

ICTR-07-91-PT
20-11-2008
(1785-1784)

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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

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

Registrar: Mr. Adama Dieng

Date: 20 November 2008

JUDICIAL DEPARTMENT
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THE PROSECUTOR

v.

Léonidas NSHOGOZA

Case No. ICTR-07-91-PT

DECISION ON DEFENCE MOTION TO EXAMINE ON AFFIDAVIT

Office of the Prosecutor:

Richard Karegyesa
Abdoulaye Seye
Dennis Mabura
Florida Kabisanga

For the Accused

Allison Turner

INTRODUCTION

1. On 9 October 2008, the Prosecutor filed a motion seeking protective measures for certain Prosecution witnesses. In that motion, the Prosecutor refers to the affidavit of Commander Kwende, Officer in Charge of Investigations, to support his submission that there is a subjective and objective fear on the part of Prosecution witnesses living in Rwanda, giving rise to the need for the protective measures requested.¹
2. The Defence filed a Motion on 27 October 2008 in which the Defence describes the contents of Commander Kwende's affidavit as "vague" and "constituting double hearsay." In its Motion, the Defence requests the particulars of Commander Kwende, as well as authorization to examine him on his affidavit, and to use a recording of any such examination in these proceedings.²
3. The Prosecutor did not respond to the Motion.

DISCUSSION




4. The Chamber considers that there is no factual basis for the Motion. Rule 69 of the Rules of Procedure and Evidence provides that applications for protection of victims and witnesses be made to the Chamber. It follows that, where an affidavit accompanies the application, it is for the Chamber, not the opposing party, to evaluate the merits of the application. The Chamber considers that the Defence request to cross-examine Commander Kwende on the substance of his affidavit, in the absence of any evidence from the Defence that its contents are untrue, would amount to a fishing expedition, which the Chamber will not allow.
5. The Chamber considers that the Motion is without merit. The Chamber further considers the Motion to be frivolous, and an unnecessary expenditure of valuable judicial resources.

FOR THESE REASONS the Chamber,

DENIES the Motion in its entirety; and

HEREBY DIRECTS the Registry to withhold the payment of any costs associated with the filing of the "Defence Motion to Examine on Affidavit," filed on 27 October 2008.

Arusha, 20 November 2008

Khalida Rachid Khan
 Presiding Judge

Lee Gacugira Muthoga
 Judge

For and on behalf of
 Emile Francis Short
 Judge

[Seal of the Tribunal]



¹ Nshogozu, "Prosecutor's Extremely Urgent Motion for Protective Measure for Victims and Witnesses," filed 9 October 2008, at para 4.

² Nshogozu, "Defence Motion to Examine on Affidavit," filed 27 October 2008, at paras. 2-3.