



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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UNITED NATIONS  
NATIONS UNIES

OR: ENG

TRIAL CHAMBER II

**Before Judges:** Khalida Rachid Khan, Presiding  
Lee Gacuiga Muthoga  
Emile Francis Short

ICTR-99-50-T  
23-07-2008  
(28138-28131)

**Registrar:** Adama Dieng

**Date:** 23 July 2008

THE PROSECUTOR  
v.  
CASIMIR BIZIMUNGU  
JUSTIN MUGENZI  
JÉRÔME-CLÉMENT BICAMUMPAKA  
PROSPER MUGIRANEZA

2008 JUL 23 1 P 3 28  
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Case No. ICTR-99-50-T

**DECISION ON DEFENCE MOTION SEEKING THE APPOINTMENT OF  
AMICUS CURIAE TO INVESTIGATE POSSIBLE FALSE TESTIMONY BY  
WITNESSES GFA, GAP AND GKB**

***Office of the Prosecutor:***

Mr. Paul Ng'arua  
Mr. Ibukunolu Babajide  
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Ms. Michelyne C. St. Laurent for Casimir Bizimungu  
Mr. Ben Gumpert and Mr. Jonathan Kirk for Justin Mugenzi  
Mr. Michel Croteau and Mr. Philippe Laroche for Jérôme-Clément Bicamumpaka  
Mr. Tom Moran and Ms. Cynthia Cline for Prosper Mugiraneza

## INTRODUCTION

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1. By Motion filed on 6 June 2008, the Defence for Bicamumpaka requests the Chamber to find that Witnesses GFA, GAP and GKB may have given false testimony, and seeks to have an investigation commenced pursuant to Rule 91(B) of the Rules of Procedure and Evidence ("Rules").<sup>1</sup> The Motion also seeks to join Justin Mugenzi's motion seeking to admit into evidence testimony given by Witness GFA in the case of *Prosecutor v. Karemera et al.*<sup>2</sup>

2. The Prosecutor objects to the Motion on the basis that an investigation into false testimony by Witness GFA is premature, that there are no grounds for investigating false testimony by Witness GAP, and that there is insufficient information to support an investigation into false testimony by Witness GKB.<sup>3</sup>

3. This Decision will address the request for an investigation into the alleged false testimonies of Witness GFA, GAP and GKB. The portion of the Motion joining the Mugenzi motion, and seeking to admit into evidence transcripts from *Karemera et al.*, will be addressed by a separate decision dealing with Mugenzi's motion, taking into account Bicamumpaka's submissions on that issue.

## DISCUSSION

### *Law on False Testimony under Rule 91(B)*

4. Rule 91 (B) provides that a Chamber may, where it "has strong grounds for believing that a witness knowingly and wilfully" gave false testimony, either direct the Prosecutor to commence an investigation with a view to preparing and submitting an indictment for false testimony; or, where, in the Chamber's view, the Prosecutor has a conflict of interest, 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.<sup>4</sup>

<sup>1</sup> *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, "Motion of Bicamumpaka Asking the Chamber to Issue an Order in Lieu of An Indictment and Appoint an Amicus Curiae to Prosecute the Matter of the Perjuries of Witnesses GFA, GAP and GKB & Joinder to Justin Mugenzi's Motion for the Trial Chamber to Exercise its Power to Admit the Transcripts of the Evidence Given in the Case of Karemera et al. by the Witness Known in the Instant Proceedings as GFA & Add Particular Conclusions to Bicamumpaka's Case," filed on 6 June 2008 ("Motion").

<sup>2</sup> Case No. ICTR-98-44-T.

<sup>3</sup> *Bizimungu et al.*, "The Prosecutor's Response to Jerome Bicamumpaka's Motion Asking the Chamber to Issue an Order in Lieu of an Indictment and appoint an Amicus Curiae to Prosecute the Matter of the Perjuries of Witnesses GFA, GAP and GKB & Joinder to Justin Mugenzi's Motion for the Trial Chamber to Exercise its Power to Admit the Transcripts of the Evidence Given in the Case of Karemera et al. by the Witness Know in the Instant Proceedings as GFA & Add Particular Conclusions to Bicamumpaka's Case", filed on 16 June 2008.

