



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

CHAMBER I - CHAMBRE I

OR: ENG

Before :

Judge Laïty Kama, Presiding Judge
Judge Lennart Aspegren
Judge Navanethem Pillay

Registry:

Mr. Antoine Kesia-Mbe Mindua

Decision of : 10 March 1998

**THE PROSECUTOR
VERSUS
GEORGES ANDERSON NDERUBUMWE RUTAGANDA**

Case No.: ICTR-96-3-T

**DECISION ON THE DEFENCE MOTION TO DIRECT THE PROSECUTOR TO
INVESTIGATE THE MATTER OF FALSE TESTIMONY
BY WITNESS "E"**

Office of the Prosecutor:

Mr. James Stewart
Mr. Udo Gehring

Counsel for the Accused:

Ms. Tiphaine Dickson

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the
"TRIBUNAL"),**

SITTING as Trial Chamber I of the Tribunal, composed of Judge Laïty Kama as
Presiding Judge, Judge Lennart Aspegren and Judge Navanethem Pillay;

BEING SEIZED of a motion dated 10 September 1997, filed by the Defence Counsel, Ms Tiphaine Dickson, requesting, pursuant to Rule 91(B) of the Rules of Procedure and Evidence (the "Rules"), that the Tribunal direct the Prosecutor to investigate the testimony of the prosecution witness referred to under the pseudonym of "E" in the present case, with a view to the preparation and submission of an indictment for false testimony against him;

HAVING RECEIVED the response to the said Defence motion from the Prosecutor, dated 26 Septembre 1997;

HAVING HEARD the parties during the audience of 6 March 1998 held to that end;

AFTER HAVING DELIBERATED,

WHEREAS the Defence requests the Tribunal to direct the Prosecutor to examine the veracity of the answers given by the prosecutor's witness "E" during his cross-examination in the present case before the Tribunal on 10 June 1997, with a view to the preparation and submission of an indictment for false testimony against him;

WHEREAS in support of its request, the Defence submitted that the content of the documents, annexed to the motion and presented under seal to the Tribunal, raised doubts as to the truth of the answers given by the witness, during his cross-examination, in response to the questions as to whether he had been the subject of criminal convictions, on the one hand, and on the other, as to the exact nature of his functions during April 1994;

WHEREAS the Prosecutor submitted, in her above-mentioned response and during the hearing, that the request of the Defence was unfounded, Counsel for the Defence having failed to show the existence of any reasonable grounds for believing that witness "E" knowingly and wilfully gave false testimony, as required by Rule 91(B) of the Rules;

WHEREAS, according to the provisions of Rule 91(B) of the Rules, if a Chamber has strong grounds for believing that a witness has knowingly and wilfully given false testimony, or at the request of a party, it may direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony;

WHEREAS, in the opinion of the Tribunal, the said provisions stipulate:

- *Either* the Chamber establishes proprio motu that strong grounds exist for believing that a witness has knowingly and wilfully given false testimony, and thence directs the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony;
- *Or*, at the request of a party, it invites the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony; and in this case, the onus is on this party to convince the Chamber that there exist

strong grounds for believing that a witness has knowingly and wilfully given false testimony;

WHEREAS it is generally accepted that false testimony may be defined as a false statement made in court under oath or solemn declaration;

WHEREAS, by way of an example, in Great Britain, the Perjury Act of 1911, section 1, sub-section (1), stipulates, *inter alia*, that : "If a person lawfully sworn as a witness [...] in a judicial proceeding wilfully makes a statement material in that proceeding, which he knows to be false or does not believe to be true, he shall be guilty of perjury [...]";

WHEREAS in the United States of America, 18 U.S.C. ' 1621, provides that: AWhoever, having taken an oath before a competent tribunal [...], that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, wilfully and contrary to such oath states or subscribes any material matter which he does not believe to be true [...], is guilty of perjury [...]@;

WHEREAS therefore, the constituent elements of false testimony are:

- the witness must make a solemn declaration;
- the false statement must be contrary to the solemn declaration;
- the witness must believe at the time the statement was made that it was false; and
- there must be a relevant relationship between the statement and a material matter within the case;

WHEREAS a false testimony may therefore consist of either an affirmation of a false fact or negation of a true fact;

WHEREAS, in many judicial systems, the false testimony must be directly linked to the facts of the case; some judicial systems even add that statements, which are deemed to be false, must have some bearing on the outcome of the trial, during which the witness was heard; in other words, the false statement must be able to influence the decision of the judge, either in favour of or against the accused (see in France, Garraud, no.2296, note 17; see also in India, Sheodahin 3 Cr, LJ46: "In a complaint for giving false evidence, it must be intentionally false and the alleged false statement should have a bearing upon the matter in issue");

WHEREAS it is indeed appropriate to add that false testimony is a deliberate offence, which supposes wilful intent on the part of the perpetrator to mislead the judge and thus to cause harm;

WHEREAS, finally, and in accordance with the general rules of evidence, the onus is on the party pleading a case of false testimony to prove:

- the falsehood of the witness statements;

- that these statements were made with harmful intent, or at least that they were made by a witness who was fully aware that they were false; and
- the possible bearing of the said statements upon the judge's decision;

WHEREAS the Tribunal notes that, in its motion, the Defence does not demonstrate that the witness "knowingly and wilfully gave false testimony" as required by Rule 91(B) of the Rules;

WHEREAS, rather, the Tribunal holds that the Defence restricts itself only to raising doubts as to the truth of the answers given by witness "E" during his cross-examination to the questions as to whether he had been the subject of criminal convictions;

WHEREAS, furthermore, the Tribunal finds that, as regards the answers given by witness "E" during cross-examination in response to questions as to the exact nature of his functions during April 1994, the Defence shows only that the sealed document presented in support of its motion contains allegations which may put the honesty of witness "E" into question;

WHEREAS, obviously, to only raise doubts about the reliability of statements made by a witness and about his morality is not in itself sufficient to establish strong grounds for believing that this witness knowingly and wilfully gave false testimony; the Tribunal moreover is of the opinion that, in the context of the ongoing trials before the Tribunal, inaccuracies and other possible contradictions could be raised during the overall evaluation of credibility upon the final determination of the probative value of the evidence presented at trial;

WHEREAS, in pursuance of the above findings, the Tribunal is of the opinion that the Defence motions for false testimony by witness "E" should be dismissed;

FOR THE ABOVE REASONS,

THE TRIBUNAL

DECLARES the motion admissible but without merits;

FINDS that there are no grounds to request the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony against witness "E";

Rendered on 10 March 1998,

Signed in Arusha on 27 March 1998.

Laity Kama

Lennart Aspegren

Navanethem Pillay

Presiding Judge

Judge

Judge

(Seal of the Tribunal)