



ICTR-98-42-T  
4-7-2005  
(11395 — 11392)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

11395  
smmlkg

OR: ENG

**TRIAL CHAMBER II**

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

**Registrar:** Mr Adama Dieng

**Date:** 4 July 2005

**The PROSECUTOR**

v.

**Pauline NYIRAMASUHUKO**  
Case No. ICTR-97-21-T  
Joint Case No. ICTR-98-42-T

2005 JUL -4 P 4: 15  
ICTR  
RESEARCHIVES

**DECISION ON PAULINE NYIRAMASUHUKO'S EX-PARTE- EXTREMELY URGENT  
MOTION FOR RECONSIDERATION OF TRIAL CHAMBER II'S DECISION ON  
NYIRAMASUHUKO'S STRICTLY CONFIDENTIAL EX-PARTE - UNDER SEAL -  
MOTION FOR ADDITIONAL PROTECTIVE MEASURES FOR DEFENCE WITNESS  
WBNM DATED 17 JUNE 2005  
OR, SUBSIDIARILY, ON NYIRAMASUHUKO'S STRICTLY CONFIDENTIAL EX-PARTE-  
UNDER SEAL - MOTION FOR ADDITIONAL PROTECTIVE MEASURES FOR DEFENCE  
WITNESS WBNM**

**Office of the Prosecutor**

Ms Silvana Arbia  
Ms Adelaide Whest  
Ms Holo Makwaia  
Ms Adesola Adeboyejo  
Mr Cheikh T. Mara  
Ms Althea Alexis  
Mr Michael Adenuga  
Ms Astou Mbow, Case Manager

**Defence Counsel**

Ms Nicole Bergevin  
Mr Guy Poupart

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

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**SITTING** as Trial Chamber II composed of Judge William H. Sekule, Presiding, Judge Arlette Ramaroson and Judge Solomy Balungi Bossa (the "Chamber");

**BEING SEISED** of "Pauline Nyiramasuhuko's *Ex-Parte* extremely Urgent Motion For Reconsideration of the Decision on Nyiramasuhuko's Strictly Confidential *Ex-Parte* Under Seal-Motion For Additional Protective Measures For Defence Witness WBNM or Subsidiarily on Nyiramasuhuko's Strictly Confidential *Ex-Parte*- Under Seal Motion For Additional Protective Measures For Defence Witness WBNM"<sup>1</sup>, filed on 20 June 2005 (the "Motion"), and the Addendum filed on 22 June 2005;

**NOTING** the "Decision on Nyiramasuhuko's Strictly Confidential *Ex-Parte* – Under Seal – Motion for Additional Protective Measures for Defence Witness WBNM" of 17 June 2005 (the "Impugned Decision");

**NOTING** the "Scheduling Order in the Matter of Pauline Nyiramasuhuko's *Ex-Parte* Extremely Urgent Motion for Reconsideration of the Decision on Nyiramasuhuko's Strictly Confidential *Ex-Parte* – Under seal – Motion for Additional Protective Measures for Defence Witness WBNM", of 22 June 2005 (the "Scheduling Order");

**NOTING** "Pauline Nyiramasuhuko's *Ex-Parte* Execution of the Scheduling Order in the Matter of Pauline Nyiramasuhuko's *Ex-Parte* Extremely Urgent Motion For Reconsideration of the Decision on Nyiramasuhuko's Strictly Confidential *Ex-Parte* Motion for Additional Protective Measures for Defence Witness WBNM", filed on 29 June 2005 (the "Response to the Scheduling Order");

**CONSIDERING** the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules");

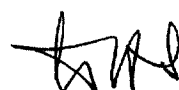
**NOW DECIDES** the matter, pursuant to Rule 73 (A), on the basis of the written submissions of the Defence.

#### SUBMISSIONS OF THE DEFENCE

1. The Defence moves the Chamber to reconsider its decision of 17 June 2005 in order to allow Defence Witness WBNM to testify by means of video-conference from Belgium, where he currently resides. The Defence indicates that it would set an appropriate time for this at a later stage. The Defence further requests that the information concerning the expulsion order against Witness WBNM not be disclosed to any third party including the Prosecutor, the Rwandan State, other accused persons in this trial, or any other State, institution, or organisation.
2. In support of its motion, the Defence submits that by filing further documents annexed to the Response to the Scheduling Order, it has complied with the Chamber's orders contained in the Scheduling Order and discharged its burden of proof as to an objective basis underscoring the Witness's fears of leaving Belgium to come and testify in Arusha.

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<sup>1</sup> This Motion was originally filed in French as "*Requête ex parte d'extrême urgence de l'accusée Pauline Nyiramasuhuko en reconsidération de la décision on Nyiramasuhuko's Strictly Confidential ex parte – Under Seal – Motion for Additional Protective Measures for Defence Witness WBNM ou subsidiairement requête de l'accusée Nyiramasuhuko ex parte et strictement confidentielle pour mesures additionnelles de protection pour le témoin à décharge WBNM*".



