

ICTR-00-55C-1
(13-9-2011
(8186-5182))

8186



UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

TRIAL CHAMBER III

Before Judges: Lee Gacuiga Muthoga, *Presiding*
Seon Ki Park
Robert Fremr

Registrar: Adama Dieng

Date: 13 September 2011

THE PROSECUTOR

v.

Ildéphonse NIZEYIMANA

CASE NO. ICTR-00-55C-T

JUDICIAL RECORDS/ARCHIVES
RECEIVED
UNICTR
2011 SEP 13 P 5:11
L.S. 102

**DECISION ON EXTREMELY URGENT DEFENCE MOTION
FOR PROTECTIVE MEASURES FOR DEFENCE WITNESSES KENYON 06 AND
RWV17**

Articles 19 and 21 of the Statute and Rules 54, 69, 73 and 75 of the Rules of Procedure and Evidence

Office of the Prosecution:

Drew White
Kirsten Gray
Yasmine Chubin
Astou Mbow

Defence Counsel for Ildéphonse Nizeyimana:

John Philpot
Cainnech Lussiaà-Berdou
Myriam Bouazdi
Sébastien Chartrand

INTRODUCTION

1. The trial commenced on 17 January 2011 with the opening statements of both the Prosecution and the Defence. The Prosecution closed its case-in-chief on 25 February 2011, after called 38 witnesses. The Defence closed its case on 16 June 2011, having called 38 witnesses. On 6 September 2011, the Chamber heard one Defence Witness, Witness BNN07. On 8 September 2011, the Prosecution completed the presentation of its evidence in rebuttal to the Defence case.

2. On 8 September 2011, the Defence team of the Accused, Ildéphonse Nizeyimana (“the Defence” and “the Accused” respectively) filed a motion urgently seeking protective measures for Defence Witness KEN06 and RWV17.¹ The Defence attached a confidential, *ex parte*, declaration by its investigator, Valens Hahirwa, attesting to the fact that Witness KEN06 and Witness RWV17 would like to seek protective measures for fear of reprisals by the Rwandan government and community, respectively.²

3. On 12 September 2011, the Office of the Prosecutor (“Prosecution”) filed a response to the Defence Motion.³ The Prosecution submits that it does not generally oppose the granting of protective measures in general, but does not consider the measures warranted in the instant case.⁴ Moreover, the Prosecution notes that the characterization of the circumstances underlying the fear expressed by the two potential rejoinder witnesses is “flawed and outdated.”⁵

DELIBERATIONS

Applicable Law of Protective Measures

4. The Chamber recalls that pursuant to Article 21 of the Statute, the Tribunal has the duty to provide for the protection of victims and witnesses. Such protective measures shall include, but shall not be limited to, the conduct of *in-camera* proceedings and the protection of victims’ identities. To this end, Rule 69 of the Rules of Procedure and Evidence (“Rules”) provides that under exceptional circumstances, either of the parties may apply to a trial

¹ Extremely Urgent Defence Motion for Protective Measures for Defence Witnesses KEN06 and RWV17, 8 September 2011.

² Confidential and *Ex Parte* Annex to Extremely Urgent Defence Motion for Protective Measures for Defence Witness KEN06 and RWV17, 8 September 2011.

³ Prosecution Response to Defence Extremely Urgent Motion for Protective Measures for Defence Witnesses KEN06 and RWV17 (“Prosecution Response”), 12 September 2011.

⁴ Prosecution Response, paras. 3-11.

⁵ Prosecution Response, paras. 12-22.



8184

chamber to order that the identity of a witness or victim who may be in danger or at risk not be disclosed, until that chamber decides otherwise.

5. Rule 75 authorises a judge or a chamber, *proprio motu*, or at the request of either party, the victim or witness concerned, or of the Witnesses and Victims Support Section ("WVSS"), to order appropriate measures to safeguard the privacy and security of victims and witnesses.

6. Protective measures for victims and witnesses are granted on a case-by-case basis where a chamber determines the appropriateness of such protective measures.⁶

Specific Application for Protective Measures

7. In support of the request for protective measures, Annex A of the Defence Motion includes an affidavit signed by Valens Hahirwa specifying Witness KEN06's and Witness RWV17's particular fears of intimidation. The Chamber finds that the Defence has demonstrated the existence of exceptional circumstances and a real fear for the Witnesses' safety which justifies the grant of protective measures for the Witnesses identified in Annexes A of the Motion.

