



ICTR-98-42-T  
30-09-2008  
(12613-12604)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

12613  
Mwamp

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 30 September 2008

JUDICIAL RECORDS ARCHIVES  
RECEIVED  
2008 SEP 30 1 P 5:50

The PROSECUTOR v. Arsène Shalom NTAHOBALI  
Case No. ICTR-97-21-T

*Joint Case No. ICTR-98-42-T*

DECISION ON NTAHOBALI'S MOTION FOR ADMISSION OF DOCUMENTS  
INTO EVIDENCE

**Office of the Prosecutor**

Ms. Holo Makwaia  
Ms. Adelaide Whest  
Ms. Madeleine Schwarz  
Ms. Althea Alexis Windsor  
Mr. Fergal Gaynor  
Mr. Tidiane Mara  
Ms. Astou Mbow, Case Manager  
Mr. Lansana Dumbuya, Case Manager

**Counsel for Ntahobali**

Mr. Normand Marquis  
Mr. Bernard St. Arnaud

ICTR-97-21-T  
4890-12-46-2121

**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 de Arsène Shalom Ntahobali en autorisation de dépôt de documents,*” filed on 21 August 2008 (“the Motion”);

**CONSIDERING** the

- i. “*Réponse de Sylvain Nsabimana à la ‘requête de Shalom Ntahobali en dépôt de documents,*” filed confidentially on 25 August 2008 (“Nsabimana’s Response”);
- ii. “*Réponse de Joseph Kanyabashi à la ‘requête de Shalom Ntahobali en dépôt de documents,*” filed on 25 August 2008 (“Kanyabashi’s Response”);
- iii. Prosecutor’s Response to the “*Requête de Arsène Shalom Ntahobali en autorisation de dépôt de documents,*” filed on 5 September 2008 (“Prosecution’s Response”);
- iv. “*Réplique de Arsène Shalom Ntahobali aux réponses de Kanyabashi et Nsabimana à sa requête en autorisation de dépôts de documents,*” filed on 9 September 2008 (“Ntahobali’s Reply ”);
- v. “*Réplique, et requête reconventionnelle en réouverture de preuve ou, subsidiairement en contre-preuve, de Arsène Shalom Ntahobali à la réponse du procureur à sa requête en autorisation de dépôts de documents,*” filed on 9 September 2008 (“Ntahobali’s Reply and Counter-Claim”);

**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 on the basis of the written submissions of the Parties.

#### INTRODUCTION

1. On 28 April 2008, the Chamber declared Ntahobali’s case closed, save for the disclosure of several documents. On 21 August 2008, the Defence for Ntahobali requested the admission of 36 documents into evidence.

#### SUBMISSIONS OF THE PARTIES

##### *Ntahobali’s Motion*

2. The Defence requests the admission of 36 documents into evidence. The Defence had initially planned to introduce some of these documents during Kanyabashi’s testimony. However, Kanyabashi decided not to testify on 10 March 2008. The Defence indicates that it could not have introduced these documents during Ntahobali’s own testimony, as Ntahobali was not an administrative authority of Butare *préfecture* or of Ngoma *commune*.

3. The documents sought to be introduced into evidence are divided into three groups. A first series of documents was received by the Prosecution during Alison Des Forges's testimony on 8 June 2004 (Attachment R-1, Nr. 1 to 28, Reference Number K). A second series of documents was obtained by the Defence for Ntahobali at Ngoma *communal* office (R-1, Nr. 29 to 35; and Attachment R-2, Affidavit). A third series contains one document from the files confiscated during Pauline Nyiramasuhuko's arrest on 18 July 1998 (Attachment R1, Nr 36). This document was seized by the Prosecution and later disclosed to the Defence.

