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ICTR-96-3-A  
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UNITED  
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International Criminal Tribunal for the  
Prosecution of Persons Responsible for Genocide  
and Other Serious Violations of International  
Humanitarian Law Committed in the Territory of  
Rwanda and Rwandan Citizens Responsible for  
Genocide and Other Such Violations Committed in  
the Territory of Neighbouring States, Between 1  
January 1994 and 31 December 1994

1998 JUN -8 A 8-53

Case No. ICTR-96-3-A

Date: 8 June 1998

Original: ENGLISH

**IN THE APPEALS CHAMBER****Before:**

**Judge Gabrielle Kirk McDonald (Presiding)**  
**Judge Mohamed Shahabuddeen**  
**Judge Lal Chand Vohrah**  
**Judge Wang Tieya**  
**Judge Rafael Nieto-Navia**

**Registrar:****Mr. Agwu U. Okali****Decision of:****8 June 1998****PROSECUTOR****v.****GEORGES ANDERSON NDERUBUMWE RUTAGANDA**

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**DECISION ON APPEALS AGAINST THE DECISIONS BY TRIAL  
CHAMBER I REJECTING THE DEFENCE MOTIONS TO DIRECT THE  
PROSECUTOR TO INVESTIGATE THE MATTER OF FALSE  
TESTIMONY BY WITNESSES "E" AND "CC"**

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**The Office of the Prosecutor:**

Mr. James Stewart  
Mr. Pierre-Richard Prosper  
Ms. Udo Gehring  
Mr. Holo Makwaia

**Counsel for the Accused:**

Ms. Tiphaine Dickson

## I. INTRODUCTION

1. Pending before the Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994 ("ICTR") is a Notice of Appeal Against the Decision of Trial Chamber I Dismissing the Defence Motion for an Order to the Prosecutor to Investigate A Case of False Testimony (Witness "CC"), filed on 19 March 1998, and a Notice of Appeal Against the Decision of Trial Chamber I Dismissing the Defence Motion for An Order to Prosecutor to Investigate A Case of False Testimony (Witness "E"), filed on 23 March ("Notices of Appeal").

2. The Notices of Appeal are brought pursuant to Sub-rule 108 (B) of the Rules of Procedure and Evidence of the ICTR ("ICTR Rules" or "Rules"). They concern the Decision on the Defence Motion to Direct the Prosecutor to Investigate the matter of False Testimony by Witness "CC" filed on 26 March 1998 and the Decision on the Defence Motion to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness "E" filed on 27 March 1998 ("Trial Chamber Decisions") and are, therefore, considered together by the Appeals Chamber in this Decision.

## **II. APPLICABLE PROVISIONS**

3. The applicable provisions of the Statute and Rules of the ICTR that are relevant to the Decision of the Appeals Chamber are as follows:

### **Article 24**

#### **Appellate Proceedings**

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chambers or from the Prosecutor on the following grounds:
  - a) An error on a question of law invalidating the decision; or
  - b) An error of fact which has occasioned a miscarriage of justice.
2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chambers.

### **Rule 72**

#### **Preliminary Motions**

(A) Preliminary motions by either party shall be brought within sixty days following disclosure by the Prosecutor to the Defence of all the material envisaged by Rule 66(A)(i), and in any case before the hearing on the merits.

(B) Preliminary motions by the accused shall include:

- i) objections based on lack of jurisdiction;
- ii) objections based on defects in the form of the indictment;

- iii) applications for severance of crimes joined in one indictment under Rule 49, or for separate trials under Rule 82(B);
  - iv) objections based on the denial of request for assignment of counsel.
- (C) The Trial Chamber shall dispose of preliminary motions in limine litis.
- (D) Decisions on preliminary motions are without interlocutory appeal, save in the case of dismissal of an objection based on lack of jurisdiction, where an appeal will lie as of right.
- (E) Notice of appeal envisaged in Sub-Rule (D) shall be filed within seven days from the impugned decision.
- (F) Failure to comply with the time-limits prescribed in this Rule shall constitute a waiver of the rights. The Trial Chamber may, however, grant relief from the waiver upon showing good cause.

