

ICTR-97-29-T  
05-09-2006  
(4987-4986)

4989  
PM



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER II**

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

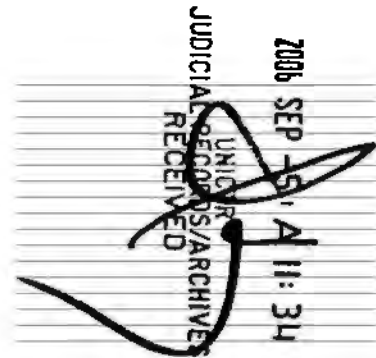
**Registrar:** Mr Adama Dieng

**Date:** 5 September 2006

**The PROSECUTOR**

v.

Sylvain NSABIMANA  
Case No. ICTR-97-29-T  
Joint Case No. ICTR-98-42-T



**DECISION ON SYLVAIN NSABIMANA'S EXTREMELY URGENT MOTION  
TO RECONSIDER THE DECISION ON SYLVAIN NSABIMANA'S  
EXTREMELY URGENT-STRICTLY CONFIDENTIAL-UNDER SEAL-MOTION  
TO HAVE WITNESS AGWA TESTIFY VIA VIDEO-LINK**

**Office of the Prosecutor**

Ms Silvana Arbia, Senior Trial Attorney  
Ms Adelaide Whest, Trial Attorney  
Ms Holo Makwaia, Trial Attorney  
Mr Gregory Townsend, Trial Attorney  
Ms Althea Alexis Windsor, Trial Attorney  
Ms Astou Mbow, Case Manager

**Defence Counsel**

Ms Josette Kadji, Lead Counsel

**THE TRIBUNAL INTERNATIONAL CRIMINAL FOR RWANDA** (the “Tribunal”);

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

**BEING SEIZED** of the “*Requête en extrême urgence de Sylvain Nsabimana aux fins de reconsidération de la décision intitulée ‘Decision on Sylvain Nsabimana’s Extremely Urgent-Strictly Confidential Under Seal- Motion to have Witness AGWA Testify Via Video-Link’*”, filed on 25 August 2006 (the “Motion”) **AND** the annexes entitled: “*Avis médical du 23 août 2006 délivré par le Docteur Graux Carios, Hématologue au Centre d’Hématologie aux cliniques universitaires Saint Luc de Bruxelles*” and “*Avis d’interprétation du Docteur Epée Hernandez du 25 Août 2006 à la demande de la Défense de Sylvain Nsabimana*” (the “Annexes”);

**CONSIDERING** the “Prosecutor’s Response to the *Requête en extrême urgence de Sylvain Nsabimana aux fins de reconsidération de la décision intitulée ‘Decision on Sylvain Nsabimana’s Extremely Urgent-Strictly Confidential Under Seal- Motion to have Witness AGWA Testify Via Video-Link’*”, filed on 29 August 2006 (the “Prosecution Response”);

**NOTING** the “Decision on Sylvain Nsabimana’s Extremely Urgent-Strictly Confidential Under Seal- Motion to have Witness AGWA Testify Via Video-Link”, issued on 17 August 2006 (the “Decision of 17 August 2006”);

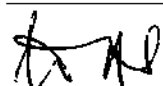
**CONSIDERING** the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”), particularly Rules 71 (D) and 71 (A) of the Rules;

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

### **SUBMISSIONS OF THE PARTIES**

#### ***The Defence***

1. The Defence moves the Chamber to reconsider its Decision of 17 August 2006 to allow Defence Witness AGWA to testify by means of video-conference from Brussels, in the week starting 18 September 2006.
2. The Defence submits that shortly after the issuance of the Decision of 17 August 2006, it received a document providing further details concerning Witness AGWA’s actual state of health from Dr. Graux Carios. The Defence indicates that Witness AGWA is currently being treated for a very serious disease which prevents him from travelling for at least six months starting from 23 August 2006, the date of the medical certificate.
3. The Defence stresses that the details contained in the medical certificate dated 23 August 2006 were totally unknown to it when it filed its initial Motion leading to the



Decision of 17 August 2006; the Defence adds that those details constitute new and exceptional circumstances warranting the reconsideration of the Decision of 17 August 2006.

### **The Prosecution**

4. The Prosecution submits that the medical certificate contains information which was always available to the Defence and which should have been transmitted to the Chamber with its earlier Motion. Therefore, the requirements for reconsideration are not met. The Prosecution however asserts that it is entirely within the Chamber's discretion to reconsider its own Decision.

### **HAVING DELIBERATED**

5. The Chamber recalls the Tribunal's jurisprudence on reconsideration:

The 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.<sup>1</sup>

6. The Chamber recalls its 17 August Decision in which it found that Witness AGWA's testimony was sufficiently important to the Accused's defence but since the Defence did not specify the nature or gravity of his illness, its video-link request was denied.<sup>2</sup>
7. The Chamber notes that the Defence has now produced a Medical Certificate allegedly issued by Doctor Graux Carios on 23 August 2006. According to this certificate, Witness AGWA apparently suffers from a very serious disease that does not allow him to travel for at least six months. In the Chamber's view, the details contained in this newly provided document do not amount to "particular circumstances" within the meaning of the aforesaid jurisprudence given that they could and should have been known by the Defence when filing their initial motion for video-link testimony. The Motion for reconsideration is therefore denied.
8. However, the Chamber *proprio motu* and in the interests of justice, considers that the conditions for hearing Witness AGWA's testimony by means of video-conference from Brussels are met and urges the Defence with the assistance of the Registry to take all appropriate measures for it to be carried out without undue delay.

---

<sup>1</sup> *Prosecutor v. 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.

<sup>2</sup> The Decision of 17 August 2006, paras. 9 and 10.

9. Finally, the Chamber urges the Defence for Nsabimana to act with more diligence in the preparation of its work and in the filing of motions to avoid wasting time and resources.

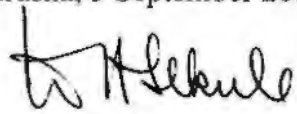
**FOR THE ABOVE REASONS, THE TRIBUNAL,**

**DENIES** the Motion for reconsideration of the “Decision on Sylvain Nsabimana’s Extremely Urgent-Strictly Confidential Under Seal- Motion to have Witness AGWA Testify Via Video-Link” of 17 August 2006.

**RULES *proprio motu*** that Witness AGWA’s testimony be taken by means of video-conference from Brussels.

**URGES** the Defence with the assistance of the Registry to take all appropriate measures for Witness AGWA’s video-conference testimony to be carried out without undue delay.


Arusha, 5 September 2006



William H. Sekule  
Judge President



Arlette Ramaroson  
Judge



Solomy Balungi Bossa  
Judge

[Seal of the Tribunal]