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ICTR-99-50-T
18-10-2007
(24496-24494)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR:
ENG

TRIAL CHAMBER II

Before Judges: Khalida Rachid Khan, presiding
Emile Francis Short
Lee Gacunga Muthoga

Registrar: Mr. Adama Dieng

Date: 18 October 2007

THE PROSECUTOR
v.
CASIMIR BIZIMUNGU
JUSTIN MUGENZI
JÉRÔME-CLÉMENT BICAMUMPAKA
PROSPER MUGIRANEZA

Case No. ICTR-99-50-T

**DECISION ON DEFENDANT BICAMUMPAKA'S MOTION TO VARY
PROTECTION MEASURES FOR CERTAIN DEFENCE WITNESSES**

Rules 54, 69 and 75 of the Rules of Procedure and Evidence

Office of the Prosecutor:

Mr. Paul Ng'ama
Mr. Ibukunolu Alao Babajide
Mr. Justus Bwonwonga
Mr. Elvis Bazawule
Mr. Shyam Lal Rajapaksa
Mr. Olivier De Schutter
Mr. William Mubiru

Counsel for the Defence:

Ms. Michelyne C. St. Laurent and Ms. Alexandra Marcel for **Casimir Bizimungu**
Mr. Ben Gumpert and Mr. Jonathan Kirk for **Justin Mugenzi**
Mr. Michel Croteau for **Jérôme-Clément Bicamumpaka**
Mr. Tom Moran and Ms. Marie-Pierre Pouliain for **Prosper Mugiraneza**

INTRODUCTION

1. This Decision concerns two Motions brought by the Defence for Mr Bicamumpaka requesting that the Chamber set aside the protective measures for eight (8) witnesses. In the first Motion, the Defence requests that the Chamber set aside the protective measures, except for the measures listed in paragraph (j), for six (6) witnesses: LJ-1, OK-1, MG-1, JS-1, CC-1 and CE-1.¹ The Defence submits that these witnesses wish to testify unprotected under their true identities, and do not fear reprisals, and supports this submission with the sworn statement from Defence Co-Counsel to this effect.² The Prosecution does not oppose the First Defence Motion.³

2. In the Second Motion, the Defence for Mr Bicamumpaka requests that the Chamber set aside the protective measures, again excepting paragraph (j), for two (2) witnesses: OC-1 and NE-2.⁴ Sworn statements from OC-1 and NE-2 have been annexed to the Second Motion. These statements express (i) their desire that the protective measures be lifted, and (ii) their awareness that their identities and the fact that they have testified will be publicly available as a result of the waiver.⁵ The Prosecution did not respond to the Second Defence Motion.

DISCUSSION

3. The Chamber decides these Motions pursuant to Rules 54, 69, and 75 of the Rules of Procedure and Evidence. Rule 75 (f) explicitly authorizes the Chamber or a Judge of the Chamber to rescind, vary or augment extant protective measures at the request of the parties.

4. Pursuant to a prior Decision of this Chamber, the witness protection measures presently in force apply to all potential Defence Witnesses for Mr Bicamumpaka nominated to the Witness and Victim Support Section of the Registry (WVSS) in the proper format.⁶

5. Regarding the First Motion, which is based on the sworn statement of Defence Co-Counsel for Mr Bicamumpaka, the Chamber informally inquired whether WVSS had any objection to the withdrawal of protective measures for these witnesses. Initially, WVSS expressed no objection to the requested withdrawal of protective measures. But, by e-mail dated 8 October 2007, a representative of WVSS informed the Chamber and the Defence for Mr Bicamumpaka that, upon arrival in Arusha, Witnesses CE-1, CC-1, and MG-1 had reconsidered their decision and now refused to waive their protective

¹ Motion by Defendant Bicamumpaka to Vary Protection Measures for Certain Defence Witnesses, filed 25 September 2007 ("First Motion").

² Annex A to the Defence Motion, Affidavit of Philippe LaRochelle dated 25 September 2007.

³ Prosecutor's Response to Jerome Bicamumpaka's Motion to Vary Protection Measures for Certain Defence Witnesses, filed 26 September 2007.

⁴ Motion by Defendant Bicamumpaka to Vary Protection Measures for Certain Defence Witnesses, filed 5 October 2007 ("Second Motion").

⁵ Annexes A & B to the Second Defence Motion (Confidential), filed 5 October 2007.

⁶ *Prosecutor v. Bizimungu et al.*, Decision on Jerome Bicamumpaka's Motion for Protection of Defence Witnesses, 27 June 2005.



measures. The Chamber will, therefore, consider the First Motion only with regard to witnesses OK-1, LJ-1, and JS-1. Based on the indication from Co-Counsel for Mr Bicamumpaka that the aforementioned witnesses do not require the Tribunal's protection, and the lack of objection by WVSS, the Chamber is prepared to cancel the protective measures for witnesses OK-1, LJ-1, and JS-1.

6. Regarding the Second Motion, which is based on the signed statements of witnesses OC-1 and NE-2, the Chamber is satisfied that these witnesses are aware of the consequences of their decision to testify openly. The Chamber will therefore cancel the protective measures for witnesses OC-1 and NE-2. Paragraph (j), which obliges the Prosecutor to arrange contacts with Defence witnesses through the Defence, shall remain in force for all witnesses.

FOR THESE REASONS, the Chamber

GRANTS the First Motion in part;

DENIES the remainder of the First Motion;

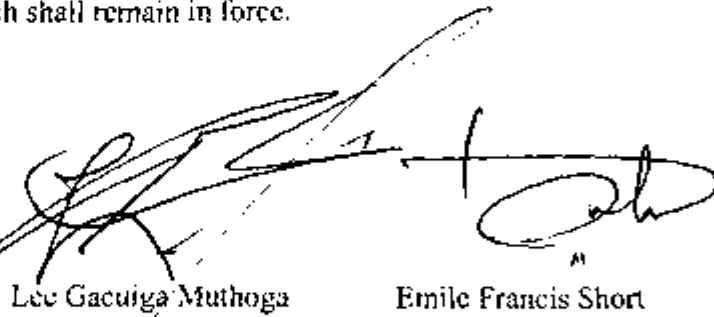
GRANTS the Second Motions; and

CANCELS the Witness Protection Orders for Witnesses LJ-1, OK-1, JS-1, OC-1 and NE-2, save for paragraph (j), which shall remain in force.

Arusha, 18 October 2007



Khalida Rashid Khan
Presiding Judge



Lee Gacuga Muthoga
Judge



Emile Francis Short
Judge

[Seal of the Tribunal]