

Summary of Judgement and Sentence in case of *Prosecutor v. Gaspard Kanyarukiga*

I. Introduction

The Accused in this case, Gaspard Kanyarukiga, was born in Kivumu *commune*, Kibuye *préfecture*, Rwanda. In 1994, Kanyarukiga was a businessman who owned a pharmacy in the Nyange Trading Centre, located in Nyange *secteur*, Kivumu *commune*, Kibuye *préfecture*. The Accused is charged with genocide and in the alternative, complicity in genocide, in addition to extermination as a crime against humanity. Kanyarukiga is alleged to be criminally responsible under Article 6(1) of the Statute and as part of a joint criminal enterprise. The charges in this case are set forth in the Prosecutor's Amended Indictment, which was filed and confirmed on 14 November 2007. The Defence disputes all charges and raises a defence of alibi.

By way of background, the events in this case concern alleged attacks on thousands of Tutsi civilians who took refuge at the Nyange Parish, located in Kivumu *commune*, Kibuye *préfecture*, after the death of President Habyarimana on 6 April 1994. The attacks culminated in the destruction of the Nyange Parish Church on 16 April. At the time of the destruction of the Nyange Parish Church, it is alleged that about 2000 Tutsi civilians were confined in the church and that its destruction resulted in their deaths.

The trial commenced on 31 August 2009 and closed on 24 May 2010, with the hearing of closing arguments. During the course of the trial, the Prosecution called 11 witnesses, while the Defence called 23.

The Chamber is unanimous with respect to all three counts of the Indictment: genocide, complicity in genocide and extermination as a crime against humanity.

The following is a summary of the central findings concerning the allegations against Kanyarukiga. Only the written Judgement is authoritative. It will be available in due course.

II. Evidence not considered by the Trial Chamber for notice reasons

The Chamber issued a decision on 15 January 2010 regarding a Defence motion for a stay of proceedings or exclusion of evidence. The Chamber reserved its decision with regard to a number of requests for exclusion of evidence relating to meetings the Accused is alleged to have attended. For the reasons outlined in the Judgement, the Chamber has not considered the evidence of: Prosecution Witnesses CBR and CDL regarding Kanyarukiga attending a meeting at the Nyange communal office on 13 April 1994; Witness CBK regarding Kanyarukiga's attendance at a meeting at the parish on 13 April 1994; Witness CDL regarding Kanyarukiga attending a meeting at the Mutanoga Centre on 14 April 1994; Witnesses CBR and CDK regarding Kanyarukiga attending a meeting at the CODEKOKI building on 15 April 1994 and Witness CDL regarding Kanyarukiga participating in a meeting outside his pharmacy on 16 April 1994. For the reasons outlined in the Judgement, the Chamber has not considered this evidence because it finds that there was insufficient notice of this evidence provided to the Accused by the Prosecution.

In addition, for the reasons outlined in the Judgement, the Chamber has not considered a number of other pieces of Prosecution evidence in its deliberations, including evidence of the Accused attending other meetings, on the basis that there was insufficient notice provided to the Accused by the Prosecution.

III. The Chamber's assessment of the alibi

The Indictment alleges that Kanyarukiga engaged in criminal conduct from 10 April to 16 April 1994 at the Nyange Parish Church and surrounds. The Defence has provided an alibi for the period of 12 April to 16 April, which places Kanyarukiga in Gitarama and Ndera, just outside Kigali, during this time.

The Defence claims that Kanyarukiga left Nyange and stayed in Gitarama, from 12 April 1994 to 14 April 1994, whilst he endeavoured to organise documents for travel to Ndera to retrieve his family. It further submits that Kanyarukiga left Gitarama early on the morning of 15 April, passed by Gitarama Military Camp to pick up a soldier-escort, and proceeded to Ndera, stopping at Witness KG55's house, Witness Hitimana's shop in Kigali and at a roadblock in Ndera. On 16 April, the day that the Nyange Church was destroyed, Kanyarukiga is said to have traveled from Ndera to Nyange with his family, via an alternate and longer route than that taken on 15 April 1994. The Defence presented thirteen witnesses who claim that they saw Kanyarukiga on at least one of these days.

The Chamber notes that the following factors, in combination, lead it to reach its conclusion with regard to the alibi.

Firstly, the Defence filed its notice of alibi after the close of the Prosecution case. Further, a complete list of Defence witnesses, who would testify in favour of the alibi, was filed only one month prior to the start of the Defence case. The Chamber has taken this delay into consideration in determining whether to attach any weight to the alibi evidence.

Secondly, for the reasons set out in the written judgment, the Chamber does not find the Defence witnesses who provided evidence with regard to the alibi to be credible. Among other things, the Chamber found many of the Defence witnesses would have a reason to provide testimony that was favourable to the Accused and found their accounts insufficient to raise doubt with respect to the Prosecution evidence.

Finally, the Chamber has carefully considered the observations recorded during the site visit, which, was undertaken by the Chamber from 19 to 21 April 2010. Comparisons between the observations during the site visit and the Defence witness evidence further confirm to the Chamber that the evidence given by Defence alibi witnesses is not credible. In addition, these comparisons show that the route purportedly taken by Kanyarukiga on 16 April 1994 was long, precarious and would not reasonably have been taken at all at that time.

In combination, these factors, for the reasons set out in the Judgement, lead the Chamber to find that the alibi is not reasonably possibly true.

IV. The Chamber's Factual Findings

The Indictment alleges that, after the death of the Rwandan President on 6 April 1994, Tutsi civilians were attacked in their homes in Kivumu *commune* and that, as a result of these attacks, Tutsi civilians sought refuge in public buildings, including the Nyange Parish Church. The Indictment further alleges that from 12 April 1994, attackers surrounded the Nyange Parish, at which Tutsi civilians had taken refuge, and that Hutu assailants attacked the Tutsi at the Nyange Parish on 15 and 16 April, culminating in the destruction of the Nyange Church by bulldozer on 16 April.

As explained in the Judgement, the Chamber finds that the evidence consistently establishes that, after the death of President Habyarimana, Tutsi civilians sought refuge from attacks at the Nyange Parish Church. It is further established that Hutu assailants surrounded the parish after 12 April 1994. Further, although not explicitly alleged in the Indictment, the Chamber has found that attacks against the Tutsi at Nyange Parish began on 13 April. The Chamber has no doubt that the attacks intensified on 15 April and that at least one grenade was thrown during the later part of this day. Following this, the Tutsi locked themselves in the Nyange Parish Church. The Chamber finds that there was an attempt to burn down the Church in the afternoon of 15 April. When that was unsuccessful, on 16 April, at least one bulldozer was used to destroy the Nyange Church, killing approximately 2000 Tutsi civilians who had taken refuge inside.

The Chamber now moves to a series of allegations regarding the Accused's role in these events.

(i) Meeting on or about 12 April 1994

The Indictment alleges that on or about 12 April 1994, Kanyarukiga attended a meeting on Athanase Seromba's balcony at the Nyange Parish.

Relying on Prosecution Witnesses CBS and CBN and for the reasons set out in the Judgement, the Chamber finds that Kanyarukiga, Fulgence Kayishema, Grégoire Ndahimana and Brigadier Mbakirirehe attended a meeting at the Nyange Parish but that this meeting occurred on 14 April. However, the Chamber finds that the evidence is insufficient to establish beyond reasonable doubt that the meeting occurred on Seromba's balcony.

(ii) Presence and Role in Attacks on 15 April 1994

The Indictment alleges that, on 15 April 1994, there were a number of attacks throughout the day against Tutsi civilians taking refuge at the Nyange Church, including the throwing of grenades, which culminated in an attempt to burn down the church with Tutsi civilians inside. The Indictment alleges that Kanyarukiga ordered and instigated the attackers during the morning of 15 April 1994 and that during the later part of the attacks and the attempted burning of the Nyange Church, Kanyarukiga was present, ordering, instigating and supervising and aiding and abetting the attackers.

For the reasons set out in the Judgement and based on the credible evidence of Witnesses CBR, CBN, CBS and CBY who corroborate the evidence of Witnesses CNJ, CBT, CDK, YAU and CBK, the Chamber finds that Kanyarukiga was present at Nyange Parish prior to 11.00 a.m. on 15 April with Fulgence Kayishema and Grégoire Ndahimana. It further finds that on the same

morning, prior to and during the attacks outlined in paragraph 14 of the Indictment, Kanyarukiga was around the areas of the Statue of the Virgin Mary and the Nyange Church. Moreover, based on Witness CBR, who the Chamber finds credible, the Prosecution has established beyond reasonable doubt that Kanyarukiga was present when Grégoire Ndahimana told the attackers to “begin work”, which was understood to mean kill the Tutsi.

Relying on Witnesses CBY and CBS, who corroborate the account of Witness CNJ, for the reasons set out in the Judgement, the Chamber has no doubt that Kanyarukiga was present at the Nyange Parish, in the company of Fulgence Kayishema, after the attacks outlined in paragraph 15 of the Indictment.

For the reasons set out in the judgement, the Chamber finds it established beyond reasonable doubt, based on the evidence of Witnesses CBY and CDK, that Kanyarukiga discussed with Fulgence Kayishema on the evening of 15 April that the assailants should demolish the Nyange Church.

(iii) Demolition of Nyange Church

With regard to 16 April 1994, the Indictment alleges that Gaspard Kanyarukiga, Fulgence Kayishema, Téléphore Ndungutse, Judge Habiyambere, Grégoire Ndahimana and others met Father Athanase Seromba at the Nyange Parish and informed Father Seromba of their decision to demolish the Church. It alleges that Kanyarukiga instigated the demolition of the church by suggesting that another church would be built. Finally, the Indictment alleges, among other things, that Kanyarukiga was present during the demolition of the church and instigated attackers to kill the Tutsi.

Based on the evidence of Witness CDL, as corroborated by the evidence of Witnesses CBY and CBR who the Chamber has found credible, and for the reasons set out in the Judgement, the Chamber finds that the Prosecution has proven beyond reasonable doubt that, on the morning of 16 April, Kanyarukiga, Fulgence Kayishema, Téléphore Ndungutse, Judge Habiyambere, Grégoire Ndahimana and others met Father Athanase Seromba at the Nyange Parish and discussed demolishing the church. Based on the Chamber’s view that Witness CBR gave credible evidence, the Prosecution has established beyond reasonable doubt that, following this meeting, Kanyarukiga told *Bourgmestre* Ndahimana, IPJ Kayishema, Judge Habiyambere, Ndungutse and others that the Nyange Church had to be destroyed and that he would make it his responsibility to rebuild it in three days.

The Chamber notes that it has found that the Nyange Church was destroyed following these series of events.

The Chamber finds that the Prosecution has failed to establish all other allegations contained in the Indictment that relate to the Accused. The deliberations regarding the allegations and associated facts that the Prosecution has failed to establish beyond reasonable doubt are discussed fully in the Judgement.

V. The Chamber's Legal Findings

Having considered the facts established by the Prosecution, the Chamber is satisfied: that Kanyarukiga and others planned certain criminal conduct that was later perpetrated; the plan to destroy the church substantially contributed to the killing of the Tutsi at the Nyange Parish on 16 April 1994; that the Accused had the intent to plan the destruction of the Nyange Church and that Kanyarukiga was aware that, if the planned demolition went forward, the Tutsi who had taken refuge in the Nyange Church would be killed.

Therefore, for the reasons set out in the Judgement, the Chamber finds beyond reasonable doubt, that the Accused and others planned the destruction of the Nyange Church and the killing of those inside.

Given the manner in which the attacks were conducted, the Chamber finds that the assailants intentionally targeted and killed members of the Tutsi ethnic group, a protected group under Article 2 of the Statute. The Chamber also finds that in planning the destruction of the Nyange Church on 16 April 1994, the Accused is responsible for the killing of approximately 2000 members of the Tutsi ethnic group. The Chamber therefore finds that the *actus reus* for genocide has been satisfied in this case.

Furthermore, having considered the totality of the evidence, the Chamber finds it established beyond reasonable doubt that Kanyarukiga acted with genocidal intent.

For the reasons set out in the Judgement, the Chamber therefore is satisfied beyond reasonable doubt, that Gaspard Kanyarukiga is criminally responsible under Article 6(1) of the Statute for planning the killing of members of the Tutsi ethnic group at the Nyange Church and is therefore guilty of genocide (Count 1 of the Indictment) under Article 2(3)(a) the Statute.

Having found Kanyarukiga guilty of genocide, the Chamber dismisses Count 2 of the Indictment, charging Kanyarukiga, in the alternative, with complicity in genocide.

With regard to extermination as a crime against humanity, the Chamber is satisfied that the demolition of the Nyange Church was committed as part of a widespread or systematic attack against the Tutsi civilian population on ethnic grounds and that the Accused knew that his acts formed part of this broader attack. Further, having found that Kanyarukiga intentionally participated in the planning of the demolition, which resulted in thousands of Tutsi deaths, the Chamber finds that the Accused intentionally participated in a mass killing of Tutsi civilians amounting to extermination as a crime against humanity.

Accordingly, for the reasons set out in the Judgement, the Chamber finds that the Accused is guilty of extermination as a crime against humanity (Count 3 of the Indictment) under Article 3 of the Statute.

VI. FINDINGS

The Trial Chamber finds in respect of Gaspard Kanyarukiga as follows:

Count 1: Genocide: GUILTY

Count 2: Complicity in Genocide: NOT GUILTY

Count 3: Extermination as a crime against humanity: GUILTY

VII. SENTENCING

The Chamber has considered the gravity of each of the crimes for which Kanyarukiga has been convicted, as well as aggravating and mitigating circumstances. The Chamber sentences Gaspard Kanyarukiga to a single sentence of 30 years imprisonment. In accordance with Rules 102(A) and 103, Kanyarukiga shall remain in the custody of the Tribunal pending transfer to the state where he will serve his sentence.

This marks the end of the summary of the Judgement. The full Judgement will be available soon. The trial proceedings in this case have now come to an end. Thank you.