



UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

ICTR-2000-55-I  
18-11-2003  
(4607 - 4604)

4607  
Hm

ENGLISH  
OR: FR

### TRIAL CHAMBER III

**Before:** Judge Lloyd G. Williams, Q.C., Presiding  
Judge Andréia Vaz  
Judge Khalida Rachid Khan

**Registrar:** Adama Dieng

**Date:** 18 November 2003

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JUDICIAL RECORDS DIVISION  
ICTR

### THE PROSECUTOR

v.

**Tharcisse MUVUNYI et al.**

*Case No. ICTR-2000-55-I*

### DECISION ON THE ACCUSED'S REQUEST TO INSTRUCT THE REGISTRAR TO REPLACE ASSIGNED LEAD COUNSEL

*Article 20(4)(d) of the Statute and Rules 45 and 73 of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**

Silvana Arbia  
Jonathan Moses  
Adelaide West  
Adesola Adeboyejo  
Manuel Bouwknecht  
Astou M'Bow

**Counsel of Tharcisse Muvunyi:**

Michael Fisher, Lead Counsel

**Counsel of Idelphonse Hategekimana:**

Jesse Kiritta, Duty Counsel

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

**SITTING** as Trial Chamber III composed of Judges Lloyd G. Williams, Q.C., presiding, Andréia Vaz, and Khalida Rachid Khan ("Chamber");

**BEING SEISED** of the "Extremely Urgent Motion of the Accused Tharcisse Muvunyi to Instruct the Registrar to Replace Michael Fisher, Assigned Counsel" filed on 24 September 2003 by the Accused ("Motion");

**CONSIDERING** the "Prosecutor's Reply to the Accused Tharcisse Muvunyi's Motion to Order the Registrar to Replace his Lead Counsel, Michael Fisher" filed on 2 October 2003 ("Response");

**CONSIDERING** the "Registrar's Response to the Extremely Urgent Motion Filed by the Accused Tharcisse Muvunyi in Order for the Trial Chamber to Direct the Registrar to Withdraw Mr. Michael Fisher as Lead Counsel" filed on 21 October 2003 ("Registrar's Response"); and the Interoffice Memorandum sent by the Defence Counsel Management Section on 10 November 2003 ("Memorandum");<sup>1</sup>

**CONSIDERING** the Statute of the Tribunal ("Statute") and the Rules, especially Rule 45(H);

**NOW REVIEWS** the Motion, pursuant to Rule 73(A) of the Rules, solely on the basis of the written briefs filed by the parties.

**Submissions of the Parties*****Accused***

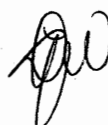
1. Accused Tharcisse Muvunyi requests the Trial Chamber to direct the Registrar to replace his Lead Counsel because of material difficulties, especially lack of communication. He asserts that Counsel does not reply to his numerous messages. Since September 2002, he has failed to communicate with Lead Counsel.

2. Accused Muvunyi also asserts, in support of his request, that Lead Counsel has never agreed to work with him on any defence strategy. Nor did he proceed to select Co-Counsel to assist him. Finally, Lead Counsel allegedly never went to Rwanda, and he contacted just one of the individuals whom the Accused indicated to him as being potential witnesses.

***Defence Counsel***

3. In a letter Lead Counsel addressed to the Accused on 2 September 2002, following certain criticism expressed by the latter, Lead Counsel expressed his willingness to be replaced if it was the Accused's final decision. But Lead Counsel also wrote in a letter dated

<sup>1</sup> See: Rapport sur la défense de Tharcisse Muvunyi (Me. Michael Fisher), 10 November 2003, ICTR/JUD-11-5-2-3541.