### **Rule 73**

#### **Motions**

- (A) Subject to Rule 72, either party may move before a Trial Chamber for appropriate ruling or relief after the initial appearance of the accused. Such motions may be written or oral, at the discretion of the Trial Chamber.
- (B) Decisions rendered on such motions are without interlocutory appeal.

**Rule 77**  
**Contempt of the Tribunal**

(A) Subject to the provisions of Rule 90(E), a witness who refuses or fails contumaciously to answer a question relevant to the issue before a Chamber may be found in contempt of the Tribunal.

The Chamber may impose a fine not exceeding USD 10,000 or a term of imprisonment not exceeding six months.

(B) The Chamber may, however, relieve the witness of the duty to answer, for reasons which it deems appropriate.

(C) Any person who attempts to interfere with or intimidate a witness may be found guilty of contempt and sentenced in accordance with Sub-rule (A).

(D) Any judgement rendered under this Rule shall be subject to appeal.

(E) Payment of a fine shall be made to the Registrar to be held in a separate account.

**Rule 91**  
**False testimony Under Solemn Declaration**

(A) A Chamber, on its own initiative or at the request of a party, may warn a witness of the duty to tell the truth and the consequences that may result from a failure to do so.

(B) If a Chamber has strong grounds for believing that a witness may have knowingly and wilfully given false testimony, or at the request of a party, the Chamber may direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony.

(C) The Rules of Procedure and Evidence in Parts Four to Eight shall apply *mutatis mutandis* to proceedings under this Rule.

(D) The maximum penalty for false testimony under solemn declaration shall be a fine of USD 10,000 or a term of imprisonment of twelve months, or both. The payment of any fine imposed shall be made to the Registrar to be held in the account referred to in Rule 77(E).

### **Rule 108**

#### **Notice of Appeal**

(A) Subject to Sub-rule (B), a party seeking to appeal a judgement or sentence shall, not more than thirty days from the date on which the judgement or sentence was pronounced, file with the Registrar and serve upon the other parties a written notice of appeal, setting forth the grounds.

(B) Such delay shall be fixed at fifteen days in the case of an appeal from a judgement dismissing an objection based on a lack of jurisdiction or a decision rendered under Rule 77 or Rule 91.

**Rule 117****Expedited Appeals Procedure**

(A) An appeal under Rule 108(B) shall be heard expeditiously on the basis of the original record of the Trial Chamber and without the necessity of any written brief.

(B) All delays and other procedural requirements shall be fixed by an order of the President issued on an application by one of the parties, or proprio motu should no such application have been made within fifteen days after the filing of the notice of appeal.

### III. PROCEDURAL HISTORY

4. On 10 September 1997, the Defence (“Appellant”) filed the Defence Motion for Orders to Direct the Prosecutor to Investigate a Case of False Testimony in reference to the alleged false testimony of witness “E”, who testified for the Office of the Prosecutor ( “Respondent”). The motion was founded on Sub-rule 91(B) of the Rules which provides that a party may request that the Trial Chamber direct the Prosecutor to investigate allegations of perjury with a view toward preparation and submission of an indictment for false testimony.

5. On 8 October 1997, the Appellant presented to Trial Chamber I a similar verbal motion with regard to the testimony of witness “CC” which was followed on 2 March 1998 by the Defence Motion to Direct the Prosecutor to Investigate the Matter of False Testimony.

6. Trial Chamber I heard arguments from the parties on 6 March 1998. The Trial Chamber Decisions rejecting both motions were delivered orally on 10 March 1998 and written Decisions regarding Witnesses “CC” and “E” were filed with the Registry on 26 and 27 March 1998 respectively. The Appellant filed the Notices of Appeals pursuant to Sub-rule 108(B) of the Rules on 19 and 23 March 1998, respectively.

7. The Appellant additionally filed a motion on 23 March 1998 requesting that the President of the Tribunal, *inter alia*, fix the delays and procedural requirements for an expedited appeal pursuant to Rule 117(B) of the Rules and suspend hearings until such time as the recordings and transcripts required for the appeals were made available to the Appellant. Although Sub-rule 117(A) provides that it is not necessary to submit briefs, the Appellant requested permission to submit a statement of the grounds for the Notices of Appeal because of the importance of the issues presented.

