



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-00-56-T

20-05-2011

(30608-30606)

TRIAL CHAMBER II

30608
Mw

OR: ENG

Before Judges: Asoka de Silva, Presiding
Taghrid Hikmet
Seon Ki Park

Registrar: Adama Dieng

Date: 20 May 2011

The PROSECUTOR

v.

Augustin NDINDILYIMANA
Augustin BIZIMUNGU
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU

Case No. ICTR-00-56-T

JUDICIAL SECRETARIAT
2011 MAY 20 A 3 21

DECISION ON NZABONIMANA'S MOTION FOR ACCESS TO THE *AMICUS CURIAE* REPORT ON THE RECONTANTION OF WITNESS GFR

Pursuant to Rules 75(F) and (G) of the Rules of Procedure and Evidence

Office of the Prosecution:

Mr Alphonse Van
Mr Moussa Sefon
Mr Lloyd Strickland
Mr Abubacarr Tambadou
Ms Faria Rekkas

Defence Counsel for Joseph Nzirorera

Mr Peter Robinson
Mr. Patrick Nimy Mayidika Ngimbi

Counsel for the Defence:

Mr Gilles St-Laurent and Mr Benoît Henry for Augustin Bizimungu
Mr Christopher Black and Mr Vincent Lurquin for Augustin Nindiliyimana
Mr Charles Taku and Ms Beth Lyons for François-Xavier Nzuwonemeye
Mr Fabien Segatwa and Mr Seydou Doumbia for Innocent Sagahutu

INTRODUCTION

1. On 17 May 2011, the Defence for Callixte Nzabonimana, who is an accused person in another trial before this Tribunal, filed a motion requesting the Chamber to allow it access to a letter written by Prosecution Witness GFR and an *Amicus Curiae* report on the witness's recantation of his testimony before this Chamber.¹
2. Witness GFR testified before this Chamber on 29-30 March 2005. On 26 June 2009, Counsel for Augustin Ndindiliyimana filed a motion claiming to have received a letter from Witness GFR.² The substance of the letter was that Witness GFR desired to recant his testimony. Pursuant to an Order from the Chamber, on 2 October 2009 the Chamber received an *Amicus Curiae* report on the veracity and circumstances of the letter. The letter and report were subsequently distributed to the parties and admitted into evidence.³
3. The Nzabonimana Defence asserts that it seeks access to the letter and report because that material is relevant to assessing the credibility of witnesses in the *Nzabonimana* case. The Defence alleges that the report and letter will be relevant to demonstrating a "policy by the Rwandan Government to coerce people into testifying against accused persons at the Tribunal."⁴ The Defence therefore submits that the requested materials will be relevant in assessing the credibility of Prosecution witnesses in light of this alleged policy.
4. The Prosecution did not file a response to this motion

DELIBERATIONS

5. Rule 75(F)(ii) of the Rules of Procedure and Evidence of the Tribunal states:

Once protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal ... such protective measures ... shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal ... unless and until they are rescinded, varied or augmented in accordance with the procedure set out in this Rule.

6. The Chamber notes that the case law of the Tribunals provides:

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 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.⁵

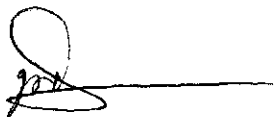
¹ *Prosecution v. Ndindiliyimana*, Case No. ICTR-00-56-T, Nzabonimana's Motion for Access to the *Amicus Curiae* Report on the Recantation of Witness GFR, 17 May 2011 ("Nzabonimana Motion").

² *Prosecutor v. Ndindiliyimana et al.*, Case No. ICTR-00-56-T, Motion Requesting Remedy for Possible Witness Recantation (TC), 26 June 2009.

³ *Prosecutor v. Ndindiliyimana et al.*, Case No. ICTR 00-56-T, Decision on Witness GFR's Recantation of his Evidence, 10 February 2010.

⁴ Nzabonimana Motion, para. I3.

⁵ *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, citing: *Prosecutor v. Galić*, Decision on Momčilo Perišić's Motion Seeking



30606

7. As summarised above, the Defence seeks access to the report and letter in connection with a theory of coercion of Prosecution witnesses by the Rwandan Government regarding the events of 1994. Having considered the Defence submissions, the Chamber is satisfied that the Defence has demonstrated a sufficient nexus and possibility that the requested documents will assist its case materially.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Defence Motion;

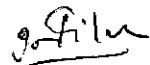
REQUESTS the Registrar to make immediate disclosure of the *Amicus Curiae* report and letter to all parties in the *Nzabonimana* case, as well as copies of those documents redacted to conceal Witness GFR's identity.

ORDERS that the parties in receipt of this information shall be bound, *mutatis mutandis*, by the applicable witness protection orders.

Arusha, 20 May 2011, done in English.

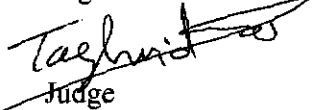
Read and Approved by

Asoka de Silva



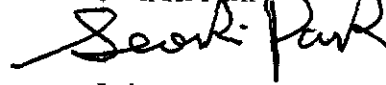
Presiding Judge

Taghrid Hikmet



Judge

Seon Ki Park



Judge

[Seal of the Tribunal]



Access to Confidential Material in the Galić Case (AC), 16 February 2006, para. 3 (citations omitted); *Prosecutor v. Blagojević and Jokić*, Decision on Momčilo Perišić's Motion Seeking Access to Confidential Material in the Blagojević and Jokić Case (AC), 18 January 2006, para. 4; *Prosecutor v. Bagosora*, Case No. ICTR-98-41-T, Decision on Nzirorera Request for Access to Protected Material (TC), 19 May 2006, para. 2.