



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

929

OR: ENG

TRIAL CHAMBER I

Before: Judge Erik Møse, Presiding
Judge Asoka de Z. Gunawardana
Judge Mehmet Güney

Decision of: 11 July 2000

**THE PROSECUTOR
VERSUS
IGNACE BAGILISHEMA**

Case No. ICTR-95-1A-T

ICTR
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**DECISION ON THE REQUEST OF THE DEFENCE FOR THE CHAMBER
TO DIRECT THE PROSECUTOR TO INVESTIGATE A MATTER
WITH A VIEW TO THE PREPARATION AND SUBMISSION OF AN INDICTMENT
FOR FALSE TESTIMONY**

The Office of the Prosecutor:

Ms Anywar Adong
Mr. Wallace Kapaya
Mr. Charles Adeogun Phillips

Counsel for the accused:

Mr. François Roux
Mr. Maroufa Diabira

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

SITTING as Trial Chamber I, composed of Judge Erik Møse, Presiding, Judge Asoka de Z. Gunawardana and Judge Mehmet Güney;

BEING SEIZED of a motion filed by the Defence on 6 June 2000, requesting that the Trial Chamber direct the Prosecutor to investigate a matter with a view to the preparation and submission of an indictment for false testimony;

CONSIDERING the response of the Prosecution, dated 30 June 2000;

The submissions of the parties

1. The Defence contends that witness H, who testified for the Prosecution on 19 and 22 November 1999, did knowingly and wilfully give false testimony. The Defence submits that the statements of the witness relevant to persons whom he saw alongside the accused during certain events alleged in the indictment are false. Support for this submission is to be found in correspondence from the commune of Mabanza in 1994 (annexed to the motion and tendered as exhibits by the Defence) which tend to demonstrate that the presence of such persons alongside the accused would have been impossible.

2. The Prosecutor, after recalling the provisions of Rule 91 (False Testimony) of the Rules of Procedure and Evidence and jurisprudence of the Tribunal, requests the Chamber to dismiss the motion of the Defence in its entirety. According to the Prosecution, the issue is not one of false testimony but one of evaluation and assessment of the probative value of the testimony of the witness. The fact that the documents tendered by the Defence may contradict the words of the witness go to credibility and not false testimony. These contradictions were put to the witness, and dealt with accordingly during the hearing of 22 November 1999.

The Chamber

3. The procedure to be followed in instances of alleged false testimony is laid out in Rule 91, which reads:

(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, 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 separate account referred to in Rule 77(E).

4. According to Rule 91 (B), at the request of a party, in this case the Defence, the Chamber may direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony. In order to do so, the Chamber must have strong grounds for believing that a witness may have knowingly and wilfully given false testimony. It follows from the Decision on the Defence Motions to Direct the Prosecutor to Investigate the False Testimony of Witness "R", rendered on 9 March 1998 by Trial Chamber I in *"The Prosecutor v. Jean-Paul Akayesu"* (Case No. ICTR-96-4-T), that 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.

5. According to the same decision 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.

6. In the present case, the Chamber is of the opinion that the submissions of the Defence do not tend to demonstrate that witness H "knowingly and wilfully" gave false testimony, as interpreted in case law. The Chamber has been presented with the testimony of witness H on the one hand and documents presented by the Defence on the other, which, read together, it is argued, are contradictory. This does not suffice to demonstrate that the witness intended to mislead the Chamber and to cause harm.

7. Indeed, the fact that evidence presented by the parties may be in contradiction, forms part of the proceedings in many criminal cases. In this instance, the Trial Chamber shall decide upon such contradictions in the final determination of the probative value of the evidence presented by the parties during trial. Therefore, the request of the Defence to direct the Prosecutor to investigate a matter of possible false testimony by witness H is dismissed.

THEREFORE,

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THE CHAMBER

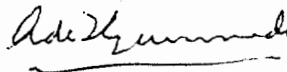
HEREBY

DISMISSES the Defence motion requesting that the Trial Chamber direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony.

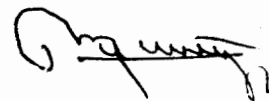
Arusha 11 July 2000.



Erik Møse,
Presiding Judge



Asoka de Z. Gunawardana
Judge



Mehmet Güney
Judge



(Seal of the Tribunal)

