

ICTR-01-63-I  
15-09-2003  
(604-600)

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

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*Office of the President  
Cabinet du Président*

Before: Judge Erik Møse, President

Original: English

Registrar: Mr. Adama Dieng

Date: 12 September 2003

**THE PROSECUTOR**

v.

**SIMÉON NCHAMIHIGO**

Case No. : ICTR-2001-63-I

INTERNATIONAL PROSECUTOR GENERAL'S  
OFFICE  
ICTR  
2003 SEP 15 11:10:00

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**THE PRESIDENT'S DECISION ON SIMÉON NCHAMIHIGO'S APPEAL AGAINST  
THE REGISTRAR'S DECISION DENYING THE REQUEST FOR THE  
WITHDRAWAL OF LEAD COUNSEL**

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

**SITTING** as Judge Erik Møse, President;

**BEING SEIZED** of an Appeal of 29 July 2003 from Siméon Nchamihigo against the Registrar’s decision of 14 April 2003;

**HEREBY CONSIDERS THE APPEAL****INTRODUCTION**

Siméon Nchamihigo (“the Applicant”) is indicted for Genocide alternatively Complicity in Genocide, Crimes against Humanity and Violations of Article 3 Common to the Geneva Conventions and Additional Protocol II. He was found to be indigent and therefore eligible for legal aid. On 23 July 2001, the Applicant identified three counsel from a list of counsel eligible to represent indigent accused, and requested the Registrar to appoint one of these counsel as his lead counsel. On 10 October 2001, the Registrar appointed Mr. David W. Gachuki (“Lead Counsel”) who had been one of the three counsel picked by the Applicant. On 2 December 2002, the Applicant requested the Registrar to withdraw the assignment of Lead Counsel. The Registrar, by decision of 19 March 2003, denied this request (“the decision”). The Applicant has now filed an appeal against the ~~impugned~~ decision, the English translation of which was filed on 11 June 2003 (“the Appeal”). On 1 July 2003, the Registrar filed a response to the Appeal (“the Response”).

**SUBMISSIONS**

In the main, the Applicant submits that the Registrar either minimised or failed to consider his submissions when taking the decision. According to the Applicant, Lead Counsel displayed incompetence, negligence and lack of diligence in carrying out his duties. He had failed to obtain a file from duty counsel who originally represented the Applicant and had filed a motion well after the prescribed time limits had lapsed. This motion was dismissed and ruled to be frivolous by the Trial Chamber. Lead Counsel had also failed to obtain the audio tapes of a particular court proceeding and statements of a prosecution witness nine months after the Trial Chamber had directed the disclosure of these items to the Applicant.

It is submitted that Lead Counsel placed the interests of third parties before that of the Applicant. He had hired a legal assistant who is unable to work in French, after having been informed by the Applicant to hire a legal assistant who could work in French. This would have facilitated the work of the Defence, especially since the Applicant speaks French whilst Lead Counsel speaks English.

It is also submitted that Lead Counsel is ill and as a result has lost consciousness during his consultations with the Applicant at the Tribunal's Detention Facility. The Applicant avers that Lead Counsel's state of health could jeopardise and impede the preparation and conduct of his defence. Moreover, there has been a complete breakdown in the collaboration and communication between the Applicant and Lead Counsel. This is largely because of Lead Counsel's conduct which the Applicant describes as offensive, arrogant and contemptuous. Lead Counsel had called the Applicant a criminal and a liar, and insinuated that the Applicant requested material favours from him because he (the Applicant) had suggested that Lead Counsel provide him with a computer. The Applicant avers that the circumstances mentioned above, constitute exceptional circumstances and warrant the withdrawal of Lead Counsel.

