

6. Jugement en appel de la Haute cour militaire du 25 février 2009

THE HIGH MILITARY COURT, SITTING IN NYARUGUNGA, IN KICUKIRO DISTRICT, KIGALI CITY, ON CRIMINAL CASES RENDERED THE FOLLOWING APPEAL JUDGEMENT ON 25/02/2009 :

APPEALS JUDGEMENT N° RPA 0062/08/HCM

THE PROSECUTOR

Vs.

1. **Brigadier General Wilson GUMISIRIZA**, son of RUHEMURA Yefesi and Grace RUHEMURA, born in Uganda in 1962, a military officer in the Rwandan army, member of the 501 Brigade as Brigadier Commander, married to Kasangwa Chantal, father of 6 children, owner of one house, one cow and one vehicle, with no known criminal record.
2. **Major Wilson UKWISHAKA**, son of RUCAMUBIKATSI John and MUKANKUNDIYE Thérèse, born in Mutara in 1961, a military officer in the Rwandan Army, residing in NDO, married to MUKANKURANGA Béatrice, father of 5 children, owner of a vehicle, with no known criminal record.
3. **Captain John BUTERA**, son of NTAGARAMA Tito and MUKANDOLI Donatila, born in Uganda in 1967, a military officer in the Rwandan Army, member of the 9th Battalion, married to MUTETERI Léonille, father of 4 children, owner of no property, with no known criminal record.
4. **Retired Captain Dieudonné RUKÉBA**, son of BUTSIRIKA Esdras and MUKAMUTARA Ruth, born in DRC in 1960, retired, residing in Kicukiro, in KIGALI CITY, married to KABANYANA Espérance, father of 3 children, owner of one plot, with no known criminal record.

CHARGES

- 1. Brigadier General Wilson GUMISIRIZA** (who had the rank of Major at the time of the offence) is accused of having, on 5 June 1994 during the war aimed at stopping the genocide perpetrated against the Tutsis which was opposing the then RWANDAN ARMED FORCES (FAR) to the RWANDAN PATRIOTIC ARMY (RPA), as a commander in the RPA, failed to prevent or to stop the murder of 15 persons the majority of whom being clergymen who had sought refuge at GAKURAZO, while he had reasons to know that such acts were about to be committed. This conduct amounts to breaching Article 3 common to the Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War and Additional Protocol of 8 June 1977 and Article 6 (3) of the Statute of the International Criminal Tribunal for Rwanda based in Arusha as amended so far and is punishable by Article 311 of the Rwandan Criminal Code.
- 2. Major Wilson UKWISHAKA** (then lieutenant) is accused of having, on 5 June 1994, in GAKURAZO, during the war aimed at stopping the genocide perpetrated against the Tutsis opposing the then RWANDAN ARMED FORCES (FAR) to the RWANDAN PATRIOTIC ARMY (RPA), as a commander (*Platoon commander*) of the RPA unit which was positioned there, failed to prevent or to stop the murder of 15 persons the majority of whom being clergymen who had sought refuge at GAKURAZO, while he had reasons to know that such acts were about to be committed. This conduct amounts to breaching Article 3 common to the Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War and Additional Protocol of 8 June 1977 and Article 6 (3) of the Statute of the International Criminal Tribunal for Rwanda based in Arusha as amended so far and is punishable by Article 311 of the Rwandan Criminal Code.
- 3. Captain John BUTERA** (then Sergeant) is accused of murdering, on 5 June 1994, in GAKURAZO, together with the Retired Captain Dieudonné RUKÉBA (then Sergeant), Sergeant NYAGATARE Déo (deceased) and Private KABANDANA Eugène (deceased), 15 civilians. These acts amount to a breach of Article 3 common to the Geneva Convention of 12 August 1949 and are punishable by Article 311 of the Rwandan Criminal Code.
- 4. Retired Captain Dieudonné RUKÉBA** is accused of murdering, on 5 June, in GAKURAZO, together with Captain John BUTERA, Sergeant NYAGATARE Déo (deceased) and Private KABANDANA Eugène (deceased), 15 civilians at the time of war between the FAR and the RPA. These acts amount to a breach of Article 3 common to the Geneva Convention of 12 August 1949 and are punishable by Article 311 of the Rwandan Criminal Code.

JURISDICTION OF THE COURT AND LAWS APPLICABLE

GIVEN the Constitution of the Republic of Rwanda of 4 June 2003 as amended so far, especially its Articles 10, 17, 18, 19, 20, 140, 141, 142, 153, 154 and 155;

GIVEN Article 3 Common to the Geneva Convention of 12 August 1949;

GIVEN the Statute of the International Criminal Tribunal for Rwanda based in Arusha as amended so far especially its Article 6 (3);

GIVEN the Organic Law N°51/2008 of 9 September 2008 determining the organization, functioning and jurisdiction of courts in its Articles 138, 139, 140, 141, 142 and 143;

GIVEN the Law N°13/2004 of 17 May 2004 on the Code of Criminal Procedure as modified and completed so far by the Law N° 20/2006 of 22 April 2006 in its Articles 1, 3, 144, 145, 146, 149, 150, 153, 164, 165, 244 and 274;

GIVEN the Law N° 15/2004 of 12 June 2004 relating to evidence and its production in its Articles 3, 4, 10 and 119.

GIVEN the Articles 3, 78, 79, 82, 83, 90 and 311 of the Rwandan Criminal Code.

BACKGROUND

1. During the war in 1994 between the RPA Inkotanyi, on the one hand and the FAR assisted by the *Interahamwe* on the other hand, the RPA drove back the FAR Forces and the *Interahamwe* and captured KABGAYI where they found refugees who had sought refuge thereto, including clergymen. Considering that it was difficult to ensure the security of the refugees and the clergymen, it became necessary to remove them from that place and take them behind the frontline in more secure areas such as BYIMANA and RUHANGO as there was no more fighting there. Brigadier General Wilson GUMISIRIZA accompanied the bishops and clergymen until they reached RUHANGO on that very date of 2 June 1994. Thereafter, the

clergymen requested the RPA high command to take them to the convent of GAKURAZO thinking that this area was a better place for them. On 5 June 1994, Brigadier General Wilson GUMISIRIZA accompanied the clergymen in different vehicles to GAKURAZO. Once there, Brigadier General Wilson GUMISIRIZA returned to RUHANGO and the clergymen were shown where they would be staying temporarily. On the date they arrived there, in the evening at around 6.30 pm, Sgt TUGANIMANA Fred (deceased), the then section commander that was guarding the monastery called on the refugees who arrived at the monastery that same day in order to tell them how they were supposed to behave and to give them an opportunity to talk about the problems they were encountering. Then they met in the dining hall. From the very beginning of the meeting, around four soldiers came and entered the meeting room through the main door and ordered everybody to lie down and then opened fire and as a result 15 people were killed, including:

- (1) Bishop NSENGIYUMVA Vincent
- (2) Bishop NSENGIYUMVA Thaddée
- (3) Bishop GASABWOYA Innocent
- (4) Bishop RUZINDANA Joseph
- (5) Bishop RWABIRINDA Jean Marie Vianney
- (6) Father NTAMUGABUMWE Bernard
- (7) Father MUTABAZI Denis
- (8) Father UWIMANA Emmanuel
- (9) Father NDABERETSE Sylvestre
- (10) Father MULIGO François
- (11) Father UWIMANA Emmanuel
- (12) Father GAHONZIRE Fidèle
- (13) Brother NTSINGA Jean Baptise
- (14) TWAHIRWA Stanislas (Seminararian)
- (15) SHEJA Richard

2. After the shooting, the killers left the room using the small door and when they arrived outside the convent they came across RPA soldiers who were on patrol and who quickly came following the shootings. They shot dead one of the killers whom they identified as Private Eugène KABANDANA (deceased). The latter was amongst the soldiers under the command of Major Wilson UKWISHAKA. Both parties are in agreement about this event.

PROCEEDINGS BEFORE THE MILITARY TRIBUNAL

3. The investigations with regard to the offences committed in GAKURAZO on 5 June 1994 were conducted by the Military Prosecution Office and as a result suspects, including Brigadier General Wilson GUMISIRIZA, Major Wilson UKWISHAKA, Captain John BUTERA and Retired Captain Dieudonné RUKÉBA were arrested and a provisional arrest warrant was issued on 11 June 2008. In his letter of 13 June 2008 to the President of the Military Tribunal, the Military Prosecutor requested that the suspects be provisionally put in detention. On 18 June 2008, the judge of the Military Tribunal granted the requested detention of 30 days. The suspects were not satisfied with the decision and appealed against it upon its deliverance. The case file was transferred to the Registry of the High Military Court on 20 June 2008, and then the President's Order set the date of the hearing on 24 June 2008. On this date all the parties appeared before the Tribunal and after the hearing the Tribunal decided that its ruling would be rendered on 25 June 2008. On that date, the Tribunal decided to put in detention all the four suspects.

4. In his letter of 22 July 2008, the Deputy Military Prosecutor sent the case file to the President of the Military Tribunal and asked that the date of the hearing be communicated to him. The case file was registered under the following number: N° RP 0151/08/TM. The President's order set the date for the court hearing on 19 August 2008. However, the hearing was successively adjourned to 2 September 2008, then 10 September 2008, and finally to 24 September 2008. After the court hearings, the judgment was rendered on 24 October 2008 as follows:

- (1) For Brigadier General GUMISIRIZA, the Military Tribunal noted that the accused was not aware that the soldiers under his command would kill the people whom they were supposed to protect. The Tribunal added that the accused

could not presume that they would commit such killings as he did not receive any report or information to that effect. The court decided that Brigadier General Wilson GUMISIRIZA was not guilty of the crime of conspiracy in the killings and that no sentence should be imposed on him. The Tribunal declared that he was acquitted and that he should be released immediately.

(2) For Major Wilson UKWISHAKA, the Military Tribunal found that he was not guilty of the crime of conspiracy in murder because the fact that he knew that members of the population were angry about the clergymen's conduct with regard to the killings that took place in KABGAYI was not enough to presume that an offence was about to be committed, "*... it is a kind of information which was not sufficiently clear nor alarming to indicate the likelihood of serious offence about to be committed and to trigger this commander's duty to investigate the matter*"². The Tribunal stated that Major Wilson UKWISHA was acquitted and ordered his immediate release.

(3) For Captain John BUTERA, the Military Tribunal noted that he was guilty of the offence charged against him and sentenced him to 8 years of imprisonment because he confessed his involvement in the killing of 15 people and asked for forgiveness. The Tribunal ordered him to pay legal fees amounting to RWF 19,750 jointly with Retired Captain Dieudonné RUKÉBA.

(4) For Retired Captain Dieudonné RUKÉBA, the Military Tribunal noted that he was involved in the murder of 15 people killed at GAKURAZO and that the accused pleaded guilty and asked for forgiveness. The Military Tribunal stated that Retired Captain Dieudonné RUKÉBA was guilty of the offence charged against him and sentenced him to 8 years of imprisonment and ordered him to pay legal fees amounting to RWF 19,750 jointly with Captain John BUTERA.

² Judgment n° RP 0151/08/TM rendered on 24 October 2008 which refers to Mettaux, Guénael, *International crimes and the Ad Hoc Tribunals*, Oxford, University Press, 2006, pp. 3001-3002.

PROCEEDINGS BEFORE THE HIGH MILITARY COURT

5. As some of the accused were not satisfied with the judgment, they appealed against it. For his part, the Prosecutor's appeal was filed before the Registry of the High Military Court on 18 November 2008 and was registered under the following number: N° RPA 0062/08/HCM.

6. On 23 December 2008, the President's order set the date of the court hearing on 21 January 2009. On this date the parties appeared before the Court and the Defence counsels requested the adjournment of the case so that they could have sufficient time to prepare their arguments. For this reason, the court hearing was adjourned to 28 January 2009. On this date, the parties appeared before the court and the Military Prosecution was jointly represented by Captain KAYIJUKA NGABO and Captain Pacifique KABANDA. As for the Accused, Brigadier General Wilson GUMISIRIZA was represented by Counsel Athanase RUTABINGWA, Major Wilson UKWISHAKA by Counsel Emmanuel NTAMBARA, Captain John BUTERA by Counsel Charles SHEMA GAKUBA and Retired Captain Dieudonné RUKÉBA by Counsel Clément NTIHEMUKA MPENGERI. After the pleadings and final briefs, Court stated that the judgment would be rendered on 25 February 2009. On that date, Judgment N° RPA 0062/08/HC was indeed delivered.

7. Captain KAYIJUKA NGABO representing the Public Prosecution took the floor and explained that the grounds of the Prosecutor's appeal consisted in the fact that Brigadier General Wilson GUMISIRIZA and Major Wilson UKWISHAKA were acquitted by the Military Tribunal on the basis that the *command responsibility* is *direct* (criminal conspiracy) while it may also be *indirect* because the accused had reasons to know that the offences were about to be committed. Concerning Captain John BUTERA and Retired Captain Dieudonné RUKÉBA, the appeal was filed in the interest of the law because the fact that the accused was the first offender does not amount to a mitigating factor as stated by the Military Tribunal in the case of the two accused.