<sup>4</sup> Rule 91 (C) further states: "If the Chamber considers that there are sufficient grounds to proceed against a person for giving false testimony, the Chamber may: (i) in the circumstances described in paragraph (B) (i),



5. False testimony may be defined as a false statement given under oath, and it can consist of either an affirmation of a false fact or a negation of a true fact.<sup>5</sup> There are, therefore, four elements to giving false testimony:

- 1) the witness must have made a solemn declaration,
- 2) the false statement must be contrary to the solemn declaration,
- 3) the witness must have believed the statement was false at the time that the statement was made,
- 4) there must be a relevant connection between the statement and a material issue in the case.<sup>6</sup>

6. Perjury is a deliberate act, which requires that the witness willingly and knowingly gave false testimony, with the intent to mislead the judge and thereby to cause harm. Thus, the onus is on the party who is asserting that a witness has given false testimony to prove that the statements made by the witness were false; that the statements were made with harmful intent, or at least with the knowledge that they were false; and that there is a possibility that the statements will have some bearing on the Chamber's decision.<sup>7</sup>

7. Mere inconsistencies are not sufficient for an investigation into false testimony, but rather, can be taken into account by the Chamber when assessing the credibility of the witness, and the overall probative value of the evidence given by the witness at trial.<sup>8</sup>

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direct the Prosecutor to prosecute the matter, or (ii) in the circumstances described in paragraph (B) (ii), issue an order in lieu of an indictment and direct *amicus curiae* to prosecute the matter."

<sup>5</sup> *Prosecutor v. Jean Paul Akayesu*, Case No. ICTR-96-4-T, Decision on the Defence Motions to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness "R", 9 March 1998, ("Decision on False Testimony") p. 3; *Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, Decision on the Defence Motion to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness "E", 10 March 1998 ("Decision on False Testimony by Witness 'E'"), p. 3

<sup>6</sup> *Akayesu*, Decision on False Testimony, p. 3; *Rutaganda*, Decision on False Testimony by Witness "E," p. 3; *Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-T, Decision on the Request of the Defence for the Chamber to Direct the Prosecutor to Investigate a Matter with a View to the Preparation and Submission of an Indictment for False Testimony, 11 July 2000, p. 3; *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, 3 October 2003, para. 8

<sup>7</sup> *Akayesu*, Decision on False Testimony, pp. 3-4; *Rutaganda*, Decision on False Testimony by Witness "E," p. 4; *Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-T, Decision on the Request of the Defence for the Chamber to Direct the Prosecutor to Investigate a Matter with a View to the Preparation and Submission of an Indictment for False Testimony, 11 July 2000, p. 3

<sup>8</sup> *Akayesu*, Decision on False Testimony, p. 4; See also *Rutaganda*, Decision on False Testimony by Witness "E" and *Rutaganda*, Decision on the Defence Motion to Investigate the Matter of False Testimony by Witness "CC": The Chamber held in both instances that raising doubts as to the reliability of a witness's testimony is insufficient to establish strong grounds that a witness may have given false testimony, but that possible contradictions and inaccuracies in a witness's testimony could be raised during the evaluation of credibility and probative value of the evidence given at trial; *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Defence Motion for Investigation of Prosecution Witness HH for False Testimony, 26 September 2007 para.4; *Karemera et al.*, Decision on Defence Motion for Investigation of Prosecution Witness Ahmed Mbonnyunkiza for False Testimony, 29 December 2006, para. 7.



Are there Sufficient Grounds to Commence an Investigation Pursuant to Rule 91(B)?

