

The Prosecutor v. Léonidas Nshogoza, Case No. ICTR-99-54A-T
Summary of Judgement – 2 July 2009

1. Trial Chamber III of the International Criminal Tribunal for Rwanda will now render its judgement in the case of *The Prosecutor v. Léonidas Nshogoza*. The Chamber will read out a summary of the Judgement. The written judgement is the authoritative version and will be filed and distributed soon hereafter.

2. Léonidas Nshogoza is a Rwandan citizen, born in 1961 in Rukeri, Kyumba, Muhanga, Southern Province, Rwanda. In 1986, Nshogoza graduated from the National University of Rwanda, where he studied law. He began working as a Defence investigator in the case of *The Prosecutor v. Jean de Dieu Kamuhanda* at the end of 2001.

3. Léonidas Nshogoza is charged with contempt of the Tribunal, pursuant to Rule 77 of the Rules of Procedure and Evidence. In particular, the Accused is charged with four counts: two counts of contempt of the Tribunal and two counts of attempt to commit acts punishable as contempt of the Tribunal.

4. The Prosecution alleges that the Accused repeatedly met with Prosecution Witness GAA, a prosecution witness in the *Kamuhanda* case, and Defence Witness A7/GEX, a potential prosecution witness in the *Kamuhanda* case, and manipulated, incited, instigated, induced or bribed them into signing false statements and into testifying falsely before the Appeals Chamber in the *Kamuhanda* case. According to the Prosecution, the Accused committed these acts in knowing violation of, or with reckless indifference to whether his actions violated protective measures ordered by the *Kamuhanda* Trial Chamber. In addition, the Prosecution alleges that the Accused attempted to procure false statements or testimony from Prosecution Witnesses BUC, GAF, SP003 and SP004.

5. The trial commenced on 9 February 2009 and concluded on 30 March 2009. The Chamber heard the live testimony of five witnesses for the Prosecutor, and 11 witnesses for the Defence, including Nshogoza himself.

Evaluation of GAA's Testimony

6. Before turning to its factual findings on the Prosecution's allegations, the Chamber now addresses the issue of the evaluation of Prosecution Witness GAA's testimony.

7. The Prosecution's case rests in significant part on the evidence of Witness GAA. On 3 December 2007, Witness GAA pleaded guilty, before this Tribunal, to false testimony under solemn declaration and contempt of the Tribunal. In this case, the Prosecution alleges that Nshogoza procured Witness GAA's false testimony.

8. The Chamber notes that it is not prohibited from relying on the evidence of convicted persons or accomplices of an accused. Witness GAA had already served his sentence at the time of his testimony in this trial, and was thoroughly cross-examined by the Defence.

9. Still, the Chamber could not entirely eliminate the possibility that Witness GAA had improper incentives or motives for testifying against the Accused. The Chamber was also troubled by the Witness's admitted prior false testimony, and his testimony that from 2005 until the point of his confession to false testimony, in 2007, his statements were mostly untrue or contained lies. Moreover, the Chamber notes that, with respect to several allegations in this case, Witness GAA was the only Prosecution Witness. For these reasons, the Chamber considered Witness GAA's testimony with particular care.

10. The Chamber will now describe the background of the case.

11. By decision dated 7 July 2000, the *Kamuhanda* Trial Chamber ordered protective measures on behalf of victims and potential prosecution witnesses in that trial. Most relevant to this case were measures that prohibited the defence from disclosing any information which could reveal the identities of prosecution witnesses, and that prohibited the defence from meeting with prosecution witnesses without informing the Prosecution and obtaining prior authorization from the Chamber.

12. Prosecution Witness GAA testified as a prosecution witness in the *Kamuhanda* trial in 2001. He testified that he had sought refuge at Gikomero Parish, where on 12

April 1994, he saw Jean de Dieu Kamuhanda leading attackers who massacred Tutsi refugees. In 2005, he appeared before the Appeals Chamber in the same case, and recanted his trial testimony, stating that he had not been at Gikomero Parish on the date in question.

13. Defence Witness A7/GEX signed a statement for the prosecution in the Kamuhanda case in which she stated she was at Gikomero Parish on 12 April 1994, and heard people say that Kamuhanda was leading the attack. She too recanted her statement before the Appeals Chamber in 2005.

