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Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

ICTR-99-52-A  
06-September 2005  
(4932/H-4929)

IN THE APPEALS CHAMBER

Before:

Judge Theodor Meron, Presiding Judge  
Judge Mohamed Shahabuddeen  
Judge Florence Ndepele Mwachande Mumba  
Judge Fausto Pocar  
Judge Andresia Vaz

Registrar:

Mr. Adama Dieng

Order of:

6 September 2005

2005 SEP 07 10 21 AM  
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PROSECUTOR

v.

Hassan NGEZE

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME  
COPIE CERTIFIÉE CONFORME A L'ORIGINAL PAR MOI  
NAME / NOM: ROSETTE MUZISO-MORERISA  
SIGNATURE: [Signature]  
DATE: 06/09/05

Case No. ICTR-99-52-A

**ORDER DIRECTING THE PROSECUTION TO INVESTIGATE  
POSSIBLE CONTEMPT AND FALSE TESTIMONY**

Counsel for Hassan Ngeze

Mr. Bharat B. Chadha  
Mr. Behram Shroff

Office of the Prosecutor

Mr. James Stewart  
Mr. Neville Weston

Counsel for Ferdinand Nahimana

Mr. Jean-Marie Biju-Duval  
Mrs. Diana Ellis

Counsel for Jean-Bosco Barayagwiza

Mr. Donald Herbert  
Mr. Tanoo Mylvaganam

ICTR Appeals Chamber  
Date: 06 September 2005  
Action: R.T.  
Copied To: Concerned Judges

Parties, Judicial Archives, L/S  
LSS [Signature]  
6 September 2005

**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 (“Appeals Chamber” and “Tribunal”, respectively);

**BEING SEISED OF** the confidential “Prosecutor’s Urgent Motion Pursuant to Rules 39(iv), 54, and 107, for an Order, Pursuant to Rule 77(C)(i) and Rule 91(B)(i), Directing the Prosecutor to Investigate Certain Matters, With a View to the Preparation and Submission of Indictments for Contempt and False Testimony, Respectively”, filed on 25 July 2005 (“Motion”) in which the Prosecution requests an order from the Appeals Chamber authorising Special Counsel to investigate possible contempt and false testimony<sup>1</sup> such as the order issued in the *Kamuhanda* Case;<sup>2</sup>

**NOTING** the “Appellant Hassan Ngeze’s Response to the Prosecutor’s Urgent Motion Pursuant to Rules 39(iv), 54, and 107, for an Order, Pursuant to Rule 77(C)(i) and Rule 91(B)(i), Directing the Prosecutor to Investigate Certain Matters, With a View to the Preparation and Submission of Indictments for Contempt and False Testimony, Respectively”, filed confidentially on 3 August 2005 (“Response”) in which the Appellant Hassan Ngeze (“Appellant”) argues that the order requested by the Prosecution is unnecessary and improper because of (i) the dissimilarities between the current case and the *Kamuhanda* Case; (ii) the completion of the investigation with regard to Witnesses AFX and EB; (iii) the failure of either witness to allege that the Commanding Officer of the United Nations Detention Facility (“UNDF”) approached and offered a bribe to change testimony; (iv) the violation of the “principles of fair justice” which would arise from further investigation and (v) the waste of Tribunal resources which would result from further investigation;<sup>3</sup>

**NOTING** the “Prosecutor’s Reply to ‘Appellant Hassan Ngeze’s Response to the Prosecutor’s Urgent Motion Pursuant to Rules 39(iv), 54, and 107, for an Order, Pursuant to Rule 77(C)(i) and Rule 91(B)(i), Directing the Prosecution to Investigate Certain Matters, With a View to the Preparation and Submission of Indictments for Contempt and False Testimony, Respectively’”, filed confidentially on 8 August 2005, in which the Prosecution submits that (i) the attempt to subvert the course of justice by interfering with – or attempting to corrupt – witnesses who testified at trial is a matter common to both the *Kamuhanda* Case and the Appellant’s case, which justifies a

<sup>1</sup> Motion, para. 1.

<sup>2</sup> *Prosecutor v. Jean de Dieu Kamuhanda*, ICTR-99-54A-A, Oral decision (Rule 115 and Contempt of False Testimony), 19 May 2005, See also, T. 19 May 2005, p. 50-51.

