



ICTR-98-42-T
27-01-2006
(11579 - 11571)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr Adama Dieng

Date: 27 January 2006

The PROSECUTOR

v.

Pauline NYIRAMASUHUKO and Arsène Shalom NTAHOBALI

Case No. ICTR-97-21-T

Joint Case No. ICTR-98-42-T

DECISION ON ARSÈNE SHALOM NTAHOBALI'S MOTION TO AMEND HIS WITNESS LIST AND TO RECONSIDER THE DECISION OF 26 AUGUST 2005 TITLED: "DECISION ON THE DEFENCE MOTION TO MODIFY THE LIST OF DEFENCE WITNESSES FOR ARSÈNE SHALOM NTAHOBALI"

Office of the Prosecutor

Ms Silvana Arbia, Senior Trial Attorney
Ms Adelaide Whest, Trial Attorney
Ms Holo Makwaia, Trial Attorney
Ms Adesola Adeboyejo, Trial Attorney
Ms Althea Alexis, Assistant Trial Attorney
Mr Michael Adenuga, Legal Advisor
Mr Cheikh T. Mara, Legal Advisor
Ms Astou Mbow, Case Manager

Defence Counsel for Ntahobali

Mr Normand Marquis, Lead Counsel
Mr Louis Huot, Co-Counsel

Defence Counsel for Kanyabashi

Mr Michel Marchand, Lead Counsel
Ms Simone Santerre, 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 Arsène Ntahobali pour amender sa liste de témoins et en reconsidération de la décision de la Chambre de Première Instance II* « Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali », filed on 30 November 2005 (the “Motion”);

CONSIDERING

- i) The “*Réponse de Joseph Kanyabashi à la « Requête de Arsène Shalom Ntahobali pour amender sa liste de témoins et en reconsidération de la décision de la Chambre de Première Instance II* « Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali », filed on 5 December 2005 (the “Kanyabashi’s Response”);
- ii) The “Prosecutor’s Response to the Defence « *Requête de Arsène Ntahobali pour amender sa liste de témoins et en reconsidération de la décision de la Chambre de Première Instance II* « Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali”, filed on 12 December 2005 (the “Prosecutor’s Response”);
- iii) The “*Réplique à la réponse de Joseph Kanyabashi à la « Requête de Arsène Shalom Ntahobali pour amender sa liste de témoins et en reconsidération de la décision de la Chambre de Première Instance II* -Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali », filed on 12 December 2005 (the “Ntahobali’s Reply to Kanyabashi’s Response”);
- iv) The “*Réplique de Arsène Ntahobali à la Prosecutor’s Response to the Defence « Requête de Arsène Ntahobali pour amender sa liste de témoins et en reconsidération de la décision de la Chambre de Première Instance II* « Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali”, filed on 19 December 2005 (the “Ntahobali’s Reply to the Prosecutor’s Response”);

RECALLING

- i) The “Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali”, issued on 26 August 2005 (the “Decision of 26 August 2005”);
- ii) The “Decision on the « *Requête d’Arsène Shalom Ntahobali en autorisation de rencontrer le détenu Georges Rutaganda en l’absence du représentant du Procureur et du Greffe* », issued on 22 September 2005 (the “Decision of 22 September 2005”).

NOTING:

- i) The “Prosecutor’s Request for an Extension of Time to Respond to Arsène Shalom Ntahobali’s Motion to Vary its Witnesses List and Reconsideration of the Trial Chamber Decision on the Defence Motion to Modify the List of Witnesses for Arsène Shalom Ntahobali”, filed on 6 December 2005 (the “Prosecutor’s Request for Extension of Time”);

- ii) The “*Réponse de Arsène Shalom Ntahobali à la Prosecutor’s Request for an extension of Time to Respond to Arsène Shalom Ntahobali’s Motion to Vary its Witnesses List and Reconsideration of the Trial Chamber Decision on the Defence Motion to Modify the List of Witnesses for Arsène Shalom Ntahobali*”, filed on 7 December 2005 (the “Ntahobali’s Response”);
- iii) The facsimile titled “File Submission-In the matter of the Prosecutor vs. Nyiramasuhuko et al.”, issued by the Registry on 8 December 2005;
- iv) The Oral Decision issued by the Chamber on 12 December 2005, prescribing a timeframe of five days running from the date of the decision for other Parties to respond to the “*Requête de Arsène Ntahobali pour amender sa liste de témoins et en reconsidération de la décision de la Chambre de Première Instance II* « Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali”¹ (the “Oral Decision of 12 December 2005”);

