

RWANDA / JUDGMENT

The Prosecutor v. GAA

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International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda OR: ENG TRIAL CHAMBER 111 Before Judges: Dennis C. M. Byron, Presiding Gberdao Gustave Kam Vagn Joensen Registrar: Adama Dieng 1 Date: 4 December 2007 THE PROSECUTOR v. GAA' Case No. ZCTR-07-90-R77-Z I JUDGEMENT and SENTENCE Defence Counsel Cecil J. Mamma Silvana Arbia Richard Karegyesa Abdoulaye Seye Florida Kabasinga Dennis Mabura ' The Accused is a ted witness who testified in different trial under the pseudonym GAA. Therefore, the real name of the cannot be disclosed.

. , Judgement and Sentence ~ I. THE PROCEEDINGS 1. On 11 June 2007¹ an Indictment against the Accused known by the pseudonym of GAA b was issued.² It contained counts, namely: giving false testimony under solemn declaration SIX (Count I);³ contempt of the Tribunal (Count 11);⁴ and various attempts to commit acts punishable as contempt of the Tribunal (Counts 111 to VI). This Indictment was confirmed on 11 June 2007.⁵ 2. GAA was Kigali, Rwanda on 30 July, 2007 and transferred to the Tribunal on August 2007, he made his initial appearance and pleaded guilty to Count I and not guilty to the other five counts.⁶ 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 11, 111, IV, V, and VI of the Indictments, setting down the hearing for 3 December 2007.⁷ 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,⁸ and an application to amend the indictment.⁹ On 30 November 2007, the Chamber granted the amendment of the Indictment, only two counts: giving false testimony under solemn declaration of the Tribunal (Count 11) ("Amended Indictment").¹⁰ The Prosecutor signed by the Accused, in which GAA confirmed his plea of guilty to Count I and entered a plea of guilty to Count 11 of the Amended Indictment.¹¹ 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 Accused, declared himself satisfied that the guilty plea March 2007 ("Original Indictment") Procedure and Evidence ("the Rules"). (TC), 11 June 2007. ' T. 10 August 2007, p. - and Not Guilty Pleas of GAA Rule 62 of the Rules of - Rules 73, 50 and 51 and 62 bis(A)(i) of the / Prosecutor v. GAA, Case No. ICTR-07-90-R77-I

Judgement and Sentence 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.¹² In its oral ruling, the Chamber indicated at the written reasons for its sentencing would follow. The present Judgement is the authoritative statement of the Chamber's findings and reasoning. 11. 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. 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 Lkonidas 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 Lkonidas 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. Rules 77 (G) and 11 (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 to Rule 62 bis (A), submitted that a sentencing range of six 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 then the duty of the Chamber to satisfy itself on this issue. " T. 3 December 2007 14 Prosecutor v. Jean de Dieu Kamuhanda, Case No. ICTR-99-54A-A Prosecutor v. GAA, Case No. ICTR-07-90-R77-I

Judgement and Sentence 7. In discussing to impose, the Chamber notes that neither this Tribunal nor the International Criminal Tribunal for the former Yugoslavia ("ICTY") have rendered judgments for giving false testimony has been imposed. Although with issues of contempt, none of them have resulted in contempt reflecting other types of misconduct.* 8. The Chamber that the penalty should reflect the goals of retribution, deterrence, rehabilitation, and of society. Article 23 (2) of the Statute of the Tribunal ("the Statute") and provide for the Chamber to consider, inter alia, the conduct, the individual circumstances of the accused, including substantial cooperation with the conviction, and the extent to which any prior sentence for the same act has already been served. 9. The Counsel for Accused acknowledged that the offences of giving false testimony under solemn declaration and contempt of the Tribunal, are serious but asked for leniency. a financial punishment. He contended that the Accused was dependent on him as its sole breadwinner. He suggested 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 false testimony under solemn declaration and contempt of the Tribunal as very as they constitute a direct challenge to the integrity of the trial process. integrity of the administration of justice is particularly criminal offences. It is therefore necessary for general 1 Prosecutor v. GAA, Case No. ICTR-07-90-R77-I

Judgement and Sentence 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 Leonidas 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." 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, ~ 17 T. 3 December 2007, ~ Prosecutor v. GAA, Case No. ICTR-07-90-R77-I

~ Judge tent and Sentence IV. DISPOSITION I. HOLDING guilty on the two counts of giving false testimony under of the Tribunal; sentence of nine (9) months imprisonment crediting him transfer to the Tribunal and during trial; 1 H. WELLES that this judgement shall be enforced immediately, and that until his transfer to the designated place of imprisonment, GAA shall be kept in detention under the present conditions. Arrêté du 4 décembre 2007, one in English. /" Up in English? Judge Prosecutor v. GAA, Case No. ICTR-07-90-R77-I 616 \ "

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