14. As a result of these recantations and other testimony, the Appeals Chamber directed the prosecution to investigate whether Tribunal employees may have attempted to interfere with witnesses who had given evidence in proceedings before the Tribunal, and to investigate discrepancies in testimony arising from the Rule 115 hearing for possible false testimony.

15. On 11 June 2007, the Tribunal indicted Witness GAA for giving false testimony under solemn declaration and of contempt of the Tribunal, as well as attempt to commit acts punishable as contempt of the Tribunal. After reaching a plea agreement with the Prosecution, Witness GAA pleaded guilty to false testimony and contempt. He was subsequently sentenced to nine months imprisonment, and was released from prison on 14 March 2008.

16. The Chamber will now summarise the factual findings in relation to the Prosecution's allegations.

17. In relation to the Prosecution's allegations concerning the Accused's meetings with Witnesses GAA and A7/GEX, the Chamber notes that much of the evidence adduced by both Parties is in accord or is not disputed. Consequently, the Chamber accepts the following facts as proved beyond a reasonable doubt. During the relevant time period, Prosecution Witness GAA informed Defence Witness A7/GEX that, despite his testimony to the contrary in the *Kamuhanda* trial, he had not been at Gikomero on 12 April 1994. Witness A7/GEX arranged a meeting between Witness GAA and the Accused, where Witness GAA informed Nshogoza that he had not been at Gikomero on the date in question, and had not seen *Kamuhanda* commit acts of

genocide. Subsequently, the Accused took statements from both witnesses and took them to a notary public's office in Kigali to confirm these statements and have them notarized. The Accused also brought Defence Witness Augustin Nyagatare, a participant in the Gikomero Parish massacres, to the notary's office. These witnesses' statements were submitted to the Appeals Chamber as part of a Rule 115 application to submit additional evidence in connection with Kamuhanda's appeal from his conviction at trial.

18. Several disputed issues of fact arose from the Indictment, the evidence in relation to the Accused's meetings with Witnesses GAA and A7/GEX, and the submissions of the Parties. These issues are:

- (i) What did the Accused know regarding the status of witnesses GAA and A7/GEX under the protective measures ordered by the *Kamuhanda* Trial Chamber;
- (ii) did the Accused disclose protected information to the public or third parties at the meetings;
- (iii) did the Accused fabricate the recantation statements, and what did he know with regard to the truth or falsity of the recantation statements and testimony; and
- (iv) did the Accused procure Witnesses GAA's and A7/GEX's signatures and testimonies through bribery or other interference?

19. Considering that the Accused was a trained lawyer and had been working as a defence investigator on the *Kamuhanda* case for approximately two years at the time of the relevant events, the Chamber did not accept testimony suggesting that he was ignorant of the existence of the Protective Measures Order or its contents.

20. The Chamber finds that for reasons described in detail in the Judgement, the Accused had reason to know that both Witness GAA and A7/GEX were protected prosecution witnesses in this case, and that, with respect to Witness GAA, the evidence proves beyond a reasonable doubt that the Accused knew that he was a protected prosecution witness before bringing him to the notary's office in Kigali.

21. The Chamber finds that, of itself, the fact that the meetings were held in a public place is not significant, since there was no evidence to suggest that any protected information was revealed to any persons not party to the meetings.

22. Regarding the disclosure of protected information to third parties at these meetings, the Prosecution and Defence evidence shows that Prosecution Witness GAA and Defence Witness A7/GEX attended their meetings with Nshogoza together; and that Defence Witness Augustin Nyagatare attended the meeting at the notary's office in Kigali.

23. Given that Prosecution and Defence Witnesses testified that Nshogoza discussed their testimony or potential testimony in the presence of third parties at the meetings, the Chamber did not accept that Nshogoza took precautions not to be heard by third parties in attendance at the meetings. The Chamber therefore finds that the evidence shows, beyond reasonable doubt, that the Accused discussed details of Witness GAA's testimony in the presence of Witness A7/GEX. The Chamber also finds that the evidence proves beyond a reasonable doubt that, by bringing Witnesses GAA and A7/GEX to the notary's office, the Accused disclosed their identities as, respectively, a prosecution witness and a potential prosecution witness to the notary and to Defence Witness Augustin Nyagatare.

