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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 Solomy Balungi Bossa
Judge Mparany Rajohnson

Registrar: Mr. Adama Dieng

Date: 12 March 2010

The PROSECUTOR

v.

Augustin NGIRABATWARE

Case No. ICTR-99-54-R77.1

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DECISION ON ALLEGATIONS OF CONTEMPT

Office of the Prosecutor

Mr. Wallace Kapaya
Mr. William Egbe
Mr. Patrick Gabaake
Mr. Iskandar Ismail
Ms. Faria Rekkas

Defence Counsel

Mr. Peter Herbert
Ms. Mylène Dimitri

to me

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the “Tribunal”),

SITTING as Trial Chamber II composed of Judges William H. Sekule, Presiding, Solomy Balungi Bossa and Mparany Rajohnson (the “Chamber”);

RECALLING its 30 October 2009 Decision by way of which it ordered an investigation per Rule 77 into possible violations of the Chamber’s 6 May 2009 Order granting protective measures to Prosecution Witness ANAF;¹

CONSIDERING the “Report of Amicus Curiae on Rule 77 Investigation Related to Witness ANAF”, filed confidentially on 28 January 2010 (the “Report”);

CONSIDERING the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”);

NOW DECIDES the matter pursuant to Rules 77 (D) of the Rules.

INTRODUCTION

1. On 30 October 2009, upon hearing Prosecution Witness ANAF’s concerns regarding her security, the Chamber ordered an investigation into possible violations of the 7 May 2009 Order granting protective measures to Prosecution witnesses.² The Chamber directed the Registrar to appoint an *amicus curiae* to investigate the following allegations:

- That Witness ANAF and her family were threatened;
- That the identity and status of Witness ANAF had been disclosed to persons who do not have access to it pursuant to the Chamber’s 7 May 2009 Order granting her protective measures; and
- That several of these persons were aware of the content of the witness statements, as well as the identity of other Prosecution protected witnesses.

The Chamber further directed the Registrar to advise on whether sufficient grounds exist to institute contempt proceedings against anyone pursuant to Rule 77.

2. The *amicus curiae*’s confidential Report was filed on 28 January 2010.

¹ Decision on Prosecution Oral Motion for Rule 77 Investigation Related to Witness ANAF, filed 30 October 2009.

² See Decision on Prosecution’s Motion for Special Protective Measures for Prosecution Witnesses and Others, filed 7 May 2009.

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DELIBERATIONS

3. Rule 77 of the Rules provides, insofar as relevant:

(A) The Tribunal in the exercise of its inherent power may hold in contempt those who knowingly and wilfully interfere with its administration of justice, including any person who

(...)

(ii) discloses information relating to those proceedings in knowing violation of an order of a Chamber;

(...)

(iv) threatens, intimidates, causes any 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;

(...)

(D) If the Chamber considers that there are sufficient grounds to proceed against a person for contempt, the Chamber may:

(...)

(ii) in circumstances described in paragraph (C) (ii) or (iii), issue an order in lieu of an indictment and either direct *amicus curiae* to prosecute the matter or prosecute the matter itself.

4. The Chamber notes that the Appeals Chamber held that “the ‘sufficient grounds’ standard under Rule 77(D) of the ICTY Rules only requires the Trial chamber to establish whether the evidence before it gives rise to a *prima facie* case of contempt of the Tribunal and not to make a final finding on whether contempt has been committed.”³ The Chamber further notes that Rule 77 of the ICTY Rules is identical to Rule 77 of the ICTR Rules and considers that, therefore, the same legal standard applies.

5. The Chamber has carefully reviewed the detailed account of the facts investigated by the *amicus curiae* given in the Report and its Annexes,⁴ as well as the *amicus curiae*’s research and conclusions.⁵

6. The Chamber further notes that the *amicus curiae* reported that there is *prima facie* evidence that Aphrodis Bugingo⁶ disclosed information relating to these

³ *Prosecutor v. Vojislav Šešelj* Case No. IT-03-67-AR77.2, Decision on the Prosecution’s Appeal Against the Trial Chamber’s Decision of 10 June 2008 of 25 July 2008, para. 16.

⁴ Report, pp. 2-9 and Annexes A and B.

⁵ *Id.* pp. 10-14

⁶ The Chamber notes that witness ANAF spelt the name B-U-G-I-N-G-O in the authoritative French version of the Transcript of 30 September 2009, *see* T. 30 September 2009, p. 52 in French.

proceedings in knowing violation of an order of the Chamber and threatened, intimidated and otherwise interfered with Witness ANAF when she was about to give and had given evidence in proceedings before this Chamber.⁷

7. The Chamber considers that *prima facie* evidence exists to instigate proceedings against Aphrodis Bugingo for contempt of court. **CONSIDERING** that the Chamber has reason to believe that Aphrodis Bugingo may be in contempt of the Tribunal, it thus, pursuant to Rule 77:

INITIATES contempt proceedings against Aphrodis Bugingo for knowingly and wilfully disclosing information in violation of an order of a Chamber and for threatening, intimidating, and otherwise interfering with Prosecution Witness ANAF when she was about to give and had given evidence in proceedings before this Chamber;

ISSUES an order in lieu of an Indictment appended in the Annex to the present Decision and pursuant to Rule 77 (D) (ii); and

DIRECTS the Registry to appoint *amicus curiae* to prosecute the matter pursuant to Rule 77 (D) (ii).

DIRECTS the Registry to disclose the *amicus curiae* Report to the parties in these proceedings only and reminds all concerned parties of the strictly confidential nature of the Report and that the protective measures in place remain applicable at all times.⁸

Arusha, 12 March 2010



William H. Sekule
Presiding Judge




Solomy Balungi Bossa
Judge



Mparany Rajohnson
Judge

[Seal of the Tribunal]

⁷ *Id.* p. 13.

⁸ See Decision on Prosecution's Motion for Special Protective Measures for Prosecution Witnesses and Others, 7 May 2009.