

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO. : ICTR-2007-90-R77-T
CHAMBER III

THE PROSECUTOR
OF THE TRIBUNAL
v.
GAA

MONDAY, 3 DECEMBER 2007
0901H
TRIAL

Before the Judges:

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

For the Registry:

Mr. Constant K. Hometowu
Mr. Issa Mjui

For the Prosecution:

Mr. Richard Karegyesa
Ms. Renifa Madenga
Mr. Abdoulaye Seye
Ms. Florida Kabasinga
Mr. Dennis Mabura

For the Accused GAA:

Mr. Cecil Maruma

Court Reporter:

Ms. Sherri Knox

PROCEEDINGS

1

2 MR. PRESIDENT:

3 Good morning, everybody.

4

5 Mr. Registrar, could you open the proceedings, please?

6 MR. HOMETOWU:

7 Thank you, Mr. President.

8

9 Trial Chamber III of the International Criminal Tribunal for Rwanda, composed of Judge Dennis Byron,
10 presiding, Judge Gberdao Gustave Kam and Judge Vagn Joensen, is now sitting in open session
11 today, Monday, the 3rd of December 2007, for the commencement of trial in the matter of the
12 Prosecutor versus GAA, Case No. ICTR-2007-90-R77-T.

13

14 Thank you.

15 MR. PRESIDENT:

16 Thank you, Mr. Registrar.

17

18 Could we have appearances, please?

19 MR. KAREGYESA:

20 Good morning, Mr. President, Your Honours. The Prosecutor is represented by myself,
21 Richard Karegyesa, and I'm appearing with Abdoulaye Seye, Renifer Madenga, Florida Kabasinga and
22 Dennis Mabura.

23

24 Most obliged.

25 MR. PRESIDENT:

26 Thank you, Mr. Karegyesa.

27 MR. MARUMA:

28 Your Honours, my name is C.J. Maruma, Defence counsel for GAA, and I'm appearing on my own.

29 MR. PRESIDENT:

30 Thank you very much.

31

32 Counsel, it is my understanding that the -- that the Accused would wish to have Count 2 of the
33 indictment read to him so he could change his plea?

34 MR. MARUMA:

35 That's correct, Your Honour.

36 MR. PRESIDENT:

37 Mr. Registrar, could you put Count 2 of the indictment to the Accused, please.

1 MR. HOMETOWU:

2 "The International Criminal Tribunal for Rwanda. The Prosecutor against GAA.
3 Case No. ICTR-2007-90-R77-I. Amended Indictment.

4
5 "The Prosecutor of the International Criminal Tribunal for Rwanda, hereinafter "the Tribunal", pursuant
6 to his authority under Article 17 of the Statute of the Tribunal and Rules 77 and 91 of the
7 Rules of Procedure and Evidence of the Tribunal, hereinafter "the Rules", charges GAA with contempt
8 of the Tribunal, contrary to Rule 77(A) and (G) of the Rules on the basis of the concise statement of the
9 facts hereto, all of the facts being relevant to the counts herein."

10
11 Count 2, page 10: Contempt of the Tribunal.

12
13 "The Accused is further charged with personally committing the offence of contempt of the Tribunal,
14 contrary to Rule 77(A) and (G) of the Rules, for knowingly and willfully interfering with the administration
15 of justice in the period from on or about 1st March 2004, up to and including on or about 31st May
16 2005, in diverse locations in Kigali-rural and Kigali-ville *préfectures*, Rwanda and in Arusha, Tanzania,
17 by accepting inducements and the promise of a bribe or reward in the form of a substantial amount of
18 money for knowingly and willfully providing a false statement on 17th March 2004 for use in the appeal
19 against conviction and sentence of Jean de Dieu Kamuhanda, Case No. ICTR-99-54A-A; and
20 knowingly and willfully giving false testimony under solemn declaration on 18 May 2005 at an
21 evidentiary hearing before the Appeals Chamber of the Tribunal in connection with that appeal in
22 Arusha, Tanzania, as specified in paragraphs 5, 6 and 7 above.

