



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

## TRIAL CHAMBER II

**Before:** Judge William H. Sekule, Presiding  
Judge Arlette Ramaroson  
Judge Solomy Balungi Bossa  
**Registrar:** Mr Adama Dieng  
**Date:** 26 September 2005

### The PROSECUTOR

v.

**Pauline NYIRAMASUHUKO and Arsène Shalom NTAHOBALI**

*Case No. ICTR-97-21-T*  
*Joint Case No. ICTR-98-42-T*

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**DECISION ON ARSÈNE SHALOM NTAHOBALI'S MOTION FOR CERTIFICATION TO APPEAL  
THE "DECISION ON THE DEFENCE MOTION TO MODIFY THE LIST OF DEFENCE  
WITNESSES FOR ARSÈNE SHALOM NTAHOBALI"**  
*(Article 73 of the Rules of Procedure and Evidence)*

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#### **Office of the Prosecutor**

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#### **Defence Counsel for Kanyabashi**

Mr Michel Marchand, Ms Simone Santerre

#### **Defence Counsel for Nyiramasuhuko**

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#### **Defence Counsel for Ntahobali**

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#### **Defence Counsel for Nsabimana**

Ms Josette Kadji, Mr Charles Patie Tchakount

#### **Defence Counsel for Nteziryayo**

Mr Titinga Frédéric Pacere, Mr Richard Perra

**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 SEIZED** of the Defence for Ntahobali’s “*Requête d’Arsène Shalom Ntahobali afin d’obtenir la certification d’appel de la décision intitulée ‘Decision on the Defence Motion to Modify the List of Defence (sic) Witnesses for Arsène Shalom Ntahobali’*”, filed on 2 September 2005 (the “Motion”);

**HAVING RECEIVED** the “Prosecutor’s Response to the Motion of Arsène Shalom Ntahobali for Certification to Appeal the Decision to Modify the List of Witnesses”, filed on 8 September 2005 (the “Prosecutor’s Response”) and the Defence for Ntahobali’s “*Réplique de Arsène Shalom Ntahobali à la ‘Prosecutor’s Response to the Motion of Arsène Shalom Ntahobali for Certification to Appeal the Decision to Modify the List of Witnesses’ (Article 73 Règlement de procédure et de preuve)*”, filed on 12 September 2005 (the “Defence Reply”);

**NOTING** the “Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali”, issued on 26 August 2005 (the “impugned Decision”);

**CONSIDERING** the provisions of the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”), in particular Rule 73 (B) and (C);

**NOW DECIDES** the matter, pursuant to Rule 73 (A) of the Rules, on the basis of the written submissions of the Parties.

**SUBMISSIONS BY THE PARTIES***Defence for Ntahobali*

1. The Defence for Ntahobali moves the Chamber for certification to appeal the impugned Decision, of which it was notified on 29 August 2005. In particular, the Defence seeks certification to appeal the decision in relation to Witnesses WQMJP, MJ110, WDUSA, and NTN. The Defence takes issue with the impugned Decision because it denies the addition of Witnesses WDUSA and NTN to Ntahobali’s witness list, and, whilst admitting Witnesses WQMJP and MJ110, restricts their respective testimonies to specific issues. [\[1\]](#)
2. The Defence submits that had it been able to meet Witnesses WQMJP, MJ110, WDUSA, and NTN prior to 31 December 2004, they would have been included in Ntahobali’s witness list and the Chamber would not have had discretion to limit or deny the inclusion of their proposed testimonies. Consequently, the narrow approach taken by the Chamber in the impugned Decision seems altogether inequitable, at odds with the spirit of the Statute, and contrary to the guaranteed rights of the Accused. [\[2\]](#)
3. Primarily, the Defence for Ntahobali argues that the impugned Decision has grave consequences on the fair and expeditious conduct of the proceedings and the subsequent outcome of this trial, particularly where an Accused is deprived of presenting a defence of alibi because of a non-existent criterion or obligation;[\[3\]](#) that the fairness of proceedings are compromised if the Prosecutor is allowed a large number of witnesses while the Defence is restricted which denies the Defence the opportunity to provide an adequate Defence;[\[4\]](#) and, that the Chamber’s Decision is in total contradiction with earlier decisions on similar motions, in particular those where the Chamber has permitted the Prosecutor to add witnesses of no great significance to his case, at a late stage of proceedings, and without restric