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Case No. ICTR-96-11-I

18719



International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda

UNITED NATIONS  
NATIONS UNIES

TRIAL CHAMBER I

Original : English

Before: Judge Navanethem Pillay, Presiding  
Judge Erik Møse  
Judge Asoka de Zoysa Gunawardana

Registry: Ms Marianne Ben Salimo

Decision date: 27 February 2001

THE PROSECUTOR v. FERDINAND NAHIMANA  
Case No. ICTR-96-11-I

JUDICIAL RECORDS ARCHIVES  
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DECISION ON THE DEFENCE MOTION TO DIRECT THE PROSECUTOR TO  
INVESTIGATE THE MATTER OF FALSE TESTIMONY BY WITNESS "AEN" IN  
TERMS OF RULE 91 (B)

Office of the Prosecutor:

M. Bernard Muna  
M. William T. Egbe  
Ms Charity Kagwi  
Ms Simone Monasebian

Counsel for the Accused:

M. Jean Marie Biju-Duval  
Ms Diana Ellis

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
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SIGNATURE: [Signature] DATE: 27/02/2001

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**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (hereinafter the "Tribunal")

**SITTING** as Trial Chamber I, composed of Judge Navanethem Pillay, Presiding, Judge Erik Møse and Judge Asoka de Zoysa Gunawardana;

**CONSIDERING** the oral motion made by the Defence on 9 November 2000 to direct the Prosecutor to investigate the matter of false testimony by witness "AEN";

**HAVING HEARD** the Parties on 9 November 2000.

### **The Submissions of the Parties**

The Defence submitted that prosecution witness AEN, who testified from 7 to 9 November 2000, gave false testimony. According to the Defence, the witness stated, during examination in chief, that the accused, Ferdinand Nahimana, had incited people to kill Tutsis during two meetings held in Gatonde Commune, on 29 March and 12 April 1994, but under cross examination and questioning by the Judges the witness said that in respect of the meeting of 12 April 1994, he had been outside the hall and had not heard anything said at the meeting.

The Defence accordingly requested that the Prosecutor be directed "to investigate the matter with a view to the preparation and submission of an indictment for false testimony", pursuant to Rule 91(B) of the Rules of Procedure and Evidence ("the Rules").

The Prosecutor responded that the Defence was not representing the witness's testimony correctly, that the witness had said he had heard the accused speak at the meeting of 29 March 1994, but had not said so in respect of the meeting of 12 April 1994.

### **Deliberations of the Chamber**

The Chamber notes that, on 7 November 2000, during the examination in chief, witness AEN testified as follows:

"Q. Okay, and can you tell us the first time you saw him on 29 March where he was-- when you first laid eyes on him on 29th of March, where was Mr. Nahimana?

A. He was in the Busengo Sub Prefecture during a party meeting which was held there.

...

A. Ferdinand Nahimana started with greetings to the parties as well as the interahamwe. He then identified the common enemies who were the Tutsis and the Inkontanyi.

Q. What did he do next, if anything?

A. He took the floor.

Q. And what else did he say?

A. He continued to emphasize the hatred for the Tutsis-- against the Tutsis and asked the interahamwe of Nyarutovu to kill all the Tutsis and those who did not belong to the interahamwe.

Q. Okay, did you come to see Ferdinand Nahimana again after March 29th 1994?

A. Yes I saw him.

Q. And when was that. The next time you saw him?

A. On 12th April 1994.

Q. And where did you see Ferdinand Nahimana on the 12th of April?

A. I saw him again at the Gatonde commune.

Q. Okay, and where in the Gatonde commune did you see him?

A. At the communal office of the Gatonde Commune.

Q. And can you tell us when was the first time you laid eyes on him that day? Was it in the office, or outside of the office?

A. He was inside the communal office, in the Communal Hall.

Q. Okay. But did you see him arrive at that office?

A. I saw him inside the communal office, he was holding a meeting. He was talking about the objective of eliminating the Tutsis and he was emphasising the fact that they needed to attend this objective<sup>1</sup>-- this objective which was declared on 29th March 1994.

...

Q. Now, you say the meeting was on April 12, when did the actual killings occur? How long after April. Was it the same day, the next day, or when?

A. On the next day the killings started in Gahanga secteur ...<sup>2</sup>

Under cross-examination, and regarding the 12 April meeting, witness AEN said:

“Q. I asked you how you got into a meeting if you were not a member of MRND. Did you not understand my question.

A: I was unable to enter the meeting room where the meeting was taking place, because the meeting was being held in the common Hall. I was outside and also outside were interahamwe who were waiting for the decision which was going to be taken during the meeting.

...

