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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
Vagn Joensen

Registrar: Adama Dieng

Date: 4 December 2007

THE PROSECUTOR

v.

GAA¹

Case No. ICTR-07-90-R77-I

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JUDGEMENT and SENTENCE

Office of the Prosecutor
Hassan Bubacar Jallow
Silvana Arbia
Richard Karegyesa
Abdoulaye Seye
Florida Kabasinga
Dennis Mabura

Defence Counsel
Cecil J. Maruma

¹ The Accused is a protected witness who testified in different trial under the pseudonym GAA. Therefore, the real name of the Accused cannot be disclosed.

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I. THE PROCEEDINGS

1. On 11 June 2007, an Indictment against the Accused known by the pseudonym of GAA was issued.² It contained six counts, namely: giving false testimony under solemn declaration (Count I);³ contempt of the Tribunal (Count II);⁴ and various attempts to commit acts punishable as contempt of the Tribunal (Counts III to VI).⁵ This Indictment was confirmed on 11 June 2007.⁶
2. GAA was arrested in Kigali, Rwanda on 30 July, 2007 and transferred to the Tribunal on 1 August 2007. On 10 August 2007, he made his initial appearance and pleaded guilty to Count I and not guilty to the other five counts.⁷ The President of the Tribunal assigned a Trial Chamber to deal with both the guilty plea for Count I and the not guilty pleas for Counts II, III, IV, V, and VI of the Indictment,⁸ setting down the hearing for 3 December 2007.
3. On 27 November 2007, the Prosecutor filed a plea agreement together with a solemn declaration and statement of admitted facts signed by the Accused,⁹ and an application to amend the indictment.¹⁰ On 30 November 2007, the Chamber granted the amendment of the Indictment, retaining only two counts: giving false testimony under solemn declaration (Count I) and contempt of the Tribunal (Count II) ("Amended Indictment").¹¹ The Prosecutor also filed the plea agreement signed by the Accused, in which GAA confirmed his plea of guilty to Count I and entered a plea of guilty to Count II of the Amended Indictment.¹²
4. On 3 December 2007, pursuant to Rules 62 and 62 *bis* of the Rules of Procedure and Evidence ("the Rules"), GAA pleaded guilty to both counts in the Amended Indictment. The Chamber, after having spoken with the Accused, declared itself satisfied that the guilty plea

² Indictment against GAA, dated 23 March 2007 ("Original Indictment")

³ Contrary to Rule 91 of the Rules of Procedure and Evidence ("the Rules").

⁴ Contrary to Rule 77 (A), and (G) of the Rules

⁵ Contrary to Rule 77 (A)(iv), (B), and (G) of the Rules.

⁶ *The Prosecutor v. GAA*, Case No. ICTR-07-90-R77, Confirmation of Indictment and Other Related Orders (TC), 11 June 2007.

⁷ T. 10 August 2007, p. 7

⁸ Designation of a Trial Chamber to Consider the Guilty and Not Guilty Pleas of GAA - Rule 62 of the Rules of Procedure and Evidence, 15 November 2007

⁹ The Solemn Declaration and Statement of Admitted Facts of GAA, dated 27 November 2007, filed as Annex C to the Prosecutor's Application for Leave to Amend the Indictment - Rules 73, 50 and 51 and 62 bis(A)(i) of the Rules of Procedure and Evidence, filed on November 2007

¹⁰ Prosecutor's Application for Leave to Amend the Indictment - Rules 73, 50 and 51 and 62 bis(A)(i) of the Rules of Procedure and Evidence, filed on 30 November 2007

¹¹ *Prosecutor v. GAA*, Decision on Prosecutor's Application for Leave to Amend the Indictment - Rules 73, 50 and 51 and 62 bis(A)(i) of the Rules of Procedure and Evidence, 30 November 2007

¹² Plea Agreement between GAA and the Prosecutor of the International Criminal Tribunal for Rwanda, filed as - confidential - as Annex C to the Prosecutor's Application for Leave to Amend the Indictment - Rules 73, 50 and 51 and 62 bis(A)(i) of the Rules of Procedure and Evidence, filed on 27 November 2007

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was made freely and voluntarily, was well informed, unequivocal, and was based on sufficient facts for the crime and Accused's participation in it. The Chamber entered a verdict of guilty sentencing the Accused to nine months imprisonment.¹³ In its oral ruling, the Chamber indicated that the written reasons for its sentencing would follow. The present Judgement is the authoritative statement of the Chamber's findings and reasoning.

