

ICTR-96-15-1  
13 FEB 2013  
(6098 0994)

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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 Ramaroson  
Judge Solomy Balungi Bossa

Registrar: Mr. Bongani Majola

Date: 13 February 2013

**The PROSECUTOR**

v.

**Joseph KANYABASHI**

Case No. ICTR-96-15-T  
Joint Case No. ICTR-98-42-T

JUDICIAL DEPARTMENT  
2013 FEB 13 PM 2:58  
M. J. M. M.

**DECISION ON KANYABASHI'S MOTION FOR DISCLOSURE OF THE  
SECOND *AMICUS CURIAE* REPORT CONCERNING WITNESS QA**

**Office of the Prosecutor**  
Mr. Hassan Bubacar Jallow  
Mr. James Arguin  
Ms. Deborah Wilkinson

**Defence Counsel**  
Mr. Michel Marchand  
Ms Alexandra Marcil

**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 “*Requête Confidentielle de Joseph Kanyabashi en vue d’obtenir la divulgation du Rapport du 2<sup>e</sup> Amicus Curiae concernant le Témoin QA*,” filed on 14 June 2012 (the “Kanyabashi Motion”);

**CONSIDERING:**

1. the “Prosecutor’s Response to ‘*Requête Confidentielle de Joseph Kanyabashi en vue d’obtenir la divulgation du Rapport du 2<sup>e</sup> Amicus Curiae concernant le Témoin QA*’,” filed on 18 June 2012 (the “Prosecution Response”);
2. the “*Réplique Confidentielle de Joseph Kanyabashi en vue d’obtenir la divulgation du Rapport du 2<sup>e</sup> Amicus Curiae concernant le Témoin QA*,” filed on 20 June 2012 (the “Kanyabashi Reply”); and
3. the “*Requête de Joseph Kanyabashi adressée au Président du Tribunal en vue d’obtenir l’affectation temporaire d’un Juge*,” filed on 13 August 2012 (the “Kanyabashi Motion to the President”); and

**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.

## INTRODUCTION

1. Trial Chamber II heard the case of *The Prosecutor v. Pauline Nyiramasuhuko et al.*, which included the case against Joseph Kanyabashi. The Bench in this case was composed of Judge William H. Sekule, presiding, Judge Arlette Ramaroson, and Judge Solomy Balungi Bossa.<sup>1</sup>

2. On 17 March 2010, *amicus curiae* filed a report before the Trial Chamber concerning allegations of contempt and false testimony in relation to Witness QA.<sup>2</sup>

3. On 24 June 2011, the Trial Chamber rendered its Judgement and Sentence against Joseph Kanyabashi and others in the *Nyiramasuhuko et al.* case.<sup>3</sup>

<sup>1</sup> Judge Solomy Balungi Bossa was appointed to Trial Chamber II on 20 October 2003. See *The Prosecutor v. Pauline Nyiramasuhuko et al.* (“*Nyiramasuhuko et al.*”), Case No. ICTR-98-42-T, Judgement and Sentence (TC), 24 June 2011 (“*Nyiramasuhuko et al.* Trial Judgement and Sentence”), para. 75.

<sup>2</sup> *Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Report of *Amicus Curiae* on Rule 77 and Rule 91 Investigation Related to Witness QA, 17 March 2010.

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4. On 1 September 2011, the Prosecution filed its Notice of Appeal, in which the Prosecution challenged certain aspects concerning the case against Kanyabashi.<sup>4</sup>

5. On 2 September 2011, the Trial Chamber rendered its Decision arising out of the *amicus curiae* report concerning Witness QA.<sup>5</sup>

