

**THE TRIAL CHAMBER**

**Case No:** STL-11-01/T/TC

**Before:** Judge David Re, Presiding  
Judge Janet Nosworthy  
Judge Micheline Braidy  
Judge Walid Akoum, Alternate Judge  
Judge Nicola Lettieri, Alternate Judge

**Registrar:** Mr Daryl Mundis

**Date:** 26 April 2017

**Original language:** English

**Classification:** Public

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**DECISION GRANTING ONEISSI DEFENCE'S REQUEST TO PERMIT TRIAL IN  
THE ABSENCE OF LEAD- AND CO-COUNSEL FOR MR ONEISSI**

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(Extract from Official Public Transcript of Hearing on 26 April 2017, page 62, line 14 to page 64, line 25; page 80, line 1 to page 80, line 9)

The Trial Chamber is seized of an application from counsel appearing for the accused, Mr. Hussein Hassan Oneissi, who are asking the Chamber to permit the trial against Mr. Oneissi in the case of Prosecutor versus Oneissi to continue in the absence of a lead counsel and the two co-counsel who were assigned to represent Mr. Oneissi in this trial in absentia by the Head of the Defence Office, Monsieur Francois Roux. The application was made at 10.39 this morning on Wednesday, the 26th of April, saying:

[...]

The [...] co-counsel for Mr. Oneissi notified the Trial Chamber's legal officer this morning at 10.39 saying:

“Because of urgent other matters, unfortunately no counsel for Mr. Oneissi will be able to attend this afternoon's hearing. However, I have consulted with counsel for Mr. Ayyash and they kindly agreed to represent us.”

And then further:

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“One member of our team (Gyo Thomas Suzuki) will be present in the courtroom.”

The Chamber asked the counsel for Mr. Oneissi to make a formal application and counsel did so and informed the Chamber that she had made arrangements two months ago not to be here this afternoon but that the other two counsel, that is lead counsel and co-counsel, could not be here because they were engaged in other professional business connected with the case.

The Chamber sought the intervention of the Head of the Defence Office as to whether the Chamber had any express or inherent power to grant the application, and referred to Rule 57(G), which requires that the Head of the Defence Office “ensure representation of suspects and accused meets internationally recognized standards.”

The Chamber has several times in the past allowed the trial to proceed in the absence, briefly, of counsel for an accused or the Legal Representative of Victims but did so on an exceptional basis and certainly not in the testimony of a witness of the importance of Mr. John Edward Philips to the Prosecution's case against Mr. Oneissi. Some of the other times we have allowed this, concerned the Chamber's reception into evidence of documentary evidence.

The Statute and Rules contain no express power allowing a trial to continue against an accused person, even in absentia, in the absence of their assigned counsel. The Chamber has carefully considered the matter and heard submissions from the Defence Office and counsel for Mr. Oneissi, and we note that the Prosecution has made no submissions and says it's a matter for the Chamber, and the Legal Representative of Victims similarly had no submissions to make.

The Chamber makes the following finding.

The Chamber will permit the trial to continue for one session only this afternoon against Mr. Oneissi on an exceptional basis in the absence of his assigned co-counsel on the condition that a lawyer from the Oneissi Defence team, who Ms. von Wistinghausen has informed us is Ms. Maud Sarlieve, will be present and, if necessary, can instruct counsel for Mr. Ayyash to make any relevant submissions connected to any matters relating to the representation of Mr. Oneissi in the proceedings today.

The Chamber emphasizes that [...] it is making this order on an exceptional basis, and it is displeased by the late notice, which, in effect, was presented to the Chamber as a fait

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accomplish this morning. We note, of course, Ms. von Wistinghausen has apologized for the late notice and we take notice of that.

So we will allow the application but on an exceptional basis, and we direct counsel for any of the accused that if they wish to make a similar application in the future they must do so in a timely manner unless, of course, some compelling urgent matter intervenes.

[...]

In making the order, the Chamber is satisfied that there is no conflict of interest between the interests of the accused, Mr. Salim Jamil Ayyash and Mr. Hussein Hassan Oneissi, in relation to the evidence that Mr. Philips is giving this afternoon.

And further, the Chamber is making this order on an exceptional basis in the absence of any express provision in the Statute of the Tribunal or its Rules of Procedure and Evidence under the doctrine of inherent implied proceedings; that is, by making orders necessary to effect justice in the proceedings.

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