

ICTR-96-13-I
(25.11.1997
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ICTR
CRIMINAL REGISTRY
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UNITED NATIONS



NATIONS UNIES

International Criminal Tribunal for Rwanda

1997 NOV 25 P 2-31

TRIAL CHAMBER I

OR: ENG

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

Registry: Mr. Frederik Harhoff

Decision of: 18 November 1997

THE PROSECUTOR

versus

ALFRED MUSEMA

Case No. ICTR-96-13-I

**DECISION
TO WITHDRAW ASSIGNED COUNSEL AND
TO ALLOW THE PROSECUTOR TEMPORARILY TO REDACT
IDENTIFYING INFORMATION OF HER WITNESSES**

Office of the Prosecutor:

Mr. Pierre-Richard Prosper

Counsel for Accused:

Ms. Marie-Paule Honegger (not present)

WithdrawalCounsel/Rule46/Chamber1/eng

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

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

NOTING that the accused, Alfred MUSEMA, was arrested in Switzerland on 11 February 1995, indicted by the Tribunal pursuant to the confirmation of the indictment signed by Judge Yakov Ostrovsky on 15 June 1996 and transferred from Switzerland to the Tribunal's Detention Unit in Arusha on 20 May 1997;

TAKING INTO ACCOUNT that the Registrar, in accordance with the choice made by the accused, had assigned Ms. Marie-Paule Honegger of the Geneva Bar as his Defence Counsel on 18 December 1996;

WHEREAS the initial appearance of the accused before the Tribunal was scheduled twice, on 16 June 1997 and again on 3 September 1997, and on each occasion the initial appearance of the accused before the Tribunal had to be adjourned due to Ms. Honegger's disregard of the fixed dates for the initial appearance of her client, Alfred Musema, who on both occasions declined to accept alternate counsel;

REFERRING to the Tribunal's Warning and Notice of 31 October 1997 to Ms. Honegger pursuant to Rule 46(A) of the Rules of Procedure and Evidence of the Tribunal (the "Rules"), wherein the Tribunal concluded that the assigned Counsel's conduct and lack of co-operation are obstructing the proceedings and are contrary to the interests of justice, and therefore warned her that she may be sanctioned by refusal of further audience before the Tribunal, if she did not comply with the Tribunal's request to represent in person her client during his initial appearance, scheduled anew for 18 November 1997;

TAKING INTO ACCOUNT the letter of the Defence Counsel of 14 November 1997 to the Tribunal, which was received by facsimile on 15 November 1997;

TAKING NOTE of the fact that the assigned Defence Counsel, despite the said warning and notice, has not presented herself for the initial appearance of her client on 18 November 1997 in accordance with Rule 62 of the Rules, as requested by the Tribunal;

HAVING HEARD the accused today at the said initial appearance, during which he pleaded not guilty to all charges raised against him in the indictment;

CONSIDERING the provisions in Article 19 of the Statute of the Tribunal and Rules 46 and 62 of the Rules;

HAVING RECEIVED, during the initial appearance of the accused, the Prosecutor's oral request pursuant to Rule 69 of the Rules for permission to temporarily redact the names and identifying information of the Prosecutor's witnesses in the supporting material until such time as the Chamber has ordered measures for protection of her witnesses;

AFTER HAVING DELIBERATED,

Concerning the Defence Counsel

1. The right of the accused to appear initially before the Tribunal “without delay” in order to be formally charged and to enable the accused to plead guilty or not guilty to the charges is an inextricable right, which shall not be suspended or obstructed for any reason.

2. Pursuant to Rule 62 of the Rules, the Chamber shall satisfy itself that the right of the accused to counsel has been respected and shall have the indictment read out to the accused in a language he or she understands and in such a manner as to satisfy the Chamber that the accused has also understood the indictment and the charges brought against him or her.

3. In the present case, the Tribunal notes that the Registrar, on 18 December 1996, assigned a Defence Counsel to the accused and did so prior to his questioning by the Prosecutor’s investigators. In the Tribunal’s view, thus, the accused’s right to counsel has been fully respected.

4. The Tribunal, however, has been unable to obtain the necessary co-operation of Ms. Honegger, who has twice caused the suspension of the initial appearance of the accused. For this reason, the Tribunal has been compelled to proceed and arrange for the initial appearance of the accused without the assistance of the Defence Counsel.

5. Prior to formally charging the accused by having the indictment read out to him during the initial appearance, the Tribunal clarified with the accused that his pleading guilty or not guilty to the charges without the presence of his lawyer did not deprive him of his right to counsel and further explained to him that should he fail to plead to the charges, a plea of not guilty will be entered on his behalf. After having satisfied itself that the accused had understood and accepted this, the Tribunal proceeded with the initial appearance. The Tribunal recalls that the accused would, in any event, be entitled to conduct his own defence if he so chose, by virtue of Rule 45(F) of the Rules.

6. The Tribunal notes that the accused, during his initial appearance, declared that he was satisfied with Ms. Honegger as his lead counsel and that he was prepared to accept the co-counsel suggested by her, Mr. Steven Kay of the United Kingdom.

7. The Tribunal, however, is unable to accept the reasons expressed by Ms. Honegger in her letter of 14 November 1997 to explain her absence during the initial appearance of her client. Making her presence at the Tribunal conditional upon the Tribunal’s advance payment of her air ticket and her claims for prior legal services, notably, and awaiting assignment of co-counsel who is unavailable before 26 January 1998, are obviously and clearly insufficient grounds for further postponement of the initial appearance.

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8. Finding no reasonable or compelling grounds in the response by the assigned counsel for refusing to be present at the Tribunal for the initial appearance of her client, the Tribunal will give effect to the warning to the Counsel issued on 31 October 1997 according to Rule 46(C) of the Rules, by refusing her further audience before the Tribunal;

Concerning the Prosecutor's request

9. The Tribunal finds that there are good reasons to grant the Prosecutor's request to redact the identifying information relating to her witnesses.

FOR THESE REASONS,

THE TRIBUNAL

FINDS that the conduct of the assigned Defence Counsel, Ms. Marie-Paule Honegger, despite the warning issued to her on 31 October 1997, continues to obstruct the proceedings and remains contrary to the interests of Justice;

DECIDES, therefore, pursuant to Rule 46(C) of the Rules, to refuse further audience to Ms. Honegger before the Tribunal;

INSTRUCTS the Registrar to withdraw the assignment of Ms. Honegger as defence counsel for the accused, Alfred Musema, and to immediately assign a new defence counsel to him;

FURTHER INSTRUCTS the Registrar to send to the Geneva Bar a copy of this Decision and of the above mentioned Decision of 31 October 1997;

DECIDES, pursuant to Rule 69 of the Rules, to grant permission to the Prosecutor to temporarily redact the names and other identifying information of her witnesses in the supporting material until such time as the Tribunal has ordered protective measures for the Prosecutor's witnesses;

REMINDS the Prosecutor that, subject to Rule 75 of the Rules, the identity of the victims or witnesses shall be disclosed in sufficient time prior to the trial to allow adequate time for preparation of the defence.

Arusha, 18 November 1997

Lennart Aspegren

Lennart Aspegren
Presiding Judge

Laity Kama

Laity Kama
Judge

Navanethem Pillay

Navanethem Pillay
Judge

(Seal of the Tribunal)

WithdrawalCounsel/Rule46/Chamber1/eng