8. Captain John BUTERA and his counsel took the floor and explained the reason why they appealed against the judgment. They said that the Military Tribunal did not accord sufficient weight to his grounds of provocation and stay on execution of the sentence put forward during the court hearing. They also said that the Tribunal did not give the accused the 2 year sentence provided for by the law (Article 82 of the Rwandan Criminal Code) and did not give

any reason whatsoever to this effect. Lastly, they implored the Court to be lenient with the accused.

9. Retired Captain Dieudonné RUKÉBA and his counsel took the floor and explained that their appeal is based on the fact that the Military Tribunal did not accord mitigating factors sufficient weight which would have led to a lesser sentence. Lastly, they implored the Court to be lenient with the accused.

10. With regard to Brigadier General Wilson GUMISIRIZA, the Prosecutor went on saying that on 2 June 1994 the RPA forces drove back the FAR forces and captured KABGAYI where they freed those who had sought refuge there. Then the bishops and other clergymen were transferred to RUHANGO because this place was more secure. Two days later, the bishops and those who were together with them said that they should be taken to the monastery of GAKURAZO because they thought they would benefit better conditions there. On 5 June 1994, Brigadier General Wilson GUMISIRIZA escorted in separate vehicles the bishops and those who were together with them until they reached GAKURAZO at around 11 am. He added that all along the journey people were pointing at the clergymen accusing them of killing their relatives while others were referring to them as *Interahamwe*. For these reasons, Brigadier General Wilson GUMISIRIZA had reasons to know or to presume that they would be killed. Nevertheless, he did not do anything to prevent this from happening.

11. As regards Major Wilson UKWISHAKA, the Prosecutor explained that, while he was in Mukingi, the accused heard the genocide survivors accusing the clergymen of being *Interahamwe*. Therefore, the fact that Major Wilson UKWISHAKA whose unit was positioned at the communal office of Mukingi, at a distance of 800 meters away from GAKURAZO, and who was the commander of the soldiers guarding the refugees who had sought refuge at GAKURAZO did not do anything to prevent the murder of those clergymen.

12. The Prosecutor criticized the Military Tribunal saying that it never pointed out that the responsibility of Brigadier General Wilson GUMISIRIZA and Major Wilson UKWISHAKA was based on the fact that they knew that the clergymen were about to be killed and that they had reasons to know that these offences were about to be committed or could be committed but did not do what they were supposed to do to know it (*presumption of knowledge*), especially

because witnesses including MUJAWAMARIYA Dorcella and MUKANKUBITO Christine ascertained that from RUHANGO to GAKURAZO all the refugees who saw the bishops (killed) were saying that the latter killed their relatives and accused them of being *Interahamwe*.

13. Counsel RUTABINGWA Athanase representing Brigadier General Wilson GUMISIRIZA said that the Prosecutor did not provide sufficient evidence that his client heard the refugees' remarks since the bishops and those who were together with them on the one hand, and Brigadier General Wilson GUMISIRIZA on the other hand, were in separate vehicles. Besides, he added that if his client had heard the refugees accusing the Bishops of being the killers and *Interahamwe*, this would not have led him to think that clergymen would be killed by soldiers given that the Prosecutor did not provide any evidence of the causal effect between the refugees and the soldiers who committed the killings.

14. With regard to Major Wilson UKWISHAKA, his counsel NTAMBARA Emmanuel said that his client heard the refugees saying that the bishops (clergymen) were *Interahamwe* and killers before the clergymen reached GAKURAZO where he was based and that he, therefore, could not know that these clergymen would be taken to GAKURAZO and later on be killed by soldiers under his command. He proceeded by explaining that the Prosecutor did not provide any evidence with regard to the hatred between the clergymen and the soldiers which would have led Major Wilson UKWISHAKA to know that the soldiers under his command could kill them.

15. Captain John BUTERA and his counsel explained their grounds of appeal saying that the Military Tribunal did not grant sufficient weight to the provocation factor and the stay on execution of the sentence put forward during the court hearing and that the Tribunal did not sentence the accused to 2 years of imprisonment as provided for by the law (Article 82 of the Rwandan Criminal Code) without giving reasons for its decision and that they implored the High Military Court to be lenient as far as the accused is concerned.

16. Retired Dieudonné RUKÉBA and his Counsel Clément NTIHEMUKA MPENGERI said that their appeal grounds are based on the fact that the Military Court did not give sufficient weight to mitigating factors which would have led to the reduction of his sentence. They also implored the Court to be lenient vis-à-vis the accused.

17. Considering the grounds of appeal of the two accused and their counsels, notably Counsel SHEMA GAKUBA Charles and Counsel Clément NTIHEMUKA MPENGERI, the Prosecutor said that they are unfounded because Counsel SHEMA Charles GAKUBA who represents Captain John BUTERA does not show how the deceased provoked his client, especially because he never proved that his relatives were killed at KABGAYI with the complicity of these clergymen. Moreover, the latter never provoked the soldiers, including Captain John BUTERA. As regards the mitigating factors, the Prosecutor said that the Tribunal considered them at the trial stage as it sentenced Captain John BUTERA and Retired Captain Dieudonné RUKÉBA to 8 years of imprisonment for a crime which is punishable by a life sentence. With regard to the stay on execution of the sentence, he said that, according to him, it is not possible because the offence of murder of which they were declared guilty is punishable by more than 5 years of imprisonment while, according to the law, the stay on execution of the sentence can only be granted for offences punishable by less than 5 years of imprisonment.

18. In response to the Court's invitation to provide evidence that Brigadier General Wilson GUMISIRIZA and Major Wilson UKWISHAKA had reasons to know that the clergymen would be killed, the Prosecutor said that all the way from RUHANGO to GAKURAZO all the refugees were accusing the clergymen of failing to protect the victims, thus calling them killers and *Interahamwe*, that the fact that this was said by many people at different times and in different locations implies that the insults and blame against the bishops and other clergymen were widespread. This implies that Brigadier General Wilson GUMISIRIZA and Major Wilson UKWISHAKA surely knew that the clergymen could be killed.

