



ICTR-98-42-T
19-01-2009
(13222-13213)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

13222
Lusungu

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 19 January 2009

The PROSECUTOR v. Joseph KANYABASHI

Case No. ICTR-96-15-T

Joint Case No. ICTR-98-42-T

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**DECISION ON KANYABASHI'S MOTIONS FOR RECONSIDERATION OF
THE 2 JULY 2008 DECISION, REQUESTING THAT WITNESSES D-2-23-C AND D-
11-AB BE CALLED TO TESTIFY, AND FOR SPECIAL PROTECTIVE MEASURES
FOR WITNESSES D-2-23-C AND D-11-AB**

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

SITTING as Trial Chamber II composed of Judges William H. Sekule, Presiding, Arlette Ramaroson and Solomy Balungi Bossa (the "Chamber");

BEING SEIZED of the

- i. "*Requête de Joseph Kanyabashi en reconsidération de la décision du 2 juillet 2008 et demandant que D-2-23-C et D-11-AB soient entendus,*" filed confidentially on 18 November 2008 ("Kanyabashi's First Motion");
- ii. "*Requête de Joseph Kanyabashi aux fins d'ordonner des mesures spéciales de protection concernant les témoins D-2-23-C et D-11-AB,*" filed confidentially on 19 November 2008 ("Kanyabashi's Second Motion");

CONSIDERING the:

- i. "Prosecutor's Response to the two Motions of Joseph Kanyabashi asking the Trial Chamber to reconsider its decision of 2 July 2008, and that D-2-23-C and D-11-AB be heard and requesting special measures of protection for them," filed confidentially on 24 November 2008 ("Prosecution's Response");
- ii. "*Réponse de Sylvain Nsabimana à la 'Requête de Joseph Kanyabashi en reconsidération de la décision du 2 juillet 2008 et demandant que D-2-23-C et D-11-AB soient entendus,'*" filed confidentially on 24 November 2008 ("Nsabimana's Response to the First Motion");
- iii. "*Réponse de Arsène Shalom Ntahobali à la requête de Joseph Kanyabashi en reconsidération de la décision du 2 juillet 2008 et demandant que D-2-23-C et D-11-AB soient entendus,*" filed confidentially on 24 November 2008 ("Ntahobali's Response to the First Motion");
- iv. "*Réponse d'Arsène Shalom Ntahobali à la requête de Joseph Kanyabashi aux fins d'ordonner des mesures spéciales de protection concernant les témoins D-2-23-C et D-11-AB,*" filed confidentially on 24 November 2008 ("Ntahobali's Response to the Second Motion");
- v. "*Réplique de Joseph Kanyabashi aux réponses relatives à sa 'Requête en reconsidération de la décision du 2 juillet 2008 et demandant que D-2-23-C et D-11-AB soient entendus,'*" filed confidentially on 28 November 2008 ("Kanyabashi's Reply to the First Motion");
- vi. "*Réplique de Joseph Kanyabashi aux réponses relatives à sa 'Requête aux fins d'ordonner des mesures spéciales de protection concernant les témoins D-2-23-C et D-11-AB,'*" filed confidentially on 28 November 2008 ("Kanyabashi's Reply to the Second Motion");

RECALLING the "Decision on Kanyabashi's Motion to Re-Open his Case and to Recall Prosecution Witness QA," of 2 July 2008 (the "Impugned Decision");

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

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

INTRODUCTION

1. On 20 May 2008, the Chamber declared Kanyabashi’s defence case closed but for one remaining witness, Witness D-2-21-T, who was not yet available to testify.¹
2. On 2 July 2008, the Chamber issued the Impugned Decision, which allowed the recall of Witness QA, but denied the re-opening of Kanyabashi’s case and the addition of Witness D-2-23-C to Kanyabashi’s witness list. On 29 and 30 October, Witness QA gave further testimony. On 5 November 2008, Witness D-2-21-T completed his testimony and Kanyabashi’s defence was formally declared closed.
3. The Chamber will consider Kanyabashi’s two Motions jointly as they appear to be related or are related, with consideration of the request made in the Second Motion regarding special protective measures being contingent on the Chamber deciding to grant the First Motion.

