



UNITED NATIONS
NATIONS UNIES

ICTR-01-74
27-09-2011
E19/A-606/A

E19/A
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**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

TRIAL CHAMBER III

Before Judge: Vagn Joensen
Designated by the Trial Chamber pursuant to Rule 75 (I)

Registrar: Adama Dieng

Date: 27 September 2011

THE PROSECUTOR

v.

François KARERA

Case No. ICTR-01-74

2011 SEP 27 P 5:03
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DECISION RESCINDING THE PROTECTIVE MEASURES OF WITNESS BMI

Rules 33, 75 and 81 of the Rules of Procedure and Evidence

V.

608/A

INTRODUCTION

1. On 1 December 2005, Trial Chamber III granted protective measures to Prosecution Witness BMI in the framework of the case against François Karera.¹ The trial was decided on appeal on 2 February 2009. No Chamber is still seized of the case.
2. In March 2011, the Registry sent an interoffice memorandum to the President of the Tribunal seeking rescission of protective measures ordered for several deceased witnesses. This memorandum was later supplemented by a corrigendum.² Witness BMI is one of the witnesses concerned by this request.
3. Following the interoffice memorandum from the Registry, Trial Chamber III composed of Judges Dennis C. M. Byron, presiding, Gustave Gberdao Kam and Vagn Joensen was appointed to decide the matter.³ Pursuant to Rule 75 (I) of the Rules of Procedure and Evidence, the Chamber has designated Judge Vagn Joensen to rule on the Registry's request as a single judge.

DELIBERATION

4. Rule 75 regulates the protection of witnesses in proceedings before this Tribunal and allows for protective orders to be varied or rescinded. Rule 75 (F) states that once protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal such protective measures continue to have effect unless and until they are rescinded.
5. Rule 75 (A) provides that protective measures may be ordered by a Judge or a Chamber *proprio motu* or at the request of either party, the victim or witness concerned or the Victims and Witnesses Support Unit, whereas the Rule, does not provide how, apart from by request

¹ *The Prosecutor v. François Karera*, Case No. ICTR-2001-74 ("Karera"), Decision on Motion for Protective Measures for Prosecution Witnesses, 1 December 2005.

² Request for Rescission of Protective Measures Ordered for (30) Deceased Witnesses, 18 March 2011; Request for Rescission of Protective Measures Ordered for Deceased Witnesses – Corrigendum, 20 April 2011.

³ Designation of a Trial Chamber to Consider the Registrar's Request for Rescission of Protective Measures Ordered for Deceased Witnesses, 23 June 2011.

N.

607/A

from a party in other proceedings before the Tribunal, protective measures may be rescinded or varied.

6. However, according to Rule 81, a Trial Chamber may order the disclosure of all or part of the record of closed proceedings when the reasons for ordering the non disclosure no longer exist. Moreover, Rule 33 (B) empowers the Registrar, in the execution of his functions, to make oral or written representations to Chambers on *any* issue arising in the context of a specific case which affects or may affect the discharge of such functions. Protective measures for victims and witnesses are among the functions executed by the Registrar.⁴ Consequently, the Chamber finds that Rule 75 (A) is applicable *mutatis mutandis* to matters of rescission or variation of protective measures.

7. In the present case, the WVSS requests that the protective measures ordered for Witness BMI in the *Karera* case be rescinded on the grounds that the case has been closed, BMI has died, was a widower and the protective measures were not extended to his family.⁵

8. The Chamber considers that Rule 75 (H) should also apply *mutatis mutandis* under the present circumstances and has, therefore, consulted with the judges who ordered protective measures for Witness BMI.

9. The Chamber recalls that the principle of public access directs the work of the Tribunal and that confidentiality is the exception.⁶ The Chamber is satisfied that the WVSS has demonstrated that Witness BMI is now deceased and that protective measures for his safety are no longer warranted.⁷ The Chamber is also satisfied that the rescission of the protective measures of Witness BMI is in the interest of justice and would not endanger others. Consequently, the Chamber rescinds the protective measures wherefore Witness BMI may now be referred to as Callixte KARAKE.

10. The Chamber is however mindful of the practical consequences of rescinding Witness BMI's protective measures if his pseudonym were to be replaced by his name in all the concerned documents. Consequently, the Chamber considers that instead of replacing each single occurrence of "Witness BMI" by his real name, the Registry may append to each filed record that includes a reference to Witness BMI a notice that the protective measures of

⁴ Rule 34 of the Rules of Procedure and Evidence.

⁵ *Karera*, Decision on Motion for Protective Measures for Prosecution Witnesses, 1 December 2005.

⁶ See Article 20 of the Statute, Rule 78.

⁷ WVSS appended a death certificate for Witness ATM in its Interoffice Memorandum and in its corrigendum to it.

N.

606/A


Witness BMI have been rescinded by the present decision and that his real name is Callixte KARAKE.

11. As a consequence of the decision to rescind protective measures, exhibits and other documents that are under seal for the sole purpose of protection of Callixte KARAKE's identity should be re-filed as public documents.

FOR THE ABOVE REASONS, THE CHAMBER

- I. **GRANTS** the Registrar's Request regarding Witness BMI;
- II. **RESCINDS** the Protective measures ordered in favour of Witness BMI by Trial Chamber III's Decision of 1 December 2005;
- III. **REQUESTS** the Registry that it be indicated in each filed record mentioning Witness BMI that the protective measures of the Witness have been rescinded by the present decision and that his real name is Callixte KARAKE; and
- IV. **REQUESTS** the Registry to re-file as public documents exhibits and other documents that are under seal for the sole purpose of the protection of Callixte KARAKE's identity.

Arusha, 27 September 2011, done in English.


Vagn Joensen
Judge

[Seal of the Tribunal]