<sup>3</sup> Response, para. 1, 4, 5, 7, 9.

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similar treatment by the Appeals Chamber; (ii) the Motion did not suggest any implication of the UNDF staff and (iii) the Motion was triggered by the Registrar's request of such an order.

**NOTING** that in the Motion, the Prosecution has brought to the attention of the Appeals Chamber that the cooperation of the Registrar and his office with Special Counsel to the Prosecutor is conditional on such an order being issued by the Appeals Chamber;<sup>4</sup>

**NOTING** that under Rule 77(C)(i) of the Rules of Procedure and Evidence of the Tribunal ("Rules"), "[w]hen a Chamber has reason to believe that a person may be in contempt of the Tribunal, it may [...] direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for contempt";

**NOTING ALSO** that under Rule 91(B)(i) of the Rules, "[i]f a Chamber has strong grounds for believing that a witness has knowingly and wilfully given false testimony, it may [...] direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony";

**NOTING** that the Appeals Chamber, when deciding upon the Appellant's three motions<sup>5</sup> requesting admission of additional evidence pursuant to Rule 115 of the Rules, deferred its decision on the motion relating to the alleged new evidence by Witness EB until an investigation is carried out by the Prosecution on the question of the reliability of this alleged new evidence;<sup>6</sup>

**NOTING** that the Appeals Chamber also expressed concern "about the sudden influx of witnesses wishing to recant their testimonies at trial"<sup>7</sup> and directed the Prosecution to decide whether to bring charges of contempt of court for perjury;<sup>8</sup>

**CONSIDERING** that the discrepancies between testimony at trial given by Witnesses AFX and EB and their written statements appended to the Motions for Leave to Present Additional Evidence may amount to contempt of court and false testimony and that it is precisely in the interest of justice to

<sup>4</sup> Motion, para. 4.

<sup>5</sup> Appellant Hassan Ngeze's Urgent Motion for Leave to Present Additional Evidence, filed confidentially on 4 April 2005, Appellant Hassan Ngeze's Urgent Motion for Leave to Present Additional Evidence, filed on 11 April 2005 and Appellant Hassan Ngeze's Urgent Motion for Leave to Present Additional Evidence (Rule 115) of Witness EB, filed confidentially on 25 April 2005 and corrected on 28 April 2005 ("Motions for Leave to Present Additional Evidence").

<sup>6</sup> Decision on Appellant Hassan Ngeze's Motions for Admission on Additional Evidence on Appeal, filed confidentially on 24 May 2005, para. 43.

<sup>7</sup> *Ibid.*, para. 44.

<sup>8</sup> *Ibid.*, para. 45.

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shed light on the justifications underpinning such discrepancies given the "crucial importance of the truthful testimony of witnesses and their protection";<sup>9</sup>

**PURSUANT TO** Rules 77(C)(i) and 91(B)(i) of the Rules;

**HEREBY DIRECTS** the Prosecution

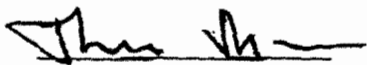
- to investigate allegations made in relation to the Motions for Leave to Present Additional Evidence, to the effect that the Appellant or persons purporting to act on the Appellant's behalf may have attempted to interfere with the Witnesses AFX and EB who had given evidence in proceedings before this Tribunal, with a view to the preparation and submission of an indictment for contempt;
- to investigate discrepancies emanating between testimony at trial given by Witnesses AFX and EB and their written statements appended to the Motions for Leave to Present Additional Evidence and the consequent possibility of false testimony with a view to the preparation and submission of an indictment for false testimony;
- to exercise his discretion to take the eventual steps and measures which it deems necessary and appropriate under the circumstances to carry out the investigations as ordered herein by the Appeals Chamber.

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

Done this 6<sup>th</sup> day of September 2005,  
At The Hague,  
The Netherlands.



[Seal of the Tribunal]

  
Judge Theodor Meron  
Presiding Judge of the Appeals Chamber

<sup>9</sup> *Prosecutor v. Beqa Beqaj*, IT-03-66-T-R77, Judgement on Contempt Allegations, 27 May 2005, para. 60.