24. With regard to the fabrication of the recantation statements, the Chamber recalls that the uncontested evidence in the case shows that the Accused prepared the recantation statements for the signatures of Witnesses GAA and A7/GEX. Nshogoza testified that he prepared both witnesses statement on the basis of notes he took at his initial meetings with them. The Prosecution failed to adduce any evidence to suggest that this statement taking process was out of the ordinary, and the Chamber does not consider the fact that Nshogoza prepared the statements for the signature of the two witnesses to be material to the charges in the Indictment.

25. With respect to the Accused's knowledge of the truth or falsity of the statements, the uncontested evidence in this case shows that Prosecution Witness GAA informed Defence Witness A7/GEX and the Accused that he had not been at Gikomero, and that his testimony against Kamuhanda at trial was a lie. Though Witness GAA disavowed these statements at trial, there was no evidence to suggest that he informed Nshogoza that he had lied to him at the time. Nshogoza was only aware that the new statement was inconsistent with his prior testimony in the *Kamuhanda* trial. The Defence adduced

additional evidence which suggested that the Accused may have had reason to believe that Witness GAA's recantation was true.

26. The Prosecution did not adduce any evidence to suggest that Witness A7/GEX's recantation statement was false or that the Accused had any reason to believe it was false. For her part, Witness A7/GEX testified that she informed Nshogoza that she had lied in her statement to Prosecution investigators regarding Kamuhanda's presence at Gikomero.

27. The Chamber therefore finds that the Prosecution has failed to prove beyond a reasonable doubt that the Accused fabricated these witnesses' statements. Nor has it proved beyond a reasonable doubt that the Accused knew the recantation statements were false, or even that he had reason to know that they were false.

28. The evidence of both parties shows that the Accused made payments to Witnesses GAA and A7/GEX, but the purpose and amount of the payments was disputed at trial. In addition, Witness GAA testified that Nshogoza promised him one million Rwandan Francs in exchange for his testimony, that Nshogoza made misrepresentations about the purpose and consequences of his testimony in order to secure his cooperation.

29. For reasons specified in the judgement, the Chamber did not accept Witness GAA's uncorroborated testimony regarding the amount of the payments made by the Accused after each meeting. More importantly, irrespective of the amount paid, the evidence adduced in the case suggested that such payments were made for the purpose of covering transport expenses, and showed that similar payments were also made, at least on occasion, by representatives of the Prosecution and WVSS after meetings with witnesses. Given this evidence, the Chamber does not find that the Prosecution proved beyond a reasonable doubt that Nshogoza made such payments with the intent or purpose of bribing or otherwise interfering with Witnesses GAA or A7/GEX.

30. Regarding the alleged promise of payment of one million Rwandan Francs, the Chamber finds Witness GAA's uncorroborated evidence lacking in several respects. The evidence lacked any detail in relation to the timing and circumstances of the alleged promise, and contained no details as to what Nshogoza actually said. This evidence was inconsistent with a prior statement Witness GAA made to Rwandan

authorities, and other Prosecution witnesses cast doubt on Witness GAA's testimony. The Chamber therefore finds that the Prosecution failed to prove this allegation beyond a reasonable doubt.

31. For reasons specified in the Judgement, the Chamber did not accept Witness GAA's uncorroborated testimony that the Accused told him that he was writing a book about Kamuhanda at their first meeting, or that the Accused told him that there would be no consequences if Witness GAA recanted.

32. The Prosecution alleges that the Accused requested Witness GAA to arrange for him to meet with Prosecution Witness BUC. According to the Prosecution, the Accused attempted to procure false testimony from Witness BUC, but Witness BUC refused the Accused's offer. Despite this alleged refusal, the Prosecution alleged that Lead Counsel for Kamuhanda filed an undated statement to the Appeals Chamber.