4. The Defence submits that the relevance of these documents has to be assessed in the context of Ntahobali's Defence strategy, namely:

- a) The national authorities instructed the population not to mistake ordinary neighbours for the enemy, i.e. the RPF and its associates;
- b) Roadblocks and patrols were set up under the authorities' control to guarantee the citizens' security and to stop the RPF and its recognised associates;
- c) Ngoma *communal* authorities and Butare *préfecture* authorities were still in office and performing their functions between April and July 1994;
- d) Ngoma *communal* authorities were well informed of the situation prevailing in their *commune* as well as in other *communes*;
- e) Security-related issues for Ngoma *commune* were discussed at several levels and in various institutions and organisations;
- f) Ntahobali used to live in Ngoma *commune*, in Butare town. He was a citizen and as such, he was under the control of the administrative, civil and military authorities of Butare town;
- g) No relevant document from that period charges Ntahobali;
- h) Butare town authorities continued to investigate, arrest, and charge criminals.

The documents meet the reliability and relevance criteria set out by the ICTR and ICTY case law. The Defence submits that a document does not necessarily need to be introduced into evidence through a witness.<sup>1</sup> Further, there is no obligation to produce the original document.<sup>2</sup> A document may be admitted into evidence if the Party has established sufficient indicia of its reliability.<sup>3</sup>

#### ***Nsabimana's Response***

5. The Defence opposes Ntahobali's Motion. It submits that none of the legal authorities cited by the Defence for Ntahobali support the admission of new evidence outside any time limit.

6. On 26 June 2006, the Chamber had declared Ntahobali's case closed, subject to the testimony of Witness NMBNP; the introduction of parts of [Kanyabashi's] interviews of 24 and 26 July 1994; and the judgements relating to the Accused Nzisabera (sic). The Defence

<sup>1</sup> *The Prosecutor v. Delalic et al.*, Decision on Motion for Admissibility of Evidence, 19 January 1998, para. 22; *The Prosecutor v. Brdanin & Talic*, Order on the Standards governing the admission of Evidence, 15 February 2002, para. 18.

<sup>2</sup> *The Prosecutor v. Bagasora et al*, ICTR-98-41-T, Trial Decision, 14 October 2004, para. 22.

<sup>3</sup> *The Prosecutor v. Delalic et al*, Appeal Decision, 4 March 1998, para.17; Appeal Judgment, *Prosecutor v. Rutaganda*, ICTR-96-3-A, 26 May 2003, para. 33; *Prosecutor v. Nyiramasuhuko et al.*, Appeal Decision, 4 October 2004, para. 7.

points out that none of the documents currently sought to be introduced fulfill the criteria mentioned by the Chamber on 26 June 2006. Furthermore, the Defence for Ntahobali cannot request the admission of documents on the basis of the Chamber's instructions of 28 April 2008. Therefore, the request for admission of documents has no legal basis. Rather, it constitutes a disguised request to reopen Ntahobali's case and to introduce additional evidence.

7. In addition, the Defence submits that three of the documents sought to be admitted directly concern Nsabimana.<sup>4</sup> While the Defence for Ntahobali has been in possession of these documents since Alison Des Forges's testimony (2004), it did not produce them during its cross-examination of Nsabimana (2006) and therefore did not give Nsabimana any opportunity to comment on them. To introduce these documents at this stage would prejudice Nsabimana.

### ***Kanyabashi's Response***

8. The Defence opposes the Motion and submits that on 26 June 2006, when Ntahobali's case was closed subject to the introduction of the judgement of Witness TQ, the Defence for Ntahobali did not mention the documents now sought to be introduced into evidence. On 28 April 2008, the Defence for Ntahobali stated that it was awaiting documents from Rwanda. At that time, the documents now sought to be introduced into evidence were already in the Defence for Ntahobali's possession. For that reason, the Defence for Ntahobali could not have been referring to these documents on 28 April 2008, but only to documents related to Witness TQ.