CONSIDERING the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”), in particular its Rules 73 and 73 *ter*;

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

SUBMISSIONS OF THE PARTIES

Defence for Ntahobali

1. The Defence moves the Chamber for leave to add convictee Georges Rutaganda and Witness WDSA to its witness list and to reconsider the Decision of 26 August 2005, thereby allowing Witness MJ110 to testify to the following:
 - That the Accused was bedridden for nearly one week between late April and early May 1994 and therefore, he did not leave the Hotel Ihuriro during this period;
 - That the Accused left for Cyangugu on 28 May 1994.
2. The Defence submits that Georges Rutaganda is identified as Witness NMRG and that a request for his addition to Ntahobali’s initial witness list was denied by the Chamber on 26 August 2005. The Defence further states that it failed to provide the Chamber with the summary of Witness NMRG’s expected testimony in the previous motion to vary the list of its witnesses filed on 2 August 2005, as the decision in relation to its motion to meet with said witness in the absence of the Prosecution and the Registry was still pending at that time.
3. The Defence submits that it only managed to meet with Georges Rutaganda on 28 October 2005, following the Decision of 22 September 2005, which granted such a visit.² During that meeting, Georges Rutaganda provided the Defence with a lot of information relevant to Ntahobali’s case and accepted to testify for the Accused.
4. The Defence submits that in his capacity as a former member of the Council of Direction of *Interahamwe za MRND*, Georges Rutaganda is the only witness who will be able to enlighten

¹ *Nyiramasuhuko et al.*, T. 12 December 2005, pp. 49-50.

² The Decision is titled : “Decision on the « *Requête d’Arsène Shalom Ntahobali en autorisation de rencontrer le détenu Georges Rutaganda en l’absence du représentant du Procureur et du Greffe* »”.

the Chamber in relation to the Accused's purported involvement with the *Interahamwe*.³ According to the Defence, no other witness for Ntahobali will testify to this issue.

5. The Defence submits that it intends to call Georges Rutaganda as one of the last witnesses, thereby allowing the Prosecution and the other Defence teams sufficient time to conduct their investigations and to prepare their cross-examinations.⁴
6. With regard to Witness WDUSA, the Defence recalls that the Chamber denied the request for his addition to its witness list on 26 August 2005.⁵ However, the Defence filed its notice of intent to enter a defence of alibi on 13 October 2005⁶ and stated that Witness WDUSA is one of the proposed alibi witnesses. The Defence argues that the current request for his addition to the initial witness list is therefore justified. The Defence further asserts that Witness WDUSA, being the only alibi witness not related to the Accused, will testify to his and the Accused's presence in Cyangugu.⁷
7. With regard to Witness MJ110, the Defence recalls that the Chamber granted the request for her addition on 26 August 2005 but limited her expected testimony to the events involving the "Bihira girls" and to the sheltering of Tutsi refugees by the Accused.⁸ The Defence submits that Witness MJ110 is amongst the alibi witnesses it intends to call, as specified in the notice of intent to enter a defence of alibi of 13 October 2005. As such, Witness MJ110 should be allowed to extend her testimony to the facts that the Accused was bedridden for nearly one week between late April and early May 1994 and that he left for Cyangugu towards 28 May 1994.⁹ The Defence points out that the notice of alibi constitutes a new circumstance warranting the reconsideration of the Decision of 26 August 2005 as proposed above.¹⁰
8. The Defence alleges that the *will-say* statements of Witnesses WDUSA and MJ110 were filed on 10 August 2005 and that their respective identity and current address are included in the Defence notice of intent to enter a defence of alibi filed previously. The Prosecution and the other Defence teams will therefore be able to conduct an effective cross-examination of these two witnesses.

Kanyabashi's Response

9. The Defence for Kanyabashi moves the Chamber to limit the potential testimony of Georges Rutaganda to what is alleged in paragraphs 33 and 34 of the Motion and therefore requests the removal of paragraphs 1 and 2 from his *will-say* statement.¹¹ As for paragraphs 3, 6, 7, 9, 10, 12, 13, 15, 18, 19, and 20, the Defence for Kanyabashi submits that it is unable to make any investigation in relation to the allegations mentioned in these paragraphs in the absence of precise and concrete facts making the cross-examination ineffective. It therefore requests the deletion of those paragraphs.¹²

³ Paragraphs 33 and 34 of the Motion.