6. Effective from 22 September 2011, Judge Arlette Ramaroson was assigned to the Appeals Chamber.<sup>6</sup>

7. On 14 June 2012, the Kanyabashi Defence filed a motion (the “Kanyabashi Motion”) before the *Nyiramasuhuko et al.* Trial Chamber. The Motion requested that the *amicus curiae* report be released to the Parties “for the purpose of [Kanyabashi’s] proceedings before the Appeals Chamber”. It also submitted that the Trial Chamber has jurisdiction because proceedings pertaining to contempt or false testimony are independent matters.<sup>7</sup>

8. On 18 June 2012, the Prosecution filed its response. In relation to the jurisdictional issue, the Prosecution submitted that the Trial Chamber was *functus officio*, and that the request should have been filed before the Appeals Chamber.<sup>8</sup>

9. On 20 June 2012, the Defence filed its reply. In regard to the Prosecution’s submission on the appropriate forum, the Defence referred to the position stated in the original motion.<sup>9</sup>

10. On 1 July 2012, the Arusha branch of the Mechanism for International Criminal Tribunals (“MICT”) commenced functioning.<sup>10</sup> The MICT has jurisdiction over any trial

<sup>3</sup> See generally *Nyiramasuhuko et al.* Trial Judgement and Sentence. The written version was filed on 14 July 2011. See *id.*, fn. 1.

<sup>4</sup> See *Nyiramasuhuko et al.*, Case No. ICTR-98-42-A, Prosecutor’s Notice of Appeal, 1 September 2011. The Kanyabashi Defence filed its Notice of Appeal on 17 October 2011. See *The Prosecutor v. Joseph Kanyabashi* (“Kanyabashi”), Case Nos. ICTR-96-15-T & ICTR-98-42-A, *Acte d’Appel de Joseph Kanyabashi*, 17 October 2011.

<sup>5</sup> *Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, *Confidential Decision Following Amicus Curiae Report Related to Allegations of Contempt of the Tribunal and False Testimony and Witness QA* (TC), 2 September 2011. This same day, the Chamber also rendered a decision concerning Witnesses QY and SJ. See *Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, *Confidential Decision Following Amicus Curiae Report Related to Allegations of Contempt of the Tribunal and False Testimony and Witnesses QY and SJ* (TC), 2 September 2011.

<sup>6</sup> The President’s Assignment of Judge Arlette Ramaroson to the Appeals Chamber (President), 14 September 2011.

<sup>7</sup> Kanyabashi Motion, paras. 14-16, citing *Nyiramasuhuko et al.*, Case No. ICTR-98-42-A, Decision on Pauline Nyiramasuhuko’s Motion to Void Trial Chamber Decision (AC), 30 September 2011 (“*Nyiramasuhuko et al.* Appeals Chamber Decision of 30 September 2011”). The case names and numbers for the Parties’ submissions reflect the information provided on the title page of the submissions, and do not necessarily imply that these submissions were duly filed in the relevant cases.

<sup>8</sup> Prosecution Response, para. 2, citing *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-2001-75-AR11bis, Decision on Motion to Place on Record Certain Information by a Non-Party Applicant (President), 29 August 2011 (“*Uwinkindi* President’s Decision”), para. 3.

<sup>9</sup> Kanyabashi Reply, para. 3.

<sup>10</sup> See Security Council Resolution 1966 (22 December 2010), UN Doc. S/RES/1966 (2010), para. 1.

proceedings which were not pending as of its establishment, whereas the ICTR retains jurisdiction over any trial proceedings pending as of 1 July 2012.<sup>11</sup>

11. On 9 August 2012, Judge William H. Sekule and Judge Solomy Balungi Bossa expressed their view that they did not consider the Bench to have the necessary competence to determine the Kanyabashi Motion.<sup>12</sup>

12. On 13 August 2012, the Kanyabashi Defence filed a Motion before the President of the Tribunal. This motion requested the temporary appointment of a Judge to complete the Bench to decide upon the Kanyabashi Motion.<sup>13</sup> It appears that the Prosecution did not respond to the Motion before the President.

