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ICTR-98-42-T
26. 6. 2002
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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Winston C. Matanzima Maqutu
Judge Arlette Ramaroson

Registrar: Adama Dieng

Date: 26 June 2002

The PROSECUTOR

v.

Arsène Shalom NTAHOBALI et al.

Case No. ICTR-97-21-T

Case No. ICTR-98-42-T

JUDICIAL RECORDS/ARCHIVES
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**DECISION ON NTAHOBALI'S MOTION TO DIRECT THE PROSECUTOR TO
INVESTIGATE THE MATTER OF FALSE TESTIMONY
BY WITNESS "QCB" PURSUANT TO RULE 91(B) OF THE RULES**

Office of the Prosecutor
Silvana Arbia
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Counsel for the Defence
Duncan Mwanyumba
Normand Marquis

WMS

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the “Tribunal”),

SITTING as Trial Chamber II composed of Judges William H. Sekule, Presiding, Winston C. Matanzima Maqutu and Arlette Ramaroson (the “Chamber”);

BEING SEIZED of:

- (i) The “Requête de Arsène Shalom Ntahobali pour faux témoignage du témoin QCB”, filed on 27 May 2002 (the “Motion”);
- (ii) The “Prosecutor’s Reply to the ‘Requête de Arsène Shalom Ntahobali pour faux témoignage du témoin QCB’, filed on 3 June 2002 (the “Prosecutor’s Response”);
- (iii) The “Réplique de Arsène Shalom Ntahobali à la réponse du Procureur à sa requête pour faux témoignage du témoin QCB”, filed on 6 June 2002 (the “Defence’s Reply”);

CONSIDERING the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”), in particular Rules 73 and 91(B) of the Rules;

NOW DECIDES the Motion pursuant to Rule 73 of the Rules on the basis of the written briefs only as filed by the Parties.

SUBMISSIONS OF THE PARTIES

Defence Submissions

1. The Defence recalls the Decision of 16 November 2001¹ recognising the right of the Defence to file a request to investigate false testimony pursuant to Rule 91(B) of the Rules. The Defence submits that Witness QCB knowingly and wilfully gave false testimony during the Chamber’s proceedings on 25 and 26 March 2002 when the said witness stated that the current lead counsel for the Accused, Mr Mwanyumba, met the said witness in June 2001 at the witness’ current place of residence in Rwanda.² Further, the Defence contends that on 26 March 2002 Witness QCB testified that the purpose of Mr Mwanyumba’s visit was to tamper with evidence against other accused.
2. The Defence maintains that this testimony was false, as Mr Mwanyumba has never visited Rwanda, and did not represent the Accused before July 2001.
3. The Defence argues that this false testimony was given knowingly and wilfully, and was aimed at attacking the credibility of the Accused and his counsel. Therefore, the Defence requests that the Chamber direct the Prosecutor to investigate the matter with a view to prosecuting Witness QCB for false testimony.

¹ *Alfred Musema v. Le Procureur*, Mandat d’arrêt et ordonnance de mise en detention et de transfert, 16 November 2001 (Case ICTR 96-13-A).

² Transcripts of 25 March 2002 pp. 131, 155, 160; transcripts of 26 March 2002 pp. 7-22.

Prosecution's Response

4. The Prosecution argues that the alleged false testimony is the result of honest but mistaken identification of Mr Mwanyumba by Witness QCB. The Prosecution maintains that there is no reason to doubt that Mr Mwanyumba has never visited Rwanda. Nevertheless, the Prosecution also argues that there are no grounds for disbelieving that Witness QCB spoke to a member of the Accused's Defence team in Rwanda in June 2001.
5. The Prosecution submits that to undertake an investigation into this matter would involve a waiver of client confidentiality by the current and previous counsel for the Accused. Such a waiver would be necessary, according to the Prosecution, to establish the movements of said counsel and the substance of Witness QCB's comments to counsel in interview.
6. Finally, the Prosecution submits that the Motion is a waste of the Chamber's time and should be dismissed.

HAVING DELIBERATED

7. The Chamber notes the Defence submission that Witness QCB gave false testimony on the 25 and 26 March 2002 contrary to the provisions of Rule 91(B) of the Rules.
8. The Chamber recalls the wording of Rule 91(B):

Rule 91: False Testimony under Solemn Declaration

- (A) [...]
- (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) [...]
- (D) [...]

9. The Chamber accepts Mr Mwanyumba's affidavit that he was not in Rwanda in June 2001, and therefore concludes that Mr Mwanyumba did not meet Witness QCB then, nor tamper with evidence in the circumstances outlined by Witness QCB. To that extent, the Chamber concludes that Witness QCB's statements on these matters were untrue.
10. The Chamber notes the Defence submission that Witness QCB testified on these matters without prompting and that the witness did not retract the statements in cross-examination. However, the Chamber is of the opinion that this does not suggest knowing or wilful false testimony by the witness. Instead, the Chamber notes that the witness could have made a genuine mistake of identification, which Mr Mwanyumba took to be an attack on his integrity.
11. Accordingly, the Chamber finds that Witness QCB did not knowingly and wilfully give false testimony so as to warrant an investigation as prescribed under Rule 91(B) of the Rules. The Chamber therefore finds that there are no grounds to require the Prosecutor to

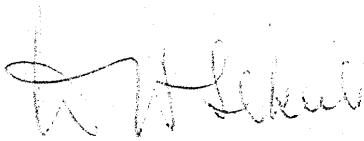
investigate the matter with a view to the preparation and submission of an indictment for false testimony against Witness QCB. The Motion is therefore denied.

12. Further, the Chamber considers this Motion to be misconceived and could be regarded as frivolous. The Chamber notes that in future such Motions may attract the sanctions stipulated under Rule 73(E) of the Rules, i.e. non-payment and re-imbursement to the Defence of all costs and fees associated with the preparation and filing of such motions. Therefore, the Chamber hereby warns the Defence of the consequences of filing frivolous motions in the future.

FOR THE ABOVE REASONS, THE TRIBUNAL

DENIES the Defence Motion.

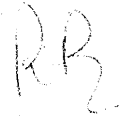
Arusha, ²⁶ June 2002



William H. Sekule
Presiding Judge



Winston C. Matanzima Maqutu
Judge



Arlette Ramaroson
Judge



[Seal of the Tribunal]