



UNITED NATIONS  
NATIONS UNIES

**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**

OR: ENG

**TRIAL CHAMBER III**

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

**Registrar:** Adama Dieng

**Date:** 03 September 2009

**THE PROSECUTOR**

v.

**Édouard KAREMERA  
Matthieu NGIRUMPATSE  
Joseph NZIRORERA**

*Case No. ICTR-98-44-T*

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**DECISION ON JOSEPH NZIRORERA'S MOTION TO VARY PROTECTIVE  
MEASURES FOR WITNESSES MEM, RGM AND JK 312 IN THE KAJELIJELI  
CASE, AND FOR WITNESS DC IN THE NDINDABAHIZI CASE  
Rules 75(F) and (G) of the Rules of Procedure and Evidence**

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## INTRODUCTION

1. Pursuant to Rule 75 (F) and (G) of the Rules of Procedure and Evidence (“Rules”), Joseph Nzirorera requests this Chamber to vary the protective measures ordered in the *Kajelijeli* case for witnesses who now appear as Witnesses 1, 6 and 20 on his witness list in the *Karemera et al.* case, on the one hand, and the protective measures ordered in the *Ndindabahizi* case for Witness 57 on the same witness list, on the other hand.<sup>1</sup> The Prosecution has not responded to the 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 (“first proceedings”), such protective measures shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal (“second proceedings”) unless and until they are rescinded, varied or augmented in accordance with the procedure set out in Rule 75. Rule 75(G) and (H) provides that an application to vary protective measures should be submitted to the Chamber seized of the first proceedings and that, if no Chamber remains seized of the case, the application is to be decided by the Chamber seized with the second proceedings, 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. With respect to the protective measures for Witnesses 1, 6 and 20 in the *Kajelijeli* trial, the Chamber notes that they were ordered by late Judge Laïty Kama, and Judges William Sekule and Mohamed Güney<sup>2</sup> in response to a Defense motion,<sup>3</sup> while the protective measures concerning Witness 57 in the *Ndindabahizi* trial were ordered by Judges Erik Møse, Rachida Khan, and Solomy Bossa<sup>4</sup> following a motion by the Defense.<sup>5</sup> As

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<sup>1</sup> 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”).

<sup>2</sup> *The Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR-98-44A-T, Decision on Juvenal Kajelijeli's Motion for Protective Measures for Defense Witnesses, 3 April 2001 (“*Kajelijeli* Decision on Protective Measures”).

<sup>3</sup> Notice of Urgent Motion for the Protection of Defense Witnesses, filed on 4 March 2001.

<sup>4</sup> *The Prosecutor v. Emmanuel Ndindabahizi*, Case No. ICTR-2001-71-I, Decision on the Defense Motion for protection measures, 15 September 2003 (“*Ndindabahizi* Decision on Protective Measures”).

<sup>5</sup> Requête urgente en prescription de mesures de protection pour les témoins à décharge, filed on 16 June 2003.

required by the Rules, the Chamber has consulted the Judges who are still members of this Tribunal.

4. Joseph Nzirorera requests that all protective measures be removed, as the security situation no longer justifies them.<sup>6</sup> 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 that any such fears are objectively reasonable.<sup>7</sup> Nzirorera further contends that subsequent to claims by the Witnesses and Victims Support Section (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.<sup>8</sup>

5. The Chamber notes that protective measures for the *Kajelijeli* Defense Witnesses were ordered after that Trial Chamber was satisfied that there was sufficient basis for it to conclude that the fears of the witnesses were well founded.<sup>9</sup> Protective measures for the *Ndindabahizi* Defense Witnesses were also ordered after the Trial Chamber found that the conditions for such measures were satisfied.<sup>10</sup> The Chamber further notes that the practice of this Tribunal requires that the Party seeking variation of protective measures demonstrate that the protected witnesses have given their clear consent to this variation<sup>11</sup> or that there are new elements showing a change in the situation that initially justified the protective measures.<sup>12</sup> Joseph Nzirorera has not presented any evidence, other than his own statement, in support of his claims that the security situation no longer justifies the protective measures granted to these witnesses and that none of his witnesses desires to travel to Arusha as a protected witness. In particular, the Chamber notes that Nzirorera has not included any evidence from the witnesses in question, such as an affidavit, to substantiate his claims. In these circumstances, and following consultation with Judges Sekule, Güney, Møse, Khan and Bossa, the Chamber does not find it appropriate to vary the protective measures for

<sup>6</sup> Nzirorera's Motion, para. 10.

<sup>7</sup> Nzirorera's Motion, para. 6.

<sup>8</sup> Nzirorera's Motion, para. 6, footnote 1.

<sup>9</sup> *Kajelijeli* Decision on Protective Measures, para. 16.

<sup>10</sup> *Ndindabahizi* Decision on Protective Measures, para. 3.

<sup>11</sup> See *Prosecutor v. Mikaeli Muhimana*, Case No. ICTR-95-1B; *Prosecutor v. Obed Ruzindana and Clément Kayishema*, Case No. ICTR-95-1; *Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14; *Prosecutor v. Gérard Ntakirutimana et al.*, Case No. ICTR-96-10/17; *Prosecutor v. Alfred Musema*, Case No. ICTR-96-13, Decision on Prosecution's Urgent Ex-Parte Motion to Unseal and Disclose Personal Information Sheets and Rescind Protective Measures for Witnesses (TC III), 13 August 2008, par. 6; *Procureur v. Radislav Kristić*, Case No. IT-98-33-A, Ordonnance portant annulation des mesures de protection, 15 juillet 2003, section 2); *The Prosecutor v. Augustin Ndindiliyimana et al.*, Case No. ICTR-00-56-T, Decision on Joseph Nzirorera's Motion for Variation of Protective Measures for Witness DC2-5 and CBP99, 16 July 2009, para. 7-9.

<sup>12</sup> *Prosecutor v. Augustin Bizimungu et al.*, Case No. ICTR-2000-56-I, Décision sur la requête du Procureur aux fins de modification et d'extension des mesures de protection des victimes et des témoins, 39; *Procureur v. Léonidas Nshogoza*, Case No. ICTR-07-91-PT, Décision relative à la requête en extrême urgence du Procureur en prescription de mesures de protection en faveur de victimes et de témoins, 24 November 2008.

Witnesses 1, 6, 20 and 57. The Chamber will however assess whether such variation is appropriate once the witnesses come to testify before it.

**FOR THESE REASONS, THE CHAMBER**

**DENIES** Joseph Nzirorera's Motion in its entirety.

Arusha, 03 September 2009, done in English.

Dennis C. M. Byron  
Presiding Judge

Gberdao Gustave Kam  
Judge

Vagn Joensen  
Judge

[Seal of the Tribunal]