



UNITED NATIONS  
NATIONS UNIES

ICTR-00-56-T  
(04-08-2009)  
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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER II**

**Before Judges:** Asoka de Silva, Presiding  
Taghrid Hikmet  
Seon Ki Park

**Registrar:** Adama Dieng

**Date:** 4 August 2009

JUDICIAL  
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**The PROSECUTOR**

v.

**Augustin NDINDILYIMANA  
Augustin BIZIMUNGU  
François-Xavier NZUWONEMEYE  
Innocent SAGAHUTU**

*Case No. ICTR-00-56-T*

**DECISION ON NDINDILYIMANA'S MOTION REQUESTING A REMEDY FOR  
POSSIBLE WITNESS RECANTATION**

**Office of the Prosecution:**

Mr Alphonse Van  
Mr Moussa Sefon  
Mr Lloyd Strickland  
Mr Abubacarr Tambadou  
Ms Faria Rekkas

**Counsel for the Defence:**

Mr Gilles St-Laurent and Mr Benoît Henry for Augustin Bizimungu  
Mr Christopher Black and Mr Vincent Lurquin for Augustin Ndingilyimana  
Mr Charles Taku and Ms Beth Lyons for François-Xavier Nzuwonemeye  
Mr Fabien Segatwa and Mr Seydou Doumbia for Innocent Sagahutu

## INTRODUCTION

1. The evidence hearing phase in this case was completed on 18 February 2009 after four and a half years of trial. Closing arguments were heard from 24 to 26 June 2009.<sup>1</sup>
2. On 26 June 2009, the Defence for Ndindiliyimana filed a Motion indicating that it had received a letter written in Kiyarwanda purporting to be from protected Prosecution Witness GFR in which the witness states that he lied in his testimony before this Chamber. The Defence therefore requests the Chamber to either admit this letter as an exhibit pursuant to Rule 92bis for the purpose of evaluating Witness GFR's credibility, or alternatively, that the Chamber should allow the Defence for Ndindiliyimana and a representative of the Prosecution to take a deposition from Witness GFR as to establish the veracity of the letter. The original letter and an unofficial English translation, are attached to the Motion.<sup>2</sup>
3. The Prosecution opposes the Defence Motion and submits that the Trial Chamber is not seized of the matter since the aforesaid letter is addressed to the President of the Tribunal and not this Trial Chamber. Furthermore, the Prosecution submits that contrary to the Defence submission, the signature on the letter does not resemble the signature on Witness GFR's witness statement and is therefore not genuine.<sup>3</sup>
4. The Defence replied to the Prosecution's Response, taking issue with the Prosecution statement that inquiries into witness recantation at this Tribunal have always led to the arrest of members of the Defence teams. The Defence submits that this statement is threatening, undermines the Accused's right to effective assistance by Counsel, and warrants a sanction from the Chamber.<sup>4</sup>

## DELIBERATIONS

5. As a preliminary matter, the Chamber finds that it, rather than the President of the Tribunal, is the appropriate body to consider this issue, as it is currently seized with this case.
6. The Chamber notes that for a statement to be admissible under Rule 92bis, the general requirements of relevance and probative value, applicable to all genres of evidence under Rule 89 (C), must be satisfied.<sup>5</sup> Evidence will be considered relevant for the purposes of Rule 89 (C), if it can be shown that a connection exists between the evidence and proof of an allegation pleaded in the indictment.<sup>6</sup> Evidence sought to be tendered will be considered to have probative value if it proves or disproves an allegation and has sufficient *indicia* of reliability.<sup>7</sup>

<sup>1</sup> Scheduling Order, dated 4 December 2008.

<sup>2</sup> Motion Requesting Remedy for Possible Witness Recantation, filed on 26 June 2009.

<sup>3</sup> *Réponse du Procureur a la Requête de la Défense du Général Augustin Ndindiliyimana Intitulée "Motion Requesting Remedy for Possible Witness Recantation"*, filed on 1 July 2009.

<sup>4</sup> Reply to Prosecutor's Response to General Ndindiliyimana's Motion Requesting Remedy for Possible Witness Recantation, filed on 6 July 2009.

<sup>5</sup> *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecutor's Motion for the Admission of Written Witness Statements Under Rule 92 bis (TC), 9 March 2004, para. 12.

<sup>6</sup> *Karemera et al.*, Decision on Joseph Nzirorera's Motion to Admit Documents Authored by Enoch Ruhigira (TC), 26 March 2008, para. 3.

<sup>7</sup> *Bagosora et al.*, *Bagosora*, Decision on Request to Admit United Nations Documents into Evidence Under Rule 89 (C), 25 May 2006, para. 4.

7. The Chamber notes that there is a great deal of uncertainty regarding the provenance of the letter given the Defence's failure to articulate the circumstances in which it received the letter. Therefore, the Chamber finds that it cannot admit the purported letter from Witness GFR into evidence because the Defence has not demonstrated on a *prima facie* basis that the letter possesses sufficient *indicia* of reliability to warrant its admission into evidence.

8. The Chamber notes Ndindiliyimana's alternative request for a deposition to be taken from witness GFR in order to determine the authenticity of the letter purportedly written by him. The Chamber recalls that Rule 91 (B) provides that a Chamber may, where it "has strong grounds for believing that a witness has knowingly and willfully given false testimony" either: (i) direct the Prosecutor to commence an investigation with a view to preparing and submitting an indictment for false testimony or; (ii) appoint an *amicus curiae* to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instituting proceedings for false testimony.

9. The Chamber is satisfied that the existence of Witness GFR's alleged letter, which contains an admission that he gave false testimony against Ndindiliyimana, constitutes a strong ground for ordering an investigation under Rule 91 (B).

10. Taking into account the uncertainty surrounding the authenticity of witness GFR's alleged letter and the circumstances under which the Defence came into possession of the letter, the Chamber finds that it is premature to order a deposition hearing at this stage. Rather, the Chamber finds that the appointment of an *amicus curiae* will enhance its ability to impartially determine the authenticity and the source of the letter.

11. The Chamber notes the Defence's request for a warning or sanctions regarding the Prosecution's Response. The Chamber has taken note of the contents of Paragraph 12 of the Prosecution's Response and considers it to be inappropriate. The Chamber urges the Prosecution to refrain from making such statements in the future.

**FOR THE ABOVE REASONS, THE CHAMBER.**

- I. **DIRECTS** the Registrar to appoint an *amicus curiae* to investigate the following:  
(i) GFR's current whereabouts; (ii) whether GFR did in fact write the letter and;  
(iii) if so, GFR's willingness to return to the Tribunal to give testimony under oath.
- II. **FURTHER DIRECTS** the *amicus curiae* to report his/her findings to the Chamber within 60 days of the issuance of this Decision.
- III. **ORDERS** all Parties, in particular the Defence, through whom the letter came to the attention of the Chamber, and the Witnesses and Victims Support Section to afford any and all assistance to the *amicus curiae*, in order that they may provide a full and proper investigative report to the Chamber;
- IV. The Chamber shall make such further order(s) it deems necessary after receiving and considering the investigative report.

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Arusha, 4 August 2009, done in English.

Read and approved by  
Asoka de Silva

*Seon Ki Park*

Presiding Judge

Read and approved by  
Taghrid Hikmet

*Seon Ki Park*



Seon Ki Park

*Seon Ki Park*

Judge