19. Counsel RUTABINGWA Athanase representing Brigadier General Wilson GUMISIRIZA said that the killings committed by APR soldiers under his command took place in GAKURAZO only, during one day (on 5 June 1994) and in a short time. This shows that there was neither a "*widespread nature*" nor a "*notoriety of crime*". Counsel Emmanuel NTAMBARA representing Major Wilson UKWISHAKA said that the Prosecutor did not give any evidence showing that offences such as killing the clergymen were of *widespread nature and publicly notorious, numerous and temporary sparned breaches* were committed by the RPA forces such that he would have neglected them and failed to prevent the criminal plan of *subordinates under his command* of killing clergymen.

20. As regards the Prosecutor's second ground of appeal relating to the breach of the law, the Prosecutor explained that the fact that an accused is a first offender does not amount to mitigating factors because if it was so nobody would be given the sentence provided for by the law. With regard to this ground, Defence counsels SHEMA GAKUBA Charles and NTIHEMUKA MPENGERI Clément said that the onus rests on the judge to appreciate the mitigating factors and that these factors are evaluated taking into account circumstances prevailing before, during and after the offence is committed.

21. Counsel RUTABINGWA Athanase requested the Court to see whether Article 86 of the Additional Protocol to the Geneva Convention according to which the Prosecutor charges his client Brigadier General Wilson GUMISIRIZA should be applied to the war that took place in Rwanda between Rwandans (*non-international armed conflict*). With regard to this ground, the Prosecutor said that the Military Tribunal explained very well that this Additional Protocol I is completing the Geneva Convention of 12 August 1949 relating to the Protection of Civilian Persons in Time of War which clarifies the responsibility of military commanders in the offences committed by their subordinates in time of war and that all these Conventions and Additional Protocols make up a whole such that nothing can prevent the Court from considering them in reaching its decision.

22. After discussing the grounds of appeal filed by both parties, the Court asked the parties whether they had anything to add to their arguments and the latter responded negatively. In response to the question whether the parties wanted their witnesses to be summoned, they said that there was no need for that and asked the Court to reach its decision based on the testimonies already given to the Military Tribunal and on the witnesses' statements placed on the file.

23. After the discussions on the grounds of appeal, the Prosecutor Captain KAYIJUKA NGABO presented his closing arguments as follows:

(1) Concerning Brigadier General Wilson GUMISIRIZA, the Prosecutor said that at the time the accused transferred the clergymen from RUHANGO to GAKURAZO the

refugees showed anger saying that the clergymen were *Interahamwe* or killers. He continued saying that these acts could lead him to knowing that the offences were to be committed (*presumption of knowledge*). However, the accused did absolutely nothing to prevent these killings committed by the soldiers under his command while he had the means to do so even though he was not at the crime site. For this reason, he requested the Court to sentence him to life imprisonment.

(2) With regard to Major Wilson UKWISHAKA, the Prosecutor is of the view that the fact that the accused heard the refugees shouting when they saw the bishops in MUKINGI on their way to GAKURAZO was sufficient for him to take the necessary measures to prevent these offences from being committed especially because he was nearby the crime site. For this reason, he requested the Court to sentence him to life imprisonment for the offence of conspiracy to murder committed at the time of war.

(3) As regards Captain John BUTERA, the Prosecutor said that the Rwandan Criminal Code does not provide for indirect provocation. As for the stay on execution of the sentence, he said that this is only possible for offences punishable by 5 years of imprisonment or less. Therefore, there is no way a stay on execution of the sentence can be granted given that the offence charged against the accused is punishable by life imprisonment. As regards the mitigating factors, he requested the Court to correct the mistake made by the Military Tribunal which stated that being a first offender amounts to a mitigating factor. Finally, he requested the Court to uphold the sentence imposed by the Military Tribunal.

(4) As for Retired Captain Dieudonné RUKÉBA, the Prosecutor said that the Military Tribunal considered mitigating factors in sentencing him to 8 years of imprisonment. However, the Prosecutor is of the view that one of the mitigating factors considered by the Tribunal that the accused was a first offender should be reviewed as it is unfounded based on the explanations given during the court hearing. Finally, he requested the Court to uphold the sentence of 8 years of imprisonment imposed on the accused by the Military Tribunal.

24. Counsel RUTABINGWA Athanase representing Brigadier General Wilson GUMISIRIZA concluded by saying that with regard to the "*command responsibility/presumption of knowledge*", in case the Court relies on Article 86 para. 2 of the Additional Protocol I of the Geneva Conventions in reaching its decision it will discover that this provision stipulates that the military commander is guilty of the offence committed by soldiers under his command if he had reasons to know that those soldiers were about to commit the offence and did not take appropriate measures to prevent it. Apparently this was not the case as regards Brigadier General Wilson GUMISIRIZA because he did not hear the refugees blaming the victims. Moreover, these remarks were not made by soldiers under his command. He continued by saying that the fact that the victims were killed in GAKURAZO far away from RUHANGO where the accused was, at a distance of 12 kilometers, implies that he could not know that the clergymen could be killed by the soldiers. This conforms to the legal experts' view in DELLALIE et al. that the "ICTY" stated that having the knowledge that an offence is about to be committed cannot *be presumed*, but *must be established by way of circumstantial evidence*.³ Counsel for Brigadier General Wilson GUMISIRIZA added that if the "*presumption of knowledge*" is to be accepted it must be demonstrated by prior criminal acts committed more than once (*the number of illegal acts*), *the widespread occurrence of the act and the location of the commander at the time*. For the foregoing reasons, Brigadier General Wilson GUMISIRIZA and his counsel concluded their intervention asking the Court to acquit the accused.

25. Counsel Emmanuel NTAMBARA representing Major Wilson UKWISHAKA was then given the floor to present his final arguments. He said that Major Wilson UKWISHAKA heard that the bishops were involved in the killings four days before the refugees, including clergymen, arrived at GAKURAZO. This should not have led the accused to take measures to prevent the offences committed by soldiers under his client's command on 5 June 1994 at GAKURAZO because the remarks he heard did not mean that the soldiers would kill those clergymen. Counsel for Major Wilson UKWISHAKA said that his client did not accept that the clergymen were involved in the killing of the family members of Sgt. NYAGATARE Déo (+) at KABGAYI. Therefore, he could not suspect that Sgt. NYAGATARE Déo (+) would take revenge on the clergymen. He explained that the remarks that clergymen are killers or *Interahamwe* were not widespread such that he could be aware of them. For these reasons, the accused and his counsel concluded by asking the Court to confirm the trial judgment rendered by the Military Tribunal and therefore to acquit Major Wilson UKWISHAKA.

