



ICTR-01-69
27-09-2011
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

3730

Am

(3730-2727)

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.

Hormidas NSENGIMANA

Case No. ICTR-01-69

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**DECISION RESCINDING THE PROTECTIVE MEASURES OF WITNESSES BVJ
AND CAU**

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

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INTRODUCTION

1. On 2 September 2002, Trial Chamber II granted protective measures to Prosecution Witnesses BVJ and CAU in the framework of the case against Hormisdas Nsengimana.¹ Nsengimana was acquitted by Trial Chamber I on 17 November 2009.² 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.³ Witnesses BVJ and CAU are two 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.⁴ 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the protection of witnesses in proceedings before this Tribunal and allows for protective orders to be varied or rescinded.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in any proceedings before the Tribunal such protective measures continue to have effect unless and until they are rescinded.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provide how, apart from by request from a party in other proceedings before the Tribunal, protective measures may be rescinded or varied.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

¹ *The Prosecutor v. Hormisdas Nsengimana*, Case No. ICTR-2001-69 ("*Nsengimana*"), Decision on the Prosecutor's Motion for Protective Measures for Witnesses, 2 September 2002.

² *Nsengimana*, Judgement (TC), 17 November 2009.

³ 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.

⁴ Designation of a Trial Chamber to Consider the Registrar's Request for Rescission of Protective Measures Ordered for Deceased Witnesses, 23 June 2011.

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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.⁵ 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 Witnesses BVJ and CAU in the *Nsengimana* case be rescinded on the grounds that the case has been closed, BVJ and CAU have died, BVJ was single and CAU was a widow and the protective measures were not extended to their respective families.⁶

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 Witnesses BVJ and CAU.

9. The Chamber recalls that the principle of public access directs the work of the Tribunal and that confidentiality is the exception.⁷ The Chamber is satisfied that the WVSS has demonstrated that Witnesses BVJ and CAU are now deceased and that protective measures for their safety are no longer warranted.⁸ The Chamber is also satisfied that the rescission of the protective measures of Witnesses BVJ and CAU is in the interest of justice and would not endanger others. Consequently the Chamber rescinds the protective measures wherefore Witness BVJ may now be referred to as Dismas RUKUNGU NTAWUDAYINKUNGA and Witness CAU as Costasie MUKAGASANA.

10. The Chamber is however mindful of the practical consequences of rescinding Witnesses BVJ and CAU's protective measures if their pseudonyms were to be replaced by their name in all the concerned documents. Consequently, the Chamber considers that instead of replacing each single occurrence of "Witness BVJ" and "Witness CAU" by their real name, the Registry may append to each filed record that includes a reference to Witnesses BVJ and CAU a notice that the protective measures of Witnesses BVJ and CAU have been rescinded by the present decision and that their real name are Dismas RUKUNGU NTAWUDAYINKUNGA and Costasie MUKAGASANA, respectively.

⁵ Rule 34 of the Rules of Procedure and Evidence.

⁶ *Nsengimana*, Decision on the Prosecutor's Motion for Protective Measures for Witnesses, 2 September 2002.

⁷ See Article 20 of the Statute, Rule 78.

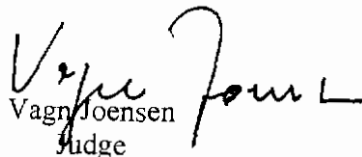
⁸ WVSS appended a death certificate for Witness ATM in its Interoffice Memorandum and in its corrigendum to it.

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 Dismas RUKUNGU NTAWUDAYINKUNGA and Costasie MUKAGASANA's identity should be re-filed as public documents.

FOR THE ABOVE REASONS, THE CHAMBER

- I. **GRANTS** the Registrar's Request regarding Witnesses BVJ and CAU;
- II. **RESCINDS** the Protective measures ordered in favour of Witness BVJ and CAU by Trial Chamber II's Decision of 2 September 2002;
- III. **REQUESTS** the Registry that it be indicated in each filed record mentioning Witness BVJ and Witness CAU that the protective measures of the Witnesses have been rescinded by the present decision and that their real names are Dismas RUKUNGU NTAWUDAYINKUNGA and Costasie MUKAGASANA, respectively; 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 Dismas RUKUNGU NTAWUDAYINKUNGA and Costasie MUKAGASANA's identity.

Arusha, 27 September 2011, done in English.


Vagn Joensen
Judge

[Seal of the Tribunal]