23
24 "The Accused rendered false testimony, as particularised in paragraphs 5 to 15 above. Prior to giving
25 false testimony, the Accused received and accepted inducements from one Léonidas Nshogoza, a
26 Defence investigator during the trial of Jean de Dieu Kamuhanda. The Accused also accepted from
27 Léonidas Nshogoza the promise of a bribe or reward of one million Rwandan francs, which was to be
28 paid to him after giving the false testimony before the Appeals Chamber.

29
30 "The Accused was introduced to Léonidas Nshogoza sometime in early March 2004 by a woman
31 known to the Tribunal as Witness GEX, who testified as Defence witness at a Rule 115 evidentiary
32 hearing before the Appeals Chamber of the Tribunal in relation to the appeal against conviction and
33 sentence of Jean de Dieu Kamuhanda, Case No. ICTR-99-54A-A, in Arusha, Tanzania.

34
35 "The Accused met with Léonidas Nshogoza in the presence of GEX on five or six occasions in the
36 period from on or about 1st March 2004 up to and including on or about 31st May 2005. GEX would
37 inform the Accused about the scheduled meetings with Léonidas Nshogoza, and they would travel

1 together from Gikomero to Kigali. The meetings were usually held at Stella bar in Remera, Kigali,
2 Rwanda.

3
4 "Léonidas Nshogoza initially told the Accused that he was writing a book about the facts and conduct of
5 Jean de Dieu Kamuhanda during the 1994 events in Gikomero. He told the Accused that he was
6 interested in him because he had had access to his file and knew that the Accused had testified at the
7 Tribunal against Jean de Dieu Kamuhanda. He told the Accused that he needed a statement from him
8 relevant to the events in Gikomero of April 1994 for use in his forthcoming book.

9
10 "In the course of their second and third meetings, in early to mid-March 2004, Léonidas Nshogoza
11 showed the Accused a statement which he wanted the Accused to sign. The statement was a
12 recantation of the testimony the Accused had given during the trial of Jean de Dieu Kamuhanda.

13
14 "On 17 March 2004, in Kigali, Rwanda, Léonidas Nshogoza took the Accused to a notary and asked the
15 Accused to sign a statement in Kinyarwanda and a copy in French in which the Accused rendered false
16 testimony, recanting the evidence he had given in the trial of Jean de Dieu Kamuhanda. The Accused
17 knowingly and willfully signed the said statement, knowing them to be false.

18
19 "During each of the said meetings with Léonidas Nshogoza, the Accused received and accepted from
20 Léonidas Nshogoza inducements comprising of 10,000 Rwandan francs together with a meal and
21 drinks.

22
23 "On one occasion, when the Accused was being prepared for his impending testimony before the
24 Appeals Chamber, sometime between April and early May 2004 (*sic*), in Kimihurura, Kigali, the
25 Accused received and accepted further inducements from Léonidas Nshogoza comprising of 20,000
26 Rwandan francs, a meal and drinks.

27
28 "On another occasion, between April and early May 2005, at the ICTR offices in Kigali, after being
29 informed that he would be required to render his false testimony on 18 May 2005 at an evidentiary
30 hearing before the Appeals Chamber in Arusha, the Accused accepted the promise of a bribe or reward
31 of one million Rwandan francs from Léonidas Nshogoza. The said amount was to be paid to the
32 Accused by Léonidas Nshogoza after the Accused's testimony.

33
34 "In anticipation of the promised bribe or reward of one million Rwandan francs, the Accused knowingly
35 and willfully rendered false viva voce evidence on 18 May 2005 before the Appeals Chamber in Arusha,
36 Tanzania, as particularised in paragraphs 5 through 15 above.

1 "The Accused personally committed the above offences of false testimony under solemn declaration
2 and contempt of the Tribunal, which are punishable under Article 14 of the Statute of the Tribunal and
3 Rules 91(G) and 77(B) and (G) of the Rules respectively.

