



UNITED NATIONS
NATIONS UNIES

ICTR-96-13
27-10-2011
126-123

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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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 October 2011

THE PROSECUTOR

v.

Alfred MUSEMA

Case No. ICTR-96-13

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DECISION RESCINDING THE PROTECTIVE MEASURES OF WITNESS J

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

INTRODUCTION

1. On 20 November 1998, Trial Chamber I granted protective measures to Defence Witness J in the framework of the case against Alfred Musema.¹ The trial was decided on appeal on 16 November 2001. 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 J 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.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the protection of witnesses in proceedings before this Tribunal and allows for protective orders to be varied or rescinded.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in any proceedings before the Tribunal such protective measures continue to have effect unless and until they are rescinded.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provide how, apart from by request from a party in other proceedings before the Tribunal, protective measures may be rescinded or varied.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 functions, to make oral or written representations to Chambers on *any* issue arising in the

¹ *The Prosecutor v. Alfred Musema*, Case No. ICTR-96-13 ("Musema"), Decision on the Prosecutor's Motion for Witness Protection, 20 November 1998.

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.

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 J in the *Musema* case be rescinded on the grounds that the case has been closed, J has died, was a widow and the protective measures were not extended to her family.

8. The Chamber notes that Witness J was later on awarded further protective measures by a decision of 9 March 2000 in the *Muhimana* case.⁵ The Decision in the *Muhimana* case does not refer to the protective measures Witness J had already been awarded in the present case. While the protective measures in the *Musema* and *Muhimana* cases are similar, they are not identical. Noting that the Registry, in its memorandum, requests that Witness J's protective measures be also rescinded in the *Muhimana* case, the Chamber will render another decision with regards to this specific request.

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 J 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 J is in the interest of justice and would not endanger others. Consequently the Chamber rescinds the protective measures wherefore Witness J may now be referred to as Bernadette MUKANGANGO.

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

⁴ Rule 34 of the Rules of Procedure and Evidence.

⁵ *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.

⁶ See Article 20 of the Statute, Rule 78.

⁷ WVSS appended a death certificate for Witness J in its request.

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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.

FOR THE ABOVE REASONS, THE CHAMBER

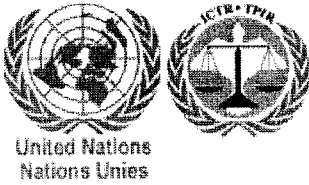
- I. **GRANTS** the Registrar's Request regarding Witness J;
- II. **RESCINDS** the Protective measures ordered in favour of Witness J by Trial Chamber I's Decision of 20 November 1998;
- III. **REQUESTS** the Registry that it be indicated in each filed record mentioning Witness J that the protective 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]





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