⁴ The Defence attached to its Motion as Annex A the Particular Sheet and the *Will-say statement* of Georges Rutaganda.

⁵ "Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali", paragraphs 62-65.

⁶ Paragraph 50 of the Motion.

⁷ Paragraph 52 of the Motion.

⁸ "Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali", paragraphs 53-55.

⁹ Paragraph 74 of the Motion.

¹⁰ Paragraph 75 of the Motion.

¹¹ Paragraph 15 of Kanyabashi's Response.

¹² Paragraph 16 of Kanyabashi's Response.

- 10. The Defence for Kanyabashi submits that Georges Rutaganda's *will-say* statement gives no indication with regard to the moment in 1994 when he would have been present in Butare, in Ngoma Commune, or in Butare *Prefecture*, particularly between 6 April and 3 July 1994.¹³

Prosecutor's Response

- 11. The Prosecution does not object to the proposed addition of Georges Rutaganda to the Accused's witness list. Nevertheless, the Prosecution underscores that the attached *will-say* statement of Georges Rutaganda is broad, imprecise, and has paragraphs that go beyond the temporal jurisdiction of the Tribunal or are irrelevant to the matter at hand. Thus, the Prosecution will suffer irreparable prejudice if the Defence is allowed to present such evidence.¹⁴
- 12. The Prosecution therefore requests the exclusion of the following paragraphs from Georges Rutaganda's *will-say* statement: 1, 2, 3, 4, 6, 7, 9, 10, 12, 13, 14, 15, 18, 19 and 20. The Prosecution argues that paragraph 1 falls outside the temporal jurisdiction of the Tribunal and is not material to the matter before the Chamber. Some witnesses previously called by Accused Nyiramasuhuko have sufficiently testified on the 1990 war and its impact on Butare, rendering paragraph 2 of the *will-say* statement unnecessary. As for paragraphs 3, 4, 6, 7, 9, 10, 13, 19, and 20, they lack precision and/or specific dates or incidents to support the alleged facts. The Prosecution further submits that Georges Rutaganda is not an expert witness; as such, he cannot be allowed to draw conclusions with respect to opinion of the experts referred to in paragraph 12 of the *will-way* statement. Paragraph 14 is outside the temporal jurisdiction of the Tribunal and the Defence failed to make the requisite disclosure, pursuant to Rule 67(C). Regarding paragraph 15, the Prosecution submits that it is imprecise and irrelevant as it is not the *Interahamwe* or the RPF which are charged in the Indictment. According to the Prosecution, paragraph 18 is also irrelevant and imprecise.¹⁵
- 13. As far as the prayer for reconsideration is concerned, the Prosecution argues that the Defence has failed to demonstrate any special circumstances that would warrant reconsideration, nor has it demonstrated a clear error, or that a reconsideration of the Decision of 26 August 2005 will prevent an injustice in conformity with the jurisprudence.¹⁶ The Prosecution submits that on 1 August 2005, when the Defence filed its first motion to vary its witness list, it was aware that Witness WDUSA would be giving alibi evidence but that it chose not to serve notice under Rule 67, until after the Trial Chamber ruled on that application on 29 August 2005.
- 14. With regard to Witness MJ110, the Prosecution submits that the Trial Chamber has occasioned no injustice warranting a reconsideration of the Decision of 26 August 2005 in limiting this witness' expected testimony strictly to the "Bihira girls" and to the alleged sheltering of Tutsi refugees by the Accused. Furthermore, the Prosecution argues that the Defence should have known about the new proposed facts as referred to in paragraph 7 above and should have provided the Trial Chamber with this information on 1 August 2005, when it filed its application to vary its witness list. Finally, the Prosecution submits that the Defence has failed to comply with the Trial Chamber Decision of 1 March 2005, directing all Defence teams to

¹³ Paragraph 11 of Kanyabashi's Response.

¹⁴ Paragraph 6 of the Prosecutor's Response.

¹⁵ Paragraphs 8-14 of the Prosecutor's Response.

