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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-00-55A-A

20 July 2007

(987/H - 984/H)

P.T.

IN THE APPEALS CHAMBER

Before:

Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Liu Daqun
Judge Theodor Meron
Judge Wolfgang Schomburg

Registrar:

Mr. Adama Dieng

Decision of:

20 July 2007

ICTR Appeals Chamber

Date: 20 July 2007

Action: P.T.

Copied To: [unclear] Judges
Parties, G.O.C., [unclear] [unclear]

Archives

THE PROSECUTOR

v.

Tharcisse MUVUNYI

Case No. ICTR-00-55A-A

Decision on Motion for DisclosureOffice of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. James Stewart
Ms. Linda Bianchi
Mr. Renifa Madenga
Mr. François Nsanzuwera
Ms. Evelyn Kamau

Counsel for Tharcisse Muvunyi:

Mr. William E. Taylor
Ms. Abbe Jolles
Mr. Dorian Cotlar

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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NAME / NOM: Patrice Tchidiemba

SIGNATURE: [Signature] DATE: 20/07/07

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1. 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 and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively) is seized of a motion filed by Mr. Tharcisse Muvunyi ("Applicant") for disclosure relating to Prosecution Witness QY.¹ The Prosecution responded on 18 June 2007,² and the Applicant did not file a reply.

2. On 12 September 2006, Trial Chamber II ("Trial Chamber") convicted the Applicant of three counts of genocide, direct and public incitement to commit genocide, and other inhumane acts as crimes against humanity, and sentenced him to twenty-five years' imprisonment.³ On 12 October 2006, the Applicant appealed against his convictions and sentence.⁴ The Prosecution has also appealed against the Trial Judgement.⁵

3. On 7 June 2007, the Applicant filed a motion seeking the disclosure of transcripts of Witness QY's testimony in closed session in criminal proceedings against a Rwandan national in Canada.⁶ The Trial Chamber relied, in part, on Witness QY in convicting the Applicant for other inhumane acts as a crime against humanity.⁷ Counsel for the Applicant submits that he was informed that, during the proceedings in Canada, Witness QY admitted to giving false testimony in another case before the Tribunal at the instigation of the Prosecution.⁸ The Applicant argues that, if this allegation is true, it taints not only Witness QY's evidence given in his case, but his trial as a whole, because the member of the Prosecution who allegedly encouraged the false testimony also appeared as part of the Prosecution team in his case.⁹

4. The Applicant argues that under Rule 68 of the Rules of Procedure and Evidence ("Rules") the Prosecution has an obligation to disclose the transcripts of Witness QY's testimony in Canada

¹ Accused Tharcisse Muvunyi's Motion to Produce Testimony of Witness QY Pursuant to Rule 68 and for Sanctions, 7 June 2007 ("Motion").

² Prosecutor's Response to "Accused Tharcisse Muvunyi's Motion to Produce Testimony of Witness QY Pursuant to Rule 68 and for Sanctions", 18 June 2007 ("Response").

³ *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-T, Judgement and Sentence, 18 September 2006, ("Trial Judgement"), paras. 531, 545. The Trial Judgement was pronounced on 12 September 2006, and the written judgement was filed with the Registry on 18 September 2007.

⁴ Accused Tharcisse Muvunyi's Notice of Appeal, 12 October 2006, paras. 3-14 ("Muvunyi Notice of Appeal").

⁵ Prosecutor's Notice of Appeal and Motion for an Extension of Time within which to File Notice of Appeal, 17 October 2006.

⁶ Motion, paras. 3, 13.

⁷ Trial Judgement, paras. 450, 456, 530.

⁸ Motion, paras. 3-6, 8.

⁹ Motion, paras. 5, 6, 10.

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as well as any other information in its possession implicating its staff in soliciting false evidence.¹⁰ Pointing to a prior request for disclosure under Rule 68 of the Rules, the Applicant claims that the Prosecution "knowingly and willfully" interfered in the administration of justice and, therefore, seeks sanctions against it.¹¹ Finally, the Applicant asks for a hearing on the Motion.¹²

5. The Prosecution responds that it has no information that Witness QY recanted in the Canadian proceeding the testimony which she gave in the *Muvunyi* case.¹³ It explains that it is seeking authorization from the Canadian authorities to disclose the requested transcripts to the Applicant.¹⁴ In addition, the Prosecution denies that there has been any Prosecutorial misconduct.¹⁵ The Prosecution notes in this regard that it is seeking clearance from the United Nations Office of Legal Affairs to enable the trial attorney alleged to have encouraged false testimony in another case before the Tribunal to give a solemn declaration addressing the allegations.¹⁶

6. The Appeals Chamber notes that on 22 June 2007, the Prosecution disclosed the requested transcripts of Witness QY's testimony to the Applicant.¹⁷ Consequently, the request for disclosure of these transcripts is now moot.

7. As to the request for information concerning alleged Prosecutorial misconduct, the Prosecution is in the process of addressing these allegations. At this stage, the Appeals Chamber is not convinced that the Applicant has established that any information of Prosecutorial misconduct is in fact in the possession of the Prosecution such as to warrant the Appeals Chamber granting the relief sought. If the Prosecution does uncover any information which implicates members of the Prosecution team in encouraging false testimony in the Applicant's case, the Prosecution must disclose such information to him pursuant to its obligation to do so under Rule 68 of the Rules. The Appeals Chamber expects that the Prosecution will respect this mandatory obligation. Further, the Appeals Chamber is not persuaded that the Applicant has shown any bad faith on the part of the Prosecution in the discharge of its disclosure obligations.

¹⁰ Motion, para. 13.

¹¹ Motion, para. 9.

¹² Motion, para. 14.

¹³ Response, para. 4.

¹⁴ Response, para. 6.

¹⁵ Response, paras. 13, 14.

¹⁶ Response, paras. 13, 14.

¹⁷ Disclosure of the Transcripts of the Testimony of Witness QY Given in the Trial of Désiré Munyaneza in Canada, pursuant to Rule 75(F)(ii) and Rule 68, 22 June 2007. The Prosecution disclosed the transcripts to the Applicant's counsel on a compact disk. The Appeals Chamber has not received nor reviewed the contents of the disclosure.

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8. For the foregoing reasons, the Appeals Chamber **DISMISSES** the Applicant's Motion in its entirety.

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

Done this 20th day of July 2007,
At The Hague,
The Netherlands.



[Seal of the Tribunal]

A handwritten signature in black ink, which appears to read "Fausto Pocar", is written over a horizontal line.

Judge Fausto Pocar
Presiding