

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 MOTIONS FOR APPOINTMENT OF AMICUS
CURIAE**

Rules 77 and 91 of the Rules of Procedure and Evidence

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

INTRODUCTION

1. The trial in the instant case commenced on 19 September 2005 with the Prosecution calling its first witnesses. On 26 October 2006, Prosecution Witness ALG testified that he had been told about a letter written by Mr. Ngirumpatse in early April 1994 requesting the *Interahamwe* to comply with the orders of soldiers.¹ Later, Prosecution Witness HH testified that on 8 April 1994, the National President of the *Interahamwe*, Robert Kajuga, showed a letter from Mathieu Ngirumpatse to Lieutenant Miruho and told him that the *Interahamwe* should work with the soldiers "to flush out the enemy", namely to kill RPF soldiers and their accomplices, the Tutsi.²

2. During the fifth trial session, Prosecution Witness Jean-Bosco Twahira testified to how he came into possession of letters allegedly from Mathieu Ngirumpatse giving instructions to erect roadblocks and undertake massacres of Tutsi.³ He further explained that he sent those documents to the Office of the Prosecutor, although he could not assert the authenticity of the said documents.⁴ Those letters were then admitted as Exhibit DNG-50 during the cross-examination of Witness Twahira.⁵ It is accepted by both Parties that those documents are forgeries.⁶

3. On 3 July 2007, Joseph Nzirorera filed a motion moving the Chamber to appoint an *amicus curiae*, pursuant to Rules 77 (C) (ii) and 91 (B) (ii) of the Rules of Procedure and Evidence ("Rules") in order to investigate allegations of interference with the administration of justice and false testimony concerning the forged letters of Mathieu Ngirumpatse contained in Exhibit DNG-50.⁷ The Prosecution opposed the motion.⁸ Mathieu Ngirumpatse joined Nzirorera's Motion and reiterated its prior request that an investigation on this matter be ordered by the Chamber.⁹

¹ T. 26 October 2006, pp.64-65.

² T. 9 November 2006, pp. 9-10.

³ T. 26 June 2007, pp. 9 and seq.

⁴ T. 26 June 2007, p. 11.

⁵ T. 26 June 2007, pp. 26-27.

⁶ T. 26 June 2007.

⁷ Joseph Nzirorera's Motion for Appointment of *Amicus Curiae*: The Ngirumpatse Letters, filed on 3 July 2007 ("Nzirorera's Motion"); Reply Brief: Joseph Nzirorera's Motion for Appointment of *Amicus Curiae*: the Ngirumpatse Letters, filed on 9 July 2007 ("Nzirorera's Reply").

⁸ Prosecution Response to Joseph Nzirorera's Motion for Appointment of *Amicus Curiae*: the Ngirumpatse Letters, filed on 9 July 2007.

⁹ Mémoire pour M. Ngirumpatse sur la requête de M. Nzirorera for appointment of *amicus curiae*, filed on 9 July 2007 ; Mémoire complémentaire pour M. Ngirumpatse sur la requête de M. Nzirorera for appointment of *amicus curiae* : the Ngirumpatse letters, filed on 11 July 2007. See T. 26 June 2007.

DISCUSSION

4. According to Joseph Nzirorera, the forged letters are the strongest evidence of the concerted effort on the part of certain persons in Kigali to falsely accuse Mathieu Ndirumpatswe of ordering the *Interahamwe* to man roadblocks and kill Tutsi after the death of President Habyarimana. In his view, this conduct, if proven, could constitute an interference with the administration of justice of the Tribunal pursuant to Rule 77 and the wilful providing of false testimony pursuant to Rule 91.

