

ICTR-96-10A-I
17-08-1999
(887-884)

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Case No. ICTR-96-10A-I



International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

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CRIMINAL REGISTRY
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OR:Eng

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Yakov A. Ostrovsky
Judge Tafazzal Hossain Khan

Registry Mr. John Kiyeyeu

Decision of 21 May 1999

THE PROSECUTOR
versus
ANDRÉ NTAGERURA

Case No. ICTR-96-10A-I

**DECISION ON THE DEFENCE MOTION REQUESTING FOR THE
WITHDRAW OF THE WARNING ISSUED AGAINST THE DEFENCE
COUNSEL**

The Office of the Prosecutor:

Mr. Bernard Mono
Mr. Don Webster
Mr. Alphonse Van

Counsel for the Accused:

Mr. Fakhy N'Fa Kaba Konate
Mr. Benoit Henry

The International Criminal Tribunal for Rwanda (“ the Tribunal”)

SITTING AS Trial Chamber II composed of Judge William H. Sekule, Presiding, Judge Yakov A. Ostrovsky and Judge Tafazzal H. Khan (“the Trial Chamber”);

BEING SEIZED of a Defence motion filed on 10 December 1998 pursuant to rule 46 of the Rules of Procedure and Evidence (“ the Rules”) in which the Defense Counsel seeks to lift a warning issued against him by the Trial Chamber on 18 November 1998 for non-appearance without due reason;

CONSIDERING the proceedings before the Trial Chamber on 18 November 1998 when the Defense Counsel failed to appear as a result of which he was cautioned;

WHEREAS the Defense Counsel submitted that since his assignment as Lead Counsel in 1996, he has never behaved irreverently before the Tribunal;

WHEREAS FURTHER the said Counsel advanced the reasons for his failure to appear, which includes inter alia, the non-payment of fees for the Defence Team despite several requests made to the Registrar’s Office;

TAKING INTO ACCOUNT the Defense Counsel’s submission that the issue of non-payment was compounded by the unilateral reservation made by the Registry and the issuance of a pre-paid ticket only 24 hours before the scheduled travel without the requisite authorization for Counsel to travel for the hearing of 18 November 1998, which was against the established Guidelines for the Remuneration of Counsel Appearing before the ICTR issued by the Registrar on 1 September 1998 (“ the Guidelines”);

MINDFUL OF the various communication between the Defence Counsel and the Registry;

CONSIDERING the Registrar’s response in which he, inter alia, conceded to the fact that although there was a slight delay in the payment of fees for the investigators for the Defence, it was not a very pertinent issue because the requests for disbursements were made between September and November 1998 for work done since February 1998 whereas the Registry recommends monthly claims as a way of speeding up payments;

WHEREAS the Registrar in his written submission stated that pursuant to paragraph 2.3 of the Guidelines, the Defense Counsel does not need an authorization to come to Arusha for a scheduled hearing. Further that on the facts of the case, the authorization granted to the Defence Counsel for the hearing of 26 October 1998 which was rescheduled for 18 November 1998, was sufficient although the representative of the Registrar conceded that a misunderstanding existed between the Registry and the Defence Counsel regarding the authorization to travel to Arusha on 18 November 1998;

WHEREAS the Prosecutor took no position in this matter;

CONSIDERING rule 46 of the Rules and the Guidelines regarding remuneration of Defence Counsel above mentioned;

HAVING HEARD the Defence Counsel and the Registrar during the hearing of 19 March 1999.

AFTER HAVING DELIBERATED

WHEREAS the conduct of Counsel appearing before the Tribunal should be impeccable and considering that a warning issued by the Trial Chamber should be taken very seriously;

WHEREAS during the proceedings of 18 November 1998, the Trial Chamber issued a warning in terms of rule 46 of the Rules, specifically, the Trial Chamber stated that the conduct as demonstrated by Counsel in this case, cannot be accepted and should not be repeated;

WHEREAS the Trial Chamber stipulated that if any problems arose, they should be addressed before a Trial Chamber, the Trial Chamber nevertheless cautioned that problems should not be considered as reasons that would entitle Counsel to take a unilateral action whose effect is to obstruct the smooth organization of the proceedings of the Tribunal;

WHEREAS the Trial Chamber stated that it expected a full explanation about the non-appearance of Counsel;

WHEREAS it is a cardinal principle of justice to hear both sides to the dispute and considering that during the hearing of 18 November 1998 the Defence Counsel was absent and the Trial Chamber, heard only the view of the Registrar;

CONSIDERING the submissions of Counsel and the Registrar, the Trial Chamber is of the view that non-payment of fees is not a reason to warrant the non appearance of Counsel thus the only crucial issue to be considered is one of authorization to travel to Arusha for the hearing on 18 November 1998;

TAKING INTO CONSIDERATION paragraph 2.1 of the Guidelines, which require a written authorization from the Registrar prior to the travel of Counsel and considering paragraph 2.2 of the said Guidelines which states that *although in principle, journeys to Arusha for hearing purposes are authorized in principle, journeys to Arusha for the hearing purposes should still necessitate prior authorization, especially with regard to the duration of the stay component of the trip;*

WHEREAS there appears to have been confusion about the issuance of the authorization to the Defence Counsel to travel to Arusha on 18 November 1998 and given that the Registrar has not conclusively demonstrated that the Defence Counsel was authorized to travel to Arusha for the hearing on the said date as required by the Guidelines, in the interests of justice, the benefit of the doubt should be given to the Defence Counsel.

CONSIDERING THAT the Defence Counsel in this case had until then behaved in a way befitting Counsel.

FOR ALL THE ABOVE STATED REASONS THE TRIBUNAL

GRANTS the Defence motion and lifts the warning issued upon Mr. Fahky N'Fa Kaba Konate,

Caution/defence counsel.eng

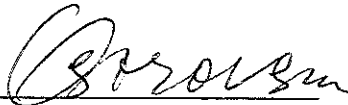


the Defence Counsel for Andre Ntagerura. The Registrar is requested to rectify the record.

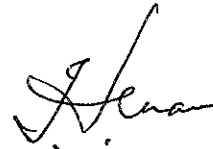
Arusha, 21 May 1999.



William H. Sekule
Presiding Judge



Yakov A. Ostrovsky
Judge



Tafazzal H. Khan
Judge

SEAL OF THE TRIBUNAL