FOR THESE REASONS, THE CHAMBER

I. GRANTS the Motion;

II. ORDERS that Defence Witnesses KEN06 and RWV17 be subject to the following protections which will remain in effect until further order:

- i. If it has not already done so, the Defence is to designate a pseudonym for each protected witness. The pseudonyms shall be used when referring to such protected witnesses in ICTR proceedings, communications, and discussions, both between the parties and with the public. The use of such pseudonyms shall last until such time as the Trial Chamber orders.
- ii. Names, address(es), whereabouts and information of a private, personal or descriptive nature that either directly reveals the identity of the protected witness or makes the identity of the witness a matter of deduction (hereinafter

⁶ *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Nyiramasuhuko's Strictly Confidential *Ex-Parte*- Under Seal - Motion for Additional Protective Measures for Defence Witness WBNM (TC), 17 June 2005, paras. 8, 9, citing *Prosecutor v. Bagosora et al.*, Case No. ICTR-96-7-I, Decision on the Extremely Urgent Request Made by the Defence for Protection Measures for Mr. Bernard Ntuyahaga (TC), 13 September 1999, para. 28.

The Prosecutor v. Ildéphonse Nizeyimana, Case No. ICTR-00-55C-T

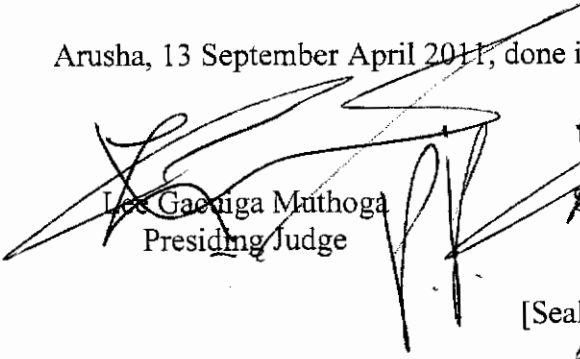


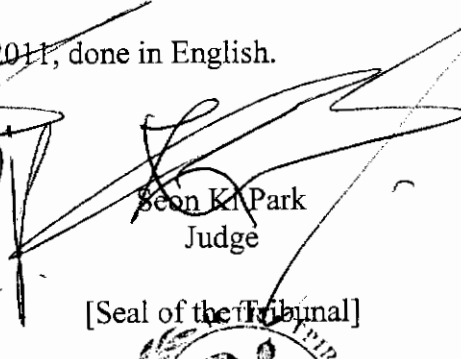
“Identifying Information”) must be sealed by the Registry and not be included in public or non-confidential ICTR records;

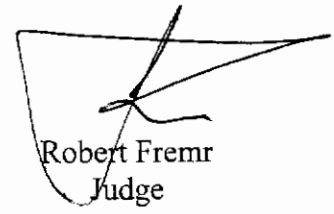
- iii. To the extent that any Identifying Information is contained in existing records of the Tribunal, such Identifying Information must be expunged from the public record of the Tribunal and placed under seal;
- iv. Identifying Information shall not be disclosed to the public or the media. This order shall remain in effect until further order;
- v. Until such time as Identifying Information is provided to the Prosecution pursuant to a Trial Chamber order, no member of the Prosecution shall attempt, encourage or otherwise aid any person in an attempt to make any independent determination of the identity of any protected witness;
- vi. Nowhere and at no time shall the public or the media make audio or video recordings or broadcasts, or take photographs of any protected witness or his/her family members (meaning, parents, siblings, children and partners), in relation to the testimony of the protected witness at the ICTR, without leave of the Trial Chamber;
- vii. No member of the Prosecution shall make any contact with a protected witness, unless the consent of the person concerned has first been confirmed. The Prosecution shall contact the Defence, who with the services of the WVSS, shall determine whether such consent exists. In the event that such consent exists, the WVSS shall facilitate the interview; and
- viii. The Prosecution shall keep confidential the fact that the witness is a witness and shall not express, share, discuss or reveal directly or indirectly that status to any unauthorized person or entity.



Arusha, 13 September 2011, done in English.


Lee Gaciga Muthoga
Presiding Judge


Seon Ki Park
Judge


Robert Fremr
Judge

[Seal of the Tribunal]