9. The Defence submits that the documents at stake may only be introduced by reopening Ntahobali's case, but that the requirements for reopening the case are not met. Ntahobali did not show that, with reasonable diligence, the documents could not have been identified and presented during Ntahobali's case-in-chief. All documents were in Ntahobali's possession long before the Motion was filed. Furthermore, the Motion was filed five months after Kanyabashi informed the Chamber that he was not going to testify. The Motion and Ms. Dimitri's affidavit (Attachment R-2) are both dated 12 June 2008, but the Motion was only filed on 21 August 2008. Ms. Dimitri's affidavit does not indicate when documents 29-35 were obtained.

10. The Defence submits that Ntahobali did not produce the first series of documents during his cross-examination of Alison Des Forges. During his cross-examination of Nsabimana, Ntahobali did not mention documents 7, 10, 12, 13, 15 and 20, which relate to issues at the *préfecture*, during the time when Nsabimana was *préfet*. Ntahobali did not request to introduce document 36 during his cross-examination of Nyiramasuhuko, despite the fact that it relates to her arrest on 18 July 1997.

11. The Defence submits that the documents lack the probative value necessary to be introduced into evidence at this stage of the proceedings. Furthermore, some of the documents lack reliability. Finally, the Defence asserts that to admit these documents into evidence at this stage of the proceedings would cause an irreparable prejudice to Kanyabashi, whose decision not to testify was based on the evidence already introduced at that time.

---

<sup>4</sup> Document No10: K0039897, A letter dated 25 May 1994 from the *bourgmestre* of Shyanda to the *préfet* of Butare; Document No12: K0065496 dated 3 June 1994 and Document No15: K0065504 dated 6 June 1994.

***Prosecution's Response***

12. The Prosecution opposes the Motion and submits that Ntahobali's Defence case is closed in respect of these 36 documents. On 26 June 2006, Counsel for Ntahobali announced the closure of Ntahobali's case subject to the appearance of one witness; the submission of documents containing Kanyabashi's custodial statements; and the submission of final judgements of the Supreme Court of Rwanda regarding Witness KQ (*sic*, it should read TQ). The Defence for Ntahobali did not mention any of the 36 documents that it now seeks to introduce into evidence.

13. On 28 April 2008, the Defence for Ntahobali recalled his earlier announcement that Ntahobali's case was closed, subject to the submission of certain documents and that they were waiting for documents from Rwanda. The Defence for Ntahobali could only have been referring to the judgements of the Supreme Court of Rwanda regarding Witness KQ (*sic*, it should read TQ), but not to any of the 36 documents in question.

14. The Prosecution submits that the Motion is more properly characterised as a motion to reopen Ntahobali's defence case. The Motion should be denied as the Defence fails to meet the "reasonable diligence" standard. The 36 documents could have been identified and presented with reasonable diligence during Ntahobali's case-in-chief

15. According to the Prosecution, the documents listed under the "First Series" and "Third Series" were in the Defence's possession well before the start of the presentation of Ntahobali's case. Regarding the documents in the "Second Series", the Prosecution states that the affidavit does not indicate when the documents were obtained, and recalls that the assistant who received the documents worked in the Defence team between 2002 and 2006. The Prosecution submits that the Defence could have introduced the 36 documents before the close of its defence case without a witness or through an expert witness.

16. The Prosecution submits that Ntahobali will not be unfairly prejudiced by the denial of the Motion because the 36 documents concern Kanyabashi more than they do Ntahobali. In addition, they do not exculpate Ntahobali.

17. The Prosecution submits that if the Defence had produced the documents during Kanyabashi's defence case, Kanyabashi would have been able to defend himself adequately against such evidence if he so wished. There is no reasonable explanation as to why the Defence waited for such a long time to file its Motion after Kanyabashi announced, on 10 March 2008, that he would not testify. Finally, allowing Ntahobali's Motion may result in further requests from other Parties, in particular Kanyabashi and Ndayambaje, to reopen their own cases and therefore may delay the progress of the trial.

