



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: 14 May 2008

THE PROSECUTOR

v.

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

**DECISION ON PROSECUTOR'S CONFIDENTIAL MOTION TO INVESTIGATE
BTH FOR FALSE TESTIMONY**

Rules 54 and 91(B) of the Rules of Procedure and Evidence

Office of the Prosecutor:

Don Webster
Alayne Frankson-Wallace
Iain Morley
Saidou N'Dow
Gerda Visser
Sunkarie Ballah-Conteh
Takeh Sendze
Deo Mbutu

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 Nimy Mayidika Ngimbi

INTRODUCTION

1. Witness BTH first testified as a Prosecution witness in this trial in June 2006. He was then recalled to testify in April 2008. His most recent testimony directly contradicted his prior testimony on a number of issues, including the alleged involvement of Joseph Nzirorera in events in the Mukingo *commune*, and raised a number of allegations with regard to the testimony of previous other Prosecution witnesses in these proceedings. At the conclusion of BTH's testimony, the Prosecution made an oral motion requesting the appointment of an *amicus curiae* to investigate BTH for false testimony. The Chamber requested the Prosecution to file its submissions on that matter confidentially and in writing. On 22 April 2008, the Prosecution did so¹. None of the parties dispute that in either June 2006 or April 2008 BTH has given false testimony, but they disagree on the scope of the proposed investigation.²

DELIBERATIONS

Preliminary Issues

Confidential Filings

2. The Chamber ordered the parties to file their initial submissions on this issue confidentially³. In his motion, Joseph Nzirorera requests that the filings be made public. The Chamber has reviewed the Prosecution Motion and replies of the co-Accused, and notes that none of the filings contain confidential information which may reveal the identity of protected witnesses. Consequently, the Chamber considers it appropriate to now order that these motions be re-filed publically.

Assignment of Defence Counsel

3. Joseph Nzirorera submits that Defence Counsel should be appointed for Witness BTH in the event that an investigation is initiated. Noting that the assignment of counsel for suspects and persons charged with false testimony is managed by the Registrar, and that at this stage of the proceedings, BTH is neither a suspect nor an accused, the Chamber considers that it is unnecessary to make any order for the assignment of defence counsel.

¹ Prosecutor's Motion pursuant to Rule 91 to Investigate BTH for False Testimony, filed confidentially on 22 April 2008.

² *Mémoire pour M. Ngirumpatse* à la requête du Procureur "to investigate BTH for false testimony" en date du 21 avril 2008, filed 28 April 2008; Réponse de Karemera à la requête du Procureur "Prosecutor's pursuant to Rule 91 to investigate BTH for false testimony" - filed confidentially 28 April 2008; Joseph Nzirorera's Response to Prosecutor's Motion to Investigate Witness BTH for False Testimony, filed 24 April 2008.

³ See T. 17 April 2008, p. 7 (closed session).

On the Initiation and Scope of an Investigation

4. Each of the Accused support the appointment of independent *amicus curiae* to conduct the investigation into BTH for false testimony, but differ in their view of the scope such an investigation should take. Edouard Karemera contends the investigation should extend to certain other witnesses mentioned by BTH, and should reveal the alleged payments made to Witnesses G and T. Joseph Nzirorera submits the investigation should not, at this stage, encompass other witnesses who have testified in this case. Mathieu Ngirumpatse proposes the postponement of the investigation until the Chamber has heard Defence witnesses and other evidence he intends to adduce on this issue. All of the Accused submit that any investigation must also address those who may have procured the false testimony in either June 2006 or April 2008. Edouard Karemera and Joseph Nzirorera also request examination of the alleged involvement of staff from the Office of the Prosecutor in procuring the possible false testimony in April 2008 from BTH.

5. Rule 91(B) of the Rules of Procedure and Evidence ("Rules") 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. Trial Chambers have exercised this jurisdiction on a number of occasions with reference to the constituent elements of false testimony enumerated in the *Akayesu* case.⁴

6. In this case, after being warned by the Chamber of the consequences of failing to observe his obligation to tell the truth, the witness stated under oath that he knowingly lied during his testimony under oath to the Tribunal in June 2006 as well as in other proceedings before this Tribunal. He stated that his alleged false testimony was given with the knowledge that the information he provided was critical to determining the guilt or innocence of certain accused persons before this Tribunal, including Joseph Nzirorera.⁵ He acknowledged that he knows that the persons whom he stated to have given false testimony may face prosecution.

⁴ See for example, *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; *Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, Decision on Appeals Against the Decisions by Trial Chamber I Rejecting the Defence Motions to Direct the Prosecutor to Investigate the Matter of False Testimony By Witnesses "E" And "CC" (AC), 8 June 1998, para. 9; *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.

⁵ See T. 17 April 2008, pp. 21-22, 26, 28, 30-32.

Finally, the Chamber notes that the testimony of BTH relates to material matters of the case, including the alleged involvement of Joseph Nzirorera in events in the Mukingo Commune. The Chamber is therefore satisfied that there are strong grounds for believing that Witness BTH knowingly gave false testimony in either June 2006 or April 2008. It also agrees with all parties that the provisions for requiring the Registrar to appoint an *amicus curiae* should be invoked.

7. The scope of the investigation that the Chamber is empowered to order is specifically prescribed by Rule 91(B). It is to investigate whether there are sufficient grounds for instigating proceedings for false testimony. This implies that the investigation would extend to all relevant enquiries required to determine what grounds exist for instigating proceedings for false testimony. This necessarily involves enquiring into whether the false testimony was procured or induced by others. It would not, however, allow enquiry into the conduct of witnesses not connected to the testimony of BTH. Accordingly, the Chamber considers that the conditions justifying the order for an investigation have been met, and is of the view that this investigation must necessarily address the extent to which BTH gave false testimony during June 2006 and April 2008, and the grounds for initiating proceedings against him for false testimony.

FOR THESE REASONS, THE CHAMBER

- I. GRANTS** the Prosecution Motion to order an investigation into the false testimony of BTH pursuant to Rule 91(B);
- II. DIRECTS** the Registrar to appoint an independent *amicus curiae* to investigate the false testimony of BTH in this case, in accordance with paragraph 7 above, and to report back to the Chamber and advise on the instigation of proceedings for false testimony;
- III. ORDERS** the Registrar to take the necessary steps to lift the confidential status of the filings in this matter and re-file them as public documents and to notify the parties accordingly; and
- IV. DENIES** the motions of the Prosecution and co-Accused in all other respects.

Arusha, 14 May 2008, done in English.

Dennis C. M. Byron

Gberdao Gustave Kam

Vagn Joensen

Presiding Judge

Judge

Judge

[Seal of the Tribunal]