33. Much of the evidence of the Parties concerning this meeting is in agreement or was not disputed at trial. Nshogoza asked Witness GAA to contact Witness BUC on his behalf. Witness GAA told Witness BUC that Nshogoza wanted to meet with her because she was a survivor of the massacres in Gikomero in 1994. At the meeting, Nshogoza asked Witness BUC questions about the massacres at Gikomero in 1994 and about Kamuhanda. Afterwards, Nshogoza asked Witness BUC if she would be willing to testify before a court and she accepted.

34. The Prosecution failed to adduce any evidence that the Accused sought false testimony from Witness BUC, or that the statement submitted before the Appeals Chamber by the Kamuhanda defence was false.

35. The Prosecution alleges that the Accused asked Prosecution Witness GAA to contact Prosecution Witnesses GAF, SP003 and SP004, in order to meet them with the ultimate purpose of procuring false testimony from each of them, in exchange for a bribe. Though Prosecution Witnesses GAF, SP003 and SP004 testified in this case, the Chamber notes that the Prosecution's case concerning these allegations rests on the evidence of Witness GAA, who is the only Prosecution Witness who gave direct evidence of the Accused's alleged request that he find more witnesses.

36. As the result of inconsistencies and lack of clarity and detail in Witness GAA's evidence on this allegation, among other reasons specified in the Judgement, the Chamber finds that the Prosecution has failed to prove beyond a reasonable doubt that the Accused asked Witness GAA to find other witnesses to provide false testimony. For reasons specified in the Judgement, the Chamber also did not accept Witness GAA's testimony concerning the alleged promise of payment.

37. The Chamber will now summarise its legal conclusions in respect of each of the counts charged.

38. Under Count One of the Indictment, the Prosecution charges Nshogoza with committing contempt of the Tribunal pursuant to Rule 77 (A) and (A)(ii), by repeatedly meeting with and disclosing the protected information of Witnesses GAA and A7/GEX, in knowing violation of, or with reckless indifference to whether his actions were in violation of the protective measures ordered by the *Kamuhanda* Trial Chamber on 7 July 2000.

39. The Defence submits that neither Prosecution Witness GAA nor Defence Witness A7/GEX were protected prosecution witnesses in the *Kamuhanda* case at the time of the meetings.

40. In relation to Witness A7/GEX, the Defence submits that, because she did not testify in the *Kamuhanda* trial, she ceased to be a potential prosecution witness and all alleged protections for her ceased when the prosecution closed its evidence in that trial. The Defence argued that any other outcome would have an enormous stifling effect on defence investigations.

41. The Chamber disagrees, and finds that Witness A7/GEX remained a protected prosecution witness at the time of the meetings. Pursuant to the plain language of Rules 69 and 75(G), protective measures remain in force until rescinded, varied or augmented by either the Chamber which issued the order or another Chamber seized of a request regarding the measures.

42. The Protective Measures issued by the *Kamuhanda* Chamber expressly covered potential witnesses and had not been rescinded or varied at the time of the events in

question. With regard to the stifling effect suggested by the Defence, the Chamber notes that the protective measures provided for a procedure by which the Defence could seek permission from the Chamber to meet with protected prosecution witnesses. The Chamber does not consider that reasonable delay that may result from the Defence following this procedure would impede defence investigations or violate the rights of the Accused.

43. Concerning Witness GAA, the Chamber did not accept the Defence evidence that he initiated contact with the Accused, but, even if Witness GAA had approached the Accused, the Chamber, for reasons discussed in the Judgement, does not consider that this would amount to a knowing and wilful waiver of his protective measures. The Chamber finds that Prosecution Witness GAA remained a protected prosecution witness at the time of the meetings.

44. The Chamber notes that, pursuant to the Appeals Chamber, “a violation of a court order *as such* constitutes an interference with the International Tribunal’s administration of justice” and “[a]ny defiance of an order of a Chamber *per se* interferes with the administration of justice for the purposes of a conviction for contempt.” Given this broad language, the Chamber finds that meeting with protected prosecution witnesses in violation of a protective measures order is punishable as contempt of the Tribunal.