1) WITNESS GFA

8. Witness GFA testified as a Prosecution witness in these proceedings on 11, 12 and 13 October, 2004.<sup>9</sup> He has also appeared as a witness for the Prosecution in other cases, including *Karemera et al.*

9. In 2007, Witness GFA sent a letter addressed to the President of the Tribunal, dated 21 August 2007, in which he stated that he had given testimony against certain accused persons, including Jérôme-Clément Bicamumpaka, and that he wanted to meet with their legal counsel.<sup>10</sup> The Chamber granted the Defence for Bicamumpaka permission to meet with Witness GFA in the presence of counsel from the Prosecutor's office and a representative from WVSS.<sup>11</sup> This meeting took place on 8 February 2008.<sup>12</sup>

10. During the meeting, Witness GFA told the Defence, in the presence of the Prosecutor and the WVSS representative, that he had given false testimony against Mr. Bicamumpaka before the Chamber in these proceedings. He stated that he did not know Mr. Bicamumpaka, and that he had not attended a meeting regarding the installation of the *Préfet* and did not know, therefore, what was said at that meeting.<sup>13</sup> Witness GFA also stated that he, and other prisoners at Ruhengeri prison, had agreed about their proposed testimonies so that their stories would corroborate one another.<sup>14</sup>

11. Following that meeting, and on the basis of further material presented before the Chamber, the Chamber ordered the recall of GFA for further cross-examination on the issue of his false testimony.<sup>15</sup>

12. In March 2008, the *Karemera et al.* Chamber issued a similar order for the further cross-examination of the same witness on the issue of false testimony.<sup>16</sup> Pursuant to that order, the Witness gave further testimony before the *Karemera et al.* Chamber in April 2008. The Defence submits that, during this further testimony, Witness GFA also

<sup>9</sup> *Bizimungu et al.*, T., 11-13 October, 2004.

<sup>10</sup> Motion, Annex "A".

<sup>11</sup> *Bizimungu et al.*, Decision on Jerome-Clement Bicamumpaka's Motions to Meet With Prosecution Witnesses GFA and GKB, 5 December 2007.

<sup>12</sup> Motion, Annex "B", Transcripts of GFA's Meeting with Bicamumpaka Defence team in presence of Prosecutor, 8 April 2008. ("GFA Meeting T.")

<sup>13</sup> GFA Meeting T., DVD 1, pp. 22-25

<sup>14</sup> GFA Meeting T., DVD 2, pp. 6-8. *See generally*, Motion, Annex "B": GFA also said in this meeting that he lied about having been at roadblocks, about having received military training, about attending certain meetings, and about having killed one or more persons. He denied having participated in any of these activities.

<sup>15</sup> *Bizimungu et al.*, Decision on Jérôme-Clément Bicamumpaka's Motion Requesting a Recall of Prosecution Witness GFA; Disclosure of Exculpatory Materials; and to Meet with Witnesses GFA ("Recall Decision"), 21 April 2008.

<sup>16</sup> *Prosecutor v. Karemera et al.*, Case No ICTR-98-44-T, Decision on Joseph Nzirorera's Motion to Recall Prosecution Witness BTH, 12 March 2008.



confirmed, under oath, that he gave false testimony against the Accused Bicamumpaka, before this Chamber.<sup>17</sup>

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13. Witness GFA appeared before this Chamber on 28 and 30 April, and 5 May 2008, pursuant to the Chamber's Recall Decision. The Chamber asked the Witness several times to swear an oath prior to receiving further testimony from him, but he evaded doing so.<sup>18</sup> On 6 May 2008, the Chamber requested that GFA be brought before it again in relation to his further testimony. However, it was advised by the Witnesses and Victims Support Section ("WVSS") that the Witness had absconded.<sup>19</sup> The Chamber issued a subpoena compelling the attendance of GFA before it, and instructed the Registrar to execute the subpoena in liaison with the relevant State authorities.<sup>20</sup> To date, the subpoena remains unexecuted.

14. The Trial Chamber in the case of *Karemera et al.* recently decided that the Witness known as GFA in this case should be investigated in relation to the allegation of having given false testimony in those proceedings.<sup>21</sup> In *Karemera et al.*, the Witness stated under oath that he knowingly lied during his testimony before the Tribunal in that case and in other proceedings.<sup>22</sup>

15. The Chamber considers that there are strong grounds to believe that Witness GFA may have willingly and knowingly given false testimony with the intent to mislead the Chamber and cause harm. The Chamber is also satisfied that the allegedly false statements could have some bearing on the ultimate disposition of the case. Since GFA was a Prosecution witness in these proceedings, the Chamber considers it appropriate to appoint *amicus curiae* to investigate the matter and report back to the Chamber.

