



ICTR-98-42-T  
19-03-2009  
(13292-13293)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

13298  
PM

OR: ENG

**TRIAL CHAMBER II**

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

Registrar: Mr. Adama Dieng

Date: 19 March 2009

Judicial Chamber II  
2009 MAR 19 A 11:35

**The PROSECUTOR v. Pauline NYIRAMASUHUKO *et al.*,**

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

**DECISION ON NTAHOBALI'S MOTION FOR AN INVESTIGATION INTO FALSE  
TESTIMONY AND KANYABASHI'S MOTION FOR AN INVESTIGATION INTO  
CONTEMPT OF COURT RELATIVE TO PROSECUTION WITNESSES QY AND SJ**

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**Counsel for Ndayambaje**

Mr. Pierre Boulé  
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**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 SEISED** of Ntahobali’s oral Motion to order an investigation against Prosecution Witnesses QY and SJ for false testimony (“Ntahobali’s Motion”) and Kanyabashi’s oral Motion for contempt of court (“Kanyabashi’s Motion”) argued on 24 February 2009;

**CONSIDERING** the Responses of the Prosecution and of the Co-Accused also argued on 24 February 2009;

**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 oral submissions of the Parties.

### INTRODUCTION

1. Prosecution Witnesses QY<sup>1</sup> and SJ<sup>2</sup> testified before this Chamber in 2003 and 2002 respectively. They also testified in the trial of Désiré Munyaneza held in Canada on 4 and 5 April 2007 (Witness QY) and 6 June 2007 (Witness SJ). On 10 April 2006, Prosecution Witness QY was recalled for further cross-examination in this trial.<sup>3</sup> On 23 and 24 February 2009, Prosecution Witnesses QY and SJ were recalled for further cross-examination in this trial.<sup>4</sup>

### SUBMISSIONS OF THE PARTIES

#### *The Defence*

2. The Defence for Ntahobali submits that following Prosecution Witnesses QY’s and SJ’s testimonies heard on 23 and 24 February 2009, it moves the Chamber to order an investigation against these two witnesses for false testimony pursuant to Rule 91. The remaining Defence Teams support the Motion.

3. The Defence for Nyiramasuhuko submits that since some staff of the Witness and Victim Support Section (the “WVSS”) and of the Office of the Prosecutor (the “OTP”) might be involved in this matter, the investigation should be entrusted to an independent body. The Defence indicates that the issue at stake in the instant case is similar to that in the case of Prosecution Witness QA.

<sup>1</sup> Prosecution Witness QY testified on 19, 20, 24, 25 and 26 March 2003.

<sup>2</sup> Prosecution Witness SJ testified on 28, 29 and 30 May 2002; 3, 4 and 5 June 2002.

<sup>3</sup> *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, “Decision on Ntahobali’s Strictly Confidential Motion to Recall Witnesses TN, QBQ and QY, for Additional Cross-Examination”, 3 March 2006.

<sup>4</sup> *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, “Decision on Ntahobali’s Motion for Exclusion of Evidence or for Recall of Prosecution Witnesses QY, SJ and Others”, 3 December 2008.

4. The Defence for Nteziryayo relies on the *Rutaganda* Appeals Judgement of 26 May 2003 and argues that it has been shown in the current case that Prosecution Witnesses QY and SJ gave false testimony as they deliberately decided to mislead the Judges.

5. The Defence for Nsabimana indicates that neither Prosecution Witness QY nor Prosecution Witness SJ was forced to give false testimony. Opening an investigation into false testimony in the present case has a bearing on the credibility of the Tribunal itself.

6. The Defence for Kanyabashi underscores that it is well demonstrated that lies have been told in the current case. It further suggests that the investigation should be entrusted to a body independent from the OTP and WVSS staff. The Defence indicates that those who might have incited Prosecution Witnesses QY and SJ to give false testimony should also be the subject to an investigation pursuant to Rule 77.

7. The Defence for Ndayambaje argues that an independent investigation should be carried out. It further indicates that the false testimony resulted in the violation of the rights of the Accused provided for by Article 20 of the Statute and Rule 90 (G), as the right of the Accused to cross-examine Prosecution Witnesses QY and SJ was restricted. These two witnesses denied their knowledge of certain persons during their previous appearance before the Chamber preventing the Defence from further questioning them in this respect.

#### ***The Prosecution***

8. The Prosecution opposes the Motion and argues that Prosecution Witnesses QY and SJ did not intend to mislead the Chamber while testifying. They told untruths under constraint and false testimony cannot be established in such a case.<sup>5</sup> The Prosecution further relies upon the *Bagosora et al.* Decision of 3 October 2003<sup>6</sup> and submits that Prosecution Witnesses QY's and SJ's alleged false testimony does not concern a matter material to the case justifying an investigation under Rule 91.

9. The Prosecution argues that Prosecution Witness QA's case was different in that the latter knowingly and wilfully misled the Chamber. To emphasise the difference between Prosecution QA's case and that of Prosecution Witnesses QY and SJ, the Prosecution relies upon the *Bizimungu* Decision of 23 July 2008.<sup>7</sup>

### **DELIBERATIONS**

10. 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

<sup>5</sup> *The Prosecutor v. Mika Muhimana*, Case No. 95-1B-T, "Decision on the Defence Motion To Appoint an *Amicus Curiae* in Proceedings Against Investigator Tony Lucassen For False Testimony", 6 May 2004.