***Ntahobali's Replies and Counter-Claim***

18. The Defence submits that there is no need to request the reopening of Ntahobali's case because the case is not yet closed. Alternatively, if the Chamber considers Ntahobali's case closed, the Defence requests the Chamber to reopen Ntahobali's case or to allow a counter-claim for the introduction of the said documents, or, subsidiarily, to introduce these documents as rebuttal evidence. According to the Defence, Kanyabashi's decision not to testify was an exceptional circumstance justifying such measures as being in the interests of justice.

19. The Defence states that it could only have introduced the documents either through Nsabimana or Kanyabashi, the concerned persons of authority, but that it would have been useless to do so during Nsabimana's testimony in view of the fact that Nsabimana refused to recognise several documents that the Defence for Ntahobali had presented to him.<sup>5</sup> Therefore, the only option would have been to present the documents during Kanyabashi's cross-examination.

20. The Defence submits that Kanyabashi's defence strategy is to allege that Ntahobali was responsible for a roadblock at the MSM garage. Accordingly, the introduction of the said documents has become even more important. The documents establish that Kanyabashi continued to fulfil his function as *bourgmestre*; that he was informed of the security situation in Ngoma *commune*; and that the authorities would not have been silent if Ntahobali had perpetrated the alleged crimes in Ngoma *commune*. Furthermore, by introducing the documents, the Defence seeks to show that the Prosecution is not able to produce documents which would support any of the allegations against Ntahobali.

21. The Defence argues that Nsabimana has failed to demonstrate that he would be prejudiced by the admission of documents 10, 12 and 15 into evidence. Although document 10 was addressed to *Préfet* Nsabimana, there is no proof that it actually reached the *préfecture* or that Nsabimana was aware of it. Document 12 was stamped and signed by a *sous-préfet*, but it does not necessarily follow from this that Nsabimana was informed of it. In fact, according to its Pre-Defence Brief, the Defence for Nsabimana had planned to file a document similar to document 12. Document 15 is a letter addressed to *Préfet* Nsabimana but it does not imply that the latter actually received or read it.

22. According to the Defence, Kanyabashi has failed to demonstrate that he would be prejudiced by the admission of the said documents. Many documents are not signed or do not bear the seal of Ngoma *commune* and therefore will not be prejudicial to Kanyabashi.

23. The Defence submits that all Parties have introduced documents into evidence that were not mentioned in their Defence Briefs. Furthermore, documents 4, 5 and 25 are referred to in Kanyabashi's Defence Brief and documents 4, 23 and 27 are mentioned in Nsabimana's Defence Brief.

24. The Defence submits that pursuant to Rule 73 of the Rules, a motion may be filed after the initial appearance of the accused and until the rendering of the judgement; therefore the Motion was filed in a timely manner.

## DELIBERATIONS

### *Applicable Law*

25. Under Rule 89 (C), the Chamber has broad discretion to admit any evidence that it deems to be relevant and of probative value.<sup>6</sup> Documents need not be produced through a

<sup>5</sup> The Defence refers to T. 117 October 2006, pp. 7, 16, 47, 55, 63 (French); T. 18 October 2006, pp. 64, 69, 82, 90.

<sup>6</sup> *The Prosecutor v Nyiramasuhuko et al*, Case No. ICTR-98-42-A, Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence, 04 October 2004, paras. 5, 7.

witness but may be directly introduced into evidence.<sup>7</sup> A distinction must be drawn between admissibility of evidence and the exact probative weight to be attached to it, which is to be assessed by the Trial Chamber at a later stage.<sup>8</sup> At the admissibility stage, the moving party needs to show *prima facie* that the document is relevant and has probative value.<sup>9</sup> The moving party must show that a connection exists between the evidence sought to be admitted and the proof of an allegation sufficiently pleaded in the indictment to be relevant.<sup>10</sup> The probative value of a document depends on the authenticity of a document. For the document to be considered authentic, the Chamber must be satisfied that there are “sufficient indicia of reliability” to warrant its admission.<sup>11</sup> The requirements for reliability are low at the initial stage of admissibility and the moving party need only demonstrate the beginning of proof that the evidence is reliable.<sup>12</sup> Indicia of reliability include: the authorship of the document; whether it is an original or a copy; the place from which the document was obtained in conjunction with its chain of custody; whether its contents are supported by other evidence; and the nature of the document itself, such as signatures, stamps, or the form of the handwriting.<sup>13</sup>

