

ICTR-98-44-T
18-06-2010
(51554-51549)

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THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA

CASE No. ICTR-98-44-T

IN TRIAL CHAMBER No. 3

Before: Judge Dennis C.M. Byron, Presiding
Judge G. Gustave Kam
Judge Vagn Joensen

Registrar: Mr. Adama Dieng

Date Filed: 18 June 2010

THE PROSECUTOR

v.

JOSEPH NZIRORERA

JUDICIAL OFFICES
18/06/2010

JUN 18 10 09 25

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AFFIDAVIT OF PETER ROBINSON

The Office of the Prosecutor:

Mr. Don Webster
Mr. Takeh Sendze

Defence Counsel:

Mr. Peter Robinson
Mr. Patrick Nimy Mayidika Ngimbi

Counsel for Co-Accused:

Ms. Dior Diagne Mbaye and Mr. Felix Sow for Edouard Karemera
Ms. Chantal Hounkpatin and Mr. Frederick Weyl for Mathieu Ngirumpatse

1. On 8 June 2010 the Trial Chamber directed that Lead Counsel for Joseph Nzirorera “submit an affidavit showing cause why he should not be held in contempt of court no later than close of business on Friday 18th June. The affidavit should also mention why Mr. Nimy has not been present in court this week, which has effectively left Mr. Nzirorera without counsel as this matter unfolds.”¹

2. This affidavit is being submitted after the ICTR Court Management Service advised on 17 June 2010 that the Trial Chamber had denied the *Motion for Extension of Time to File Affidavit* (17 June 2010) and that a written decision would follow. It remains the position of Lead Counsel that it is error to require an individual against whom contempt proceedings have been initiated to show cause why he or she should not be held in contempt. It is respectfully contended that any contempt proceedings will be fatally flawed as a result of the Trial Chamber having compelled such an affidavit.

Respectfully submitted,



PETER ROBINSON

Lead Counsel for Joseph Nzirorera

¹ Transcript of 8 June 2010 at p. 4

AFFIDAVIT

I, PETER ROBINSON, do hereby declare under penalty of perjury that the following is true and correct:

1. I am Lead Counsel for Joseph Nzirorera.
2. I have been ordered to show cause why I should not be held in contempt.
3. I should not be held in contempt because I believed that I was doing the right thing.
4. I genuinely believed that I would be violating Articles 5 and 9 of the ICTR *Code of*

Professional Conduct for Defence Counsel if I were to proceed.

5. Article 5(e) of that code provides in pertinent part that:

In providing representation to a client, Counsel must...never permit their independence, integrity and standards to be compromised by external pressures.

6. Article 9(3)(c)(2) of that code provides in pertinent part that:

Counsel must not represent a client with respect to a matter if...the Counsel's professional judgement on behalf of the client will be, or may reasonably be expected to be, adversely affected by...the Counsel's own...personal interests.

7. I genuinely believed that, in light of arrest of Peter Erli nder and the particular nature of Mr. Nzirorera's defence, I faced a real risk of prosecution by the Rwandan government for my work as Lead Counsel.

8. I genuinely believed that such external pressures compromised my ability to act with independence and integrity on Mr. Nzirorera's behalf.

9. I genuinely believed that the impact of those pressures on my own personal interests adversely affected my professional judgement on behalf of Mr. Nzirorera.

10. When caught between my obligation to adhere to the ICTR's *Code of Professional Conduct for Defence Counsel* and to obey the orders of the Trial Chamber, I did everything I could to avoid that confrontation.

11. First, I requested a postponement of the trial until the situation concerning Peter Erlinder's arrest could be clarified.

12. Second, when the Trial Chamber indicated that the arrest of Peter Erlinder had nothing to do with his work at the ICTR, I requested that the Chamber take the time to obtain more accurate information.

13. Third, when the Chamber insisted on proceeding, I filed an *Application for Withdrawal of Assignment of Counsel* with the Registrar. I went to the Registrar's office at every break in the proceedings in an effort to meet with him and get a decision on that application. As I told the Trial Chamber, I was and am prepared to abide by any final decision on that application.

14. Fourth, I met with the two witnesses who were present in Arusha and explained the situation to them. They were very supportive of my position. They indicated that they would be willing to return to Arusha and give their testimony at another time, thus ensuring that my client would not be prejudiced if the proceedings were postponed.

15. Fifth, I requested the opportunity to consult with my bar association and private counsel to obtain their advice as to what I should do in the face of what had become competing obligations between the ICTR *Code of Professional Conduct for Defence Counsel* and the desires of the Trial Chamber.

16. Indeed, the Trial Chamber initiated contempt proceedings without giving me the opportunity to decide how to proceed after I had requested to consult with my bar association and counsel. In fact, at the time it initiated contempt proceedings, I had not declined to proceed but had simply made one last request to avoid the confrontation between my two duties.

17. I consulted at all times with my client Joseph Nzirorera and he fully agreed with and supported my actions at each step of the proceedings.

18. I was also motivated by my desire to support, as much as I could lawfully do so, my colleague Peter Erlinder and the principle that it was unacceptable for a defence lawyer to be arrested for doing his job. As I told the Chamber:

Today, a long way away in the United States, my daughter is taking the law school entrance examination. She wants to be a human rights activist for Amnesty International or Human Rights Watch -- or something like that. And I think if she looks back on her father's career till this moment, I don't think she would be very proud of me if I conducted business as usual in the face of the arrest of one of my colleagues for doing his job.²

19. I stand by that statement. And indeed, my family is proud of me.

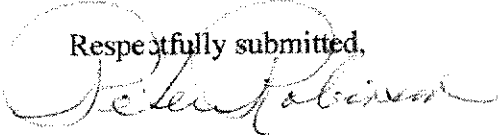
20. As I write this, Peter Erlinder has been ordered released on bail. I express my appreciation to the Rwandan Judiciary for that decision, as well as to those at the ICTR and UN Office of Legal Affairs who acted decisively to assert the immunity to which Mr. Erlinder and his fellow defence counsel are entitled. I hope that this development will assist us in moving forward with Mr. Nzirorera's case.

21. My co-counsel Patrick Nimy was not in court during the week of 7 June 2010 because I had given him and the rest of the team the week off to spend with their families. We were on recess during the week of 31 May and the week of 14 June, and were scheduled to sit only three days during the week of 7 June. Both of the scheduled witnesses were assigned to me for direct examination. Therefore, by giving the team those three days off, they were able to spend a full three weeks at home. I also did not want to expose my defence team to problems which might (and did) arise in connection with the arrest of Peter Erlinder.

² Transcript of 7 June 2010 at p. 3

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22. I apologize to the Trial Chamber for any aggravation or inconvenience which I caused.

Respectfully submitted,

PETER ROBINSON
Lead Counsel for Joseph Nzirorera

