



UNITED NATIONS  
NATIONS UNIES

ICTR-00-56-T  
09-09-09  
(30197-30195)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

30197  
PM

OR: ENG

**TRIAL CHAMBER II**

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

**Registrar:** Adama Dieng

**Date:** 9 September 2009

**The PROSECUTOR**

v.

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

*Case No. ICTR-00-56-T*

2009 SEP - 9 1 A 9: 59  
JUDICIAL RECORDS ARCHIVES  
RECEIVED

**DECISION ON JOSEPH NZIRORERA'S RENEWED MOTION FOR VARIATION  
OF PROTECTIVE MEASURES FOR WITNESSES DB15-11, DC2-5 AND CBP99**

*Rule 75 of the Rules of Procedure and Evidence*

**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

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
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NAME / NOM: Kouamba Roger-Noël	
SIGNATURE: [Signature]	DATE: 9/9/2009

**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

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## INTRODUCTION

1. On 8 June 2004, the Chamber ordered protective measures for all Defence witnesses in this case, including for Witness DB15-11 and Witness DC2-5, who testified as protected witnesses on behalf of General Augustin Bizimungu, and Witness CBP99, who testified as a protected witness on behalf of General Augustin Ndindiliyimana.<sup>1</sup>
2. On 3 June 2009, Joseph Nzirorera, on trial before another Trial Chamber, filed a motion requesting this Trial Chamber to vary the protective measures granted to Witness DB15-11, on the ground that Witness DB15-11 wished to testify on his behalf without protective measures in *The Prosecutor v. Karemera et al.* ("*Karemera et al.*").<sup>2</sup>
3. On 9 June 2009, the Chamber ordered that the protective measures granted to Witness DB15-11 in this case should not apply to her prospective testimony in the *Karemera et al.* proceedings.<sup>3</sup>
4. On 6 and 9 July 2009, Nzirorera filed two motions requesting the Chamber to vary the protective measures granted to Witnesses DC2-5 and CBP99 respectively on the ground that these Witnesses wished to testify on his behalf without the benefit of protective measures.<sup>4</sup>
5. On 10 and 13 July 2009, the Prosecution responded to the above motions, opposing the Defence requests on the ground that Nzirorera had not provided any evidence to substantiate his claims that the witnesses had opted to testify without protective measures and calling the Chamber's attention to the fact that Witness CBP99 had recently testified as a protected witness before another Trial Chamber.<sup>5</sup>
6. On 16 July 2009, the Chamber determined that it had erred in granting Nzirorera's request to vary the protective measures for Witness DB15-11 since he did not provide any evidence to support his submission that the witness was willing to testify without protective measures. Further, the Chamber noted that Nzirorera had filed three motions in a short period of time requesting the Chamber to vary the protective measures of witnesses that had earlier testified before it. The Chamber therefore *proprio motu*, reconsidered its Decision varying protective measures for Witness DB15-11 and ordered 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.<sup>6</sup>

<sup>1</sup> *Décision sur la Requête de la Défense aux fins de mesures de protection des témoins a décharge*, (TC), 8 June 2004.

<sup>2</sup> Joseph Nzirorera's Motion to Vary Protective Measures: Witness DB15-11, 3 June 2009.

<sup>3</sup> Decision on Nzirorera Defence Motion to Vary Protective Measures for Witness DB15-11 (TC), 9 June 2009.

<sup>4</sup> Joseph Nzirorera's Motion to Vary Protective Measures: Witness DC2-5, 6 July 2009, para. 4; Joseph Nzirorera's Motion to Vary Protective Measures: Witness CBP99, 9 July 2009, para. 4.

<sup>5</sup> Prosecutor's Response to Joseph Nzirorera's Motion to Vary Protective Measures: Witness DC2-5, 10 July 2009, para. 7; Prosecutor's Response to Joseph Nzirorera's Motion to Vary Protective Measures: Witness CBP99, 13 July 2009, paras. 6-7.

<sup>6</sup> Decision on Joseph Nzirorera's Motion for Variation of Protective Measures for Witnesses DC2-5 and CBP99.

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7. On 28 July 2009, Nzirorera filed the current motion to vary the protective measures of Witnesses DB15-11, DC2-5, and CBP99,<sup>7</sup> and a confidential annex that included signed written statements from each of the witnesses indicating that they wished to testify as defence witnesses for Nzirorera without protective measures.<sup>8</sup>

### DELIBERATIONS

8. The Chamber has closely examined the statements contained in the Confidential Annex to Nzirorera's Motion, and is satisfied that Witnesses DB15-11, DC2-5, and CBP99 are willing to testify on the behalf of Nzirorera without the benefit of protective measures and are aware of the consequences of their decision to testify openly.

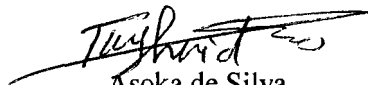
### FOR THE ABOVE REASONS, THE CHAMBER

**GRANTS** the Defence Motion;

**ORDERS** that the protective measures granted to Witnesses DB15-11, DC2-5, and CBP99 in this case shall not apply to their testimony in the case *The Prosecutor v. Karemera et al.*

Arusha, 9 September 2009, done in English.

Read and Approved by

  
Asoka de Silva

  
Taghrid Hikmet

  
Seon Ki Park

Presiding Judge

Judge



Judge

<sup>7</sup> Joseph Nzirorera's Renewed Motion to Vary Protective Measures: Witnesses DB15-11, DC2-5, and CBP99, filed 28 July 2009.

<sup>8</sup> Confidential Annex to Joseph Nzirorera's Renewed Motion to Vary Protective Measures: Witnesses DB15-11, DC2-5, and CBP99, filed 28 July 2009.