



UNITED NATIONS
NATIONS UNIES

ICTR-00-56-T
19 - 11 - 2009
(30236 - 30233)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

30236
Mwamp

OR: ENG

TRIAL CHAMBER II

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

Registrar: Adama Dieng

Date: 19 November 2009

The PROSECUTOR
v.
Augustin NDINDILYIMANA
Augustin BIZIMUNGU
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU
Case No. ICTR-00-56-T

JUDICIAL RECORDS/ARCHIVES
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**INTERIM ORDER TO ASCERTAIN THE IDENTITY OF WITNESS GFR AND
OTHER MATTERS**

Rule 54 of the Rules of Procedure and Evidence

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 Ndindiliyimana**
Mr Charles Taku and Ms Beth Lyons for **François-Xavier Nzuwonemeye**
Mr Fabien Segatwa and Mr Seydou Doumbia for **Innocent Sagahutu**

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INTRODUCTION

1. On 26 June 2009, the Defence for Ndindiliyimana filed a motion indicating that it had received a letter purporting to be from Prosecution Witness GFR in which the witness stated that he lied in his testimony before this Chamber. The Defence requested the Chamber to either admit Witness GFR's purported letter as an exhibit pursuant to Rule 92 *bis* for the purpose of evaluating Witness GFR's credibility, or alternatively, that the Chamber allow the Defence for Ndindiliyimana and a representative of the Prosecution to depose Witness GFR so as to determine the veracity of the letter.¹
2. On 1 July 2009, the Prosecution opposed the Defence motion submitting that the Trial Chamber is not seized of the matter since the aforesaid letter is addressed to the President of the Tribunal and not the Trial Chamber.² Furthermore, the Prosecution submitted that contrary to the Defence submission, the letter in question is not genuine since the signature on the letter does not resemble the signature on Witness GFR's pre-trial statement.³
3. On 4 August 2009, the Trial Chamber denied the Defence motion, but directed the Registrar to appoint an *amicus curiae* to investigate and provide the Chamber with a report on: (i) witness GFR's current whereabouts; (ii) whether GFR did in fact write the letter; and (iii) if so, whether witness GFR is willing to return to the Tribunal to testify under oath.⁴
4. On 2 October 2009, the Trial Chamber received the report of the *amicus curiae*.⁵ On 19 October 2009, the Chamber issued an Interim Order that directed the Registrar to disclose the *amicus curiae* report to the Parties, and directed the Parties to file submissions regarding the report.⁶
5. On 26 October 2009, the Defence filed a Motion requesting that the Trial Chamber admit into evidence the letter purportedly written by Witness GFR and the full report of the *amicus curiae*, and reject the trial testimony of Witness GFR.⁷

¹ Augustin Ndindiliyimana's Motion Requesting Remedy for Possible Witness Recantation, dated, filed on 26 June 2009.

² *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.

³ *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.

⁴ *Prosecutor v. Augustin Ndindiliyimana*, Case No. ICTR-2000-56-T, Decision on Ndindiliyimana's Motion Requesting a Remedy for Possible Witness Recantation (TC), 4 August 2009.

⁵ Final Report by *amicus curiae* Relating to Ndindiliyimana's Motion Requesting a Remedy for Possible Witness Recantation, 14 September 2009.

⁶ Interim Order on Report of the *amicus curiae* Regarding the Alleged Recantation of Prosecution Witness GFR, 19 October 2009.

⁷ Augustin Ndindiliyimana's Motion for Admission of Statements Relating to Witness GFR's Recantation of his Testimony, filed on 26 October 2009, paras. 15-16; Reply to the Submissions of the Prosecutor Regarding the Report of *amicus curiae* Regarding the Recantation of Prosecution Witness GFR, filed on 30 October 2009, para. 11.

