



UNITED NATIONS
NATIONS UNIES

ICTR-99-52
27-09-2011
92/A - 89/A
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

92/A
Am

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.

**FERDINAND NAHIMANA
JEAN-BOSCO BARAYAGWIZA
HASSAN NGEZE**

Case No. ICTR-99-52

JUDICIAL RECORDS/ARCHIVES
UNICTR
2011 SEP 27 P 5-01

DECISION RESCINDING THE PROTECTIVE MEASURES OF WITNESS RM300

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

9.

91/A

INTRODUCTION

1. On 23 September 2002, Trial Chamber I granted protective measures to Defence Witness RM300 in the framework of the case against Hassan Ngeze¹. The trial was decided on appeal on 28 November 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.² Witness RM300 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the protection of witnesses in proceedings before this Tribunal and allows for protective orders to be varied or rescinded.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in any proceedings before the Tribunal such protective measures continue to have effect unless and until they are rescinded.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provide how, apart from by request from a party in other proceedings before the Tribunal, protective measures may be rescinded or varied.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

¹ *The Prosecutor v. Hassan Ngeze*, Case No. ICTR-99-52 ("Media case"), Decision on Hassan Ngeze's Urgent Motion for orders for Protective Measures for Defence Witnesses and Co-Operation and Judicial Assistance from States, 23 September 2002.

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.

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90/A

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 RM300 in the *Media* case be rescinded on the grounds that the case has been closed, RM300 has died, was a widow and the protective measures were not extended to her family.⁵

8. 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 RM300 is now deceased and that protective measures for her safety are no longer warranted.⁷ The Chamber is also satisfied that the rescission of the protective measures of Witness RM300 is in the interest of justice and would not endanger others. Consequently the Chamber rescinds the protective measures wherefore Witness RM300 may now be referred to as Adeline KAYENZI.

9. The Chamber is however mindful of the practical consequences of rescinding Witness RM300'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 RM300" by her real name, the Registry may append to each filed record that includes a reference to Witness RM300 a notice that the protective measures of Witness RM300 have been rescinded by the present decision and that her real name is Adeline KAYENZI.

10. 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 Adeline KAYENZI's identity should be re-filed as public documents.

FOR THE ABOVE REASONS, THE CHAMBER

I. GRANTS the Registrar's Request regarding Witness RM300;

⁴ Rule 34 of the Rules of Procedure and Evidence.

⁵ *Media* case, Decision on Hassan Ngeze's Urgent Motion for orders for Protective Measures for Defence Witnesses and Co-Operation and Judicial Assistance from States, 23 September 2002.

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.

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89/A

- II. **RESCINDS** the Protective measures ordered in favour of Witness RM300 by Trial Chamber I's Decision of 23 September 2002;
- III. **REQUESTS** the Registry that it be indicated in each filed record mentioning Witness RM300 that the protective measures of the Witness have been rescinded by the present decision and that her real name is Adeline KAYENZI; 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 Adeline KAYENZI's identity.

Arusha, 27 September 2011, done in English.


Vagn Joensen
Judge

[Seal of the Tribunal]





TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

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From:	<input checked="" type="checkbox"/> Chamber III K. ARBAULT (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)
Case Name:	The Prosecutor vs. Nahimana & al		Case Number: ICTR-99-52
Dates:	Transmitted: 27/09/2011	Document's date: 27/09/2011	
No. of Pages:	4	Original Language: <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda	
Title of Document:	Decision rescinding the Protective Measures of witness R1300		
Classification Level:		TRIM Document Type:	
<input type="checkbox"/> Ex Parte <input type="checkbox"/> Strictly Confidential / Under Seal <input type="checkbox"/> Confidential <input checked="" type="checkbox"/> Public		<input type="checkbox"/> Indictment <input checked="" type="checkbox"/> Decision <input type="checkbox"/> Disclosure <input type="checkbox"/> Judgement <input type="checkbox"/> Warrant <input type="checkbox"/> Affidavit <input type="checkbox"/> Order <input type="checkbox"/> Motion <input type="checkbox"/> Correspondence <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Appeal Book <input type="checkbox"/> Book of Authorities <input type="checkbox"/> Submission from non-parties <input type="checkbox"/> Submission from parties <input type="checkbox"/> Accused particulars	

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CMS SHALL NOT take any action regarding translation.

Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

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Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

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