

ICTR-98-42-T  
23-09-2005  
(11538-11535)

11538  
Muny



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

**Before:** Judge William H. Sekule, Presiding  
Judge Arlette Ramaroson  
Judge Solomy Balungi Bossa

**Registrar:** Mr Adama Dieng

**Date:** 23 September 2005

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The PROSECUTOR

v.

Pauline NYIRAMASUHUKO and Arsène Shalom NTAHOBALI

Case No. ICTR-97-21-T  
Joint Case No. ICTR-98-42-T

DECISION ON ARSÈNE SHALOM NTAHOBALI'S MOTION TO HAVE PERJURY  
COMMITTED BY PROSECUTION WITNESS QY INVESTIGATED  
(Article 91 of the Rules of Procedure and Evidence)

**Office of the Prosecutor**

Ms Silvana Arbia, Senior Trial Attorney  
Ms Adelaide Whest, Trial Attorney  
Ms Holo Makwaia, Trial Attorney  
Ms Adesola Adeboyejo, Trial Attorney  
Ms Althea Alexis, Assistant Trial Attorney  
Mr Michael Adenuga, Legal Advisor  
Ms Astou Mbow, Case Manager

**Defence Counsel for Ndayambaje**

Mr Pierre Boulé, Mr Claude Desrochers

**Defence Counsel for Kanyabashi**

Mr Michel Marchand, Ms Simone Santerre

**Defence Counsel for Nyiramasuhuko**

Ms Nicole Bergevin, Mr Guy Poupart

**Defence Counsel for Ntahobali**

Mr Normand Marquis

**Defence Counsel for Nsabimana**

Ms Josette Kadji, Mr Charles Patie Tchakounte

**Defence Counsel for Nteziryayo**

Mr Titinga Frédéric Pacere, Mr Richard Perras

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

**SITTING** as Trial Chamber II composed of Judge William H. Sekule, Presiding, Judge Arlette Ramaroson and Judge Solomy Balungi Bossa (the "Chamber");

**BEING SEIZED** of the Defence for Ntahobali's "*Requête de Arsène Shalom Ntahobali en parjure à l'encontre du témoin du Procureur nommé 'QY'*", filed on 25 August 2005 (the "Motion");

**HAVING RECEIVED** the "Prosecutor's Response to the "*Requête de Arsène Shalom Ntahobali en parjure à l'encontre du témoin du Procureur nommé QY*,"" filed on 30 August 2005 (the "Prosecutor's Response");

**NOTING THAT** both the Motion and the Prosecutor's Response were filed as confidential pleadings;

**CONSIDERING** the provisions of the Statute of the Tribunal (the "Statute"), specifically Articles 19 and 20, and the Rules of Procedure and Evidence (the "Rules"), in particular Rule 91;

**NOW DECIDES** the matter, pursuant to Rule 73 (A) of the Rules, on the basis of the written submissions of the Parties.

**SUBMISSIONS BY THE PARTIES***Defence for Ntahobali*

1. The Defence for Ntahobali moves the Chamber to order that an independent prosecutor be nominated to conduct the investigation of false testimony allegedly given by Prosecution Witness QY and to prepare an indictment for perjury against her.
2. The Defence relies on the Appeals Chamber's decision in *Musema* that allowed the Parties to file a motion pursuant to Rule 91 if they wished to raise the issue of false testimony.<sup>1</sup> The Defence recalls that according to the Tribunal, "the giving of false testimony may consist of the affirmation of a false fact or the negation of a true fact".<sup>2</sup>
3. The Defence recalls the criteria for the commission of perjury as follows:
  - i. "The witness must make a solemn declaration;
  - ii. The false statement must be contrary to the solemn declaration;
  - iii. The witness must believe at the time the statement was made that it was false;
  - iv. And there must be a relevant relationship between the statement and a material matter within the case."<sup>3</sup>
4. The Defence for Ntahobali argues that Witness QY's testimony fulfils the above criteria, for not only are there contradictions between her statements and the testimony given in these proceedings and in *Muvunyi*, respectively, but this false testimony was given knowingly and deliberately.<sup>4</sup> The Defence for Ntahobali cites four examples of alleged false testimony.<sup>5</sup>
5. The Defence for Ntahobali concludes that, based on the testimony given in the *Muvunyi* proceedings, it is clear that Witness QY lied several times about important issues raised during her testimony in

<sup>1</sup> The Motion, para. 5, relying on *Alfred Musema v. The Prosecutor*, Judgement (AC), 16 November 2001.

<sup>2</sup> *Ibid.*, para. 6, relying on *The Prosecutor v. Jean-Paul Akayesu*, Decision on the Defence Motion to Direct the Prosecutor to Investigate the False Testimony by Witness "R" (TC), 9 March 1998.

<sup>3</sup> *Ibid.*, para. 7, relying on *Akayesu*, Decision of 9 March 1998.

<sup>4</sup> *Ibid.*, para. 8.

