

ICTR-98-44-T
07-06-2010
(51392-51387)

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THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA

CASE No. ICTR-98-44-T

Before: Mr. Adama Dieng, Registrar

Date Filed: 7 June 2010

THE PROSECUTOR

v.

JOSEPH NZIRORERA

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REQUEST FOR WITHDRAWAL OF THE
ASSIGNMENT OF COUNSEL

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. Peter Robinson, Lead Counsel for Joseph Nzirorera, hereby requests, pursuant to Article 19 (A)(i) of the *Directive on the Assignment of Defence Counsel*, that his assignment as Lead Counsel for Mr. Nzirorera be withdrawn.

2. Article 19 provides that:

(A) The Registrar may:

(i) In exceptional circumstances, at the request of the accused, or his Counsel, withdraw the assignment of Counsel

3. Mr. Robinson respectfully submits that exceptional circumstances exist for the withdrawal of his assignment as counsel for Mr. Nzirorera.

4. On 28 May 2010, the Rwandan government arrested Peter Erlinder, Lead Counsel for Aloys Ntabakuze, and charged him with negation of genocide and endangering national security. The charges stem from Mr. Erlinder's representation of Major Ntabakuze at this Tribunal.¹

5. As a result of this action, defence counsel at the ICTR are subject to a real risk of prosecution in Rwanda for their work on behalf of their clients. Mr. Robinson never agreed to take such a risk when he accepted the assignment to represent Joseph Nzirorera in 2002, before the 2003 amendment to the Rwandan constitution and the 2008 genocide ideology laws were adopted.

6. Such a risk is unacceptable to Mr. Robinson and his family.

7. Continued representation of Mr. Nzirorera by Mr. Robinson would cause him to be in violation of Article 5(e) of the ICTR *Code of Professional Conduct for Defence Counsel*. That article provides that:

¹ Mr. Robinson refers to *Joseph Nzirorera's Motion for Continuance: Arrest of Peter Erlinder* (31 May 2010); *Supplemental Submission: Joseph Nzirorera's Motion for Continuance: Arrest of Peter Erlinder* (3 June 2010) and *Reply Brief: Joseph Nzirorera's Motion for Continuance: Arrest of Peter Erlinder* (7 June 2010) which are hereby incorporated into this motion by reference.

In providing representation to a client, Counsel must:

- (e) Never permit their independence, integrity and standards to be compromised by external pressures

8. The external pressure exerted upon defence counsel by the Rwandan government through its arrest of Peter Erlinder and application of its laws to ICTR defence counsel doing their jobs has compromised Mr. Robinson's independence and standards of what is necessary in the defence of his client. Therefore, under such conditions, he can no longer carry out the functions of defence counsel at the ICTR.

9. The action of the Rwandan government in subjecting defence counsel at the ICTR to arrest and incarceration for their work on behalf of their clients also creates a conflict of interest between Mr. Robinson and his client in violation of Article 9(3)(c)(2) of the ICTR *Code of Professional Conduct for Defence Counsel*. That section provides:

(3) ...Counsel must not represent a client with respect to a matter if:

(c) The Counsel's professional judgement on behalf of the client will be, or may reasonably be expected to be, adversely affected by:

(ii) The Counsel's own financial, business, property or personal interests

10. Mr. Robinson's own personal interests in avoiding arrest and incarceration by the Rwandan government will unavoidably adversely affect his professional judgement on behalf of Mr. Nzirorera, since to continue to advance Mr. Nzirorera's defence subjects him to personal consequences which he is not willing to accept.

11. It is Joseph Nzirorera's case that the killings which occurred in Rwanda in 1994 were not the result of a state-sponsored genocide, and that the Rwandan authorities and political party leaders never desired nor encouraged the killings, and in fact, tried their best to stop them.

12. In support of his case, he has called Ministers Pauline Nyiramasuhuko and Eliezer Niyitegeka as witnesses and intends to call Ministers Casimir Bizimungu, Augustin Ngirabatware, and Andre Ntagerura in his case to establish those facts. In addition, he has introduced prior testimony from Ministers Agnes Ntamabyaliro and Emmanuel Ndindabahizi to this effect pursuant to Rule 92 *bis*.

13. Mr. Nzirorera has also elicited testimony from top military leaders General Augustin Bizimungu, Colonel Tharcisse Renzaho, and Colonel Anatole Nsengiyumva and intends to call Colonel Theoneste Bagosora to the effect that the Rwandan authorities and political party leaders never encouraged the population to kill Tutsis.

14. Mr. Nzirorera himself has testified to those facts, as has Edouard Karemera, and he expects Matthieu Ngirumpatse to do the same. He has also obtained the testimony of Interahamwe Vice President George Rutaganda and intends to call another Interahamwe leader, Witness 31, to testify that the MRND and leaders of the Interahamwe never encouraged the killings and in fact tried to stop them.

