

ICTR-96-7-T
31.3.1998
(308-305)

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Case No. ICTR-96-7-T

UNITED NATIONS  NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR
CRIMINAL REGISTRY
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CHAMBER II CHAMBRE II

OR:ENG.

Before: Judge William H. Sekule, Presiding Judge
Judge Laity Kama
Judge T. H. Khan

Registry: Mr. Kesia M. Mindua

Decision of: 26 June 1997

THE PROSECUTOR
VERSUS
THEONESTE BAGOSORA

Case No. ICTR-96-7-T

DECISION ON THE REQUEST BY THE ACCUSED
FOR CHANGE OF ASSIGNED COUNSEL.

The Office of the Prosecutor:

Mr. James Stewart
Ms. Jose D'Aoust

Counsel For the Defence

Mr. Benjamin Ondingui

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("The Tribunal"), sitting as Trial Chamber II, composed of Judge William H. Sekule, Presiding, Judge Laïty Kama, and Judge Tafazzal H. Khan;

CONSIDERING that by a letter dated 30 August 1996, the accused, Theoneste Bagosora requested the Registrar of the Tribunal to assign him a Defence Counsel and indicated his choice as being first Mr Fakhy N'fa Kaba Konate, Mr Benjamin Ondingui and Mr Luc De Temmerman in that order;

CONSIDERING ALSO that since his first and third choices of Counsel were not honoured because the Counsels had already been assigned to represent other accused persons, the accused had opted for Mr Benjamin Ondingui as Defence Counsel;

CONSIDERING FURTHER that by a letter dated 28 February 1997, the Registry confirmed that the accused had been assigned Mr Benjamin Ondingui as his Defence Counsel;

CONSIDERING that the Defence Counsel has already appeared before the Tribunal on behalf of the accused at the initial appearance on 7 March 1997;

HAVING RECEIVED a copy of the letter addressed to the Registrar dated 30 May 1997 complaining about his Defence counsel, Mr Benjamin Ondingui and requesting for the replacement of his assigned Counsel;

BEING SEIZED OF an oral motion for change of Counsel prior to the hearing on merit of the Prosecution motion for Protective Measures for Witnesses and Victims filed on 10 April 1997;

CONSIDERING THAT the above said motion was adjourned to enable the oral application of the accused to be heard;

HAVING HEARD the accused on 27 June 1997 and taking into account the reasons advanced by the accused for change of Assigned Counsel notably that he had lost confidence in his Assigned Counsel on account of his failure to communicate with him to seek his opinion on the defence strategy and to inform him about the way the case was proceeding;

WHEREAS, the Defence Counsel, Mr Benjamin Ondingui, whilst objecting to the allegations made by the accused against his professional conduct submitted that the accused misunderstood the role of Counsel as being that of carrying out each and every request of the accused without

Bagosora chg/counsl/26/6/97



leaving his Counsel the freedom to choose his line of defence.

WHEREAS FURTHER the Assigned Counsel argued that due to financial constraints he could not travel to Arusha to meet with the accused but that in any case he had actually contacted the accused by fax on 22 April 1997;

AND WHEREAS Consequently, the said Counsel was of the view that notwithstanding his limited communication with the accused, nothing had happened since 7 March 1997 to warrant any other meetings with the accused hence no negligence exists on his part;

WHEREAS the Tribunal is satisfied that there was no meaningful communication between the accused and his counsel as shown by the fact that the only instances of contact made by the Assigned Counsel comprised of his contact with the accused at the initial appearance and again as stated above on 22 April 1997 when on both occasions no substantial discussion was held between the parties concerned in respect of the conduct of the case and or its strategy;

BEING AWARE OF THE FACT THAT an accused person needs constant contact with his Counsel and that in this case it has been shown that the Assigned Counsel made no substantive contact with the accused by either telephone or fax and no physical meeting whatsoever was held with the accused since the initial appearance on 7 March 1997;

WHEREAS the Tribunal considers that in the circumstances of this case there no longer exists a relationship of trust between the accused and the Assigned Counsel, Mr Benjamin Ondingui, that this lack of communication created a justified lack of confidence on the part of the accused;

WHEREAS the Tribunal notes that his failure to communicate effectively with the accused could not have been as a result of lack of money on the part of the Assigned Counsel as no case has been made out to this effect;

WHEREAS ALSO in light of the decision rendered by the Tribunal on 20 November 1996 in the case of The Prosecutor versus Jean-Paul Akayesu (Case No. ICTR-96-4-T), the Tribunal found lack of confidence by the accused in his Counsel to be an exceptional circumstance warranting the replacement of Assigned Counsel within the ambit of Article 19(D) of the Directive and granted that request;

AND WHEREAS the Tribunal notes that the circumstances as they exist and as revealed at the hearing of the motion depicts an irremediable break down of the relationship between the accused Theoneste Bagosora and his Assigned Counsel;

Bagosora chg/couns/26/6/97



AND WHEREAS FINALLY the Tribunal is therefore of the view that the aforementioned factors constitute exceptional circumstances required for the replacement of assigned counsel as provided for in Article 19 (D) of the Directive;

FOR ALL THE ABOVE REASONS, THE TRIBUNAL

FINDS that exceptional circumstances, as provided for by Article 19(D) of the Directive, do exist in the present case,

GRANTS relief to the request of the accused to be assigned a new counsel in the present case.

INSTRUCTS the Registrar, in accordance with Article 19(C) of the Directive to immediately assign a new counsel to the accused.

Arusha, 26 June 1997

Judge William H. Sekule,
Presiding Judge

Judge Laity Kama
Judge

Judge T. H. Khan
Judge

(Seal of the Tribunal)

