

Katanga Defence Question Witness Reliability

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Following a week of intense questioning, defence contends prosecution witness not telling truth.

The defence teams representing alleged former Congolese militia leaders Germain Katanga and Mathieu Ngudjolo last week said that they will apply to start legal proceedings against a prosecution witness, on the grounds that he appears unable or unwilling or unable to tell the truth.

The defence lawyers made the announcement late last week, following a week where they had challenged a prosecution witness's claims that he was abducted as a child soldier by the Nationalist and Integrationist Front (FNI), the militia group that Ngudjolo allegedly led.

Katanga, who is said to have led the Patriotic Forces of Resistance of Ituri (FRPI), and Ngudjolo are accused of war crimes and crimes against humanity related to an attack on the village of Bogoro, one of the most deadly incidents of the Ituri conflict.

During the cross-examination, both David Hooper, defence counsel for Katanga, and Jean-Pierre Fofé, acting for Ngudjolo, expressed frustration that the witness often did not remember the details of events that he was asked about or, in some cases, remained silent rather than answer the questions put to him.

Under Article 70 of the Rome Statute, the defence counsel can apply to initiate proceedings against a witness in the event that the witness appears to be giving "false testimony when under an obligation... to tell the truth" or to present "evidence that the party knows is false or forged".

The week began with Hooper questioning whether the witness really was a child soldier, claiming that a Congolese electoral card showed that the witness was born in 1984 and not, as he claimed, in 1990.

Wider questions about the witness's reliability arose when he was asked about his alleged abduction into the FNI by a man named Boba Boba, who is said to have been a commander in the militia.

In his answers, the witness said that his parents had been there when he was abducted. Hooper questioned whether the witness's account was true by drawing attention to the presence of Ugandan soldiers nearby.

Hooper asked, "Are you saying that Boba Boba was able to come with numerous soldiers and take you away, despite screaming parents, right under the noses of those Ugandan soldiers?"

"I would say that we lived a little bit away from it all, and the Ugandans in question were a few kilometres away," the witness replied.

Hooper said that in fact the Ugandans were "just a few hundred metres away... that is a couple of football pitch lengths away from where you lived", to which the witness replied that he didn't know.

Hooper pressed the witness further, saying, "And all this stuff about Boba Boba taking you away is nonsense, isn't it?"

"Before testifying here I stated that I was going to tell the truth, and now you say that everything I have said is false," the witness protested. "I have no power to say anything else, to add anything else, or to give another answer with regard to what you say."

As the cross-examination continued, the defence counsel questioned the reliability of the witness's identification of the accused shortly before the attack on Bogoro.

Hooper pointed out an apparent contradiction in the witness's testimony. In his statement, the witness claimed that it was his parents who had identified Katanga and Cobra Matata, a senior commander, to him. But, in evidence given in court, the witness said that a fellow soldier had pointed the two men out to him.

The witness did not respond to Hooper's questions, leading the defence counsel to say, "Am I right in saying that there never was a time when your parents pointed out Germain and Cobra to you on the road before your abduction? Am I right in saying that never happened?"

Hooper then went further, claiming that the witness deliberately made things up in order to participate in the victim protection programme.

The week's proceedings ended with a discussion between the prosecutor and the defence about the witness's reliability.

The prosecutor, Lucio Garcia, said, "What I have realised is that when he is tired he doesn't answer the questions put to him, so I would not wish this type of silence under certain circumstances be wrongly interpreted to the effect that the witness did not want to answer the questions."

Fofé, however, rejected Garcia's argument.

"We believe that this witness does not want to tell the truth. The witness is not tired," he said. "The witness is embarrassed by the questions seeking clarification that are put to him, and which are supposed to enlighten the honourable judges... the witness is not tired at all, he is simply refusing to tell the truth."

Hooper added, "I've not seen a tired man sitting there this morning. I've seen perhaps, from time to time, a sullen and resentful person, but that of course is not to do with tiredness."

It was unclear from the testimony when the chamber will take a decision regarding the defence's plea that the witness is lying under oath.

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