SUBMISSIONS OF THE PARTIES

Kanyabashi’s First Motion

4. The Defence moves the Chamber to reconsider its Decision of 2 July 2008 and to re-open Kanyabashi’s case by calling Witnesses D-2-23-C and D-11-AB. Alternatively, if the Chamber deems that calling these Witnesses would cause prejudice to the other co-accused, the Defence requests that Kanyabashi’s case be severed from the Butare trial so that these Witnesses can be heard. The respective will-says for Witnesses D-2-23-C and D-11-AB are annexed to the Motion.
5. The Defence submits that Witness D-2-23-C only agreed to testify on 24 May 2008 and that it first met Witness D-11-AB on 13 July 2008. Both of these events occurred after Kanyabashi’s case was declared closed on 20 May 2008.
6. It recalls that Witness D-2-23-C is expected to testify about the beginning of the killings in his *secteur*, the absence of Kanyabashi at Rango market on the Thursday, the EER, the *préfecture* office, the refugees in Rango, the *Ibuka* association and the fabrication of false accusations against Kanyabashi involving certain Prosecution Witnesses. The Defence submits that Witness D-2-21-T also mentioned these six Prosecution Witnesses in her testimony.
7. The Defence submits that Witness D-11-AB resides in Rwanda and fears for his safety. The Defence submits that Witness D-11-AB is expected to establish that certain Prosecution

¹ As of 20 May 2008, the Defence for Kanyabashi was expected to call two remaining witnesses. On 19 June 2008, the Chamber granted the Defence’s request to remove one of the witnesses from Kanyabashi’s witness list.

Witnesses attended meetings to fabricate evidence against Kanyabashi. It asserts that Witness D-2-21-T also testified about the participation of certain Prosecution Witnesses in meetings of that sort.

8. The Defence relies upon the *Munyakazi* Appeals Chamber Decision of 8 October 2008 in submitting that witnesses living in Rwanda, such as Witnesses D-2-23-C and D-11-AB, are in a unique situation when proposing to testify about a group of witnesses alleged to have fabricated false accusations against an accused before the ICTR.

9. The Defence submits that the new elements – the testimony of Prosecution Witness QA, that of Witness D-2-21-T, the only witness to have testified about the fabrication of false accusations against Kanyabashi, and the recent Appeals Chamber Decision in the *Munyakazi* case – justify the reconsideration of the Impugned Decision.

10. The Defence argues that the proposed testimonies of Witnesses D-2-23-C and D-11-AB are crucial to Kanyabashi's case.

Prosecution's Response to Kanyabashi's First Motion

11. The Prosecution opposes the Motion and submits that the Defence has not put forward any new facts that amount to special circumstances warranting reconsideration. It submits that the evidence of Witness QA is already the subject of an investigation by the Chamber and that the only new element raised – his confession to having testified falsely – does not constitute a special circumstance warranting the reconsideration of the Impugned Decision.

12. The Prosecution submits that as several other witnesses have already testified about the alleged fabrication of evidence and issues related to *Ibuka*, there is no need to hear more evidence on these topics from Witnesses D-2-23-C and D-11-AB; it submits that Kanyabashi would not suffer any prejudice if their evidence is not heard.

13. In addition, the Prosecution submits that the Defence has not shown that the evidence sought to be introduced could not have been identified before the close of its case. The Prosecution further notes that Witnesses D-13-D and D-2-18-O each testified that they attended *Ibuka* meetings.

14. Finally, the Prosecution submits that there is no good reason for the Chamber to order, in the alternative, the separation of trial of Kanyabashi and that the Chamber has already denied applications for severance in the past.

Nsabimana's Response to Kanyabashi's First Motion

15. The Defence submits that the criteria for reconsideration have not been met with respect to Witness D-2-23-C. It leaves the decision with regard to D-11-AB to the Chamber to make.

16. The Defence notes that Kanyabashi's Defence cites Witness QA's testimony on recall, Witness D-2-21-T's testimony, and the recent Appeals Chamber Decision in the *Munyakazi* case as new elements justifying the reconsideration of the Impugned Decision. The Defence underscores that these do not constitute new elements in this sense and that the will-say of

Witness D-2-23-C annexed to the Motion contains the same points argued before the Chamber and denied in the Impugned Decision.

