

ICTR-02-78-T
03-09-2009
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Masanche



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before Judges: Taghrid Hikmet, Presiding
Seon Ki Park
Joseph Masanche

Registrar: Adama Dieng

Date: 3 September 2009

THE PROSECUTOR

v.

Gaspard KANYARUKIGA

Case No. ICTR-2002-78-T

JUDICIAL RECORDS SECTION
RECEIVED

2009 SEP - 3 1 A 9: 31

**DECISION ON THE DEFENCE MOTION FOR WITNESS PROTECTION
MEASURES**

Rules 69 and 75 of the Rules of Procedure and Evidence

Office of the Prosecutor:

Holo Makwaia
Althea Alexis-Windsor
Mara Tidiane
Lasana Dumbuya

Defence Counsel:

David Jacobs
Claver Sindayigaya
Marc Nerenberg

INTRODUCTION

1. The trial in this case commenced on 31 August 2009.
2. On 21 August 2009, the Defence for the Accused, Gaspard Kanyarukiga, filed a motion for witness protection measures pursuant to Article 21 of the Statute and Rules 69 and 75 of the Rules of Procedure and Evidence (“the Rules”).¹ The Defence requests protective measures for all of its proposed witnesses.²
3. On 25 August 2009, the Prosecution filed a response.³ The Prosecution does not oppose the Defence motion but requests modifications to two of the measures proposed by the Defence.⁴
4. On 27 August 2009, the Defence filed a reply.⁵

DELIBERATIONS

5. Rule 69(A) of the Rules provides that, “[i]n exceptional circumstances, either of the parties may apply to a Trial Chamber to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk, until the Chamber decides otherwise.”
6. According to Rule 75(A), moreover, “[a] Judge or a Chamber may ... at the request of either party ... order appropriate measures to safeguard the privacy and security of victims and witnesses provided that the measures are consistent with the rights of the accused.”
7. Measures for the protection of witnesses are granted on a case-by-case basis. According to the well established jurisprudence of this Tribunal, the witnesses for whom protective measures are sought must have a real fear for their safety or that of their families, and there must be an objective justification for this fear. These fears may be expressed by persons other than the witnesses themselves.⁶
8. In this case, the Chamber finds that the Defence has provided ample justification for the protective measures requested on behalf of witnesses residing in Rwanda and neighbouring States. The Chamber notes, however, that the Defence has not provided objective justification for the fears expressed by witnesses residing outside of central Africa, particularly those living on other continents.⁷

¹ Defence Motion for Witness Protection Measures, filed on 21 August 2009.

² Defence Motion for Witness Protection Measures, filed on 21 August 2009, at paras. 7, 18.

³ Prosecutor’s Response to the Defence Motion for Witness Protection Measures, filed on 25 August 2009.

⁴ Prosecutor’s Response to the Defence Motion for Witness Protection Measures, filed on 25 August 2009, paras. 2-4.

⁵ Defence Reply to the Prosecutor’s Response to the Defence Motion for Witness Protection Measures, filed on 27 August 2009.

⁶ *Prosecutor v. Hategekimana*, Case No. ICTR-00-55B-PT, Decision on Prosecution Extremely Urgent Motion for Protective Measures (TC), 16 January 2009, para. 4; *Prosecutor v. Kalimanzira*, Case No. ICTR-2005-88-I, Decision on Prosecution Motion for Protective Measures (TC), 8 November 2007, para. 3; *Prosecutor v. Setako*, Case No. ICTR-04-81-I, Decision on Prosecution Motion for Protective Measures (TC), 18 September 2007, para. 4; *Prosecutor v. Nchamihigo*, Case No. ICTR-2001-63-PT, Decision on Motions for Protective Measures for Prosecution Witnesses (TC), 26 July 2006, paras. 4-5.

⁷ Defence Motion for Witness Protection Measures, filed on 21 August 2009, para. 7.

9. Nevertheless, the Chamber considers it necessary to take the side of caution and orders, for all witnesses referred to in the Defence motion, protective measures, enumerated below, identical to those granted to the Prosecution witnesses in this case.⁸ The Chamber notes that it may reverse its decision on the protective measures whenever it is warranted.

FOR THE FOREGOING REASONS, the Chamber

GRANTS the Defence motion for witness protective measures;

ORDERS that,

- I. the Defence for Kanyarukiga shall designate pseudonyms for each of the witnesses for whom it claims the benefits of this Order, for use in trial proceedings, and during discussions between the Parties in proceedings;
- II. the names, addresses, whereabouts, and other information concerning the protected witnesses shall be sealed by the Registry and not included in any non-confidential Tribunal records, or otherwise disclosed to the public;
- III. Names, addresses, locations and other identifying information of the protected witnesses which may appear in the Tribunal's public records shall be expunged;
- IV. The names and identities of the protected witnesses shall be forwarded from the Defence to the Registry in confidence, and shall not be disclosed to the Prosecution unless otherwise ordered;
- V. No person shall make audio or video recordings or broadcasts, or take photographs or make sketches of protected witnesses, in relation to their testimony, without leave of the Chamber or the witness;
- VI. The Prosecution, and any representative acting on its behalf, shall notify the Defence in writing if it wishes to contact any protected witness and, if the witness consents, the Defence shall facilitate such contact;
- VII. The Prosecution shall keep confidential any information identifying a witness subject to this order, and shall not, directly or indirectly, disclose, discuss or reveal any such information to any person or any entity outside the office of the Prosecutor;
- VIII. The Prosecution shall provide the Registry with a designation of all persons who will have access to any identifying information concerning any protected witness, and shall notify the Registry in writing of any such person leaving the Prosecution and to confirm in writing that such person has remitted all material containing identifying information;

⁸ Decision on Prosecution Motion for Protective Measures (TC), 3 June 2005.

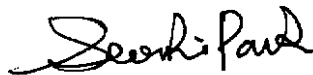


- IX.** The Defence may withhold disclosure to the Prosecution of the identities of protected witnesses and temporarily redact their names, addresses, locations and other identifying information from material disclosed to the Prosecution, in accordance with paragraph X below;
- X.** The information withheld in accordance with paragraph IX shall be disclosed by the Defence to the Prosecution thirty days prior to commencement of the Defence case, in order to allow adequate time for the preparation of the Prosecution pursuant to Rule 69(C) of the Rules.

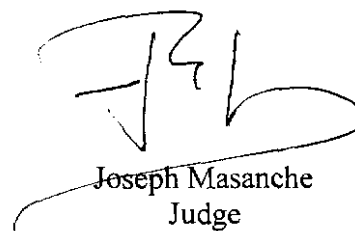
Arusha, 03 September 2009



Taghrid Hikmet
Presiding Judge



Seon Ki Park



Joseph Masanche
Judge