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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: 17 February 2009

JUDICIAL RECORDS/ARCHIVES
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**THE PROSECUTOR
v.
DOMINQUE NTAWUKULILYAYO**

Case No. ICTR-05-82

**DECISION ON DEFENCE EXTREMELY URGENT APPLICATION FOR
EXTENSION OF TIME FOR FILING RESPONSE TO PROSECUTION MOTION
FOR PROTECTIVE MEASURES**

Rules 73 and 75 of the Rules of Procedure and Evidence

Office of the Prosecutor:

Charles Adeogun-Phillips
Ibukunolu Alao Babajide
Veronic Wright
Thembile Segoete

Counsel for the Defence:

Francois Roux
Dorothee Le Fraper du Hellen

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INTRODUCTION

1. On 29 January 2009, the Prosecution filed a motion for protective measures for all potential Prosecution witnesses.¹ The Defence did not respond to the Prosecution Motion for Protective Measures.²
2. On 6 February 2009, the Trial Chamber issued a decision granting the Prosecution Motion.³ The Defence now moves the Chamber to order an extension of time for filing a response to the Prosecution Motion for Protective Measures.⁴

DISCUSSION

Preliminary Matter

3. The Chamber first wishes to express its concern regarding the confidential filing of motions that deserve to be filed publicly. The transparency of the proceedings is served by the public filing of documents. The Defence Motion is filed “confidentially”. Confidential filing should be reserved for exceptional circumstances – for instance, where the protection of a witness is at stake.⁵ In the present case, the Chamber considers that the Defence Motion contains no such confidential information and therefore, the confidentiality of the Defence Motion should be lifted.

Extension of Time for Response

4. Pursuant to Rule 73 (E) of the Rules of Procedure and Evidence (“Rules”), a responding party shall file any reply to a motion within five days from the date on which Counsel received the motion.

5. The Defence submits that it requires an extension of time to respond to the Prosecution Motion for Protective Measures because as of 5 February 2009, it was only in

¹ *Prosecutor v. Dominique Ntawukulilyayo*, Case No. ICTR-05-82, “Prosecution Motion for Protective Measures”, 29 January 2009, para. 1 (“Prosecution Motion for Protective Measures”).

² However, in the Chamber’s Decision on Prosecutor’s Motion for Protective Measures, 6 February 2009 (“Decision on Protective Measures”), para. 2 and fn. 2, the Chamber considered that since the Prosecution had made disclosures of un-redacted statements under Rule 66 (A) (ii) on 30 January 2009, it was necessary to ensure the security of the witnesses whose statements have been disclosed, and therefore deemed it necessary to consider the Prosecution Motion for Protective Measures without any further delay. In addition, although the five day time limit under Rule 73 (B) of the Rules for the Defence to respond to the Prosecution Motion for Protective Measures had expired, the Chamber noted that counsel for the Defence is French speaking and requires documents in French.

³ Decision on Protective Measures. *See supra* fn. 2.

⁴ *Ntawukulilyayo*, “Defence Extremely Urgent Application for Extension of Time for Filing Response to Prosecution Motion for Protective Measures dated 29 January 2009”, dated 5 February 2009 but recorded as filed on 10 February 2009 (“Defence Motion”). The Chamber notes that although the Defence Motion was filed on 6 February with Court Management Services (“CMS”), CMS have informed the Chamber that there was a delay in the processing of the Defence Motion.

⁵ *Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, Order for Transfer of Detained Witnesses, 1 March 2007, para. 5; *Prosecutor v. Karemera et al.*, Decision on Motion to Unseal Ex Parte Submissions and to Strike Paragraphs 32.4 and 49 from the Amended Indictment (TC), 3 May 2005, para. 13.

receipt of a list of statements disclosed under Rule 66 (A) and not the actual statements.⁶ The Defence, therefore, submits that it was not in a position to respond to the Prosecution Motion for Protective Measures within the prescribed five day period, as it had no knowledge of the contents of the witnesses' statements. The Defence requests a further five days from the date of receipt of the relevant witness statements to respond to the Prosecution Motion for Protective Measures.

6. The Chamber notes that any request for an extension of time to respond to a motion should be filed within the time limit prescribed by the Rules.⁷ Accordingly, as the Prosecution Motion for Protective Measures was filed on 29 January 2009, the Chamber considers that the Defence should have requested an extension of time to respond by 3 February 2009.


7. Furthermore, in view of the Chamber's Decision on Protective Measures of 6 February 2009, the Chamber considers that the request for an extension of time is now moot. The Chamber, however, notes that pursuant to Rule 75 (I), it is open to either Party to apply to the Chamber to rescind, vary or augment the protective measures ordered in the 6 February 2009 Decision.

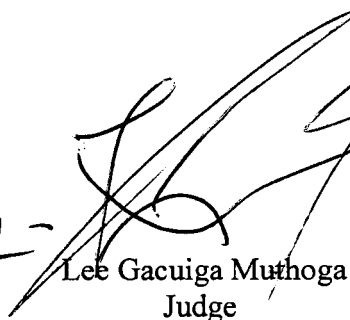
FOR THE ABOVE REASONS, the Chamber


ORDERS that the confidentiality of the Defence Motion be lifted by the Registrar; and

DENIES the Defence Motion.

Arusha, 17 February 2009


Khalida Rachid Khan
Presiding Judge


Lee Gacuiga Muthoga
Judge


With the consent, and
on behalf of
Emile Francis Short
Judge

[Seal of the Tribunal]



⁶ Rule 66 (A) (i) of the Rules provides for supporting materials accompanying the indictment and all prior statements from the accused, to be disclosed within 30 days of the accused's initial appearance; and Sub-Rule (A) (ii) provides that statements of all witnesses, whom the Prosecutor intends to call to testify at trial, to be disclosed no later than 60 days before the date set for trial.

⁷ See for example, *Prosecutor v. Karemera et. al.*, Case No ICTR-98-44-T, Decision on Extension of Time to Respond to the Prosecutor's Two Motions, para. 8.