4

5 "Dated at Arusha this 28th day of November 2007."

6

7 Signed by the Prosecutor, Hassan Bubacar Jallow.

8

9 Thank you.

10 MR. PRESIDENT:

11 Thank you, Mr. Registrar.

12

13 GAA, could you please stand?

14

15 Have you heard and understood the count that was just read out to you?

16 THE ACCUSED:

17 Yes, I have heard what the registry official has said, Mr. President.

18 MR. PRESIDENT:

19 How do you plead, guilty or not guilty?

20 THE ACCUSED:

21 I plead guilty, and I am asking for forgiveness. I committed those offences. I do acknowledge that, and
22 I am asking for pardon.

23 MR. PRESIDENT:

24 Now, you had previously pleaded not guilty to this offence, and now you have changed your plea.

25 Were you encouraged, pressured to do so, or do you do it freely and of your own will?

26 THE ACCUSED:

27 Before this Tribunal, I am acknowledging that I committed those two offences. Nobody brought
28 pressure to bear on me to make the confession. Prior to this, I did not acknowledge those two
29 offences, but today I am acknowledging having committed them. I had earlier accepted that I
30 committed only one crime, only one offence. Nobody forced me to plead guilty, and I have done so with
31 my conscience.

32 MR. PRESIDENT:

33 Okay. You may sit.

34 THE ACCUSED:

35 Thank you.

36 MR. PRESIDENT:

37 The Trial Chamber now enters a finding of guilty on the second count. The Accused previously pleaded

1 guilty on Count No. 1. We now find him guilty on Count No. 2.

2

3 Mr. Prosecutor?

4 MR. KAREGYESA:

5 If it pleases Your Honours, the Accused, having now changed his plea in respect of the second count to
6 one of guilty, I believe what remains is for the Chamber to test the validity of both pleas for Counts 1
7 and 2 pursuant to Rule 62(B).

8 MR. PRESIDENT:

9 I thought I had just done that.

10 MR. KAREGYESA:

11 As it pleases Your Honours. If that -- if you're satisfied, so is the Prosecutor. Most obliged.

12 MR. PRESIDENT:

13 Yes, we are satisfied from the answers given to the -- by the Accused that the plea was made freely
14 and voluntarily, that it was informed, that it was unequivocal and that it was based on sufficient facts for
15 the crime and the Accused's participation in it. We are satisfied of that now.

16 MR. KAREGYESA:

17 I'm most obliged, Your Honours. And in that event, I would invite the Chamber to enter a conviction in
18 respect of both counts on the basis of the guilty pleas.

19 MR. PRESIDENT:

20 Well, I thought I had already done that as well, because I told the registrar that we have found him guilty
21 on both counts. I was really expecting that we would move to discuss the question of sentencing. We
22 have read the plea agreement which has been filed. On the face of it, it seems to accord with principle,
23 and it seems consistent with our appreciation of the -- of reasonable penalties for the crime for which he
24 has pleaded guilty. So we are willing to move straight into the issue of sentencing.

25

26 There was one particular enquiry we had -- we had, though, which I think I should ask you about.

27 Based on the nature of the charge, we wondered if there was a reason why the person who offered the
28 inducement to the Accused has not been indicted.

29 MR. KAREGYESA:

30 Your Honours, that is a matter within the discretion of the Prosecutor, and I'm informed that that matter
31 is being looked into. At this moment, that is all I can state.

32 MR. PRESIDENT:

33 See, I think the Court -- as a Chamber, we find that is something which we feel that we should express
34 disapproval of.

35 MR. KAREGYESA:

36 I will convey the sentiments of this Chamber, Your Honour, to the Prosecutor, and we'll refer to the
37 Chamber in due course.

1 MR. PRESIDENT:

2 Thank you.

3 MR. KAREGYESA:

4 In respect of sentence, Your Honours, we have nothing to add to what is contained in the plea
5 agreement, and I believe my learned counsel -- Defence counsel may wish to have something to say.

