



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
25-03-2011
(53242-53240)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

53242
HM

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 25 March 2011

THE PROSECUTOR

v.

**Édouard KAREMERA and
Matthieu NGIRUMPATSE**

Case No. ICTR-98-44-T

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J. K. K. K.

**DECISION ON THE PROSECUTION'S MOTION FOR VARIATION OF WITNESS
LLK'S PROTECTIVE MEASURES**

Rules 54 and 75 of the Rules of Procedure and evidence

Office of the Prosecution:
Don Webster
Maria Wilson
Takeh Sendze
Sunkarie Ballah-Conteh

Defence Counsel for Édouard Karemera
Dior Diagne Mbaye and Félix Sow

Defence Counsel for Matthieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

HM

INTRODUCTION

1. Witness LLK, who testified on the behalf of Édouard Karemera, was granted protective measures as part of a blanket grant of protection on 19 February 2008.¹ The Prosecution now seeks that the Chamber vary the protected measures granted to LLK so that the Parties can refer to him and his testimony under his real name while the protective order be maintained in all other aspects.² The Defence did not file a response.

DELIBERATIONS

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the Tribunal, such protective measures shall continue to have effect in any other proceedings unless and until they are rescinded, varied or augmented in accordance with the procedure set up in this rule.³

3. The Chamber recalls that its decision to issue protective measures for Édouard Karemera's witnesses was based on his submissions⁴ which included references to the fear of his witnesses and their family.⁵ The practice of the Tribunal has been to vary witness protection measures where the witness gives his or her clear consent.⁶ However, Witness LLK is now deceased and the Prosecution has not demonstrated that the Witness, before his death, consented to his protective measures being varied or that the security of his family is not at stake.

4. Moreover, the variation sought would entail that the identity of the Witness would be revealed to the public that happened to read the Parties' closing briefs and the transcripts of their closing arguments whereas the Witness would still appear under his pseudonym in the public transcripts. Further, the closed session transcripts and sealed exhibits which reveal his identity would still not be accessible to the public and these remaining protective measures would also apply in all other proceedings before the Tribunal and in other jurisdictions. Thus, the relief sought by the Prosecution does not respect the proper administration of public access to the Tribunal's trial records or serve the interest of justice. For these reasons the Motion cannot be granted.

¹ *The Prosecutor v. Édouard Karemera and Matthieu Ndirumpatse*, Case No. ICTR-98-44-T ("*Karemera et al.*"), Decision on Édouard Karemera's Motion for Orders for the Protection of Defence Witnesses, 19 February 2008 ("Decision of 19 February 2008").

² Prosecutor's Motion to Rescind the Protective Measures for deceased Witness LLK (Confidential), filed on 13 January 2011 ("Motion"), para. 1.

³ Rule 75(F).

⁴ Decision of 19 February 2008, para. 10.

⁵ Requête de Édouard Karemera sur les fondements des articles 19 à 21 du Statut, et 69 et- 75 du RPP: Mesures de protection des victimes et des témoins, dated 31 January 2008, filed on 4 February 2008, para. 7.

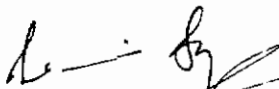
⁶ Rule 75 (F); See e.g., *Théoneste Bagosora, Aloys Ntabakuze, and Anatole Nsengiyumva v. The Prosecutor*, Case No. ICTR-98-41-A, Order Rescinding Protective Measures (AC), 10 September 2010.

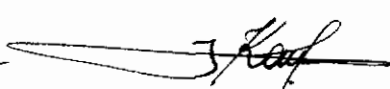
5. Finally, the Chamber observes that the confidential filing of the present Motion was warranted as it includes information allowing the public to identify Witness LLK. However, this is not the case for this decision. Therefore, the present decision shall be filed as a public document.

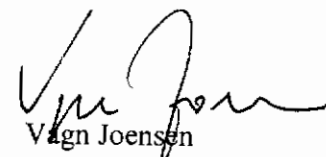
FOR THESE REASONS, THE CHAMBER:

DISMISSES the Prosecution's Motion in its entirety.

Arusha, 25 March 2011, done in English.


Denis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

[Seal of the Tribunal]

