



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER 2

OR: ENG

Before:

Judge William H. Sekule, Presiding Judge
Judge Yakov Ostrovsky
Judge Tafazzal H. Khan

Registry:

Mr. Frederik Harhoff
Ms. Prisca Nyambe

Decision of: 17 April 1997

**THE PROSECUTOR
VERSUS
CLEMENT KAYISHEMA
OBED RUZINDANA**

Case No. ICTR-95-1-T

**ORDER ON THE PROBATIVE VALUE OF ALLEGED CONTRADICTION
BETWEEN THE ORAL AND WRITTEN STATEMENT OF A WITNESS
DURING EXAMINATION**

The Office of the Prosecutor:

Mr. Jonah Rahetlah
Ms. Elizabeth Ann Farr
Ms. Brenda Sue Thornton

The Counsel for the Accused:

Me Pascal Besnier (for Obed Ruzindana)
Me André Ferran (for Clément Kayishema)
Me Philippe Moriceau (for Clément Kayishema)

THE TRIBUNAL,

SITTING AS Trial Chamber 2 of the International Criminal Tribunal for Rwanda ("the Tribunal"), composed of Judge William H. Sekule as Presiding Judge, Judge Yakov Ostrovsky and Judge Tafazzal H. Khan;

CONSIDERING the oral testimony given by Witness "A" before the Tribunal during the examination and cross-examination of this witness on 15 and 16 April 1997;

CONSIDERING the Defence Counsel's contention that the testimony presented by Witness "A" in Court varied in a matter of fact mentioned in the written statement taken by the Prosecutor's investigators when interviewing this witness prior to the trial, for which reason the Defence Counsel raised doubts about the credibility of this witness;

CONSIDERING Rule 85, Rule 89(B) and (C) and Rule 91 of the Rules of Procedure and Evidence ("the Rules"):

AFTER HAVING DELIBERATED:

WHEREAS the Tribunal acknowledges that there exists, from time to time, variations

between the written statement of the witness taken by investigators prior to the trials, and the oral

testimonies actually given by these same witnesses before the Tribunal during trial;

WHEREAS, however, the Tribunal opines that variations may occur at times for appreciable reasons without giving cause to disregard the statement in whole or in part or to curtail its

probative value, which, in any case, is to be determined by the Tribunal at a later stage;

WHEREAS, under Rule 85(B), the party calling the witness may re-examine the witness on, among other things, such variations after the cross-examination of the witness by the other party;

WHEREAS, furthermore, the Judges may at any stage put additional questions to the witnesses according to Rule 85 (B) of the "Rules";

WHEREAS, in this case, the Tribunal deems it appropriate to allow the witness to clarify in more detail the facts pertaining to the particular point of variation between the written statement and the oral testimony;

WHEREAS, the Tribunal at this stage, cannot consider the question of credibility, truth or otherwise of the alleged contradiction;

WHEREAS, finally, the Tribunal concludes that it will consider the evidence in its entirety and determine the probative value of the testimony of this witness at a later stage of the trial when both parties have completed their presentation of evidence;

FOR ALL THE ABOVE STATED REASONS

THE TRIBUNAL ORDERS THAT

Whenever a Counsel for the Prosecution or Defence perceives that there is a contradiction

between the written and oral statement of a witness, Counsels for the Parties should only raise such a question formally by putting to the witness the exact portion in issue to enable the witness to explain the discrepancy, inconsistency or contradictions, if any, before the Tribunal. Counsels should then mark the relevant portion of such a written statement and formally exhibit it so as to form part of the record of the Tribunal;

It will determine the probative value of the alleged contradiction in question at a later stage. However, this matter should not be a subject of discussion or comments by the Counsels during the examination-in-chief, cross-examination or re-examination;

Arusha, 17 April 1997

William H. Sekule
Presiding Judge

Yakov Ostrovsky
Judge

T. H. Khan
Judge

Seal of the Tribunal