



UNITED NATIONS  
NATIONS UNIES

ICTR-95-1B  
27-10-2011  
(1927 - 1924)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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OR: ENG

**TRIAL CHAMBER III**

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

**Registrar:** Adama Dieng

**Date:** 27 October 2011

**THE PROSECUTOR**

v.

**MIKAELI MUHIMANA**

*Case No. ICTR-95-1B*

JUDICIAL RECORDS/ARCHIVES  
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**DECISION RESCINDING THE PROTECTIVE MEASURES OF WITNESS AP**

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

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## INTRODUCTION

1. On 9 March 2000, Trial Chamber III granted protective measures to Defence Witness AP in the framework of the case against Mikaeli Muhimana.<sup>1</sup> The trial was decided on appeal on 21 May 2007. No Chamber is currently 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.<sup>2</sup> Witness AP 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, Gberdao Gustave Kam and Vagn Joensen was appointed to decide the matter.<sup>3</sup> 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the protection of witnesses in proceedings before this Tribunal and allows for protective orders to be varied or rescinded.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in any proceedings before the Tribunal such protective measures continue to have effect unless and until they are rescinded.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provide how, apart from by request from a party in other proceedings before the Tribunal, protective measures may be rescinded or varied.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 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

<sup>1</sup> *The Prosecutor v. Mikaeli Muhimana*, Case No. ICTR-95-1B (“*Muhimana*”), Decision on the Prosecutor's Motion for Orders for Protective Measures for Victims and Witnesses, 9 March 2000.

<sup>2</sup> 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.

<sup>3</sup> 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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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.<sup>4</sup> 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 AP in the *Muhimana* case be rescinded on the grounds that the case has been closed, AP has died, was a widow and the protective measures were not extended to her family.

8. The Chamber notes that Witness AP was previously granted protective measures as Witness J in the *Musema* case.<sup>5</sup> Those protective measures were rescinded on 27 October 2011.<sup>6</sup>

9. The Chamber recalls that the principle of public access directs the work of the Tribunal and that confidentiality is the exception.<sup>7</sup> The Chamber is satisfied that the WVSS has demonstrated that Witness AP is now deceased and that protective measures for her safety are no longer warranted.<sup>8</sup> The Chamber is also satisfied that the rescission of the protective measures of Witness AP is in the interest of justice and would not endanger others. Consequently the Chamber rescinds the protective measures wherefore Witness AP may now be referred to as Bernadette MUKANGANGO.

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

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 Bernadette MUKANGANGO's identity should be re-filed as public documents.

<sup>4</sup> Rule 34 of the Rules of Procedure and Evidence.

<sup>5</sup> *The Prosecutor v. Alfred Musema*, Case No. ICTR-96-13 ("*Musema*"), Decision on the Prosecutor's Motion for Witness Protection, 20 November 1998.

<sup>6</sup> *Musema*, Decision Rescinding the Protective Measures of Witness J, 27 October 2011.

<sup>7</sup> See Article 20 of the Statute, Rule 78.

<sup>8</sup> WVSS appended a death certificate for Witness J/AP in its request.

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**FOR THE ABOVE REASONS, THE CHAMBER**

- I. GRANTS** the Registrar's Request regarding Witness AP;
- II. RESCINDS** the Protective measures ordered in favour of Witness AP by Trial Chamber III's Decision of 9 March 2000;
- III. REQUESTS** the Registry that it be indicated in each filed record mentioning Witness AP that the protective measures of the Witness have been rescinded by the present decision and that her real name is Bernadette MUKANGANGO; 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 Bernadette MUKANGANGO's identity.

Arusha, 27 October 2011, done in English.

  
Vagn Joensen  
Judge

[Seal of the Tribunal]

