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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding  
Judge Arlette Ramaroson  
Judge Solomy Balungi Bossa

Registrar: Mr. Adama Dieng

Date: 7 November 2008

The PROSECUTOR v. Arsène Shalom NTAHOBALI  
Case No. ICTR-97-21-T

*Joint Case No. ICTR-98-42-T*

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DECISION ON NTAHOBALI'S MOTION FOR AN INVESTIGATION RELATIVE  
TO FALSE TESTIMONY AND CONTEMPT OF COURT

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*[Handwritten signature]*

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (the "Tribunal"),

**SITTING** as Trial Chamber II composed of Judges William H. Sekule, Presiding, Arlette Ramaroson and Solomy Balungi Bossa (the "Chamber");

**BEING SEIZED** of the Defence for Ntahobali's Oral Motion of 30 October 2008 and of the "Submissions of Arsène Shalom Ntahobali in Favour of an Investigation Relative to False Testimony and Contempt of Court (Section 91, RPF)," filed confidentially on 3 November 2008 ("the Motion");

**CONSIDERING** the:

- i. "Prosecutor's Response to the Submissions of Arsène Shalom Ntahobali in Favour of an Investigation Relative to False Testimony and Contempt of Court" filed confidentially on 5 November 2008 ("Prosecution's Response");
- ii. "*Représentations de Joseph Kanyabashi suite aux soumissions d'Arsène Shalom Ntahobali demandant qu'une enquête soit effectuée pour faux témoignage et outrage au Tribunal en vertu de l'article 91 RPP*" filed confidentially on 5 November 2008 ("Kanyabashi's Submissions");
- iii. "Reply by Arsène Shalom Ntahobali to Prosecution Response in Favour of an Investigation Relative to False Testimony and Contempt of Court," filed confidentially on 7 November 2008 ("Ntahobali's Reply");

**CONSIDERING** the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules");

**NOW DECIDES** the Motion pursuant to Rules 77 and 91 of the Rules on the basis of the written submissions of the Parties.

**INTRODUCTION**

1. Prosecution Witness QA first testified in this trial on 18, 22 and 23 March 2004. He was recalled for further cross-examination on 29 and 30 October 2008 pursuant to a defence request. During his October 2008 testimony, Witness QA admitted to having lied during his previous testimony of March 2004. On 30 October 2008, the Defence for Ntahobali orally submitted that the Chamber should order an investigation relative to false testimony and contempt of court regarding Prosecution Witness QA. The Chamber directed the Defence to file submissions in support of the oral Motion in writing by Monday 3 November 2008 specifically addressing the scope of the investigation, and any response by 5 November 2008.

**SUBMISSIONS OF THE PARTIES**

*Ntahobali's Motion*

2. The Defence requests the Chamber to order an investigation against Witness QA for false testimony; an investigation for contempt of court against three individuals under Rules 8 and 91 of the Rules; an investigation of these individuals and representatives of the Office of the Prosecution into allegations of influence over Witness QA and other witnesses.



3. The Defence recalls that Prosecution Witness QA admitted to: having falsely testified before the ICTR when appearing before the Canadian Court on Rogatory Commission on 12 and 13 May 2008 held in Dar es Salaam in the case of Désiré Munyaneza;<sup>1</sup> having lied in previous sworn testimonies in meetings with ICTR Prosecutors on 14 and 15 May 1996<sup>2</sup>; having lied in interviews with the Canadian police in 2003.<sup>3</sup>

4. The Defence submits that Witness QA testified that *Ibuka* members, a *conseiller de secteur* and Rwandan authorities prompted him to lie to Prosecution investigators in 1996 and that meetings were set up to prepare this false testimony.<sup>4</sup> Some Rwandan authorities exercised political influence over the Witness, promised him money and immigration papers.<sup>5</sup> The Defence further submits that Witness QA admitted to being bribed by Rwandan authorities to give false testimony against Munyaneza, Nsabimana and Kanyabashi.<sup>6</sup>

5. Therefore, the Defence argues that by way of intimidation, fear or bribery, Witness QA's admission to having knowingly given false testimony amounts to contempt of court. False testimony under solemn declaration and contempt of court are grave offences that directly challenge the integrity of the proceedings.

6. The Defence submits that an independent *amicus curiae* be appointed to investigate Witness QA and that the investigation cover:

- The statement that Witness QA gave to Prosecution investigators in 1996 and the circumstances under which the statement was given;
- The alleged threats and payment promised to Witness QA;
- Three Rwandan authorities identified in the confidential Motion for intimidating and bribing witnesses;
- The extent to which Rwandan authorities or these individuals provided other witnesses to the OTP, whether other witnesses faced similar intimidation and the impact of any affected testimony on Ntahobali;
- The revelation that Rwandan authorities have threatened and/or incited witnesses through bribes or intimidation to testify falsely at the ICTR against Ntahobali or his co-accused.

7. The Defence argues that the Prosecution should not conduct the investigation because, among other reasons, Witness QA was called by the Prosecution and the investigation would necessarily cover the Prosecution's dealings with the Witness.

