



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

2546
MWR

ICTR-96-14

22-07-2011
(2544-2546)

OR: ENG

TRIAL CHAMBER III

Before Judges: Khalida Rachid Khan, *Presiding*
Lee Gacuiga Muthoga
Seon Ki Park

Registrar: Adama Dieng

Date: 22 July 2011

Eliézer NIYITEGEKA

v.

THE PROSECUTOR

Case No. ICTR-96-14

JUDICIAL RECORDS/ARCHIVES
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2011 JUL 22 P 12: 03

**INTERIM ORDER IN RELATION TO ELIÉZER NIYITEGEKA'S REQUEST FOR
DISCLOSURE**

Rules 54 and 68 of the Rules of Procedure and Evidence

For the Prosecution:
Mr. Hassan Bubacar Jallow

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INTRODUCTION

1. In its Judgement of 9 July 2004, the Appeal's Chamber dismissed Eliézer Niyitegeka's Appeal.¹ Since then, the Appeals Chamber has dismissed five requests for review filed by Niyitegeka,² who is currently serving his sentence in Mali.
2. Following the dismissal by the Appeals Chamber of Eliézer Niyitegeka's Motion for disclosure of exculpatory materials for lack of jurisdiction,³ Niyitegeka filed the same request before the President of the Tribunal.⁴
3. As no Chamber is currently seized of Eliézer Niyitegeka's case, the President appointed this Chamber to Rule on the matter.⁵

DELIBERATIONS

4. Eliézer Niyitegeka submits that the Prosecution failed to disclose to him an exculpatory confidential document relating to Witness KJ, a Prosecution witness in Niyitegeka's case. He alleges that this document, a letter, could have influenced the Chamber's opinion of Witness KJ's credibility.⁶ In his Motion of 15 May 2011, Niyitegeka refers to his Original Motion before the Appeals Chamber.⁷
5. In his Original Motion before the Appeals Chamber, Eliézer Niyitegeka alleges that the Prosecution failed to discharge its obligations pursuant to Rule 68 of the Rules of Procedure and Evidence by not disclosing him a letter dated 3 October 2002 authored by Witness KJ to the Kigali General Military Auditor. The letter, according to Niyitegeka, includes an annex.⁸

¹ *Eliézer Niyitegeka v. The Prosecutor*, Case No. 96-14-A ("*Niyitegeka*"), Judgement, 9 July 2004.

² *Niyitegeka*, Decision on Request for Review, 30 June 2006 ; Decision on Request for Review, 6 March 2007 ; Decision on Third Request for Review, 23 January 2008; Decision on Fourth Request for Review, 12 March 2009; Decision on Fifth Request for Review, 27 January 2010; Decision on Motion for Reconsideration on Fifth Review Decision, 25 March 2010.

³ *Niyitegeka*, Decision on Motion for Disclosure, 10 May 2011.

⁴ Requête aux fins d'une ordonnance portant communication des éléments de preuve à décharge et autres éléments pertinents, dated 15 May 2001 and filed on 18 May 2011 ("*Motion of 15 May 2011*").

⁵ *Niyitegeka*, Designation of a Trial Chamber to Consider Eliézer Niyitegeka's Motion for Disclosure, 20 July 2011.

⁶ Motion of 15 May 2011.

⁷ Requête aux fins d'une ordonnance portant communication des éléments de preuve à décharge et autres éléments pertinents, dated 9 November 2010 and filed on 24 November 2010 ("*Original Motion*").

⁸ Original Motion, para. 5

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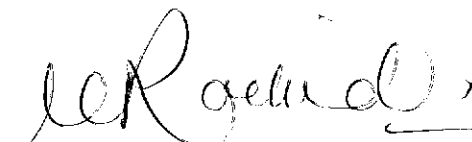
6. In its response to the Original Motion, the Prosecution submits that the said letter, which is in its custody, does not contain any exculpatory information within the meaning of Rule 68.⁹ The Prosecution also expresses concerns over Niyitegeka's knowledge of the content of letter.¹⁰

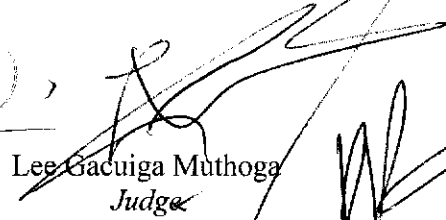
7. The Chamber observes that it appears from the submissions of the Parties that Eliézer Niyitegeka is already privy to the confidential content of the document he is requesting. From the Prosecution's Response of 3 November 2010 to Niyitegeka's request for disclosure of 13 October 2010, it appears that Niyitegeka has knowledge of the addressee of the letter, its date, its content and its ERN number.¹¹ Therefore, the Chamber considers that it is appropriate to ask Niyitegeka to explain how he has become privy to the confidential information contained in KJ's letter of 3 October 2002, before the Chamber decides on the merits of the Motion.

FOR THESE REASONS, THE CHAMBER

- I. **ORDERS** that Eliézer Niyitegeka explains in writing *ex parte* to the Chamber, within ten (10) days of being notified of this Order, how he became privy to KJ's letter of 3 October 2002 and to its content;
- II. **REQUESTS** that the Registry ensures that Eliézer Niyitegeka is notified of this order as soon as possible.

Arusha, 22 July 2011, done in English.


Khalida Rachid Khan
Presiding Judge


Lee Gacuiiga Muthoga
Judge


Seon-Ki Park
Judge

[Seal of the Tribunal]



⁹ Réponse du Procureur à la "Requête aux fins d'une ordonnance portant communication des éléments de preuve à décharge et autres éléments pertinents, dated 6 December 2010. With Annex 1 : Réponse à votre correspondance du 13 octobre 2010 concernant le témoin KJ, 3 November 2010.

¹⁰ Réponse du Procureur à la "Requête aux fins d'une ordonnance portant communication des éléments de preuve à décharge et autres éléments pertinents, dated 6 December 2010, para. 3.

¹¹ Annex 1 to Réponse du Procureur à la "Requête aux fins d'une ordonnance portant communication des éléments de preuve à décharge et autres éléments pertinents, dated 6 December 2010.