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UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

**Before Judges:** Dennis C. M. Byron, Presiding  
Emile Francis Short  
Gberdao Gustave Kam

**Registrar:** Adama Dieng

**Date:** 29 December 2006

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THE PROSECUTOR

v.

Édouard KAREMERA  
Mathieu NGIRUMPATSE  
Joseph NZIRORERA

Case No. ICTR-98-44-T

DECISION ON DEFENCE MOTION FOR INVESTIGATION OF PROSECUTION  
WITNESS AHMED MBONYUNKIZA FOR FALSE TESTIMONY

*Rule 91(B) of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**  
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**Defence Counsel for Joseph Nzirorera**  
Peter Robinson and Patrick Nimy Mayidika Ngimbi

## INTRODUCTION

1. The trial in this case started on 19 September 2005. The Prosecution called Witness Ahmed Napoléon Mbonkunkiza as its first witness starting 20 September 2005 through 28 October 2005. On 14 October 2005, while the Chamber was also hearing the testimony of Prosecution Witness G who allegedly contradicted Witness Mbonkunkiza's testimony, the Defence for Nzirorera made an oral motion requesting that the Chamber order an investigation for false testimony of Witness Mbonkunkiza.<sup>1</sup> The Chamber denied the Motion stating that it was premature and that it cannot initiate an investigation every time there is a contradiction of testimony.<sup>2</sup> On 1 March 2006, while cross-examining Witness UB, the Defence for Nzirorera reiterated its application.<sup>3</sup> The Chamber reserved its ruling at that time.<sup>4</sup> After hearing all the testimony from the Prosecution witnesses who had testified to the same issues, the Defence for Nzirorera, joined by the Defence for Ndirumpatse, renewed its application for investigation of Witness Mbonkunkiza for false testimony.<sup>5</sup>

## DISCUSSION

2. The Defence for Nzirorera requests, pursuant to Rule 91(B) of the Rules of Procedure and Evidence that an *amicus curiae* be appointed to investigate the false testimony of Prosecution Witness Mbonkunkiza because some of his statements have been contradicted by the testimony of other Prosecution witnesses and will be contradicted by Defence witnesses in the future. It claims that Prosecution Witnesses G, UB and T contradicted Witness Mbonkunkiza's statement that Ndirumpatse spoke at weekly Wednesday meetings in February 1992 and advocated elimination the Tutsi; that Prosecution Witnesses G and T also contradicted Mbonkunkiza's testimony that it was Bikindi who introduced a song about eliminating the Tutsi at the meetings and that Gaspard Uwizigara attended the meetings and that axes were displayed and distributed at the meetings. It also asserts that Prosecution Witness UB denied that axes were used by the *Interahamwe* at the time. The Defence for Ndirumpatse joins in the Motion and alleges that Witness Mbonkunkiza lied about further events such as: that Ndirumpatse was the author of a grammar book; that meetings took place

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<sup>1</sup> T. 14 October 2005, pp.19-20.

<sup>2</sup> T. 14 October 2005, p.21.

<sup>3</sup> T. 1 March 2006, pp. 36-37.

<sup>4</sup> T. 1 March 2006, p. 37.

<sup>5</sup> Motion for Investigation of Witness Ahmed Mbonkunkiza for False Testimony, filed on 29 May 2006; *Mémoire de Ndirumpatse sur la Joseph Nzirorera's Motion for Investigations of Witness Ahmed Mbonkunkiza for False Testimony*, filed on 5 June 2006; see also Joseph Nzirorera's Reply filed on 6 June 2006.

every Wednesday and that lists were generated confirming the presence of individuals at the meetings. On 2 November 2006, during the testimony of Prosecution Witness ALG, the Defence for Nzirorera requested the Chamber to consider the evidence of that witness as supplementary material in support of this Motion.<sup>6</sup>

3. The Defence asserts that the requirements set out under Rule 91(B) of the Rules for an investigation in case of false testimony are met. To support its application, it relies upon an oral decision from the Appeals Chamber in the *Kamuhanda* case, where it alleges that the Appeals Chamber referred a matter for investigation of false testimony on far less evidence than exists against Witness Mbonnyunkiza.

4. The Prosecution opposes the Motion and asserts that apparent contradictions do not automatically mean that a witness has deliberately given false testimony.<sup>7</sup>

5. Rule 91(B) of the Rules bestows a discretionary power upon the Chamber such that if a Chamber has strong grounds for believing that a witness has knowingly and wilfully given false testimony, it may:

- i) direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony;
- ii) where the Prosecutor, in the view of the Chamber, has a conflict of interest with respect to the relevant conduct, direct the Registrar to appoint an *amicus curiae* to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating proceedings for false testimony.