26. Furthermore, the ICTY and ICTR jurisprudence has developed specific requirements for the admission of new evidence after the close of the moving party’s case to ensure a fair trial and to protect the other parties’ rights.<sup>14</sup> A case may be reopened under exceptional circumstances if the moving party has shown that with reasonable diligence the new evidence could not have been identified and presented during its defence.<sup>15</sup> New evidence includes not only evidence obtained after the close of the party’s case, but also evidence in the party’s prior possession, which becomes significant only in the light of other new evidence.<sup>16</sup>

27. In addition, the Trial Chamber exercises its discretion as to whether to admit the evidence, taking into account the relevance and probative value of the evidence and the need to ensure a fair trial. The probative value of the new evidence must outweigh the prejudice caused by delaying the fair and expeditious conduct of the proceedings.<sup>17</sup> Factors to be

<sup>7</sup> *Prosecutor v Karemera et al.*, Case No. ICTR-98-44-T, Decision on the Prosecutor’s Motion for Admission of Certain Exhibits into Evidence, 25 January 2008, para. 7.

<sup>8</sup> *The Prosecutor v Nyiramasuhuko et al.*, Appeal Decision, Case No. ICTR-98-42-A, 04 October 2004, paras. 6, 7.

<sup>9</sup> *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41, Decision on Ntabakuze Motion to Deposit Ceratin United Nations Documents, 19 March 2007, paras. 2,3.

<sup>10</sup> *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-98-42-AR73.2, Decision on Pauline Nyiramasuhuko’s Appeal on the Admissibility of Evidence (AC), 4 October 2004, paras. 7,8.

<sup>11</sup> *Bagosora et al.*, Decision on the Request to Admit United Nations Documents into Evidence Under Rule 89 (C) (TC), 25 May 2006, para. 4; *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41, Decision on Ntabakuze Motion to Deposit Ceratin United Nations Documents, 19 March 2007, paras. 2,3.

<sup>12</sup> *Nyiramasuhuko*, Decision on Pauline Nyiramasuhuko’s Appeal on the Admissibility of Evidence, para. 7.

<sup>13</sup> *Prosecutor v Karemera et al.*, Case No. ICTR-98-44-T, Decision on the Prosecutor’s Motion for Admission of Certain Exhibits into Evidence, 25 January 2008, para. 5.

<sup>14</sup> *The Prosecutor v. Delalic et al.*, Case No. ICTY-IT-96-21-T, 1998, paras. 17,18; *The Prosecutor v. Delalic et al.*, Case No. ICTY-IT-96-21-Abis, Appeal Judgement, 2 February 2001 paras. 280-296; *The Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Kanyabashi’s Motion to Reopen his Case and to Recall Prosecution Witness QA, 2 July 2008, para. 23.

<sup>15</sup> *The Prosecutor v. Delalic et al.*, Case No. ICTY-IT-96-21-Abis, Appeal Judgement, 2 February 2001 para. 283; *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on the Prosecution Motion to Reopen Its Case and on the Defence Motion to File Another Rule 98bis Motion, 19 April 2008, para. 10.

<sup>16</sup> *Prosecutor v Karemera et al.*, Case No. ICTR-98-44-T, Decision on the Prosecutor’s Motion for Admission of Certain Exhibits into Evidence, 25 January 2008, para. 8.

