



UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

TRIAL CHAMBER III

Before Judges: Khalida Rachid Khan, presiding
Lee Gacuiga Muthoga
Aydin Sefa Akay

Registrar: Mr. Adama Dieng

Date: 14 December 2009

**THE PROSECUTOR
v.
DOMINIQUE NTAWUKULILYAYO**

Case No. ICTR-05-82-T

**ORAL RULING ON THE QUALIFICATION OF MR. CHARLES NTAMPAKA TO
TESTIFY AS A DEFENCE EXPERT WITNESS**

Office of the Prosecutor:
Charles Adeogun-Phillips
Ibukunolu Alao Babajide
Thembile Segoete

Counsel for the Defence:
Maroufa Diabira
Dorothee Le Fraper du Hellen

Transcript Extract: 14 December 2009, pages 43-46

MADAM PRESIDENT:

Here is the oral ruling on the qualification of Mr. Charles Ntampaka to testify as an expert witness: The Defence offers Mr. Charles Ntampaka as an expert witness, pursuant to Rule 94 *bis* of the Rules of Procedure and Evidence. Mr. Ntampaka's proffered area of expertise is on administrative authorities in Rwanda.

On 23rd November 2009, the Prosecution filed a motion opposing Mr. Ntampaka's qualifications as an expert. On 27th November 2009, this Chamber issued a decision which ordered a *voir dire* hearing and ordered the Defence to provide additional documents with regard to Mr. Ntampaka's qualifications. A *voir dire* hearing took place this morning.

The role of an expert is to assist the Chamber in understanding the evidence before it. The proposed expert must possess relevant specialised knowledge in a specific field acquired through education, research, experience, or training in his or her proposed field of expertise.

The Chamber has considered Mr. Ntampaka's CV filed on 11th November 2009, as well as additional documents filed by Defence on December 4, 2009, pursuant to the Chamber's decision of 20 -- of 27th November 2009, and has considered his testimony today. In this ruling the Chamber will address Mr. Ntampaka's academic qualifications and professional experience in order to determine whether he qualifies as an expert in this case.

With regard to academic qualifications, the Chamber notes that Mr. Ntampaka has a bachelor degree in law and a diploma in international humanitarian law. He holds a PhD in law, which focused on a comparative study of Rwandan, Burundian, Senegalese -- Senegalese, and Belgian law with regard to the status of natural versus legitimate children. The Chamber notes that apart from having studied administrative law as a part of his law degree and having considered the administrative and civil system with regard to marriage in Rwanda as part of his PhD thesis, Mr. Ntampaka does not possess any other academic

qualifications to demonstrate special -- specialist knowledge in the area of administrative authorities in Rwanda.

The Chamber will now turn to consider Mr. Ntampaka's professional experience.

Mr. Ntampaka is a qualified lawyer with teaching experience. He is a professor at two universities in Belgium and has taught extensively at the national university in Rwanda. Between 1978 and 1981 Mr. Ntampaka was assistant lecturer at the national university in Rwanda in the areas of judicial organisation and family law. From 1981 to 1985 he taught -- he taught courses at the national university, in particular, customary law, family law, African legal systems, Kinyarwanda legal language, and matrimonial law. Between 1989 and 1994 Mr. Ntampaka was senior lecturer at the national university where he was in charge of the courses and taught family law as well as trained magistrates. The Chamber notes that Mr. Ntampaka's teaching experience at the national university did not include any courses in the Rwandan administrative law or structures.

Although not included in his CV, Mr. Ntampaka testified that, during the time he was a professor at the national university, he also taught a course in administrative organisation at the Higher Institute of Public Finance in Kigali between 1989 and 1994, part-time for three hours a week. Mr. Ntampaka testified that the course at the institute touched on administrative law and administrative institutions, including the *préfecture* and *sous-préfecture* and gave the public finance students a general overview of administrative law. He confirmed that the institution did not -- that institute did not have university status but was equivalent to a university and only admitted students who had completed three years of post secondary school education.

Mr. Ntampaka is currently a professor at two universities in Belgium. According to his CV since 2003 he has been a professor in human rights and development and since 2000 has supervised students of international criminal law and taught courses in family, customary, and constitutional law. Mr. Ntampaka testified that since 2007 he has been a member of the Brussels' bar and for the last six years in Belgium has worked in the area of immigration law, in particular with regard to the repatriation of Rwandans, which he testified involves a

consideration -- a consideration of Belgian and Rwandan administrative law.

