

MICT-13-33
29-03-2016
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UNITED
NATIONS



Mechanism for International Criminal Tribunals

Case No.: MICT-13-33

Date: 29 March 2016

Original: English

BEFORE A SINGLE JUDGE

Before: Judge Aminatta Lois Runeni N'gum
Registrar: Mr. John Hocking
Decision of: 29 March 2016

PROSECUTOR

v.

JEAN DE DIEU KAMUHANDA

PUBLIC

DECISION ON MOTION TO RESCIND PROTECTIVE
MEASURES FOR DEFENCE WITNESS ALM

The Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Richard Karegyesa

Counsel for Jean de Dieu Kamuhanda:

Mr. Peter Robinson

Received by the Registry
Mechanism for International Criminal Tribunals

29/03/2016 18:00

A handwritten signature in black ink, appearing to read 'McCall Gatti', written over a horizontal line.

Case No. MICT-13-33

29 March 2016

Handwritten initials 'RW' in black ink.

I, **AMINATTA LOIS RUNENI N’GUM**, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Single Judge in this case;¹

BEING SEISED OF a motion filed on 5 March 2016, in which Mr. Jean de Dieu Kamuhanda requests the rescission of protective measures granted to Defence Witness ALM by the International Criminal Tribunal for Rwanda (“ICTR”) in the case of *The Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54 and the reclassification of Witness ALM’s pseudonym sheet and closed session transcripts as public;²

OBSERVING that the Prosecution has not responded to the Motion;

RECALLING that the Protective Measures Decision provides that Kamuhanda is “at liberty [...] to request a Judge or Trial Chamber, at any time, to amend the protective measures sought or to seek additional measures for [his] witnesses, if necessary”;³

CONSIDERING that, in accordance with Rule 86(F)(i) of the Rules of Procedure and Evidence of the Mechanism (“Rules”), protective measures ordered before the ICTR continue to have effect unless and until they are rescinded, varied, or augmented;

CONSIDERING that, in accordance with Rule 86(J) of the Rules, a witness may waive protective measures and that, in accordance with Rules 86(H) and (I) of the Rules, protective measures may be rescinded with the consent of the protected person;

NOTING Kamuhanda’s submission that Witness ALM is deceased and that Witness ALM’s eldest son indicated, having discussed the matter with other members of Witness ALM’s immediate family, that they would like the protective measures to be rescinded and to have Witness ALM’s identity and testimony made public;⁴

¹ Order Assigning a Single Judge to Consider an Application Pursuant to Rule 86(H), 15 March 2016.

² Motion to Rescind Protective Measures for Defence Witness ALM, 5 March 2016 (“Motion”), paras. 8, 9. *See also The Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54-T, Decision on Jean de Dieu Kamuhanda’s Motion for Protective Measures for Defence Witnesses, 22 March 2001 (“Protective Measures Decision”).

³ Protective Measures Decision, para. 24.

⁴ Motion, para. 3.

CONSIDERING that, where a witness is deceased, consent to the variation of the protective measures cannot be obtained from him or her,⁵ nor can it be substituted by consent from a member or members of that individual's family;⁶

CONSIDERING FURTHER that, in accordance with Rule 86(I) of the Rules, protective measures may be rescinded in the absence of consent on the basis of a compelling showing of exigent circumstances or where a miscarriage of justice would otherwise result;

NOTING that Kamuhanda requests the rescission of Witness ALM's protective measures because he "believes that it is important that as much information from his case be as public as possible, as he has been wrongfully convicted of crimes he did not commit through the false evidence of persons hiding behind pseudonyms";⁷

NOTING that Witness ALM was a defence witness and that the Motion makes no showing that Mr. Kamuhanda's conviction was based on his evidence or that he provided false evidence;

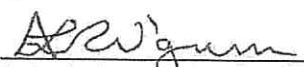
FINDING THAT the Motion does not demonstrate a compelling showing of exigent circumstances that would justify the rescission of the protective measures or that the requested rescission is necessary to prevent a miscarriage of justice;⁸

PURSUANT TO Article 20 of the Mechanism's Statute and Rules 55 and 86 of the Rules;

HEREBY deny the Motion.

Done in English and French, the English version being authoritative.

Done this 29th of March 2016,
At Arusha,
Tanzania.


Judge Aminatta Lois Runeni N'gum
Single Judge

[Seal of the Mechanism]



⁵ See *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-R75H.3, Decision on Application pursuant to Rule 75(H), 5 December 2014 (confidential and *ex parte*), para. 14.

⁶ See *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Application of the Prosecutor of the Tribunal for Variation of Protective Measures, 27 January 2010 (confidential and *ex parte*), paras. 18, 19.

⁷ Motion, para. 10.

⁸ *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-01-73, Decision Rescinding the Protective Measures of Witness ATM, 26 September 2011, para. 9; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Decision on Prosecution Motion for Admission of Evidence of Stevan Todorović pursuant to Rule 92 *quartér*, 29 October 2010, para. 5.



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Date Created/ Daté du :	29 March 2016	Date transmitted/ Transmis le : 29 March 2016	No. of Pages/ Nombre de pages : 3
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