³ John R.W.D Jones Steven Powles, in International Criminal Practice, "The International Criminal Tribunal for former Yugoslavia, The International Criminal for Rwanda, ... ", Ardsley, NY, USA, Oxford, p. 437.

26. Counsel SHEMA GAKUBA Charles representing Captain John BUTERA concluded his remarks by asking the Court to take into account the provocation factor that Captain John BUTERA committed the crime due to the misconduct of the deceased who failed to fulfill their obligations of serving God and leading their flock and instead chose to abandon them and assist the killers (*Interahamwe* and Ex-FAR) in committing the killings. He said that the family members of Sgt. NYAGATARE Déo (deceased) are amongst the victims and that this laid the foundation for the planning of the murder of the clergymen. Sgt. NYAGATARE Déo (deceased) asked the accused to help him revenge himself by killing the clergymen and Captain John BUTERA due to the fact that he saw many corpses at KABGAYI and the distress which the survivors rescued by the RPA soldiers on 2 June 1994 were in immediately accepted the revenge plan without thinking it out nor considering the consequences of these acts on him. As regards the stay on execution of the sentence, he said that the accused was suffering from high blood pressure and had many children and a large family he cared about. For these reasons, the accused and his counsel concluded by asking the Court to be lenient and to reduce the sentence imposed on the accused up to 2 years of imprisonment and thereafter to order a stay on execution of the sentence if justice is to be done.

27. Counsel NTIHEMUKA MPENGERI Clément representing Retired Captain Dieudonné RUKÉBA concluded by saying that the Military Tribunal imposed a harsh sentence on his client despite the fact that specific evidence which was presented should have led to the reduction of the penalty to 2 years as provided for by Article 82 of the Rwandan Criminal Code. Indeed, during the war and prior to the commission of the offence and after its commission, Retired Captain Dieudonné RUKÉBA demonstrated a good conduct and this is confirmed by his former subordinates and superiors and all those who are close to him. He added that this minor error was committed on 5 June 1994 after Sgt NYAGATARE Déo (deceased), whose entire family had just been exterminated with the complicity of the clergymen at KABGAYI where they had sought refuge, asked him for assistance in revenging them. He continued saying that following his client's recollection of the distress of the KABGAYI survivors and the big number of corpses found in the monastery of KABGAYI, he immediately agreed to Sgt NYAGATARE's revenge plan and joined the latter in the killings, which the accused regrets now very much. In addition, he helped the Prosecutor in ascertaining the truth, because upon seeing that many innocent people were wrongly prosecuted, he promptly decided to tell the truth and recognized his responsibility and denounced his accomplices. He added that nothing can justify the harsh sentence imposed on

him and stated that his stay in prison will not teach him any lesson because he normally behaves well. Besides the public peace will not be affected if a stay on the execution of the pronounced sentence is decided in his favour. Therefore, the accused and his counsel concluded by imploring the Court to be lenient by reducing the sentence imposed on the accused and by ordering a stay on the execution of his sentence.

ASSESSMENT OF THE GROUNDS OF APPEAL AND THE COURT'S POSITION

28. The appeal filed by the Prosecutor was received by the High Military Court on 18 November 2008 while the appeal lodged by Captain John BUTERA and that of Retired Captain Dieudonné RUKÉBA were received by the Court's Registry on 10 November 2008. The judgment N^o RP 0154/08/TM which is appealed against was rendered on 24 October 2008, that is to say, the parties' appeals were lodged within the statutory time limit of 30 days. Therefore, the parties' appeals should be received because they were regularly filed.

29. The Prosecutor's appeal is based on two grounds. The first ground relies on the "*command responsibility*" which can be either "*direct*" or "*indirect*" also called "*presumption of knowledge*". This means that the accused should have known that the clergymen were about to be killed and did nothing to prevent the crimes. In the second ground, the Prosecutor criticized the Military Tribunal for confirming that being a first offender (committing a crime for the first time) amounts to a mitigating factor.

30. In the first ground of appeal, the Prosecutor affirmed that the Military Tribunal wrongly explained the "*command responsibility*" which is based on the "*presumption of knowledge*" and consequently declared Brigadier General Wilson GUMUSIRIZA and Major Wilson UKWISHAKA not guilty.

31. In paragraph 151 of the judgment RP 0151/08/TM, the Military Tribunal explained that the offence committed by subordinates after their superior failed to prevent it while he knew or had reasons to know that it was about to be committed constitutes a type of criminal

conspiracy based on the failure to prevent it. The jurists define this as a “*form of complicity through omission*”⁴.

32. In paragraphs 153 and 154 of the judgment, the Military Tribunal further explained this ground saying that the Prosecutor did not give any evidence proving that Brigadier General Wilson GUMISIRIZA heard the remarks uttered by the refugees saying that the clergymen killed their relatives and calling them *Interahamwe*. Even if he had heard those words, this information is not sufficient *to enable him conclude or be put on notice* to then start investigating on the soldiers that could kill them and hence prevent the offence (crime) from being committed. Concerning Major Wilson UKWISHAKA, the Military Tribunal concluded, in paragraph 163 of the judgment, that the remarks heard by the accused from the refugees should be considered as a “*kind of information which was neither sufficiently clear nor alarming to indicate the likelihood of serious criminal offence about to be committed and to trigger this commander’s duty to investigate the matter*”.⁵

33. For the foregoing, the Military Tribunal acquitted Brigadier General Wilson GUMISIRIZA and Major Wilson UKWISHAKA as it found that the killings of the clergymen in Gakuzo were not planned and that the accused were first offenders. Consequently, *pursuant to article 97 (3) of the Rwandan Criminal Code*, the accused should not be considered as co-perpetrators of those killings.

34. Concerning the request for examining if paragraph 2 of Article 86 of the Additional Protocol I to the Geneva Conventions could be applied to this case, the Military Tribunal concluded that this article is related to international armed conflicts. As for offences committed in a non-international armed conflict, Article 3 common to the Geneva Conventions and the Additional Protocol II applies. To this effect, the Military Tribunal referred to paragraph 2 of Article 6 of the ICTR Statute for the following reasons: the case is related to the war in Rwanda; the provisions of this article are similar to those of paragraph 2 of Article 86 of the abovementioned Additional Protocol. It is clear that nothing has changed with regard to the responsibility of the accused, namely Brigadier General Wilson GUMISIRIZA and Major Wilson UKWISHAKA.

