

ICIR-98-44-I
26-1-2004
(9374 - 9371)

9374
-Hm



UNITED NATIONS
NATIONS UNIES



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
Tel: 255 57 4207-11 4367-72 or 1 212 963 2850 Fax: 255 57 4000/4373 or 1 212 963 2848/49

Office of the President
Cabinet du Président

Before: Judge Erik Møse, President

Original: English

Registrar: Mr. Adama Dieng

Date: 26 January 2004

THE PROSECUTOR

v.

JOSEPH NZIRORERA et al.

Case No. : ICTR-1998-44-I

JUDICIAL RECORDS
10/11
2004 JAN 27 A 9:30
H. J. O'Brien

THE PRESIDENT'S DECISION ON LEAD COUNSEL'S APPLICATIONS FOR
REVIEW OF SANCTIONS IMPOSED UNDER RULE 73(F)

Lead Counsel:

Peter Robinson

Hm

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

SITTING as Judge Erik Møse, President;

BEING SEIZED of two Applications for review of sanctions from Peter Robinson, filed on 30 September 2003 and 27 October 2004, respectively;

HEREBY CONSIDERS BOTH APPLICATIONS

INTRODUCTION

Peter Robinson has been assigned as Lead Counsel by the Registrar to represent Joseph Nzirorea who is an indigent accused. On 4 September 2003, Trial Chamber III directed the Registrar not to pay to Counsel, fees and costs associated with a defence motion.¹ According to Counsel, the Registrar has indicated that these sanctions will be enforced. On 30 September 2003, Counsel filed a request for review of the Registrar’s decision to enforce the sanctions. On 10 October 2003, the Registrar filed a response to this application. On 13 October 2003, Counsel filed a reply to the Registrar’s response and on 16 October, the Registrar filed a reply to Counsel’s reply.

On 29 September 2003, Trial Chamber III denied a second Defence motion and directed the Registrar not to pay to Counsel fees and costs associated with this motion.² On 7 October 2003, the Trial Chamber denied a third Defence motion and further ordered the non-payment of half of the fees and costs associated with this motion.³ Counsel avers that he had been informed by the Registrar that these sanctions will be enforced. On 27 October 2003, Counsel filed a second request for review of the Registrar’s enforcement of these sanctions.

SUBMISSIONS

Counsel submits that it is well established in the Tribunal that the President has the power to review actions by the Registrar in respect of the legal aid system. He therefore seeks review of the imposition of sanctions by the Registrar, although he indicates that it is unclear as to whether or not the Registrar has the discretion not to impose sanctions ordered by the Trial Chamber. Counsel further argues that, since the Trial Chamber directed the Registrar to withhold payment of fees associated with the preparation and filing of three motions, this scenario is covered by Article 30 of

¹ *The Prosecutor v. Joseph Nzirorera et al*; Case No. ICTR-98-44-T, Decision on the Defence Motion to Order the Government of Rwanda to Show Cause, 4 September 2003.

² *The Prosecutor v. Joseph Nzirorera et al*; Case No. ICTR-98-44-T, Decision on the Defence Request for Leave to Interview Potential Prosecution Witnesses Jean Kambanda, Georges Ruggiu and Omar Serushago, 29 September 2003.

the Directive of Assignment of Defence Counsel (“the Directive”). This provision states that in the event of disagreement relating to the calculation and payment of remuneration, the Registrar shall make a decision after consulting the President. Counsel argues that since he disagrees with the payment of remuneration for work done in respect of the motions in question, the President, pursuant to Article 30 of the Directive, may offer his opinion on this matter. It is requested that the President recommend to the Registrar that the sanctions ordered by the Trial Chamber not be imposed.

According to Counsel, sanctions imposed under Rule 73(F) of the Rules of Procedure and Evidence (“the Rules”) can be reviewed by the President. In the present case, there is a need for the review of these sanctions, as it impacts on Counsel’s professional standing, reputation and remuneration. Counsel argues that the Rules do not provide him with remedies relating to either an appeal or review of the sanctions that had been imposed.

The Registrar submits that the request should be dismissed as they lack substance and merit. He has not taken a decision to sanction Counsel, but will be enforcing the orders rendered by the Trial Chamber which sanction Counsel.

In response to Counsel’s submission on whether the Registrar has the discretion not to enforce the sanctions ordered by the Trial Chamber, the Registrar submits that the notion that he has such discretion is contrary to Article 16 of the Statute and Rule 33(A) of the Rules.

DELIBERATIONS

An application for review of the Registrar’s decision by the President on the basis that it is unfair procedurally or substantively, is admissible under Rules 19 and 33(A) of the Rules, if the applicant has a protective right or interest, or if it is otherwise in the interests of justice.⁴ In the present case, Counsel seeks a review of what he perceives to be the Registrar’s decision to enforce sanctions that have been ordered by Trial Chamber III.

³ *The Prosecutor v. Joseph Nzirorera et al*; Case No. ICTR-98-44-T, Decision on Defence Motion for Disclosure of Exculpatory Evidence, 7 October 2003.

⁴ *The Prosecutor v. Joseph Nzirorera et al*; Case No. ICTR-98-44-T, The President’s Decision on Review of the Decision of the Registrar withdrawing Mr. Andrew McCartan as Lead Counsel of the Accused Joseph Nzirorera, 13 May 2002, page 3, paragraph xi.

Counsel has been sanctioned by the Trial Chamber, pursuant to Rule 73(F) of the Rules. According to this provision, a Chamber may impose sanctions against Counsel if he or she files a motion that is found to have been frivolous or an abuse of process.

Neither the Statute nor the Rules confer on the Registrar the discretion to make a determination as to whether or not a Chamber's decision should or should not be implemented. In the present case, the Trial Chamber, in three decisions, directed the Registrar not to pay to Counsel fees and costs associated with certain motions. The Registrar is obliged to implement these decisions. He has not exercised any discretion that may be the subject of review, pursuant to Rules 19 and 33(A) of the Rules.

Article 30 of the Directive provides for settlement of disagreements on matters relating to the calculation and payment of remuneration, and the reimbursement of expenses to assigned Counsel. The present case does not fall within the ambit of this Article. There is no disagreement between Counsel and Registrar arising from the calculation and payment of fees. In declining to pay fees and costs associated with the three motions filed by Counsel, the Registrar is simply implementing the decisions of the Trial Chamber. As Article 30 of the Directive is not applicable in this case, the issue of the Registrar consulting the President does not arise.

Counsel also argues that sanctions imposed pursuant to Rule 73 (F) of the Rules may be reviewed by the President. It is noted that neither the Statute nor the Rules confer on the President the competence to review any decision handed down by a Chamber. Therefore, Counsel's requests to review the three decisions rendered by the Trial Chamber are declined.

FOR THE ABOVE REASONS, THE TRIBUNAL

DISMISSES Peter Robinson's applications for review.

Arusha, 26 January 2004.



Judge Erik Møse

President

(Seal of the Tribunal)