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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Winston C. Matanzima Maqutu
Judge Arlette Ramaroson

Registry: Adama Dieng

Date: 14 December 2001

THE PROSECUTOR

v.

ARSÈNE SHALOM NTAHOBALI

Case No. ICTR-97-21-T

**DECISION ON NTAHOBALI'S EXTREMELY URGENT MOTION FOR
THE RE-INSTATEMENT OF SUSPENDED INVESTIGATOR, Mr. THADDEE
KWITONDA**

The Office of the Prosecutor:
Silvana Arbia
Japhet Mono
Jonathan Moses
Gregory Townsend
Adesola Adeboyejo
Manuel Bouwknecht

Counsel for Ntahobali:
Duncan Mwanyumba
Normand Marquis

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

SITTING as Trial Chamber II, composed of Judges William H. Sekule, Presiding, Winston C. Matanzima Maqutu, and Arlette Ramaroson (the "Chamber");

BEING SEIZED of the "Extremely Urgent Motion for the Re-instatement of Suspended Investigator Mr. Thaddée Kwitonda", filed by Counsel for Ntahobali on 22 October 2001 with Annexes (the "Motion");

CONSIDERING the "Prosecutor's Reply to Ntahobali's Motion to Re-instate Suspended Investigator" filed on 29 October 2001 (the "Prosecutor's Reply");

CONSIDERING that, pursuant to Rule 33(B) of the Rules, the Chamber invited the Registry to file any relevant information in relation to the Motion, by memorandum dated 23 October 2001;

CONSIDERING the "Registrar's Representations Pursuant to Rule 33(B) of the Rules of Procedure and Evidence Regarding the Defence Motion" (the "Registrar's Representation") filed on 29 October 2001 with, *inter alia*, the Registrar's "Statement on the Non-renewal of the Employment Contracts of Certain Defence Investigators" filed on 16 July 2001 as an annex to the Registrar's Representation;

CONSIDERING the "Response to the Replies of the Registry and the Prosecutor to A. Shalom Ntahobali's Extremely Urgent Motion for the Re-instatement of Suspended Investigator Mr. Thaddée Kwitonda" (the "Response") filed on 5 November 2001;

CONSIDERING that the Parties were informed that the Motion would be decided on the basis of the written briefs only pursuant to Rule 73 of the Rules of Procedure and Evidence (the "Rules");

CONSIDERING the Statute of the Tribunal (the "Statute") and the Rules, specifically Articles 19 and 20 of the Statute and Rules 73 (A) and 33 (B) of the Rules;

SUBMISSION OF THE PARTIES

Submissions by the Defence

1. Counsel for Ntahobali alleges that the suspension by the Registrar on 16 July 2001 of the employment contract of Mr. Thadée Kwitonda, Defence Investigator, on the basis that the latter was investigated by the Office of the Prosecutor of the Tribunal, has deprived the Accused of the right to have adequate time and facilities to prepare his defence and, consequently, of the right to a fair trial.
2. Counsel for Ntahobali argue that the aforementioned investigator is the only person with the knowledge and confidence of the Accused's potential witnesses, and would assist the newly appointed Counsel to fully understand the Defence case. The suspension has hampered their investigations and cross-examination of Prosecution witnesses and interferes with the due process of law by putting the Accused on an unequal footing with his co-accused.
3. Finally, the Defence alleges that the decision to suspend the investigator is "devoid of any legal or factual basis" and was taken in "bad faith", presumably to paralyse the Defence.

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4. Following the suspension, the Defence submit that the investigator has not only reiterated his innocence against the allegation of active involvement in the 1994 genocide but has also filed, in a spirit of transparency, both with the Prosecutor and the Registrar, confidential documents to demonstrate his innocence. In particular, Mr Kwitonda has filed a letter by the Belgian Immigration Authorities who, after a thorough investigation, cleared him of charges of active involvement in the 1994 Rwandan genocide.

The Reply by the Prosecution

5. The Prosecution states that it was not a Party to the Registrar's Decision to suspend the contract of the said Investigator and that, pursuant to the principle of the independence of the three organs of the Tribunal, there does not exist a mechanism to challenge administrative decisions taken by the Registry.
6. With regard to the identity of the persons under investigation by her office, the Prosecutor indicates that it "is and must remain a confidential matter". Therefore, neither the Defence Counsel nor the Accused has the right to this information.
7. The Prosecution acknowledges that the Accused has a right to adequate time and facilities to prepare for trial, but that the Accused cannot use the failure of Counsel to have requested an alternative investigator to support a claim of inadequate means to prepare.
8. Finally, the allegation that the Prosecution is seeking to paralyse the Defence is "baseless and without merit", according to the Prosecution.

