

ICTR REGISTRY
IC1K-99-52-A
19 January 05
(1895/H - 1892/H)

1895/H
RMM



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: 19 January 2005

ICTR Appeals Chamber
Date: 19 January 05
Action:
Copied To: Concerned Judges,

Parties, Judicial Archives,
LDs, LSS
[Signature]

Ferdinand NAHIMANA
Jean-Bosco BARAYAGWIZA
Hassan NGEZE
(Appellants)

V.

THE PROSECUTOR
(Respondent)

Case No. ICTR-99-52-A

JUDICIAL RECORDS/ARCHIVES
ICTR
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DECISION ON JEAN BOSCO BARAYAGWIZA'S MOTION CONCERNING THE REGISTRAR'S DECISION TO APPOINT COUNSEL

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
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORME A L'ORIGINAL PAR NOUS
NAME / NOM: ROSETTE MUZIGO-MORRISON
SIGNATURE: *[Signature]* DATE: 19/01/05

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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);

BEING SEISED of the "*Recours très urgent contre le refus du Greffier de commettre M. Richard Harvey comme mon Conseil principal en exécution de la décision de la Chambre d'appel du 03 novembre 2004*" ("Motion") filed by Appellant Jean Bosco Barayagwiza ("Appellant Barayagwiza") on 6 December 2004, in which he asks the Appeals Chamber to order the Registrar to assign Mr. Richard Harvey as lead counsel and Mr. Donald Herbert as co-counsel and to assign new counsel with the time and facilities to acquaint themselves with the case before proceeding with the appeal;

NOTING that the proceedings in this case have been stayed since 19 May 2004, pending the assignment of new lead counsel;¹

NOTING the "Decision on Barayagwiza 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;

NOTING the "Order to Appoint Counsel to Jean Bosco Barayagwiza" of 3 November 2004, in which the Appeals Chamber ordered the Registrar (i) to consider reinstating Mr. Richard Harvey on the list of eligible counsel, and, if he is eligible and available, to assign Mr. Richard Harvey as lead counsel for the Appellant Barayagwiza, (ii) if Mr. Richard Harvey is not eligible or available, to assign Mr. Donald Herbert as lead counsel, and (iii) to ensure that Appellant Barayagwiza is represented by lead counsel no later than 10 November 2004;

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 Barayagwiza's* Motion for Appointment of Counsel or a Stay of Proceedings," filed 2 December 2004, in which the Registrar indicates that, after learning that Mr. Harvey was assigned as co-counsel in an ongoing trial before the International Criminal Tribunal for the Former Yugoslavia, the Registry considered that Mr. Harvey's availability to the Appellant and to the Appeals Chamber could not be assured and therefore appointed Mr. Herbert as lead counsel for Appellant Barayagwiza;

NOTING the "*Observations sur la 'Registrar's Representation' datée du 2 décembre 2004* 'regarding the Appeals Chamber Decision on Jean Bosco Barayagwiza's Motion for Appointment of Counsel or Stay of Proceedings,'" filed on 8 December 2004, in which the Appellant contests the

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Registrar's finding that his first choice for lead Counsel is not "available" to defend the Appellant Barayagwiza, and reiterates his request that Mr. Harvey be appointed to serve as his lead counsel and that Mr. Herbert be appointed as co-counsel;

NOTING the "Registrar's Representation Pursuant to Rule 33 (B) of the Rules of Procedure and Evidence Regarding Jean-Bosco Barayagwiza's *Observations sur la Registrar's Representations Datée du 2 Décembre 2004* Regarding the Appeals Chamber Decision on Jean Bosco Barayagwiza's Motion for Appointment of Counsel or Stay of Proceedings," filed on 27 December 2004, in which the Registrar details his reasons for finding that Mr. Harvey is not available to defend the Appellant Barayagwiza, argues that such an assignment could prejudice the rights of other defendants, and stresses that, according to Article 15 (A) of the Directive on the Assignment of Defence Counsel, co-counsel is chosen by lead counsel and not by the accused;

NOTING the "*Réplique a la réponse du Greffier du 27 décembre 2004 à mes observations sur la 'Registrar'[sic] Representation' datée du 2 décembre 2004* 'regarding the Appeals Chamber Decision on Jean Bosco Barayagwiza's Motion for Appointment of Counsel or Stay of Proceedings,'" filed on 5 January 2005, in which the Appellant Barayagwiza states that Mr. Harvey considers himself available to defend the Appellant Barayagwiza, argues that in Tribunal practice it is not the Registrar who chooses co-counsel but the Accused, and reiterates his request that Mr. Harvey serve as lead counsel and Mr. Herbert as co-counsel;

NOTING that proceedings in this appeal have been delayed for a significant time and that it is therefore in the interests of justice for this case to advance immediately after the appointment of lead counsel for the Appellant Barayagwiza, and that in such circumstances, it is preferable for Appellant Barayagwiza to be assigned lead counsel who is in a position to prioritize the preparation of this appeal;

CONSIDERING that, although the choice of an accused regarding his defence counsel should be respected, the Registrar maintains a degree of discretion in assigning counsel to an indigent accused, and may decide not to appoint the accused's first choice of counsel if there are sufficient grounds overriding the accused's preference;²

FINDING that, in the circumstances of this case, the Registrar has given reasonable explanations why Appellant Barayagwiza's first choice of lead counsel is unsuitable for appointment and has therefore assigned another lead counsel from the names proposed by the Appellant, as ordered by the Appeals Chamber;

¹ Decision on Jean-Bosco Barayagwiza's Motion Appealing Refusal of Request for Legal Assistance, 19 May 2004.

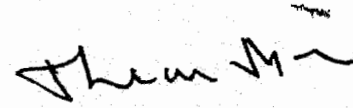
² See, e.g., *Prosecutor v. Akayesu*, ICTR-97-23 Appeals Judgement, para. 61; *Prosecutor v. Kambanda*, ICTR-97-23 Appeals Judgement, 19 October 2000, para. 33; *Prosecutor v. Prlić et al.*, IT-04-74-AR73.1, 24 November 2004, para. 19.

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HEREBY Dismisses the Motion in its entirety.

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

Dated this 19th day of December 2004,
At The Hague, The Netherlands.



Theodor Meron
Presiding Judge

[Seal of the Tribunal]