45. The Chamber did not accept the Defence submissions that the instructions of Lead Counsel Aicha Condé, a Defence Witness in this case, who told the Accused that Witness A7/GEX was not a protected witness and that meeting with Witness GAA in the presence of the notary would comport with the Protective Measures excused the violations of the measures or eliminated the required *mens rea* of knowing and wilful conduct. These instructions were at odds with the plain language of the Protective Measures themselves, which applied to potential witnesses and which made no mention of the use of a notary as a substitute for obtaining the *Kamuhanda* Trial Chamber’s permission to meet with protected witnesses. Moreover, the Chamber notes that it is well-established in the ICTY’s jurisprudence on contempt that mistake of law is not a valid defence.

46. Recalling its factual findings regarding the knowledge of the Accused as to the protected status of Witnesses GAA and A7/GEX, the Chamber finds, that for his initial meeting with Witness GAA and all of his meetings with Witness A7//GEX, the Accused acted with reckless indifference to whether his actions were in violation of the Protective Measures. For all subsequent meetings with Witness GAA, including the meeting at the notary's office, the Accused knowingly and wilfully violated the Protective Measures.

47. Under Count One, the Prosecution also submits that the Accused committed contempt pursuant to Rule 77 (A)(ii) by "disclosing information ... in knowing violation of" the Protective Measures Order.

48. The Appeals Chamber has held that any wilful disclosure of information in knowing violation of an order of a Chamber is sufficient for the purposes of contempt under Rule 77(A)(ii). It need not be shown that such disclosures actually interfered with the Tribunal's administration of justice.

49. The Chamber recalls its factual findings that, by bringing Witnesses GAA, A7/GEX and Witness Augustin Nyagatare to the notary's office, the Accused disclosed Witness GAA's identity as a prosecution witness in the *Kamuhanda* case and Witness A7/GEX's identity as someone who had given a statement to the Prosecution, or a potential witness, to Augustin Nyagatare and to the notary.

50. The evidence shows that that the Accused discussed the substance of Witness GAA's testimony in the presence of Witness A7/GEX. Although the evidence also showed that Witnesses GAA and A7/GEX discussed their respective testimonies prior to their meetings with the Accused, the Chamber notes that, pursuant to the contempt jurisprudence of the ICTY, the prior disclosure of protected information does not authorize or exempt subsequent disclosures.

51. For these acts, the Chamber therefore finds the Accused, Léonidas Nshogoza, guilty of contempt of the Tribunal pursuant to Count One of the Indictment.

52. Under Count Two of the Indictment, the Prosecution charges Nshogoza with committing contempt of the Tribunal pursuant to Rule 77 (A), (A)(ii), (A)(iv) and (B)

by knowingly and wilfully procuring false statements and inciting, manipulating, instigating, offering inducements or promising a bribe to Prosecution Witnesses GAA and A7/GEX to sign false statements and give false testimony, or by otherwise interfering with them.

53. The Chamber recalls that the facts relevant to Count Two were not proved beyond a reasonable doubt. Though the evidence in this case shows that the Accused made payments to Witnesses GAA and A7/GEX, and offered them food and drink, the Prosecution failed to prove beyond a reasonable doubt that the payments were made with the intent to bribe or otherwise interfere with the witnesses.

54. The Chamber therefore finds the Accused not guilty under Count Two of the Indictment.

55. Under Count Three of the Indictment, the Prosecution charges Nshogoza with committing the offence of Attempt to Commit Acts Punishable as Contempt of the Tribunal by attempting to suborn false testimony from Witness BUC.

56. Rule 77 (B) states that “any incitement or attempt to commit any of the acts punishable under paragraph (A) is punishable as contempt of the Tribunal with the same penalties.”

57. The Chamber notes that the Prosecution failed to prove beyond a reasonable doubt that the Accused sought false testimony from Witness BUC.

58. The Chamber therefore finds the Accused not guilty of Count Three.

59. Under Count Four of the Indictment, the Prosecution charges Nshogoza with Attempt to Commit Acts Punishable as Contempt of the Tribunal by attempting to procure false statements or false testimony from Witnesses GAF, SP003 and SP004.

60. The Chamber recalls that the Prosecution failed to prove beyond a reasonable doubt that the Accused asked Witness GAA to procure false statements or testimony from Witnesses GAF, SP003 and SP004, or that he offered them a bribe or instructed Witness GAA to offer them a bribe.

