

ICTR-95-1B
28-09-2011
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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 28 September 2011

THE PROSECUTOR

v.

MIKAELI MUHIMANA

Case No. ICTR-95-1B

JUDICIAL RECORDS ARCHIVES
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**DECISION RESCINDING THE PROTECTIVE MEASURES OF WITNESSES AU
AND BF**

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 Prosecution Witnesses AU and BF in the framework of the case against Mikaeli Muhimana.¹ 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.² Witnesses AU and BF 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, 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the protection of witnesses in proceedings before this Tribunal and allows for protective orders to be varied or rescinded.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in any proceedings before the Tribunal such protective measures continue to have effect unless and until they are rescinded.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

¹ *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.

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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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 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 Witnesses AU and BF in the *Muhimana* case be rescinded on the grounds that the case has been closed, AU and BF have died, AU was single and BF was a widower and the protective measures were not extended to their respective families.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 Witnesses AU and BF are now deceased and that protective measures for their safety are no longer warranted. The Chamber is also satisfied that the rescission of the protective measures of Witnesses AU and BF is in the interest of justice and would not endanger others. Consequently the Chamber rescinds the protective measures wherefore Witness AU may now be referred to as Agathe MUKANGWIRA and Witness BF as Eraste NZABANDORA.

9. The Chamber is however mindful of the practical consequences of rescinding Witnesses AU and BF'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 AU" and "Witness BF" by their real name, the Registry may append to each filed record that includes a reference to Witnesses AU and BF a notice that the protective measures of Witnesses AU and BF have been rescinded by the present decision and that their real name are Agathe MUKANGWIRA and Eraste NZABANDORA, respectively.

⁴ Rule 34 of the Rules of Procedure and Evidence.

⁵ *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.

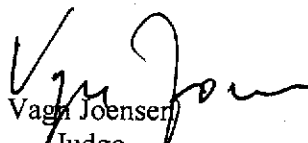
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10. As a consequence of the decision to rescind protective measures, exhibits and other documents that are under seal for the sole purpose of protection of Agathe MUKANGWIRA and Eraste NZABANDORA's identity should be re-filed as public documents.

FOR THE ABOVE REASONS, THE CHAMBER

- I. **GRANTS** the Registrar's Request regarding Witnesses AU and BF;
- II. **RESCINDS** the Protective measures ordered in favour of Witnesses AU and BF by Trial Chamber III's Decision of 9 March 2000;
- III. **REQUESTS** the Registry that it be indicated in each filed record mentioning Witness AU and Witness BF that the protective measures of the Witnesses have been rescinded by the present decision and that their real names are Agathe MUKANGWIRA and Eraste NZABANDORA, 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 Agathe MUKANGWIRA and Eraste NZABANDORA's identity.

Arusha, 28 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. ARDAULT (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)
Case Name:	The Prosecutor vs. <i>Muhimana</i>		Case Number: ICTR-95-1B
Dates:	Transmitted: <i>28/09/2011</i>	Document's date: <i>28/09/2011</i>	
No. of Pages:	<i>4</i>	Original Language:	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	<i>Decision Rescinding the Protective Measures of Witnesses AU and BF</i>		
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Reference material is provided in annex to facilitate translation.

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CMS SHALL NOT take any action regarding translation.

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

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<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: