

TRUSTEESHIP  
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PETITION FROM EX-CHIEF BARNABE NTUNGUKA  
CONCERNING RUANDA-URUNDI

(T/PET.3/72 and Add.1)

Observations of the Belgian Government as Administering Authority

Mr. Barnabé NTUNGUKA has submitted two petitions to the United Nations:

- (1) dated 30 May 1954 (T/PET.3/72);
- (2) dated 10 June 1954 (T/PET.3/72/Add.1).

In this connexion the Administering Authority submits the following comments:

(1) With regard to the petition of 30 May 1954

Mr. PIERARD, retail butcher at Usumbura, had advanced various sums of money to the petitioner on account for cattle which the petitioner was to deliver to him. As the cattle were never delivered, Mr. PIERARD instituted legal proceedings against Mr. NTUNGUKA.

On 3 March 1954 Mr. Ntunguka was sentenced by the court of first instance to pay the sum of 52,549.50 francs to Mr. PIERARD, butcher at Usumbura.

As he was unable to obtain voluntary execution of the judgment, the creditor, armed with his court order, had action taken to distraint upon NTUNGUKA's property. On 22 May, a process-server, accompanied by the Administrator of the Territory, went to NTUNGUKA's house to proceed with the seizure of twenty-five head of cattle. The petitioner was present at the outset of the operation but later went to Usumbura to report his dissatisfaction to some authorities. Upon his return home, noting that the twenty-five head of cattle had been taken, he set out to search for them with the intention of recovering them. He had learned that his cattle had been sent to the Iranda School-Farm by Chief NYARUSAGE, who had been appointed

custodian of the property seized. On the way there, he came across a herd belonging to this chief and decided to take them. The herdsmen fled at the approach of NTUNGUKA and his men, who were armed, whereupon the petitioner drove the cattle to his own ruغو and locked them up.

After informing the local territorial authorities, Chief NYARUSAGE reported the matter to the parquet. A warrant was issued against NTUNGUKA, who was arrested the following morning and brought before the Examining Magistrate, who had him committed to the central prison at Usumbura.

In a judgment of 6 July 1954 the Residency court of Urundi sentenced Mr. NTUNGUKA Barnabé to three years penal servitude for robbery and infringement of article 136 of the Penal Code, Book One. This sentence is not yet final, as an appeal was brought by the first three accused, including NTUNGUKA, and the Procureur du Roi is following up the appeal.

Copies of the two judgments delivered in this case are attached to this note.

(2) With regard to the petition of 10 June

The only new points in the petition of 10 June relate to the food given to the petitioner, who is at present in the central prison at Usumbura.

The investigation made in reply to the petition discloses that:

- (a) the petitioner, like all the other prisoners, receives the regulation ration of food regularly;
- (b) from the outset of his imprisonment, and as a pure favour, the petitioner has been authorized to receive food sent to him by his family;
- (c) this prisoner's wife brings him his favourite food daily and so far the Administration has not denied the prisoner this exceptional privilege;
- (d) the Administration is not aware that the petitioner ordered food to be sent in from an Asian restaurant; in any case, no such authorization was granted by the prison administration.

The petitioner further states: "Mr. JAMAR, who was my counsel, dropped me by arrangement with the authorities". Like the petitioner's other allegations, this statement is pure fantasy, for the Administration has never discussed this matter with Mr. JAMAR.

FC 3904

USUMBURA CIVIL AND COMMERCIAL COURT OF  
FIRST INSTANCE, SITTING AT USUMBURA,  
HAS HANDED DOWN THE FOLLOWING JUDGMENT:

PUBLIC SESSION OF 3 MARCH 1954

In the matter of: PIERARD, retail butcher, resident of Usumbura,  
R.C. USA No. 712, represented by Messrs. Baltus  
and Ganshof, barristers-at-law of Ruanda-Urundi,  
residents of Usumbura,

PLAINTIFF:

vs: NTUNGUKA BARNABE, resident of Buringa, Territory  
of Bubanza

DEFENDANT:

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On 5 January 1954 Roger ROELS of Kihanga, a process-server, served the defendant, NTUNGUKA BARNABE, with a summons on the part of the plaintiff, PIERARD, to appear before this court in public session at eight o'clock in the morning of 10 February 1954, at its customary chambers at Usumbura, so that the defendant might:

