



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICR-00-55A-PT

29-05-2009

(921-919)

TRIAL CHAMBER III

OR: ENG

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
Vagn Joensen

Registrar: Adama Dieng

Date: 29 May 2009

THE PROSECUTOR

v.

Tharcisse MUVUNYI

Case No. ICTR-00-55A-PT

JUDICIAL RECORDS/ARCHIVE
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ORDER REGARDING PROTECTIVE STATUS OF WITNESSES

Rules 54 and 75 of the Rules of Procedure and Evidence

Prosecution Counsel:
Mr. Charles Adeogun-Phillips
Mr. Ibukunolu Babajide

Defence Counsel:
Mr. William E. Taylor III
Ms. Abbe Jolles

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1. On 12 September 2006, the Trial Chamber rendered a Judgement convicting Tharcisse Muvunyi for Counts 1 (Genocide), 3 (Direct and Public Incitement to Commit Genocide) and 5 (Other Inhumane Acts). On 29 August 2008, the Appeals Chamber delivered its judgement granting all grounds of appeal and reversing the convictions, except with relation to Count 3. On Count 3, the Appeals Chamber ordered a retrial pursuant to Rule 118(C) of the Rules of Procedure and Evidence.
2. On 29 April 2009, a status conference was held where the parties discussed and agreed upon deadlines for filing of motions and other pre-trial matters, as well as dates for the commencement of the retrial before this Chamber.¹
3. On 8 May 2009, the Chamber issued a Scheduling Order confirming various deadlines for both the Prosecution and the Defence.² In particular, the Prosecution was ordered to file any preliminary motions, including any motion for protective measures, by 29 May 2009.³
4. Noting that the Prosecution did not file a motion requesting protective measures for those witnesses who did not testify during the original trial, the Chamber ordered the Prosecution to file submissions in relation to the protective status of its witnesses on 26 May 2009.⁴ On 27 May 2009, the Prosecution filed submissions taking the position that the protective measures granted in the original trial are adequate and sufficient to protect all its witnesses irrespective of whether they testified in the original trial.⁵
5. The Prosecution intends to rely on the evidence of six factual witnesses and one expert in the re-trial. Two of the factual witnesses, YAI and CCP, testified in the original trial. The statements of three factual witnesses, AMJ, FBX and CCS, were disclosed both in the original trial and the re-trial. The remaining factual witness, BZB, was not involved in the original trial.⁶
6. The Prosecution argues that a decision of 25 April 2001 granting protective measures to Prosecution witnesses in the original trial continues in effect for all Prosecution witnesses in the instant case because the Chamber granted protective measures for indicated witnesses

¹ T. 29 April 2009.

² *The Prosecutor v. Muvunyi*, Case No. ICTR-00-55A-PT ("*Muvunyi*"), Scheduling Order, 8 May 2009, p. 3 ("*Scheduling Order*").

³ *Muvunyi*, Scheduling Order, p. 3.

⁴ *Muvunyi*, Order to Comply with Scheduling Order, 26 May 2009, para. 7.

⁵ Prosecutor's Preliminary Response to Comply with Scheduling Order of 8 May 2009, filed 27 May 2009, para. 12 ("*Prosecutor's Submissions*").

⁶ Prosecution Submissions, para. 13.

J.S.

as well as many other additional witnesses [who] will also be assigned pseudonyms, which will be used during the course of the trial.”⁷


7. The Chamber notes that pursuant to Rule 75(F), once protective measures have been ordered, they continue in effect unless rescinded, varied or augmented in accordance with the Rules. Consequently, Witnesses YAI, CCP, AMJ, FBX and CCS are subject to the protective measures ordered in the Decision of 25 April.


8. However, contrary to the Prosecution’s assertions, Witness BZB is not covered by the Decision of 25 April, as he was not part of the original trial. The Chamber notes that the relief granted in the Decision of 25 April was specific to witnesses granted pseudonyms in the course of the trial. Witness BZB is not such a witness. Consequently, if the Prosecution seeks protective measures for this witness pursuant to Rule 75(A), it must file a request justifying such relief.

FOR THE FORGOING REASONS, THE CHAMBER

- I. **CONFIRMS** that the protective measures granted in the Decision on the Prosecutor’s Motion for Order for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment, dated 25 April 2001, continue in effect with respect to Witnesses YAI, CCP, AMJ, FBX and CCS; and,
- II. **FINDS** that Witness BZB is not subject to protective measures and therefore should the Prosecution seek protective measure for this witness, it must file a motion justifying such relief.

Arusha, 29 May 2009, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vaght Joensen
Judge



⁷ Prosecutor’s Submissions, paras. 14-15; *The Prosecutor v. Muvunyi and Others*, Case No. ICTR-2000-55-I, Decision on the Prosecutor’s Motion for Order for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment, 25 April 2001 (“Decision of 25 April”).