Registrar's Representations

9. The Registrar submits that, on 16 July 2001, Mr. Kwitonda, Investigator for the Defence, was "under investigation by the Office of the Prosecutor of the Tribunal for crimes allegedly committed during the 1994 genocide", as an alleged former leader of the Interahamwe militia. Accordingly, the Registrar decided to suspend the employment contract of the said investigator, which contract was to expire on 8 August 2001.
10. Notwithstanding, the Registrar also indicated in the 16 July 2001 statement that the Registry did not presume the guilt of the Investigator, and stood "ready to reconsider [him] for clearance for employment by any Defence Counsel in the Tribunal, should [he] be cleared of the charges and suspicions against [him] [...] in the International Tribunal".
11. However, the Registrar states that the documents forwarded by the Investigator fail to prove that Mr. Kwitonda is cleared of the investigations undertaken by the Prosecutor. Therefore, the Registrar clearly indicates in response to the Motion that he cannot lift the suspension and consider the re-employment of Mr. Kwitonda.
12. Nonetheless, the Registrar prays the Chamber (1) to dismiss Counsel's allegation that the Registrar's Decision is devoid of any legal basis, (2) to dismiss the Motion in its entirety or, in the alternative, (3) to instruct the Prosecutor and the Defence Counsel to provide the Registrar with further information to determine whether Mr. Kwitonda should be re-employed.



Accused Response to the Reply by the Prosecution and to the Registrar's Representations

13. Counsel for the Defence alleges that Rules 19 and 33 of the Rules provide the Chambers with the power to control activities and operations of the Registrar.
14. The Defence further quote a Decision of 13 March 1999 (*The Prosecutor v. Nyiramasuhuko and Ntahobali, Case No. 97-21-T*), in which the Chamber stated that the administrative discretion of the Registrar "is still subject to judicial scrutiny [...] to ensure that [...] the discretionary power is exercised fairly and justly" and, in particular, that the "question of the right to legal assistance is [...] a matter subject to legal supervision".

AFTER HAVING DELIBERATED

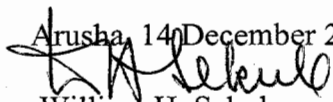
15. The Chamber has considered Article 16.1 of the Statute, according to which "the Registry shall be responsible for the administration and servicing of the International Tribunal for Rwanda". More specifically, pursuant to Rules 44 and 45, the Registry is responsible for the assignment of Counsel to indigent Accused. The Lawyers and Detention Facilities Management Section (the "LDFMS") is the Section responsible for the application of the Directive on the Assignment of the Defence Counsel adopted on 9 January 1996. The LDFMS has issued a Practical Information for Counsel (dated 13 September 2000, updated on 22 February 2001), indicating at paragraph 2.1.5.1 that the assistants and the investigator must be recruited following the appropriate administrative procedure authorised by the Registry.
16. In the instant proceedings, the Chamber recalls that, following the Registrar's Statement of 16 July 2001, Counsel for Ntahobali has sent several letters to the Registrar requesting the reinstatement of the Investigator, namely on 17 and 31 August and 8 October 2001. Counsel's letters were answered by the LDFMS by letters dated 28 August and 10 October 2001 (*See annex to the Motion*).
17. Accordingly, in view of the administrative powers and responsibilities of the Registry in organising and appointing Defence investigators, the Chamber finds that the issue of reinstatement of a suspended Investigator is an administrative matter resting with the Registry. The Chamber finds that it cannot be legally seized of the matter raised by the Defence and declares the Motion inadmissible.
18. In the instant case, the Chamber notes that pursuant to Rule 33 (B) of the Rules, the Registrar was invited to file "any relevant information" but he was not requested to submit prayers. Accordingly, the Chamber finds the Registrar's prayers unwarranted.



THE TRIBUNAL HEREBY

DECLARES the Motion inadmissible.

Arusha, 14 December 2001



William H. Sekule
Presiding Judge



Winston C. Matanzima Maqutu
Judge



Arlette Ramarison
Judge



[Seal of the Tribunal]