

ICTR-96-13-I
S-11-1997
(40-37)

40
#

UNITED NATIONS  NATIONS UNIES

International Criminal Tribunal for Rwanda

TRIAL CHAMBER I

OR: ENG

Before: Judge Laity Kama, Presiding
Judge Lennart Aspegren
Judge Navanethem Pillay

Registry: Frederik Harhoff

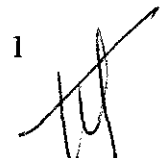
Decision of: 31 October 1997

THE PROSECUTOR
versus
ALFRED MUSEMA

Case No. ICTR-96-13-I

WARNING AND NOTICE TO COUNSEL
IN TERMS OF RULE 46A OF THE RULES OF PROCEDURE AND EVIDENCE

ICTR
RECEIVED
5 NOV 1997
ACTION: Registrar.
COPY 1

1


ICTR-96-13-I

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA, (the "Tribunal")

SITTING as Trial Chamber I composed of Judge Laïty Kama as Presiding Judge, Judge Lennart Aspegren and Judge Navanethem Pillay;

WHEREAS the accused, Alfred MUSEMA, was arrested in Switzerland on 11 February 1995;

CONSIDERING the Tribunal's Decision of 15 June 1996 confirming the indictment against the accused and the Warrant of Arrest and Order for Surrender of that same day, addressed to the authorities of Switzerland;

TAKING INTO ACCOUNT that the Registrar, in accordance with the choice made by the accused, assigned Ms. Marie-Paule Honegger of the Swiss Bar as his Defence Counsel on 18 December 1996, prior to which she had already assisted the accused in litigation in Switzerland;

NOTING that the accused, pursuant to the Tribunal's aforesaid Warrant of Arrest and Order for Surrender, was transferred to the Tribunal's Detention Facility in Arusha on 20 May 1997 and is still detained there without having his plea recorded before the Tribunal;

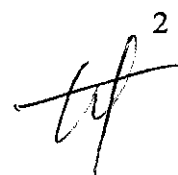
WHEREAS the initial appearance of the accused before the Tribunal was adjourned twice, namely on 16 June 1997 and again on 3 September 1997, due to the assigned Defence Counsel's disregard of the fixed dates for the initial appearance of her client, who on both occasions declined to accept alternate counsel;

CONSIDERING the provisions in Rules 46 and 62 of the Tribunal's Rules of Procedure and Evidence (the "Rules");

TAKES NOTE OF THE FOLLOWING

1. Through several telephone calls made in May and June 1996 by the legal staff of the Registry to the Defence Counsel, Ms. Honegger indicated that she would be unable to travel to Arusha for the initial appearance of her client in May 1996 because she was too busy, or in June and July on the grounds that these months were her summer vacation period.
2. A date for the accused's initial appearance was then arranged by the President of the Tribunal for the 16 June 1997, and the accused and Ms. Honegger were duly advised of the date.
3. By letter dated 11 June 1997, however, the accused informed the Registrar that he had contacted Ms. Honegger who had informed him that she was not available until the 28 June 1997. He declined the Registrar's offer of substitute counsel to assist him at his initial appearance and indicated that he elected to wait for his appointed counsel.

WarningCounsel/Rule46/Chamber1/eng

 2

ICTR-96-13-I

4. The legal staff of the Registry endeavoured to contact Ms. Honegger and left several messages on her answering service, but the calls were not returned by her or by her office. On 13 and 14 June 1997, telephone contact was established with Ms. Honegger's assistant, Mr. Desarnaulds, who informed the Tribunal staff member that Ms. Honegger was not in Geneva and would not represent the accused before the Tribunal on the date set down for his initial appearance.

5. On 16 June 1997, the accused was brought before Trial Chamber I for his initial appearance. Ms. Honegger was not present. The Accused declined to plead without the presence of his counsel and declined the offer of substitute counsel for the day. He requested a postponement which was granted by the Chamber.