## II) WITNESS GAP

16. Witness GAP testified, as a witness for the Prosecution, before this Chamber on 19, 20, 21, and 23 January 2004.<sup>23</sup>

17. The Defence submits that Witness GAP made two false allegations against Mr Bicamumpaka. According to the Defence, the first false allegation is that the Accused was at a swearing-in ceremony of one Basile Nsabumugisha, where the Accused is said

<sup>17</sup> Motion, para. 22. See generally, *Karemera et al.* T. 10-17 April 2008 (Witness GFA appeared before the Chamber in *Karemera et al.* between 10 and 17 April, 2008 to recant his previous testimony from 2006). See *Karemera et al.*, T. 10 April 2008; *Karemera et al.*, T. 14 April 2008 (Witness GFA, also known as BTH, stated that the evidence he had given against Mr. Bicamumpaka was false).

<sup>18</sup> See, *Bizimungu et al.*, T. 5 May 2008, p. 54, ln. 9, requesting GFA to swear an oath; T. 5 May 2008, p. 58, ln. 3-4, GFA refuses to swear an oath; T. 30 April 2008, p. 21, ln. 28, requesting GFA to swear an oath; T. 29 April 2008, pp. 59-60, GFA requests time to decide if he will testify; the Chamber grants that request.

<sup>19</sup> See, *Bizimungu et al.*, T. 6 May 2008, pp. 35, 37-40.

<sup>20</sup> T. 21 May 2008, pp. 28-30 (Oral Ruling). The Motion was generally supported by Mugenzi's co-Accused, but was opposed by the Prosecutor.

<sup>21</sup> *Karemera et al.*, Decision on Prosecutor's Confidential Motion to Investigate BTH for False Testimony, 14 May 2008 ("BTH Decision"). Witness BTH is known in this proceeding as Witness GFA.

<sup>22</sup> BTH Decision, para 6, citing T. 17 April 2008, pp. 21-22, 26, 28, 30-33.

<sup>23</sup> *Bizimungu et al.*, T., 19-23 January 2004.

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to have incited genocide.<sup>24</sup> The Defence asserts that the second false allegation is that Mr. Bicamumpaka was "present at a ceremony involving Kajelijeli, in Ruhengeri on 5 May 1994, and that he was present at a meeting in Mukigo Commune that took place sometime between 10 and 20 May 1994."<sup>25</sup> The Defence submits that Witness GAP gave the allegedly false testimony on 20 and 23 January 2004.

18. The Defence asserts that the statements of Witness GAP are false because: i) according to documentary evidence presented to the Chamber, Mr. Bicamumpaka was not in Rwanda at the relevant time; ii) Witness GAP did not mention the Accused in statements made prior to March 2003; iii) the testimony of Basile Nsabumugisha contradicts the testimony of Witness GAP; and iv) Witness GFA has identified Witness GAP as one of the persons with whom he invented stories.<sup>26</sup>

19. In light of the fact that Witness GFA's credibility has been called into question, the Chamber will not rely on his statement to support allegations that another witness may have lied.

20. The documentary evidence presented at trial, which contradicts the witness's testimony, does not provide a sufficient basis for commencing an investigation into false testimony by the witness.<sup>27</sup> Contradictory evidence often arises in the course of criminal proceedings, and is relevant to the overall probative value of the evidence provided.<sup>28</sup> It has been held, in various cases before this Tribunal, that contradictions and inconsistencies related to a witness's testimony are not sufficient grounds for an investigation into false testimony, but are to be taken into account when assessing the credibility of the witness and the overall probative value of the witness's testimony.<sup>29</sup>

21. The Chamber is not satisfied that the Defence has demonstrated that there are strong grounds to believe that Witness GAP, willingly and knowingly, gave false testimony with the intent to mislead the Chamber.

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<sup>24</sup> Motion, para 28.

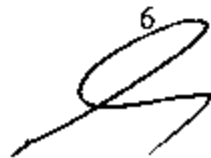
<sup>25</sup> Motion, para. 29.

