

ICTR-98-41-T
02-02-2005
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
(23601-23599)

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TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 2 February 2005

THE PROSECUTOR
v.
Théoneste BAGOSORA
Gratien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA
Case No. : ICTR-98-41-T

JUDICIAL RECORDS/ARCHIVES
ICTR
2005 FEB - 2 P 5: 32
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**DECISION ON MR. DEGLI'S REQUEST FOR AUTHORIZATION TO
COMMUNICATE WITH MR. KABILIGI**

The Office of the Prosecutor
Barbara Mulvaney
Drew White
Christine Graham
Rashid Rashid

Counsel for the Defence
Raphaël Constant
Paul Skolnik
René Saint-Léger
Peter Erlinder
André Tremblay
Kennedy Ogetto
Gershom Otachi Bw'Omanwa

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“the Tribunal”),

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

BEING SEIZED OF Mr. Degli’s request to have authorization to communicate with Mr. Kabiligi, filed on 31 January 2005;

HEREBY DECIDES the request.

INTRODUCTION

1. In a decision of 26 October 2004, the Registrar withdrew the assignment of Mr. Jean Yaovi Degli as Lead Counsel for the Defence of Gratien Kabiligi under the framework of the legal aid system.¹ The Registrar’s decision also ordered Mr. Degli to deliver to the Accused or the present Co-Counsel, all original documents in the file within fifteen days of the decision.
2. All Defence teams, as well as Mr. Kabiligi individually, challenged this decision before the Trial Chamber and requested Mr. Degli’s reinstatement. The Chamber denied the motions orally on 20 December 2004. On 19 January 2005, the Chamber delivered its written decision setting forth in detail its reasons for denying the Defence motions. The Chamber also instructed the Registrar to appoint Mr. Paul Skolnik as Lead Counsel for the Kabiligi Defence.² The appointment was made on 24 January 2005.
3. All Defence teams, through Counsel, filed a joint request for certification to appeal the Chamber’s decision on 26 January 2005. Mr. Kabiligi filed a separate request, individually, on 28 January 2005. The Chamber has denied the requests for certification in a separate decision filed today.³

SUBMISSIONS

4. Mr. Degli requests the Chamber to authorize him to contact Mr. Kabiligi by telephone so that he can discuss and obtain instructions concerning the case file. Mr. Degli recalls that the Chamber in its decision of 19 January 2005 at paragraph 52 stated: “In addition, Article 20 (A) of the Directive further mandated that he actively continue until replaced. From the submissions as well as his apparent lack of participation in the case since the Registrar’s decision, the Chamber notes that it seems that Mr. Degli has not fulfilled these obligations.” In response, Mr. Degli emphasises that he respected and conformed to his professional obligations and the instructions of his client, in particular by remaining in contact with the witnesses. Mr. Degli did not respond to the ongoing proceedings because the Registry stopped sending him copies of relevant documents and opposed his contact with Mr. Kabiligi. Therefore, he did not believe that he was obliged to participate in the proceedings related to his reinstatement. In addition, the fact that the other Defence teams requested his reinstatement did not necessitate his intervention.

¹ Decision to Withdraw the Assignment of Mr. Jean Yaovi Degli as Defence Counsel for Gratien Kabiligi (Registrar), 26 October 2004.

² *Bagosora et al.*, Decision on the Defence Motions for the Reinstatement of Jean Yaovi Degli as Lead Counsel for Gratien Kabiligi (TC), 19 January 2005.

³ *Bagosora et al.*, Decision on the Defence Requests for Certification of the “Decision on the Defence Motions for the Reinstatement of Jean Yaovi Degli as Lead Counsel for Gratien Kabiligi” (TC), 2 February 2005.

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DELIBERATIONS

5. Article 20 (A) and (B) of the Directive on the Assignment of Defence Counsel (“the Directive”) states:

(A) Where the assignment of Counsel is withdrawn by the Registrar or where the services of assigned Counsel are discontinued, the Counsel assigned may not withdraw from acting until either a replacement Counsel has been provided by the Tribunal or by the suspect or accused, or the suspect or accused has declared his intention in writing to conduct his own defence.

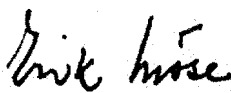
(B) Where the assignment of Counsel is withdrawn by the Registrar or where the services of assigned Counsel are discontinued, the Counsel must deliver within fifteen days of withdrawal all the original documents in the file to the Counsel who succeeds him, or otherwise, to his client.

6. Mr. Degli’s submissions concerning his continued activity on behalf of Mr. Kabiligi are noted.⁴ The Chamber does not find it necessary to address these submissions. The Registrar’s appointment of Mr. Skolnik as Lead Counsel for Mr. Kabiligi on 24 January 2005 has now concluded Mr. Degli’s obligations pursuant to Article 20 (A) of the Directive. With the Chamber’s denial of the Defence requests for certification, all that remains is an orderly transfer of the case file from Mr. Degli to Mr. Skolnik as envisioned by Article 20 (B) of the Directive. In this respect, Mr. Degli should be authorized to communicate with Mr. Kabiligi.

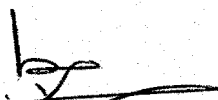
FOR THE ABOVE REASONS, THE CHAMBER

INSTRUCTS the Registrar to authorize Mr. Degli to have telephone communication with Mr. Kabiligi in order to facilitate the orderly transfer of the case file to the new Lead Counsel, Mr. Skolnik.

Arusha, 2 February 2005



Erik Møse
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge



⁴ These submissions do not alter the Chamber’s decision of 19 January 2005 not to reinstate Mr. Degli, which was based on other considerations, or to instruct the Registrar to appoint Mr. Skolnik as Lead Counsel.