



ICTR-00-56-I
12-11-2002
(1775-1471)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1775
number

OR: ENG

TRIAL CHAMBER II

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

Registry: Adama Dieng

Date: 12 November 2002

The Prosecutor

v.

Augustin NDINDILYIMANA

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JUDICIAL RECORDS
PROSECUTOR

**DECISION ON AUGUSTIN NDINDILYIMANA'S MOTION FOR AN ORDER
THAT THE REGISTRAR HOLD A HEARING ON THE SUSPENSION OF THE
CONTRACT OF HIS INVESTIGATOR PIERRE-CLAVER KARANGWA**

The Office of the Prosecutor:

Ciré Aly Bâ
Justus Bwonwonga
Alphonse Van
Beverly Gardner
Faria Rekkas

Counsel for the Defence:

Christopher Black

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the “Tribunal”);

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

BEING SEIZED of:

- (i) the “Urgent Oral Motion for an Order that the Registrar Hold a Hearing on the Suspension of the Contract of His Investigator Pierre-Claver Karangwa,” filed on 5 June 2002 (the “Motion”); and
- (ii) the “Response by the Prosecutor to the Motion” filed on 10 June 2002 (the “Prosecutor’s Response”);
- (iii) the “Registrar’s Representations pursuant to Rule 33(B) of the Rules of Procedure and Evidence Regarding Defence’s Urgent Oral Motion for an Order that the Registrar Hold a Hearing on the Suspension of the Contract of His Investigator Pierre-Claver Karangwa,” filed on 14 June 2002;
- (iv) the “Reply to Response of the Registrar and the Prosecutor to the Urgent Oral Motion for an Order that the Registrar Hold a Hearing on the Suspension of the Contract of his Investigator Pierre-Claver Karangwa,” filed on 24 June 2002 (the “Defence Reply”);

CONSIDERING the Statute of the Tribunal (the “Statute”) specifically Articles 16, 19, and 20(4)(b) of the Statute; the Rules of Procedure and Evidence (the “Rules”), in particular Rules 5, 19, 32 and 33 of the Rules; Considering also the Directive for the Registry of the International Criminal Tribunal For Rwanda; Judicial and Legal Services Division – Court Management Section (the “Directives for the Registry”) specifically Articles 5(1), 7(1) and 49 of the Directives for the Registry;

NOW DECIDES the Motion pursuant to Rule 73(A) of the Rules on the basis of the written briefs only as filed by the Parties.

SUBMISSIONS OF THE PARTIES

Defence Submissions

1. The Defence alleges that Rule 5 of the Rules is violated because the Registrar has failed to comply with his duty under the Statute and the Rules.
2. The Defence alleges that the Registrar has failed to provide it with a hearing with respect to the suspension of the contract of the investigator, Pierre Claver Karangwa, in violation of the rules of natural justice and of the Accused rights under Article 20 of the Statute. The Defence, quoting various texts and case law, submits that if a tribunal fails to observe natural justice or is biased, its decision is a nullity and void.
3. The Defence alleges that the Accused has suffered material prejudice because in suspending the contract of the investigator, without a fair hearing, the Defence has been denied its right to make full answer whereas the Defence will have difficulty to find an investigator with the same qualifications and abilities.

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4. In order to remedy the prejudice caused to the Accused, the Defence requests that the Chamber declare that the suspension of the investigator is null and void and order that the Registrar hold a hearing into the allegations against the investigator with respect to his involvement in the events of 1994.

Prosecution Submissions

5. The Prosecution, in objection to the Motion submits that it was not Party to the Registrar's decision to suspend the contract of the investigator. Furthermore, the Prosecution submits that neither the Rules nor the Statute provide the Chamber with powers of judicial review of administrative action taken by the Registrar and that if such powers were available, they would vest in the President of the Tribunal acting in her administrative capacity rather than her judicial capacity, pursuant to Rule 19 of the Rules.

6. The Prosecution objects to the Defence's argument that the Registrar has violated the provisions of Article 20 of the Statute. The Prosecution argues that since the Accused has claimed indigence, his right to a fair trial does not extend to having a particular individual as an investigator. The Prosecution recalls the provisions of Article 17 of the Directives for the Registry that any expense incurred in the preparation of the Defence shall be borne by the Registry. The Prosecution argues that said provision does not perforce entitle the Accused to an investigator of his choice. Furthermore, the Prosecution submits that the Defence by reason of its own neglect or failure, has failed to show whether it took any steps to request an alternate investigator and, as such, has failed to exhaust all avenues to alleviate any alleged prejudice.

