



UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

11534  
Mubup

OR: ENG

TRIAL CHAMBER II

**Before:** Judge William H. Sekule, Presiding

Judge Arlette Ramaroson

Judge Solomy Balungi Bossa

ICTR-98-42-T

22-09-05

(11534-11528)

**Registrar:** Mr Adama Dieng

**Date:** 22 September 2005

The PROSECUTOR

v.

**Pauline NYIRAMASUHUKE et al.**

*Case No. ICTR-97-21-T*

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

2005 SEP 22 A 11:01

**DECISION ON PAULINE NYIRAMASUHUKE'S MOTION TO EXTEND THE  
TIME WITHIN WHICH TO FILE THE EXPERT REPORT OF PROPOSED  
EXPERT WITNESS BALIBUTSA MANIARAGABA**

**Office of the Prosecutor**

Ms Silvana Arbia, Senior Trial Attorney

Ms Adelaide Whest, Trial Attorney

Ms Holo Makwaia, Trial Attorney

Ms Adesola Adebeyejo, Trial Attorney

Ms Althea Alexis, Assistant Trial Attorney

Mr Michael Adenuga, Legal Advisor

Ms Astou Mbow, Case Manager

**Defence Counsel for Nyiramasuhuko**

Ms Nicole Bergevin, Lead Counsel

Mr Guy Poupart, Co-Counsel

**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 “*Requête de l’accusée Pauline Nyiramasuhuko en extension de délais afin de communiquer le rapport du témoin expert Monsieur Balibutsa Maniaragaba*,” filed on 2 September 2005 (the “Motion”);

**CONSIDERING**

- (i) The “*Réponse de Shalom Ntahobali à la ‘Requête de l’accusée Pauline Nyiramasuhuko en extension de délais afin de communiquer le rapport du témoin expert Monsieur Balibutsa Maniaragaba’*”, filed on 5 September 2005 (“Ntahobali’s Response”);
- (ii) The “Prosecutor’s Joint Response to the ‘*Requête de l’accusée Pauline Nyiramasuhuko en extension de délais afin de communiquer le rapport du témoin expert Monsieur Balibutsa Maniaragaba*’”, filed on 7 September 2005;
- (iii) The “*Réponse de Shalom Ntahobali à la ‘Requête de l’accusée Pauline Nyiramasuhuko en extension de délais afin de communiquer le rapport du témoin expert’*”, filed on 7 September 2005 (the “Prosecutor’s Joint Response”);
- (iv) The “*Réplique de Pauline Nyiramasuhuko à la ‘Prosecutor’s Joint Response to the Requête de l’accusée Pauline Nyiramasuhuko en extension de délais afin de communiquer le rapport du témoin expert Monsieur Balibutsa Maniaragaba’*”, filed on 12 September 2005 (“Nyiramasuhuko’s Reply to the Prosecutor’s Joint Response”);

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

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

**SUBMISSIONS OF THE PARTIES***The Defence for Nyiramasuhuko*

1. The Defence requests an extension of three weeks within which to file the expert report of its proposed expert Mr. Maniaragaba. It recalls that on 7 July 2005, when Mr. Maniaragaba was accorded the status of an expert by the Representative of the Witnesses and Victims Support Section (the “WVSS”), he was given 12 days to conduct his research and prepare a report. However, Mr. Maniaragaba informed the Defence that he could only commence his research in mid-July 2005 because of his duties at the University of Gabon and other commitments with UNESCO.

2. The Defence recalls the Chamber’s Scheduling Order of 5 August 2005 where the Chamber ordered the Defence of Nyiramasuhuko to file the expert report within two weeks of the said Scheduling Order. The Defence submits that it has received the official contract for the proposed expert from WVSS on 26 August 2005.



3. The Defence submits that the problems encountered in acquiring an unofficial contract for its proposed expert on 7 July 2005, the qualification and remuneration problems of Witness Edmond Babin, as well as the allegations levelled against the Accused by four Prosecution experts, two of whom have filed voluminous reports, could not prompt Mr. Maniaragaba to prepare a report within the deadlines set by WVSS.

