



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

111589
Jm

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Solomy Balungi Bossa
Judge Mparany Rajohnson

Registrar: Mr. Bongani Majola

Date: 21 February 2013

ICR-99-54-T
21st Feb 2013
(111589. 111589)

The PROSECUTOR

v.

Augustin NGIRABATWARE

Case No. ICTR-99-54-T

2013 FEBRUARY 21 12:13
OFFICE OF THE PROSECUTOR

DECISION ON ALLEGATIONS OF CONTEMPT

Office of the Prosecutor

Mr. Wallace Kapaya
Mr. Rashid Rashid
Mr. Patrick Gabaake
Mr. Iskandar Ismail
Mr. Kristian Douglas
Ms. Sonja Sun
Ms. Mankah Fombang
Ms. Faria Rekkas

Defence Counsel

Ms. Mylène Dimitri
Mr. Claver Sindayigaya
Mr. Deogratias Sebureze
Ms. Anne-Gaëlle Denier
Mr. Gregg Shankman
Mr. Philippe Plourde

111588

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 that the Judgement and Sentence in the case of *The Prosecutor v. Augustin Ngirabatware* was pronounced on 20 December 2012;

CONSIDERING the 30 September 2011 Decision by the Appeals Chamber in the *Nyiramasuhuko et al.* case which affirmed that a Chamber retains jurisdiction after judgement has been pronounced with respect to ancillary matters of which it is properly seized and that issues relating to possible contempt are independent of the proceedings out of which they arise;¹

RECALLING its 6 July 2010 Decision by way of which it ordered an investigation into possible violations of Rule 77 of the Rules;²

CONSIDERING the “Report of Amicus Curiae on Investigations Related to the Allegations of Contempt”, filed *ex parte* and confidentially on 30 November 2010 (the “Amicus Report”); and

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

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

INTRODUCTION

1. On 6 July 2010, the Chamber issued a Decision directing the Registrar to appoint an independent *amicus curiae* to investigate alleged violations of Rule 77 of the Rules in relation to Prosecution Witnesses ANAU, ANAS and ANAT, more specifically:

- (a) The allegation that efforts were made by named individuals to improperly influence Witness ANAU’s testimony before the Tribunal, including by promising him a bribe;
- (b) The allegation that Witness ANAS was warned not to testify against Ngirabatware; and
- (c) The circumstances under which Witness ANAT may have learned the identity of another protected witness in this case, as well as whether this may have occurred in knowing violation of an order by the Chamber.

¹ *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-A, Decision on Pauline Nyiramasuhuko’s Motion to Void Trial Chamber Decisions (AC), 30 September 2011.

² Decision on Prosecution Oral Motion for Amendment of the Chamber’s Decision on Allegations of Contempt (TC), 6 July 2010.



111587

The Chamber further directed the Registrar to instruct the appointed *amicus curiae* to report back to the Chamber as to whether sufficient grounds exist to institute contempt proceedings against any individual.³

2. On 27 October 2010, the Registrar appointed *amicus curiae*. On 30 November 2010, the *Amicus* Report was submitted to the Chamber.⁴

3. Upon receipt and review of the *Amicus* Report, the Chamber now issues a decision with regard to whether there are sufficient grounds to proceed against the subjects for Contempt of the Tribunal under Rule 77.

DELIBERATIONS

4. Pursuant to Rule 77(A)(i)-(v) of the Rules, the Tribunal may hold in contempt those who knowingly and wilfully interfere with its administration of justice. Rule 77(A)(iv) provides that this includes any person who “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”. In addition, Rule 77(B) provides that “[a]ny incitement or attempt to commit any of [these acts] is punishable as contempt of the Tribunal with the same penalties”.

5. Rule 77(D)(ii) provides that after having appointed an *amicus curiae* to present a report to the Chamber, and “[i]f the Chamber considers that there are sufficient grounds to proceed against a person for contempt, the Chamber may ... issue an order in lieu of an indictment”.

6. 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.”⁵ 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.

7. The Chamber notes that the *prima facie* standard is a relatively low burden which requires the Chamber to take the evidence adduced in support of the allegations as true. If there is evidence in support of each of the elements of the alleged crime, the *prima facie* standard has been satisfied and there are sufficient grounds to initiate proceedings. The

³ *Id.*, p. 6.

⁴ See *Amicus* Report, p. 1, para. 2.

⁵ *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 (AC), 25 July 2008, para. 16. See also *The Prosecutor v. Hormisdas Nsengimana*, Case Nos. ICTR-01-69-A & ICTR-2010-92, Decision on Prosecution Appeal of Decision Concerning Improper Contact with Prosecution Witnesses (AC), 16 December 2010 (“*Nsengimana* Appeal Decision”), para. 14; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR.91, Decision on “Joseph Nzirorera’s Appeal from Refusal to Investigate [a] Prosecution Witness for False Testimony” and on Motion for Oral Arguments (AC), 22 January 2009, para. 19.

