



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER I

Before: Judge Navanethem Pillay, presiding
Judge Erik Møse
Judge Asoka de Zoysa Gunawardana

Registrar: Mr. Adama Dieng

Decision: 11 September 2000

PROSECUTOR

v.

Ferdinand NAHIMANA
Jean-Bosco BARAYAGWIZA
Hassan NGEZE

ICTR-99-52-I

ORAL DECISION ON THE APPELLANTS MOTIONS ON WITHDRAWAL OF LEAD COUNSEL FOR THE PROSECUTION TEAM

The Office of the Prosecutor:

Mr. Bernard A. Muna
Mr. Sankara Menon
Mr. William Egbe
Mr. Alphonse Van

Ms. Charity Kagwi
Ms. Simone Monasebian
Mr. Elvis Bazawule

Counsel for the Accused:

For the Defendant Nahimana:

Mr. Jean-Marie Biju-Duval
Ms. Diana Ellis

For the Defendant Barayagwiza:

Ms. Carmelle Marchessault
Mr. David Danielson

For the Defendant Ngeze:

Mr. John Clifford Floyd III

Extract from the Transcripts of 11 September 2000, pp. 101-104 :

MADAM PRESIDENT:

I will now proceed to the motion moved by Defence Counsel in respect of the recusal by Mr. Muna. At the Pre-trial conference this morning, Defence Counsel for Mr. Barayagwiza, Mr. Ngeze and Mr. Nahimana requested the Chamber to rule that the

Deputy Prosecutor, Mr. Muna, who is now Lead Counsel for the team, should withdraw as a member of the Prosecution.

The Defence alleged that Mr. Muna has been involved in the falsification of evidence, in connection with the review proceedings of Mr. Barayagwiza's case before the Appeals Chamber.

Defence has requested a revision of the Appeal Chamber's decision not to release Mr. Barayagwiza. In those proceedings, Defence intends to call Mr. Muna as a witness.

According to the Defence, it is a well established principle that a lawyer cannot at the same time be a witness in the case he is pleading. Mr. Muna has rejected the allegations made against him as being without foundation.

The Defence has not been able to refer to any provision in the Statute or the Rules of Procedure and Evidence containing a legal basis for ordering a Counsel for the Defence or the Prosecution to withdraw because he might appear as a witness in the case he is pleading.

Neither can it be said that this is a general principle in all national jurisdictions. Whether such a culmination of roles, as counsel and witness in the same case is acceptable, will have to be assessed on a case by case basis. In the present case, the Defence of Mr. Barayagwiza has stated its intention to call Mr. Muna in the review proceedings before the Appeals Chamber, and not before the Trial Chamber.

In order to obtain his testimony, the Defence must first obtain an order from the Appeals Chamber to summon him as a witness. At present, Mr. Muna has no witness status.

The Trial Chamber notes that the allegations against Mr. Muna, are now pending before the Appeals Chamber, and would have to be dealt with in that context. Mr. Muna has strongly refuted them. The Trial Chamber cannot assume that the allegations are correct, or that Mr. Muna will in fact appear as a witness in the review proceedings. The Trial Chamber cannot pre-empt the decision of the Appeal Chamber.

Consequently, and for these reasons, the motion of the Defence for an order that Mr. Muna recuses himself as Counsel for the Prosecution, is dismissed.

We will now resume the program that was scheduled for today, which is the pre-trial conference in terms of Rule 73 bis.

MR. DANIELSON:

Your Honour.

MADAM PRESIDENT:

Mr. Danielson.

MR. DANIELSON:

To assure no rights are waived, we respectfully disagree with the Court's decision with respect to the two issues, upon which it's now made a ruling, and reserve our rights to appeal.