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6. On 26 October 2009, the Prosecution filed a Response opposing the Defence motion.⁸ The Prosecution submitted that the *amicus curiae* did not establish the identity of Witness GFR since the person who presented himself as Witness GFR did not provide any form of identification. The Prosecution also points out a number of contradictions between the statements made by Witness GFR in the *amicus curiae* report and the statements made by him to the investigators of the Office of the Prosecutor. For these reasons, the Prosecution submits that the *amicus curiae* report is unreliable. Furthermore, the Prosecution expressed its concern about how the Defence came into possession of the letter allegedly written by Witness GFR and suggests that the Defence may have violated protective measures which were granted to Witness GFR by this Chamber.⁹
7. On 30 October 2009, the Defence filed a Reply to the Prosecution's submissions.¹⁰ The Defence stated that it is satisfied with the determination made by the *amicus curiae* that the person whom he met during his investigation was in fact Witness GFR. With respect to the Prosecution's concern that the Defence may have violated protective measures granted to Witness GFR, the Defence replies that Witness GFR's alleged letter was sent to Lead Counsel for Ndindiliyimana via email by someone who was previously unknown to anyone in the Defence team. Furthermore, the Defence submits that it has not had any kind of communication with Witness GFR himself.¹¹

DELIBERATIONS

8. The Chamber has carefully reviewed the submissions of the parties and the report prepared by the *amicus curiae*. The Chamber recalls that the person who met with the *amicus curiae* did not possess any identification documents to support his claim that he was in fact Witness GFR.¹² Although the *amicus curiae* stated in his report that he had no reason to doubt that the person whom he met is Prosecution Witness GFR, the Chamber finds this to be an insufficient basis to conclude that the person was Witness GFR given the fact that the *amicus curiae* had no prior knowledge of the Witness. Consequently, the Chamber is not satisfied that the identity of Witness GFR has been sufficiently established and defers its decision on the merits until the identity of the individual spoken to by the *amicus curiae* is confirmed to be that of Witness GFR.
9. The Chamber notes that the Witnesses and Victims Support Section ("WVSS") is responsible for bringing witnesses to the Tribunal, and therefore has adequate competence to address the concerns of the Chamber as to whether the person who met with the *amicus curiae* is in fact Witness GFR. Furthermore, the Chamber recalls that WVSS has dealt with Witness GFR before and is therefore in a suitable position to ascertain his identity.

⁸ *Réponse du Procureur a la Requête de la Défence du Général Augustin Ndindiliyimana Intitulée " Augustin Ndindiliyimana's Motion for Admission of Statements Relating to Witness GFR's Recantation of his Testimony,"* filed on 26 October 2009.

⁹ *Réponse du Procureur a la Requête de la Défence du Général Augustin Ndindiliyimana Intitulée " Augustin Ndindiliyimana's Motion for Admission of Statements Relating to Witness GFR's Recantation of his Testimony,"* filed on 26 October 2009.

¹⁰ Reply to the Submissions of the Prosecutor Regarding the Report of the Amicus Curiae Regarding the Recantation of Prosecution Witness GFR, filed on 30 October 2009, para. 4.

¹¹ Reply to the Submissions of the Prosecutor Regarding the Report of the Amicus Curiae Regarding the Recantation of Prosecution Witness GFR, filed on 30 October 2009, para. 4.

¹² Final Report by *amicus curiae*, dated 14 September 2009, p. 2.

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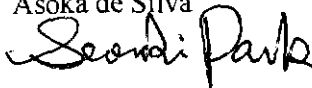
10. Furthermore, bearing in mind the importance of the protective measures afforded to witnesses who appear before the Tribunal, the Chamber directs the Registrar to ascertain the circumstances under which Witness GFR came into contact with Defence Counsel and how the alleged letter came into the custody of the Lead Counsel for Ndindiliyimana.

FOR THE ABOVE REASONS, THE CHAMBER

- I. **DIRECTS** the Registrar, through the Witnesses and Victims Support Section, to ascertain whether the person whom the *amicus curiae* met is in fact Witness GFR;
- II. **DIRECTS** the Registrar, if he concludes that the aforementioned person was in fact Witness GFR, and taking into account the protective measures granted to prosecution witnesses in this case, to determine the circumstances under which the Defence Counsel came into contact with Witness GFR and how the alleged letter came into the possession of Lead Counsel;
- III. **ORDERS** all Parties, in particular the Defence and the *amicus curiae* to fully cooperate with the Registrar and the Witnesses and Victims Support Section in carrying out this Order;
- IV. **FURTHER DIRECTS** the Registrar to report his findings to the Chamber within thirty days of the date of this Order;
- V. **THE CHAMBER** shall make such further order(s) it deems necessary after receiving the report of the Registrar.

Arusha, 19 November 2009, done in English.

Read and approved by
Asoka de Silva



Presiding Judge

Read and approved by
Taghrid Hikmet



Judge
[Seal of the Tribunal]



Seon Ki Park



Judge