4. The Defence recalls that during their testimonies, Prosecution Expert Guichaoua testified to having taken a long time to conduct his research and to prepare his report and that Prosecution Expert Alison Des Forges testified that a large part of her report was taken from her book. For this reason, the Defence submits that it cannot be expected that Mr. Maniaragaba will conduct his research and prepare a report - in answer to the numerous and serious allegations levelled against the Accused - within the span of 12 days, as directed by WVSS.

5. The Defence submits that it would be prejudicial to the Accused Nyiramasuhuko not to be granted a further extension of time within which to file the report of the proposed expert Mr. Maniaragaba, whose testimony is indispensable to her Defence strategy, particularly to counter the allegations of Prosecution Experts Professor Guichaoua and Dr DesForges.

6. The Defence recalls that the proposed expert testimony of Professor Guichaoua was announced in the Pre-Trial Brief, but that the expert report was filed on 12 April 2004, including various errata filed thereafter. It further recalls that even after the close of the Prosecution case, the Chamber authorised the calling of a handwriting expert.

7. The Defence submits that the extension of three weeks requested for the filing of the report of its proposed expert would not cause further delays to the proceedings, since the Accused Nyiramasuhuko has yet to conclude her testimony and since Witness WBNM would testify before the proposed expert. The Defence submits that should both the Accused and Witness WBNM have concluded their testimony, the Defence of Ntahobali could step in and resume presentation of its case to cover the 21 day disclosure deadlines required under Rule 94bis.

8. The Defence submits that on 12 August 2005, it received a first part/draft of Mr. Maniaragaba's report. On 25 August 2005, the Defence contacted Mr. Maniaragaba regarding the time required to prepare a second draft and on 29 August 2005, upon resumption of trial, the Defence informed the Chamber of its wish to request an extension of time within which to file the report of its proposed expert.

#### ***The Defence of Ntahobali***

9. The Defence of Ntahobali requests the Chamber to grant Nyiramasuhuko's Motion.

10. The Defence submits that following the grant of the addition of Mr. Maniaragaba to the list of witnesses for the Accused Nyiramasuhuko on 1 June 2005, it filed a Motion on 1 August 2005 requesting, *inter alia*, the removal of Mr. Maniaragaba from its list of witnesses. This Defence Motion was granted on 26 August 2005.

11. On or about 1 September 2005, the Defence realised that Mr. Maniaragaba's report has not been filed within the timeframes given by the Chamber. On the same date, the



Defence of Ntahobali also received Nyiramasuhuko's Motion requesting an extension of time within which to file Mr. Maniaragaba's report.

12. The Defence submits that the series of events outlined above, have caused serious prejudice to the Accused Ntahobali, while it was the intention of his Defence, when withdrawing Mr. Maniaragaba from the list of witnesses, to facilitate the smooth conduct of the trial.

13. The Defence submits that should the Motion be denied, the Accused Ntahobali would face the risk of not being able to present the evidence intended because his own expert witness has been withdrawn.

14. The Defence reserves Ntahobali's right to add the proposed expert witness Mr. Maniaragaba to Ntahobali's list of witnesses, although it argues that it would be in the interests of judicial economy to grant Nyiramasuhuko's Motion. The Defence for Ntahobali offers to call its witnesses after the conclusion of the testimonies of the Accused Nyiramasuhuko and of Witness WBNM, should the expert witness be unable to begin his testimony upon conclusion of the Defence of Nyiramasuhuko.

#### ***The Prosecution Reply***

15. The Prosecution objects to the Motion for extension of time within which to file Mr. Maniaragaba's report.

16. The Prosecution recalls the chronology of events, in particular the Scheduling Order of 5 August 2005 and the Chamber's Decision of 19 August 2005.<sup>1</sup> The Defence was required to file the expert report of its proposed expert within two weeks after the issuing of the Scheduling Order, i.e., by 19 August 2005, taking into account the provisions of Rule 7(B). The Prosecution submits that if the Defence envisaged problems in making the timely filing, it should have made a request for extension before the deadlines had elapsed. The Prosecution notes that the Defence filed its request for extension on 2 September 2005, two weeks after the deadlines have elapsed.

