

ICTR-96-10317-T

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UNITED NATIONS  NATIONS UNIES

International Criminal Tribunal for Rwanda

TRIAL CHAMBER I

OR: ENG

Before: Judge Asoka de Zoysa Gunawardana, Presiding  
Judge Navanethem Pillay  
Judge Erik Møse

Registry: Ms Aminatta N'Gum

Decision of: 6 April 2001

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ICTR  
09/04/2001

THE PROSECUTOR

v.

ELIZAPHAN NTAKIRUTIMANA AND GERARD NTAKIRUTIMANA

ICTR-96-17-T

ICTR-96-10-T

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**DECISION ON PROSECUTION'S *EX PARTE* MOTION FOR VARIATION OF WITNESS PROTECTION MEASURES FOR PROSECUTION WITNESS II**

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The Office of the Prosecutor:

Mr. Solomon Loh

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME  
COPIE CERTIFIÉE CONFORME A L'ORIGINAL PAR NOUS  
NAME / NOM: AMINATTA L.R. N'GUM  
SIGNATURE: A. N'Gum DATE: 09/04/2001



**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the TRIBUNAL),**

**SITTING** as Trial Chamber I, composed of Judge Asoka de Zoysa Gunawardana, Presiding, Judge Navanethem Pillay and Judge Erik Møse;

**CONSIDERING** the *ex parte* motion, filed in Arusha on 5 April 2001, by the Prosecution, for the variation of witness protection measures for Prosecution Witness II;

**CONSIDERING** the DECISION ON WITNESS PROTECTION, issued by this Trial Chamber, on 22 August 2000, which granted protective measures for Prosecution and Defence witnesses;

**CONSIDERING** Articles 20 and 21 of the Statute (the "Statute") and Rules 66, 68 and 75 of the Rules of Procedure and Evidence (the "Rules");

**HEREBY DECIDES** the Prosecution motion on the basis of the written brief.

**The Motion**

1. The Prosecution, on 5 April 2001, filed its *ex parte* motion for the variation of witness protection order for Prosecution Witness II. The Prosecution submitted that Witness II, who is a Prosecution witness in the present case, has given a statement to the Office of the Prosecutor that may be relevant to the subject matter of the appeal in the case of *Musema vs The Prosecutor* (ICTR-96-13-A), which is currently before the Appeals Chamber.

2. The Prosecution is of the view that the said statement of Witness II may fall within the scope of Rule 68 in relation to the appeal in *Musema vs The Prosecutor*. Rule 68, which obliges the Prosecution to disclose exculpatory evidence to the Defence, as soon as practicable, provides:

The Prosecutor shall, as soon as practicable, disclose to the defence the existence of evidence known to the Prosecutor which in any way tends to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of prosecution evidence.

3. The Prosecution submitted that the Decision of 22 August 2000, which granted

protective measures for Prosecution and Defence witnesses, prevents it from disclosing the statement of Witness II, to the Defence team of Musema.

4. Therefore, the Prosecution seeks an order to vary the witness protection measures in respect of Witness II, to allow for the disclosure of this Witness II's statement to Mr Steven Kay QC, Counsel for Musema, for the purposes of the appeals proceedings in the case of *Musema vs The Prosecutor*.

**Deliberations**

5. The Chamber finds that it is in the interests of justice to vary its decision on witness protection, dated 22 August 2000, as it pertains to Prosecution Witness II, for the reasons provided by the Prosecution, as stated above.

6. This Chamber, in its decision on witness protection, dated 22 August 2000, gave the following orders:

- "1. The names, addresses and other identifying information concerning the Parties' witnesses shall be forwarded by the Parties, to the Victims and Witnesses Support Section of the Tribunal, in confidence, and shall be kept under seal by the Registry and not be included in any public records of the Tribunal.
- 2. Where the names, addresses, locations or other identifying information concerning the Parties' witnesses appear in the Tribunal's public records, this information shall be expunged from the records.
- 3. The names, addresses, locations and other identifying information of the Parties' witnesses contained in the Parties' trial materials, shall not be disclosed to the public or to the media.
- 4. The Parties shall not disclose, or reveal any document or information identifying the witnesses protected by this order, to anyone except members of the Parties' immediate team or the accused.
- 5. No photographs, audio or video recordings or broadcastings, or sketches of witnesses protected by this order may be taken, without leave of the Trial Chamber and the Party concerned.

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6. The Parties shall be permitted to designate pseudonyms for each of their witnesses for use in the proceedings of the Tribunal and during discussions between the Parties.
7. Counsel for the Parties, and any representative acting on their behalf, shall notify the other Party prior to any contact with the witnesses of that other Party, and the other Party shall make arrangements for such contacts.
8. The Parties are authorised to withhold disclosure of the identity of the witness and to temporarily redact their names, addresses, locations and other identifying information from the supporting material and other disclosure on file with the Registry, until such time as the witnesses are under the protection of the Tribunal."

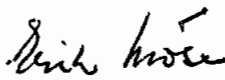
**THE TRIAL CHAMBER  
HEREBY ORDERS,**

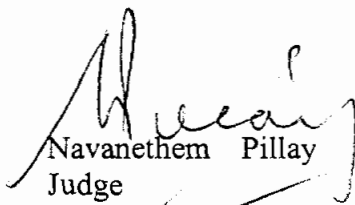
That the DECISION ON WITNESS PROTECTION, issued by Trial Chamber I, on 22 August 2000, be varied in the following terms:

- (a) the Prosecution is permitted to disclose the non-redacted statement of prosecution Witness II to Mr Steven Kay QC, for the purposes of the appeal in *Alfred Musema v. The Prosecutor*, ICTR-96-13-A;
- (b) the witness protection measures ordered by the Decision of 22 August 2000 shall remain in force in all other respects and shall apply *mutatis mutandis* to the Counsel for Musema;
- (c) the statement of Witness II may be filed before the Appeals Chamber only as a confidential document that shall be kept under seal; and
- (d) the Registry shall assign a pseudonym to Witness II for the purpose of the appeals proceedings in the case of *Alfred Musema v. the Prosecutor* (ICTR-96-13-A).

Done this 6<sup>th</sup> day of April 2001  
Arusha

  
Asoka de Zoysa Gunawardana  
Presiding Judge

  
Erik Møse  
Judge

  
Navanethem Pillay  
Judge

