



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

**IN THE APPEALS CHAMBER**

**Before:**

Judge Theodor Meron, Presiding  
Judge Mohamed Shahabuddeen  
Judge Florence Ndepele Mwachande Mumba  
Judge Wolfgang Schomburg  
Judge Inés Mónica Weinberg de Roca

**Registrar:** Mr. Adama Dieng

**Order of:** 19 May 2005

**JEAN DE DIEU KAMUHANDA**

*(Appellant)*

v.

**THE PROSECUTOR**

*(Respondent)*

*Case No. ICTR-99-54A-A*

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**ORAL DECISION (RULE 115 AND CONTEMPT OF FALSE TESTIMONY)**

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**Counsel for the Prosecution**

Mr. James Stewart

**Counsel for the Appellant**

Ms. Aïcha Condé

**Oral Ruling on Rule 115 and Contempt of False Testimony, 19 May 2005**

The next thing I will read is the decision of the Bench on the motion of the Defence.

Over the past two days, we have heard from two Defence witnesses under Rule 115, provisions for hearing additional evidence on appeal. We have also heard from two Prosecution witnesses who were presented in the rebuttal to the Appellant's additional

evidence, and we are now presented with a new motion by the Appellant to call yet two more witnesses who, the Appellant alleges, will challenge the testimony of one of the Prosecution's rebuttal witnesses. I will briefly summarise the Appellant's justification for this motion.

At today's Rule 115 hearing a Prosecution witness alleged that two Tribunal employees approached her at the United Nations safe house where she was staying while testifying before this Tribunal in another case. She further alleged that these two Tribunal employees offered to pay her money and give her substantial assistance in other ways if she would come back to this Court and recant her trial testimony in the Kamuhanda case. The Appellant would now like to call these two Tribunal employees, presumably, for the purpose of getting them to deny having offered any bribes to the Prosecution witness in question.

For two reasons, the Appeals Chamber is not persuaded that this is appropriate. First, this is a Rule 115 hearing, which is intended to be a sharply delimited proceeding for entering discrete, specific evidence into the record; it is not intended to be a trial within a trial that opens the door to the exploration of every issue that might be raised during the hearing. Presenting these two witnesses would be a rejoinder to a rebuttal to the Defence's original Rule 115 evidence, and there is no guarantee that it would end there.

Second, the Appeals Chamber is not convinced that the witness's testimony will make a material difference to the Defence's case. The Appeals Chamber simply does not believe that such evidence on the record would be at all helpful in assessing the credibility of the Prosecution's rebuttal witnesses. The Appeals Chamber does not foreclose the possibility that if sufficiently compelling or unexpected evidence surfaces during a Rule 115 hearing, it might be required in the interests of justice to expand the hearing beyond its original scope. But under the circumstances of this case the Appellant has failed to convince the Chamber that such truly exceptional circumstances exist. The Appellant's motion is denied.

I will now deal with matters pertaining to contempt and false testimony.

During the course of Rule 115 proceedings over the past two days, the Appeals Chamber has noted significant discrepancies in testimony given by the witnesses, which may amount to false testimony. In addition, the Chamber has been given reason to believe that there may have been attempts to pervert the course of justice with respect to this appeal in the form of the solicitation of false testimony. Both such forms of behaviour are specifically prohibited by the Rules of Procedure and Evidence. Rule 77(A)(iv) provides that the Tribunal, in the exercise of its inherent power, may hold in contempt those who knowingly and willfully interfere with the administration of justice, including any person who, (iv), threatens, intimidates, causes an injury, or offers a bribe to, or otherwise interferes with a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness.

Rule 91(B) of the Rules of Procedure and Evidence provides, *inter alia*, that if the Chamber has strong grounds for believing that the witness has knowingly and willfully given false testimony it may, one, direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony.

The Chamber wishes to make it very clear to the parties, to the witnesses, who have appeared before us during the past two days, and to future witnesses, as well as to all others connected to these proceedings, that the Tribunal will not tolerate such occurrences. The giving of false testimony before the Court, as well as the interference with the testimony of other witnesses who may appear before the Court, are unacceptable practices, both for the impact that they have on the trial as well as the impact that they have on the Tribunal's mission to seek justice and establish the truth.

Accordingly, the Appeals Chamber refers the matter to the Prosecutor for general investigation and, in particular:

1. directs the Prosecutor, pursuant to Rule 77(C)(i) of the Rules, to investigate allegations made in evidence given before the Appeals Chamber during the Rule 115 hearing, to the effect that Tribunal employees may have attempted to interfere with the witness who had given evidence in proceedings before this Tribunal; and,
2. directs the Prosecutor, pursuant to Rule 91(B), to investigate discrepancies emanating from the Rule 115 hearing testimony and the consequent possibility of false testimony with a view to the preparation and submission of an indictment for false testimony.

The Appeals Chamber stresses that in so directing the Prosecutor, it leaves it to his discretion to take the eventual steps and measures which he deems necessary and appropriate under the circumstances.

We have now finished with the rulings by the Chamber and we will proceed to do the hearing of the appeal, and we start with the Appellant's submissions; one and a half hours. Madam Condé.