5. In his reply, Joseph Nzirorera specifies that "the false testimony is that of Witness HH, supported by his fellow prisoner of Kigali Central Prison, Witness ALG, both of who [sic] claimed to have knowledge of the letters which we now know to be forged."¹⁰ He contends that the forged letters are additional evidence of the manipulation associated with the testimony of Witness HH, who admitted under cross-examination to being part of a conspiracy to frame François Karera.¹¹ He concludes that there are therefore strong grounds to believe that false testimony has been presented to the Chamber and that an investigation is necessary to determine the identity of those responsible for the effort to frame Mr. Ndirumpatswe.¹² Nzirorera further requests the Chamber to appoint an *amicus curiae* to investigate the matter as the Prosecution has an obvious conflict of interest as the alleged false testimony pertains to its own witnesses and because of its participation in the obtaining of the forged documents and conflicting explanations concerning who it was who provided those documents. He submits that the present situation should receive the same treatment as the one in the *Kamuhanda* case in which an *amicus curiae* was appointed.¹³

6. Under Rule 77 (A), a Chamber in the exercise of its inherent power may hold in contempt those who *knowingly and wilfully* interfere with its administration of justice.¹⁴ In

¹⁰ Nzirorera's Reply, para. 5.

¹¹ Nzirorera's Reply, para. 6.

¹² Nzirorera's Reply, para. 7.

¹³ The Defence relies upon *Kamuhanda v. Prosecutor*, Case No. ICTR-99-54A-A, Oral Decision (AC), 19 May 2005.

¹⁴ This may include any person who

- (i) being a witness before a Chamber, contumaciously refuses or fails to answer a question;
- (ii) discloses information relating to those proceedings in knowing violation of an order of a Chamber;
- (iii) without just excuse fails to comply with an order to attend before or produce documents before a Chamber;
- (iv) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness; or
- (v) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Judge or Chamber.

such circumstances where a Chamber has reason to believe that a person may be in contempt of the Tribunal, it may either direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for contempt, or 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 contempt proceedings, or the Chamber may initiate the proceedings itself.¹⁵

7. Rule 91(B) of the Rules bestows a similar discretionary power upon the Chamber when it has strong grounds for believing that a witness has *knowingly and wilfully* given false testimony.¹⁶

8. In determining whether a person can be held for contempt of the Tribunal or whether "strong grounds" exist that the witness gave false testimony, the Rules require the showing of a specific intention of the person to commit the offence.¹⁷

9. In the present case, the testimony of Witnesses HH and ALG has been challenged and many issues concerning their credibility have been raised. The Chamber also notes the admission by the Prosecution that the letters admitted as Exhibit DNG-50 are forgeries and that this admission was grounded on independent forensic enquiries. However, in the Chamber's view, at this stage, the evidentiary foundation for the allegations of the Defence does not constitute strong grounds for believing in any harmful intent of the witnesses concerned nor that their testimony results from a plan to subvert the trial as submitted.

10. Furthermore, the allegations made by Joseph Nzirorera and Mathieu Ndirumpatse concerning a conspiracy to make false accusations against them are part of their challenge to the Prosecution's case and reflect a theory that the Defence has been advocating. The Chamber, however, recalls that the burden of proof is on the Prosecution and cannot be made to shift to the Defence. The Chamber also recalls that the process is mainly adversarial and that the Rules clearly state that the relief which the Defence is seeking is discretionary.

¹⁵ Rule 77 (C).

¹⁶ Rule 91 (B): 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.

¹⁷ *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Decision on Defence Motions to Direct the Prosecutor to Investigate the Manner of False Testimony by Witness "R" (TC), 9 March 1998.

11. In view of these elements, the Chamber considers that the material before it does not require the exercise of the requested power. The interests of justice do not require or make it desirable for the Chamber to engage an investigation on a collateral exercise on the basis of the unsupported suspicions expressed by the Defence. This goes outside what is necessary for justice to be done in this case.

FOR THOSE REASONS, THE CHAMBER

DENIES the Defence Motions in their entirety.

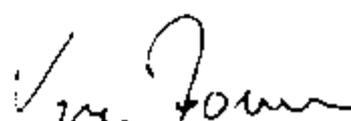
Arusha, 26 September 2007. done in English.



Dennis C. M. Byron
Presiding Judge



Gberdao Gustave Kam
Judge



Vagn Joensen
Judge

[Seal of the Tribunal]