19 November 2002 to Defence Counsel Management Section, that he was not prepared to discharge himself without the authority of the Tribunal.<sup>2</sup>

### **Prosecutor**

4. The Prosecutor does not object to the Accused's request as long as no delay is occasioned to the proceedings on the merits. The Prosecutor argues that, since June 2002, the Defence and the Chamber have been notified of his readiness for trial.<sup>3</sup> The Prosecutor adds that he intends to file a request for severance of Tharcisse Muvunyi's trial from that of his co-Accused.

### **Registrar**

5. The Registrar submits that, when he listed Counsel of his choice, the Accused was reminded in vain that he might encounter some difficulties, Mr. Fisher being English-speaking. The Registrar justifies his Decision by stating the inaccuracy of the Accused's assertions, and the lack of good cause for the withdrawal of Lead Counsel.

### **Deliberations**

6. The Chamber notes that, according to the Statute and the Rules, regarding the assignment of Counsel, there is no right for an accused person before this Tribunal to choose Counsel. The procedure of assignment implies that an accused person expresses his wishes, and the Registrar is the only authority to assign Counsel. The jurisprudence of the two *ad hoc* Tribunals has consistently affirmed this practice.

7. The Chamber further notes, pursuant to the Statute, the Rules, and the Directive on the Assignment of Defence Counsel ("Directive"), that the Registrar is the only competent authority to assign Defence Counsel. Any request for replacement of Counsel shall therefore be addressed to the Registrar. In the present case, the Accused has already applied to the Registrar, who rejected his application.<sup>4</sup> The President affirmed the Decision of the Registrar.<sup>5</sup>

8. Pursuant to Rule 45(H) of the Rules, "under exceptional circumstances, [...] the Trial Chamber may instruct the Registrar to replace an assigned Counsel, upon good cause being shown and after having been satisfied that the request is not designed to delay the proceedings".

<sup>2</sup> See: Registrar's Response to the Extremely Urgent Motion Filed by the Accused Tharcisse Muvunyi in Order for the Trial Chamber to Direct the Registrar to Withdraw Mr. Michael Fisher as Lead Counsel, filed on 21 October 2003, Annex IV, p. 4568.

<sup>3</sup> T. 6 June 2002, pp. 3-4.

<sup>4</sup> The Registrar's Decision of Denial of the Request for Withdrawal of Mr. Michael Fisher as Lead Counsel of the Accused Tharcisse Muvunyi, 14 April 2003.

<sup>5</sup> 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, 12 September 2003.



9. In the present case, the Trial Chamber notes that Lead Counsel has not taken any action, since the Registrar's Decision of 14 April 2003, except for two confidential letters sent to the Accused on 17 April and 23 September 2003. This situation and the absence of confidence constitute exceptional circumstances in accordance with Rule 45(H) of the Rules.

10. It is the view of the Trial Chamber that the current situation hinders the proceedings, in so far as the Defence does not appear to be preparing itself to commence the trial, while the Prosecution has expressed its willingness for the commencement of the trial. The Chamber will not lightly permit a change of Counsel. In the present situation there is a deadlock between the Accused and his Counsel. The continuation of this situation is a hindrance to the commencement of the trial. The Accused's request is therefore granted. However, this Decision shall not be construed as a ground for the Defence to request a postponement of the Accused's trial.

**FOR THE ABOVE REASONS,**

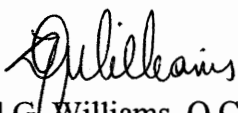
**THE CHAMBER**

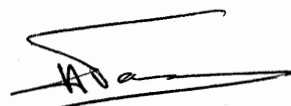
**I. INSTRUCTS** the Registrar to replace Lead Counsel for Accused Tharcisse Muvunyi, as soon as possible and in accordance with the Rules;


**II. REMINDS** the Defence that this Decision cannot be interpreted as implying any delay in the commencement of the trial.

Done in English and French, the French version being authoritative.

Arusha, 18 November 2003

  
Lloyd G. Williams, Q.C.  
Presiding Judge

  
Andréia Vaz  
Judge

  
Khalida Rachid Khan  
Judge

[Seal of the Tribunal]

