



UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

3121  
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ICTR-01-70-T  
31-05-2007  
(3121-3118)  
TRIAL CHAMBER II

OR: ENG

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

**Registrar:** Mr Adama Dieng

**Date:** 31 May 2007

JUDICIAL RECORDS ARCHIVER  
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**THE PROSECUTOR**

v.

**Emmanuel RUKUNDO**

*Case No. ICTR-2001-70-T*

**DECISION ON THE CONFIDENTIAL AND EXTREMELY URGENT DEFENCE  
MOTION TO REVIEW THE REGISTRAR'S DECISION DATED 9 MAY 2007**

**Office of the Prosecutor:**

Mr William T. Fgbe  
Mr Sulaiman Khan  
Ms Veronic Wright  
Mr Patrick Gabaake  
Ms Thembile Segoete  
Ms Amina Ibrahim

**Counsel for the Defence:**

Ms Aïcha Condé  
Ms Annie Olivier

## INTRODUCTION

1. The trial against Emmanuel Rukundo commenced on 15 November 2006. After calling 18 witnesses, the Prosecution closed its case on 12 March 2007. The Defence case is set to start on 2 July 2007.<sup>1</sup>

2. On 10 March 2007, co-Counsel for Rukundo informed Lead Counsel of her intention to withdraw from the case. On 13 March 2007, Lead Counsel for Rukundo asked the Registrar to accept co-Counsel's resignation. On 9 May 2007, the Registrar denied that request on the basis that exceptional circumstances were not demonstrated as required by Article 19(A)(ii) of the Directive on the Assignment of Defence Counsel ("the Directive") and urged the two Counsel to resolve their differences. On 15 May 2007, the Defence filed a Motion, to which it annexed several documents, asking the Chamber to review the Registrar's decision of 9 May 2007 pursuant to Rule 45(H) of the Rules of Procedure and Evidence (the 'Rules').<sup>2</sup> On 18 May 2007, co-Counsel for Rukundo filed a Response.<sup>3</sup> On 29 May 2007, the Registrar, based on Rule 33(B), presented a short submission and indicated that he is content to be guided by the Trial Chamber's view on the matter.<sup>4</sup>

## DELIBERATIONS

### *(i) Jurisdiction*

3. The Defence submits that based on Rule 45(H), a Chamber may, under exceptional circumstances and upon request from Lead Counsel or the Accused, and after having satisfied itself that the request is not designed to delay the proceedings, instruct the Registrar to withdraw a Counsel. The Defence contends that exceptional circumstances exist in the present case and asks the Chamber to grant the request in the interests of the Accused.

4. The Defence submits that the Registrar erred in his Decision because he misconstrued the facts of the case and it is thus necessary to reverse his Decision. Finally, the Defence submits that the withdrawal of co-Counsel would not delay the proceedings and that other potential co-Counsel to replace Madame Olivier have already been informed that the Defence case is scheduled to commence on 2 July 2007.

5. In her submission to the Chamber, co-Counsel asserts that the Defence should have seized the President with a Motion to review the Registrar's decision pursuant to Article 19(E) of the Directive, rather than making this pleading before the Chamber. Co-Counsel states, however, that in light of the Accused's position, she no longer wishes to be part of the Defence team as was offered by the Registrar.

6. The Chamber observes that according to Article 19(A)(ii) of the Directive "the Registrar may ... [i]n exceptional circumstances, at the request of Lead Counsel withdraw the assignment of co-Counsel." The Chamber further observes that Article 19(E) of the Directive provides for Presidential review of the decision when the Registrar denies a request for withdrawal emanating from the Accused or Counsel. Since the Registrar's decision is based on Article 19(A)(ii) of the Directive, the proper course of action for a review of that decision

<sup>1</sup> Scheduling Order following the Pre-Defence Conference, 7 May 2007.

<sup>2</sup> "Requête confidentielle et en extrême urgence aux fins de retrait de la commission d'office de Madame Annie OLIVIER."

<sup>3</sup> "Réponse à la requête confidentielle et en extrême urgence, de M. Rukundo, aux fins de retrait de la commission d'office de Mme Annie OLIVIER, en date du 15 Mai 2007."

<sup>4</sup> "The Registrar's Submission regarding Rukundo's confidential and extremely urgent Motion for the withdrawal of the assignment of Ms. Annie Olivier."



would have been to seize the President of the matter, in accordance with Article 19(E) of the Directive.

7. The Chamber notes, however, that Rule 45(H) of the Rules provides for a parallel procedure whereby the Trial Chamber is vested with a direct adjudicative role over matters concerning the withdrawal of assigned counsel. This Rule stipulates that a Trial Chamber may "under exceptional circumstances ... 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." In the interest of judicial economy and in light of the scheduled commencement of the Defence case on 2 July 2007, the Chamber will consider the Defence submission under Rule 45(H).

*(ii) Merits*

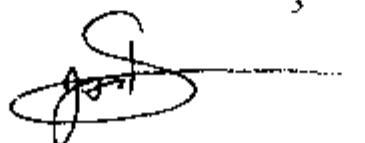
8. In addition to the confidential submissions made by Lead Counsel and co-Counsel on certain events between 9 and 12 March 2007, which led to the current situation, the Chamber takes particular note of the Registrar's submission on the issue and the various letters written by co-Counsel and notes a complete loss of confidence between the Accused and Lead Counsel on one side and co-Counsel on the other side. The language and content of the pleadings filed actually suggests that the relationship between Lead and co-Counsel has collapsed, thereby making it impossible for them to work together to defend the interests of the Accused. Furthermore, the Chamber notes co-Counsel's unwillingness to rejoin the Defence team. At this critical stage of the proceedings when the Defence case is scheduled to commence on 2 July 2007, the current impasse should not be allowed to prevail or to adversely affect the proceedings.

9. The Chamber considers that this situation constitutes "exceptional circumstances" within the meaning of Rule 45(H).<sup>5</sup> The Chamber therefore instructs the Registrar pursuant to Rule 45(H) to replace co-Counsel for Rukundo as soon as possible bearing in mind the scheduled commencement of the Defence case.

10. The Chamber however notes that this incident represents the second time that a co-Counsel for Rukundo has resigned since the beginning of the case in November 2006. The Chamber considers this as highly unusual and urges Lead Counsel and the Accused to make all necessary efforts to ensure that present and future members of the Defence team and the Accused act courteously and respectfully towards one another and any future problem that may arise, is dealt with in a strictly professional manner.

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<sup>5</sup> See also *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), 18 November 2003, para. 9.

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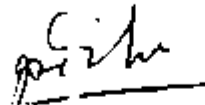
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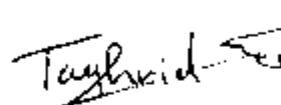
**FOR THE ABOVE REASONS, THE CHAMBER**

**INSTRUCTS** the Registrar pursuant to Rule 45(H) to replace co-Counsel for the Accused Rukundo as soon as reasonably practicable in accordance with the Rules and the Directive, bearing in mind the scheduled commencement of the Defence case on 2 July 2007;

**REMINDS** the Defence that this Decision provides no basis for any delay or postponement of the commencement of its case.

Arusha, 31 May 2007

  
Asokide Silva  
Presiding Judge

  
Taghrid Hikmet  
Judge

  
Seon Ki Park  
Judge

