



UNITED NATIONS
NATIONS UNIES

ICTR-07-91-T
26-1-2009
(2567 - 2568)

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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: 26 January 2009

THE PROSECUTOR

v.

Léonidas NSHOGOZA

Case No. ICTR-07-91-PT

JUDICIAL RECORDS ARCHIVE
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DECISION ON DEFENCE MOTION FOR CLARIFICATION OF 24 NOVEMBER
2008 WITNESS PROTECTION ORDER

Rules 54, 73, and 75 of the Rules of Procedure and Evidence

Office of the Prosecutor:

Richard Karegyesa
Abdoulaye Seye
Dennis Mabura
Florida Kabisanga

For the Accused:

Allison Turner

INTRODUCTION

1. The Chamber issued a Decision granting protective measures in respect of Prosecution witnesses on 24 November 2008 ("Protective Measures Order").¹
2. By way of Motion filed on 18 December 2008, the Defence seeks an order limiting the meaning of the term "family members" in the Protective Measures Order to immediate family members.²
3. The Prosecutor opposes the Motion.³

DISCUSSION

4. Rule 75 (F) of the Rules of Procedure and Evidence allows the Chamber or a Judge of the Chamber to vary protective measures in respect of a witness.

5. The Protective Measures Order sets out a procedure for the Defence to follow in order to communicate with family members of protected Prosecution witnesses. Measure vii states:

The Accused and the Defence team shall be prohibited from making contact with a protected witness and/or his or her family members unless the consent of the person concerned has first been obtained. The Accused and/or any member of the Defence team shall contact the Prosecutor, who, with the assistance of the WVSS shall ascertain whether such consent exists. In the event that consent exists, the WVSS shall facilitate the interview, which shall be conducted in the presence of a representative of the Prosecutor.⁴

6. The Defence submits that the term "family members" should be limited to immediate family members such as parents, spouses, siblings and children of the protected witness, and asserts that a "broader interpretation, including cousins, second cousins, in-laws, and other distant relatives ... unduly restricts and/or hampers investigations and case preparation."⁵

7. The Prosecutor submits that any limitation of the words "family members" would frustrate the object and purposes of the Protective Measures Order, and would mean that persons normally accepted as family members would be left unprotected and thereby exposed to security threats from various sources. The Prosecutor further submits that the Defence effectively seeks to vary the Protective Measures Order, but that it has not advanced any legitimate reason for the request.⁶

¹ *Prosecutor v. Léonidas Nshogoza*, Case No. ICTR-07-91-PT, Decision on Prosecutor's Extremely Urgent Motion for Protective Measures for Victims and Witnesses, 24 November 2008 ("Protective Measures Order").

² *Nshogoza*, "Urgent Application for Clarification of 24 November 2008 Witness Protection Order (Rules 54 and 73 ICTR R.P.E.," filed 18 December 2008 ("Motion"). On the same day, the Defence filed a motion to vary the Protective Measures Order in respect of a family member of protected Prosecution Witness BUC.

³ *Nshogoza*, "Prosecutor's Response to 'Defence Urgent Application for Clarification of 24 November 2008 Witness Protection Order'," filed 22 December 2008 ("Response").

⁴ Protective Measures Order.

⁵ Motion, para. 4.

⁶ Response, paras. 6-16.



8. Protective measures granted in respect of witnesses before this Tribunal have required the opposing party to obtain consent to speak with a protected witness or family member of a protected witness before communicating with that person. Consent is often ascertained with the assistance of a third party, or the party calling the witness.⁷ The requirement to obtain such consent has, in some instances, also included “associates” of a protected witness.⁸

9. The Chamber notes that the Defence does not advance any argument regarding how the requirement to obtain consent to speak with a cousin, for example, of a protected Prosecution witness, as compared to a sibling of a protected Prosecution witness, would hamper Defence investigations or case preparation. Nor has the Defence suggested that it has attempted to comply with the procedure set out in Measure vii, and encountered difficulties in the process.

10. The Chamber considers that the Defence has not presented a valid reason to vary the Protective Measures Order to limit the term “family members” to certain members of a protected witness’s family, while excluding other members of the family.

FOR THESE REASONS, the Chamber

DENIES the Motion in its entirety.

Arusha, 16 January 2009

For and on behalf of
Khulida Rachid Khan
Residing Judge

Lee Gacuiya Muthoga
Judge

For and on behalf of
Emile Francis Short
Judge

[Seal of the Tribunal]



⁷ *Prosecutor v. Juvenal Rugambarara*, Case No. ICTR-00-59-I, Decision on the Prosecutor’s Motion for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment, 31 January 2006; *Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-I, Decision on the Prosecutor’s Motion for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment, 17 August 2005; *Prosecutor v. Pauline Nyiramasuhuko and Arsène Shalom Ntahobali*, Case No. ICTR-97-21-T, Decision on Pauline Nyiramasuhuko’s Motion for Protective Measures for Defence Witnesses and their Family Members.

⁸ *Rugambarara* Decision; *Renzaho* Decision.