6. In the *Akayesu* case, the Trial Chamber outlined the basic considerations for an order to investigate false testimony.<sup>8</sup> It considered that to constitute false testimony a) the witness must make a solemn declaration; b) the false statement must be contrary to the solemn declaration; c) the witness must believe at the time the statement was made that it was false; and d) there must be a relevant relationship between the statement and a material matter within the case. The statement must also have been made with intent to mislead the judge and to cause harm and the onus is on the pleading party to prove a) the falsehood of the witness statements; b) that the statements were made with harmful intent; or at least they were made by a witness who was fully aware that they were false; and c) the possible bearing of the said statements on the judge's decision.<sup>9</sup>

<sup>6</sup> T. 2 November 2006 p. 36.

<sup>7</sup> Prosecution Response filed 5 June 2006.

<sup>8</sup> *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Decision on Defence Motions to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness "R" (TC), 9 March 1998 ("*Akayesu* Decision").

<sup>9</sup> *Ibidem*.

7. In determining whether “strong grounds” exist that the witness gave false testimony, a Chamber must therefore find, on a case-by-case basis in the particular circumstances of each case, evidence of an intention to commit this offence. Contradictory evidence between witness’ testimony is insufficient evidence to demonstrate that a witness intended to mislead the Chamber and to cause harm.<sup>10</sup> Instead, contradictory evidence is used when determining the probative value of the evidence presented by the parties during trial.<sup>11</sup>

8. The Chamber notes that in the *Kamuhanda* case referred to by the Defence, the Appeals Chamber not only “noted significant discrepancies in testimony given by the witnesses, which may amount to false testimony”, but also “had 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”.<sup>12</sup> They were therefore specific circumstances in that case for the Appeals Chamber to order the Prosecution to investigate the matter of alleged false testimony of a witness.<sup>13</sup>

9. In this case, the Defence alleges that Witness Mbonkunkiza made statements contradicted by other Prosecution witnesses and that will be contradicted by witnesses the Defence intends to call to testify. The Defence does not provide any details as to the content of the evidence of these potential Defence witnesses, and mostly does not adduce evidence of any harmful intent of Witness Mbonkunkiza to make a false testimony. As already recalled, mere contradictions or discrepancies between the testimonies of different witnesses do not, as such, constitute sufficient ground for believing that a witness has knowingly and wilfully given false testimony. Also the Defence has not shown that the requirements set forth by the Rule for ordering an investigation for false testimony have been met.

10. Furthermore, the fact that the Tribunal will close its business by a certain date and could not be able to prosecute witnesses for false testimony, as claimed by the Defence, is not a sufficient ground for ordering an investigation when there is no strong reasons for believing that a witness has knowingly and willfully given false testimony. The Chamber also does not accept the Defence contention that the Chamber should order an investigation for false

<sup>10</sup> *Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-T, Decision on the Request of the Defence for the Chamber to Direct the Prosecution to Investigate a Matter with a View to the Preparation and Submission of an Indictment for False Testimony (TC), 11 July 2000, para. 6.

<sup>11</sup> *Id.* at para. 7; *Akayesu* Decision; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Defence Request for an Investigation into Alleged False Testimony of Witness DO (TC), 3 October 2003, para. 9; *Prosecutor v. Niyamasuhuko et al.*, Case No. ICTR-97-21-T and ICTR-98-42-T, Decision on Arsène Shalom Ntahobali’s Motion to Have Perjury Committed by Prosecution Witness QY Investigated (TC), 23 September 2005.

<sup>12</sup> *Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54-A, T. 19 May 2005, p. 50.

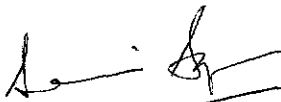
<sup>13</sup> *Ibidem.*


testimony in the present case for the purpose of discouraging future witnesses from giving false testimony, when there are no strong grounds for believing any harmful intent of the witness concerned. In addition, the Appeals Chamber has already made it very clear to potential witnesses that the Tribunal will not tolerate false testimony before the Court, as well as the interference with the testimony of other witnesses who may appear before the Court.<sup>14</sup>


11. In any event, any alleged discrepancy in the testimony of Witness Mbonnyunkiza will be addressed by this Chamber at a later stage when assessing the evidence adduced by each party in the present case as a whole. To make a finding now on allegedly contradictory evidence would be pre-judging the issues and is premature.

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

Arusha, 29 December 2006, done in English.

  
Dennis C. M. Byron  
Presiding Judge

  
With the consent and on behalf of  
Emile Francis Short  
Judge  
(absent at the time of the signature)

  
With the consent and on behalf of  
Gberdao Gustave Kam  
Judge  
(absent at the time of the signature)



<sup>14</sup> *Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54-A, T. 19 May 2005, p. 50.