



UNITED NATIONS
NATIONS UNIES

ICTR-98-42-T
(20-64-2007)
(1984-1980)

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Mwamp

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr Adama Dieng

Date: 20 April 2007

The PROSECUTOR v. PAULINE NIYRAMASUHUKO et al.

The PROSECUTOR v. SYLVAIN NSABIMANA & ALPHONSE NTEZIRYAYO

Case No. ICTR-97-29-T
Joint Case No. ICTR - 98 - 42 - T

**DECISION ON NTEZIRYAYO'S MOTION FOR VARIATION OF PROTECTIVE
MEASURES FOR WITNESSES AND-36, AND-38 AND AND-50**

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

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

SEIZED of the "*Requête en extrême urgence de la Défense de l'accusé Alphonse Nteziryayo pour la modification des mesures de protection accordées aux témoins AND-36, AND-50 et AND-38*" filed on 27 March 2007 (the "Motion");

CONSIDERING the

- i. Prosecutor's Response to the '*Requête en extrême urgence de la Défense de l'accusé Alphonse Nteziryayo pour la modification des mesures de protection accordées aux témoins AND-36, AND-50 et AND-38*' filed on 27 March 2007;
- ii. Registry's electronic mails dated 29 March 2007 and 11 April 2007 pursuant to Rule 33(B) of the Rules of Procedure and Evidence (the "Rules");
- iii. Réponse d'Elic Ndayambaje à la '*Requête en extrême urgence de la Défense de l'accusé Alphonse Nteziryayo pour la modification des mesures de protection accordées aux témoins AND-36, AND-50 et AND-38, en vertu des articles 69 et 75 du RPP et de l'article 22 du Statut du TPIR*' filed on 3 April 2007;
- iv. Submission of the Registrar Under Rule 33 (B) with respect to Nteziryayo's Motion for variation of protective measures for witnesses AND 36, AND 38 & AND 50 filed on 17 April 2007.
- v. *Réplique d'Alphonse Nteziryayo à la «Submission of the Registrar Under Rule 33 (B) with respect to Nteziryayo's Motion for variation of protective measures for witnesses AND 36, AND 38 et AND 50»* filed on 18 April 2007.

CONSIDERING the Statute of the Tribunal (the "Statute") and the Rules, in particular Rules 69 and 75 of the Rules;

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

SUBMISSIONS OF THE PARTIES***Preliminary Matter***

1. The Chamber will not consider the response by the Defence for Ndayambaje which was filed outside of the prescribed time limits without good cause being demonstrated.

The Defence

2. Defence Witnesses AND-36, AND-50 and AND-38 are scheduled to testify during the next trial session. The Defence submits that these witnesses do not wish to reside in a safe house while in Arusha. Moreover, Witnesses AND-36 AND-50 wish to testify under their real identities while Witness AND-38 wishes to maintain the protection of her identity. The Defence therefore moves the Chamber to vary Witnesses AND-36 AND-50's protective measures ordered by the Chamber on 18 September 2001.

¹ Unofficial translation. Alphonse Nteziryayo's Extremely Urgent Motion for Variation of Protective Measures for Witnesses AND-36, AND-50 and AND-38.

3. In support of its prayers, the Defence submits that residing in a safe house is not part of the protective orders made by the Chamber and that previous protected witnesses testifying under their real identities or under their pseudonym have resided in a hotel.²

4. The Defence further submits that the witnesses have expressed, by e-mail attached to the Motion, their wish to reside in a hotel as soon as they arrive in Arusha and have been informed of the consequences of such choice in terms of security. The Defence adds that these witnesses do not require a high level of protection on a 24 hour basis and that a decision should be rendered before their arrival.³

5. The Defence recalls the *Bagosora* Decision of 3 July 2006 to outline that a witness's refusal to reside in a safe house does not alter his status as a protected witness. The Defence also recalls the *Rwamakuba* Decision of 29 November 2005 and the *Bizimungu* Decision of 4 September 2006 in which it was ordered that a witness's ticket, visa, transport from the airport and between the hotel and the Tribunal remain the responsibility of the Registry. The Defence argues that the same should apply to its witnesses.

The Responses

6. The Prosecution does not oppose the Motion and indicates that these issues are within the sole jurisdiction of the Chamber. Nonetheless, the Prosecution submits that the Chamber should order that proper disclosure be made in relation to these three witnesses to avoid any delay.

