



ICTR-00-56-T  
8 - 10 - 2004  
(18251 - 18249)

18251  
Mwaja

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER II**

Before: Judge Asoka de Silva, Presiding  
Judge Taghrid Hikmet  
Judge Seon Ki Park

Registrar: Mr. Adama Dieng

Date: 8 October 2004

**The PROSECUTOR**  
v.  
**Augustin NDINDILYIMANA**  
**Augustin BIZIMUNGU**  
**François-Xavier NZUWONEMEYE**  
**Innocent SAGAHUTU**

Case No. ICTR-2000-56-T

JUDICIAL RECORDS/ARCHIVES  
ICTR  
2004 OCT - 8 P. 12: 50  
Mwaja

**DECISION ON DEFENCE ORAL MOTION FOR ADJOURNEMENT OF THE  
PROCEEDINGS**

**The Office of the Prosecutor:**

Ciré Aly Bâ  
Alphonse Van  
Moussa Sefon  
Ifeoma Ojemeni  
Segun Jegede  
Abubacarr Tambadou  
Faria Rekkas  
Harriette Sabblah

**Counsel for the Accused:**

Michel Croisier, for Augustin Bizimungu  
Christopher Black, for Augustin Ndindiliyimana  
André Ferran and Antoine Béraud,  
for François-Xavier Nzuwonemeye  
Fabien Segatwa and Didier Patry  
for Innocent Sagahutu

*[Signature]*

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

**SITTING** as Trial Chamber II composed of Judges Asoka de Silva, presiding, Taghrid Hikmet and Seon Ki Park (the "Chamber");

**BEING SEIZED** of a Defence oral motion for adjournment of the proceedings argued on Thursday 7 October 2004;

**HAVING HEARD** the Prosecution's reply during the same proceedings;

**CONSIDERING** the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules");

**NOW DECIDES** the Motion on the basis of the oral submissions by the Parties.

**WHEREAS** Mr Ferran, Lead Counsel for the Defence for Nzuwonemeye argues that since Co-Counsel Mr. Béraud has filed a request for withdrawal based on health reasons which he will accept, and awaiting the assignment of a new Co-Counsel to the interest of the Accused, a one month trial adjournment should be ordered by the Tribunal;

**WHEREAS** Mr. Ferran argued that it would not be feasible for him to continue the proceedings without the help of co-counsel at a sustained rhythm and also in view of his age;

**WHEREAS** the Prosecution rejects Counsel's arguments based on the fact that a Lead-Counsel and a Co-Counsel are designed to operate as substitute to one another and added that this situation is only temporary and provisional as a Co-Counsel will be appointed and that Lead Counsel benefits from the assistance of a Legal Assistant.

**HAVING DELIBERATED**

1. The Trial Chamber recall Article 20 (4)(b) of the Statute:

In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:[...] to have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his own choosing;"

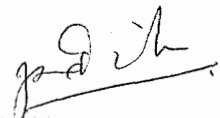
2. The Chamber also recalls that pursuant to Rule 45 (i), "It is understood that Counsel will represent the accused and conduct the case to finality.[...]"

3. The Chamber also notes Article 15 (A) of the Directive on the assignment of Defence Counsel (the "Directive") which states that:

A suspect or accused shall only be entitled to have *one Counsel* assigned to him and that Counsel shall deal with *all stages of procedure* and all matters arising out of the representation of the suspect or accused or for the conduct of his Defence.[...] (Our emphasis)

4. The Chamber further notes Article 15 (C) of the Directive which states that:

Whenever appropriate and at the request of the assigned Counsel, the Registrar *may*, pursuant to Article 13 above, appoint a co-counsel to assist the assigned Counsel.[...] (Our emphasis),



5. Article 15 (E) recalls that Lead Counsel “has primarily responsibility for the Defence” and stipulates that under the authority of Lead Counsel, Co-Counsel may deal with all stages of the procedure.


6. Accordingly, the Chamber is of the view that an indigent Accused is entitled to the assignment of *one Counsel* who has the responsibility to deal with all stages of the procedure whereas the Registrar *may* appoint a Co-Counsel, which is a discretionary power.

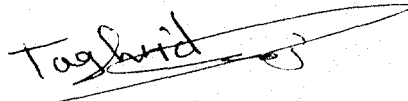
7. The Chamber recalls that Counsel for Nzuwonemeye shall deal with all stages of the procedure and all matters arising out of the representation of the accused or of the conduct of the Accused’s Defence. Based on the fact that the Accused Nzuwonemeye is represented by Counsel, the Chamber is satisfied that the right of the Accused to have an adequate Defence is respected. The Chamber adds for the record that Mr. Ferran is an experienced Counsel before this Tribunal and benefits from the assistance of a Legal Assistant. Therefore, the Chamber denies the Defence request for adjournment of the proceedings based on the fact that Co-Counsel has asked to withdraw.

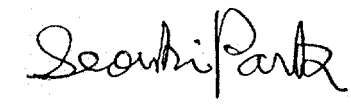
**FOR THE FOREGOING REASONS, THE TRIBUNAL:**

**DENIES** the Defence motion in all respect.

Arusha, 8 October 2004

  
Asoka de Silva  
Presiding Judge

  
Taghrid Hikmet  
Judge

  
Seon Ki Park  
Judge