17. The Defence also notes that the First Motion refers to arguments from a previous Motion, which was denied. Witness D-2-23-C would simply testify in support of Witness D-2-21-T on the issue of fabrication of false testimonies. On the Defence for Kanyabashi's own admission, six witnesses whose testimonies would be supported by Witness D-2-23-C on the fabrication of evidence issue were already mentioned by Witness D-2-21-T. No mention is made of any other subjects that might be testified to or of any new element that arose after the Impugned Decision.

18. The Defence submits that Kanyabashi has not demonstrated new material facts warranting a reconsideration of whether Witness D-2-23-C should be called to testify. It also submits that calling Witness D-2-23-C to testify would dangerously prejudice Nsabimana.

Ntahobali's Response to Kanyabashi's First Motion

19. The Defence opposes the Motion and notes that the re-opening of Kanyabashi's defence to hear Witness D-2-23-C testify was denied by the Chamber because of a lack of diligence, the repetitive nature of the expected testimony in light of other testimonies already heard by the Chamber and because of prejudice other accused would suffer. The Defence submits that these reasons remain valid and should base the denial of the Motion.

20. The Defence recalls that minimal diligence should have resulted in the Defence for Kanyabashi informing the Chamber on 5 November 2008 of its intention to call additional witnesses because it had all the information about these two Witnesses available at that time.

21. The Defence submits that the reasons given by the Chamber in the Impugned Decision to deny the request to hear the testimony of Witness D-2-23-C are also valid with regard to Witness D-11-AB's addition to the witness list. The Defence for Kanyabashi, appears to be continuing its investigations beyond the closing of its defence, does not clearly explain why it could not have known of the existence of potential Witness D-11-AB until after 20 May 2008, the date its defence was closed, which was seven years after the beginning of the trial and three and a half years after the beginning of the defence.

22. The Defence submits that other witnesses, including Witness QA, have sufficiently covered the same subjects about which D-11-AB is expected to testify. It recalls that this was part of the Chamber's reasoning in refusing the testimony of Witness D-2-23-C in the Impugned Decision. The addition of this Witness at this stage of the proceedings would unduly prolong this already too long trial.

23. The Defence submits that in the *Munyakazi* case, the Appeals Chamber recognised that fear and threats could weigh on Defence witnesses; but this does not necessarily imply that these same fears and threats weigh on Kanyabashi's witnesses. The alleged presence of fear and threats, which has existed for a long time, does not justify why Kanyabashi could not have called these two witnesses to testify during his defence.

24. With respect to the alleged new elements resulting from Witness QA's testimony on recall, and that of Witness D-2-21-T, the defence originating from the evidence of fabrication

of lies against Kanyabashi is not new either: other witnesses, like Witnesses D-13-D and D-2-18-0, among others, also testified to this effect.

Kanyabashi's Reply to Responses to Kanyabashi's First Motion

25. Contrary to the assertions in the various Responses, the Defence submits that the new facts that have come to light since 2 July 2008, as well as the particularly serious circumstances surrounding these, justify reconsideration. When the 2 July 2008 Decision was issued, the Chamber had not yet heard the testimonies of Witnesses QA (on recall) and D-2-21-T. The Defence recalls that Witness QA alleged that other witnesses had given false testimony before the Chamber. The Defence also submits that D-2-21-T mentioned the same three individuals that Witness QA alleged incited him to give false testimony. According to Witness D-2-21-T, these people were present at certain meetings. The Defence submits that Witness D-11-AB will mention these same three people while Witness D-2-23-C will give evidence about one of them.

26. The Defence submits that this very particular situation, which involves several Prosecution witnesses against Kanyabashi who were assembled to give false testimonies, is an exceptional situation that should cause the Chamber to reconsider the Impugned Decision. These allegations directly affect the integrity of the judicial process.

27. With regard to allegations of repetitiveness of testimony, the Defence notes that the Prosecution was allowed to produce 11 witnesses on the Rango refugees and 13 concerning the *préfectoral* office.

28. The Defence notes that the Prosecution's Response is factually wrong concerning Witnesses D-13-D and D-2-18-O and submits that these Witnesses did not participate in the meetings mentioned by Witnesses D-2-23-C and D-11-AB. Finally, Witnesses D-2-23-C and D-11-AB implicate certain Prosecution witnesses who have not otherwise been implicated. Witnesses RL (through hearsay) and SU are not mentioned except by Witness D-2-23-C. Witness QI is mentioned by both Witnesses D-2-23-C and D-11-AB, but in different circumstances.