II. THE FACTS

5. In his statement of admitted facts, as well as in the guilty plea agreement, GAA acknowledged that on 18 May 2005, he knowingly and wilfully gave false testimony under solemn declaration during an evidentiary hearing before the Appeals Chamber in both open and closed sessions, in the appeal against the conviction and sentence of Jean de Dieu Kamuhanda.¹⁴ On that occasion, GAA falsely recanted the testimony he had given before the Trial Chamber and testified that he was not present at Gikomero Parish on 12 April 1994 and did not witness the actions of Jean de Dieu Kamuhanda at the time of the massacre on that day as he had previously testified. GAA stated that he was introduced to Léonidas Nshogoza, an investigator in the Defense team of Jean de Dieu Kamuhanda by a fellow witness known to the Tribunal under the pseudonym of GEX. GAA stated that his false testimony was induced by Léonidas Nshogoza, who gave him money and paid for his meals and drinks on several occasions and offered him the reward of 1,000,000 Rwandan Francs for giving false testimony. GAA complained that after he had given the false testimony he was never paid the promised amount.

III. SENTENCING

6. Rules 77 (G) and 91 (G) of the Rules provide that the offences for which GAA has been convicted carry a maximum sentence of five years and/or \$10,000.00. The Prosecutor, after entering the plea agreement with the Accused, pursuant Rule 62 *bis* (A), submitted that a sentencing range of seven to twelve months was appropriate in the present case. However, the Chamber notes that Rule 62 *bis* (B) provides that the Chamber is not bound by any such agreement. It is therefore the duty of the Chamber to satisfy itself on this issue.

¹³ T. 3 December 2007

¹⁴ *Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54A-A

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7. In discussing the penalty to impose, the Chamber notes that neither this Tribunal nor the International Criminal Tribunal for Former Yugoslavia ("ICTY") have rendered judgements in which a conviction or sentence for giving false testimony has been imposed. Although some ICTY Trial Chambers have dealt with issues of contempt, none of them have ruled on similar factual circumstances and are related to contempt reflecting other types of misconduct.¹⁵

8. The Chamber considers that the penalty should reflect the goals of retribution, deterrence, rehabilitation, and the protection of society. Article 23 (2) of the Statute of the Tribunal ("the Statute") and Rule 101 of the Rules, provide for the Chamber to consider, *inter alia*, the gravity of the offences or totality of the conduct, the individual circumstances of the accused, any aggravating and mitigating circumstances including substantial cooperation with the Prosecutor by the convicted person before or after conviction, and the extent to which any penalty imposed by a court of any State on the accused for the same act has already been served.

9. The Counsel for the Accused acknowledged that the offences of giving false testimony under solemn declaration, and contempt of the Tribunal, are serious but asked for leniency. He urged the Chamber to impose a financial punishment. He contended that the Accused was a poor farmer whose extended family depended on him as its sole breadwinner. He suggested that he was the naïve victim of inducements given by an official of the Tribunal. He also stressed the fact that the Accused was a genocide survivor and asked the Chamber to take account of his guilty plea, his full confession and the remorse he expressed.

