

ICTR 98-44-T
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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
Gberdao Gustave Kam
Vagn Joensen

Registrar: Adama Dieng

Date: 26 September 2007

THE PROSECUTOR

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA
Case No. ICTR-98-44-T

**DECISION ON DEFENCE MOTION FOR INVESTIGATION OF PROSECUTION
WITNESS HH FOR FALSE TESTIMONY**

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

Office of the Prosecutor:

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Saidou N'Dow
Gerda Visser
Sunkarie Ballah-Conteh
Takeh Sendze

Defence Counsel for Édouard Karemera
Dior Diagne Mbaye and Félix Sow

Defence Counsel for Mathieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

Defence Counsel for Joseph Nzirorera
Peter Robinson and Patrick Niny Mayidika Ngimbi

INTRODUCTION

1. On 30 July 2007, the Defence for Joseph Nzirorera applied for an *amicus curiae* to be appointed to investigate the false testimony of Prosecution Witness HH pursuant to Rule 91(B) of the Rules of Procedure and Evidence ("Rules").¹ The witness had testified on 20 November 2006 that he had never been to Mugina *commune* in his life. Since then, another Prosecution witness has given evidence which, according to the Defence, contradicts HH to the extent that there were claims that HH came to Mugina *commune* and launched attacks there. The Defence for Nzirorera alleges that Witness HH lied about further facts as he admitted to having made numerous false statements to Rwandan authorities and to the Office of the Prosecutor.

DISCUSSION

2. The Defence asserts that the requirements set out under Rule 91(B) of the Rules for an investigation into the alleged false testimony are met and submits that the Appeal Chamber in the *Kamuhanda* case referred a matter for investigation of false testimony on far less evidence than exists against Witness HH. The Prosecution opposes the Motion and asserts that apparent contradictions do not automatically mean that a witness has deliberately given false testimony.²

3. Rule 91(B) of the Rules bestows a discretionary power to direct an enquiry as to whether there are sufficient grounds for instigating proceedings for false testimony if a Chamber has strong grounds for believing that a witness has knowingly and wilfully given false testimony.³

4. Trial Chambers have sought to distinguish between false testimony and questions regarding credibility which may manifest themselves in contradictions and

¹ Joseph Nzirorera's Motion for Investigation of Witness HH for False Testimony, filed 30 July 2007.

² Prosecution Response to Nzirorera's Motion for Investigation of Witness HH for false Testimony, filed 06 August 2007.

³ Rule 91(B) provides 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; or (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".

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inconsistencies. Contradictions may erode the probative value of the evidence, but for false testimony, doubt as to the reliability of the evidence is not enough. False testimony is a deliberate offence which supposes wilful intent on the part of the perpetrator to mislead the judge and to cause harm and a miscarriage of justice. It is necessary for the party alleging the falsehood to prove the falsehood of the statement, the harmful intent of the maker or his awareness that it was false, and the possible bearing of the statement on the judge's decision on a material matter in the case.⁴

5. In the *Akayesu* case, the Trial Chamber outlined the basic considerations for an order to investigate false testimony.⁵ 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 that 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.⁶

6. 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. In this case reliance is placed on the contradictions between various Prosecution witnesses. In the premise the Defence is asking the Chamber to establish preference for the testimony of one witness over that of another. The Chamber considers that it is too early in the proceedings to resolve conflicts of that nature and prefers to deliberate after it has heard all the testimony. Contradictory evidence between witnesses' testimonies, without more, is insufficient to demonstrate that one of those witnesses intended to mislead the Chamber and to cause

⁴ See *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").

⁵ *Ibidem*.

⁶ *Ibidem*.

harm.⁷ Instead, contradictory evidence is relevant to determining the probative value of the evidence presented by the parties during trial.⁸

7. 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".⁹ They were therefore specific circumstances in that case, which do not exist in this one, for the Appeals Chamber to order the Prosecution to investigate the matter of alleged false testimony of a witness.¹⁰

8. In any event, any alleged discrepancy in the testimony of Witness HH 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 on contradictory evidence at this stage of the proceedings would be pre-judging the issues.

9. The Chamber notes that in a motion filed some three weeks before the instant Motion, the Defence for Nzirorera requested similar relief in relation to allegations that included the falsehood of Witness HH.¹¹ The Decisions on both motions are being delivered at the same time. The Chamber expresses its disapproval of this waste of resources and abuse of the process, because the applications should have been merged into one motion. In the circumstances, the Chamber forbids the Defence to present any bills for this motion.

⁷ See *Prosecutor v. Edouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-PT ("Karemera et al. case", Decision on Defence Motion for investigation of Prosecutor's Witness Ahmed Mhonyukiza for False Testimony (TC), 29 December 2006, para. 6. *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.

⁸ *Ibidem.* 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. Niyramatuhuko 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.

⁹ *Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54-A, T. 19 May 2005, p. 50.

¹⁰ *Ibidem.*

¹¹ See *Joseph Nzirorera's Motion for Appointment of Amicus Curiae: The Ndirumpatse Letters*, filed on 3 July 2007.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Defence's Motion.

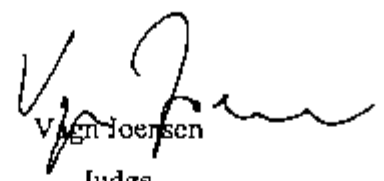
Arusha, 26 September 2007, done in English.


Dennis C. M. Byron

Presiding Judge


Gberdao Gustave Kam

Judge


Vagn Joensen

Judge

[Seal of the Tribunal]





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Dates:	Transmitted: 26/09/2007		Document's date: 26/09/2007	
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