Hear a declaration that the contract concluded between the parties was broken by the defendant owing to his failure to make delivery of cattle valued at 55,670 francs;

Hear that he was sentenced to pay the plaintiff the sum of 55,670 francs, with interest at 8 per cent per annum from this day, viz. 5 January 1954;

Hear that he was sentenced to pay court fees and costs;

Hear the reading of the judgment which shall take effect notwithstanding any appeal which may be brought and without security;

The case, duly submitted and entered in the register, was heard in open court on 10 February 1954, the plaintiff being represented by Mr. Baltus and the

defendant failing either to appear in person or to be represented. Mr. Baltus, for the plaintiff, after noting that the defendant had failed to appear, requested the Court to find in favour of the plaintiff. He submitted his brief initialled by the responsible Registrar.

The Court noted the failure of the defendant to appear and referred the case to the Public Prosecutor's Department for an opinion.

At the public session of 24 February 1954, when the case was called, the plaintiff was represented by the same counsel as before; the defendant failed either to appear in person or to be represented.

The Public Prosecutor's Department, represented by the Deputy Procureur du Roi Mr. J. VAN DER HEYDEN, read the opinion of his colleague, Mr. L. BUSINE, which concluded:

"Although the defendant made no objection when served with the summons, the Public Prosecutor's Department considers there is no justification for action on the second count of the summons, namely for the repayment of the sum of 7,000 francs allegedly remitted to NTUNGUKA on 16 July 1952. The plaintiff has not proved that this sum is owing to him, inasmuch as in evidence of his claim he produces a receipt at the bottom of which a certain BIGIRANEZA is alleged to have made his mark. The Public Prosecutor's Department leaves the other issues to the wisdom of the court".

"This opinion is placed in the file".

The Court took the case under deliberation and at the public session of this day pronounced judgment as follows:

Whereas the plaintiff advanced various sums of money to Ntunguka on account of cattle to be delivered by the latter to the plaintiff;

Whereas the cattle were never delivered and the defendant thus failed to comply with his principal obligation;

Whereas when served with the summons the defendant merely replied: "I wish to repay this sum, ten thousand francs at the end of this month and the rest within five months at the latest.";

Whereas it must be concluded from this statement that the defendant acknowledges his debt;

Whereas the three documents dated 8 July 1952, 7.8.52 and 10 October 1952 are valid;

Whereas the fourth document, dated 16 July 1952, is open to challenge;

Whereas this is an unsigned receipt bearing a thumb print alleged to be that of a certain BIGIRANEZA;

Whereas, firstly, it is not clear why a person by the name of BIGIRANEZA should have affixed his thumbprint, since the other documents are initialled by the defendant;

Whereas the receipt is clearly for the sum of 2,000 francs and not for the sum of 7,000 francs as stated in the summons;

Whereas an extra-judicial admission cannot cover an undeniable error of fact;

Whereas this count of the complaint should be dismissed;

NOW THEREFORE,

THE COURT, handing down judgment by default;

FINDS the action just and well founded except in so far as it calls for the repayment of a sum of SEVEN THOUSAND FRANCS (7,000. Francs) which is the subject of the receipt dated 16 July 1952;

FINDS the contract concluded between the parties broken by the defendant owing to his failure to deliver cattle to the value of 48,670 francs;

SENTENCES the defendant to pay the plaintiff the sum of 48,670 francs, with interest at 8 per cent per annum from 5 January 1954 until payment is completed;

SENTENCES THE DEFENDANT further to pay court fees and costs;

DECLARES this judgment to be provisionally enforceable notwithstanding any appeal which may be brought, and without security;

SO DECIDED and judgment delivered at USUMBURA, in public session on the THIRD DAY OF MARCH IN THE YEAR NINETEEN HUNDRED AND FIFTY FOUR, in the presence of Mr. A. VAN HOECK of the Public Prosecutor's Department, Mr. Christian de BEER de LAER being the Judge and Mr. Maurice MEEUWES the Registrar.

REGISTRAR

JUDGE

(Signed) M. MEEUWES

(Signed) Ch. de BEER de LAER

Certified True Copy by the  
Assistant Registrar  
M. MEEUWES

RESIDENCY CRIMINAL COURT OF URUNDI, USUMBURA  
CHAMBER, SITTING AT USUMBURA, HAS HANDED DOWN  
THE FOLLOWING JUDGMENT:

PUBLIC SESSION OF 6 JULY 1954

IN THE MATTER OF:  
THE PUBLIC PROSECUTOR'S DEPARTMENT  
VS

1. NTUNGUKA Barnabé, son of Nyamusimba (deceased) and of Ntifishwe (deceased), native of Kasenyi hill, chiefdom of Mushasha-Nord, Territory of Bubanza, resident of Rulinga in the aforesaid chiefdom and Territory, in preventive custody at Usumbura prison, 55 years of age;
2. KORI, son of Mahirire (living) and of Ntimara (deceased), native of Kasenyi hill, chiefdom of Mushasha-Nord, Territory of Bubanza; resident of Bulinga hill in the aforesaid chiefdom and Territory, herdsman, amugaragu of Ntunguka, at liberty;
3. MUGESO, son of Kisosi (deceased) and Ntaweninda (living), native of Kasenyi hill, chiefdom of Mushasha-Nord, Territory of Bubanza, resident of Bulinga hill in the aforesaid chiefdom and Territory, herdsman, amugaragu of Ntunguka, at liberty;
4. RWABIKERO, son of Ntango (deceased) and of Ntimasimba (deceased) native of Rugombo hill, chiefdom of Mushasha-Nord, Territory of Bubanza, resident of Bulinga hill in the aforesaid chiefdom and Territory, herdsman in the service of Ntunguka, at liberty;

Considering the proceedings brought against the aforementioned accused:

It is charged against the four accused that:

Acting as perpetrators, co-perpetrators and accomplices, in accordance with the provisions of articles 21 and 22 of the Penal Code, Book I, in the chiefdom of Mushasha-Nord, Territory of Bubanza, Residency of Urundi, and specifically in the plain of Kajeke, on the day of 22 May 1954, they did fraudently seize forty-five and eighteen head of cattle from the indigenous chief NYARUSAGE Athanase and the indigenous inhabitant GABINO Bahundukizi respectively, to a total value

of 189,000 francs, with the additional circumstance that three of the four accused were each carrying a spear and a knife - Offence provided for and made punishable under articles 21, 22 and 23 of the Penal Code, Book I, and articles 79 and 81, 5, of the Penal Code, Book II:

It is charged against NTUNGUKA alone that:

(1) At Bulinga, chiefdom of Mushasha-Nord, Territory of Bubanza, Residency of Urundi, on the morning of Sunday, 23 May 1954, he resisted with violence and threats the efforts of Mr. FREZIN, the Chief Administrator of the Territory of Bubanza, and Mr. BALTHAZAR, Chief Territorial Police Officer, an order of the authorities, namely the summons to appear issued against the accused - offence provided for and made punishable under articles 133 and 134 of the Penal Code, Book II;

(2) At the same time and place, by deeds, gestures and words, he insulted Mr. FREZIN, The Chief Administrator of the Territory of Bubanza, and Mr. BALTHAZAR, Chief Police Officer, carrying out their duties by replying to them, when they came to his house and requested him to produce the stolen cattle and to place himself at their disposal to be brought before the Examining Magistrate at Usumbura: "You will not take me alive, I shall kill myself. Go away.". During this time he remained seated in front of his house within his own enclosure, the entries to which had been barricaded, holding a spear in one hand and a sword of indigenous manufacture in the other - Offence provided for and made punishable under article 136 of the Penal Code, Book I.

(3) At the same time and place, by gestures and words, he insulted NYARUSAGE Athanase, Chief of the Chiefdom of Mushasha-Nord, police officer, in the exercise of his functions, saying to him: "You are just the person I have been looking for; if you are a man, come near me and you will be seen ukabone" - an act provided for and made punishable under article 136 of the Penal Code, Book II."

Considering the summons served on the accused KORI, MUGESO and RWABIKERO by the process-server, Albert BALTHAZAR of Kihanga, Territory of Bubanza, on 29 June 1954 and on the accused NTUNGUKA Barnabé by The process-server, Jean DUFONT, of Usumbura, on 28 June 1954 to appear before this Court sitting at Usumbura on 2 July 1954 at eight o'clock in the morning;

Considering the hearing of 2 July 1954;

Considering that all four of the accused having been duly summoned appeared at this hearing;

Having heard the examination of the accused;

Having heard the testimony of the witnesses;

Having heard the Public Prosecutor's representative in his address to the Court, requesting the Court to find that the charges against NTUNGUKA of theft with aggravating circumstances and of insulting behaviour have been proved and consequently to SENTENCE HIM: on the first count to penal servitude for THREE YEARS; on the third count to penal servitude for TWENTY DAYS; on the fourth count to penal servitude for FIFTEEN DAYS; to three-sevenths of the costs or SEVEN DAYS imprisonment.

To pronounce a total sentence of THREE YEARS and THIRTY-FIVE DAYS;

TO FIND that the charge against the accused Ntunguka of resistance to authority has not been established and therefore to ACQUIT HIM on this count;

TO FIND that the charge against the accused KORI, MUGESO and RWABIKERO of taking part in the theft as co-perpetrators has been established; TO SENTENCE them on this count to penal servitude for ONE YEAR and the payment by each of one-seventh of the costs or SEVEN DAYS imprisonment and to order their immediate arrest;

To charge one-seventh of the court costs to the Government of Ruanda-Urundi;

HAVING HEARD the statements and the defence of the accused;

Considering that the matter was postponed to the public session of July 1954 for the pronouncing of the sentence;

AND that at this session at which all four accused have appeared, the court hands down the judgment reproduced below;

WHEREAS the preliminary examination and the testimony at the hearing, particularly the depositions of the witnesses MUYURU, BANKAHUNGUZA, NZISHURA and KAGIMBI and the depositions of the two plaintiffs, Chief NYRUSAGE Athanase and the man named GABINO, as well as the complete and substantiated statements of the accused, show that early in the afternoon of Saturday, 22 May 1954, the



said NTUNGUKA accompanied by the said KORI, and MUESO, on the way to Kihanga where his twenty-five head of cattle, duly seized during the morning in accordance with an order of the Usumbura Court of First Instance, had been taken, came upon a herd of forty-five head of cattle belonging to the indigenous chief NYARUSAGE Athanase, and a herd of eighteen cattle belonging to the said GABINO on the plain of Kajeke, Chiefdom of Mushasha-Nord, Territory of Bubanza, Residency of Urundi;

THAT after an indigenous inhabitant who was passing by had confirmed that the herd in question did in fact belong to Chief NYARUSAGE, he approached the said herd and assisted by his two companions collected the cattle together, drove them from the pasture and took them to Bulinga, three or four kilometres away, where he locked them up in his enclosure;

THAT at the approach of the three aforementioned accused, each armed with a spear and a knife, the two herdsman, MUYUKU and BANKAHUNGUZA, left the herd and kept at a distance;

THAT when he was enjoining his two companions to help him seize the cattle, the first accused addressed the other two in the following terms: "A cow is a cow. He (Nyarusage) has taken my cattle and I shall take his, Because of him my children will have no milk; I in turn shall deprive his children of theirs"; that he repeated the same words to the herdsman MUYUKU, charging him to report the words to his master, Chief NYARUSAGE;

THAT on the way to Bulinga the first three accused were rejoined by the fourth accused RWABIKERO, a herdsman in NTUNGUKA'S service;

THAT RWABIKERO had apparently come to inform his master of the seizure of the latter's cattle; that he had no part in the seizure of NYARUSAGE'S cattle but simply accompanied his master to Bulinga, hearing, as a herdsman in Ntunguka's service, to drive the stolen cattle;

WHEREAS furthermore sufficient legal evidence was produced in the preliminary examination and at the hearing, from the formal and concordant depositions of the plaintiffs, that on the following day towards eight o'clock in the morning Mr. FREZIN, Chief Administrator of the Territory of Bubanza, armed with a warrant to appear issued against the first accused by the Parquet of Usumbura, and accompanied by Mr. BALTHAZAR, Chief Territorial Police officer, went to Ntunguka's home to arrest him and take him before the Examining Magistrate;

THAT upon arriving there he found chief NYARUSAGE, and about two hundred indigenous inhabitants armed with spears, machetes or knives surrounding NTUNGUKA'S enclosure, the entry to which had been barricaded by the latter;

THAT inside the enclosure NTUNGUKA was standing still in front of his house, armed with a war spear and a sword of indigenous manufacture, that upon being ordered by Mr. FREZIN to produce the cattle which he had stolen from the pasture the previous day and to give himself up so that he could be taken to Usumbura he replied: "You will not take me alive, I shall commit suicide, go away - OINDOKA";

THAT the indigenous inhabitants who had been ordered by Mr. FREZIN to remove the stolen cattle and return them to their respective owners then broke into NTUNGUKA'S enclosure;

THAT upon the entry of the indigenous inhabitants NTUNGUKA withdrew backwards into the small enclosure, holding his spear and sword before him; that no indigenous inhabitant approached him; and that he himself neither threatened nor struck anyone;

WHEREAS NYARUSAGE states that upon his arrival at the rugo of the first accused, the latter told him: "You are just the person I have been waiting for, if you are a man come near me and you will be seen", whereas the first accused denies having made such a statement, and whereas there is no evidence to corroborate NYARUSAGE'S statements;

WHEREAS the testimony showed that, upon NYARUSAGE'S arrival the first accused advanced towards him and informed him that one of the stolen cows had calved and that the calf was in good health, and that NYARUSAGE thanked him for the information;

WHEREAS the latter statement, confirmed by NYARUSAGE, makes the alleged insulting of NYARUSAGE unlikely;

WHEREAS, with regard to the nature of the charge, under the provisions of article 79 of the Penal Code, Book II, "Any fraudulent taking of property belonging to another" is considered to be theft;

WHEREAS the taking of property consists in the seizure and removal of property against the will or without the consent of the owner, possessor or legitimate custodian (See Garraud No. 2373, Coedsels No. 2725, Schnind Ed. 1944 page 311, Marchal and Gaspar No. 1184, Mineur Ed. 1953 pages 188-189), and this requirement was fulfilled;

WHEREAS it is recognized in the general doctrine and the established jurisprudence of Belgian law, both in the metropolitan country and in the colonies, as well as in French law, that the word "fraudulent" in the definition of theft which describes the moral factor in the offence, the motive for the removal, includes the intention either unlawfully to appropriate to oneself the property of another in order to procure an unlawful advantage for oneself or for a third party or to do wrong without desire for gain solely in order to harm the owner or possessor of the property to take revenge (see Nypels and Servais sb.art.461 No. 21-26, Schnind Ed. 1944 page 312, Goesels No. 2475 - Marchal and Gaspar No. 1185, Mineur Ed. 1953, pages 190-192, Garraud No. 2385 and note No. 70; Eville 7 March 1916. Jurisp. col. 1926 page 323 - Première Instance Appel Eville 16 April 1929; R.J.C.B. 1929 page 129 - Léo 17 September 1940; R.J.C.B. 1941 page 102, Note under Léo 25 March 1943 signed V.D.; R.J.C.B. 1943 page 184);

WHEREAS the circumstances which preceded, accompanied and followed the seizure of the cattle by NTUNGUKA and his accomplices, in particular the seizure by the first accused of twenty-five head of cattle which had been placed in Chief NYARUSAGE'S custody in the words uttered by the aforesaid accused at the time of the seizure of the Chief's cattle and the message sent to the latter through the herdsman MUYUKU, the restoration of the cattle to its owners only under compulsion, as well as the statements of the accused himself at the hearing, show beyond any possible doubt that the motive behind Ntunguka's action was to harm the presumed owner of the sixty-three head of cattle that had been seized, namely the indigenous Chief NYARUSAGE, in a spirit of vengeance;

WHEREAS the second and third accused, KORI and MUGESO, co-operated directly in the offence, and should therefore be punished in accordance with articles 21 and 23 of the Penal Code, Book I, as co-perpetrators;

WHEREAS at the time of the removal of the cattle the first three accused were each carrying a spear and a knife;

WHEREAS the fourth accused, RWABIKERO, did not participate in the offence;

WHEREAS the first acts cited are therefore evidence that the first three accused of armed theft participated as co-perpetrators of the offence - offence provided for and made punishable under articles 21 and 23 of the Penal Code, Book I, and articles 79 and 81, 5<sup>o</sup>, of the Penal Code, Book II;

WHEREAS in the absence of an "attack" or "resistance with violence or threats" against police officers the acts referred to in the second count cannot be qualified as obstruction and therefore the charges against the accused Ntunguka on this count should be dismissed;

WHEREAS, with regard to the acts mentioned in the third and fourth counts, the gestures and words of the accused were manifestly contemptuous, in view of the circumstances, and constitute an infringement of the respect due to the police;

WHEREAS, being directed against the police in the exercise of their duties and with intent to insult them, these acts come under article 136 of the Penal Code, Book II, which punishes contempt of representatives of the police;

WHEREAS the acts mentioned in the fourth count have not been sufficiently proved and the charges against the first accused under this count should be dismissed;

WHEREAS having regard to the sentences to be pronounced there are highly extenuating circumstances to be taken into account in favour of the second and third accused, such as the absence of any known police record, the fact that they were bound to the first accused by a contract of "ubuhake", that in their minds as umugaragu they could not avoid obeying the order given by NTUNGUKA, their shebuja and the fact that they had tried to dissuade the first accused from committing the offence;

WHEREAS it is also important to take into account in favour of the first accused his state of excitement and anger at the time of his seizing the cattle, an act which he had decided upon suddenly and without reflection and which he put into effect at once;

WHEREAS with regard to the first three accused it should be pointed out that no material damage was actually caused to the plaintiffs, who recovered all their property less than twenty-four hours after the theft;

And WHEREAS, for this last reason there is no ground for awarding damages to the plaintiffs, indigenous inhabitants of Ruanda-Urundi;

NOW, THEREFORE, PRONOUNCING JUDGMENT AFTER HEARING ALL PARTIES

CONSIDERING the Congo Penal Code made applicable in Ruanda-Urundi by O.R.U. 43/Just. of 18 May 1940 and particularly articles 5, 7-9, 15-23 of Book I, 79, 81, 5<sup>o</sup>, 133 and 134 of Book II;

CONSIDERING the Congo Code of Penal Procedure, made applicable in Ruanda-Urundi by O.R.U. 11/82 of 21 June 1949;

CONSIDERING the Decree of 5 July 1948 on the re-organization of the judiciary in Ruanda-Urundi, in particular articles 29-31, 64 and 69;

FINDS that the charges of theft with aggravating circumstances and insults to Mr. FREZIN and Mr. BALTHAZAR, as described in the complaint, have been established against the accused NTUNGUKA and therefore SENTENCES HIM:

On the first count to THREE YEARS penal servitude;

On the third count to TWENTY DAYS penal servitude;

FINDS that, owing to the nonconcurrence of the sentences, a total of THREE YEARS AND twenty days penal servitude is imposed;

FURTHER SENTENCES the accused to pay two-sevenths of the costs of the trial amounting to a total of 556 francs, that sum officially reduced to SEVENTY-FIVE francs and, in the event of failure to pay within the legal time-limit, to SEVEN DAYS imprisonment;

FINDS that the charges of resistance and of insulting Chief Nyarusage brought against the accused Ntunguka have not been established and therefore ACQUITS him of the charge on this count;

FINDS that the charge of participation in the theft as co-perpetrators has been established against the accused KORI and MUGESO and SENTENCES each of them on this count to SIX MONTHS penal servitude and to pay one-seventh of the costs of the trial, amounting to a total of 228 francs each, that sum officially reduced to 75 francs each and, in the event of failure to pay within the legal time-limit, to seven days imprisonment;

Charges three-sevenths of the court costs, amounting to a total of 833.50 francs, to the Government of Ruanda-Urundi:

FINDS that the charge against RWABIKERO of participation in the theft as a co-perpetrator has not been established and therefore dismisses the charge against him without costs;

AND whereas there is reason to believe that the accused may attempt to avoid sentence;

ORDERS their immediate arrest;

SO HELD and sentence pronounced at Usumbura in public session on  
6 July 1954; on the bench Mr. H. E. VAN TICHELEN, Deputy Judge, Ghislain TACQ,  
Public Prosecutor's Department, Gilbert GUILLAUME, Acting Registrar:

Acting Registrar (signed) G. GUILLAUME

Deputy Judge (signed) H. E. VAN TICHELEN

CERTIFIED TRUE COPY

THE ACTING REGISTRAR (signed) GUILLAUME G.

Seal of the Residency Court of Urundi, Usumbura Chamber.

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