



UNITED NATIONS
NATIONS UNIES

ICTR-00-55A-T
28-01-2011
(1170-1169)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1170
12

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 28 January 2011

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JUDICIAL REGISTER/REGISTRE
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THE PROSECUTOR

v.

THARCISSE MUVUNYI

Case No. ICTR-00-55A-T

**DECISION ON PROSECUTOR'S CONFIDENTIAL EXTREMELY URGENT
MOTION TO VARY THE PROTECTIVE MEASURES FOR WITNESS KAL**

Rule 75 of the Rules of Procedure and Evidence

Office of the Prosecution:
Drew White
Kirsten Gray
Yasmine Chubin
Zahida Virani

Defence Counsel for the Accused:
John Philpot
Cainnech Lussiaa-Berdou
Myriam Bouazdi

By

1. Witness KAL was granted protective measures in the case of the *Prosecutor v. Tharcisse Muvunyi* as part of a blanket grant of protection on 25 April 2001 and now seeks to testify as an unprotected witness in the *Prosecutor v. Ildephonse Nizeyimana*. Witness KAL is scheduled to testify in the *Nizeyimana* case the week of 31 January 2011 and is scheduled to appear before the *Nizeyimana* chamber on 28 January 2011 to provide his consent on the record for the rescission of the protective measures.


2. Rule 75 of the Rules of Procedure and Evidence explicitly provides that once protective measures have been ordered in respect of a witness in any proceedings before the Tribunal, such protective measures shall continue to have effect in any other proceedings unless and until they are rescinded.¹ Furthermore, a party to the second proceedings seeking to rescind, vary, or augment protective measures ordered in the first proceedings must apply, to any Chamber, however constituted, remaining seised of the first proceedings.²

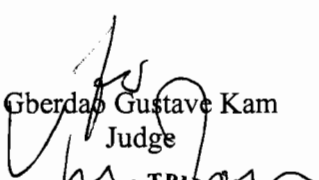
3. The practice of the Tribunal has been to vary witness protection measures where the witness gives his or her clear consent.³ However, the Chamber considers that as the *Muvunyi* case is currently on appeal, the *Muvunyi* Appeals Chamber bench is seised of the first proceeding and is therefore the proper body to consider the present motion.

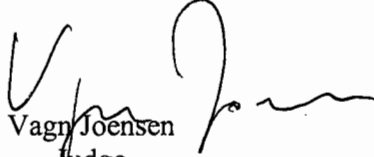
FOR THESE REASONS, THE CHAMBER:

I. DISMISSES the Prosecution's Motion in its entirety.

Arusha, 28 January 2011, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge



¹ Rule 75(F).

² Rule 75(G)(i).

³ See e.g., *Théoneste Bagosora, Aloys Ntabakuze, and Anatole Nsengiyumva v. The Prosecutor*, Case No. ICTR-98-41-A, Order Rescinding Protective Measures (AC), 10 September 2010.