

ICTR-98-42-T
19-09-2006
(11816-11813)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr Adama Dieng

Date: 19 September 2006

The PROSECUTOR

v.

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

JUDICIAL REC'D
RECEIVED
2006 SEP 19 1 P 4: 21
REGISTRAR
CORRESPONDENCE ARCHIVES

**DECISION ON PAULINE NYIRAMASUHUKO'S EXTREMELY URGENT
MOTION FOR EXCLUSION OF EVIDENCE OR SUBSIDIARILY FOR
FURTHER DISCLOSURE REGARDING WITNESS DEDE'S EXPECTED
TESTIMONY**

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 for Nsabimana

Ms Josette Kadji, Lead Counsel
Defence Counsel for Nyiramasuhuko
Ms Nicole Bergevin, Lead Counsel
Mr Guy Poupart, Co-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 d’extrême urgence de Pauline Nyiramasuhuko aux fins d’exclusion totale de preuve ou subsidiairement, en divulgation supplémentaire d’informations concernant le témoignage éventuel de DEDE*”, filed on 8 September 2006 (the “Motion”);

CONSIDERING:

- a) the “Prosecutor’s Response to Nyiramasuhuko’s Motion to Exclude Part of DEDE’s Forthcoming Evidence or Alternatively for Further Disclosure”, filed on 11 September 2006 (the “Prosecution Response”);
- b) the “*Réplique de Sylvain Nsabimana à la requête d’extrême urgence de Pauline Nyiramasuhuko aux fins d’exclusion totale de preuve ou subsidiairement, en divulgation supplémentaire d’informations concernant le témoignage éventuel de DEDE*”, filed on 13 September 2006 (“Nsabimana’s Response”);
- c) the “*Réplique de Pauline Nyiramasuhuko à la réponse du Procureur et à la ‘Réplique de Sylvain Nsabimana à la requête d’extrême urgence de Pauline Nyiramasuhuko aux fins d’exclusion totale de preuve ou subsidiairement, en divulgation supplémentaire d’informations concernant le témoignage éventuel de DEDE’*”, filed on 14 September 2006 (“Nyiramasuhuko’s Reply”);

RECALLING:

- i) the “Decision on the Prosecution’s Urgent Motion to Compel Compliance With the Trial Chamber’s Decision of 17 August 2006”, issued on 5 September 2006 (the “Decision of 5 September 2006”);
- ii) the document entitled “*Complément d’informations*” filed by the Defence for Nsabimana on 7 September 2006 (the “Additional Information of 7 September 2006”);

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

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

INTRODUCTION

In its Decision of 5 September 2006, the Chamber ordered the Defence for Nsabimana to specifically mention by name or by position, the 'MRND dignitaries' mentioned by Witness DEDE in his supplementary will-say of 29 August 2006. Additionally, if those 'MRND dignitaries' include Accused before the Chamber, the Defence is ordered to name the said Accused. Subsequently, the Defence of Nsabimana filed an additional information on 7 September 2006 in which it indicated that the "MRND dignitaries" referred to by Witness DEDE are, among others, Pauline Nyiramasuhuko and President Theodore Sindikubwabo. On 8 September 2006, the Defence for Nyiramasuhuko filed a motion in connection to the additional information mentioned above and which is the subject of the instant Decision.

SUBMISSIONS OF THE PARTIES

Defence for Nyiramasuhuko

1. The Defence moves the Chamber to prohibit Witness DEDE from testifying on facts related to the Accused Pauline Nyiramasuhuko or subsidiarily, to order the Defence for Nsabimana to disclose further information in this regard.
2. The Defence submits that the additional information concerning the fact that Pauline Nyiramasuhuko is among the "MRND dignitaries" lacks precision and prevents it from conducting an effective cross-examination of Witness DEDE. The Defence alleges that the following information is lacking: When and where did Witness DEDE purportedly see Pauline Nyiramasuhuko moving about in Butare town under escort? Who was Pauline Nyiramasuhuko's escort? Was Pauline Nyiramasuhuko accompanied and if so by whom? How was Pauline Nyiramasuhuko moving about? Was she in a vehicle? If so which type?

