



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-42-T
09 - 05 - 2011
(13499 - 13496)

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OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Arlette Ramarason
Judge Solomy Balungi Bossa

Registrar: Mr. Adama Dieng

Date: 9 May 2011

The PROSECUTOR

v.

Pauline NYIRAMASUHUKO *et al*,

Joint Case No. ICTR-98-42-T

2011 MAY - 9 P 3 21
JUDICIAL HISTORY ARCHIVE

**DECISION ON ILDEPHONSE NIZEYIMANA'S CONFIDENTIAL MOTION FOR
DISCLOSURE OF CLOSED SESSION TRANSCRIPTS AND EXHIBITS UNDER SEAL
WITH RESPECT TO WITNESS RV**

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Mr. Guy Poupart

Counsel for Ndayambaje

Mr. Pierre Boulé

Counsel for Nsabimana

Ms. Josette Kadji
Mr. Pierre Tientcheu Weledji

AMS

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the “Tribunal”),

SITTING as Trial Chamber II composed of Judges William H. Sekule, Presiding, Arlette Ramaroson and Solomy Balungi Bossa (the “Chamber”);

BEING SEIZED of the “Urgent Motion Requesting Closed Session Transcripts and Exhibits Under Seal With Respect to Protected Witness RV” (the “Motion”), filed confidentially on 29 March 2011;

CONSIDERING:

1. The “*Réponse de Nsabimana au Urgent Motion Requesting Closed Session Transcripts and Exhibits Under Seal with respect to Protected Witness RV*”, filed on 30 March 2011 (the “Nsabimana’s Response”);
2. The “Prosecutor’s Response to the Urgent Motion Requesting Closed Session Transcripts and Exhibits Under Seal with respect to Protected Witness RV” (“Prosecution Response”), filed on 4 April 2010 (the “Prosecution Response”).

CONSIDERING the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”);

NOW DECIDES the Motion pursuant to Rule 73 (A) and 75 of the Rules, on the basis of the written briefs filed by the Parties.

INTRODUCTION

1. Witness RV is a protected Prosecution witness in this case. The protection this witness enjoys was ordered pursuant to the Chamber’s Decision of 11 March 1997. It entails among others, that his identity be concealed from the press and the public. Witness RV testified on 16, 17, 18, and 19 February 2004. Part of his evidence was given in closed session to avoid the disclosure of his identity.

2. The Defence for Ildelphonse Nizeyimana, an accused in another case before this Tribunal¹ requests the disclosure of the closed session transcripts of Witness RV as well as exhibits tendered through this witness including Defence Exhibit 154.²

SUBMISSIONS OF THE PARTIES

The Nizeyimana Defence

3. The Defence submits that Witness RV will be called as a potential Defence witness in the *Nizeyimana* trial, and therefore the sought disclosure is relevant to the preparation of his case.³

¹ *The Prosecutor v. Ildelphonse Nizeyimana*, Case No. ICTR-2000-55-T.

² Motion, para. 3.

³ Motion, paras. 4-6.

4. The Defence points out that Witness RV's testimony with regard to the recruitment of soldiers for training at the request of the ESO commander on 19 April 1994 supports the Accused's submissions that he was absent from ESO from 26 April 1994, as he was training recruits at Mata, in Gikongoro *Préfecture*. This constitutes a contested issue in his trial.⁴

5. The Defence submits that it will abide by the protective order granted to Witness RV.⁵

The Prosecution

6. The Prosecution does not object to the Motion. However, it argues that the disclosure should be limited to the transcripts of 19 February 2004 which deal with the issue raised by the Defence in the Motion, notably the request sent by the ESO commander.⁶

The Nsabimana Defence

7. The Defence does not oppose the Motion but underscores that the protective measures enjoyed by Witness RV should be complied with in the *Nizeyimana* Case.

DELIBERATIONS

8. Rule 75 provides, in relevant part, that:

(A) A Judge or a Chamber may, *proprio motu* or at the request of either party, or of the victim or witness concerned, or of the Victims and Witnesses Support Unit, order appropriate measures to safeguard the privacy and security of victims and witnesses, provided that the measures are consistent with the rights of the accused.⁷

[...]

(F) Once protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal (the "first proceedings"), such protective measures:

(i) shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal (the "second proceedings") unless and until they are rescinded, varied or augmented in accordance with the procedure set out in this Rule; but

(ii) shall not prevent the Prosecutor from discharging any disclosure obligation under the Rules in the second proceedings, provided that the Prosecutor notifies the Defence to whom the disclosure is being made of the nature of the protective measures ordered in the first proceedings."⁸

[...]

9. The Chamber sees no reason to depart from the established jurisprudence of this Tribunal governing the matter which provides that:

"Confidential *inter partes* material from one case may be disclosed to a party in another case, where the applicant demonstrates that the material sought 'is likely to assist that applicant's case materially, or at least that there is a good chance that it would'. This standard can be met by showing that there is a factual nexus

⁴ Motion, para. 6.

⁵ Motion, para. 7.

⁶ Prosecution Response, paras. 1, 4-5.

⁷ Rule 75 (A).

⁸ Rule 75 (F).



between the two cases, for example, if the cases stem from events alleged to have occurred in the same geographical area at the same time.”⁹

10. The Chamber considers that, as the Defence intends to call Witness RV as a witness in the *Nizeyimana* trial, and as his testimony in the *Butare* trial dealt with, *inter alia*, the contested issue referred to in the instant Motion, a sufficient basis exists for the Nizeyimana Defence to be granted access to Witness RV’s closed session testimony in the *Butare* trial, along with all the exhibits filed under seal therewith, in that such material is likely to assist the Nizeyimana Defence in the preparation of its case.

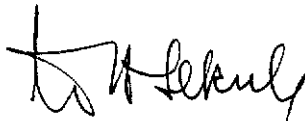
11. With regard to Witness RV’s closed session testimony for 16, 17 and 18 February 2004 and Defence Exhibit 154, the Chamber considers these materials may be helpful in preparing the defence case and therefore considers it necessary to disclose each of the materials sought by the Defence.

FOR THE ABOVE REASONS, THE TRIBUNAL

GRANTS the Motion in all respects;

ORDERS the Registry to immediately disclose to the Defence for Ildephonse Nizeyimana the transcripts of the closed session testimony of Witness RV in the *Butare* trial, for 16, 17, 18 and 19 February 2004 and the exhibits filed under seal therewith, while reminding the Defence to preserve the confidentiality of the said testimony under all circumstances and in compliance with the Chamber’s Witness Protection Decisions in the *Butare* trial.

Arusha, 9 May 2011



William H. Sekule
Presiding Judge



Arlette Ramafoson
Judge



Solomy Balungi Bossa
Judge

⁹ *The Prosecutor v. Muvunyi*, Case No. ICTR-00-55, “Decision on Extremely Urgent Motion from the Accused Alphonse Nteziryayo to Disclose Closed Session Transcripts for Witness M078” (TC) 23 March 2007, para. 4 referring, among others, to the *Prosecutor v. Nahimana et al.*, Case No. 99-52-T, “Decision on Nsengiyumva Request for Access to Protected material” (TC), 16 July 2006, para. 4.