



UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

11355  
Mwanja

OR: ENG

TRIAL CHAMBER II

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

**Registrar:** Mr Adama Dieng

**Date:** 11 April 2005

ICTR-98-42-T  
11 - 04 - 2005  
(11355 - 11352)

The PROSECUTOR v. **Élie NDAYAMBAJE**  
(Case No. ICTR-96-8-T)

The PROSECUTOR v. **Joseph KANYABASHI**  
(Case No. ICTR-96-15-T)

The PROSECUTOR v. **Pauline NYIRAMASUHUKO & Arsène Shalom NTAHOBALI**  
(Case No. ICTR-97-21-T)

The PROSECUTOR v. **Sylvain NSABIMANA & Alphonse NTEZIRYAYO**  
(Case No. ICTR-97-29-T)

*Joint Case No. ICTR-98-42-T*

**DECISION ON THE PROSECUTOR'S MOTION FOR THE EXCLUSION OF THE  
PROPOSED EXPERT REPORT AND EVIDENCE OF EDMOND BABIN**

**Office of the Prosecutor**

Ms Silvana Arbia  
Ms Adelaide Whest  
Ms Holo Makwaia  
Ms Adesola Adeboyejo  
Ms Althea Alexis  
Mr Michael Adenuga  
Mr Cheikh T. Mara  
*Ms Astou Mbow, Case Manager*

**Defence Counsel for Ndayambaje**

Mr Pierre Boulé  
Mr Claude Desrochers

**Defence Counsel for Kanyabashi**

Mr Michel Marchand  
Ms Simone Santerre

**Defence Counsel for Nyiramasuhuko**

Ms Nicole Bergevin  
Mr Guy Poupart

**Defence Counsel for Ntahobali**

Mr Duncan Mwanyumba  
Mr Normand Marquis

**Defence Counsel for Nsabimana**

Ms Josette Kadji  
Mr Charles Tchacounté Patie

**Defence Counsel for Nteziryayo**

Mr Titinga Frédéric Pacere  
Mr Richard Perras

JUDICIAL RECORDS DIVISION  
2005 APR 11 A 9:47

to us

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (the “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 the Exclusion of the Proposed Expert Report and Evidence of Edmond Babin,” filed on 18 March 2005 (the “Motion”);

**CONSIDERING** the “*Réponse de Shalom Ntahobali à la Requête du Procureur intitulée “Prosecutor’s Motion for the Exclusion of the Proposed Expert Report and Evidence of Edmond Babin,”*” filed on 24 March 2005 (“Ntahobali’s Response”); **AND** The “Prosecutor’s Response to Ntahobali’s *Requête du Procureur intitulée “Prosecutor’s Motion for the Exclusion of the Proposed Expert Report and Evidence of Edmond Babin,”*” filed on 31 March 2005 (the “Prosecution Reply to Ntahobali”);

**CONSIDERING** the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”) in particular Rule 94*bis* of the Rules;

**NOW DECIDES** the Motion pursuant to Rule 73(A) on the basis of the written submissions filed by the Parties.

**SUBMISSIONS OF THE PARTIES***The Prosecution*

1. The Prosecution submits that, after receiving the Report and all the supporting documentation<sup>1</sup> filed on behalf of Mr. Edmond Babin, it requests the Chamber to order that the proposed common expert to Nyiramasuhuko and Ntahobali and his testimony be excluded and/ or ruled inadmissible pursuant to Rules 54, 73, 89 and 94*bis*. The Prosecution further submits that the proposed witness does not qualify as an expert whose opinion ought to be received by the Chamber and that the expert report proffers evidence that is irrelevant to the matters to be determined by the Chamber.
2. The Prosecution also notes that although it will cross-examine the proposed expert, it will conduct such cross-examination without having heard any evidence in support of the case for Ntahobali.
3. The Prosecution submits that although the bulk of the material with respect to the proposed expert comprises of photographs and videos of various scenes around Butare, the said material does not include an analysis of what the witness is expected to say about said photographs and videos. The Prosecution argues that the procedure whereby the Defence would seek that the said photographs and videos be entered into evidence and thereafter the witness make comments on them is wrong in law because nowhere is it indicated that the proposed expert is an investigator who has made investigations in Butare. Furthermore, the Prosecution argues that nowhere is it indicated that the proposed expert has expertise in taking the photographs and videos he took, or that he has special expertise concerning the events in Rwanda.