Prosecution

3. The Prosecution prays the Chamber to deny the Motion given that Nyiramasuhuko will have sufficient time to prepare the cross-examination of Witness DEDE on the basis of existing disclosure. However, the Prosecution asserts that it rests with the Chamber to assess if the additional information complies with its earlier Decision or otherwise.

Defence for Nsabimana

4. The Defence submits that the additional information did comply with the Decision of 5 September 2006 and the further information sought by the Defence for Nyiramasuhuko is a matter for cross-examination. Moreover, the Defence indicates that when the Accused Nyiramasuhuko testified on her own behalf, she indicated that, between April and July 1994, she was present in Butare many times.

Nyiramasuhuko's Reply

5. The Defence submits that Witness DEDE's will-say upon which the Chamber relied to grant the request for addition to Nsabimana's list of witnesses did not refer to "MRND dignitaries" nor to the Accused Nyiramasuhuko herself and any subsequent will-say and/or additional information should not do so, either. According to the Defence, no cross-examining party be allowed to raise those issues during the expected testimony of Witness DEDE.
6. Finally, the Defence stresses that the supplementary will-say and/or additional information regarding Witness DEDE should be in connection with what is set out in the Decision of 17 August 2006 granting his addition as a Defence Witness for Nsabimana.

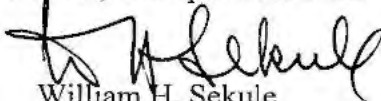
HAVING DELIBERATED

7. The Chamber recalls 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.¹
8. The Chamber sees no reason to depart from this standard and notes that the disclosure made thus far in connection with Witness DEDE's expected testimony meets the requirements as enunciated above, allowing any other party to conduct an effective cross-examination of that witness. The Chamber therefore denies the Motion in its entirety.

FOR THE ABOVE REASONS, THE TRIBUNAL,

DENIES the Motion.

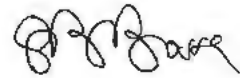
Arusha, 19 September 2006



William H. Sekule
Judge President



Arlette Ramaroson
Judge



Solomy Balungi Bossa
Judge

[Seal of the Tribunal]

¹ *Prosecutor v. Nyiramasuhuko et al.*; 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", 27 January 2006, para. 24.



TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input checked="" type="checkbox"/> Trial Chamber II R. N. Kouambo	<input type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS M. Diop	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande
From:	<input checked="" type="checkbox"/> Chamber Mihary Andrianaivo (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. Sylvain Nsabimana		Case Number: ICTR-97-29-T	
Dates:	Transmitted: 19/09/2006		Document's date: 19/09/2006	
No. of Pages:	4	Original Language:	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	DECISION ON PAULINE NYIRAMASUHUKO'S EXTREMELY URGENT MOTION FOR EXCLUSION OF EVIDENCE OR SUBSIDIARILY FOR FURTHER DISCLOSURE REGARDING WITNESS DEDE'S EXPECTED TESTIMONY			
Classification Level:		TRIM Document Type:		
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<input type="checkbox"/> Confidential		<input checked="" type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal
<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book
		<input type="checkbox"/> Judgement	<input type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities
			<input type="checkbox"/> Submission from non-parties	<input type="checkbox"/> Submission from parties
			<input type="checkbox"/> Accused particulars	

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

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Filing Party hereby submits only the original, and **will not submit** any translated version.

Reference material is provided in annex to facilitate translation.

Target Language(s):

English French Kinyarwanda

CMS SHALL NOT take any action regarding translation.

Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

Original	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

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III - TRANSLATION PRIORITISATION (For Official use ONLY)

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<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines:

ICTR-98-42-0626/1



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**PROOF OF SERVICE TO DETAINEES
PREUVE DE NOTIFICATION D'ACTES AUX DETENUS**

Upon signature of the detainee, please return this sheet to the originator as proof of service.
Formulaire à être renvoyé à l'expéditeur dûment signé par le détenu.