15. Mr. Nzirorera has also introduced considerable evidence in his trial that it was the Rwandese Patriotic Front which triggered the killings on 6 April 1994 by shooting down President Habyarimana's plane. That evidence consists of prior testimony of RPA soldiers Abdul Ruzibiza and Aloys Ruyenzi, Witness BRA-1, Witness ALL-2, Witness ALPHA 1, and prior statements of four other RPA insiders, all admitted pursuant to Rule 92 *bis*.

16. If Peter Erlinder's actions on behalf of Aloys Ntabakuze can be the basis of criminal charges, then Mr. Nzirorera's Lead Counsel is at risk for prosecution in Rwanda for genocide negationism and threat to national security if his work on behalf of Mr.

Nzirorera is so interpreted by the Rwandan government. That is simply an unacceptable risk for Mr. Robinson and his family.

17. The Registrar has in the past found exceptional circumstances to exist justifying the withdrawal of lead counsel where the counsel was either not willing or not able to execute the defence strategy.² Likewise, where the client justifiably lacked the confidence that his counsel could fight for his interests, exceptional circumstances existed for the withdrawal of lead counsel.³ Mr. Robinson himself does not have the confidence that he is able to fight for the interests of his client given the actions of the Rwandan government.

18. The Registrar has also in the past found exceptional circumstances to exist when defence counsel sought to withdraw for personal or family reasons.⁴ Mr. Robinson's family has expressed its wish that he not continue as Lead Counsel for Mr. Nzirorera if that representation threatens his liberty and consequently, their well-being.

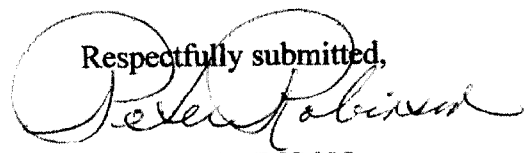
² *Prosecutor v Muvunyi*, No. ICTR-2000-55-I, *Decision on the Accused's Request to Instruct the Registrar to Replace Lead Counsel* (18 November 2003); *Prosecutor v Nyiramasuhuko et al*, No. ICTR-98-42-T, *Decision on Ntahobali's Motion for Withdrawal of Counsel* (22 June 2001) at para. 14; *Prosecutor v Rukundo*, No. ICTR-2001-70-T, *Decision on the Confidential and Extremely Urgent Defence Motion to Review the Registrar's Decision Dated 9 May 2007* (31 May 2007); *Prosecutor v Bagosora*, No. ICTR-98-41-T, *Decision of Withdrawal of Mr. Clemente Monterosso as Lead Counsel of the Accused Aloys Ntabakuze* (28 August 2002)

³ *Prosecutor v Bagosora*, No. ICTR-96-7-T, *Decision on Request of the Accused for Change of Assigned Counsel* (26 June 1997); *Prosecutor v Akayesu*, No. ICTR-96-4-T, *Decision on the Request of the Accused for the Replacement of Assigned Counsel* (20 November 1996); *Prosecutor v Ngirabatware*, No. ICTR-99-54-PT, *Decision Withdrawing Professor David M. Thomas as Counsel for the Accused Augustin Ngirabatware* (16 June 2009)

⁴ *Prosecutor v Sagahutu*, No. ICTR-00-56-T, *Decision on the Withdrawal of Mr. Didier Patry as Co-Counsel for the Accused Innocent Sagahutu* (26 January 2005); *Prosecutor v Bizimungu et al*, No. ICTR-99-50-T, *Decision on the Withdrawal of the Assignment of Ms. Alexandra Marcil as Co-counsel for the Accused Casimir Bizimungu* (10 March 2008); *Prosecutor v Munyakazi*, No. ICTR-97-36-T, *Decision on the Withdrawal of the Assignment of Mr. Richard Kazadi Kabimba Co-Counsel for the Accused Yusuf Munyakazi* (27 April 2009); *Prosecutor v Ndambaje*, No. ICTR-96-8-T, *Decision de Retrait de la Commission d'Office de Maitre Claude Desrochers a Titre de Co-Conseil d M. Elie Ndayambaje* (15 February 2006); *Prosecutor v Nteziryayo*, No. ICTR-98-42-T, *Decision on Withdrawal of the Assignment of Mr. Richard Perras Co-Counsel for the Accused Alphonse Nteziryayo* (8 December 2006); *Prosecutor v Bagosora et al*, No. ICTR-98-41-T, *Decision on the Withdrawal of Andre Tremblay as Co-Counsel for the Accused Aloys Ntabakuze* (22 February 2007)

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19. Therefore, exceptional circumstances justifying the withdrawal of the assignment of Peter Robinson as Lead Counsel for Joseph Nzirorera exist. The Registrar is respectfully requested to grant this application.

Respectfully submitted,

PETER ROBINSON
Lead Counsel for Joseph Nzirorera