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<sup>1</sup> The documentation includes five CDs, a Curriculum Vitae and two DVDs; See para. 1 of the Motion.

4. The Prosecution submits that for testimony to be considered expert, “the subject matter of the inquiry must be such that ordinary people are unlikely to form a correct judgement about it if unassisted by people with special knowledge.”<sup>2</sup> The Prosecution argues that the proposed expert does not possess the expertise, educational, experimental or experiential credentials as would qualify him as an expert whose opinion should be received by the Trial Chamber.

5. The Prosecution further argues that the proposed expert’s evidence on crime scene analysis is not relevant to the determination of the matters before it. In particular, the Prosecution argues that the report of the expert contains no expert opinion with footnotes or a bibliography, it contains no analysis, no indication of the methodology used or hypotheses useful to the Trial Chamber in the determination of the matter before it. Moreover, the proposed expert will give evidence based on his personal opinion or his observations without centring this opinion on specialized expertise. The Curriculum Vitae does not contain any indication that the proposed expert has expert knowledge in the form of publications, research undertaken or some kind of specialised training in the field of crime scene analysis, rather it indicates general training courses undertaken by the proposed expert. The Prosecution submits that the onus is on the Defence to provide the Chamber with the information that would indicate that the proposed evidence is relevant to the matters before it.

*Ntahobali’s Response*

6. The Defence for Ntahobali submits that all the arguments advanced by the Prosecution are premature and that the Motion itself is frivolous and constitutes an abuse of process under Rule 73(e) as it does not respect the requirements of the Rules.

7. The Defence submits that the Prosecution is aware of the *voire-dire* procedure in which the qualifications of proposed expert witness can be contested. The Defence submits that the Chamber has the discretion to decide whether a witness may or may not testify as an expert following oral submissions made by the Parties at the end of the *voire-dire* procedure.

8. Additionally, the Defence submits that contrary to the Prosecution submissions, the report of the proposed expert found in the CD-ROMs filed on 23 February 2005 effectively contains an analysis. It submits that different experts may make different analyses and in this case, the witness uses sketches and descriptions.

9. Regarding the Prosecution submission concerning the time when the Prosecution will cross-examine the proposed expert, the competence and qualifications of the expert, the relevance and probative value of the evidence he will give, the Defence submits that the said submissions are premature at this stage and that all these will be considered following the *voire-dire* procedure.

10. The Defence thus requests the Chamber to dismiss the Motion in its entirety.

*Prosecution Reply to Ntahobali*

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<sup>2</sup> See the Motion at para. 9



11. In its Reply, the Prosecution reiterates the prayers it made in its Motion and submits that its Motion is not frivolous nor does it constitute an abuse of process. Rather the Motion is relevant, in order and has been filed in a timely manner.

### **DELIBERATIONS**

12. The Chamber recalls the provisions of Rule 94*bis* and finds that the Motion is premature at this stage.

13. Nevertheless, this is without prejudice to the rights of the Parties to raise the issues canvassed in this Motion at the time of the process of qualifying the witness to testify as an expert.

### **FOR THE ABOVE REASONS, THE TRIBUNAL**

**DISMISSES** the Motion in its entirety.

Arusha, 11 April 2005



William H. Sekule  
Presiding Judge



Arlette Ramarison  
Judge



Solomy Balungi Bossa  
Judge

[Seal of the Tribunal]