17. The Prosecution recalls that on 1 June 2005, when the Defence requested the addition of Mr. Maniaragaba, it submitted that, "that expert witness told me this very morning that he is now ready."<sup>2</sup> The Prosecution submits that from 1 June 2005 until the two weeks given under the Scheduling Order, the Defence had more than adequate time in which to file the report of the expert.

18. The Prosecution accepts that the granting of an extension falls within the discretionary powers of the Chamber. However, the Prosecution maintains that, in the instant case, the Defence has not sufficiently demonstrated why such an extension should be granted. The Prosecution notes that the 12 days given by WVSS, when it accorded Mr. Maniaragaba an expert status, is "customary," and it would have taken Mr. Maniaragaba up to 20 July 2005 to complete his report.<sup>3</sup> The Prosecution argues that when the Defence submitted on 1 June

<sup>1</sup> *Prosecutor v Nyiramasuhuko et al*, ICTR-98-42-T, Decision on the Prosecutor's Motion pursuant to Rules 54, 73 and 73ter to Proceed with the Evidence of the Accused Nyiramasuhuko as a Witness on 15 August 2005 or in the Alternative to proceed with the Defence case of the Accused Ntahobali, 19 August 2005.

<sup>2</sup> Transcript 1 June 2005 p, 8.

<sup>3</sup> See the Prosecutor's Response at para. 9

2005 that the expert was ready, it was aware of the problems faced by the expert in preparing his report.

19. The Prosecution notes that pursuant to the jurisprudence of the Tribunal, where extensions of time within which to file expert reports have been granted, sufficient justification had been demonstrated by the requesting Party.<sup>4</sup>

20. In response to the submissions regarding the problems faced during the qualification of Mr. Edmond Babin, the Prosecution submits that that situation cannot be used as one that would occasion the delay in filing Mr. Maniaragaba's report. In any case, the Prosecution recalls that when the Chamber granted the addition of Mr. Maniaragaba it stated that it "does not in any way amount to a formal qualification of the witness as an expert witness or granting this witness to testify as an expert."<sup>5</sup>

21. Regarding the Defence submissions that the testimony of the proposed expert is crucial to countering the testimonies of Prosecution witnesses and that a denial of the requested extension would infringe upon the Accused's rights under Article 20, the Prosecution submits that during its case-in-chief, it filed the reports of its experts in a timely fashion affording the Defence ample opportunity to prepare the cross-examination of the Prosecution experts.

22. The Prosecution takes issue with the Defence of Ntahobali's reservations of its right to add Mr. Maniaragaba as an expert witness to its list of witnesses having previously relied upon the Defence of Nyiramasuhuko's intention to present Mr. Maniaragaba as an expert witness. The Prosecution submits that the submission is premature for the Chamber has yet to rule upon the current motion.

23. It would not be in the interests of justice to add Mr. Maniaragaba to the list of Ntahobali's witnesses, the Prosecution submits, when the only common witness in the Defence cases of Nyiramasuhuko and Ntahobali was Mr. Edmond Babin. The Prosecution therefore argues that the Defence of Ntahobali does not possess an automatic right to add Mr. Maniaragaba to its list of witnesses should he not testify for the Defence of Nyiramasuhuko.

24. In conclusion, the Prosecution prays that the Chamber deny both the Motion for extension of time within which to file Mr. Maniaragaba's report and Ntahobali's request to add Mr. Maniaragaba to its list of witnesses.

### ***The Defence of Nyiramasuhuko's Reply***

25. In its Reply, the Defence reiterates the submissions made in the Motion. Considering the Defence of Nyiramasuhuko made its oral submissions of 1 June 2005 in French, it submits that the French transcripts of 1 June 2005 are authoritative. On this basis, the Defence submits that it never gave an undertaking that Mr. Maniaragaba was "ready," as

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<sup>4</sup> See the Prosecutor's response at para. 11, citing the Media Trial "Decision on the Prosecution's request for an Extension of time in which to file and disclose the report of expert witness Alison Des Forges of 21 February 2002; and Decision of the Prosecutor's Request for an extension of time in which to file and disclose the reports of expert witnesses of 21 November 2001.

