



UNITED NATIONS
NATIONS UNIES

Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding

Registrar: Mr. Adama Dieng

Decision of: 14 February 2011

THARCISSE MUVUNYI

v.

THE PROSECUTOR

Case No. ICTR-2000-55A-AR75

**DECISION ON MOTION TO VARY PROTECTIVE MEASURES FOR
WITNESS QBE**

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

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 9 February 2011 by the Prosecution to vary the protective measures for Prosecution Witness QBE.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 QBE appeared as a witness in the *Muvunyi* case in June 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 21 February 2011.⁴

3. According to the Motion, Witness QBE has requested the Tribunal’s Witness and Victims Support Section (“WVSS”) to allow him to stay in a hotel rather than a safe house during his testimony in Arusha.⁵ The Prosecution submits that the witness wishes to retain his protective measures in all other respects.⁶ The Prosecution therefore requests the Appeals Chamber to grant a partial waiver of the protective measures which would allow Witness QBE to choose his accommodations and to declare that this does not affect any other material aspects of the witness’s testimony or his status as a protected witness.⁷ The Prosecution submits that it is common practice for WVSS to facilitate a witness’s preference to choose their accommodation while testifying and that various Chambers have granted such requests.⁸

4. 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. The *Muvunyi* Witness Protection Decision focuses exclusively on issues related to the nondisclosure of a witness’s

¹ Prosecutor’s Confidential Extremely Urgent Motion to Vary the Protective Measures for Witness QBE, 9 February 2011 (“Motion”). This decision has been issued without awaiting a response in view of its urgency and the lack of prejudice.

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. 2.

⁴ Motion, para. 9.

⁵ Motion, para. 4.

⁶ Motion, paras. 4, 5, 17.

⁷ Motion, paras. 8, 15, 16, 18, 21.

⁸ Motion, paras. 14, 15.

identity.⁹ None of the protective measures in force in the *Muvunyi* case relate to a witness's accommodation during his or her testimony. Therefore, there is no protective measure in this case to vary in order to accommodate Witness QBE's housing request in relation to his testimony in the second proceeding. Such matters fall squarely within the discretion of WVSS.

5. Consequently, the Prosecution's Motion is hereby **DISMISSED**.

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

Done this 14th day of February 2011,
At The Hague,
The Netherlands.

Judge Patrick Robinson
Presiding

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⁹ *Muvunyi* Witness Protection Decision, paras. 2, 24, 25-28.