29. The Defence submits that it is reasonable to think that the Prosecution will argue that Witness D-2-21-T's testimony has not been corroborated. Witness D-2-21-T testified to facts different from those testified to by Witnesses QA, D-2-18-O and D-13-D, and calling Witnesses D-2-23-C and D-11-AB could allow the Defence to support this testimony.

30. The Defence submits that it met Witness D-2-21-T for the first time in March 2008. Witness D-2-23-C was in contact with the Defence investigator from February 2008 but did not agree to testify. The Defence recalls Paragraph 13 of its 2 June 2008 Motion, which stated that Witness D-2-23-C was first met by the Defence on 24 May 2008 after several attempts by the investigator to have him testify or at least meet with Defence Counsel. It also stated that the Witness feared for his security and did not want to be interviewed in his local community - it was only in May that the Witness was able to obtain travel documents to go to meet the investigator and one of the Defence lawyers.

31. The Defence reiterates that it was not aware of Witness D-11-AB until after 20 May 2008. The Defence did not originally have the full name of this person, who resides in



Rwanda, but not in the same place as in 1994. Despite the Defence's efforts, it was not possible to meet this person before 13 July 2008.

32. The Defence notes that the testimony of these two Witnesses would not substantially lengthen this trial.

33. The Defence adds to its earlier submissions that Witness D-2-23-C's will-say statement relates to alleged facts related to the *préfectoral* office and does not mention Nsabimana.

DELIBERATIONS

Kanyabashi's First Motion

34. The Chamber observes that Kanyabashi requests both the reconsideration of part of the Impugned Decision, which would allow the re-opening of Kanyabashi's defence to call Witness D-2-23-C to testify, and, in addition to this, the re-opening of Kanyabashi's defence to call Witness D-11-AB to testify.

Request for Reconsideration of the Impugned Decision (Witness D-2-23-C)

35. The Chamber notes that reconsideration of a decision is an exceptional measure that is available only in particular circumstances.² Reconsideration is permissible when: (1) a new fact has been discovered that was not known to the Chamber at the time it made its original decision; (2) there has been a material change in circumstances since it made its original decision; or (3) there is reason to believe that its original decision was erroneous or constituted an abuse of power on the part of the Chamber, resulting in an injustice.³ The Chamber recalls that the burden rests with the party seeking reconsideration to demonstrate that sufficiently special circumstances exist.⁴

36. The Chamber considers that the Defence has failed to show that Witness QA's testimony on recall on 29 and 30 October 2008 or Witness D-2-21-T's testimony on 3, 4 and 5 November 2008 constitute either new facts or material changes in circumstances warranting reconsideration of the Impugned Decision, the re-opening of the Defence case for Kanyabashi and the addition of Witness D-2-23-C's testimony.

37. In the Impugned Decision, the Chamber underscored that the Defence had failed to demonstrate that with reasonable diligence, the evidence could not have been identified and

² *The Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Ntahobali's Motion for Reconsideration of the "Decision on Ntahobali's Motion for Separate Trial" (TC), 22 February 2005, para. 17; *The Prosecutor v. Bagosora et al.*, Case No. ICTR-41-T, Decision on Prosecutor's Second Motion for Reconsideration of the Trial Chamber's "Decision on Prosecution Motion for Leave to Vary the Witness List Pursuant to Rule 73 bis (E)" (TC), 14 July 2004, para. 7; *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecutor's Motion for Reconsideration of the Trial Chamber's "Decision on Prosecution Motion for Leave to Vary the Witness List Pursuant to Rule 73 bis (E)" (TC), 15 June 2004, para. 7.

³ *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Motion for Reconsideration of Decision on Joseph Nzirorera's Motion for Inspection: Michel Bagaragaza, 29 September 2008, para. 4; See also *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecutor's Motion for Reconsideration of the Trial Chamber's "Decision on Prosecution Motion for Leave to Vary the Witness List Pursuant to Rule 73 bis (E)" (TC), 15 June 2004, para. 9.

⁴ *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Motion for Reconsideration of Decision on Joseph Nzirorera's Motion for Inspection: Michel Bagaragaza, 29 September 2008, para. 4.

presented during its case in chief.⁵ The Chamber also considered that it had already heard many witnesses on matters on which Witness D2-23-C was expected to testify and that the re-opening of the case would further delay the trial proceedings thereby causing prejudice to the other Parties.⁶ This reasoning is not affected by the alleged change of circumstances. In addition, the Chamber notes that, but for the recall of certain witnesses, all of the evidence in this trial has been presented by each of the Parties.