<sup>1</sup> The Defence quotes the draft transcripts of 29 October 2008 p. 13.

<sup>2</sup> The Defence quotes the draft transcripts of 29 October 2008 p. 6.

<sup>3</sup> The Defence quotes the draft transcripts of 29 October 2008 p. 10.

<sup>4</sup> The Defence quotes the draft transcripts of 29 October 2008 p. 6.

<sup>5</sup> The Defence quotes the draft transcripts of 29 October 2008 p. 11.

<sup>6</sup> The Defence quotes the draft transcripts of 29 October 2008 pp. 11 and 13.



8. The Defence argues that the Chamber should act according to Rules 91(B)(ii), 54 and 8 of the Rules and that any report and any relevant document forming part of the investigation should be transmitted to the Defence.

***Prosecution's Response***

9. The Prosecution does not take issue with the Defence submission contained in paragraphs 3 to 6 of the Motion but the Prosecution also premises his response on Rule 77(D) of the Rules.

10. The Prosecution submits that it appears that the Witness is the one who asked for money in relation to the trial of Désiré Munyaneza. The Prosecution further submits that the Witness's testimony that he had been coerced by three individuals was not conclusive. Therefore, the Prosecution does not agree that the Rwandan authorities influenced and coerced Witness QA to give false testimony. The Witness also testified that none of the three individuals that he mentioned physically threatened him after he testified at the Tribunal.

11. The Prosecution submits that the scope of the investigation should include:

- Whether QA lied to the ICTR investigators in May 1996;
- Whether QA lied to the ICTR in March 2004, whether there were any threats, payments or inducements made or offered by anyone for Witness QA to lie to the investigators in 1996 or to the Trial Chamber in 2004;
- If so, whether there were any threats, payments or inducements made or offered by anyone for Witness QA to lie about his ICTR statements and testimony during the Munyaneza Rogatory Commission in May 2008;
- Whether the three individuals mentioned by Witness QA threatened, offered payments or other inducements to QA to incite him to give a false testimony to the ICTR investigators and to the ICTR.

12. The Prosecution opposes a general investigation into other witnesses and into the fact that the "Rwandan authorities" have threatened and/ or incited witnesses through bribes.

13. The Prosecution agrees that the Chamber should appoint an independent investigator or *amicus curiae* pursuant to Rules 91(B) and 77(D) to investigate whether there are sufficient grounds for instigating proceedings for false testimony against Witness QA and for contempt of court. However, the Prosecution objects to the Defence asking for the report and relevant documents before the Prosecutor or the Chamber.

***Kanyabashi's submissions***

14. The Defence submits that Rule 91(B) is only aimed at the person the Chamber has good reason to believe has knowingly and voluntarily given false testimony. Therefore this Rule can only be applied to order an investigation into Witness QA for false testimony. The Defence recalls that Witness QA, during his testimony on recall, explained that a Hutu who refuses to comply with summonses could be seen to qualify as a *génocidaire*, which could potentially result in imprisonment. On numerous occasions in the past, the witness has made his fears of those who pressured him known.

15. The Defence underscores that all consequences implied by a charge of false testimony must be taken into consideration. These would include the risk of discouraging, in the future, those who had given false testimony from coming forward to rectify the situation before the Chamber and to ask for a pardon.

16. The Defence further submits that the request of an investigation into the three named individuals for contempt of court is properly based in Rules 77(A)(iv) and 77(B). The Defence submits that the people responsible for manipulation should be the subject of particular attention with regard to any step taken or investigation conducted to uncover conduct meant to impede the course of justice.

17. Finally, the Defence submits that if the Chamber believes that it is in the interests of justice to order investigations, the Prosecutor is not in a position to lead them and that an *amicus curiae* should be appointed pursuant to Rule 91(B)(ii).

#### *Ntahobali's Reply*

18. The Defence for Ntahobali clarifies that the investigation should not be directed on the fact that Witness QA lied to the Chamber in 2004 as on the fact that he admitted such lie under oath. The Defence agrees with the Prosecution invocation of Rule 77(D). However, the Defence strongly disagrees with the Prosecution submissions that Witness QA did not experience intimidation or fear for his personal security and denial that three Rwandan persons coerced him into making false testimony. The Defence clarifies that no suggestion of impropriety was made with regard to Prosecution staff.

#### DELIBERATIONS

19. Rule 91(B) of the 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 had occasions to consider the elements of false testimony enumerated in the *Akayesu* case.<sup>7</sup>

20. False testimony which is given knowingly and wilfully includes the following four elements:

- 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,

<sup>7</sup> *Prosecutor v. 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. 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; *Prosecutor v. Karemera et al.*, Decision on Prosecutor's Confidential Motion Pursuant to Rules 54 and 91(B) to Investigate BTH for False Testimony, 14 May 2008, para. 5.