Q. ... you are lying if you say that Ferdinand Nahimana was there, aren't you?

A. He was there.

Q. And you say you saw him or heard he was there.

A. I saw him with my own eyes.”<sup>3</sup>

When questioned on this issue by the Judges, on 9 November 2000, witness AEN stated that:

“Q. ...on 12 April meeting, how far were you from the meeting hall, the place you were standing?

A. I could not hear what was being said during that meeting but since I was in the vicinity, I could see the people seated in that hall and the distance between me and the hall will not exceed 13 metres.

Q. So you were 13 metres away from the hall during the time the meeting was taking place inside the hall?

A. That is correct, I was outside within the compound.

Q. So that you didn't hear what was being spoken to inside the hall?

A. No.”<sup>4</sup>

...

<sup>1</sup> The French version reads: “Il parlait de l'objectif d'éliminer les Tutsis. Il incitait à ce que l'on mette en oeuvre cet objectif”. See transcript of 7 November 2000, p. 160. The translation of “incitait” is rendered as “emphasising” in the English text.

<sup>2</sup> See transcript of 7 November 2000, pp. 135-149.

<sup>3</sup> See transcript of 8 November 2000, pp. 117-120.

<sup>4</sup> See transcript of 9 November 2000, pp. 140-141.

A. No, I did not hear what was being said in the hall but observing the activities that took place immediately following that meeting, I understood that there was a criminal intent to kill the Tutsis and Hutus who were opposed to the MRND because very quickly the killing started spreading across the whole country.

Q. So you didn't hear a single word that was uttered inside the room?

A. It is true I did not hear anything because I was not sufficiently close to the hall.

Q. So how would you infer what took place inside the hall, you didn't hear what they said?

A. Following that meeting, the killings started and I understood that that was the purpose of that meeting.

Q. It is very clear from you, you didn't hear what Mr. Nahimana said in that meeting?

A. No, I did not hear what he said in the course of the meeting of the 12th.

Q. So how did you infer that Tutsis were to be killed at the request of Nahimana?

A. I am saying this because I am relying on what I heard during the meeting of the 29 where he made such statements publicly and then when he came on the 12th, the killing of Tutsis had already started in Kigali. He therefore came to transmit this message to the commune. He addressed this to the Interahamwe and others who had the intention to kill Tutsis and that indeed is what happened."<sup>5</sup>

The Chamber notes that witness AEN gave an account of what Ferdinand Nahimana said and under questioning by the Judges and Defence Counsel he explained that he had not personally heard what the accused said on 12 April 1994. He is clear about the fact that he was not inside the communal office but was relying on what he had heard the accused say at the earlier meeting on 29 March 1994 and the killings that had already begun. This is his explanation for answering in the way he did, which the Chamber finds to be consistent with the rest of his testimony. This is not a situation where a witness says during examination in chief that he was present at the meeting of 12 April 1994 and heard the speaker's words and under cross-examination retracts that answer. It is to be noted that he had not specifically stated that he was inside the Communal office. It is more a case of paucity of evidence being supplemented by detail upon further questioning.

Rule 91(B) of the Rules reads : "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."

The onus lies on the party pleading a case of false testimony to prove that it was given knowingly and wilfully. In the Chamber's view this onus has not been discharged by the Defence. No strong grounds have been made out for the Chamber to conclude that the witness gave false testimony.

The Chamber is furthermore of the view that the weight to be attached to the witness's responses is a matter for evaluation by the Trial Chamber when assessing the merits of the case. The Judges follow the reasoning laid down in the case of *The Prosecutor v. Georges Rutaganda*, in which the Tribunal stated:

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<sup>5</sup> See transcript of 9 November 2000, pp. 141-142.

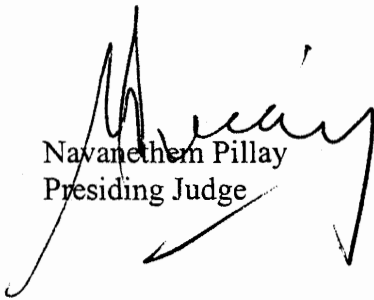
“In the context of the ongoing trials before the Tribunal, inaccuracies and other contradictions could eventually be raised during the overall evaluation of credibility upon the final determination of the probative value of the evidence presented at trial.”<sup>6</sup>

**FOR THE ABOVE REASONS**

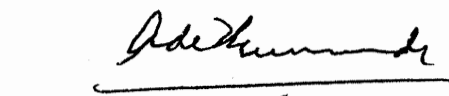
**THE CHAMBER**

**DENIES** the Defence’s motion to direct the Prosecutor to investigate the matter of false testimony by witness “AEN”.

Arusha, 27 February 2001

  
Navanethem Pillay  
Presiding Judge

  
Erik Møse  
Judge

  
Asoka de Zoysa Gunawardana  
Judge

Seal of the Tribunal



<sup>6</sup> See *The Prosecutor v. Georges 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 “CC” of 10 March 1998, p. 4.