In addition, although not included in his CV, Mr. Ntampaka testified that in 1979 he became a member of a technical committee at the *communal* level in Rwanda and in 1981 became the chair of the committee. The purpose of the technical committee was to assist the *bourgmestre* of the *commune* in the formulation of projects to develop the *commune*. Mr. Ntampaka was a member of technical committee until 1985 when he left Rwanda to undertake his PhD in Belgium. Mr. Ntampaka testified that his law degree qualified him to become a member of the technical committee. It was voluntary position which required, on average, meeting once a month with *bourgmestres* and other members of the committee.

Mr. Ntampaka has also undertaken a number of consultancies as an expert for the UN and institutions in Rwanda, such as the ministry of information. In particular, he has advised on equality issues, drafted the press code in 1994, and advised churches in Rwanda. He is also considered an expert in Belgian cooperation as well as in land law in Burundi and Rwanda through his work with the UN and European Union.

However, his CV states that he was proffered as an expert before this Tribunal -- The Chamber notes that this was in the Karemera case where the Trial Chamber decided Mr. Ntampaka was not qualified to testify as an expert.

With regard to academic quali -- publications, the Chamber notes that Mr. Ntampaka was not written -- has not written or published in any recognised academic legal reviews or peer-reviewed journals, especially on the area of administrative authorities in Rwanda. His articles in the publication "*Dialogue*" do not include topics focusing on administrative authorities.

The Chamber further notes that while Mr. Ntampaka has participated in various seminars, public lectures, and consultancies, none of these focus specifically on the area of administrative authorities.

Having considered Mr. Ntampaka's professional experience, the Chamber notes that the only relevant professional experience he possesses is the administrative organisation course which he taught at the Higher Institute of Public Finance between 1989 and 1994 and his voluntary participation in the technical committee at the *communal* level in Rwanda between 1979 and 1985.

With respect to the course on administrative organisation, the Chamber is not satisfied that this qualifies Mr. Ntampaka as an expert in the field of administrative authorities in Rwanda. He testified that the course was taught to public finance students and merely gave an overview of the administrative law. Indeed Mr. Ntampaka testified that it touched on administrative law. Furthermore, while Mr. Ntampaka testified that the institute was akin to a university, the Chamber notes that the institute specialised in public finance and not law. In addition, Mr. Ntampaka's academic qualifications or other professional experience in no way demonstrate how he was qualified to teach the course.

With regard to Mr. Ntampaka's work at the *communal* level as a member of the technical committee, the Chamber considers that this experience is insufficient to demonstrate an expertise in -- in the Rwandan administrative authorities due to the limited number of hours each month he offered in this role, the voluntary nature of the position, and the fact that it ended in 1985.

The Chamber does not consider, as suggested by Mr. Ntampaka, that a PhD in law qualifies him to be an expert in all areas of law. Rather, the Chamber considers, as stated by the Karemera Trial Chamber, that legal studies are complex and it is not conceivable that one could be an expert in all aspects of the law.

The Chamber's view that Mr. Ntampaka's professional experience does not qualify him as an expert in administrative authorities is further supported by the fact that many matters which came out during Mr. Ntampaka's testimony were not disclosed in his CV or the additional documents provided on December 4, 2009, such as his experience as the chairman of the technical committee at the *communal* level and the details of the

administrative organisation course taught at the Higher Institute of Public Finance.

Mr. Ntampaka explained that the CV he may provide as an expert in land law or in Belgian cooperation or as a lecturer would all be different. Indeed Mr. Ntampaka admits to have -- to having several CVs, and it may have been a mistake that the relevant matters were not included in the CV presented to the Chamber. The Chamber, however, considers that the standard applied for the admission of expert testimony is high and that a proposed expert cannot claim to be an expert in many different fields and tailor his CV according to the area in which he is required to assist the Chamber in.

In view of the above, the Chamber is not satisfied that Mr. Ntampaka possesses other -- either the academic qualifications or the professional experience in the area of the administrative authorities in Rwanda. Accordingly, the Chamber does not qualify him as an expert in this case. Mr. Ntampaka is relieved of -- accordingly.