13. On 26 September 2012, the President noted the Kanyabashi Motion, and ordered that the Chamber designated to consider this Motion shall be composed of Judge William H. Sekule, presiding, Judge Arlette Ramaroson and Judge Solomy Balungi Bossa.<sup>14</sup>

### DELIBERATIONS

14. The Chamber recalls that the Appeals Chamber confirmed, in the *Nyiramasuhuko et al.* case, that “when a Chamber pronounces its judgement on the merits of a case before it, it retains jurisdiction to dispose of pending ancillary matters of which it is properly seised”.<sup>15</sup> Such ancillary matters can include matters pertaining to contempt and false testimony.<sup>16</sup>

15. The Chamber considers that according to the Appeals Chamber, after the *Nyiramasuhuko et al.* Trial Chamber pronounced its Judgement in that case on 24 June 2011, it retained jurisdiction to dispose of the ancillary matters pending before it. This included the *amicus curiae* report concerning Witness QA, which was pending with the Trial Chamber when the Judgement was pronounced.

16. The Chamber disposed of this pending matter in its Decision on 2 September 2011. At this point in time, no other matter lay pending before the Trial Chamber. Three weeks later, Judge Arlette Ramaroson was assigned to the Appeals Chamber.

17. Given these circumstances, it appears that the Chamber was *functus officio* on or immediately after 2 September 2011. At this time, the Appeals Chamber would have been seized of any matters pertaining to the *Nyiramasuhuko et al.* case.

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<sup>11</sup> *Id.*, Annex 2, Article 1(1).

<sup>12</sup> See Transmission to the Parties through CMS, 9 August 2012.

<sup>13</sup> Kanyabashi Motion to President.

<sup>14</sup> *Kanyabashi*, Case Nos. ICTR-96-15-T & ICTR-98-42-T, Order Assigning a Bench (President), 26 September 2012 (“President’s Order”), p. 2, citing *Nyiramasuhuko et al.* Appeals Chamber Decision of 30 September 2011, p. 2.

<sup>15</sup> *Nyiramasuhuko et al.* Appeals Chamber Decision of 30 September 2011, p. 2 (emphasis added).

<sup>16</sup> See *id.*, p. 2 (“proceedings for contempt and false testimony ‘are independent of the proceedings out of which they arise.’”).

18. In this regard, the Chamber notes that the Kanyabashi Defence seeks relief “for the purposes of [Kanyabashi’s] proceedings before the Appeals Chamber”,<sup>17</sup> which indicates that this relates to a matter of which the Appeals Chamber is seized. Given these stated purposes, it is unclear why this matter was not raised before the Appeals Chamber by the Kanyabashi Defence.

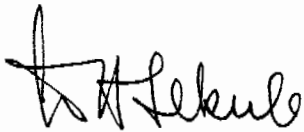
19. The Chamber further notes that the MICT came into existence on 1 July 2012 and is to have jurisdiction over any trial matters that were not pending as of this date. The Chamber takes note that the Kanyabashi Motion was filed before this date, on 14 June 2012. The current Bench, however, was composed on 26 September 2012. The Chamber observes that no submissions have been filed before this Chamber for it to consider subsequently.

20. Given the foregoing, the Chamber is of the view that it does not have jurisdiction to adjudicate the Kanyabashi Motion.

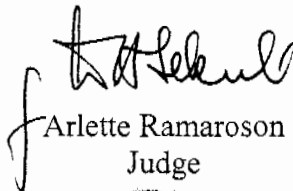
**FOR THE ABOVE REASONS, THE CHAMBER**

**DECIDES** that the Chamber does not have jurisdiction to adjudicate the Kanyabashi Motion.

Arusha, 13 February 2013



William H. Sekule  
Presiding Judge



Arlette Ramarason  
Judge



Solomy Balungi Bossa  
Judge



<sup>17</sup> Kanyabashi Motion, para. 16 (“aux fins de ses procédures devant la Chambre d’appel”).