



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

1104/H

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IN THE APPEALS CHAMBER

ICTR-97-31-A

21st May 2010

{1104/H – 1101/H}

Before: Judge Carmel Agius, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Liu Daqun
Judge Theodor Meron

Registrar: Mr. Adama Dieng

Decision of: 21 May 2010

ICTR Appeals Chamber
Date: 21st May 2010
Action: R. *[Handwritten]*
Copied To: Concerned Judges,

*Parties, Judicial Archives,
LOs LSS
[Signature]*

Tharcisse RENZAHO

v.

THE PROSECUTOR

Case No. ICTR-97-31-A

Confidential

DECISION ON NZIRORERA'S MOTION FOR MODIFICATION OF PROTECTIVE MEASURES

Office of the Prosecutor:

Hassan Bubacar Jallow
Alex Obote-Odora
Alphonse Van
Abdoulaye Seye
Clair Duffy
Florida Kabasinga

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: *KOFFI KUMEGIRO A. AEMUNDU*
SIGNATURE: *[Signature]* DATE: *21 May 2010*

Counsel for Mr. Tharcisse Renzaho:

François Cantier
Barnabé Nekuie

Counsel for Mr. Joseph Nzirorera:

Peter Robinson
Patrick Nimy Mayidika Ngimbi

1. The Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States Between 1 January and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively) is seised of "Joseph Nzirorera's Motion for Modification of Protective Measures: Witness AIA" ("Motion") filed confidentially by Joseph Nzirorera ("Nzirorera") on 20 May 2010.

I. INTRODUCTION

2. On 14 July 2009, Trial Chamber I convicted Tharcisse Renzaho ("Renzaho") of genocide, murder as a crime against humanity, rape as a crime against humanity, murder as a serious violation of Article 3 Common to the Geneva Conventions and Additional Protocol II, and rape as a serious violation of Article 3 Common to the Geneva Conventions and Additional Protocol II and sentenced him to life imprisonment.¹ His case is pending on appeal.² Nzirorera is an accused before the Tribunal whose case is currently being heard by Trial Chamber III ("Trial Chamber").³

3. Witness AIA testified as a protected witness in the *Renzaho* proceedings in July 2007.⁴ He is scheduled to testify on Nzirorera's behalf in the *Karempera et al.* proceedings on 25 or 26 May 2010.⁵ Nzirorera submits that on 19 May 2010, Witness AIA advised the Nzirorera Defence that he no longer wished to benefit from protective measures and wished to testify in his own name in the *Karempera et al.* proceedings.⁶ Accordingly, Nzirorera moves, pursuant to Rule 75(G) of the Rules of Procedure and Evidence of the Tribunal ("Rules"), for an order modifying the protective measures for Witness AIA.⁷

4. In support of the Motion, Nzirorera attaches an email from Witness AIA which states that he would like to testify as a non-protected witness.⁸ Nzirorera requests that, upon oral confirmation at the commencement of Witness AIA's testimony before the Trial Chamber that he no longer wishes

¹ *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-T, Judgement and Sentence, dated 14 July 2009 and filed on 14 August 2009 ("Trial Judgement"), paras. 812, 826.

² *Acte d'Appel*, 2 October 2009; *Mémoire d'Appel*, 2 March 2010; Prosecutor's Respondent's Brief, 13 April 2010; *Réplique de l'appelant*, Art. 113 RPP, 5 May 2010.

³ *The Prosecutor v. Édouard Karempera et al.*, Case No. ICTR-98-44-T.

⁴ Motion, para. 2. See also *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-T, Decision on Defence Request for Protective Measures, 12 March 2007.

⁵ Motion, para. 1.

⁶ Motion, para. 3, Annex "A".

⁷ Motion, para. 1.

⁸ Motion, Annex "A".

to benefit from protective measures, Witness AIA's protective measures no longer have effect in the *Karemera et al.* proceedings.⁹

II. DISCUSSION

5. Rule 75(F)(i) of the Rules provides that 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. Rule 75(G) provides:

A party to the second proceedings seeking to rescind, vary or augment protective measures ordered in the first proceedings must apply:

- (i) to any Chamber, however constituted, remaining seised of the first proceedings; or
- (ii) if no Chamber remains seised of the first proceedings, to the Chamber seised of the second proceedings.

6. As a preliminary matter, the Appeals Chamber recalls that, when the Appeals Chamber becomes seised of an appeal against a trial judgement, it becomes the Chamber "seised of the first proceedings" within the meaning of Rule 75(G)(i) of the Rules.¹⁰ The Appeals Chamber further notes that it may resolve the Motion without waiting for responses from the other parties, since the Motion primarily implicates the interests of a witness rather than of a party.¹¹

7. The Appeals Chamber notes that Witness AIA appears to have consented to the variation of his protective measures in the *Karemera et al.* proceedings.¹² As the protective measures were imposed for his own benefit, it is normally appropriate to vary them upon informed consent of the witness.¹³ However, the Appeals Chamber notes that Witness AIA's consent is contained in an email, and it is not clear whether Witness AIA understands the implications of varying his protective measures. In such circumstances, the Appeals Chamber finds it prudent to adopt the necessary precautions.¹⁴ The Appeals Chamber therefore requests the Witness and Victims Support Section of the Tribunal ("WVSS"), as a neutral non-party tasked with providing protection and support to witnesses appearing before the Tribunal, to consult with Witness AIA to ascertain

⁹ Motion, para. 6.

¹⁰ *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Decision on Radovan Karadžić's Motion for Variance of Protective Measures, 8 October 2009, para. 6; *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-A, Decision on Prosecution's Motion for Variance of Protective Measures, 30 May 2007 (confidential) ("*Limaj Decision*"), p. 1.

¹¹ *Limaj Decision*, p. 2. The Prosecution filed a response on 20 May 2010 in which it did not oppose the Motion. See Prosecutor's Response to Joseph Nzirorera's Motion for Modification of the Protective Measures: Witness AIA, 20 May 2010.

¹² See Motion, Annex "A".

¹³ *Limaj Decision*, p. 2.

whether, informed of the implications, he consents to the variation of his protective measures for the purposes of testifying in the *Karemera et al.* proceedings.

8. The Appeals Chamber further notes that Witness AIA is scheduled to testify in the *Karemera et al.* proceedings very shortly. In order not to delay those proceedings, the Appeals Chamber finds that it is in the interests of justice for WVSS to inform the Trial Chamber and the parties of the outcome of its discussion with Witness AIA prior to his appearance in the *Karemera et al.* proceedings. Should the Trial Chamber be satisfied that Witness AIA does in fact consent to testify under his own name in the *Karemera et al.* proceedings, the Appeals Chamber finds that his protective measures can be varied to that extent.

III. DISPOSITION

9. For the foregoing reasons, the Appeals Chamber

INSTRUCTS WVSS to consult with Witness AIA to confirm that he consents to testify under his own name in the *Karemera et al.* proceedings and that he understands the implications of so doing;

FURTHER INSTRUCTS WVSS to report to the Trial Chamber and the parties on the outcome of this consultation prior to the testimony of Witness AIA; and,

Contingent upon Witness AIA confirming to WVSS that he does in fact consent to testify under his own name in the *Karemera et al.* proceedings, **GRANTS** the Motion and **VARIES** the protective measures granted to Witness AIA in the *Renzaho* proceedings to the extent that he may testify under his own name in the *Karemera et al.* proceedings.

Done this twenty-first day of May 2010,
at The Hague,
The Netherlands.



[Seal of the Tribunal]

Judge Carmel Agius
Presiding

¹⁴ See *Limaj* Decision, p. 2.