<sup>5</sup> Transcript of 1 June 2005 p. 21.



submitted by the Prosecution, rather, the Defence had submitted that Mr. Maniaragaba was now “available,” and could be called to testify in Nyiramasuhuko’s Defence.<sup>6</sup>

### HAVING DELIBERATED

26. The Chamber has considered all the submissions of the Parties.

27. In particular, the Chamber notes that Mr. Maniaragaba was added to the Defence for Nyiramasuhuko’s list of witnesses on 1 June 2005 and that the Defence now seeks an extension of three weeks within which to file his expert report.

28. The Chamber recalls that when it granted the addition of this proposed expert to the Defence of Nyiramasuhuko’s witness list, it directed the Defence to, “[d]eal with the procedural aspects with regard to enlisting of this intended witness as an expert [...] with the necessary speed with the Registry [...] hoping that the Registrar will follow up this matter with the necessary dispatch.”<sup>7</sup>

29. The Chamber notes the Defence for Nyiramasuhuko submission alleging that on 7 July 2005 it was informed by WVSS that the proposed expert Mr. Balibutsa Maniaragaba<sup>8</sup> had been accorded expert status and would have 12 days to conduct his research and prepare a report.<sup>9</sup>

30. The Chamber recalls its Scheduling Order of 5 August 2005, where it ordered “[t]he Defence of Nyiramasuhuko to ensure that its defence will be completed in a timely fashion, including the disclosure of the Expert Witness’ report no later than two weeks from the date of this Order, to enable the parties to avail themselves of their rights contained in Rule 94bis.”<sup>10</sup> This Order was reiterated in the Chamber’s Decision of 19 August 2005.

31. The Chamber notes that not only has the Defence for Nyiramasuhuko failed to honour the deadlines for filing its expert’s report as set by the Registry, but also the Defence has failed to honour the deadlines set by the Chamber in its Scheduling Order of 5 August 2005 and subsequent Decision of 19 August 2005. The Chamber further notes that in filing its request for extension of time exactly two weeks after the expiration of the deadlines set by the Chamber, the Defence for Nyiramasuhuko has exhibited a lack of diligence contrary to the interests of justice and to its obligations to the Tribunal.

32. For the above reasons, the Chamber finds that the Defence of Nyiramasuhuko’s Motion for extension of time within which to file the expert report is without merit and must fail given that the stipulated timeframes for such filing had already expired.

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<sup>6</sup> See Nyiramasuhuko’s Reply at paras. 2 - 5, where reference is made to the French Transcripts of 1 June 2005, p. 10.

<sup>7</sup> Transcripts of 1 June 2005, pp. 20, 21.

<sup>8</sup> In some instances he is referred to as Baributsa and in others he is referred to as Balibutsa.

<sup>9</sup> See the Motion at para. 3. According to the WVSS Representative’s directions, the expert report of the proposed expert should have been filed by 19 July 2005.

<sup>10</sup> See Order (d) of the Scheduling Order of 5 August 2005, according to which the expert report of the proposed expert should have been filed by 22 August 2005.



33. However, the Chamber considers that it would be in the interests of justice to *proprio motu* grant the Defence for Nyiramasuhuko two weeks from the date of this Decision within which to file the expert report of its proposed expert Mr. Balibutsa Maniaragaba.

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

**DENIES** the Motion in its entirety;

**ORDERS** *proprio motu* that within two weeks from the date of this Decision, the Defence for Nyiramasuhuko shall file the expert report of its proposed expert Mr. Balibutsa Maniaragaba.

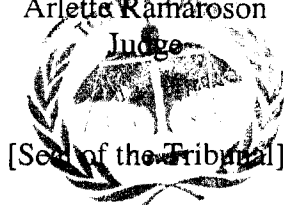
Arusha, 22 September 2005



William H. Sekule  
Presiding Judge



Arlette Ramaroson  
Judge



Solo ny Balungi Bossa  
Judge