⁴ The American Journal of International Law, Vol 93, N° 3, 1999, p. 577

⁵ Judgement of the Military Tribunal in the Case N° RP 0151/08/TM of 24 October 2008, para. 163, p. 48

35. Paragraph 3 of Article 6 of the ICTR Statute provides for the responsibility in the following terms: “*The fact that any of the acts referred to in Articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.*” This article implies that the military commander had reasons to know that a soldier under his command was about to commit a crime and that he did nothing to prevent this crime or punish the perpetrator. The acts mentioned in this article include mainly crimes committed at the time of war⁶.

36. As affirmed by the Prosecutor, *command responsibility* can be “*direct*” (*actual knowledge*) or “*indirect*” (*presumption of knowledge*). In this case, the Prosecutor requested the Military Tribunal to declare that Brigadier General Wilson GUMISIRIZA and Major Wilson UKWISHAKA are guilty based on *the theory of presumption of knowledge* because the remarks they had from the refugees that the clergymen were *Interahamwe* were sufficient for the commanders to take appropriate measures aimed at preventing the clergymen’s murder. And yet the Prosecutor did not give any irrefutable evidence establishing that the accused had information to the effect that these clergymen were going to be killed or could be killed.

37. Jurists confirm that there are conditions to be fulfilled for the indirect responsibility of the military commander based on the “*theory of presumption of knowledge*” to be retained. The ICTY Prosecutor pointed out the presumption that the commander had reasons to know that crimes were about to be committed is only possible when direct evidence showing that notorious crimes committed indiscriminately or evidently is represented. In this situation, the commander is guilty of the crimes he is accused of. The ICTY Prosecutor added that “*if it is determined on the basis of indirect evidence that there were notorious crimes or committed on a large-scale or systematically or widespread, the commandant incriminated falls within the*

⁶ Article 4 (a) of the statute of the international tribunal for Rwanda as amended regarding violations of Article 3 Common to the Geneva Conventions and their Additional Protocol II stipulates: “The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II of 8 June 1977. These violations shall include, but shall not be limited to: (a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment”.

framework of presumption"⁷. Here there is a point that should be proven by the Prosecutor such as the fact that accused knew that their subordinates went to kill those clergymen or that their subordinates used to kill clergymen and that they did not take any measures to prevent the killing of the clergymen. In addition, concerning the ground that the commander knew, the Prosecutor did not present irrefutable and corroborating evidence that removes any doubt of the Military Tribunal on the role played by Brigadier General Wilson GUMISIRIZA and Major Wilson UKWISHAKA in the perpetrated crimes.

38. Concerning General Wilson GUMISIRIZA, who escorted the clergymen from RUHANGO to GAKURAZO in different vehicles, the Prosecutor failed to prove that the accused heard the refugees' remarks that those clergymen were *Interahamwe* in a way that would make General Wilson GUMISIRIZA presume that they could be attacked. Consequently, the responsibility should not be based on the presumptions but should instead be proven as confirmed by the jurists in the following terms that "*knowledge cannot be presumed, it must be established by way of circumstantial evidence*"⁸. On his part, Nasser ZAKR indicates that "*certainly, knowledge of illegal acts cannot be presumed, it must be established on the basis of direct or conjectural evidence*"⁹. Others say that: "*... the information in his possession must be sufficiently clear or alarming to indicate the likelihood of serious criminal offences having been or about to be committed...*"¹⁰. In addition, even if the Prosecutor succeeded in proving that Brigadier G General Wilson GUMISIRIZA heard those words uttered by the refugees, he failed to show the causal effect existing between those words and the killings of the clergymen by the soldiers under him in such a way that the accused should be held responsible for the crimes perpetrated by their subordinates on the basis of the '*theory of presumption of knowledge*'.

39. On page 2 of his statement bearing reference n° 20, Major Wilson UKWISHAKA affirmed having heard the remarks uttered by the refugees that the clergymen who were taken from KABGAYI to GAKURAZO were *Interahamwe*. It is on this basis that the Prosecutor requested that the accused be held responsible of the crimes committed by his subordinates against the clergymen. However, the Prosecutor did not demonstrate clearly how these

⁷ Nasser ZAR, *the superior responsibility before the international courts* (La responsabilité du supérieur hiérarchique devant les tribunaux internationaux) in *International Review of Penal Law*, Vol 73, p. 66 Nasser ZAKR is UN adviser in Kosovo and is a former legal adviser in the Office of the Prosecutor of the ICTR.

⁸ Jones and Steven Powles, *International Criminal Practice*, p. 437

⁹ ICTY Judgement, in the Zejnir Zdravko Mucij quoted by Nasser ZAKR, *op. cit.*, p. 65

¹⁰ Mettaux and Guenaël, *International crimes and the ad hoc tribunals*, Oxford University Press, 2006, ppp. 301 and 302.

remarks uttered by the refugees led to the killings of the latter by the subordinates of the accused while he did not provide any evidence showing that the soldiers who committed those crimes were also those who made the remarks. Article 4 of the law relating to evidence and its production¹¹. However the Prosecutor failed to prove the causal effect existing between the refugees' remarks that the bishops or the clergymen were killers and the massacres perpetrated by the soldiers as they did not say anything related to the killings. Therefore, the Prosecution's charges are contrary to the provisions of paragraph 3 of Article 6 of the ICTR Statute and to the aforesaid Article 4.

40. In addition, the Prosecutor affirmed that the family of one of the soldiers who committed crimes in GAKURAZO, that is Sgt NYAGATARE Déo (deceased), was killed in KABGAYI and that some of the killed clergymen played a role in these killings. That is why Major Wilson UKWISHAKA who was NYAGATARE's commander should have presumed that NYAGATARE would revenge. Consequently, Major Wilson UKWISHAKA should have taken preventive measures. However, he did not give evidence demonstrating that the accused had knowledge of that. Consequently, he cannot be held responsible of what he did not know or that he pretended not to know as confirmed by Mr Cherif BASSIOUNI: *"No one can be deterred from conduct beyond the control of the person whose responsibility may be called in to question. To hold a superior accountable on the basis of omission for the conduct of a subordinate, therefore, requires intent or knowledge that the omission can actually or reasonably and foreseeably lead to a violative act and the superior is in a position or has the ability to act in the prevention of the violative act..."*¹²

41. Concerning Ilias BANTEKAS in the case called *"high command case"*, the ICTY confirmed that the responsibility should be based on evidence and not on presumption. It declared that: *"the absence of the direct evidences, knowledge may be established through circumstantial evidence and no presumption of knowledge may be advanced"*¹³

¹¹ Article 4 of the law N° 15/2004 of 12 June 2004 relating to evidence and its production, in the Official Gazette, special edition of 19 July 2004, p. 3.