11586

credibility and reliability of witness testimony is only to be examined at the conclusion of a case.⁶

8. Nonetheless, even where the *prima facie* standard has been met, the Chamber retains discretion to determine whether to initiate proceedings for contempt. The Chamber is entitled to find a *prima facie* case of contempt and then determine, within the bounds of its discretion, whether to initiate proceedings.⁷

9. The Chamber has carefully reviewed the detailed account of the facts investigated by the *amicus curiae* given in the Report and its Annexes,⁸ as well as the *amicus curiae*'s research and conclusions.⁹

Witnesses ANAU and ANAS

10. As detailed in the *Amicus* Report, Witness ANAU stated that two persons, including a member of the Ngirabatware Defence team, attempted to influence his testimony before the Tribunal by offering him bribes to testify on behalf of the Defence. These two persons also warned him not to testify against Ngirabatware.¹⁰ Witness ANAS stated that following his refusal to testify on behalf of Ngirabatware, two persons threatened the safety of him and his family. He further stated that a third individual attacked him following his return from testifying in Arusha.

11. Both Witnesses ANAU and ANAS specifically implicated an individual named Maximilien Turinabo, allegedly the "focal point" in Gisenyi for gathering witnesses for the Ngirabatware Defence team, as the main person responsible for bribing, intimidating, and threatening them.¹¹ The Chamber considers that the allegations against Maximilien Turinabo, if true, would constitute acts of Contempt of the Tribunal.

12. Witness ANAU also alleged that Ngirabatware Defence Legal Assistant, Deogratias Sebureze, attempted to bribe and threaten him in conjunction with Maximilien Turinabo.¹² The Chamber considers that these allegations, if true, would constitute acts of Contempt of the Tribunal.

13. Accordingly, the Chamber considers that *prima facie* evidence exists to instigate proceedings against Maximilien Turinabo and Deogratias Sebureze for contempt in relation to Witness ANAU, and Maximilien Turinabo in relation to Witness ANAS.

14. The Chamber considers threatening, intimidating and bribing potential witnesses before the Tribunal to be a most serious matter. If it is established that Maximilien

⁶ See *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, *Confidential* Decision Following *Amicus Curiae* Report Related to Allegations of Contempt of the Tribunal and False Testimony and Witnesses QY and SJ (TC), 2 September 2011, para. 8.

⁷ See *id.*, para. 9, citing *Nsengimana* Appeal Decision, para. 17.

⁸ *Amicus* Report, pp. 2-9, Annexes A-I.

⁹ *Id.*, pp. 9-10.

¹⁰ *Id.*, para. 7.

¹¹ *Id.*, paras. 27 (a)-(b).

¹² *Id.*, para. 7, Annex A, paras. 2-6.

111585

Turinabo and Deogratias Sebureze did in fact threaten and attempt to bribe Witness ANAU and that Maximilien Turinabo threatened and intimidated Witness ANAS, such conduct must be punished in order to prevent similar violations in the future, be it before the Mechanism for International Criminal Tribunals ("MICT"), the Rwandan Courts or other courts. Furthermore, the public's perception of the Tribunal as doing justice will be seriously undermined if such conduct is permitted to occur without repercussion.

15. Accordingly, the Chamber accepts the recommendation of the *amicus curiae* that there are sufficient grounds for commencing proceedings against Maximilien Turinabo for Contempt of the Tribunal and exercises its discretion to initiate such proceedings.¹³

16. In relation to Deogratias Sebureze, the Chamber notes that the *amicus curiae* made no recommendations in relation to the initiation of proceedings against him. Having reviewed the *Amicus* Report, including the interview with Deogratias Sebureze on this matter, the Chamber considers the allegations in relation to Witness ANAU to be inextricably linked to those against Maximilien Turinabo to the extent that it would be against the interests of justice to initiate proceedings against one but not the other. Therefore, the Chamber exercises its discretion pursuant to Rule 77(D)(ii) to initiate proceedings against Deogratias Sebureze for Contempt of the Tribunal.

17. In relation to other members of the Ngirabatware Defence team who may also have been present at meetings with Witness ANAU, the Chamber does not consider the information before it sufficient to indicate the existence of a *prima facie* case of Contempt of the Tribunal. Furthermore, the Chamber notes that although *amicus curiae* interviewed Maximilien Turinabo and Deogratias Sebureze, there was no such interview of any other Defence team members who may have been implicated. Under these circumstances, the Chamber will not initiate proceedings against any other individual.