4) There must be a relevant connection between the statement and a material issue in the case.<sup>8</sup>

21. The Chamber accepts that "the giving of false testimony before the Court, as well as the interference with the testimony of other witnesses who may appear before the Court, are unacceptable practices, both for the impact that they have on the trial as well as the impact that they have on the Tribunal's mission to seek justice and establish the truth."<sup>9</sup>

22. Based on the 29 and 30 October 2008 proceedings, the Chamber has reason to believe that there may have been attempts to pervert the course of justice in the form of false testimony and the solicitation of false testimony, both of which are specifically prohibited by Rules 91 and 77 of the Rules. Indeed, Witness QA testified on 29 October 2008 that he testified falsely during his appearance before this Trial Chamber in March 2004. He further testified that he had been incited by certain individuals to falsely testify against Kanyabashi after these individuals promised him money and threatened him.

23. The Chamber therefore considers that there are strong grounds to believe that Witness QA may have willingly and knowingly given false testimony in March 2004 and/or October 2008 with the intent to mislead the Chamber. The Chamber is satisfied that the alleged false testimonies could have some bearing on the ultimate disposition of the case.

24. Accordingly, the Chamber considers that the conditions justifying the order for an investigation have been met. The Chamber is of the view that this investigation must necessarily address whether Witness QA gave false testimony, whether Witness QA was incited to give false testimony and who incited the Witness to give false testimony, giving consideration to his testimony:

- During the March 2004 proceedings at the Tribunal;
- Before the Canadian Rogatory Commission in May 2008;
- During the October 2008 proceedings at the Tribunal.

25. However, the Chamber considers that there is no legal basis for the investigation to cover the general allegation that the Rwandan authorities or that these individuals provided other unidentified witnesses to the Prosecution or the general allegation that Rwandan authorities have threatened and/or incited witnesses through bribes or intimidation to testify falsely at the ICTR against Ntahobali or his co-accused. Indeed, while Rule 91(B) empowers the Chamber to order an investigation to determine whether the false testimony was procured or induced by others, it does not allow enquiry into the conduct of witnesses not connected to the testimony of the witness being specifically investigated.<sup>10</sup>

26. With respect to the Defence allegations of contempt, the Chamber notes that Rule 77(A)(iv) provides that the Tribunal may hold in contempt those who knowingly and wilfully interfere with the administration of justice, including any person who threatens, intimidates, causes an 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.

<sup>8</sup> *Prosecutor v. Bizimungu et al.*, Decision on Defence motion seeking the appointment of Amicus Curiae to investigate possible false testimonies by Witnesses GFA, GAP AND GKB, 23 July 2008, para. 5.

<sup>9</sup> *Kamuhanda v. the Prosecutor*, Appeals Hearing, T. 19 May 2006.

<sup>10</sup> *Prosecutor v. Karemera et al.*, Decision on Prosecutor's Confidential Motion Pursuant to Rules 54 and 91(B) to Investigate BTH for False Testimony, 14 May 2008, para. 7.

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Therefore, the Chamber considers that the allegations of intimidation and bribery related by Prosecution Witness QA should be investigated under Rule 77, with respect to his appearances;

- During the March 2004 proceedings at the Tribunal;
- Before the Canadian Rogatory Commission in May 2008;
- During the October 2008 proceedings at the Tribunal.

27. The Chamber considers that since Witness QA was a Prosecution witness in these proceedings, it is appropriate to appoint *amicus curiae* to investigate the false testimony and the three specific individuals identified in the Motion who may have attempted to interfere with Witness QA's evidence in proceedings before this Tribunal. Therefore, the Chamber directs the Registrar to appoint an independent *amicus curiae* to investigate the allegations of false testimony and contempt and to report back to the Chamber as to whether there are sufficient grounds for instigating proceedings on these grounds pursuant to Rules 91 (B)(ii) and 77(C)(i) of the Rules.

**FOR THE ABOVE REASONS, THE TRIBUNAL**

**GRANTS** the Motion in part:

**ORDERS** an investigation into the false testimony of Prosecution Witness QA pursuant to Rule 91(B), giving consideration to his testimony;

- During the March 2004 proceedings at the Tribunal;
- Before the Canadian Rogatory Commission in May 2008;
- During the October 2008 proceedings at the Tribunal;

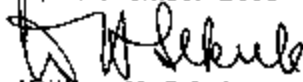
**ORDERS** an investigation into the allegations of intimidation and bribery related by Prosecution Witness QA pursuant to Rule 77 with respect to his appearances:

- During the March 2004 proceedings at the Tribunal;
- Before the Canadian Rogatory Commission in May 2008;
- During the October 2008 proceedings at the Tribunal.


**DIRECTS** the Registrar pursuant to Rules 91 and 77 of the Rules to appoint an independent *amicus curiae* to investigate the false testimony of Witness QA and the related allegations of contempt and to report back to the Chamber as soon as practicable and advise whether there are sufficient grounds for instigating proceedings for false testimony and for contempt;

**DENIES** the Motion in all other respects.

Arusha, 7 November 2008

  
William H. Sekule  
Presiding Judge

  
Arlette Ramaroson  
Judge

  
Solomy Balungi Bossa  
Judge

[Seal of the Tribunal]