6. On 17 June 1997, the legal staff of the Registry again called Ms. Honegger to ascertain her availability before fixing the next date for the accused's appearance. She responded to the effect that she was not willing to represent the accused until she had been paid for her prior legal services for the accused, and unless an air ticket was sent to her.

7. By letter dated 19 June 1997 Ms. Honegger set out to the Registrar her pre-conditions before she undertakes representation of the accused. These were, inter alia, prior-payment of her claims, her visa and health requirements and time-frame constraints. She further indicated her vacation periods as 20-29 June 1997 inclusive and 25-29 August 1997 inclusive.

8. In view thereof, the President of the Tribunal then fixed a further date for the accused's initial appearance for 3 September 1997.

9. In the earlier part of August 1997, the Registry's legal staff attempted to reach Ms. Honegger to inform her of the fixed date for the initial appearance and left messages for her on her answering machine, as well as with her secretary and with Mr. Desarnauld. None of the calls were returned.

10. On 12 August 1997, the staff member spoke with Ms. Honegger and informed her that in the court calendar the first week in September was available for the accused's appearance. Ms. Honegger responded that she was still awaiting payment of monies claimed by her and was not prepared to come to the Tribunal until such payment was made.

11. On 3 September 1997 the accused was once again brought before Trial Chamber I. Ms. Honegger was not present. The accused again declined to plead to the charges without the presence of his counsel and declined to accept alternate counsel. His request for a further postponement of the proceedings was granted by the Chamber, subject to a warning by the President that if the difficulties over his counsel were not resolved, and if she continued to default in appearing before the Trial Chamber, the Registrar would be directed to reconsider the assignment of his counsel.

12. On 20 and 21 October 1997, the legal staff attempted to contact Ms. Honegger and left messages on her answering service. The calls were not returned.

ICTR-96-13-I

13. On 22 October 1997, the staff member spoke with Ms. Honegger's secretary, who informed him that Ms. Honegger was travelling and would be returning to Geneva on 27 October. He called Ms. Honegger on 27 October and informed her that the Trial Chamber wished to proceed with the accused's initial appearance without further delay. She responded that she had now received payment but was very busy and would not be available before December 1997; she also intended to apply for the assignment of Mr. Steven Kay as co-counsel for the accused, but as the latter was not available until the 26 January 1998, the initial appearance could not take place before 28 January 1998.

14. The President of the Tribunal was not prepared to countenance any further delays in this matter, particularly since the Tribunal is obliged in terms of Rule 62 of the Rules to record the accused's plea to the charges "without delay" after his transfer to the Tribunal. Accordingly a further and final time for the Initial Appearance of the Accused has been set for Tuesday 18 November 1997 at 09:30 hours, in Arusha.

AFTER HAVING DELIBERATED,

The Tribunal concludes, upon due consideration of the above mentioned facts, that the conduct and lack of co-operation of Ms. Honegger is obstructing the proceedings and is contrary to the interests of justice;

THE TRIBUNAL HEREBY

REQUIRES the assigned Defence Counsel, Ms. Marie-Paule Honegger of the Swiss Bar, to be present in person before the Tribunal as Counsel for the accused, Alfred MUSEMA, on Tuesday 18 November 1997 at 9:30 hours for his initial appearance;

ISSUES a warning to the assigned Defence Counsel, pursuant to Rule 46(A) of the Rules, that she may be sanctioned by the refusal of further audience before the Tribunal if she defaults in complying with the Tribunal's request, in which case the Tribunal will instruct the Registrar to replace her as counsel for the accused under Rule 46(C); and

INSTRUCTS the Registrar to communicate this warning to the Swiss Bar Association.

Arusha, 31 October 1997

[Signature]
Latty Kama
Presiding Judge

[Signature]
Lennart Aspegren
Judge

[Signature]
Navanethem Pillay
Judge

