



Mechanism for International Criminal Tribunals

Case No. MICT-12-29-R
Date: 19 December 2017
Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Joseph E. Chiondo Masanche
Judge Aydin Sefa Akay
Judge Aminatta Lois Runeni N'gum
Judge Gberdao Gustave Kam

Registrar: Mr. Olufemi Elias

Decision of: 19 December 2017

PROSECUTOR

v.

AUGUSTIN NGIRABATWARE

PUBLIC

**DECISION ON DEFENCE COUNSEL'S MOTION
TO WITHDRAW**

The Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Mathias Marcussen
Ms. Veronic Wright

Counsel for Augustin Ngirabatware:

Mr. Peter Robinson

THE APPEALS CHAMBER of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively);¹

NOTING that, on 8 June 2016, the Registrar assigned Mr. Peter Robinson as counsel to Mr. Augustin Ngirabatware for the purpose of assisting him in relation to his potential request for review of his convictions;²

RECALLING that, on 19 June 2017, the Appeals Chamber: (i) granted Ngirabatware’s request for review of his convictions, finding that, in view of new information of an evidentiary nature, which constitutes a new fact for the purpose of Rule 146 of the Rules of Procedure and Evidence (“Rules”), a review of the Appeal Judgement in the case of *The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54 is warranted; and (ii) determined that a hearing should be held, pursuant to Rule 147 of the Rules, to allow the parties to provide supporting and rebuttal evidence concerning the new fact (“Review Hearing”);³

NOTING that, on 10 July 2017, the Registrar continued Robinson’s assignment as counsel to represent Ngirabatware in the review proceedings;⁴

RECALLING that, on 22 November 2017, the Appeals Chamber scheduled the Review Hearing from 8 until 16 February 2018;⁵

BEING SEISED of a motion filed on 30 November 2017, in which Robinson seeks to withdraw as counsel for Ngirabatware, citing regulations governing professional conduct of defence counsel related to discontinuation of representation and conflict of interest;⁶

NOTING that, in response, the Prosecution does not dispute the existence of a conflict of interest;⁷

RECALLING that Ngirabatware is entitled to assigned counsel at the expense of the Mechanism for the purpose of assisting him in relation to the review proceedings;⁸

¹ See Order Assigning Judges to Consider a Case Before the Appeals Chamber, 25 July 2016, p. 2.

² Decision, 8 June 2016 (confidential), p. 2.

³ Decision on Ngirabatware’s Motion for Review, 19 June 2017 (public and redacted) (“Review Decision”), pp. 2, 3. See also Motion for Review of Judgement, 8 July 2016 (confidential with confidential Annexes A-D); *Augustin Ngirabatware v. The Prosecutor*, Case No. MICT-12-29-A, Judgement, 18 December 2014; *The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Judgement and Sentence, pronounced on 20 December 2012 and issued in writing on 21 February 2013.

⁴ Decision, 10 July 2017 (public redacted version), p. 2.

⁵ Scheduling Order for Review Hearing, 22 November 2017 (“Scheduling Order”), p. 1.

⁶ Defence Counsel’s Motion to Withdraw, 30 November 2017 (with confidential Annex A) (“Motion”), paras. 1, 2, referring to Articles 9(B) and 14(D) of the Code of Professional Conduct for Defence Counsel Appearing Before the Mechanism (MICT/6, 14 November 2012); Annex A, paras. 8-15.

⁷ Response to Defence Counsel’s Motion to Withdraw, 5 December 2017 (confidential), para. 1.

⁸ Review Decision, p. 2.

NOTING that, pursuant to Rule 43(G) of the Rules, under exceptional circumstances, at the request of an assigned counsel, the Appeals Chamber may instruct the Registrar to replace the counsel, upon good cause being shown and after being satisfied that the request is not designed to delay the proceedings;

CONSIDERING that the information contained in Annex A to the Motion demonstrates the existence of exceptional circumstances, which constitute good cause for the replacement of Robinson as counsel for Ngirabatware;

CONSIDERING that the Appeals Chamber is satisfied that Robinson's request to withdraw is not designed to delay the proceedings;

CONSIDERING, therefore, that in order to safeguard the integrity of the review proceedings it is appropriate to replace Robinson as counsel for Ngirabatware;

CONSIDERING further that, in order to provide the new counsel adequate time to prepare, it is appropriate to adjourn the Review Hearing until further order of the Appeals Chamber;

FOR THE FOREGOING REASONS,

PURSUANT to Rules 43(G), 55, and 131 of the Rules;

HEREBY GRANTS the Motion;

INSTRUCTS the Registrar to replace Robinson as counsel for Ngirabatware; and

VACATES the Scheduling Order.

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

Done this 19th day of December 2017,
At The Hague,
The Netherlands


Judge Theodor Meron, Presiding

[Seal of the Mechanism]



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