<sup>6</sup> *The Prosecutor v. Théoneste Bagosora et al.*, Case No. 98-41-T, "Decision on the Defence Request for an Investigation Into Alleged False Testimony of Witness DO", 3 October 2003.

<sup>7</sup> *The Prosecutor v. Bizimungu et al.*, 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", 23 July 2008.

are sufficient grounds for instigating proceedings for false testimony. Trial Chambers have had occasion to consider the elements of false testimony enumerated in the *Akayesu* case.<sup>8</sup>

11. False testimony which is given knowingly and wilfully exhibits 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,
- 4) There must be a relevant connection between the statement and a material issue in the case.<sup>9</sup>

12. 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>10</sup>

13. Based on the 23 and 24 February 2009 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, Witnesses QY and SJ testified on 23 and 24 February 2009 that they testified falsely during their appearance before this Trial Chamber in 2003 and 2002 respectively. They further testified that they had been asked by certain individuals to deny the fact that they knew some Prosecution witnesses in this trial. The Chamber notes that in the *Munyaneza* case, these two witnesses stated the same thing, that is, that they were asked to deny the fact that they knew some Prosecution witnesses in this trial.

14. The Chamber therefore considers that there are strong grounds to believe that Witnesses QY and SJ may have knowingly and wilfully given false testimony in March 2003 and May-June 2002 respectively with the intent to mislead the Chamber. The Chamber is satisfied that the alleged false testimonies could have a bearing on a matter material to the case.

15. Accordingly, the Chamber considers that the conditions justifying the order for an investigation have been met. The Chamber is of the view that the investigation should address the following issues:

- Whether Witnesses QY and SJ gave false testimony during the March 2003, May-June 2002 and February 2009 proceedings at the Tribunal;

<sup>8</sup> *The 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; *The 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; *The 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; *The 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.

<sup>9</sup> *The 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>10</sup> *The Prosecutor v. Kamuhanda*, Appeals Hearing, T. 19 May 2006.

- Whether Witnesses QY and SJ were incited to give false testimony during the March 2003, May-June 2002 and February 2009 proceedings at the Tribunal and;
- Who incited Witnesses QY and SJ to give false testimony during the March 2003, May-June 2002 and February 2009 proceedings at the Tribunal;

16. 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. The Chamber notes the seriousness of the issue at stake as it might involve certain staff of this Tribunal. Therefore, the Chamber considers that the allegations of coercion related by Prosecution Witnesses QY and SJ should be investigated under Rule 77, with respect to their appearances:

- During the March 2003 proceedings at the Tribunal for Witness QY;
- During the May-June 2002 proceedings at the Tribunal for Witness SJ;
- During the February 2009 proceedings at the Tribunal for both Witnesses QY and SJ.

17. The Chamber considers that since both Witness QY and Witness SJ were Prosecution witnesses in these proceedings and that the individuals who may have been involved in the alleged contempt of court could be linked to the Tribunal, it is appropriate to appoint an *amicus curiae* to investigate the false testimony and the individuals referred to by Witnesses QY and SJ in their respective testimonies before the Chamber on 23 and 24 February 2009 and/or the Canadian Court on 4 and 5 April 2007 (Witness QY) and 6 June 2007 (Witness SJ), who may have attempted to interfere with Witnesses QY's and SJ'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 under Rule 91 (B) (ii) and contempt of court under Rule 77 (C) (ii) and to report back to the Chamber as to whether there is sufficient basis for instigating proceedings on these grounds.

**FOR THE ABOVE REASONS, THE TRIBUNAL**

**GRANTS** the Motion;

**ORDERS** an investigation into the alleged false testimony of Prosecution Witnesses QY and SJ pursuant to Rule 91(B), giving consideration to their testimony:

- During the March 2003 proceedings at the Tribunal for Witness QY;
- During the May-June 2002 proceedings at the Tribunal for Witness SJ;
- During the February 2009 proceedings at the Tribunal for both Witness QY and SJ.

**ORDERS** an investigation into the allegations of coercion related by Prosecution Witnesses QY and SJ pursuant to Rule 77 with respect to their appearances:

- During the March 2003 proceedings at the Tribunal for Witness QY;
- During the May-June 2002 proceedings at the Tribunal for Witness SJ;

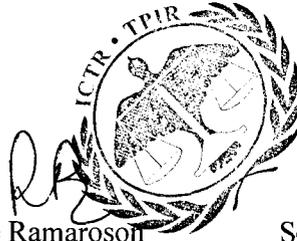
- During the February 2009 proceedings at the Tribunal for both Witness QY and SJ.

**DIRECTS** the Registrar pursuant to Rules 91 and 77 of the Rules to appoint an independent *amicus curiae* to investigate the false testimony of Witnesses QY and SJ 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.

Arusha, 19 March 2009



William H. Sekule  
Presiding Judge



Arlette Ramaroson  
Judge



Solomy Balungi Bossa  
Judge

[Seal of the Tribunal]