



UNITED NATIONS
NATIONS UNIES

ICTR-00-56-T
16-07-09
(30180-30177)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

30180
PM

OR: ENG

TRIAL CHAMBER II

Before Judges: Asoka de Silva, Presiding
Taghrid Hikmet
Seon Ki Park

Registrar: Adama Dieng

Date: 16 July 2009

The PROSECUTOR

v.

**Augustin NDINDILYIMANA
Augustin BIZIMUNGU
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU**

Case No. ICTR-00-56-T

JUDICIAL
2009 JUL 16
11:44

**DECISION ON JOSEPH NZIRORERA'S MOTION FOR VARIATION OF
PROTECTIVE MEASURES FOR WITNESSES DC2-5 AND CBP99**

Office of the Prosecutor:

Mr Alphonse Van
Mr Moussa Sefon
Mr Lloyd Strickland
Mr Abubacarr Tambadou
Ms Faria Rekkas

Defence Counsel for Joseph Nzirorera

Mr Peter Robinson
Mr. Patrick Nimy Mayidika Ngimbi

Counsel for the Defence:

Mr Gilles St-Laurent and Mr Benoît Henry for **Augustin Bizimungu**
Mr Christopher Black and Mr Vincent Lurquin for **Augustin Ndindiliyimana**
Mr Charles Taku and Ms Beth Lyons for **François-Xavier Nzuwonemeye**
Mr Fabien Segatwa and Mr Seydou Doumbia for **Innocent Sagahutu**

INTRODUCTION

1. On 8 June 2004, the Chamber granted protective measures for all Defence witnesses in this case.¹
2. On 6 July 2009, Joseph Nzirorera, who is on trial before another Trial Chamber, filed a motion requesting the Trial Chamber to vary the protective measures it granted to Witness DC2-5 ("Motion") who testified on 27 April 2007 in the *Ndindiliyimana et al.* case on behalf of the Defence for Bizimungu.² On 9 July 2009, Joseph Nzirorera filed a second motion requesting the Chamber to vary the protective measures for Witness CBP99 who also testified in the above case on behalf of the Defence for Ndindiliyimana on 3 March 2008.³
3. On 10 July 2009, the Prosecutor filed a Response to Nzirorera's motion requesting the variation of the protective measures for witness DC2-5.⁴ On 13 July 2009, the Prosecutor filed a response to Nzirorera's Motion requesting the variation of protective measures for witness CBP99.⁵

DELIBERATIONS

4. Nzirorera submits that both Witnesses DC2-5 and CBP99 wish to testify in the *Karemera et al* case on his behalf without the benefit of the protective measures which were accorded to them by this Trial Chamber in the *Ndindiliyimana et al* case. In his response, the Prosecutor submits that since the request to vary witness DC2-5's protective measures does not adversely impinge on its interests, the Prosecutor is willing to defer to the discretion of the Trial Chamber that is seized of the *Ndindiliyimana et al* in deciding the motion. With respect to Nzirorera's request to vary the protective measures of witness CBP99, the Prosecutor responds that in the absence of any affidavit from witness CBP99 attesting to his wish to testify without the protective measures availed to him by this Chamber, and given the fact that the above witness testified on 18 May 2009 as a protected witness in the *Setako* trial, the Chamber should not grant the request by Nzirorera to vary the protective measures of witness CBP99.
5. The Chamber recalls that according to Rule 75 of the Rules, once protective measures have been ordered in respect of a witness in any proceedings before the Tribunal, such protective measures shall continue to have effect *mutatis mutandis* in any other proceedings unless and until they are rescinded, varied or augmented by the Chamber which ordered the measures if that Chamber still remains seized with the first proceedings.
6. The Chamber further recalls that on 9 June 2009, it granted a similar motion from Nzirorera with respect to Witness DB15-11 despite the fact that Nzirorera did not furnish the

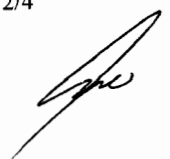
¹ *Ndindiliyimana et al.*, Decision on Defence Motion for Protective Measures for Defence Witnesses (TC), 8 June 2004.

² Joseph Nzirorera's Motion to Vary Protective Measures: Witness DC2-5, filed on 6 July 2009.