8. On 24 March 1998, the President rendered a Decision on the Expedited Appeals Procedure Following the Motion by the Defence, filed with the Registry on



the same day, finding that although not all of the requests in the Appellant's motion were directly linked to the expedited appeals procedure, but came more generally under the ambit of judicial administration, the requested transcripts would be made available to the Appellant to ensure the right of the Appellant to prepare a proper appeal file.<sup>1</sup> The Appellant's request for suspension of hearings in the Trial Chamber was denied because "on the one hand, the expedited appeals procedure does not require the forwarding of the complete case file to the Appeals Chamber, and, on the other hand, because the decision appealed against cannot affect the continuation of the trial."<sup>2</sup> The President granted leave to the Appellant to file written briefs in support of the Notices of Appeal.

9. In the Trial Chamber Decisions, the Trial Chamber found that if a motion is brought by a party pursuant to Rule 91(B) of the Rules, the onus is on the moving party "to convince the Chamber that there exist strong grounds for believing that a witness has knowingly and wilfully given false testimony."<sup>3</sup> The Trial Chamber held that the Appellant failed to meet this burden.

10. Moreover, the Trial Chamber held 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."<sup>4</sup>

<sup>1</sup> President's Decision on the Expedited Appeals Procedure Following the Motion by the Defence, on 24 March 1998, *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, at para. 2.

<sup>2</sup> *Ibid.*, para 3.

<sup>3</sup> Decision on the Defence Motion to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness "E", *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, 27 March 1998 at 3 and Decision on the Defence Motion to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness "CC", *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, 26 March 1998 ("Trial Chamber Decisions") at 3.

<sup>4</sup> *Ibid.*, at p.4 and p. 4, respectively.

11. On 14 April 1998, the Appellant filed written briefs<sup>5</sup> in support of the Notices of Appeals pursuant to Sub-rule 108(B) of the Rules. On 12 May 1998, the Respondent filed the Respondent's Brief on Appeal Against the Decision on the Defence Motion to Direct the Prosecutor to Investigate the Matter of Alleged False Testimony by Witness "E" and the Respondent's Brief on Appeal Against the Decision on the Defence Motion to Direct the Prosecutor to Investigate the Matter of Alleged False Testimony by Witness "CC" ("Prosecution Responses").

12. The Appellant and Respondent have filed other written exchanges<sup>6</sup>. These do not, however, go to the issue now being considered as to whether there is an

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<sup>5</sup> Appeal Against the Decision by Trial Chamber I in the Matter of Witness "CC", *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, 14 April 1998; Appeal Against the Decision by Trial Chamber I in the Matter of Witness "E", *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, 14 April 1998.

<sup>6</sup> Motion to Declare Inadmissible the Brief in Reply Filed by the Office of the Prosecutor - Appeal Against the Decision Rendered by Trial Chamber I Dismissing the Defence Motion to Direct the Prosecutor to Investigate a Matter of False Testimony by Witness "CC", *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, 19 May 1998; Motion to Declare Inadmissible the Brief in Reply Filed by the Office of the Prosecutor - Appeal Against the Decision Rendered by Trial Chamber I Dismissing the Defence Motion to Direct the Prosecutor to Investigate a Matter of False Testimony by Witness "E", *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, 19 May 1998; Reply by the Respondent to the Motion to Declare Inadmissible the Brief in Reply Filed by the Office of the Prosecutor (Witness "CC"), *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, 21 May 1998; Reply by the Respondent to the Motion to Declare Inadmissible the Brief in reply Filed by the Office of the Prosecutor (Witness "E"), *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, 21 May 1998; Appellant's Brief in Response to Respondent's Brief on the Motion to Declare Inadmissible the Brief in Reply Filed by the Office of the Prosecutor - Appeal Against the Decision by Chamber I to Dismiss Defence Motion to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness "CC", *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, 22 May 1998; Appellant's Brief in Response to Respondent's Brief on the Motion to Declare Inadmissible the Brief in Reply Filed by the Office of the Prosecutor - Appeal Against the Decision by Chamber I to Dismiss Defence Motion to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness "E", *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, 22 May 1998; Response of the Prosecutor (Respondent) to the Amended Motion of the Defence (Appellant) Filed on May 22, 1998 Concerning the Admissibility of the Respondent's Brief Dated and Filed May 12, 1998, in the Matter of the Appeal Against the Decision on the Defence Motion to Direct the Prosecutor to Investigate the Matter of Alleged False Testimony by Witness "CC", *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, 26 May 1998; Response of the Prosecutor (Respondent) to the Amended Motion of the Defence (Appellant) Filed on May 22, 1998 Concerning the Admissibility of the Respondent's Brief Dated and Filed May 12, 1998, in the Matter of the Appeal Against the Decision on the Defence Motion to Direct the Prosecutor to Investigate the Matter of Alleged False Testimony by Witness "E", *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, ...

