



UNITED NATIONS  
NATIONS UNIES

ICTR-98-42-T  
4-10-2004  
(10914 — 10910)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

10914  
ambes.

OR: ENG

**TRIAL CHAMBER II**

**Before:** Judge William H. Sekule, Presiding  
Judge Arlette Ramaroson  
Judge Solomy Balungi Bossa

**Registrar:** Mr Adama Dieng

**Date:** 14 October 2004

**The PROSECUTOR**

v.

**Pauline NYIRAMASUHUKO *et al.***  
**Case No. ICTR-97-21-T**  
**Joint Case No. ICTR-98-42-T**

JUDICIAL RECORDS/ARCHIVES  
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**DECISION ON PROSECUTOR'S MOTION FOR LEAVE TO ADD  
A HANDWRITING EXPERT TO HIS WITNESS LIST**

**Office of the Prosecutor**

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**Defence Counsel for:**

Michel Marchand, Simone Santerre for Joseph Kanyabashi  
Pierre Boulé, Claude Desrochers for Elie Ndayambaje  
Josette Kadji, Charles Tchacounte Patie for Sylvain Nsabimana  
Duncan Mwanyumba, Normand Marquis  
for Arsène Shalom Ntahobali  
Titinga Frédéric Pacere, Richard Perras for Alphonse Nteziryayo  
Nicole Bergevin, Guy Poupart for Pauline Nyiramasuhuko

*[Handwritten signature]*

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**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** ("Tribunal"),

**SITTING** as Trial Chamber II composed of Judge William H. Sekule, Presiding, Judge Arlette Ramaroson and Judge Solomy Balungi Bossa (the "Chamber");

**BEING SEISED** of the "Prosecutor's Motion for Leave to Add a Handwriting Expert to His Witness List", filed on 6 October 2004 (the "Motion");

**CONSIDERING** "Accused Nyiramasuhuko's Response to Prosecutor's Motion For Leave to Add a Handwriting Expert to His Witness List", filed on 12 October 2004 (the "Response");<sup>1</sup>

**CONSIDERING** its "Decision On Prosecutor's Motion for Verification of the Authenticity of Evidence Obtained Out of Court, Namely the Alleged Diary of Pauline Nyiramasuhuko" rendered in the current Case on 1 October 2004 (the "1 October 2004 Decision");

**CONSIDERING** the "Report of Forensic Document Expert Antipas Nyanjwa, Filed Under Rule 94 *bis* (A) For Disclosure to the Defence and to Be Filed With the Trial Chamber", filed on 20 September 2004 in English and on 28 September 2004 in French (the "Report");

**CONSIDERING** the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules");

**NOW DECIDES** the matter pursuant to Rule 73 (A).

**SUBMISSIONS BY THE PARTIES**

*Prosecutor's Motion*

1. The Prosecution requests for leave to add a handwriting witness to its current witness list pursuant to Rule 73 *bis* (E) and in the interests of justice. The Prosecution indicates that, should the Chamber grant its Motion, the Expert to be called is Mr Antipas Nyanjwa, whose Report was disclosed to the Defence on 16 September 2004 in English and on 28 September 2004 in French.
2. The Prosecution submits that the evidence it will lead through this witness is vital to the Prosecution's case. The Expert will give evidence of his analysis of the diary admitted as Prosecution Exhibit 144 A. This evidence will offer more elements to assist the Trial Chamber in deciding the weight to give to that exhibit, which has already been admitted.
3. The Prosecution submits that the curriculum vitae of the proposed witness shows that he is an expert in his field and has already testified as such before the Tribunal in the *Military I Case*.
4. The Prosecution submits that his report was disclosed to the Defence on 16 September 2004. The Prosecution submits that, the witness being an expert, his report could be admitted under Rule 94 *bis* without his appearance being necessary. Even if the

<sup>1</sup> Nyiramasuhuko's Response was filed in French and titled « Réponse de l'Accusée Pauline Nyiramasuhuko à la Requête urgente du Procureur aux fins d'être autorisé à ajouter un témoin expert graphologue sur la liste des témoins ».