DELIBERATIONS

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3. The Chamber recalls the Tribunal's jurisprudence on reconsideration, namely the "Decision on Prosecutor's Motion for Reconsideration of the Trial Chamber's Decision on Prosecutor's Motion for Leave to Vary the Witness List Pursuant to Rule 73bis(E)":

The fact that the Rules are silent as to reconsideration, however, is not, in itself, determinative of the issue whether or not reconsideration is available in "particular circumstances" and a judicial body has inherent jurisdiction to reconsider its decision in "particular circumstances". Therefore, although the Rules do not explicitly provide for it, the Chamber has an inherent power to reconsider its own decisions. However, it is clear that reconsideration is an exceptional measure that is available only in particular circumstances.<sup>2</sup>

4. The Chamber recalls that it dismissed the Motion in its Impugned Decision because the Defence had not shown that Witness WBNM's fears of leaving Belgium were underscored by objective elements.<sup>3</sup> The Defence has now filed further documents in support of its Motion, annexed to the Response to the Scheduling Order which, still according to the Defence, justify a further examination of the additional protective measures sought.

5. The Chamber, noting the provisions of Article 21 of the Statute and Rules 69 and 75 of the Rules, reiterates its analysis of the case law regarding requests for extra protective measures enunciated in the *Bagosora* Decision of 13 September 1999 and cited in its Decision of 1 March 2005:

To grant protective measures to a witness, pursuant to Rule 75, the following conditions must also apply. Firstly, the testimony of the witness must be relevant and important to the party's case. Secondly, there must be a real fear for the safety of the witness and an objective basis underscoring the fear. Thirdly, any measure taken should be strictly necessary. If a less restrictive measure can secure the required protection, that measure should be applied.<sup>4</sup>

6. The Chamber further recalls that it has already found that the relevance and importance of Witness WBNM's expected testimony to the Defence case cannot be disputed and that the first criterion is thus fulfilled.<sup>5</sup> As to the second criterion of real fear underscored by an objective basis, the Chamber considers that the Defence has demonstrated, by filing additional documents, that Witness WBNM's fear of being denied re-entry into Belgium because of his status as an illegal immigrant, if he testifies in Arusha, has basis. The documents filed include evidence of an expulsion order issued against Witness WBNM on 5 October 2004 in compliance with the decision of 13 September 2004, and of the two pending appeals lodged with the *Conseil d'Etat*, which have no suspensive effect on either decision or expulsion order. The Chamber further notes the Defence's admission that the Witness is an illegal immigrant in Belgium. The Chamber is therefore satisfied that Witness WBNM's fears have been shown to be underscored by objective elements, and that the second criterion is fulfilled. Accordingly, in reconsidering its Decision of

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<sup>2</sup> *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Prosecutor's Motion for Reconsideration of the Trial Chamber's "Decision on Prosecutor's Motion for Leave to Vary the Witness List Pursuant to Rule 73bis(E)" (TC), 15 June 2004, para. 7.

<sup>3</sup> *Prosecutor v. Nyiramasuhuko*, ICTR-98-42-T, Decision on Nyiramasuhuko's Strictly Confidential *Ex-Parte* – Under Seal – Motion for Additional Protective Measures for Defence Witness WBNM (TC), 17 June 2005, para. 20.

<sup>4</sup> *Prosecutor v. Bagosora*, ICTR-96-7-I, Decision on the Extremely Urgent Request Made by the Defence for Protection Measures for Mr. Bernard Ntuyahaga (TC), 13 September 1999, para. 28.

<sup>5</sup> *Prosecutor v. Nyiramasuhuko*, ICTR-98-42-T, Decision on Nyiramasuhuko's Strictly Confidential *Ex-Parte* – Under Seal – Motion for Additional Protective Measures for Defence Witness WBNM (TC), 17 June 2005, para. 12.



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17 June 2005, the Chamber concludes that Defence Witness WBNM is presently eligible to additional protective measures.

7. The Chamber recalls that the additional protective measure sought for Witness WBNM is his testimony via video-link from Belgium. According to the jurisprudence, protective measures have to be "strictly necessary", in the sense that there is no other "less restrictive measure which can secure the required protection."<sup>6</sup> The Chamber considers that the Witness's fears of being denied re-entry into the country, were he to leave it to testify in Arusha, cannot be allayed by any less restrictive measure of protection and thus grants the measure sought.
8. According to the information provided to the Chamber, the Registry needs at least three weeks to prepare and to make the necessary arrangements for testimony via video-link from Belgium. Accordingly, the Chamber directs the Defence to take all appropriate measures to comply with this administrative requirement.
9. As to the second Defence prayer, namely, the non-disclosure of the Witness's current status with regard to the expulsion order to third parties, the Chamber reiterates its view that there is no legal basis for this request, which furthermore has not been shown to be strictly necessary.

**FOR THE ABOVE REASONS, THE TRIAL CHAMBER**

**GRANTS** the Motion in part,

**ORDERS** that Witness WBNM's testimony shall be heard via video-link from Belgium where he currently resides,

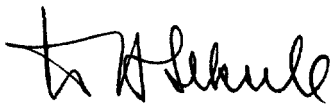
**ORDERS** the Registry to take all administrative and other steps necessary for the implementation of this Decision;

**DIRECTS** the Defence to diligently assist the Registry in the necessary arrangements;

**DISMISSES** the request for non-disclosure of the Witness's current status with regard to the expulsion order to third parties;

**REITERATES** the Decision of 17 June 2005 in all other respects.

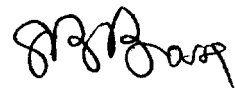
Arusha, 4 July 2005



William H. Sekule  
Presiding Judge



Arlette Ramaroson  
Judge



Solomy Balungi Bossa  
Judge



<sup>6</sup> *Prosecutor v. Tadić*, IT-94-I-T, Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses (TC), 10 August 1995, para. 66.