Date:	20/09/2006	Case Name / Affaire:	The Prosecutor v.	- ELIE NDAYAMBAJE - JOSEPH KANYABASHI - PAULINE NYIRAMASUHUKO - ARSENE SHALOM NTAHOBALI - SYLVAIN NSABIMANA - ALPHONSE NTEZIRYAYO
		Case No / Affaire Nr.	ICTR-98-42-T	
To: A:	Name of detainee / nom du détenu NDAYAMBAJE	TO BE FILLED IN BY THE DETAINEE A COMPLETER PAR LE DETENU		
		I acknowledge receipt of the document(s) listed below. <i>J'accuse réception du/des documents mentionné(s) ci-dessous.</i>	Signature 	Date, Time / Heure 20/9/06
Through:	Security Officer Commanding Officer, UNDF	Print name / nom SAIDOU GUINDO	Signature 	Date, Time / Heure 21/9/06
From: De:	<input type="checkbox"/> JP. Fomété (Chief, CMS) <input type="checkbox"/> M. Diop (D. Chief, CMS) <input type="checkbox"/> N. Diallo (TC 1) <input checked="" type="checkbox"/> R. Kouambo (TC2)			
	<input type="checkbox"/> C. Hometowu (TC3) <input type="checkbox"/> F. A. Talon (Appeals/Team IV) <input type="checkbox"/> Other / Autre			
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Pages

NYIRAMASUHUKO ET AL - DECISION ON PAULINE NYIRAMASUHUKO'S EXTREMELY URGENT MOTION FOR EXCLUSION OF EVIDENCE OR SUBSIDIARILY FOR FURTHER DISCLOSURE REGARDING WITNESS DEDE'S EXPECTED TESTIMONY

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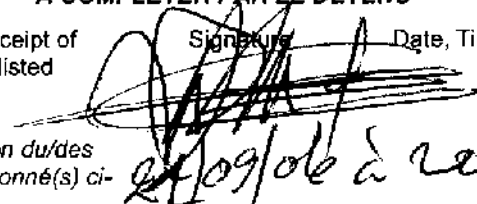
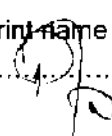
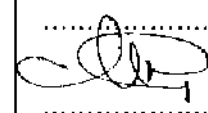


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To: A:	Name of detainee / nom du détenu NTAHOBALI	<p align="center">TO BE FILLED IN BY THE DETAINEE A COMPLETER PAR LE DETENU</p> <p>I acknowledge receipt of the document(s) listed below. <i>J'accuse réception du/des documents mentionné(s) ci-dessous.</i></p> <p align="right">Signature:  Date, Time / Heure: 20/09/06 à 20h00</p>		
Through:	Security Officer Commanding Officer, UNDF	Print name / nom  SAIDOU GUINDO	Signature 	Date, Time / Heure 20/9/06
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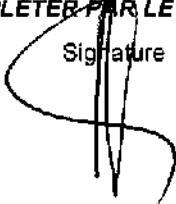
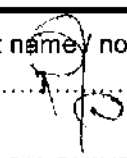
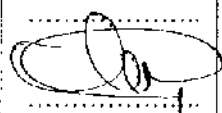



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ICTR-98-42-0626/1



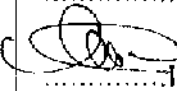


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Through:	Security Officer Commanding Officer, UNDF	Print name / nom  SAIDOU GUINDO	Signature 	Date, Time / Heure 21/9/06
From: De:	<input type="checkbox"/> JP. Fomété (Chief, CMS) <input type="checkbox"/> M. Diop (D. Chief, CMS) <input type="checkbox"/> N. Diallo (TC 1) <input checked="" type="checkbox"/> R. Kouambo (TC2) <input type="checkbox"/> C. Hometowu (TC3) <input type="checkbox"/> F. A. Talon (Appeals/Team IV) <input type="checkbox"/> Other / Autre			
Subject Objet:	Kindly find attached the following documents / <i>Veuillez trouver en annexe les documents suivants.</i>			

Documents name / titre du document

Date Filed / Date enregistré

Pages

NYIRAMASUHUKO ET AL – DECISION ON PAULINE NYIRAMASUHUKO'S EXTREMELY URGENT MOTION FOR EXCLUSION OF EVIDENCE OR SUBSIDIARILY FOR FURTHER DISCLOSURE REGARDING WITNESS DEDE'S EXPECTED TESTIMONY

19/09/2006

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