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Defence wishes to cross-examine him, his evidence will be very short as his examination-in-chief is expected to take approximately one hour and any cross-examination should also be very brief. Therefore, the Prosecution submits that his testifying will not cause undue delay in the closing of the Prosecution Case and that the importance of the evidence to be adduced by this witness will far outweigh any delay caused.

*Nyiramasuhuko's Response*

5. Defence for Nyiramasuhuko refers to the submissions contained in paragraphs 40 to 50 of its 13 September 2004 "Response to Prosecutor's Motion for Verification of the Authenticity of Evidence Obtained Out of Court, Namely the Alleged Diary of Pauline Nyiramasuhuko".
6. Defence for Nyiramasuhuko stresses that, since the beginning of the proceedings related to documents seized in the course of her arrest, it has constantly referred to the "alleged" diary of Nyiramasuhuko. Therefore, it was up to the Prosecution, which wishes to have this document admitted as exhibit, to bring the evidence of its authenticity. However, the Prosecution never asked for an expertise and it is only at the end of its Case that the Prosecution moves the Chamber to this end. The Defence submits that this lack of diligence should lead to the denial of the Motion.
7. Relying on the "Decision on the Prosecutor's Oral Motion For Leave to Amend the List of Selected Witnesses" rendered in the *Nahimana* Case on 26 June 2001 by Trial Chamber I, the Defence submits that, pursuant to Rule 73 bis (E), "the final decision as to whether it is in the interests of justice to allow the Prosecution to vary its list of witnesses rests with the Chamber" and that "such interests must not prejudice the principle that the Accused has the right to trial without undue delay".<sup>2</sup>
8. The Defence submits that in its 1 October 2004 Decision, the Trial Chamber ruled that disclosure of the Report pursuant to Rule 94 bis (A) was inadmissible. It submits that disclosure of the Report pursuant to Rule 94 bis (A) can only be done after the Chamber's decision on the current Motion and that this will cause an undue delay pursuant to Article 20 of the Statute.
9. Therefore, the Defence submits that the Motion is late and shall be denied.

**HAVING DELIBERATED**

10. Pursuant to Rule 73 bis (E), after the commencement of Trial, the Prosecutor, if he considers it to be in the interests of justice, may move the Trial Chamber for leave to reinstate the list of witnesses or to vary his decisions as to which witnesses are to be called. The Trial Chamber notes that the Motion is based on this Rule.
11. The Trial Chamber notes submissions by the Prosecution to the effect that the evidence it will lead through the Witness will assist the Chamber in assessing the probative weight to give to the diary. The Trial Chamber also notes submissions by

<sup>2</sup> *Prosecutor v. Nahimana et al. ("Media Case")*, Case n° ICTR-99-52-T, Decision on the Prosecutor's Oral Motion For Leave to Amend the List of Selected Witnesses (TC), 26 June 2001, para. 17.

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the Defence that the final decision as to whether it is in the interests of justice to allow the Prosecution to vary its list of witnesses rests with the Chamber. The Trial Chamber further notes that, according to the same Decision as quoted by the Defence, the "interests of justice" shall be assessed in the light of the following elements:<sup>3</sup>

"[t]he materiality of the testimony, the complexity of the case, prejudice to the Defence, including elements of surprise, on-going investigations, replacements and corroboration of evidence [...], the presentation of the best available evidence [...] balanced against the right of the accused to have adequate time and facilities to prepare his Defence and his right to be tried without undue delay".

