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UNITED NATIONS
NATIONS UNIES

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: 2 November 2006

The PROSECUTOR v. Élie NDAYAMBAJE
(Case No. ICTR-96-8-T)
The PROSECUTOR v. Joseph KANYABASHI
(Case No. ICTR-96-15-T)
The PROSECUTOR v. Pauline NYIRAMASUHUKO & Arsène Shalom NTAHOBALI
(Case No. ICTR-97-21-T)
The PROSECUTOR v. Sylvain NSABIMANA & Alphonse NTEZIRYAYO
(Case No. ICTR-97-29-T)

Joint Case No. ICTR-98-42-T

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**DECISION ON NDAYAMBAJE'S MOTION FOR RECONSIDERATION OF THE
CHAMBER'S DECISION TO DENY CERTIFICATION TO APPEAL ITS DECISION
ON THE MOTION FOR EXCLUSION OF EVIDENCE**

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Handwritten signature

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 B. Bossa (the “Chamber”);

SEISED of Ndayambaje’s “*Requête d’Elie Ndayambaje aux fins de reconsidération de la décision intitulée: Decision on Ndayambaje’s Motion for Exclusion of Evidence, du 1^{er} septembre 2006*”, filed on 16 October 2006 (the “Motion”);

CONSIDERING the “Prosecution’s Response to the *Requête d’Elie Ndayambaje aux fins de reconsidération de la décision intitulée: Decision on Ndayambaje’s Motion for Exclusion of Evidence of 1st September 2006*”, filed on 20 October 2006 (“Prosecution’s Response”);

RECALLING the Chamber’s “Decision on Ndayambaje’s Motion for Exclusion of Evidence” of 1 September 2006 (“Decision on Exclusion”) and “Decision on Elie Ndayambaje’s Motion for Certification to Appeal the Decision on Ndayambaje’s Motion for Exclusion of Evidence Issued on 1st September 2006” of 5 October 2006 (“Decision on Certification”);

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) of the Rules, on the basis of the written submissions of the Parties.

SUBMISSIONS OF THE PARTIES

Defence for Ndayambaje

1. On 1 September 2006, the Chamber denied the Defence for Elie Ndayambaje’s Motion requesting the exclusion of thirteen prosecution witnesses’ testimonies on account of lack of relevance and/or defect in the indictment, stressing that “some of the matters raised may be considered at a later stage of the proceedings”.¹ Ndayambaje moved the Chamber for certification to appeal this decision, and the Chamber denied that motion on 5 October 2005, finding that the Defence had “generally revisited the thrust of its previous arguments which led to the Impugned Decision rather than demonstrating the conditions required for the Chamber to grant certification to appeal”.²
2. The Defence now requests the Chamber to reconsider both earlier decisions in light of an Appeals Chamber decision rendered on 18 September 2006 in the

¹ *Prosecutor v. Pauline Nyiramasuhuko et al.*, Decision on Ndayambaje’s Motion for Exclusion of Evidence, 1 September 2006 (“Decision on Exclusion”), para. 25.

² *Prosecutor v. Pauline Nyiramasuhuko et al.*, Decision on Elie Ndayambaje’s Motion for Certification to Appeal the Decision on Ndayambaje’s Motion for Exclusion of Evidence Issued on 1st September 2006, 5 October 2006, para. 15.

Bagosora et al. case, also regarding the exclusion of evidence.³ According to the Defence, the Appeals Chamber's ruling is irreconcilable with the Chamber's decisions in the instant proceedings and therefore, constitutes a valid basis for their reconsideration.⁴ The Defence submits that the Appeals Chamber, in contrast with the Decision on Exclusion, held that objections regarding the lack of notice may be raised at any time during the trial stage.⁵ Further, the Appeals Chamber found that Trial Chamber's decisions on the identification of legal principles applicable to the exercise of its discretion to admit evidence can be overturned, if an error of law has been committed.⁶

3. The Defence also submits that the Decision on Exclusion of evidence is ambiguous, *inter alia*, with respect to issues that would be considered at a later stage of the proceedings and the allegations pleaded in the Indictment to which the impugned evidence might be relevant.⁷ Further, the Defence argues that the Chamber's decision puts the Defence in a difficult situation, given the Scheduling Order of 5 October 2006, which exhorts the Defence to significantly reduce the number of witnesses it intends to call.⁸