6 MR. PRESIDENT:

7 Thank you. Thank you, Mr. Karegyesa.

8

9 Yes, Counsel.

10 MR. MARUMA:

11 Yes, Your Honours, my instructions from Witness GAA was to -- Accused GAA was to request for an
12 adjournment to enable us prepare material for mitigation. And it was anticipated that we may need to
13 call witnesses for that. At this juncture, I would ask for an adjournment to be able to prepare for
14 sentencing for -- for mitigatory evidence to be brought in.

15 MR. PRESIDENT:

16 Counsel, we do not think that is necessary or appropriate in these circumstances. A plea agreement
17 has been entered into. We have studied the agreement. We have looked at the legal -- surrounding
18 legal provisions, and we are satisfied that the agreement which has been reached is in accordance with
19 principle and that the punishments to which you all have agreed are punishments which the Court
20 thinks could reasonably be imposed. In these circumstances, it is completely unnecessary to receive
21 any mitigatory or further evidence on this matter. So, we expect to impose a sentence today.

22 MR. MARUMA:

23 Well, Your Honours, indeed those were my early instructions, and in the interests of a fair trial, at least I
24 would ask for a short adjournment so that I can confer with my client before we can -- I can be able to
25 address the Court.

26 MR. PRESIDENT:

27 By "short adjournment," what do you mean?

28 MR. MARUMA:

29 I -- I mean I would certainly need to -- to apprise my client of the development which has just occurred.

30 MR. PRESIDENT:

31 You're speaking of 10 minutes, 15 minutes?

32 MR. MARUMA:

33 Half an hour, My Lord.

34 MR. PRESIDENT:

35 Okay. The Court will rise for 30 minutes.

36 *(Court recessed from 0924H to 1025H)*

37

1 MR. PRESIDENT:

2 Mr. Maruma, are you ready to present your submissions?

3 MR. MARUMA:

4 I am ready, Your Honours.

5 MR. PRESIDENT:

6 You may proceed.

7 MR. MARUMA:

8 Excuse me. My system is a little noisy.

9 MR. PRESIDENT:

10 Mr. Registrar, can you provide some assistance?

11 MR. MARUMA:

12 Your Honours, I think I need a little help with my system. Thanks.

13

14 My Lord, Your Honours, the Accused stands convicted of the two counts, giving false testimony and
15 contempt of the Tribunal. The Accused stands convicted on his own plea.

16

17 The sentence for these offences under the Statute is serious: It's a fine of \$10,000 and/or
18 imprisonment for five years. It is serious to that extent. It's, however, not genocide, which would have
19 been a much more serious offence.

20

21 The Accused, in this case, has made a timely plea. From the very start when he appeared before this
22 Tribunal, he pleaded to the one count. His plea to the second count was strictly not a change, but he
23 only needed to be advised what the essence of those facts are which he had agreed to and did agree
24 that, in fact, it amounts to commission of the offence in the second count. So, really, the credit is to
25 himself.

26

27 The Accused has expressed remorse. He did so from the very start when he made the appearance
28 here. He did so again this morning. The nature of the sentence to be imposed does not require
29 deterrence on the part of the Accused. He is already aware of the seriousness of the offence to which
30 he has pleaded.

31

32 In determining the sentence, I invite this Honourable Chamber to take account of these mitigating
33 circumstances, as well as the following: The Accused is still a young man of the age of 42, having been
34 born in 1965. He has a significant family responsibility. He has five children -- sorry, a wife and five
35 children of his own, and has a family of his elder brother, a wife and three children. Three of the
36 children, his own and under his care, are going to secondary schools, privately paid at the moment, and
37 the others are in the primary school. One child is only two months old and was born when the Accused

1 was already in detention.

2
3 The Accused is the sole breadwinner of the family. He is of very meager means, having only half an
4 acre to survive on and one cow, a cow which produces only one cup of milk a day.

