

ICTR-99-52-A  
3 NOVEMBER 2004  
(16191H-16161H)

16.



UNITED NATIONS  
NATIONS UNIES



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before:

Judge Theodor Meron, Presiding  
Judge Mohamed Shahabuddeen  
Judge Florence Mumba  
Judge Fausto Pocar  
Judge Inés Mónica Weinberg de Rocca

Registrar:

Mr. Adama Dieng

Order of:

3 November 2004

JUDICIAL RECORDS/ARCHIVES  
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*[Signature]*

Ferdinand NAHIMANA  
Jean-Bosco BARAYAGWIZA  
Hassan NGEZE  
(Appellants)

03 November 04  
Pg  
Concerned in  
Parties, LDs, LSS, etc  
Archives  
- *[Signature]*

V.

THE PROSECUTOR  
(Respondent)

Case No. ICTR-99-52-A

**ORDER TO APPOINT COUNSEL TO JEAN BOSCO BARAYAGWIZA**

Counsel for the Appellants

Mr. Jean-Marie Biju-Duval  
Mr. Bharat Chadha

Counsel for the Prosecutor

Mr. James Stewart  
Ms. Melanie Werrett

|   |                                    |
|---|------------------------------------|
| International Criminal Tribunal for Rwanda<br>Tribunal Pénal International pour le Rwanda |                                    |
| CONFIRME  | THE ORIGINAL SEEN BY ME            |
| CONFIRME  | CONFIRME A L'ORIGINAL PAR MOI      |
| NAME / NOM: .....   | ROSETTE MUZIGO-MORRISON            |
| SIGNATURE: .....  | <i>[Signature]</i> DATE: 03/Nov/04 |

**THE APPEALS CHAMBER** of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 (“Appeals Chamber” and “Tribunal”, respectively);

**NOTING** that the proceedings in this case have been stayed since 19 May 2004, pending the withdrawal of Mr. Barletta Caldarera’s assignment and pending the appointment of new lead counsel;<sup>1</sup>

**NOTING** that the Registrar withdrew Mr. Barletta Caldarera’s assignment as counsel for the Appellant Jean Bosco Barayagwiza (“Appellant Barayagwiza”) on 29 June 2004;<sup>2</sup>

**NOTING** that a Duty Counsel, Mr. John Maruma, was assigned on 9 September 2004 “to give assistance and advice to Mr. Barayagwiza on his rights” but that he was not selected by the Appellant and was not assigned to assist in relation to the appeal proceedings;

**NOTING** the “Decision on Jean Bosco Baryagwiza’s Motion for Appointment of Counsel or a Stay of Proceedings” of 22 October 2004, in which the Appeals Chamber ordered the Registrar, in the interests of justice, to assign counsel to Appellant Barayagwiza by 29 October 2004 (Decision to Appoint Counsel);

**NOTING** the “Registrar’s Representation Pursuant to Rule 33(B) of the Rules of Procedure and Evidence Regarding the Appeals Chamber Decision on Jean Bosco Baryagwiza’s Motion for Appointment of Counsel or a Stay of Proceedings”, filed 27 October 2004, in which the Registrar indicated that he was having problems meeting the Appeals Chamber’s deadline of 29 October 2004 because:

- (i) Appellant Barayagwiza had submitted a list of three names of counsel (Mr. Ronnie MacDonald, Mr. Richard Harvey and Mr. Scott T. Johnson) who were no longer available for appointment. Following the provision of these names, the Registrar had assigned Mr. Ronnie MacDonald to another case as co-counsel on 5 October 2004, determined that Mr. Richard Harvey was no longer eligible for appointment, and been advised that Mr. Scott T. Johnson would prefer to be assigned as co-counsel rather than as lead counsel;

<sup>1</sup> Decision on Jean-Bosco Barayagwiza’s Motion Appealing Refusal of Request for Legal Assistance, 19 May 2004.

<sup>2</sup> *Décision de Retrait de la Commission d’office de Me. Giacomo Caldarera Conseil Principal de l’accusé Jean Bosco Barayagwiza*, 29 June 2004.

(ii) On 25 October 2004, the Registrar wrote to Appellant Barayagwiza requesting him to re-submit, no later than 26 October 2004, three new names of eligible counsel for consideration by the Registrar, but the Appellant refused to comply;

**NOTING** that, on 29 October 2004, Appellant Barayagwiza wrote to the Registrar explaining that he understood that his preferred counsel Mr. Richard Harvey could be reinstated on the list of eligible counsel, but that he would submit two other names, Mr. Daniel Lighter and Mr. Donald P. Herbert to complete the required list;

**NOTING** the “*Réponse au « Registrar’ (sic) Representation » datée du 27 octobre 2004* ‘Regarding the Appeals Chamber Decision on Jean-Bosco Barayagwiza’s Motion for Appointment of Counsel or Stay of Proceedings’” filed 1 November 2004, in which the Appellant denies that the delay in appointing counsel was caused by him and explains:

- (i) That he submitted three names of counsel, as required, on 21 July 2004, but that the Registrar had persuaded his selected candidates to withdraw their candidature for lead counsel;
- (ii) That he was served with the Decision to Appoint Counsel on 25 October 2004, and was asked to provide a list of three candidates for lead counsel the following day without having been provided with a list of eligible counsel;
- (iii) That, given the urgency, he asked the Registrar to reinstate Mr. Richard Harvey, whom he had already identified as an ideal candidate, to the list of eligible counsel;
- (iv) That on 27 October 2004, Appellant Barayagwiza was informed by letter that he had to provide three names, excluding that of Mr. Harvey and that, if he failed to do so, the Registrar would appoint counsel without taking his preferences into account;
- (v) That he therefore “played Russian roulette” and submitted the names of Mr. Lighter and Mr. Herbert, whom he had identified in July as being available;
- (vi) That his preferred lead counsel is Mr. Harvey and that his preferred co-counsel is Mr. Herbert;

**CONSIDERING** that, Mr. Harvey was withdrawn from the list of eligible counsel on 2 April 2004;<sup>3</sup>

<sup>3</sup> Decision of Withdrawal of Mr. Richard Harvey as Co-counsel of Mr. Juvenal Kajelijeli, 2 April 2004. In the decision, the Registrar explained that Mr. Harvey resigned as co-counsel because he was unavailable due to other commitments.  
Case No. ICTR-99-52-A

**CONSIDERING** that the Appeals Chamber has already determined that it would be in the interests of justice and would expedite resolution of the issues before the Tribunal for the Registrar to assign counsel to Appellant Barayagwiza and that further delays in appointing counsel for the Appellant may have an adverse effect on the rights of the other Appellants in this case;


**HEREBY**

**ORDERS** the Registrar:

- (i) To consider reinstating Mr. Richard Harvey on the list of eligible counsel, and, if he is eligible and available, to appoint Mr. Richard Harvey as lead counsel for the Appellant Barayagwiza;
- (ii) If Mr. Richard Harvey is not eligible or available, to appoint Mr. Donald Herbert as lead counsel;
- (iii) To ensure that Appellant Barayagwiza is represented by lead counsel no later than Wednesday, 10 November 2004.

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

Dated this third day of November 2004,  
At The Hague, The Netherlands.

  
Theodor Meron  
Presiding Judge

[Seal of the International Tribunal]