<sup>17</sup> *The Prosecutor v. Delalic et al.*, Case No. ICTY-IT-96-21-Abis, Appeal Judgement, 2 February 2001, para. 290; *Prosecutor v. Nchamihigo*, Case No. ICTR-2001-63-T, Decision on Defence Motion in Order to Admit

7 

considered in deciding if the probative value of the new evidence outweighs the prejudice caused by delaying the fair and expeditious conduct of proceedings include the 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.<sup>18</sup>

***Is Ntahobali's Case Closed with Respect to the 36 Documents?***

28. The Chamber recalls that on 26 June 2006, it declared Ntahobali's case closed, subject to the testimony of Witness NMBNP; the introduction of excerpts of Ntahobali's interviews given in July 1997; the introduction of parts of Kanyabashi's custodial statements; and judgements of the Supreme Court of Rwanda regarding Witness TQ.<sup>19</sup> On 12 September 2006, the extracts of Ntahobali's interviews given in July 1997 were introduced into evidence.<sup>20</sup> On 15 September 2006, the Chamber denied the admission of Kanyabashi's custodial statements.<sup>21</sup> On 28 April 2008, Witness NMBNP completed her testimony<sup>22</sup> and, the same day, the Chamber declared Ntahobali's case closed subject to the introduction of the judgements of the Supreme Court of Rwanda regarding Witness TQ.<sup>23</sup> The Defence did not request the introduction of any of the 36 documents at that time. For these reasons, Ntahobali's case is closed save for the judgements of the Supreme Court of Rwanda regarding Witness TQ.

29. The Chamber will now assess whether Ntahobali's case may be reopened for the admission of the 36 documents.

***Could Ntahobali's Defence Have Identified and Presented the Documents during the Presentation of its Case, Exercising Reasonable Diligence?***

30. The Chamber recalls that a case may be reopened under exceptional circumstances if the moving party has shown that with reasonable diligence the new evidence could not have been identified and presented during its case-in-chief. The Chamber notes that the Defence does not contest its possession of the said documents before the close of Ntahobali's case. On the one hand, it states that it could not have presented the documents during Ntahobali's testimony and that it could only have done so through Nsabimana or Kanyabashi. The Defence further contends that it would have been useless to introduce the documents during Nsabimana's testimony in view of the fact that Nsabimana refused to recognise several documents and that Kanyabashi's decision not to testify was an exceptional circumstance justifying the reopening of Ntahobali's case. On the other hand, the Defence alleges that the same documents may be admitted directly into evidence without a witness and that the

---

into Evidence the Certified Copy Conform to the Original of the Extrajudicial Declaration of Prosecution Witnesses, 14 August 2007.

<sup>18</sup> *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; *The Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Kanyabashi's Motion to Reopen his Case and to Recall Prosecution Witness QA, 2 July 2008, para. 23.

<sup>19</sup> See T. 26 June 2006, pp. 56, 57, and *Requête de Arsène Shalom Ntahobali afin de déposer la déclaration de Joseph Kanyabashi en vertu de l'article 89 C*), filed on 26 June 2006.

<sup>20</sup> T. 12 September 2006, p. 6; Exhibits D. 464

<sup>21</sup> *The Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Ntahobali's Motion to admit Kanyabashi's Custodial Statements, 15 September 2006.

<sup>22</sup> T. 28 April 2008.

<sup>23</sup> T.28 April 2008 p. 81.

documents are relevant and have sufficient probative value to be admitted under Rule 89 (C).<sup>24</sup>

31. Furthermore, the Defence claims that the documents were significant in the presentation of Ntahobali's defence.<sup>25</sup> The Chamber accordingly considers that the Defence could have requested their admission into evidence directly or through a witness at that time. The fact that the Defence ascribed higher relevance to the documents after the close of Ntahobali's case does not qualify them as "new" evidence. Therefore, the Chamber is of the view that the Defence could have sought to introduce the documents during the presentation of Ntahobali's defence case if it had exercised reasonable diligence.