5
6 The Accused is otherwise a responsible member of his community. He's a leader in his *cellule* at the
7 lowest level. He does it on voluntary basis and is only paid an allowance. Depending on the nature of
8 the sentence that this Chamber will pronounce this morning, he has a chance that he may be integrated
9 back into the society and continue to provide this valuable service to the *cellule*.

10
11 The Accused person is himself a genocide survivor. He lost 87 members of his family during the
12 genocide, including both parents. He still conducts arrangements to carry out decent burials of
13 members of his family to this day. And it is to this extent that the Accused person is still a protected
14 witness of the ICTR to date.

15
16 Every April in their country -- in the Accused's country of Rwanda they do a commemoration of the
17 genocide, and on account of what he's gone through, he gets traumatic fits when that time approaches,
18 and that is only five months away.

19
20 The Accused person has provided considerable cooperation to the Prosecutor in the course of their
21 investigations. He stands ready to continue in that process in the days and months to come.

22
23 And finally -- just before finally, I would wish to mention that there is one child of the ones that the -- that
24 the Accused person looks after who is in a serious traumatic condition, a child of 13 years, and on
25 discovery that his uncle is in this situation, has worsened his condition.

26
27 Your Honours, the Accused person, being as vulnerable as I've indicated before, was under the
28 direction of very, very powerful inciters who led him to the commission of this offence. The persons
29 were, at the time, officers of the ICTR, persons who are legally qualified; and vulnerable as he is, he
30 believed them when he informed -- when they informed him that this would not amount to much in the
31 ICTR, it's okay with ICTR.

32
33 The Accused person also, naive as he may be, seeing that he was hosted by the ICTR, seeing that he
34 was transported here in the same Beechcraft that brought him initially, naively believed that it was
35 indeed going to be okay, only to find, as he now does, that it was a serious interference with the
36 administration of the Tribunal, a matter for which he profoundly expresses remorse.

1 The fact also that he was of humble means also rendered him vulnerable to the inducements and
2 persuasions of the inciters.

3
4 Your Honours, the offences for which -- to which the Accused has pleaded guilty offer the option of a
5 fine or a prison sentence. In the common law it is taken that whenever there is such an option, the
6 framers of the legislation take it that either the one, and in this case, the fine, would serve the justice of
7 the sentence for the crime for which an accused is convicted. I would wish that the Tribunal would be
8 persuaded by this common law reasoning.

9
10 Indeed, I have indicated that the Accused is of humble means and that indeed would be borne in mind
11 in determining the sentence of that option should the Chamber wish to concede it.

12
13 It is these mitigating circumstances that I would humbly invite the -- Your Honours to consider in
14 determining the appropriate sentence to be meted -- be meted out to the Accused to the offences for
15 which he has been convicted.

16
17 I am most obliged.

18 MR. PRESIDENT:

19 Thank you very much, Mr. Maruma.

20
21 Mr. Prosecutor, do you wish to --

22 MR. KAREGYESA:

23 Your Honours, as I had said earlier, we do not propose to say anything other than what is contained in
24 the plea agreement. Most obliged.

25 MR. PRESIDENT:

26 Thank you very much.

27
28 We will consider the plea in mitigation made by Counsel Maruma. We think it would take us
29 approximately -- just about an hour, hour and a half. So the registrar would probably reconvene the
30 Court at approximately midday.

31
32 We will rise now.

33 *(Court adjourned at 1042H)*

34 *(Pages 1 to 10 by Sherri Knox)*

CERTIFICATE

I, Sherri Knox, an Official Court Reporter for the International Criminal Tribunal for Rwanda, do hereby certify that the foregoing proceedings in the above-entitled cause were taken at the time and place as stated; that it was taken in shorthand (*stenotype*) and thereafter transcribed by computer; that the foregoing pages contain a true and correct transcription of said proceedings to the best of my ability and understanding.

I further certify that I am not of counsel nor related to any of the parties to this cause and that I am in nowise interested in the result of said cause.

Sherri Knox