7. The Prosecutor therefore prays that the Chamber declare the Motion inadmissible or in the alternative deny the Motion because it is misconceived and lacks merit.

The Registrar's Representations

8. The Registrar submits that, following the Registrar's statement of 13 June 2001, the Deputy Registrar, on 2 April 2002 suspended the contract of Mr. Pierre Claver Karangwa employed as an investigator in the Defence Team of Mr. Augustin Ndindiliyimana as a pre-emptive measure to avoid compromising the integrity of the Tribunal in the carrying out of its mandate.

9. In his submissions, the Registrar states that the decision was taken on the basis of confidential information made available to the Registry by the Chief of Prosecutions that Mr. Pierre Claver Karangwa was under investigation for possible involvement in the 1994 events in Rwanda. The Registrar submits that on the same day on which the suspension was made, the Deputy Registrar met with Mr. Christopher Black, Defence Counsel for the Accused advising him to take immediate remedial measures by looking for replacement of his investigator.

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10. The Registrar submits that he stands ready to lift the suspension of Mr. Pierre Claver Karangwa's contract should the latter be cleared of suspicions relating to his involvement in the 1994 genocide.

The Reply

11. In the Reply, the Defence argues that the Prosecutor's position is a complete evasion of matters raised in the Motion and that the suspension of the investigator's contract by the Registrar is an attempt by the Prosecutor to sabotage the Accused in the preparation of his defence.

12. The Defence submits that the Prosecutor's argument that the Accused has no complaint because he should have found another investigator is completely untenable, because suitable investigators are very difficult to find.

HAVING DELIBERATED

13. The Chamber notes that in the instant case, the Defence requests that the Chamber declares the Registrar's decision to suspend the contract of their investigator null and void pursuant to Rule 5 of the Rules. Furthermore, the Defence requests that the Chamber order that the Registrar hold a hearing into the allegations against the investigator with respect to his involvement in the events of 1994. The Chamber further notes that the Defence makes this request stating that the Registrar's decision was made without giving the said investigator an opportunity to be heard as is required under the principles of natural justice. The Defence argues that the Chamber has the power to review a decision such as the present one.

14. The Chamber notes that Rule 19 of the Rules provides for the functions of the President in that the President shall supervise the activities of the Registry. Pursuant to Rule 33 of the Rules, the Registrar shall assist *inter alia* the Chambers and the Judges in the performance of their functions and under the authority of the President, shall be responsible for the administration and servicing of the Tribunal.

15. The Chamber recalls its Decision in the case of *Prosecutor v. Ntahobali*,¹ that pursuant to Article 16(1) of the Statute, the Registry is responsible for the administration and servicing of the Tribunal and more specifically for the assignment of Counsel to indigent accused, pursuant to Rules 44 and 45 of the Rules. The Defence Counsel Management Section (the "DCMS") is the Section responsible for the application of the Directive on the Assignment of the Defence Counsel adopted on 9 February 1996. The DCMS has issued a Practical Information for Counsel (dated 13 September 2000, updated on 22 February 2001) indicating at para. 2.1.5.1 that the assistants and the investigators must be recruited following the appropriate administrative procedure authorised by the Registry.

¹ "Decision on Ntahobali's Extremely Urgent Motion for the Re-instatement of Suspended Investigator, Mr. Thadée Kwitonda," of 14 December 2001 at para. 15.

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16. The Chamber notes that the Registrar's decision to suspend the investigator Pierre Claver Karangwa is an administrative decision. If a Party is aggrieved by such a decision, the Party may submit before the President, who is empowered under Rule 19 of the Rules to supervise the activities of the Registry, a summary of his grievances for consideration.

17. The Chamber thus finds the Defence's request to be lacking in merit and to be improperly filed before the Chamber. Accordingly the Chamber declares the Motion inadmissible.

FOR THE FOREGOING REASONS, THE TRIBUNAL

DECLARES the Motion inadmissible.

Arusha, 12 November 2002



Arlette Ramarason
Presiding Judge



William H. Sekule
Judge



Winston C. Matanzima Maqutu
Judge

[Seal of the Tribunal]