³ Joseph Nzirorera's Motion to Vary Protective Measures: Witness CBP99, filed on 9 July 2009.

⁴ Prosecutor's Response to Joseph Nzirorera's Motion to Vary Protective Measures: Witness DC2-5, filed on 10 July 2009

⁵ Prosecutor's Response to Joseph Nzirorera's Motion to Vary Protective Measures: Witness CBP99, filed on 13 July 2009



Chamber with evidence to support his request to vary the protective measures of the witness in question.⁶

7. With respect to the two motions under consideration, the Chamber notes that Nzirorera again simply asserts that both witnesses have informed members of his Defence team of their willingness to testify on his behalf without the benefit of the protective measures without furnishing any other independent or additional evidence such as affidavit(s) in support of his motions.

8. The Chamber notes that protective measures are of utmost importance in safeguarding the privacy and security of the witnesses who testify before the Tribunal. Therefore such measures should not be lightly interfered with. A mere submission by Nzirorera to the effect that the aforesaid witnesses have informed a member of his Defence team of their willingness to forego the protective measures availed to them by this Chamber is not adequate to justify the variation of those measures.

9. In line with the reasoning enunciated above, the Chamber is disinclined to grant Nzirorera's motions in the absence of any evidence to indicate that the aforesaid witnesses are willing to waive the protective measures.

10. The Chamber notes that it has inherent power to reconsider its own decision where it believes that such a decision is erroneous or constituted an abuse of power on the part of the Chamber, resulting in an injustice.⁷ The Chamber is of the view that it erred in granting Nzirorera's request to vary the protective measures since he did not provide any evidence to support his submission that witness DB15-11 was willing to testify without the benefit of the protective measures in the *Karemera et al* case. The Chamber therefore, acting *ex proprio motu*, reconsiders the above Decision.

11. Furthermore, the Chamber notes that Nzirorera has already filed three motions within a short period of time requesting the Chamber to vary the protective measures of witnesses who had earlier testified before this Chamber. The Chamber is of the view that filing multiple motions dealing with the same issue does not foster judicial economy and places unnecessary strain on the Tribunal's resources. The Chamber therefore directs Nzirorera to file a consolidated Motion requesting variation of protective measures for all of his prospective witnesses who testified as protected witnesses before this Chamber and to provide supporting evidence in respect of the Motion for each witness.

⁶ Decision on Nzirorera's Defence Motion to Vary Protective Measures for Witness DB15-11, dated 9 June 2009

⁷ *The Prosecutor v. Stanislav Galic* ("Sarajevo"), Case No. IT-98-29-AR73, Decision on Application by Prosecution for Leave to Appeal, in which the Bench of the Appeals Chamber considered that "a Trial Chamber may nevertheless always reconsider a decision it has previously made, not only because of a change of circumstances but also where it is realised that the previous decision was erroneous or that it has caused an injustice", para 13, dated 14 December 2001, See also *Théoneste Bagosora v. The Prosecutor*, Case No. ICTR-98-41-A, Appeals Chamber, Interlocutory Appeal from refusal to Reconsider Decisions relating to Protective Measures and Application for a Declaration of "Lack of Jurisdiction", in which the Appeals Chamber considered that "[w]hether or not a Trial Chamber reconsiders a prior decision is itself a discretionary decision", para 10, dated 2 May 2002 ; see also *Karemera et al.*, Decision Reconsidering Oral Order of 28 May 2009, dated 11 June 2009



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FOR THE ABOVE REASONS, THE CHAMBER

DENIES Nzirorera's motions as currently filed without prejudice to his right to re-file a consolidated motion with the necessary supporting evidence;

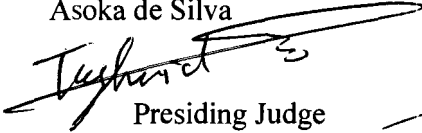
DECIDES *proprio motu* to reconsider its Decision of 9 June 2009 granting the variation of the protective measures of witness DB15-11.

Arusha, 16 July 2009, done in English.

Read and Approved by

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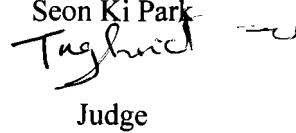
Asoka de Silva


Presiding Judge

Taghrid Hikmet


Judge

Seon Ki Park


Judge

