

ICTR-99-50-T
20-9-2001
(2517-2514)

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International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

UNITED NATIONS
NATIONS UNIES

Arusha International Conference Centre
P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzanie
Tel: 255 27 2504207-11 2504367-72 or 1 212 963 2850 Fax: 1 212 963 2848/49

Office of the President
Bureau du Président

Before: Judge Navanethem Pillay, President

Original: English

Registrar: Adama Dieng

Decision of: 20 September 2001

THE PROSECUTOR

Versus

CASIMIR BIZIMUNGU

ICTR-99-50-T

JUDICIAL RECORDS/ARCHIVES
ICTR
RECORDED

2001 SEP 20 P 5: 27

THE PRESIDENT'S DECISION ON REVIEW, IN ACCORDANCE WITH ARTICLE
19 (E) OF THE DIRECTIVE ON ASSIGNMENT OF DEFENCE COUNSEL

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“ For obvious reasons, the uncertainties created are having a negative effect on the preparation of the case and on all of the ancillary matters which must be attended to in order to provide Dr. Bizimungu with appropriate representation.”¹

Lead Counsel also expressed the view that:

“It should be apparent to all concerned with the delivery of a system of justice that is fair, that the present state of affairs cannot be permitted to continue....I reiterate...that I believe that it is in the interests of justice that Dr. Bizimungu’s request be approved without delay.”²;

- (ii) According to Mr. Shell, the Accused continues to communicate with assigned Co-Counsel on matters concerning the case however, the nature and content of these discussions are not being shared with him, by Co-Counsel. He added that, because of his professional obligation, he was not in a position to delegate lead counsel responsibilities to Co-Counsel;
- (iii) The Accused has confidence in his Co-Counsel and has proposed that, in the event of Lead Counsel being withdrawn, assigned Co-Counsel should be appointed Lead Counsel;

HAVING CONSIDERED that the Accused is indicted with three other accused persons and that the commencement of the trial has not been scheduled, any change in Lead Counsel at this stage, is not likely to be prejudicial to the co-accused;

FINDS that:

- (i) Co-Counsel, Ms. Michelyne St. Laurent, was assigned to the Accused approximately nine months ago and is in a position to continue with preparation for the trial of the Accused, without interruption. Therefore, a change in Lead Counsel at this stage would not unduly delay or hamper on-going trial preparation;
- (ii) Mr. Brian Shell is unable to discharge his responsibilities as lead counsel in the defence of the Accused, as a consequence of the Accused terminating all communication with him. Further, the contention that communications

¹ Letter to President Navanethem Pillay, dated 14 September 2001.

² Letter to Alessandro Caldarone from Brian Shell, dated 31 August 2001 and annexed by the Accused in support of his Request for Review.

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I, Judge Navanethem Pillay, President of the International Criminal Tribunal for Rwanda
(the "Tribunal");

HAVING RECEIVED a request from Casimir Bizimungu (the "Accused") dated 27 August 2001, for a review of the Registrar's Decision of 23 July 2001, which denied the Accused's request for the withdrawal of his assigned Lead Counsel, Mr. Brian Shell;

HAVING CONSIDERED correspondences from the Accused, dated 9 and 11 September 2001 and also from Mr. Brian Shell, dated 14 September 2001, all of which support the Accused's request;

HAVING CONSIDERED Article 19 (E) of the Tribunal's Directive on the Assignment of Defence Counsel (the "Directive"), which states that:

"Where a request for withdrawal, made pursuant to paragraph (A), has been denied, the person making the request may seek the President's review of the decision of the Registrar."

HAVING CONSIDERED that, pursuant to Article 19 (A) of the Directive, the Registrar may withdraw assigned counsel at the request of the Accused, provided there are "exceptional circumstances" that warrant such withdrawal;

HAVING CONSIDERED the Registrar's decision, which held *inter alia* that the loss of confidence in the assigned Lead Counsel as alleged by the Accused, was not sufficiently established and did not constitute exceptional circumstances, as envisaged in Article 19 (A) of the Directive;

HAVING CONSIDERED that since the Registrar's decision, the following new facts have been placed before me:

- (i) By letter dated 14 September 2001, Lead Counsel, Mr Brian Shell, has confirmed that he supports the Accused's application for his withdrawal. He has further confirmed that the Accused has terminated all communication with him, with regard to the case and other related matters, and he is therefore not in a position to carry out his responsibilities as lead counsel. He stated that:

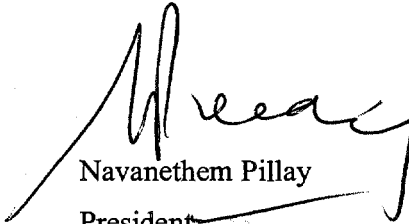


between the Accused and assigned Co-Counsel, regarding the case and other related matters, are not being shared with Lead counsel, suggests a break in communication between Lead and Co-counsel. Lead Counsel is clearly facing serious obstruction in providing effective legal representation for the Accused. This situation cumulatively constitutes exceptional circumstances and warrants the withdrawal of Lead Counsel in this case;

REVERSES the Registrar's decision of 23 July 2001 and orders the immediate withdrawal of Lead Counsel, Mr Brian Shell;

DIRECTS the Registrar to assign another lead counsel to Casimir Bizimungu without delay.

Arusha, 20 September 2001,



Navanethem Pillay
President

(Seal of the Tribunal)