Witness ANAT

18. Witness ANAT knew the identity of another protected witness in this case. If this knowledge resulted from a disclosure of that witness's identity in knowing violation of an order by the Chamber, it would constitute Contempt of the Tribunal pursuant to Rule 77(A)(ii).

19. The Chamber notes that the *amicus curiae* reported that there were insufficient grounds for instigating proceedings for Contempt of the Tribunal against Witness ANAT. The *amicus curiae* based this conclusion on the information that when detainees in Gisenyi Prison were to testify at the Tribunal, an ICTR vehicle would arrive on the prison premises. When any of the prisoners were summoned at short notice away from the prison, then their colleagues would assume that those summoned must be a witness.¹⁴

20. The Chamber accepts the *amicus curiae*'s conclusion given the evidence it has available and does not find that *prima facie* evidence exists to initiate contempt proceedings against Witness ANAT.

¹³*Id.*, p. 10.

¹⁴*Id.*, p. 10.

111584

Conclusion

21. The Chamber considers that in the interests of transparency, the *Amicus* Report should be released to the relevant Parties.

22. The Chamber has found that the evidence before it meets the “sufficient grounds” standard under Rule 77(D) and gives rise to a *prima facie* case of Contempt of the Tribunal against Maximilien Turinabo and Deogratias Sebureze. Given the seriousness of the present allegations, the Chamber considers that the interests of justice require that these allegations be resolved through a formal proceeding.

CONSIDERING that the Chamber has reason to believe that Maximilien Turinabo may be in Contempt of the Tribunal for knowingly and wilfully threatening, intimidating, and otherwise interfering with Prosecution Witnesses ANAU and ANAS prior to them giving evidence in proceedings before this Chamber;

CONSIDERING that the Chamber has reason to believe that Deogratias Sebureze may be in Contempt of the Tribunal for knowingly and wilfully threatening, intimidating, and otherwise interfering with Prosecution Witness ANAU prior to him giving evidence in proceedings before this Chamber; and

CONSIDERING further that the interests of justice require that these allegations be resolved through a formal proceeding,

FOR THE ABOVE REASONS THE CHAMBER

INITIATES contempt proceedings against Maximilien Turinabo for knowingly and wilfully threatening, intimidating, and otherwise interfering with Prosecution Witnesses ANAU and ANAS prior to them giving evidence in proceedings before this Chamber;

INITIATES contempt proceedings against Deogratias Sebureze for knowingly and wilfully threatening, intimidating, and otherwise interfering with Prosecution Witness ANAU prior to him giving 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);

DIRECTS the Registry to inform the MICT that an *amicus curiae* should be appointed to prosecute Maximilien Turinabo and Deogratias Sebureze in accordance with Rule 77(D)(ii);

DIRECTS the Registry to refer the matter to the MICT to conduct and complete the proceedings, being the appropriate jurisdiction for all contempt cases in which an



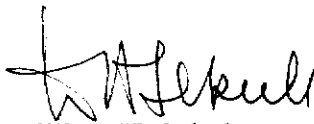
111583

indictment has not been issued prior to 1 July 2012, pursuant to Annex 2 of Security Council Resolution 1966 (2010);¹⁵

DIRECTS the Registry to immediately inform the affected individuals of the content of this Decision, so as to ensure their ability to take any appropriate steps, including the possibility of an appeal as outlined in Rule 77(J); and

DIRECTS the Registry to disclose the *Amicus* 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.¹⁶

Arusha, 21 February 2013



William H. Sekule
Presiding Judge



Solomy Balungi Bossa
Judge



Mparany Rajohnson
Judge



¹⁵ Security Council Resolution 1966 (22 December 2010), UN Doc. S/RES/1966 (2010).

¹⁶ See Decision on Prosecution's Motion for Special Protective Measures for Prosecution Witnesses and Others (TC), 7 May 2009; Decision on Defence Urgent Motion for Witness Protective Measures (TC), 9 February 2010.

111582

ANNEX



111581

ORDER IN LIEU OF AN INDICTMENT

MAXIMILIEN TURINABO, as identified throughout the *Amicus* Report, is charged with three counts of Contempt of the Tribunal pursuant to Rules 77(A)(iv) and 77(B) of the Rules as detailed below; and

DEOGRATIAS SEBUREZE, as identified throughout the *Amicus* Report, is charged with two counts of Contempt of the Tribunal pursuant to Rules 77(A)(iv) and 77(B) of the Rules as detailed below.