¹⁶ The Prosecution quotes the following Appeals Chamber Decisions: *Prosecutor v. Barayagwiza*, "Decision on Review and Reconsideration", 14 September 2000; *Prosecutor v. Niyitegeka*, "Decision on Eliezer Niyitegeka's Urgent Motion for Reconsideration of Appeals Chamber Decision dated 3 December 2003", 4 February 2004; *Prosecutor v. Kanyabashi*, "Decision for Review or Reconsideration", 12 September 2000; *Prosecutor v. Semanza*, "Decision on Application for Reconsideration on Amicus Curiae Application of Paul Bisengimana", 19 May 2004.

immediately make the necessary disclosures in accordance with Rule 67 if they wish to rely on the defence of alibi, for the reason that it only filed its notice of alibi on 1 and 13 October 2005.

Ntahobali's Reply to Kanyabashi's Response

- 15. The Defence for Ntahobali submits that paragraphs 1 and 2 of Georges Rutaganda's *will-say* statement should stand as they do not go beyond what is elaborated in paragraphs 33 and 34 of the Motion. Rather, Paragraphs 1 and 2 are intended for illustration of paragraphs 33 and 34 of the Motion; as such they constitute evidence which is necessary to the Accused's defence strategy.¹⁷
- 16. The Defence for Ntahobali submits that nowhere in the *will-say* statement is it mentioned that Georges Rutaganda came to Butare; rather, he will talk about his knowledge of Kajuga's coming there.¹⁸
- 17. The Defence for Ntahobali alleges that the purpose of a *will-say* statement is to enunciate the subjects which will be dealt with by the witness during his/her testimony but not to indicate all the concrete and precise facts to which he/she will testify, as claimed by the Defence for Kanyabashi.¹⁹ Finally, the Defence for Ntahobali submits that it has fully complied with the provision of Rule 73 *ter* B iii) in providing the summary of facts to which Georges Rutaganda will testify.²⁰

HAVING DELIBERATED,

- 18. Following its Oral Decision of 12 December 2005, the Chamber finds that both the Prosecutor's Request of 6 December 2005 for an extension of time to reply²¹ and the subsequent response filed by the Defence for Ntahobali on 7 December 2005²² have become moot.
- 19. The Chamber also notes that on 19 December 2005, the Defence for Ntahobali filed its Reply to the Prosecutor's Response dated 12 December 2005. The Chamber finds such filing out of time as the timeframe of five days within which the Defence for Ntahobali should have filed its Reply expired on 17 December 2005 following the Oral Decision of 12 December 2005. The Chamber therefore concludes that Ntahobali's Reply to the Prosecutor's Response of 19 December 2005 is inadmissible and the Chamber will therefore not take it into consideration in deciding the instant Motion.

• *On the Addition of Georges Rutaganda as a Defence Witness for Ntahobali*

- 20. The Chamber recalls decisions issued by this Tribunal where motions for additional witnesses have been granted in the interest of justice, and notes that the moving party has always provided the Chamber and the other Parties with an indication of the proposed witness' testimony, usually in the form of a summary of the proposed testimony or *will-say* statement, an indication of the relevance of the evidence to the proceedings, and an estimated length of the testimony. This is to ensure that other Parties are not taken by surprise or otherwise suffer prejudice and that there exists sufficient information upon which to prepare their examinations and carry out

¹⁷ Paragraph 10 of Ntahobali's Reply to Kanyabashi's Response.
¹⁸ Paragraph 12 of Ntahobali's Reply to Kanyabashi's Response.
¹⁹ Paragraph 17 of Ntahobali's Reply to Kanyabashi's Response.
²⁰ Paragraph 21 of Ntahobali's Reply to Kanyabashi's Response.
²¹ The Motion is titled "Prosecutor's Request for an extension of Time to Respond to Arsène Shalom Ntahobali's Motion to Vary its Witnesses List and Reconsideration of the Trial Chamber Decision on the Defence Motion to Modify the List of Witnesses for Arsène Shalom Ntahobali".
²² The Response is titled: "*Réponse de Arsène Shalom Ntahobali à la* Prosecutor's Request for an extension of Time to Respond to Arsène Shalom Ntahobali's Motion to Vary its Witnesses List and Reconsideration of the Trial Chamber Decision on the Defence Motion to Modify the List of Witnesses for Arsène Shalom Ntahobali".

the necessary investigations if required. More importantly, it allows the Chamber to make a proper determination as to the materiality and probative value of the proposed testimony to the proceedings.²³

21. The Chamber notes the Defence submissions alleging that Georges Rutaganda's testimony is relevant to its case; in his capacity as a former member of the Council of Direction of *Interahamwe za MRND*, Georges Rutaganda is the sole witness who will be able to enlighten the Chamber in relation to the Accused's purported involvement with the *Interahamwe*. After having reviewed Georges Rutaganda's *will-say* statement attached to the Motion, the Chamber is satisfied that his proposed testimony contains relevant and probative evidence which the Chamber should hear in the interest of justice. The Chamber therefore grants the motion for the addition of Georges Rutaganda as a Defence Witness for Ntahobali in the sense which will be discussed below.