7. The Registry submits that the variation of witness protection measures falls into the Trial Chamber's jurisdiction but that the Parties should bear in mind the Registrar's memorandum of 21 November 2006 on emoluments paid to witnesses. Moreover, if a witness is provided a special temporary travel document or had to be escorted by WVSS from his country of residence to Arusha, the witness shall remain under the entire supervision of the Section during his stay in Arusha. The Registry underscores that Witness AND-38 has not requested to stay in a hotel as her condition requires constant assistance. In its latest submissions of 17 April 2007, the Registry indicates that although Witnesses AND-36 and AND-50 have travel documents, they will need special authorization and visas to enter the Tanzanian territory. It concludes that unless otherwise decided by the Chamber, these witnesses should therefore stay in a secure location under ICTR protection and that WVSS does not have the resources to provide close protection to witnesses who are not accommodated in a safe house.

The Reply

8. The Defence contests the Registry's position with respect to the situation of all three witnesses. It submits that AND-38 has always expressed the wish to be accommodated in a hotel notwithstanding her health condition as exemplified by numerous electronic mail exchanges annexed to the Reply.

9. The Defence reiterates that Witnesses AND-36 and AND-50 no longer wish to be accommodated in a safe house and submits that the situation of protected witnesses who are

² The Defence quotes Witnesses WQOME, WQMJP, WUNHE, WUNJN, WCMNA, WUNBJ, Denise Nahobali, Clarisse Nahobali and others

³ The Defence recalls the Chamber's oral decision of 28 February 2007 authorizing AND-74 to reside in a hotel while maintaining all other protective measures

not accommodated in a safe house is not unusual, has occurred in the course of the "Butare" trial and is catered for by the Registrar's Memorandum of 21 November 2006. It adds that both witnesses were granted tourists visas to enter the Tanzanian territory, and not special visas, as evidenced by copies in annex to the Reply. The Defence further submits that their situation is similar to that of previous witnesses who have testified either under their real identity or under pseudonym and who were nonetheless accommodated in a hotel and not a safe house.

HAVING DELIBERATED

10. The Chamber recalls that the modification of a witness' protective measures can only be ordered by the Chamber. However, accommodations arrangements of a protected witness are administrative and logistic matters within the exclusive purview of the Registry⁴ and do not necessarily constitute part of the protective orders of 18 September 2001. These issues should therefore be discussed between the Defence Team and the Registry. The Chamber should be called upon to intervene only if such discussions do not yield the expected outcome and if the fairness of the proceedings might be impaired thereby.⁵ The Chamber therefore directs the Defence to address the issue of change of accommodation of witnesses to WVSS and urges all Parties involved to use a constructive and efficient approach in order to avoid coming back before the Trial Chamber.

11. With respect to the request for variation of protective orders for Witnesses AND-36 and AND-50, the Chamber notes from the electronic mails attached to the Motion that only Witness AND-36, and not AND-50, may have expressed the wish to testify openly and under her real identity. The Chamber notes that the Registry has not addressed this specific issue in its submission. Therefore, the Chamber is not in a position to vary the protective measures granted to Witnesses AND-36 and AND-50. Moreover, it has been this Chamber's practice to verify in court that the witness requests a waiver of some of his protective measures. In the instant case, there are no convincing reasons to depart from this practice. Finally, the Chamber urges the Parties to refrain from filing a written motion on an issue which could usually be dealt with orally.

FOR THE ABOVE REASONS, THE TRIBUNAL,

DIRECTS the Defence to address its request for change of accommodation venue of the concerned witnesses to the Registry;

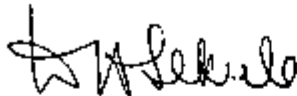
REMINDS the Registry that the change of residence while in Arusha does not modify the witness's protected status under the Chamber's Decision;

RESERVES its ruling on the lifting of the anonymity of two witnesses until the witnesses take the stand.

⁴ *The Prosecutor v. Rukundo*, Decision on the Prosecution Motion for Variation of the Protective measures for Witness CSH, 24 November 2006, para. 3, *The Prosecutor v. Ntindiliyimana et al.* "Decision on the Defence request to lift in whole or in part protective measures granted to witnesses DB2-11, DB2-13 and DB2-3, 10 April 2007 para. 7.

⁵ *Bagosora et al.*, Decision on the Request to Direct Registry to Comply with Order Concerning Witness Protection (TC), 3 July 2006, para. 5.

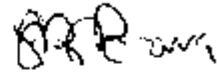
Arusha, 20 April 2007



William H. Sekule
Presiding Judge



Arlette Ramaroson
Judge



Solomy Balungi Bwisa
Judge



[Seal of the Tribunal]