¹² Mr. Cherif Bassiouni, Crimes against humanity in international criminal law, Martinus Nijhoff Publishers, London, 1992, p.372.

¹³ Ilias Bantekas, The contemporary Law of Superior Responsibility, Vol. 93, N°3, 1999, p. 589.
http :www.jstor.org/stable/2555261, accessed on 27 June 2008.

42. In addition, the Prosecutor did not prove that other massacres similar to those committed at GAKURAZO were perpetrated by the RPA soldiers at different times and places (*widespread nature and notoriety*) such that Brigadier Gen Wilson GUMISIRIZA and Major Wilson UKWISHAKA would have presumed that soldiers under their commander could commit killings for which they would be held responsible in case they did not take appropriate measures. No evidence was presented that the killings committed by the soldiers were a result of a criminal plan of killing the clergymen. Besides, the fact that those who made the remarks that the clergymen killed their relatives are not those who killed the clergymen and the widespread nature of nature or notoriety of crimes prove that Brigadier General Wilson GUMISIRIZA and Major Wilson UKWISHAKA did not know that a crime was about to be committed in such a way that they would take preventing measures. In addition, after the commission of the crimes, Major Wilson UKWISHAKA was at that time near the scene of the crimes and promptly rushed to the scene and comforted the refugees who were present. Also, one of the perpetrators of the crimes, Pte KABANDANA Eugène (deceased) was shot dead on the site by the subordinates of the accused who came immediately at crime scene. Hence, the accused did everything that could be done at that time.

43. Concerning the Prosecutor's second ground of appeal, which states that the fact that the accused is a first offender should not be considered as a mitigating factor, the Military Court found that this ground is not sufficient for the judge to lessen the gravity of the crime. On the contrary, the judge should examine the factors that either preceded or accompanied or followed the crime and he should also explain them in accordance with Article 82 of the Rwandan Criminal Code¹⁴. But with regard to paragraph 20 of the judgment rendered by the Military Tribunal, the latter explained the reasons why it gave weight to the mitigating factors that accompanied and followed the crimes allegedly committed by Captain John BUTERA and Retired Captain Dieudonné RUKÉBA. Hence, those factors together with the fact that the accused were first offenders contributed to the lessening of the sentence. And this indicates that the Military Tribunal did not commit any error in giving weight to this factor as all the factors were considered together¹⁵.

¹⁴ Article 82 of the Rwandan Criminal Code stipulates that "the judge gives weight to the mitigating factors for the perpetrator of crimes that either preceded or accompanied or followed the crime" p. 17.

¹⁵ In paragraphs 20 and 21 of the judgment, the Court concludes that « however, under duress and considering what they had seen (corpses in the churches) wherever they passed made them assist Sgt NYAGATARE Déo in killing the refugees without planning it. P. 45. Being primary delinquents and considering that they did not commit later any other crime that is known and that they confessed, pleaded guilty and requested for forgiveness before the Court , p. 46 »

44. Concerning the ground of appeal of Captain John BUTERA, i.e. provocation: Counsel SHEMA Gakuba Charles said that the Military Tribunal did not grant the provocation ground without motivating its decisions and for this reason he asked the Appeals Court to examine this ground. The provocation ground is based on the fact that the deceased people provoked the killers as they played an important role in the murdering of the parents and the family of Sgt NYAGATARE Déo (deceased) who asked Captain John BUTERA to assist him in revenging. The statement that the Military Tribunal did not explain the reason why it dismissed the provocation ground is false because the Military Tribunal stated that provocation cannot be granted as the victims (members of the clergy) did not offend any single member of the family in such a way that there is a causal link. Consequently, the provocation ground could not be granted as there is no link between the victims and their killers¹⁶.

45. But this does not prevent the Tribunal from examining again the provocation-related ground of appeal presented by Captain John BUTERA. The Court should examine whether for the provocation ground to be granted there should be a link between the victim and the perpetrator of the offence and it should examine whether the ground can be accepted. Article 78 of the Rwandan Criminal Code stipulates that “for crimes and offences, the judge picks out in the facts, if any, elements of provocation by the victim which make the offence excusable” while Article 79 provides that “the crimes and offences are excusable if their perpetrators acted out of provocation as a result of being beaten or assaulted”.

46. Article 78 of the Rwandan Criminal Code gives to the judge clear guidelines for examining the provocation ground as mentioned by Christine Lazerges-Rothe, a legal expert: “*We note the broad powers of the individualization of the punishment left to the judge by the flexibility of the definition of the elements of provocation. The court is free to use or not the excuse of provocation, and thus mitigate or not the sentence incurred under the circumstances*”¹⁷. This also clearly authorizes the judge to accept or reject provocation to mitigate the gravity of the crime or to accept it in accordance with the circumstances.

¹⁶ Case RP 0151/08/TM, p.45 para. 17 and 18 the Court concluded that; ... Nobody from the families of Captain John BUTERA and Retired Captain Dieudonné RUKÉBA was killed by the victims in a way that could lead us to say that there is a link between the victims and the accused. This link is very important for granting the defence of provocation (17). In this case it is not accepted (18).

.....
¹⁷ Christine Lazerges-Rothe, *Encyclopédie juridique de l’Afrique, l’individualisation de la sanction* (Legal encyclopedia of Africa – Individualisation of the sentence), p. 105.

47. The Tribunal cannot be forced to reduce the sentence based on provocation. The person who was provoked should not necessarily be the one who committed the crime. It can be any other accused who has interests in the matter. *“Provocation must be such that it deprives a normal person of self-control”*¹⁸. This means that provocation must have led a normal person not to tolerate what he/she has seen, what he/she has experienced or heard. Equally, in this appeal’s case, the Court is of the view that it is not necessary to mitigate the gravity of the crime based on provocation particularly because the law does not compel the Court to do so. Instead, it does so “when it is necessary”. Therefore, the ground appeal of Captain John BUTERA is rejected.

48. Concerning the stay on the execution of the sentence requested for by Captain John BUTERA and Retired Captain Dieudonné RUKÉBA for the following grounds: medical grounds of “high blood pressure” for Captain John Butera and “diabetics” for Retired Captain Dieudonné RUKÉBA. Other grounds include: family responsibilities as they both have to take care of their respective families and the fact that if they are released they would not commit any offence because they showed good conduct within the Rwandan society during the 15 years which elapsed between 1994 (year of the crime) and 2008 (year of arrest). The Court noted that the appellants did not submit any official medical certificates proving that they suffer from the said sicknesses. As for the other grounds, the Court cannot rely on them and order that it should be stayed on the execution of all the sentences or part of them as the law does not impose this obligation on the court. Instead the Court will do so in its discretion¹⁹.