38. On the Defence's reliance on the *Munyakazi* Appeals Chamber Decision as a new element warranting reconsideration, the Chamber considers that this Decision addresses the circumstances of Defence witnesses in Rwanda in the context of a motion seeking to transfer a specific case to Rwanda.⁷ This Decision was taken in a particular context which, in the Chamber's view, does not constitute a material change warranting the reconsideration of the Impugned Decision.

39. Therefore, the Chamber denies the request for reconsideration of the Impugned Decision, the re-opening of the Defence case and the addition of Witness D-2-23-C to its witness list.

Request for Re-Opening of the Case (Witness D-11-AB)

40. The Chamber recalls that a case may be re-opened by the Chamber for the introduction of new evidence only under exceptional circumstances.⁸ The moving party must show that, with reasonable diligence, the evidence could not have been identified and presented during its case in chief. In addition, the Chamber exercises its discretion as to whether to admit the evidence, taking into account the probative value of the evidence and the need to ensure a fair trial. The probative value of the new evidence needs to outweigh the prejudice caused by delaying the fair and expeditious conduct of the proceedings.⁹ Factors to be considered include the advanced stage of the trial at which the evidence is sought to be adduced, the potential delay in the trial and the effect of bringing new evidence against one accused in a multi-defendant case.¹⁰

41. The Chamber has noted the Defence's explanations for why it was not able to request the addition of Witness D-11-AB until recently but it considers that the Defence has failed to demonstrate that with reasonable diligence, the evidence could not have been identified and

⁵ Impugned Decision, para. 25.

⁶ Impugned Decision, para. 26.

⁷ *The Prosecutor v. Munyakazi*, Case No. ICTR-97-36-R11bis, Decision on the Prosecution's Appeal against Decision on Referral under Rule 11bis, 8 October 2008, para. 37.

⁸ *The Prosecutor v. Delalic et al.*, Case No. ICTY-IT-96-21-Abis, Appeal Judgement, 2 February 2001, para. 288; *The Prosecutor v. Zigiranyirazo*, Case No. ICTR-2001-73-T, Decision on the Prosecution Joint Motion for re-opening its Case and for reconsideration of the 31 January 2006 Decision on the Hearing of Witness Bagaragaza via Video-link, 16 November 2006, para. 10; *The Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Nyiramasuhuko's Motion for Disclosure of Documents under Rule 68 and for Re-opening of her Case, 29 April 2008, para. 49.

⁹ *The Prosecutor v. Delalic et al.*, Case No. ICTY-IT-96-21-Abis, Appeal Judgement, 2 February 2001, para. 283; *the Prosecutor v. Nchamihigo*, Case No. ICTR-2001-63-T, Decision on Defence Motion in Order to Admit into Evidence the Certified Copy Conform to the Original of the Extrajudicial Declaration of Prosecution Witnesses, 14 August 2007, para. 7.

¹⁰ *The Prosecutor v. Delalic et al.*, Case No. ICTY-IT-96-21-Abis, Appeal Judgement, 2 February 2001, para. 290; *The Prosecutor v. Zigiranyirazo*, Case No. ICTR-2001-73-T, Decision on the Prosecution Joint Motion for re-opening its Case and for reconsideration of the 31 January 2006 Decision on the Hearing of Witness Bagaragaza via Video-link, 16 November 2006, para. 16.

presented during its case in chief. The Chamber considers that the Defence has not sufficiently explained why it was unable to identify Witness D-11-AB until seven years after the beginning of the trial. The Chamber also notes that the Defence for Kanyabashi has already had several opportunities to alter its witness list.¹¹ In addition, the Chamber recalls that the reluctance of a witness to testify before the Chamber does not justify the re-opening of a case because, were this a sufficiently "exceptional circumstance" to allow this, any party could call any number of witnesses in this situation after the close of its evidence.¹²

42. Furthermore, the Chamber is not convinced that the probative value of the expected testimony of Witness D-11-AB would outweigh the prejudice caused by delaying the fair and expeditious conduct of the proceedings. The Chamber considers that even if Witness D-11-AB's expected testimony might be relevant to Kanyabashi's case and might have some probative value, the Chamber has already heard several witnesses testifying on the alleged fabrication of evidence.¹³ Furthermore, the Chamber recalls that Kanyabashi's case lasted ten months and was closed on 20 May 2008; that Kanyabashi is being tried in a multiple-accused case; and that the re-opening of the case would further delay the trial proceedings thereby causing prejudice to the other Parties. Therefore, the Chamber denies the request to re-open Kanyabashi's case and to add Witness D-11-AB to its witness list.