FACTUAL ALLEGATIONS

1. **MAXIMILIEN TURINABO** and **DEOGRATIAS SEBUREZE** attempted to bribe Witness ANAU to testify for the Ngirabatware Defence team. Witness ANAU refused to co-operate with **MAXIMILIEN TURINABO** and **DEOGRATIAS SEBUREZE** and opted to testify for the Prosecution instead. **MAXIMILIEN TURINABO** and **DEOGRATIAS SEBUREZE** warned Witness ANAU not to testify against Ngirabatware.¹⁷

2. **MAXIMILIEN TURINABO** requested that Witness ANAS testify for the Ngirabatware Defence team. Following Witness ANAS's refusal to do so, **MAXIMILIEN TURINABO** threatened the security of both Witness ANAS and his family. **MAXIMILIEN TURINABO** conspired to have Witness ANAS arrested by the Police of Rugerero *secteur* in January 2010. Witness ANAS testified before the ICTR on behalf of the Prosecution. Following his return to Rwanda, he was attacked by a butcher in Cyanika. According to Witness ANAS, **MAXIMILIEN TURINABO** sent the butcher to attack Witness ANAS.¹⁸

CHARGES

By their acts or omissions, **MAXIMILIEN TURINABO** and **DEOGRATIAS SEBUREZE** committed:

COUNT 1 : Contempt of the Tribunal, punishable pursuant to this Tribunal's inherent power and Rule 77(A)(iv) of the Rules, by threatening, intimidating, and otherwise interfering with Prosecution Witness ANAU who was about to give evidence in proceedings before this Tribunal; and

¹⁷ *Amicus* Report, para. 7.

¹⁸ *Id.*, paras.13-15.

COUNT 2 : Contempt of the Tribunal, punishable pursuant to this Tribunal's inherent power and Rule 77(B) of the Rules, by attempting to bribe Prosecution Witness ANAU who was about to give evidence in proceedings before this Tribunal; and

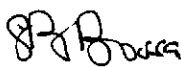
By his acts or omissions, **MAXIMILIEN TURINABO** committed:

COUNT 3 : Contempt of the Tribunal, punishable pursuant to this Tribunal's inherent power and Rule 77 (A) (iv) of the Rules, by threatening, intimidating, and otherwise interfering with Prosecution Witness ANAS before and after he gave evidence in proceedings before this Tribunal.

Arusha, 21 February 2013



William H. Sekule
Presiding Judge



Solomy Balungi Bossa
Judge



Mparany Rajohnson
Judge





TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	<input type="checkbox"/> Team I N. M. Diallo	<input checked="" type="checkbox"/> Team II C. K. Hometowu N. M. Diallo	<input type="checkbox"/> Team III C. K. Hometowu
	<input checked="" type="checkbox"/> OIC, JLSD P. Besnier	<input type="checkbox"/> OIC, JPU C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison
From:	<input checked="" type="checkbox"/> Chamber II (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)
Case Name: The Prosecutor vs. NGIRABATWARE Augustin		Case Number: ICTR-99-54-T	
Dates:	Transmitted: 21 February 2013		Document's date: 21 February 2013
No. of Pages:	11 (incl. this sheet)	Original Language:	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	Decision on Allegations of Contempt		
Classification Level:		TRIM Document Type:	
<input type="checkbox"/> Ex Parte <input type="checkbox"/> Strictly Confidential / Under Seal <input type="checkbox"/> Confidential <input checked="" type="checkbox"/> Public		<input type="checkbox"/> Indictment <input type="checkbox"/> Warrant <input type="checkbox"/> Correspondence <input type="checkbox"/> Submission from non-parties <input checked="" type="checkbox"/> Decision <input type="checkbox"/> Affidavit <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Submission from parties <input type="checkbox"/> Disclosure <input type="checkbox"/> Order <input type="checkbox"/> Appeal Book <input type="checkbox"/> Accused particulars <input type="checkbox"/> Judgement <input type="checkbox"/> Motion <input type="checkbox"/> Book of Authorities	

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.

Filing Party hereby submits only the original, and **will not submit** any translated version.

Reference material is provided in annex to facilitate translation.

Target Language(s):

English French Kinyarwanda

CMS SHALL NOT take any action regarding translation.

Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

Original	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

CMS SHALL NOT take any action regarding translation.

Filing Party **will be submitting the translated version(s)** in due course in the following language(s):

English French Kinyarwanda

KINDLY FILL IN THE BOXES BELOW

<input type="checkbox"/> The OTP is overseeing translation. The document is submitted for translation to: <input type="checkbox"/> The Language Services Section of the ICTR / Arusha. <input type="checkbox"/> The Language Services Section of the ICTR / The Hague. <input type="checkbox"/> An accredited service for translation; see details below: Name of contact person: Name of service: Address: E-mail / Tel. / Fax:	<input type="checkbox"/> DEFENCE is overseeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DCDMS): Name of contact person: Name of service: Address: E-mail / Tel. / Fax:
---	--

III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	COMMENTS	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: