

ICTR-98-41-T
03-07-2006
(28438-28436)

28438



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

JUDICIAL ARCHIVES
ICTR
2006 JUL -3 P 5: 21
[Signature]

**DECISION ON REQUEST TO DIRECT REGISTRY TO COMPLY WITH
ORDER CONCERNING WITNESS PROTECTION**

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

[Signature]

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 Seeking a Directive to the Registry”, etc., filed on 1 June 2006;

CONSIDERING the Registrar’s Submission, filed on 9 June 2006; and the Defence Response thereto, filed on 15 June 2006;

HEREBY DECIDES the motion.

INTRODUCTION

1. Before the beginning of the testimony of Witness BRA-1 on 5 and 6 April 2006, the Chamber heard oral submissions on a motion filed by the Nsengiyumva Defence requesting that the witness be permitted to stay at a place of his own choosing rather than at the safe house provided by the Tribunal for the accommodation of protected witnesses. The Chamber ruled that a protected witnesses was entitled to make such a choice without thereby altering his or her protected status. However, the protected witness must be advised that, in so choosing, the Tribunal would not be in a position to provide the level of security that would be afforded at the safe house.¹ Witness BRA-1 then entered the courtroom; was advised by the Presiding Judge of the legal and factual situation; and then unequivocally indicated that he wished to remain a protected witness, even though he wished to stay elsewhere.² On 29 May 2006, after a period of adjournment, Witness BRA-1 completed his testimony.

2. The Defence submits that, after the completion of Witness BRA-1’s testimony, the Registry violated this order by asking the witness to sign a form, attached to the motion as Annex-3, purporting to waive his protected status. The Defence asks the Chamber to direct the Registry to withdraw the use of the form and pay him the “full subsistence allowance”, although without further defining how much that should be.

3. The Registry claims that before the end of his stay in Arusha, Witness BRA-1 requested that he receive the allowance to which unprotected witnesses are entitled, which is significantly higher than that received by protected witnesses. The Registry advised him that he would not be entitled to that sum unless he signed a form waiving his protected status. The witness refused to sign the form. On 2 June 2006, he was offered the sum to which he was entitled as a protected witness, except for expenses. The witness refused the amount, claiming that his request for the full subsistence allowance was before the Chamber. On 6 June 2006, the Registry went to the place where the witness had been staying to pay him the subsistence rate for protected witnesses plus expenses, in accordance with United Nations regulations. The witness was not found at that location.

¹ T. 5 April 2006 pp. 53-54.

² T. 5 April 2006 p. 56.



DELIBERATIONS

4. The Defence witness protection orders do not provide for the voluntary waiver of protected status.³ That status was originally invoked when the Nsengiyumva Defence designated Witness BRA-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. Only the Chamber is competent to change the status of a protected witness, and the Chamber made clear in its oral decision on 5 April 2006 that the witness's protected status was unchanged. Neither the Registry nor the witness himself may alter that legal status. Witness BRA-1 remains a protected witness and must be treated accordingly. This said, the risk arising from the witness's decision not to stay at the safe house cannot be attributed the Registry. The Registry has made clear that it cannot provide the same level of security for witnesses outside of the safe house, and that it advises any witness who makes such a decision of the increased risk that they are running.⁴

5. The exact sum to which witnesses are entitled under United Nations regulations falls primarily within the purview of the Registry. The Defence has not shown that the present application of these regulations is impairing the fairness of trial proceedings. In the absence of such showing, the Chamber has no basis for reviewing the Registry's interpretation thereof.

FOR THE ABOVE REASONS, THE CHAMBER

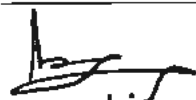
DECLARES that Witness BRA-1 remains a protected witness;

DENIES the motion in all other respects.

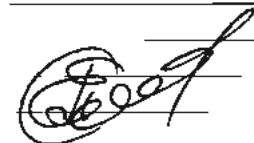
Arusha, 3 July 2006



Erik Møse
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

³ 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.

⁴ T. 5 April 2006 p. 53.