



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
22-06-2012
(54973-54971)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

54973
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ENGLISH
Original: FRENCH

Case No. ICTR-98-44-T

TRIAL CHAMBER III

Before: Judge Dennis C. M. Byron, presiding
Judge Gberdao Gustave Kam
Judge Vagn Joensen

Registrar: Adama Dieng

Date: 21 December 2011

The Prosecutor

v.

Édouard Karemera

and

Matthieu Ngirumpatse

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**DECISION ON BERNARD MUNYAGISHARI'S DEFENCE MOTION FOR
DISCLOSURE OF CONFIDENTIAL INFORMATION IN THE
KAREMERA ET AL. CASE**

Office of the Prosecutor:
Don Webster
Takeh Sendze
Sunkarie Ballah-Conteh

Counsel for Édouard Karemera:
Dior Diagne Mbaye and Félix Sow

Counsel for Matthieu Ngirumpatse:
Chantal Hounkpatin and Frédéric Weyl

CIII11-0238 (E)

Translation certified by LSS, ICTR

INTRODUCTION

1. Bernard Munyagishari is charged before the Tribunal with conspiracy to commit genocide, genocide, or alternatively with complicity in genocide, as well as murder and rape as crimes against humanity for offences committed in Gisenyi *préfecture*. His case is at the pre-trial phase.
2. In the Motion filed on 28 November 2011, Bernard Munyagishari requested the Trial Chamber in the *Kareméra et al.* case to grant him access to all closed session transcripts, all relevant exhibits as well as all confidential decisions and orders rendered in the said trial concerning the events which occurred in Gisenyi region.¹
3. On 29 November 2011, Matthieu Ngirumpatse filed submissions on the Motion, which he did not oppose provided that it did not affect the protection measures granted to Matthieu Ngirumpatse's witnesses.²
4. In its Response of 5 December 2011, the Prosecution opposed the Defence Motion on the ground that Bernard Munyagishari did not specify the legal basis for his Motion. In the alternative, the Prosecution submitted that it had not yet determined which witnesses will be called should the case be tried by the Tribunal, in order to trigger Rule 66(A) (ii) disclosure obligations for some of the requests made by the Defence. The Prosecution further submitted that the Motion was premature because a trial commencement date had not been scheduled.³

DELIBERATIONS

5. The Appeals Chamber has consistently held that a party is always entitled to seek material from any source to assist in the preparation of its case if the material sought has been identified or described by its general nature and if a legitimate forensic purpose for such access has been shown.⁴

¹ Bernard Munyagishari' Defence Motion for Disclosure of Confidential Information in the *Kareméra et al.* case, filed on 28 November 2011.

² Ngirumpatse's Submissions on Bernard Munyagishari's Defence Motion for Disclosure of Confidential Information in the *Kareméra et al.* case, filed on 29 November 2011.

³ Prosecutor's Response to "*Requête de la défense de Bernard Munyagishari visant la communication des informations confidentielles dans l'affaire Kareméra et al.*", filed on 5 December 2011.

⁴ *Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, "Decision on Defence Motion by Franko Simatović for Access to Transcripts, Exhibits, Documentary Evidence and Motion Filed by the Parties in the *Simić et al.* Case, 13 April 2005, p. 3; *Momir Nikolić v. Prosecutor*, Case No. IT-02-60/1-A, "Decision on Emergency Motion for Access to Confidential Document", 4 February 2005, p. 4; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, "Decision on Dario Kordić and Mario Čerkez's Request for Access to Tihomir Blaškić's Fourth Rule 115 Motion and Associated Documents", 28 January 2004, p. 3; *Prosecutor v. Mladen Naletilić, aka "Tuta", & Vinko Martinović, aka "Stela"*, Case No. IT-98-34-A, "Decision on Joint Defence Motion by Enver Hadžihasanović and Amir Kubura for Access To All Confidential Material, Filings, Transcripts and Exhibits in the *Naletilić and Martinović* case", 7 November 2003, pp. 3 and 4; *Ferdinand Nahimana and others v. The Prosecutor*, Case No. ICTR-99-52-A ("*Nahimana and others*"), "Decision on Ferdinand Nahimana's Motions for Disclosure of Material in the Prosecutor's Possession Necessary for the Appellant's Defence and for Registry's Assistance to Conduct Further Investigations at the Appeal Stage, para. 12; *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R75, Decision on Eliézer Niyitegeka's Appeal Concerning Access to Confidential Materials in the *Muhimana and Kareméra et al.* cases", 23 October 2008, para. 21.

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6. The Chamber notes that several motions with substantial impact on the outcome of the proceedings before this Tribunal are pending: the Prosecutor's Request for the Referral of the Case of Bernard Munyagishari to Rwanda⁵ as well as the Defence Motion for Commencement of Trial.⁶

7. In view of these pending Requests and the state of the pre-trial phase of the *Munyagishari* case, the Chamber considers that the Defence Motion is premature.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES Bernard Munyagishari's Motion.

Arusha, 21 December 2011

[Signed]

Dennis C. M. Byron
Presiding

[Signed]

Gberdao Gustave Kam
Judge

[Signed]

Vagn Joensen
Judge

[Seal of the Tribunal]



⁵ Prosecutor's Request for the Referral of the Case of Bernard Munyagishari to Rwanda Pursuant to Rule 11 *bis* of the Rules of Procedure and Evidence; a request was filed 3 October 2011 and another on 9 November 2011.

⁶ Defence Motion for the Commencement of the Trial of Bernard Munyagishari Pursuant to Articles 19(1) and 20(4)(C) of the Statute and Rule 73 *bis* of the Rules, filed on 24 November 2011.