<sup>5</sup> *Ibid.*, paras. 10-12, 14-15, 17-18, 20-23.

the *Butare* proceedings. The Defence submits that the witness demonstrated an intention to refuse to truthfully report the facts every time she was confronted with earlier inconsistent statements, a voluntary act in order to unjustly incriminate Tharcisse Renzaho, as well as the Accused Arsène Ntahobali and Pauline Nyiramasuhuko.<sup>6</sup> The Defence for Ntahobali argues that despite being under oath, the witness' testimonies frequently vary and upon confrontation with these alleged discrepancies, the witness either denied ever having made the statements in question, refused to answer the questions, or gave totally harebrained explanations.<sup>7</sup>

6. The Defence submits that the conditions of Rule 91 have been fulfilled with respect to this witness and that considering the importance of these criminal proceedings, a clear and public sanction is necessary to deter other potential witnesses from following this course of action.<sup>8</sup>

### *The Prosecution's Response*

7. The Prosecution argues that the Defence for Ntahobali has not satisfied the necessary criteria under Rule 91 and accordingly moves the Chamber to deny the Motion in its entirety.<sup>9</sup> Whilst it does not dispute that the Accused may bring a motion before the Chamber in this matter, it points out that the *Musema* Decision the Defence for Ntahobali relies upon, also states that whether or not such a motion is filed, it is still incumbent upon the Chamber to assess the evidence and reliability of the witnesses.<sup>10</sup> The Prosecution recalls the Chamber's decision of 26 August 2005 where the Chamber stated that the "Parties may therefore wish to make the proper application to recall the witnesses for further cross-examination on the alleged specific issues that may have arisen from either the additional statements and/or the testimony given in the *Muvunyi* proceedings."<sup>11</sup>
8. The Prosecution submits that pursuant to Rule 91, the onus rests on the Defence to prove to the Chamber that Witness QY knowingly intended to use false testimony or was reckless as to whether or not her testimony was false.<sup>12</sup>
9. The Prosecution relies on the findings in the *Musema* Decision, that for Rule 91 to apply,

"it is insufficient to raise only doubt as to the credibility of the statements made by the witness. The Chamber affirms its opinion that inaccurate statements cannot, on their own, constitute false testimony; an element of wilful intent to give false testimony must exist. [...] The testimony of a witness may, for one reason or another, lack credibility even if it does not amount to false testimony within the meaning of Rule 91."<sup>13</sup>

10. The Prosecution responds to the four instances given by the Defence for Ntahobali as examples of alleged false testimony. The Prosecution submit that considering that trauma may have played a role in the recantation of this witness' testimony in both the *Butare* and *Muvunyi* proceedings, this is a case of the witness possibly being confused. Rather than being indicative of false testimony, the Prosecution maintains that the alleged discrepancies were the result of honest mistakes by the witness. In conclusion, the Prosecution submits that the witness' answers on this issue go to her credibility and are not instances of false testimony.<sup>14</sup>

<sup>6</sup> *Ibid.*, paras. 23-25.

<sup>7</sup> *Ibid.*, paras. 26-28.

<sup>8</sup> *Ibid.*, paras. 8, 29, 31-32.

<sup>9</sup> Prosecutor's Response, para. 18.

<sup>10</sup> *Ibid.*, para. 7.

<sup>11</sup> *Ibid.*, para. 8, relying upon *Nyiramasuhuko et al.*, Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali, ICTR-98-42-T, 26 August 2005, para. 71.

<sup>12</sup> *Ibid.*, para. 6. The Prosecutor relies upon *Blackstone Criminal Practice* (2003), p. 28.

<sup>13</sup> *Musema*, Judgment and Sentence (AC), 27 January 2000, para. 99.

<sup>14</sup> The Prosecutor's Response, paras. 9, 11-15

**DELIBERATIONS**

11. The Chamber has carefully considered the submissions of the Parties. The Chamber does not find that the alleged discrepancies between Witness QY's testimony in these proceedings, in the statements of 2 September 2005 and/or the testimony in the *Muvunyi* proceedings warrant the action the Defence for Ntahobali seeks in this Motion pursuant to Rule 91 (B).
12. The Chamber is of the opinion that any alleged disparities in the testimony of the witness in these proceedings will be addressed as part of the Chamber's evaluation and consideration of the evidence at a later stage. The Chamber will thus not comment further on this matter.
13. The Chamber notes that Witness QY has already been the subject of two earlier motions filed by the Defence for Ntahobali.<sup>15</sup> The Chamber recalls the provisions of Articles 46 and 73 (F) and stresses, considering the sequence of events regarding this witness, that the filing of frivolous motions can be sanctioned by the non-payment of fees. The Chamber reminds Counsel of his duties as an Officer of the Court to facilitate proceedings.

**FOR THE ABOVE REASONS, THE CHAMBER DENIES** the Motion in its entirety.

Arusha, 23 September 2005



William H. Sekule  
Presiding Judge



Arlette Ramaroson  
Judge



Solomy Baungi Bossa  
Judge



<sup>15</sup> See, *Requête en modification de la liste et de l'ordre des témoins de la défense d'Arsène Shalom Ntahobali*, filed on 2 August 2005, and *Requête et notification de Arsène Shalom Ntahobali de son intention de verser au dossier les déclarations écrites de témoins et les transcriptions de leur témoignage dans un procès au TPIR en lieu et place de leur témoignage*, filed on 3 August 2005.