



UNITED NATIONS
NATIONS UNIES

Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda

160/H

ICTR-00-55A-AR75

28th January 2011

{160/H - 158/H}

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding
Registrar: Mr. Adama Dieng
Decision of: 28 January 2011

THARCISSE MUVUNYI

v.

THE PROSECUTOR

Case No. ICTR-2000-55A-AR75

DECISION ON MOTION TO VARY PROTECTIVE MEASURES FOR
WITNESS KAL

ICTR Appeals Chamber

Date: 28th January 2011

Action: R. Juvénal

Copied To: Concerned Judges,
SLC, LSC, ALSC, Parties,

CMS, LSS.

Counsel for Tharcisse Muvunyi:

Mr. William E. Taylor III

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. Drew White
Ms. Kirsten Gray
Ms. Yasmin Chubin
Ms. Zahida Virani

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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NAME / NOM: KOFFI... KUMELIO... A... AFANDE

SIGNATURE: DATE: 28 Jan. 2011

1. I, Patrick Robinson, Presiding Judge of 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 ("Tribunal") and the Presiding Judge in this case, am seized of an urgent motion filed confidentially on 28 January 2011 by the Prosecution to vary the protective measures for Prosecution Witness KAL.¹

2. On 25 April 2001, Trial Chamber II of the Tribunal issued a decision granting protective measures to Prosecution witnesses in this case.² Witness KAL appeared as a witness in the *Muvunyi* case in March 2005 ("first proceedings").³ He is currently scheduled to appear as a witness in the case of *The Prosecutor v. Ildephonse Nizeyimana* ("second proceedings") during the week of 31 January 2011.⁴ Upon arrival in Arusha, Witness KAL requested to testify as an unprotected witness.⁵ He confirmed this request before Trial Chamber III of the Tribunal on 28 January 2011.⁶

3. According to Rule 75(F)(i) of the Rules of Procedure and Evidence of the Tribunal, the protective measures ordered in the first proceeding, the *Muvunyi* case, continue to have effect in any other proceedings before the Tribunal until rescinded, varied, or augmented. Therefore, in order to allow Witness KAL to testify as an unprotected witness in the second proceedings, the *Nizeyimana* case, the Prosecution requests the Appeals Chamber, which is seized of the *Muvunyi* case, to vary Witness KAL's protective measures "to the extent that he can testify as an unprotected witness in the second proceedings."⁷

4. In support of this request, the Prosecution submits an affidavit, signed by the witness, in which he requests to testify as an unprotected witness in the *Nizeyimana* case.⁸ In addition, it submits an affidavit, signed by the witness before an official of the Tribunal's Witness and Victims Support Section, in which he requests to terminate the protective measures in the *Muvunyi* case.⁹

¹ Prosecutor's Confidential Extremely Urgent Motion to Vary the Protective Measures for Witness KAL, 28 January 2011 ("Motion"). In view of the urgency of the decision and the lack of prejudice, this decision has been issued without awaiting a response.

² *The Prosecutor v. Tharcisse Muvunyi & Others*, Case No. ICTR-2000-55-I, Decision on the Prosecutor's Motion for Orders for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment, 25 April 2001 ("*Muvunyi* Witness Protection Decision").

³ Motion, para. 6.

⁴ Motion, para. 8.

⁵ Motion, para. 8.

⁶ Motion, para. 9.

⁷ Motion, para. 15.

⁸ Motion, Annex A.

⁹ Motion, Annex B.

The affidavit reflects that the witness's choice to terminate the protective measures followed an explanation of the benefits of protection.¹⁰

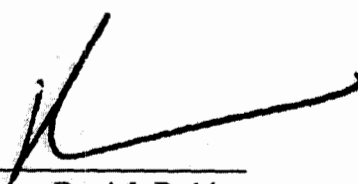
5. As Witness KAL consents to the rescinding of the protective measures in the *Muvunyi* case, I am satisfied that a variation of the *Muvunyi* Witness Protection Decision is appropriate to facilitate his testimony as an unprotected witness in the *Nizeyimana* case.

6. Accordingly, the Prosecution's request to vary the protective measures in the *Muvunyi* Witness Protection Decision to allow Witness KAL to appear as an unprotected witness in the *Nizeyimana* case is hereby **GRANTED**.

Done in English and French, the English version being authoritative.

Done this 28th day of January 2011,
At The Hague,
The Netherlands.





Judge Patrick Robinson
Presiding

[Seal of the Tribunal]

¹⁰ Motion, Annex B.