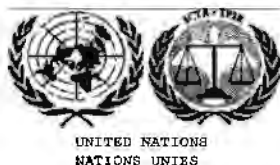


ICTR-98-41-T
03-07-2006
(28435-28433)

28435
Ivan



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 3 July 2006

THE PROSECUTOR

v.

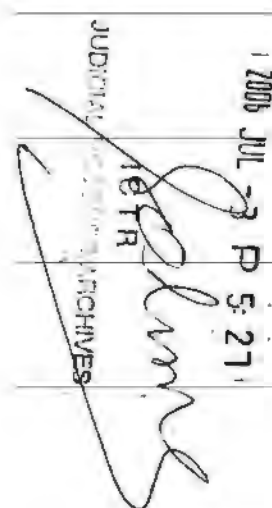
Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. ICTR-98-41-T



DECISION ON PROTECTED STATUS OF WITNESS YD-1

The Prosecution

Barbara Mulvaney
Drew White
Christine Graham
Rashid Rashid

The Defence

Raphaël Constant
Allison Turner
Paul Skolnik
Frédéric Hivon
Peter Erlinder
André Tremblay
Kennedy Ogetto
Gershom Otachi Bw'omanwa

blw

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

BEING SEIZED of the Nsengiyumva “Motion to Confirm the Status of Witness YD-1”, etc., filed on 2 June 2006;

HEREBY DECIDES the motion.

INTRODUCTION

1. Upon arrival in Arusha, Witness YD-1 indicated to the Registry that he did not wish to stay at the place normally used for the accommodation of protected witnesses. The Registry acceded to the request, but only on condition that the witness sign a form purporting to waive his status as a protected witness.¹ The Defence subsequently sought the assistance of the Registry on behalf of the witness, who complained that he was encountering security problems. The Registry declined to intervene in the matter on the basis that, by signing the form, the witness had waived his protected status.

2. The Defence seeks a declaration that Witness YD-1 is a protected witness, and a direction to the Registry to treat the witness accordingly.

DELIBERATIONS

3. The Defence witness protection orders do not provide for the voluntary waiver of protected status.² That status was originally invoked when the Nsengiyumva Defence designated Witness YD-1 as a protected witness, in accordance with operative paragraph 1 of the witness protection order, and then reaffirmed by the witness himself before the beginning of his testimony. Two days after the purported waiver was signed, the Presiding Judge advised the witness before the beginning of his testimony that “you will be referred to as witness YD-1 in these proceedings”.³ Far from authorizing any waiver of the witness’s protected status, the Chamber acknowledged that he was a protected witness and heard parts of his testimony in closed session. Only the Chamber is competent to change the status of a protected witness, and it did not do so in this case. Furthermore, the Chamber has held that refusal to stay in the accommodation provided by the Registry for protected witnesses does not alter their protected status.⁴

¹ The form signed by the witness is attached to the motion as Annex 1.

² On 1 June 2005, the Chamber ordered that the Ntabakuze witness protection order applied to all Nsengiyumva witnesses. *Bagosora et al.*, Decision on Motion to Harmonize and Amend Witness Protection Orders (TC), 1 June 2005; *Bagosora et al.*, Decision on Ntabakuze Motion for Protection of Witnesses (TC), 15 March 2004. The orders were modified again, but not in any manner relevant to the present motion, by *Bagosora et al.*, Decision Amending Defence Witness Protection Orders (TC), 2 December 2005.

³ T. 12 December 2005 p. 36.

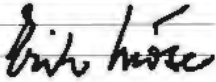
⁴ T. 5 April 2006 pp. 53-54.

FOR THE ABOVE REASONS, THE CHAMBER

DECLARES that Witness YD-1 remains a protected witness;

DIRECTS the Registry to treat him accordingly.

Arusha, 3 July 2006


Erik Mose
Presiding Judge


Sri Ram Reddy
Judge


Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