12. It appears from the Defence's submissions that it intends to challenge the authenticity of the diary. The Defence submits that it is up to the Prosecution to bring the evidence of its authenticity. Since the authenticity of the Diary is challenged, it is the view of the Trial Chamber that the materiality of the testimony expected from the requested Expert Witness has some relevance to the Case.
13. In addressing the rights of the Accused to be balanced with the presentation of the best available evidence, the Trial Chamber notes the Defence's submissions as regards to the Accused right to be tried without undue delay. In particular, the Defence stresses that, should the Motion be granted, there would be need for a new disclosure of the Expert's Report pursuant to Rule 94 *bis* (A).
14. The Trial Chamber notes that, pursuant to Rule 94 *bis* (A), the full statement of any expert witness called by a Party shall be disclosed to the opposing party as early as possible and shall be filed with the Trial Chamber not less than twenty-one days prior to the date on which the expert is expected to testify. Rule 94 *bis* (B) further provides that within fourteen days of filing of the statement of the expert witness, the opposing Party shall file a notice to the Trial Chamber indicating whether: (i) it accepts or does not accept the witness' qualification as an expert; (ii) it accepts the expert witness statement; or (iii) it wishes to cross-examine the expert-witness.
15. The Trial Chamber notes that the Report drafted by Antipas Nyanjwa was disclosed to the Defence pursuant to Rule 94 *bis* on 20 September 2004 in English and on 28 September 2004 in French. As stated in the Trial Chamber's 1 October 2004 Decision, disclosure of the Report of Expert Antipas Nyanjwa was not admissible unless the Prosecution had been authorised to amend its list of witnesses. The Trial Chamber notes the Prosecution submissions to the effect that, if leave to add an Expert Witness to its list of witnesses is granted, Mr Antipas Nyanjwa would still be the one designated.
16. The Trial Chamber further notes submissions by the Prosecution that, even if the Defence wish to have the Expert Witness appear before the Chamber, his examination-in-chief is expected to take approximately one hour. The Trial Chamber also notes that the additional Expert Witness appears to concern only Accused Nyiramasuhuko and that there may be limited cross-examination from her co-Accused. Therefore, the time needed for the appearance of the Expert Witness before the Trial Chamber should not be long.

<sup>3</sup> *Prosecutor v. Nahimana et al. ("Media Case")*, Case n° ICTR-99-52-T, Decision on the Prosecutor's Oral Motion For Leave to Amend the List of Selected Witnesses (TC), 26 June 2001, para. 17.

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17. The Trial Chamber finally notes that the proceedings are currently reaching the end of the Prosecution Case, that in any event the Defence Case cannot start before early next year, and that the appearance of the Expert Witness, if so required, will not delay the beginning of the Defence Case.
18. In the light of the above considerations, it is the view of the Trial Chamber that the relevance of the evidence that could be brought by the Expert Witness overwhelms the potential prejudice of any delays caused by the time frame for the disclosure of the Expert Report and his appearance before the Trial Chamber. Therefore, the Trial Chamber considers that the addition of the proposed Expert Witness on the Prosecution List of Witnesses is in the interests of justice and grants the Motion.
19. Since the Expert's Report was already disclosed to the Defence on 20 September 2004 in English and on 28 September 2004 in French and the conditions for this disclosure pursuant to Rule 94 *bis* (A) are now met, it is the view of the Trial Chamber that there is no need for further disclosure of the Report. However, it is also the view of the Trial Chamber that the time frames for the appearance of the Expert Witness pursuant to Rule 94 *bis* (A) and for the filing of notice pursuant to Rule 94 *bis* (B) should start from the date of the present Decision.

**FOR THE ABOVE REASONS,  
THE TRIAL CHAMBER**

**GRANTS** the Motion;

**NOTES** that the Report of Forensic Document Expert Antipas Nyanjwa was disclosed to the Defence pursuant to Rule 94 *bis* (A) on 20 September 2004 in English and on 28 September 2004 in French;

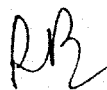
**DECIDES** that, pursuant to Rule 94 *bis* (A) the appearance of the Expert Witness, if so required, shall be made no sooner than twenty-one days after the current Decision;

**DECIDES** that the Defence shall file the notice provided for in Rule 94 *bis* (B) within fourteen days of the current Decision.


Arusha, 14 October 2004



William H. Sekule  
Presiding Judge



Arlette Ramarosan  
Judge



Solomy Balungi Bossa  
Judge

[Seal of the Tribunal]