Prosecution's Response

4. The Prosecution submits that the Motion should be dismissed because it is inadmissible *ab initio*⁹ and does not meet the threshold to move the Chamber to reconsider its decision, as there are no new facts, change in the law or other intervening circumstances.¹⁰ Rather, the Motion constitutes an attempt to relitigate issues that have already been subject of a denial of certification to appeal.¹¹

DELIBERATIONS

5. As a preliminary matter, the Chamber notes that on 27 October 2006, Counsel for the Defence seems to have applied by way of an electronic mail to CMS for an extension of time to reply to the Prosecution's Response. The Chamber observes that for a motion for extension of time to be admissible, the Defence should have addressed it to the Chamber not later than 25 October 2006, taking into account that the Prosecution filed its response on 20 October 2006 and that the Defence

³ *Requête d'Elie Ndayambaje aux fins de reconsidération de la décision intitulée: Decision on Ndayambaje's Motion for Exclusion of Evidence, du 1^{er} septembre 2006*, filed on 16 October 2006 (the "Motion"), para. 7, refers to *Prosecutor v. Bagosora et al.*, Appeals Chamber, *Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence*, 18 September 2006.

⁴ The Motion, paras. 8, 10, 31.

⁵ The Motion, paras. 13-14, quoting *Prosecutor v. Théoneste Bagosora et al.*, Appeals Chamber, *Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence*, 18 September 2006, para. 44.

⁶ The Motion, paras. 15-17, quoting *Prosecutor v. Théoneste Bagosora et al.*, Appeals Chamber, *Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence*, 18 September 2006, paras. 15-16.

⁷ The Motion, para. 22.

⁸ The Motion, para. 30.

⁹ Prosecution's Response, para. 7.

¹⁰ Prosecution's Response, paras. 12, 13, 21, 25.

¹¹ Prosecution's Response, para. 23.

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was allowed five days from the date of said response to file its reply. On the date of the Defence's letter to the Registry, there was therefore no time left to extend. The Chamber is of the opinion that Counsel for Ndayambaje acted without due diligence in this matter and considers that the issue of an extension of time does not arise.

6. With regard to the request for reconsideration, the Chamber notes that it has an inherent power to reconsider its own decisions in "particular circumstances". However, reconsideration is an exceptional measure¹² to be applied if new circumstances have unfolded after the relevant decision, and if unfairness has been caused to a party to the proceedings, due to an error.¹³
7. The Chamber has carefully considered the submissions of the Parties and the Appeals Chamber's Decision the Defence relies on. It is the Chamber's view that the Appeals Chamber's decision contains no new elements with regard to the Chamber's decision, but merely underscores the Appeals Chamber's interpretation of particular legal elements.¹⁴ The Chamber is therefore of the view that the requirements for a reconsideration have not been met and dismisses the Motion.
8. The Chamber underscores that it is not in the interest of judicial economy to relitigate issues the Chamber has already decided on.

FOR THE ABOVE REASONS, THE TRIBUNAL

DENIES the Motion.

Arusha, 2 November 2006



William H. Sekule
Presiding Judge



Arlette Ramaroson
Judge



Solomy Balungi Bossa
Judge

[Seal of the Tribunal]

¹² *Prosecutor v. Pauline Nyiramasuhuko et al.*, Decision on Sylvain Nsabimana's Extremely Urgent Motion to Reconsider Sylvain Nsabimana's Extremely Urgent-Strictly Confidential-Under Seal Motion to Have Witness AGWA Testify Via Video-Link, 5 September 2006, para. 5, quoting *Prosecutor v. Théoneste Bagosora et al.*, 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)", 15 June 2004, para. 7. See also *Prosecutor v. Laurent Semanza*, Decision on the Defence Motion to Reconsider Denying Leave to Call Rejoinder Witnesses, 9 May 2002, paras. 7-8.

¹³ *Prosecutor v. Laurent Semanza*, Decision on the Defence Motion to Reconsider Denying Leave to Call Rejoinder Witnesses, 9 May 2002, para. 8; *Prosecutor v. Théoneste Bagosora et al.*, Decision on Prosecution's Motion for Reconsideration of the Trial Chamber's "Decision on Prosecution's Motion for Leave to Vary the Witness List Pursuant to Rule 73bis (E)", 15 June 2004, para. 8.

¹⁴ See *Prosecutor v. Bagosora et al.*, Appeals Chamber, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence, 18 September 2006, para. 46.