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H/S

ICTR-97-23-A
7-3-2000
(191-187)



**Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda**

IN THE APPEALS CHAMBER

Before: Judge Claude JORDA, Presiding
Judge Lal Chand VOHRAH
Judge Mohamed SHAHABUDEEN
Judge WANG Tieya
Judge Rafael NIETO-NAVIA

Registrar: Mr Agwu U OKALI

Decision of: 7 March 2000

Jean KAMBANDA
(Appellant)

v

THE PROSECUTOR
(Respondent)

Case No.: ICTR-97-23-A

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DECISION

**(APPELLANT'S MOTION FOR ASSIGNMENT OF CO-COUNSEL AND FOR
EXTENSION OF TIME TO FILE BRIEF)**

Counsel for the Appellant:
Mr Tjarda Eduard van der SPOEL

Counsel for the Prosecutor
Mr Bernard MUNA
Mr Mohamed OTHMAN
Mr Upawamsa YAPA
Mr Norman FERREL
Mr ZU Wen-qi

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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COPIE CERTIFIEE CONFORME A L'ORIGINAL PAR NOUS
NAME / NOM: *Félicite N. Ndayishimiye*
SIGNATURE: *[Signature]* DATE: *7-3-2000*

THE APPEALS CHAMBER of the International Criminal Tribunal for Rwanda (the 'Appeals Chamber' and the 'Tribunal' respectively), acting through **JUDGE Rafael NIETO-NAVIA**, designated by the Presiding Judge as a Pre-Hearing Judge, pursuant to Rule 108*bis* of the Rules of Procedure and Evidence (the 'Rules'),

NOTING the Judgement and Sentence of Trial Chamber I in the *Prosecutor v Jean Kambanda*, rendered on 4 September 1998; that Mr Kambanda had pleaded guilty to the indictment confirmed against him; and, that he was sentenced to life imprisonment;

NOTING that a 'Notice of Appeal against Sentence of Trial Chamber I' was filed on 7 September 1998 on behalf of Mr Kambanda (the 'Appellant');

NOTING FURTHER that a 'Supplementary Notice of Appeal against Sentence of Trial Chamber I' was filed on 8 October 1998 on behalf of the Appellant;

NOTING the letter from the Registry to Mr Tjarda Eduard van der SPOEL, dated 13 August 1999, assigning him thenceforth as the Appellant's Counsel (the 'Appellant's Counsel'), and that Mr van der Spoel thereby replaced the Appellant's former Counsel of record;

NOTING that by a Scheduling Order of 29 September 1999, this Chamber ordered that (a) the Appellant shall file his appellate brief by 8 December 1999, (b) the Prosecutor (the 'Respondent') shall file her response by 4 January 2000, and (c) the Appellant may file a reply by 19 January 2000;

NOTING that by a motion dated 24 November 1999, the Appellant's Counsel requested leave from this Chamber further to supplement the Appellant's Notice of Appeal and, consequently sought an extension, by three months, of the time-limit within which to file his appellate brief;

NOTING that, in the absence of any objection from the Respondent, this Chamber, by a decision of 8 December 1999, did grant the Appellant's motion of 24 November 1999, and hence ordered, among other things, that the parties shall file their briefs by the following time-limits:

- (i) the Appellant shall file his appeal brief by 8 March 2000
- (ii) the Respondent shall file her responding brief by 7 April 2000, and
- (iii) the Appellant may file a reply brief by 22 April 2000;

NOW BEING SEISED of a motion from the Appellant's Counsel, dated 7 February 2000 (the 'Appellant's Motion'), together with the fourteen documents attached to it, requesting this Chamber to—

- (a) order the Registrar to assign one Mr Gerald P M F MOLS as the Appellant's co-counsel, and to make that assignment retroactive to 1 December 1999, and
- (b) extend by three month's (from the date of this decision) the time within which the Appellant may file his brief in this appeal;

NOTING that the prayer for assignment of co-counsel is based on allegation of 'lack of co-operation and communication by the Registrar';

NOTING that the ground given by the Appellant's Counsel in support of his prayer for extension of time is that he alone cannot defend the Appellant adequately, without the aid of co-counsel;

NOTING that the Respondent has objected neither to the prayer for an order for assignment of co-counsel, nor to the prayer for extension of time;

NOTING the *Observations du greffe introduites en application de l'article 33(B) du règlement de procédure et de preuve sur les requêtes déposées par la défense le 7 février 2000* (the 'Registrar's Memorandum') dated 2 March 2000, together with its

accompanying attachments, comprising eleven items of correspondence between the Registry and the Appellant's Counsel (and Mr Mols) on the subject of assignment of Mr Mols as co-counsel;

NOTING the Registrar's position that the Appellant's Counsel and Mr Mols bear the responsibility for the delay in assigning Mr Mols as co-counsel, as they have failed to comply with the practice and regulations of the Tribunal of forwarding to the Registrar the original or certified true copy of documents attesting to the qualifications required by Tribunal regulations, for purposes of assignment of co-counsel;

NOTING that in order to avoid delay of this appeal, the Registrar has, on 2 March 2000, provisionally assigned Mr Mols as co-counsel, on condition that Mr Mols shall deliver to the Registrar, by 20 March 2000, the original or certified true copy of his certificate of professional qualification;

CONSIDERING that the Appellant's Counsel's prayer for retroactive assignment of Mr Mols as co-counsel back to 1 December 1999 presupposes that Mr Mols has been doing work on this Appeal since that date, thus providing to the Appellant's Counsel the aid for which he feels a need in the representation of the Appellant;

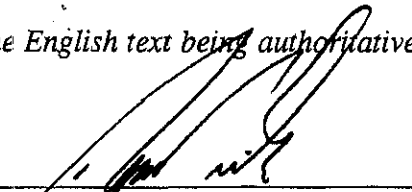
CONSIDERING that, pursuant to Article 12 read together with Article 15(E) of the Directive on the Assignment of Defence Counsel, the immediate forum for review of the Registrar's decision on the assignment of co-counsel is before the President of the Tribunal (the 'President'), not before the Appeals Chamber;

NOTING that there is no indication that the Appellant's Counsel has exhausted the President's power of review as indicated above;

NOW THEREFORE DECIDES AND ORDERS as follows:

- (1) rejects the Appellant's prayer for assignment of Mr Mols as co-counsel;
- (2) grants the Appellant's prayer for extension of time within which to file the parties' briefs only to the extent of three weeks beyond the time-limits ordered in the decision of 8 December 1999, consequently, the parties shall file their briefs according to the following time-limits:
 - (i) the Appellant shall file his appeal brief by 29 March 2000
 - (ii) the Prosecutor shall file her response by 28 April 2000, and
 - (iii) the Appellant may file a reply to the Prosecutor's response by 12 May 2000.

Done in English and French, the English text being authoritative.



Rafael NIETO-NAVIA
Pre-Hearing Judge

Dated this seventh day of March Two Thousand
At The Hague
The Netherlands.

[Seal of the Tribunal]

