



ICTR-00-55C-T
30-11-2010
(4258-4256)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

4258
1094

OR: ENG

TRIAL CHAMBER III

Before Judges: Lee Gacuiga Muthoga, *Presiding*
Seon Ki Park
Robert Fremr

Registrar: Adama Dieng

Date: 30 November 2010

THE PROSECUTOR

v.

Ildephonse NIZEYIMANA

CASE NO. ICTR-2000-55C-PT

JUDICIAL RECORDS ARCHIVE
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**DECISION ON DEFENCE MOTION REQUESTING AN ORDER TO THE
PROSECUTION AND WVSS TO CONTACT PROSECUTION WITNESSES**

Rules 54, 73 and 75 of the Rules of Procedure and Evidence

Office of the Prosecution:

Drew White
Kirsten Gray
Yasmine Chubin
Zahida Virani
Astou Mbow

Defence Counsel for Ildephonse Nizeyimana:

John Philpot
Cainnech Lussiaà-Berdou
Myriam Bouazdi

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INTRODUCTION

1. The trial in this case is scheduled to commence on 17 January 2010.¹
2. On 3 September 2010, the Pre-Trial Chamber denied the Prosecution's second motion for witness protection measures but ordered various temporary protections for 60 potential Prosecution witnesses.² Among other things, the Chamber ordered that,

The Accused nor any member of the Defence team shall not make any contact with a protected witness, unless the consent of the person concerned has first been confirmed. The Accused or any member of the Defence team shall contact the Prosecution, who with the services of the Witness and Victims Support Section ("WVSS"), shall determine whether such consent exists. In the even[t] that such consent exists, the WVSS shall facilitate the interview[.]³
3. On 3 November 2010, the Defence filed a motion requesting an order to the Prosecution and WVSS to contact Prosecution witnesses.⁴ The Defence requests consent to meet with Witnesses BXF, ZBJ, BZC and AJP.⁵ The Defence submits that it has already tried to contact the Prosecution, as required by the Chamber's 3 September 2010 decision on the Prosecution's second motion for witness protection measures, but has not received a response.⁶
4. On 4 November 2010, the Trial Chamber granted the Prosecution's third motion for protective measures and reaffirmed the order regarding contact with protected Prosecution witnesses.⁷ The Chamber ordered that this and other protective measures remain in effect until further notice.⁸
5. On 8 November 2010, the Prosecution filed a response to the Defence motion, indicating that it had conveyed the Defence request to WVSS in accordance with the Chamber's 3 September and 4 November 2010 decisions.⁹ The Prosecution submits that, in addition to communicating with WVSS, it also prepared an "informative letter to the witnesses to explain that they will be contacted by WVSS who will ask them whether they consent to meeting with counsel for the Accused[,]" which was transmitted to the WVSS to be distributed to all potential Prosecution witnesses.¹⁰ Finally, the Prosecution submits that WVSS is currently contacting the witnesses in question to determine whether they consent to being interviewed by the Defence.¹¹ For these reasons, the Prosecution requests that the Defence motion be dismissed.¹²

¹ Scheduling Order (TC), 3 November 2010, Order II.

² Decision on Prosecutor's Second Motion for Protective Measures for the Victims and Witnesses to Crimes Alleged in the Indictment (TC), 3 September 2010.

³ Decision on Prosecutor's Second Motion for Protective Measures for the Victims and Witnesses to Crimes Alleged in the Indictment (TC), 3 September 2010, Order II(vi).

⁴ Defence Motion Requesting an Order to the Prosecution and the WVSS to Contact Prosecution Witnesses, filed on 3 November 2010 ("Motion").

⁵ Motion, para. 8.

⁶ Motion, para. 6.

⁷ Decision on Prosecutor's Third Motion for Protective Measures for the Victims and Witnesses to Crimes Alleged in the Indictment (TC), 4 November 2010.

⁸ Decision on Prosecutor's Third Motion for Protective Measures for the Victims and Witnesses to Crimes Alleged in the Indictment (TC), 4 November 2010, Order III.

⁹ Prosecutor's Response to Defence Motion Requesting an Order to the Prosecution to Contact Prosecution Witnesses, filed on 8 November 2010 ("Response").

¹⁰ Response, para. 9.

¹¹ Response, para. 10.

¹² Response, para. 11.

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DELIBERATIONS

6. According to Rule 75(A), “[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. The Chamber recalls that it granted a Prosecution motion for witness protection measures on 4 November 2010. Among other things, the Chamber ordered the Accused and the Defence not to contact Prosecution witnesses without their consent; ordered the Prosecution and WVSS to communicate with protected witnesses to determine whether they would consent to being contacted by the Defence; and ordered WVSS to facilitate interviews with consenting witnesses.¹³

8. Both Parties submit that they have complied with the conditions set forth in the Chamber’s 4 November 2010 decision.¹⁴ Nevertheless, the Chamber notes that it has not been determined whether Witnesses BXP, ZBJ, BZC and AJP would be willing to meet with Counsel for the Defence.

FOR THESE REASONS, THE CHAMBER

GRANTS the Defence motion in part;

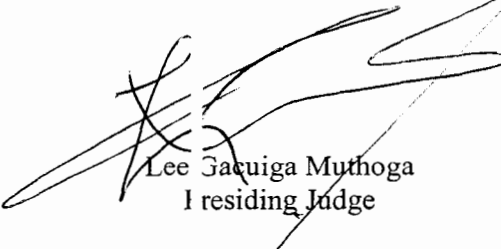
ORDERS the Prosecution to immediately contact WVSS regarding the status of the Defence request and to report back to the Chamber by close of business on 1 December 2010;

ORDERS WVSS to immediately contact Prosecution Witnesses BXP, ZBJ, BZC and AJP to inquire whether they would be willing to being interviewed by Counsel for the Defence;

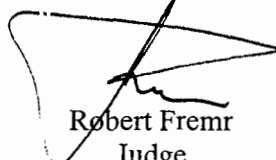
ORDERS WVSS to inform the Chamber and the Defence no later than close of business on 7 December 2010 whether these witnesses have consented to meeting with the Defence;

ORDERS WVSS to immediately facilitate meetings between Counsel for the Defence and any witnesses who have given their consent.

Arusha, 30 November 2010, done in English.


Lee Gacuga Muthoga
Residing Judge


Seon Ki Park
Judge


Robert Fremr
Judge

[Seal of the Tribunal]



¹³ Decision on Prosecutor’s Third Motion for Protective Measures for the Victims and Witnesses to Crimes Alleged in the Indictment (TC), 4 November 2010, Order III.

¹⁴ Motion para. 6; Response, paras. 5-6, 8-9.