10. The Chamber considers false testimony under solemn declaration and contempt of the Tribunal as very grave offences, as they constitute a direct challenge to the integrity of the trial process. Maintaining the integrity of the administration of justice is particularly important in trials involving serious criminal offences. It is therefore necessary for general

¹⁵ See for instance, the *Milan Vujin* case, an ancillary proceeding in the *Tadić* case, in which the Trial Chamber found that one of the leading members of the Defence team had interfered with some of the Prosecution's witnesses, and therefore found him to be in contempt of the ICTY. *Prosecutor v. Tadić*, Case No. IT-94-1-A-R77, Judgment on Allegations of Contempt Against Prior Counsel Milan Vujin (AC), 31 January 2000. See also, Kosta Bulatović – a Defence witness in the *Milošević* case – was found guilty of 'serious contempt of the Tribunal' for contumaciously refusing to answer questions asked by the Prosecution. *Prosecutor v. Milošević*, Case No. IT-02-54-R77.4, Decision on Contempt of the Tribunal (TC), 13 May 2005; *Prosecutor v. Jović*, Case No. IT-95-14/2-R77, Judgment (TC), 20 August 2006; *Prosecutor v. Jović*, Case No. IT-95-14/2-R77, Judgment (TC), 20 August 2006. See also, Josip Jović case – former editor of a Croatian newspaper – that was found guilty of having violated a court order forbidding public disclosure of a particular witness' identity. *Prosecutor v. Jović*, Case No. IT-95-14/2-R77, Judgment (TC), 20 August 2006

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deterrence and denunciation to be given high importance in sentencing policies. Although all perjury is serious, the Chamber is of the view that the most serious category is where the perjured evidence is being given to lead to the conviction of an innocent person and the second most serious category is where, as in this case, the perjured evidence is given in the hope of procuring the acquittal of a guilty person. The Chamber therefore considers that the gravity of the offence requires that a custodial sentence must be imposed taking into account the mitigating factors that have been established.

11. The Chamber further considers the view that as a general principle the culpability of the person who induced the offence is greater than that of the person who was induced. The Chamber notes with disapproval that no indictment was issued against Léonidas Nshogoza. The Chamber recalls that, when the Prosecution Counsel was asked about this matter during the proceedings held on 3 December 2007, he indicated that the matter was still under review.¹⁶ The Chamber considers that the Tribunal must take all reasonable steps to protect the integrity of its own proceedings and expects that the Prosecutor will do what is necessary.

12. The Chamber notes that GAA pleaded guilty at his initial appearance and even before that date had made confessions to the Prosecutor. He has given details of his wrongdoing and provided information which could assist in the prosecution of others. When he appeared before the Chamber he asked for forgiveness and the Chamber accepts the submissions of his Counsel that he has exhibited remorse.¹⁷ In its sentencing, the Chamber takes into consideration the mitigating factors stressed by the Defence.

13. The Chamber considers that the sentencing range submitted by the Prosecutor is appropriate, and notes that it coincides with the Chamber's views on the balance between the gravity of the offence and the mitigating factors submitted by the Accused. Under these circumstances, the Chamber has decided that a sentence in the middle of the agreed range would be appropriate.

¹⁶ T. 3 December 2007, p. 6

¹⁷ T. 3 December 2007, p. 5

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IV. DISPOSITION

FOR THESE REASONS, THE CHAMBER

I. HAVING FOUND GAA guilty on the two counts of **giving false testimony under solemn declaration, and contempt of the Tribunal;**

II. SENTENCES GAA to a single sentence of nine (9) months imprisonment crediting him for any time spent in detention pending transfer to the Tribunal and during trial;

III. RULES that this judgement shall be enforced immediately, and that until his transfer to the said place of imprisonment, GAA shall be kept in detention under the present conditions.

Arusha, 4 December 2007, done in English.

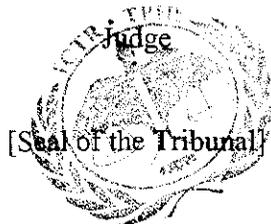


Dennis C. M. Byron

Presiding Judge

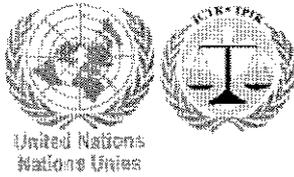


Gberdao Gustave Kam



Vagn Joensen

Judge



TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

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

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Dates:	Transmitted: 5 December 2007		Document's date: 4 December 2007	
No. of Pages:	6	Original Language: <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda		
Title of Document:	JUDGEMENT and SENTENCE			
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<input type="checkbox"/> Strictly Confidential / Under Seal		<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence
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<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book
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II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

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