appealable decision in this case. Consequently, for the purpose of deciding that issue, it will not be necessary to consider those exchanges.

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... Case No. ICTR-96-3-T, 26 May 1998; Amended Motion to Declare Inadmissible the Brief in Reply Filed by the Office of the Prosecutor -Appeal Against the Decision Rendered by Trial Chamber I Dismissing the Defence Motion to Direct the Prosecutor to Investigate a Matter of False Testimony by Witness "CC", *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, 29 May 1998; Amended Motion to Declare Inadmissible the Brief in Reply Filed by the Office of the Prosecutor -Appeal Against the Decision Rendered by Trial Chamber I Dismissing the Defence Motion to Direct the Prosecutor to Investigate the Matter of Alleged False Testimony by Witness "E", *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, 29 May 1998; Response of the Prosecutor (Respondent) to the Amended Motion of the Defence (Appellant) Filed on May 29, 1998 Concerning the Admissibility of the Respondent's Brief Dated and Filed May 12, 1998, in the Matter of the Appeal Against the Decision on the Defence Motion to Direct the Prosecutor to Investigate the Matter of Alleged False Testimony by Witness "CC", *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, 1 June 1998; Response of the Prosecutor (Respondent) to the Amended Motion of the Defence (Appellant) Filed on May 29, 1998 Concerning the Admissibility of the Respondent's Brief Dated and Filed May 12, 1998, in the Matter of the Appeal Against the Decision on the Defence Motion to Direct the Prosecutor to Investigate the Matter of Alleged False Testimony by Witness "E", *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, 1 June 1998.

#### **IV. SUBMISSIONS OF THE PARTIES**

##### **1. The Appellant**

13. The Appellant contends that the Trial Chamber “erred in law” and “erred in fact”.

14. The Appellant asserts that the legal standard established by the Trial Chamber Decisions is improper for it holds the moving party to the same burden of proof as that which would be placed on the Prosecution if it had to prove that a witness was guilty of having given false testimony. Further, this burden of proof is even higher than that required of the Prosecution when it is seeking confirmation of an indictment pursuant to Rule 47.

15. The Appellant also argues that the Trial Chamber erred in fact by finding that it merely raised doubts about the truthfulness of Witness “CC”’s answers.

##### **2. The Respondent**

16. The Respondent contends that the Trial Chamber’s standard of proof required for purposes of Sub-rule 91(B) was reasonable and appropriate. The Respondent argues that the standard of proof under that Sub-rule should be higher than the “reasonable grounds” standard of proof under Rule 47 of the Rules.

17. Further, the Respondent submits that the evidence tendered by the Appellant in support of its motion pursuant to Sub-rule 91(B) failed to meet the standard of proof articulated by the Trial Chamber. Indeed, it contends that it was insufficient to satisfy even the more lenient standard of proof required under Rule 47.

18. The Respondent notes that the language of Sub-rule 91(B) is permissive by providing that “the Chamber *may* direct the Prosecutor to investigate” (emphasis added). Accordingly, the Respondent argues that even where the Trial Chamber identifies strong grounds for believing that a witness has “knowingly and wilfully given false testimony”, the decision to direct an investigation into the matter lies within the Trial Chamber’s firm discretion. The Trial Chamber’s discretion should only be disturbed on appeal where its exercise thereof constitutes a “serious, manifest error.”<sup>7</sup>

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<sup>7</sup> Prosecution Responses at para. 4.

## V. DISCUSSION

19. The submissions of the parties are concerned for the most part with the standard of proof required to show reasonable grounds that a witness wilfully and knowingly gave false testimony. However, the Appeals Chamber considers that the seminal issue which must first be determined is whether the Notices of Appeal concern a matter that may be appealed.

20. The Appeals Chamber finds that neither the Statute nor the Rules of the ICTR allow for an appeal from the Trial Chamber Decisions. In the instant matter, therefore, the Appeals Chamber will not address the issues of fact and law regarding the standard necessary to establish “strong grounds for believing that a witness may have knowingly and wilfully given false testimony” under Rule 91.

21. The instant appeals are filed pursuant to Sub-rule 108 (B). However, the starting point in considering whether the Appeals may be maintained is Article 24 of the Statute of the ICTR. That statutory provision gives the Appeals Chamber authority to hear appeals from “*persons convicted* by the Trial Chamber or from the Prosecutor” (emphasis added). Clearly, the Appellant does not fall into either category.

22. However, even in instances when a person is not appealing from a conviction, the Appeals Chamber has jurisdiction to hear certain matters which are interlocutory in nature. Rule 72 explicitly allows for an appeal from a judgement dismissing an objection based on lack of jurisdiction. The Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) in *The Prosecutor v. Dusko Tadić*<sup>8</sup> (“Tadić Appeals Decision”) has upheld the legality of an appeal in these circumstances. It interpreted Rule 72 of the Rules of Procedure and Evidence of the ICTY (“ICTY Rules”) which was then identical to ICTR Rule 72 and allowed an

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<sup>8</sup> Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, *The Prosecutor v. Tadić*, Case No. IT-94-1, A.C., 2 Oct 1995.

interlocutory appeal from a dismissal based on lack of jurisdiction. The Appeals Chamber stated:

“Such a fundamental matter as the jurisdiction of the International Tribunal should not be kept for decision at the end of a potentially lengthy, emotional and expensive trial....Would the higher interest of justice be served by a decision in favour of the accused, after the latter had undergone what would then have to be branded as an unwarranted trial. After all, in a court of law, common sense ought to be honoured not only when facts are weighed, but equally when laws are surveyed and the proper rule is selected. In the present case, the jurisdiction of this Chamber to hear and dispose of Appellant’s interlocutory appeal is indisputable.”<sup>9</sup>

23. Contrary to the challenges made in the Tadić Appeals Decision, the challenges made in the Appeals *can* be addressed prior to the completion of the trial and, thus, are not in a category of interlocutory decisions for which an appeal is appropriate. This is supported by the Trial Chamber’s finding that “inaccuracies and other possible contradictions could eventually be raised during the overall evaluation of credibility upon the final determination of the probative value of the evidence presented at trial.”<sup>10</sup> This finding comports with the evaluative process inherent in an ongoing trial before the ICTR, and indeed before the ICTY, where the judgement on the guilt or innocence of an accused is reached only after the receipt of all of the evidence.

24. The Appellant filed the Notices of Appeal pursuant to Sub-rule 108(B). That Rule, however, prescribes only the time-limit for the filing of a Notice of Appeal in certain circumstances: dismissals of an objection based on lack of jurisdiction (Rule 72) or decisions rendered under Rule 77 or Rule 91. Sub-rule 108(B) does not of itself create a right of appeal. Appealable determinations envisaged by Sub-rule 108(B) do not include the Trial Chamber Decisions which are the subject of the Notices of Appeal.

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<sup>9</sup> *Ibid.*, at 4.

<sup>10</sup> *Supra* n. 5.

25. Sub-rule 108(B) also refers to Rule 77 which allows a Trial Chamber to impose a fine or a term of imprisonment upon a person found to be in contempt of the Tribunal. This Rule provides explicitly that a judgement rendered under this Rule shall be subject to appeal. Allowing an appeal from a contempt conviction is entirely consistent with the Statute of the ICTR. In such circumstances, the Appeals Chamber would have authority because of the express provision in Article 24 for appeals by “persons convicted”. Sub-rule 108(B) then specifies the time-limit for filing the appeal.