<sup>26</sup> Motion, paras. 30-35. The Defence submits that the allegations against Mr. Bicamumpaka by GFA and GKP both arose only in March 2003. At paragraph 57 of the Motion, the Defence alleges that there is "a very troubling system of fabrication of false evidence against some of the accused in this case."

<sup>27</sup> *Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-T, Decision on the Request of the Defence for the Chamber to Direct the Prosecutor to Investigate a Matter with a View to the Preparation and Submission of an Indictment for False Testimony ("Bagilishema Decision"), 11 July 2000, para.6

<sup>28</sup> Bagilishema Decision, para. 7

<sup>29</sup> *Akayesu*, Decision on False Testimony, p. 4.; See also *Rutaganda*, Decision on False Testimony by Witness "E" and *Rutaganda*, Decision on the Defence Motion to Investigate the Matter of False Testimony by Witness "CC"; *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Defence Motion for Investigation of Prosecution Witness HH for False Testimony, 26 September 2007 para.4; *Karemera et al.*, Decision on Defence Motion for Investigation of Prosecution Witness Ahmed Mbonyunkiza for False Testimony, 29 December 2006, para.7; Bagilishema Decision, para. 7.

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III) WITNESS GKB

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22. Witness GKB testified before this Chamber as a witness for the Prosecution on 8, 10, 12, and 15 December 2003.<sup>30</sup>

23. The Defence alleges that Witness GKB gave false testimony when he testified on 10 December that the Accused Bicamumpaka was present at a location described as the Kajelijeli installation on an unknown date.<sup>31</sup> The Defence suggests that GKB, GAP and GFA may have fabricated stories when they were together at the same prison.<sup>32</sup>

24. According to a written statement from Mr. Peter Robinson, lead counsel for Mr. Joseph Nzirorera, Witness GKB told Mr. Robinson that he lied when he gave evidence against Mr. Nzirorera in *Karemera et al.*,<sup>33</sup> and when he gave evidence in the present proceedings.<sup>34</sup>

25. In his statement, Mr. Robinson says that he met with Witness GKB at the Witness's request, and that at this meeting, Witness GKB said that he had given false information about Joseph Nzirorera to the investigators from the Tribunal, as well as false evidence in the present proceedings. Mr. Robinson further states that Witness GKB showed him a letter, hand-written in Kinyarwanda and translated by the investigator for Nzirorera who had accompanied Counsel to the prison, in which Witness GKB apparently apologized to the ICTR for making false accusations against Nzirorera and for giving false testimony against Casimir Bizimungu. In his statement, Mr. Robinson says that Witness GKB refused to give him the letter since he declined Witness GKB's request for payment.<sup>35</sup>

26. The Defence for Bicamumpaka says it met with Witness GKB on 25 January 2008, and that at that meeting, Witness GKB disputed the contents of Mr. Robinson's statement.<sup>36</sup>

27. The Chamber is not satisfied that the detention of Witnesses GFA and GKB in the same prison is sufficient grounds for believing that GKB has given false testimony against Mr. Bicamumpaka. Furthermore, Mr. Robinson's statement makes no reference to Mr. Bicamumpaka, and Witness GKB denied, in a recorded interview, that he gave false testimony against the Accused Bicamumpaka.

28. The Chamber recalls that in order to exercise its discretion under Rule 91 (B), it must have strong grounds for believing that a witness, knowingly and wilfully, gave false

<sup>30</sup> *Bizimungu et al.*, T., 8 - 15 December 2003.

<sup>31</sup> Motion, para. 47.

<sup>32</sup> Motion, para. 54. As well, at paragraphs 32 and 33 of the Motion, the Defence suggests that GAP, GKP, and GFA spent time together at the Ruhengeri prison and that GAP "invented stories" with GFA.

<sup>33</sup> Case No., ICTR-98-44-T.

<sup>34</sup> *Bizimungu et al.*, "Joseph Nzirorera's Notice of False testimony", filed 26 September 2007, and filed again as Annex "C" to the Motion on 9 June 2008.

<sup>35</sup> Motion, Annex "C".