61. Further, the Prosecution evidence shows that, after the meeting at the notary’s office, the Accused informed Witness GAA that he was not interested in meeting with

Witnesses GAF, SP003, and SP004. Thus, even if the Accused had initially requested Witness GAA to act on his behalf, he also instructed him to cease such actions. Therefore, any acts possibly punishable as contempt of the Tribunal failed to occur as a direct result of an act of the Accused. The Chamber, therefore, notes that, even if the Prosecution had proven these material facts beyond a reasonable doubt, the Accused must still be found not guilty of the crime of Attempt to Commit Acts Punishable as Contempt of the Tribunal.

62. For these reasons, the Chamber finds the Accused not guilty of Attempt to Commit Acts Punishable as Contempt pursuant to Count Four.

Accused, please rise and come to the witness box

63. For the reasons stated and having considered all the evidence and the arguments presented before it, the Trial Chamber unanimously finds you, Léonidas Nshogoza, guilty of Count One of the Indictment for committing contempt of the Tribunal pursuant to Rule 77 (A) and (A)(ii), by repeatedly meeting with and disclosing the protected information of Witnesses GAA and A7/GEX, in knowing violation of, or with reckless indifference to the protective measures ordered by the Kamuhanda Trial Chamber on 7 July 2000.

64. The Chamber finds you, Leonidas Nshogoza, not guilty on the three other Counts: Count 2, Count 3 and Count 4.

65. Rule 77 (G) of the Rules provides that the maximum penalty that may be imposed on a person found to be in contempt of the Tribunal shall be a term of imprisonment not exceeding five years, or a fine not exceeding USD 10,000, or both.

66. The Chamber recalls that the Prosecution submits that Leonidas Nshogoza should be sentenced to four years imprisonment for Count 1 of the Indictment.

67. Pursuant to Rule 101 (B), in considering the appropriate sentence, the Trial Chamber has taken into account such factors as the gravity of the offence and the individual circumstances of the convicted person, as mentioned in Article 23 (2) of the Statute.

68. As there has only been one conviction for contempt of the Tribunal before the ICTR, namely, in the *Prosecutor v. GAA*, in reaching its conclusion, the Chamber has considered the sentences imposed in cases before the ICTY where accused persons have been convicted of contempt.

69. The Chamber recalls that, with regard to the crime of contempt, the most important factors to be taken into account in determining the appropriate penalty are the gravity of the contempt and the need to deter repetition and similar conduct by others.

70. The Chamber considers contempt of the Tribunal to be a serious offence, constituting a “direct challenge to the integrity of the trial process.”

71. The Accused’s conduct in the present case undermined the authority of the *Kamuhanda* Trial Chamber, as well as confidence in the effectiveness of protective measures, and the administration of justice. Such conduct not only defies the authority of the Tribunal but may also have the effect of dissuading witnesses from testifying before it.

72. For reasons explained in the Judgement, the Chamber considered the following to be aggravating factors, proved beyond a reasonable doubt at trial:

- Nshogoza’s repeated meetings with the protected witnesses, which demonstrated a continued disregard for the protective measures;
- Nshogoza’s background of having studied law, and his position as an investigator in the *Kamuhanda* defence team, as well as in the *Rukundo* case;
- Nshogoza’s admitted submission of a false claim for fees to the Tribunal;

73. The Trial Chamber has also taken the following mitigating factors into account:

- the family circumstances of the Accused, who has three children aged 14, 15 and 17;
- the fact that the Accused has no past criminal record;
- the Accused’s cooperation with the Tribunal, through his voluntary surrender on 8 February 2008;
- For reasons explained in the Judgement, the Chamber attached limited weight to the evidence of Nshogoza’s good character from Defence witnesses Aicha Conde and Fulgence Seminega.

74. Considering all the relevant circumstances, for contempt of the Tribunal, the Chamber sentences Leonidas Nshogoza to

Ten months imprisonment

75. The Chamber notes that Nshogoza has been detained in custody at the UNDF since 8 February 2008. Pursuant to Rule 101(C) of the Rules, Nshogoza is therefore entitled to credit for time served as of 8 February 2008. In consequence, the Chamber directs that Nshogoza be released from the custody of the Tribunal, forthwith, unless he is otherwise lawfully held.

76. This brings us to the close of the case.