32. The Chamber notes that the Defence did not seek to produce documents 1-28 during Prosecution Witness Des Forges's cross-examination and documents 10, 12 and 15 during the cross-examination of Nsabimana. In the Chamber's view, the Defence's submission that Nsabimana would not have recognised these documents is mere speculation. Finally, considering that under Rule 85 (C) each accused has the right to decide whether or not to testify in his own defence, the Defence for Ntahobali should not have relied on Kanyabashi's testimony as a basis for the introduction of these documents into evidence.

33. For these reasons, the Chamber considers that the Defence has failed to show reasonable diligence in presenting the documents in a timely manner and that there are no exceptional circumstances justifying the reopening of Ntahobali's case for the admission of the said documents.

#### *Assessment of the Documents*

34. In addition, the Trial Chamber has assessed whether the relevance and probative value of the documents sought to be admitted would outweigh the potential prejudice caused by their admission.

35. The Chamber notes that documents 4, 5, 21, 23, 24 and 26 are copies of handwritten notes and bear only illegible stamps or none at all. The copies of handwritten notes in documents 11 and 27 are illegible and their authors are not identifiable. Documents 18 and 28 are copies of handwritten notes without dates, signatures, seals or stamps. Documents 7 and 25 do not bear any stamps. Under these circumstances, the Chamber considers that these documents do not possess sufficient indicia of reliability to be admitted into evidence. Documents 1-3, 6-10, 12-17, 19-20 and 22 appear to be copies bearing signatures and stamps. Nevertheless, the Chamber considers that in the absence of a witness to identify and introduce these documents, they do not possess sufficient indicia of reliability to be admitted into evidence.

36. The Chamber notes the Defence's submission that documents 29-35 were obtained by a former member of the Ntahobali Defence team, Ms. Dimitri. In her affidavit (Attachment R-2), Ms. Dimitri declares that she obtained copies of these documents from the archives of Ngoma *commune*. Furthermore, there is no information as to when Ms. Dimitri obtained these copies or to who provided them to her. Therefore, the Chamber considers that in the absence of a witness to identify and introduce these documents, they do not possess sufficient indicia of reliability to be admitted into evidence.

<sup>24</sup> See Motion para 15.

<sup>25</sup> Motion, para. 8; Reply and Counter-Claim para. 14.

37. In addition, the Chamber considers that the relevance of documents 1-35 appears to be limited and that none of them appear to be exculpatory to Ntahobali's case. Furthermore, the introduction of the documents may prejudice Kanyabashi and Nsahimana, especially in view of the advanced stage of the proceedings.

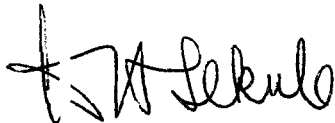
38. The Chamber notes that document 36 appears to be an attestation of Arsène Shalom Ntahobali's good conduct dated 16 April 1993 and apparently signed by *Bourgmestre* Kanyabashi. The circumstances and context under which this document was drafted remain unclear. In these circumstances, the document does not possess sufficient indicia of reliability to be admitted into evidence without having been recognised and introduced by a witness. Furthermore, the relevance of this document to Ntahobali's case appears to be limited. The fact that the Defence for Ntahobali did not seek to introduce that document during the presentation of its defence case may be a further demonstration that the document's relevance is limited.

39. For these reasons, the Chamber is of the view that the probative value of documents 1-36 would not outweigh the prejudice caused by delaying the fair and expeditious conduct of the proceedings and the prejudice that may be caused to other accused. Therefore, the Chamber denies the admission into evidence of documents 1-36.

**FOR THE ABOVE REASONS, THE TRIBUNAL**

**DENIES** the Motion in its entirety

Arusha, 30 September 2008



William H. Sekule  
Presiding Judge



Arlette Ramarison  
Judge



Solomy Balungi Bossa  
Judge

[Seal of the Tribunal]