49. Concerning the Prosecutor’s request that the Court should grant a stay of execution of the sentence only in case the principal punishment does not exceed 5 years of imprisonment, the Court is of the view that this understanding is wrong as it is contrary to the provisions of Article 244 of the Law n° 13/2004 which stipulate that the Court can decide to stay on the execution of the principal or accessory sentences **for all the sentences or parts of them pronounced by the Court for any offence except those for which the law does not allow deferred sentences**. Considering the Prosecutor’s request, there cannot be any stay on the execution of the sentence for crimes as they are punished by a principal penalty of a sentence

¹⁸ *Ibidem*.

¹⁹ Article 244 of the Law n° 13/2004 of 17 May 2004, published in the special edition of the Official Gazette of 30 July 2004, p. 39.

of more than 5 years of imprisonment. This would not be correct as there are several cases involving crimes that were tried by the Rwandan jurisdictions in which it was stayed on execution of the sentence when the accused were given a principal punishment which does not go beyond 5 years of imprisonment²⁰. **What is important here is the sentence pronounced by the Court** as mentioned by Christine Lazerges-Rotes when she explains article 97 of the Rwandan Criminal Code²¹.

50. Concerning mitigating factors submitted by Captain John BUTERA and Retired Captain Dieudonné RUKÉBA as explained by their counsels, the Military Court noted that they are admissible as they were accepted by the Military Tribunal which reduced the sentence up to eight years of imprisonment. Concerning the plea of the appellants requesting the High Military Court to reduce the sentence up to two years of imprisonment, the High Military Court considered that it should exercise its discretion and reduce the sentence of imprisonment imposed on them by the Military Tribunal based on the following reasons:

- (1) The fact that the appellant confessed, pleaded guilty and requested for forgiveness.
- (2) The fact that at the time the crime was committed, it was difficult for them because of the corpses they found in the cathedrals (including that of Kabgayi) and churches, the difficult conditions which the genocide survivors of Kabgayi were in and that the fact that they were led into committing this crime by the late Sgt. NYAGATARE whose family was exterminated in Kabgayi.
- (3) The fact that Captain John BUTERA and Retired Captain Dieudonné RUKÉBA continued to show their remorse.

DISPOSITIONS

²⁰ In the judgment rendered by the High Military court on 15 February 2005 in the case RPA 008/04/HCM/RPA 0336/03 , Pte Rwimihigo Emmanuel was convicted for the crime of raping a minor and was sentenced to 5 years imprisonment with a suspension of 4 years for a period of 4 years While in the case RPA 0046/05/HCM, Pte Nzaberaho Jean Pierre was sentenced to 5 years imprisonment for the crime of murder with a suspension of two years over a period of three.

²¹ Christine Lazerges-Rothe, *Encyclopédie juridique de l'Afrique, 'le jeu des sursis'*: les nouvelles éditions de l'Afrique, Abidjan, Dakar, Lomé, 1982, p. 107. She says: The Rwandan Criminal Code is considering the possibility of suspension of all or part of **the principal or secondary sentences imposed** (97). Remember that this article 97 of the Rwandan Criminal Code has changed to become Article 277 of the Code of Rwandan criminal procedure.

THE HIGHT MILITARY COURT:

51. ACCEPTS the Prosecutor's appeal and after examination finds it unfounded.
52. ACCEPTS the appeal of Captain John BUTERA and after examination finds it founded in part.
53. ACCEPTS the appeal of Captain Retired Dieudonné RUKÉBA and after examination finds it founded in part.
54. DECLARES Brigadier General Wilson GUMISIRIZA not guilty of the crime of conspiracy for the murders committed by his subordinates during the war and that no sentence should be imposed on him.
55. DECLARES Major Wilson UKWISHAKA not guilty of the crime of conspiracy for the murders committed by his subordinates during the war and that no sentence should be imposed on him.
56. DECLARES Captain John BUTERA guilty of the crimes of murder committed during the war and that he should be punished.
57. DECLARES Captain Dieudonné RUKÉBA guilty of the crimes of murder committed during the war and that he should be punished.
58. DECLARES that Brigadier General Wilson GUMISIRIZA is acquitted.
59. DECLARES that Major Wilson UKWISHAKA is acquitted.

60. DECLARES that Captain John BUTERA has lost the case.
61. DECLARES that Captain Dieudonné RUKÉBA has lost the case.
62. ACCEPTS to reduce the sentences of Captain John BUTERA and Retired Captain Dieudonné RUKÉBA.
63. PRONOUNCES a sentence of 5 years of imprisonment for Captain John BUTERA.
64. PRONOUNCES a sentence of 5 years of imprisonment for Captain. Dieudonné RUKÉBA.
65. ORDERS Captain John BUTERA and Retired Captain Dieudonné RUKÉBA to pay jointly legal fees amounting to RWF 32, 650 calculated as follows:
 - (1) The order of the President of the High Military Court: RWF 250;
 - (2) The appeal: RWF 1,600;
 - (3) The summonses : RWF 4,400;
 - (4) Transcripts: RWF 1,300;
 - (5) Judgment: RWF 4,350, if not an enforcement on his property will be carried out;
 - (6) Judgment rendered by the Military Tribunal: RWF19,750.
66. Judgment RP 0151/08/TM is invalidated with regard to the sentences and the legal fees.

THUS RULED AND DELIVERED IN PUBLIC HEARING THIS 25 FEBRUARY 2009 BY THE HIGH MILITARY COURT, COMPOSED OF : Major Gen Patrick NYAMVUMBA (PRESIDENT), Captain Bernard HATEGEKIMANA AND LIEUTENANT CLAUDE KABERUKA (JUDGES), IN THE PRESENCE OF SECOND LIEUTENANT Jean de Dieu RUTAYISIRE (REGISTRAR).

PRESIDENT

Patrick NYAMVUMBA

(Major General)

Signed

JUDGE

Bernard HATEGEKIMANA

(Captain)

Signed

JUDGE

Claude KABERUKA

(Lieutenant)

Signed

REGISTRAR

Jean de Dieu RUTAYISIRE

(Second Lieutenant)

Signed

Copy Certified this 05 June 2009.

The Registry of the High Military Court

Jean de Dieu RUTAYISIRE

[2LT]