• ***On the Scope of Georges Rutaganda's Expected Testimony***

22. The Chamber notes that both the Prosecution and the Defence for Kanyabashi request that some paragraphs be removed from Georges Rutaganda's *will-say* statement and should not be part of his expected testimony before the Chamber.
23. The Chamber also notes the Defence for Ntahobali's submissions alleging that the purpose of a *will-say* statement is to enunciate the subjects which will be dealt with by the witness during his/her testimony, but not to indicate all the concrete and precise facts to which he/she will testify.²⁴
24. The Chamber recalls its Oral Decision of 13 December 2005 and reiterates that since the sole purpose of the *will-say* statement is to enable the other party or the other parties to prepare and to raise issues, it must be clear enough to cover the scope of the proposed testimony of the witness. Accordingly, *will-say* statements must be full and comprehensive, not in the sense of giving all the details, but at least laying out the scope of what the witness is expected to cover in clear terms.²⁵
25. After having thoroughly reviewed the Motion and the attached *will-say* of Georges Rutaganda, the Chamber finds that Georges Rutaganda's expected testimony, in his capacity as a former member of the Council of Direction of *Interahamwe za MRND*, should be strictly limited to the alleged involvement of Ntahobali with the *Interahamwe* as it is charged in the Indictment and supported by certain Prosecution witnesses. Accordingly, the Chamber limits Georges Rutaganda's expected testimony to paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 of his *will-say* statement. Regarding paragraph 12, the Chamber notes that Georges Rutaganda is being called as a factual witness and his testimony should be limited to the factual issues raised in this paragraph.

²³ *Nyiramasuhuko et al.*, Decision on the Prosecutor's Motions for Leave to Call Additional Witnesses and for the Transfer of Detained Witnesses (TC), 24 July 2001; Decision on the Prosecutor's Motion to Modify the Sequence of Appearance of Witnesses on her Witness List (TC), 27 February 2002; Decision of 30 March 2004; Decision of 14 October 2004; *Nahimana et al.*, Decision of 26 June 2001; *Ntagerura et al.*, Decision of 4 June 2002; Decision of 11 June 2002; *Bagasora et al.*, Decision of 26 June 2003; Decision on Prosecutor's Motion for Leave to Vary the Witness List Pursuant to Rule 73bis(E) (TC), 21 May 2004; *Nyiramasuhuko et al.* Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Ntahobali (TC), 26 August 2005.

²⁴ Paragraph 17 of Ntahobali's Reply to Kanyabashi's Response.

²⁵ *Nyiramasuhuko et al.*, T. 13 December 2005, p. 57.

• **On the Reconsideration of the Decision of 26 August 2005**

26. The Chamber recalls its jurisprudence on reconsideration, namely that,

[t]he fact that the Rules are silent as to reconsideration, however, is not, in itself, determinative of the issue whether or not reconsideration is available in “particular circumstances” and a judicial body has inherent jurisdiction to reconsider its decision in “particular circumstances.” Therefore, although the Rules do not explicitly provide for it, the Chamber has an inherent power to reconsider its own decisions. However, it is clear that reconsideration is an exceptional measure that is available only in particular circumstances.²⁶

27. The Chamber notes that it has the inherent jurisdiction, to be exercised as its discretion, to reconsider an impugned decision, including but not limited to the following circumstances:

- i) Where the impugned decision was erroneous in law or an abuse of discretion when decided and for this reason a procedural irregularity has caused a failure of natural justice; or,
- ii) Where new material circumstances have arisen since the decision was issued.²⁷

28. As for the reconsideration sought regarding Witness WDUSA, the Chamber notes the Defence submissions alleging that he is among the alibi witnesses, that he will testify to his and the Accused’s presence in Cyangu, and that he is the only alibi witness who is not related to the Accused.

