



ICTR-98-42-T
10 - 05 - 2011
(13503 - 13500)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

13503
MWE

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Arlette Ramaroson
Judge Solomy Balungi Bossa

Registrar: Mr. Adama Dieng

Date: 10 May 2011

The PROSECUTOR

v.

Pauline NYIRAMASUHUKO et al,

Joint Case No. ICTR-98-42-T

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**DECISION ON THE PROSECUTION URGENT EX-PARTE MOTION TO
RESCIND PROTECTIVE MEASURES FOR WITNESSES EV, RT and RV**

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Handwritten signature

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the “Tribunal”),

SITTING as Trial Chamber II composed of Judges William H. Sekule, Presiding, Arlette Ramarosan and Solomy Balungi Bossa (the “Chamber”);

BEING SEIZED of the “Prosecutor’s Urgent *Ex Parte* Motion to Rescind Protective Measures for Witnesses, Art. 28 and Rule 75”, filed on 19 April 2011 (the “Motion”);

RECALLING the Decision on Prosecution’s Motion for Protective Measures for Victims and Witnesses of 27 March 2001 (the “Decision of 27 March 2001”);

CONSIDERING the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”);

NOW DECIDES the Motion pursuant to Rule 73 (A) and 75 of the Rules, on the basis of the written briefs filed by the Prosecution.

INTRODUCTION

1. Witnesses EV, RT and RV are protected Prosecution witnesses. The protection these witnesses enjoy was ordered pursuant to the Chamber’s Decision of 27 March 2001. It entails among others, that their identities be concealed from the press and the public. Witness EV testified on 25, 26 and 27 February 2004. Witness RT testified on 10 and 11 March 2004. Witness RV testified from 16 to 19 February 2004. Each of these witnesses gave part of their evidence in closed session to avoid the disclosure of their respective identities.

SUBMISSIONS OF THE PROSECUTION

2. The Prosecution seeks to rescind the protective measures earlier ordered by the Chamber in its Decision of 27 March 2001 with respect to Witnesses EV, RT and RV. In particular, the Prosecution seeks authorisation to disclose these witnesses’ witness statements, transcripts and exhibits tendered through these witnesses, as well as other necessary information, to the Special International Crimes Office of Denmark.¹ According to the Prosecution, these materials are required by the Special International Crimes Office of Denmark in order to facilitate investigations and eventual prosecution of Emmanuel Mbarushimana for his alleged role in the crimes committed in Rwanda in 1994.²

3. The Prosecution submits that Witnesses EV, RT and RV have each consented in writing to the lifting of the protective measures applicable to them in order to assist such investigations. The duly accomplished and signed affidavits of 25 and 26 January 2011 are annexed to the Prosecution Motion.³ The Prosecution further points out that the protective measures currently enjoyed by Witnesses EV, RT and RV need no longer apply to the investigations and eventual proceedings in Denmark since the witnesses have indicated their willingness to testify under their real identities and in open session in the Danish proceedings.⁴

¹ Motion, paras. 1, 4.

² Motion, paras. 1, 5; details of the Danish investigation are contained in the affidavits, attached as Annex A to the Motion.

³ Motion, paras. 4, 13; Annex A.

⁴ Motion, para. 12.

4. The Prosecution further states that such assistance to Denmark is consistent with Article 28 of this Tribunal's Statute, its jurisprudence, and Security Council Resolutions 1503 (2003) and 1534 (2004). The Prosecution further submits that jurisprudence has expanded Rule 75 (F)(i) to apply to proceedings in other jurisdictions and not just before this Tribunal.⁵ The Prosecution adds that the International Criminal Tribunal for the former Yugoslavia ("ICTY") in fact amended Rule 75 (F)(i) to apply to proceedings in other jurisdictions.⁶

DELIBERATIONS

5. The Chamber understands that Witnesses EV, RT and RV could facilitate investigations and eventual proceedings by the Special International Crimes Office of Denmark in connection to crimes committed in Rwanda in 1994.