<sup>36</sup> Motion, Confidential Annex "D", DVD Recording of Witness GKB Interview: At this interview, Witness GKB explained that during his meeting with Mr. Robinson, there was some problem with the translation, and that he did not agree with what the translator was telling Mr. Robinson.



testimony. The apparently inconsistent statements given to Counsel for Nizirorera and Counsel for Bicamumpaka may raise issues concerning Witness GKB's credibility in these proceedings. However, the Chamber is not satisfied that there are strong grounds to believe that Witness GKB has given false testimony against Mr. Bicamumpaka with intent to mislead the Chamber.

### CONCLUSION

29. The Chamber is not satisfied that there are strong grounds for believing that Witnesses GAP and GKP may have given false testimony. However, the Chamber considers that it has strong grounds for believing that Witness GFA may have, knowingly and willfully, given false testimony before this Chamber.

30. The Chamber notes that since the Trial Chamber in the case of *Karemera et al.* recently directed the Registrar to appoint an *amicus curiae* to investigate the Witness known as GFA in this case in relation to the allegation of having given false testimony in those proceedings, it might be prudent for the Registrar to join the investigation in this case to the investigation in *Karemera et al.*<sup>37</sup>

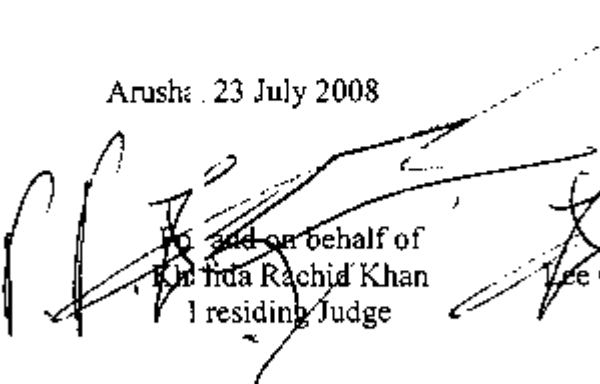
**FOR THESE REASONS** the Chamber

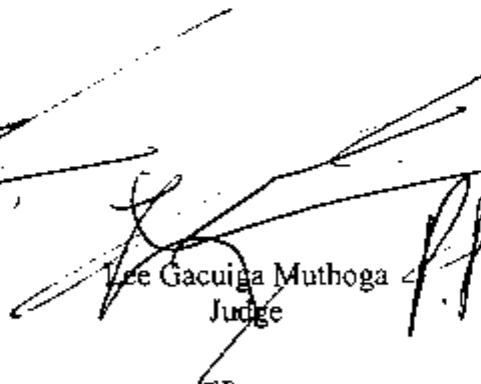
**GRANTS** the Defence Motion, in part; and

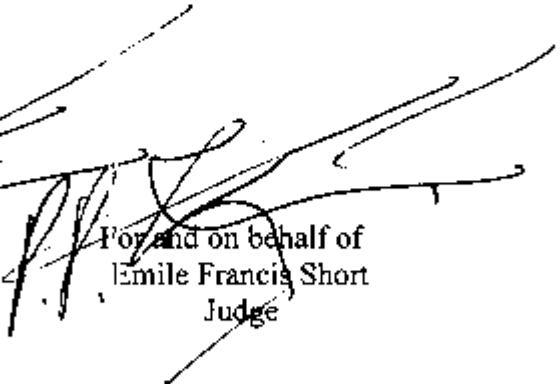
**DENIES** the Defence Motion with respect to Witnesses GAP and GKP; and hereby

**DIRECTS** the Registrar, pursuant to Rule 91 (B), to appoint an *amicus curiae* to investigate whether there are sufficient grounds for instigating proceedings for false testimony against the Witness known in the present case as GFA, and to report back to the Chamber as soon as practicable.

Arusha, 23 July 2008

  
For and on behalf of  
Khuda Rachid Khan  
Residing Judge

  
Lee Gacuga Muthoga  
Judge

  
For and on behalf of  
Emile Francis Short  
Judge

ICTR Tribunal  
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<sup>37</sup> BTH Decision.