29. The Chamber recalls the provision of Rule 67 and its Decision of 1 March 2005 where it directed “the Defence, to immediately, make the necessary disclosures in accordance with Rule 67 if they wish to rely on the defence of alibi.”²⁸ Given that the Defence only filed its notice of alibi on 13 October 2005, the Chamber finds that this notice has not been filed in a timely manner. Further, the Chamber recalls its Decision for Certification to Appeal of 21 September 2005, draws the Defence’s attention to Rule 67 in full and Sub-Rule 67 (B) in particular, and reiterates that the Defence for Ntahobali is not limited by the Chamber’s Decision of 26 August 2005 if it wishes to avail itself of its right to present a defence of alibi.

30. The Chamber is of the opinion that the filing of the notice of intention to enter a defence of alibi with regard to Witness WDUSA on 13 October 2005 does not constitute a “new material circumstance” warranting a reconsideration of the Decision of 26 August 2005. The Chamber finds that the Defence must have known about the alleged alibi evidence prior to the issuance of said Decision. The motion for reconsideration is therefore denied.

²⁶ *Nyiramasuhuko et al.*, Decision on Pauline Nyiramasuhuko’s Ex-Parte-Extremely Urgent Motion for Reconsideration of Trial Chamber II’s Decision on Nyiramasuhuko’s Strictly confidential Ex-Parte-Under Seal-Motion for Additional Protective Measures for Defence Witness WBNM, dated 17 June 2005 or, Subsidiarily, on Nyiramasuhuko’s Strictly Confidential Ex-Parte-Under Seal-Motion for Additional protective Measures for Defence Witness WBNM (TC), 4 July 2005, para. 3, quoting *Bagosora et al.*, ICTR-98-41-T, Decision on Prosecutor’s Motion for Reconsideration of the Trial Chamber’s “Decision on Prosecutor’s Motion for Leave to Vary the Witness List Pursuant to Rule 73bis (E)” (TC), 15 June 2004, para. 7.

²⁷ *Barayagwiza*, Decision (Prosecutor’s Request for Review or Reconsideration) (AC), 31 March 2000, Separate Opinion of Judge Shahabuddeen, paras. 4-5; *Bagosora et al.*, Decision on Reconsideration of Order to reduce Witness List and on Motion for Contempt for Violation of that Order (TC), 1 March 2004, para. 11; *Bagosora et al.*, Decision on Defence Motion for Reconsideration of the Trial Chamber’s Decision and Scheduling Order of 5 December 2001 (TC), 18 July 2003, para. 25.

²⁸ *Nyiramasuhuko et al.*, Decision on the Confidential Prosecutor’s Motion to be Served With Particulars of Alibi Pursuant to Rule 67 (A) ii) a) (TC), 1 March 2005.

31. However, the Chamber grants the motion for the addition of Witness WDUSA as an alibi witness whose expected testimony will be limited to the presence of the Accused in Cyangugu.
32. As for the reconsideration sought for Witness MJ110, the Chamber recalls the Defence submissions that she is also an alibi witness expected to testify to the facts that Ntahobali was bedridden for nearly one week between late April and early May 1994, and that he left for Cyangugu towards 28 May 1994.
33. The Chamber reiterates its reasoning set out in paragraphs 29 and 30 above and denies the motion for reconsideration of its Decision of 26 August 2005. Nonetheless, it grants the Defence motion to allow Witness MJ110 as an alibi witness to extend her testimony to the facts that Ntahobali was bedridden for nearly one week between late April and early May 1994, and that he left for Cyangugu towards 28 May 1994, coming back to Butare one week later.

FOR THE ABOVE REASONS, THE TRIAL CHAMBER

GRANTS the motion for the addition of Georges Rutaganda, identified as Witness NMRG, to Ntahobali's witness list;

LIMITS Georges Rutaganda's testimony to paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 of his *will-say* statement, and orders that the estimated duration of testimony of one day should be accordingly reduced;

DENIES the request for reconsideration of the Decision of 26 August 2005;

GRANTS the motion for the addition of Witness WDUSA to Ntahobali's witness list and orders that his testimony shall be strictly limited to the Accused's presence in Cyangugu;

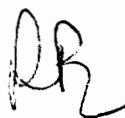
GRANTS the motion for the expansion of the scope of Witness MJ110's testimony, and orders that she be allowed to testify to the facts that Ntahobali was bedridden for nearly one week between late April and early May 1994 and that he left for Cyangugu towards 28 May 1994 and came back to Butare one week later;

DENIES the Motion in all other respects.

Arusha, 27 January 2006



William H. Sekule
Presiding Judge



Arlette Ramaroson
Judge



Solomy Balungi Bossa
Judge



[Seal of the Tribunal]