26. Rule 91 is similar to Rule 77 for it provides for a penalty in the form of a fine or a term of imprisonment for the giving of false testimony. Unlike Rule 77, however, this Rule does not state explicitly that a judgement rendered shall be subject to appeal. Implicitly, however, there would be a right of appeal by a person found guilty of giving false testimony, for he or she would be a “person convicted” within the meaning of Article 24 of the Statute of the ICTR. Once again, reference to Sub-rule 108(B) is appropriate only for ascertaining the time-limit for the submission of the appeal.

27. The instant appeals are not brought by a person convicted of false testimony. Rather, as they are submitted prior to the entry of the judgement, they are interlocutory in nature. However, as noted above, Sub-rule 72(D) does not allow for appeals from interlocutory decisions “save in the case of dismissal of an objection based on lack of jurisdiction”. Further, the only other ICTR Rule relating to motions, Sub-rule 73(B), provides that “decisions rendered on such motions are without interlocutory appeal.”

28. Finally, although Sub-rule 91(B) allows a party to request that the Trial Chamber direct the Prosecution to investigate an accusation of false testimony, the Appellant has not demonstrated any prejudice caused by the Trial Chamber Decisions refusing to direct the Prosecutor to investigate witnesses “E” and “CC”. A credibility determination may be based, but does not necessarily depend, on a judicial finding that a witness has given false testimony. The testimony of a witness may lack credibility even if it does not amount to false testimony within the meaning of Rule 91. Thus, an



investigation for false testimony is ancillary to the proceedings and does not impact on the accused's right to a fair trial.

**VI. DISPOSITION**

**THE APPEALS CHAMBER**, for the foregoing reasons, unanimously :

**REJECTS** the Defence's Notice of Appeal Against the Decision of Trial Chamber I Dismissing the Defence Motion for an Order to the Prosecutor to Investigate A Case of False Testimony (Witness "CC");

**REJECTS** the Defence's Notice of Appeal Against the Decision of Trial Chamber I Dismissing the Defence Motion for An Order to Prosecutor to Investigate A Case of False Testimony (Witness "E").

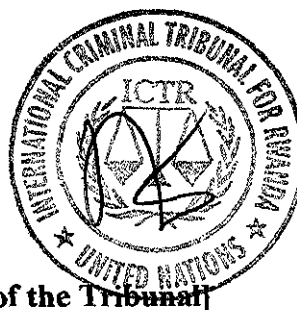
Done in English and French, the English text being authoritative.



Gabrielle Kirk McDonald  
Presiding Judge

Judge Shahabuddeen appends a Declaration to this Decision.

Dated this eighth day of June 1998,  
At Arusha,  
Tanzania.



[Seal of the Tribunal]

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NATIONS

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Prosecution of Persons Responsible for Genocide  
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**IN THE APPEALS CHAMBER**

**Before:** Judge Gabrielle Kirk McDonald (Presiding)  
Judge Mohamed Shahabuddeen  
Judge Lal Chand Vohrah  
Judge Wang Tieya  
Judge Rafael Nieto-Navia

**Registrar:** Mr. Agwu U. Okali

**Decision of:** 8 June 1998

**PROSECUTOR**

v.

**GEORGES ANDERSON NDERUBUMWE RUTAGANDA**

**DECLARATION OF JUDGE MOHAMED SHAHABUDEEN  
ON THE ADMISSIBILITY OF APPEALS AGAINST THE DECISIONS BY TRIAL  
CHAMBER I REJECTING THE DEFENCE MOTIONS TO DIRECT THE  
PROSECUTOR TO INVESTIGATE THE MATTER OF FALSE  
TESTIMONY BY WITNESSES "E" AND "CC"**

**The Office of the Prosecutor:**

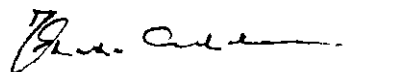
Mr. James Stewart  
Mr. Pierre-Richard Prosper  
Ms. Udo Gehring  
Mr. Holo Makwaia

**Counsel for the Accused:**

Ms. Tiphany Dickson

My agreement with the Decision to reject the Notices of Appeal rests on Article 24 of the Statute. In one way or another –permissible ways not now explored- a right of appeal has to be traceable to that provision. In this case, such a right is not so traceable.

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



Judge Mohamed Shahabuddeen

Dated this eighth day of June 1998,  
At Arusha,  
Tanzania.



[Seal of the Tribunal]