6. The Chamber recalls that the guiding principles of state cooperation under Article 28 (1) of the Statute also apply to requests for cooperation or judicial assistance from States to the Tribunal, in their investigation or prosecution of persons accused of committing serious violations of international humanitarian law.⁷ Moreover, the Chamber notes that the investigation and eventual prosecution by the Special International Crimes Office of Denmark of crimes committed in Rwanda in 1994, requiring the involvement of Witnesses EV, RT and RV, is in line with the principles of state cooperation envisaged by the completion strategy in Security Council Resolutions 1503 and 1534.

7. The Chamber recalls that pursuant to Rule 78, "all proceedings before a Trial Chamber, other than deliberations of the Chamber, shall be held in public, unless otherwise provided" and that as such, the transcripts of the testimony of Witnesses EV, RT and RV heard in open session are accessible to the public without further order by the Chamber.

8. The Chamber notes the affidavits of Witnesses EV, RT and RV attached to the Motion, express their consent to the disclosure of their confidential witness statements, testimony and other documents related to both the current proceedings as well as previous proceedings in which they appeared.⁸ However, contrary to the Prosecution's submissions,⁹ none of the three witnesses consented, in the respectively signed affidavits, to completely waiving their protected status in eventual proceedings before the Danish authorities.¹⁰

9. The Chamber therefore orders that the protective measures granted to Witnesses EV, RT and RV shall continue to have effect *mutatis mutandis* in any proceedings before these authorities unless and until they are rescinded, varied, or augmented in accordance with the procedure set out in Rule 75.

10. However, the Chamber notes that the affidavits signed by Witnesses EV, RT and RV, which are typewritten in French, were not signed by interpreters. The Chamber is satisfied that Witness RV could read and understand French.¹¹ However, the Chamber recalls that Witnesses EV and RT cannot read French.¹² In this regard, the Chamber directs the

⁵ Motion, paras. 6-8, 10.

⁶ Motion, para. 11.

⁷ *The Prosecutor v. Nyiramasuhuko et al*, ICTR-98-42-T, "Decision on Prosecution's Motion to Unseal the Transcripts of Witness WDUUSA" 1 November 2006, para. 15.

⁸ Motion, Annex A at pages 13485, 13487 and 13489.

⁹ Motion, paras. 5, 12.

¹⁰ Motion, Annex A at pages 13485, 13487 and 13489.

¹¹ T. 16 February 2004 p. 26; T. 17 February 2004 p. 21 (ICS) (Witness RV).

¹² T. 27 February 2004 p. 4 (Witness EV); T. 10 March 2004 p. 89 (Witness RT).

Prosecution to prepare new affidavits in one of the working languages of the Tribunal to be signed by Witnesses EV and RT. Each affidavit should contain a declaration from the interpreter that the document was translated into a language understood by each respective witness and that the witness fully understood the contents thereof. These affidavits and the attached declarations should be submitted to the Chamber. The Chamber will then resolve the Prosecution Motion upon the submission of these documents.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Motion in part and accordingly **VARIES** the applicable protective measures for the purposes of disclosures relating to Witness RV, as specified below;

DIRECTS the Registry to provide the Prosecution with the closed session transcripts of Witness RV's testimony of 16 to 19 February 2004, together with Prosecution Exhibit 78, and any other exhibits tendered under seal during his testimony for the purpose of disclosure of the same to the Special International Crimes Office of Denmark.

ORDERS that the protective measures granted to Witness RV shall continue to have effect *mutatis mutandis* in any proceedings before the Danish authorities.

DIRECTS the Prosecution, if it wishes to pursue this matter, to prepare new affidavits in one of the working languages of the Tribunal to be signed by Witnesses EV and RT, along with declarations from the interpreter(s) that the documents were translated into a language understood by Witnesses EV and RT and that they fully understood the contents thereof, to submit the same to the Chamber; and

DEFERS its Decision on this Motion with respect to Witnesses EV and RT until the submission of said affidavits and declarations thereof.

Arusha, 10 May 2011



William H. Sekule
Presiding Judge



Arlette Ramarison



Solomy Balungi Bossa
Judge