In response, the Registrar submitted that he took into consideration the Applicant's allegations that Lead Counsel was incompetent and lacked diligence. He considered the arguments that Lead Counsel had failed to recover the case file from Duty Counsel and had filed a motion out of time. The Registrar accepted Lead Counsel's explanation that he had obtained the case file from the Tribunal's archives and that he had met with Duty Counsel to discuss the case. Lead Counsel also explained that he was unable to file the motion in question earlier because he was waiting for documentation from the District Court of Arusha, which needed to be annexed to this motion. It was therefore reasonable for the Registrar to arrive at the conclusion that this allegation was unsubstantiated.

According to the Registrar, the Applicant's criticism of him for taking the view that employment of support defence team members fell within the competence of Lead Counsel and that the appointment of the legal assistant without prior consideration of the Applicant's point of view did not violate his rights as set forth in Article 20 of the Statute, is unfounded. The Registrar submits that this view is in line with the provisions of Article 15 of the Directive On The Assignment Of Defence Counsel ("the Directive") and the Jurisprudence of the Tribunal.

The Registrar submits that he took into consideration the Applicant's arguments relating to Lead Counsel's illness. He also considered the letter tendered in support of these arguments, which he had found to have been altered. A letter of the alphabet had been added to a word with the intention of changing the content and meaning of the letter. There were also discrepancies relating to the dates and times of Lead Counsel's alleged bouts of unconsciousness and no record of Lead Counsel suffering such unconsciousness during court proceedings, as averred by the Applicant. The Registrar concluded that the Applicant had not proven that the state of health of Lead Counsel is an effective impediment to the preparation of his case, after giving full consideration to the veracity of the Applicant's allegations, as well as the actual ability of Lead Counsel to prepare his case.

According to the Registrar, the Applicant had not raised the issue relating to the impossibility of communication and collaboration with Lead Counsel in his original request of 22 December 2002 and his subsequent letter of 10 February 2003. He is of the view that the lack of communication and collaboration between the Applicant and Lead Counsel is being orchestrated by the Applicant in order to achieve the withdrawal of Lead Counsel.

#### **DELIBERATIONS**

Article 19(A) of 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. It is also noted that pursuant to Article 19(E) of the Directive, 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.

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.

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 it is managed in accordance with the Directive which was adopted by a Plenary of the Tribunal's judges.

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In the present case, the Registrar has denied the Applicant's request to withdraw his assigned Lead Counsel. The basis for the Registrar's decision appears to be that the allegations made by the Applicant were unsubstantiated and do not constitute exceptional circumstances as envisaged in Article 19(A) of the Directive.

The averment made by the Applicant relating to the lack of communication and collaboration between him and Lead Counsel, were not considered by the Registrar when the impugned decision was taken. This issue was not raised by the Applicant in his original request of 22 December 2003 and subsequent correspondence to the Registrar, and was therefore not considered when the decision had been taken. The Registrar has since considered this additional ground and found that it does not constitute exceptional circumstances as envisaged in Article 19(A) of the Directive.

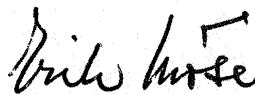
The language used by Lead Counsel must be viewed in light of the context of the allegations made against him. However, it is generally accepted that Counsel should refrain from conduct that is likely to lead to a conflict of interest or increase the tension between him and his client. The Registrar's view that the lack of communication and cooperation between the Applicant and assigned Lead Counsel is being orchestrated by the Applicant in order to achieve the withdrawal of Lead Counsel is noted. The Registrar's concern of a possible development of a trend by indigent accused to have their assigned counsel withdrawn for unclear or unjustified reasons is also noted.

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. Lead Counsel 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 request filed by Siméon Nchamihigo on 29 April 2003.

Arusha, 12 September 2003.



Judge Erik Møse

President

(Seal of the Tribunal)



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<b>Case Name:</b>	The Prosecutor vs. <i>Simon Nchamihigo</i>			<b>Case Number:</b> <i>ICTR-2001-63-1</i>	
<b>Date:</b>	Transmitted: <i>15/9/03</i>		Document's date: <i>12/9/03</i>		No. of Pages: <i>5</i>
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