



UNITED NATIONS
NATIONS UNIES

ICR-98-44-T
26-06-2009
(46335-46333)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 26 June 2009

THE PROSECUTOR

v.

Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

JUDICIAL RECORDS/ARCHIVE
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2009 JUN 26 P 1:30
J. K. Nziroera

**DECISION ON JOSPEPH NZIRORERA'S MOTION TO VARY PROTECTIVE
MEASURES FOR WITNESS RKF IN THE KAMUHANDA CASE**
Rules 75(F) and (G) of the Rules of Procedure and Evidence

Office of the Prosecution:

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Peter Robinson and Patrick Nimy Mayidika Ngimbi

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INTRODUCTION

1. On 3 June 2009, Joseph Nzirorera ("Nzirorera") filed a Motion¹ requesting this Chamber to vary the protective measures ordered for Witness 35 on his witness list (amongst other witnesses from completed trials), pursuant to provisions of Rule 75 (F) and (G) of the Rules of Evidence and Proof of this Tribunal ("Rules"). Neither the Prosecution, nor any other interested party responded to Nzirorera's Motion.

DELIBERATIONS

2. Pursuant to Rule 75(F) (i), once protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal (the "first proceedings"), such protective measures shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal (the "second proceedings") unless and until they are rescinded, varied or augmented in accordance with the procedure set out in the same Rule. Rule 75(G) provides that an application to vary protective measures should be submitted to the Chamber seized of the first proceeding and that, if no Chamber remains seized of the case, the application is to be decided by this Trial Chamber, subject to consultation with any Judge who ordered the protective measures in the first proceedings, if that Judge remains a Judge of the Tribunal.

3. Nzirorera requests the Chamber to vary the protective measures ordered in the *Kamuhanda* case² with respect to his Defense Witness 35, subject to consultation with Judges Sekule and Ramarason of the *Kamuhanda* Trial Chamber. The Chamber notes however that the protective measures for Witness 35, like those for other defence witnesses in this case, were ordered by the late Judge Laïty Kama, sitting as a single Judge, on 22 March 2001³ in response to a Defense motion.⁴ Therefore, the Chamber does not have to consult any Judge in the first proceedings.

4. Nzirorera requests that all protective measures be removed, as the security situation no longer justifies them.⁵ Nzirorera also contends that he does not believe that any of his witnesses are faced with real fear for their safety or that of their families, nor does he believe

¹ Joseph Nzirorera's Notice Concerning his Defence Witnesses and Motion to Vary Protective Measures in Completed Cases, filed on 3 June 2009 ("Nzirorera's Motion").

² *The Prosecutor v. Jean de Dieu Kamuhanda, Case No. ICTR-99-54-T, Decision on Jean de Dieu Kamuhanda's Motion for Protective Measures for Defense Witnesses, 22 March 2001* ("Decision on protective measures for Kamuhanda witnesses").

³ *Ibid.*

⁴ Requête aux fins de protection des témoins de la Défense, filed on 26 février 2001.

⁵ Nzirorera's Motion, para. 10.

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that any such fears are objectively reasonable.⁶ Nzirorera further contends that subsequent to claims by WVSS that three of his witnesses requested protective measures, his defense team contacted each of the three witnesses who all indicated that they did not wish to be protected witnesses.⁷

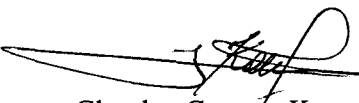
5. The Chamber notes that protective measures concerning the *Kamuhanda* Defense Witnesses were ordered after the Judge was satisfied that the Defense had indeed demonstrated the existence of fear, which pertained to potential witnesses residing in Rwanda and neighboring countries such as DRC.⁸ Nzirorera has not presented any evidence other than his own statements, in support of his claims that the security situation no longer justifies the protection measures and that none of his witnesses desires to travel to Arusha as protected witnesses. In particular, the Chamber notes that Nzirorera has not included any evidence from the witness at issue, such as an affidavit, to substantiate his claims. In these circumstances, the Chamber does not find it appropriate to vary the protective measures for Witness 35. The Chamber will however assess whether this is the case once the witness comes to testify before it.

FOR THESE REASONS, THE CHAMBER

DISMISSES Nzirorera's Motion

Arusha, 26 June 2009, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge



⁶ Nzirorera's Motion, para. 6.

⁷ Nzirorera's Motion, para. 6, footnote 1.

⁸ Decision on protective measures for Kamuhanda witnesses, para. 16.