43. The Chamber reiterates its reasons for denying the reconsideration of the Impugned Decision and the re-opening of Kanyabashi's case to add Witness D-2-23-C, above, which are also applicable to this issue. None of Witness QA's testimony on recall, Witness D-2-21-T's testimony, nor the Appeals Chamber Decision in *Munyakazi* constitutes an exceptional circumstance warranting the re-opening of Kanyabashi's case and the addition of Witness D-11-AB to Kanyabashi's witness list and the Chamber hereby denies this request.

Alternative Request

44. Under Rule 82 (B), the Trial Chamber may order that persons accused jointly be tried separately if it considers it necessary in order to avoid a conflict of interests that might cause serious prejudice to an accused, or to protect the interests of justice.

45. The Chamber considers that the Defence has failed to demonstrate that the severance of the case would be justified. The denial of the re-opening of Kanyabashi's case will not cause

¹¹ See for example, *The Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Kanyabashi's Motions for Modification of his Witness List, 21 March 2007; *The Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Kanyabashi's Three Motions to Vary his List of Witnesses and to Admit Written Statements under Rule 92bis, 12 April 2008; *The Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Kanyabashi's Motion to Vary his Witness List Pursuant to Rule 73ter, 15 February 2008.

¹² Impugned Decision, para. 25.

¹³ Witnesses D-2-10-Y, D-1-4-0, D-2-YYYY, D-2-16-P, D-2-5-1, D-2-13-D and D-2-14-D testified about the beginning of the killings at Rango; Witnesses D-2-YYYY, D-2-5-1, D-2-13-D, D-2-16-P and D-2-10-Y testified about Kanyabashi's absence at Rango market on 21 April 1994. On EER events: Kanyabashi Witnesses Bernadette Kamanzi and D-2-10-Y; Ntahobali Witnesses WTHSA, WCMNA, Ralph Lake, and NMBNP. Witness D-2-10-Y testified about Kanyabashi's presence at the *préfecture* office Witness D-2-11-D has challenged Witness SU's testimony regarding SU's presence at the *préfectural* office. Witness D-2-10-Y testified on the refugees at Nyange; Witnesses D-2-YYYY, D-2-10-Y, D-2-14-W, D-1-4-O testified about the refugees at Rango. Witness D-13-D testified about *Ibuka* and Witnesses SU's alleged fabrication of evidence; D-2-18-O testified about Witnesses QI, RL's alleged fabrication of evidence; D-2-21-T testified about Witnesses QG, QI, QY, QJ, SU, SS, and RL's alleged fabrication of false evidence.

serious prejudice to Kanyabashi or compromise the interests of justice and the alternative request for the severance of Kanyabashi's case is therefore not warranted and is denied.

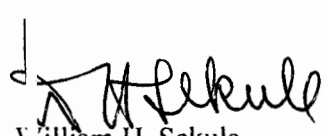
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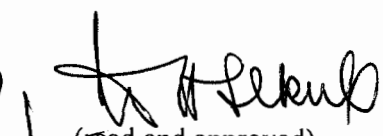
46. As the Chamber has denied Kanyabashi's requests to add Witnesses D-2-23-C and D-11-AB to its witness list, the Second Motion pertaining to special protective measures for these two witnesses has become moot and is denied.

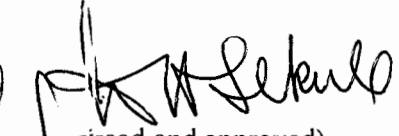
FOR THE ABOVE REASONS, THE TRIBUNAL

DENIES the Motions in their entirety.

Arusha, 19 January 2009


William H. Sekule
Presiding Judge


(read and approved)
Arlette Ramaroson
Judge


(read and approved)
Solomy Balungi Bossa
Judge
(absent at the time of signature)

