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

Arusha International Conference Centre

P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzanie

Office of the President
Cabinet du Président

Before: Judge Erik Møse, President

Original: English

Registrar: Adama Dieng

Date: 12 September 2003

THE PROSECUTOR

V

THARCISSE MUVUNYI

2003 SEP 15 P 3:20
JUDICIAL RECORDS/ARCHIVES
ICTR
HM

CASE NO: ICTR- 2000-55-I

**THE PRESIDENT'S DECISION ON THARCISSE MUVUNYI'S APPLICATION
FOR REVIEW OF THE REGISTRAR'S DECISION DENYING THE REQUEST FOR
THE WITHDRAWAL OF LEAD COUNSEL**

6.h

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("The Tribunal")

SITTING as Judge Erik Møse, President;

BEING SEIZED of an Application of 28 May 2003 from Tharcisse Muvunyi for appeal of the Registrar's decision of 14 April 2003;

HEREBY CONSIDERS THE APPLICATION**INTRODUCTION**

Tharcisse Muvunyi ("the Applicant") is indicted for genocide, alternatively complicity in genocide, direct and public incitement to commit genocide and crimes against humanity. He was found to be indigent and therefore eligible for legal aid. On 12 February 2001, the Registrar assigned Mr. Michael Fisher as Lead Counsel to represent the Applicant. On 9 October 2002, the Applicant requested the Registrar to withdraw the assignment of Mr. Fisher. The Registrar, by decision of 14 April 2003, denied the request ("the decision"). The Applicant has now filed an application for appeal of the decision ("the Application"). On 30 June 2003, the Registrar filed a response to the Application ("the Response").

SUBMISSIONS

In the main, the Applicant submits that the Registrar either minimised the full import of or failed to take into consideration his submissions when making the decision. According to the Applicant, there was lack of communication between him and Mr. Fisher, which was acknowledged by Mr. Fisher in his letter of 18 September 2002. As a consequence, the Applicant was unable to communicate his instructions to Mr. Fisher.

The Applicant also argues that Mr. Fisher lacked diligence in carrying out his assignment as Lead Counsel. Mr. Fisher refused to discuss documents relating to the Applicant's defence and also refused to meet potential witnesses and to appoint a co-counsel. There were differences of opinion as regards the objectives of the defence. The Applicant indicated that Mr. Fisher pressured him to plead guilty after having been informed by the Applicant of his intention to prove his innocence. Moreover, Mr. Fisher arranged a meeting with the Prosecution and pressured the Applicant to attend this meeting. According to the Applicant, this type of conduct calls into question the honesty and loyalty of Mr. Fisher as lead counsel. The Applicant further contends that there has been a



breakdown in communication and collaboration between him and Mr. Fisher, and that he has lost all confidence in Mr. Fisher as his counsel. This constitutes exceptional circumstances that warrant the withdrawal of Mr. Fisher as assigned Lead Counsel.

The Registrar submits that the Applicant has failed to furnish any valid reasons that warrant a reversal of the decision and the withdrawal of Mr. Fisher as Lead Counsel. The lack of communication between the Applicant and Mr. Fisher is unsubstantiated. The statements made by Mr. Fisher in his correspondence of 18 September 2002 do not constitute an acknowledgement of lack of communication between Mr. Fisher and the Applicant.

The Registrar maintains that the averred lack of diligence on the part of Mr. Fisher is unsubstantiated. He accepted Mr. Fisher's response to the issues that had been raised in respect of this allegation. The employment of support staff in the Defence team falls within the competence of Lead Counsel who has primary responsibility for the team. Appointment of co-counsel, assistants and investigators are administrative matters falling within the powers and discretion of the Registrar. Lead Counsel must initiate request for such appointments, and he is held responsible for complying with the practice directions of the Lawyers and Detention Facilities Management Section¹. It is clear that an indigent accused is not entitled as a right to have co-counsel, investigators and assistants appointed.

DELIBERATIONS

Article 19(A) of the Directive On The Assignment Of Defence Counsel ("the Directive") provides that the Registrar may, in exceptional circumstances, withdraw the assignment of counsel either at the request of the accused or his counsel. Where the Registrar has denied the request for withdrawal of assigned counsel, the person who had made the request may seek the President's review of the Registrar's decision, pursuant to Article 19(E) of the Directive.

There are no provisions in the Tribunal's Rules allowing for appeal of the Registrar's decisions relating to the withdrawal of counsel. Thus, in the present case, the appeal filed against the decision is inadmissible. However, considering that the matters raised by the Applicant bear upon his substantive right to be provided with legal assistance, I am inclined to consider a review of the decision within the purview of Article 19(E) of the Directive.

¹ *The Prosecutor v. Hassan Ngeze*, Decision on the Accused's request for withdrawal of his counsel, 29 March 2001, p 5.

An indigent accused has the right to be provided with legal representation, a right guaranteed in Article 20(d) of the Statute. The Registrar as the manager of the Tribunal's Legal Aid Programme, is obliged to ensure that the indigent accused has been assigned competent legal representation. He must also ensure that there is no abuse of the Legal Aid Programme, and that it is managed in accordance with the Directive which was adopted by a Plenary of the Tribunal's judges.

In the present case, the Registrar has denied the Applicant's request to withdraw Mr. Fisher. The basis for the Registrar's decision is that the allegations made by the Applicant were unsubstantiated and do not constitute exceptional circumstances as envisaged in Article 19(A) of the Directive and therefore does not warrants the withdrawal of Mr. Fisher.

Having considered this matter under review, I do not find that the Registrar's decision in the present case to be unfair, unreasonable, *malafide* or based on extraneous factors. Thus, I am not inclined to interfere with the decision. Mr. Fisher and the Applicant are urged to resolve any disagreements they may have and to work together in the latter's best interests.

FOR THE ABOVE REASONS, the Tribunal

DISMISSES the Application of 28 May 2003 filed Tharcisse Muvunyi.

Arusha, 12 September 2003.


Judge Erik Møse
President

(Seal of the Tribunal)