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UNITED
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Mechanism for International Criminal Tribunals

MICT-12-25-R14.1
19 October 2015
Original: FRENCH

THE TRIAL CHAMBER

Before: Judge Vagn Joensen, Presiding
Judge William Hussein Sekule
Judge Florence Rita Arrey

Registrar: Mr John Hocking

THE PROSECUTOR

v.

JEAN UWINKINDI

PUBLIC

**DISCLOSURE TO THE CHAMBER AND THE
PROSECUTION OF ADDITIONAL MATERIAL ON THE
JEAN UWINKINDI CASE BEFORE THE HIGH COURT
(HEARINGS OF 15 AND 20 OCTOBER 2015)**

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Gatera Gashabana

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I. INTRODUCTION

1. On 15 October 2015, the High Court was informed that Attorney Isaacar Hishamunda would not appear. He had left the country in secret without informing the President of the Bar Association, the Court or the Ministry of Justice, which had been involved in his assignment as Counsel against the wishes of the Accused.¹
2. Having been informed of the situation, the Accused asked the High Court to take note of this absence.
3. The High Court did not pay any heed to these remarks. It continued the hearing of witnesses in almost the same conditions as existed in March 2015.²
4. The proceedings in the case continued on 20 as well as on 22 October 2015. Although present in the courtroom, the Accused was not able to intervene as his submissions were interrupted incessantly by the Chamber. He then tried to obtain the transcripts of the hearings of 15 and 20 October 2015, *but he came up against the refusal of the Registry which claimed to have received clear instructions from the Chamber not to comply with the requests of the Accused.*³
5. Nonetheless, this evidence of extreme importance could have enlightened the Chamber on the progress of discussions in the courtroom and especially on the continuing violations of the basic rights of the Accused before the High Court.

¹ The information was passed on to the Court by Attorney Joseph Ngabonziza at the hearing. The Accused asked the court to pay particular attention to this matter, but his request was denied.

² See Monitoring Report for March 2015.

³ See correspondence sent to the Registrar on 21 October 2015.

6. It is therefore sensible that the Defence intends to transmit this material to the Chamber and Prosecutor.
7. In order to counter any obstruction, the Defence intends to seek in a separate motion the application of Rule 56 of the Rules of Procedure and Evidence instructing the High Court to send to the present Chamber all the transcripts of the hearing on 15 October 2015.
8. In accordance with Rule 72 (D) of the Rules of Procedure and Evidence, the information in the aforementioned transcripts must be disclosed to the Chamber and the Office of the Prosecutor.⁴

II. SOME LEGAL CONSIDERATIONS

9. Rule 72 (D) of the Rules of Procedure and Evidence stipulates the following:

"If either Party discovers additional evidence or material which should have been disclosed earlier pursuant to the Rules, that Party shall immediately disclose that evidence or material to the other Party and the Trial Chamber."

10. The additional evidence comes from the hearings on 15 and 20 October 2015. The disgraceful conditions under which the witness hearings were conducted recall the sad and painful epilogue of the month of March 2015.⁵

II.1. On Attorney Isaacar Hishamunda's failure to appear

⁴ "Prosecution Brief Responding to Uwinkindi's Request", page 10, paras 27 and 28.

⁵ As emphasised above, the Accused tried in vain to obtain the transcripts of the hearings of 15 and 20 October 2015, his request was rejected without a valid reason.

11. In its reply, the Prosecution did not stop praising Attorney Isaacar Hishamunda, commending his professional skills, recalling his wealth of experience within the court system in the hope of counteracting the arguments of the Defence. The events that followed refuted these claims, which could not have been more wrong.
12. First, Isaacar Hishamunda informed the High Court that he would not be able to assume the task entrusted to him by the President of the Bar Association.⁶
13. Second, the Attorney disappeared without first informing either the President of the Bar Association or the Ministry of Justice, not to mention the Court.
14. This failure to appear confirms the concerns put forward by the Accused after his Counsel was replaced in January 2015. He expressed reservations on the professionalism of the attorneys that were assigned to him.⁷
15. Despite the fierce opposition he encountered from the institutions that were supposed to ensure a fair trial, it became clear that Counsel assigned against the wishes of the Accused was neither professional nor experienced, and was even less able to ensure an irreproachable defence to Jean UWINKINDI.⁸
16. Attorney Hishamunda's failure to appear ended up clearly demonstrating not only the attorney's lack of professionalism, but

⁶ See transcript of hearing of 23 September 2015.

⁷ See transcript of hearing of 6 February 2015.

⁸ See decisions of 6 February, 24 April and 9 June 2015 upholding the assignment of Attorney Isaacar Hishamunda.

especially his inability to take up the task conferred on him by the Bar authorities.

17. It constitutes a violation of the duties of the Defence, the dignity, the loyalty and integrity expected of all attorneys when performing their professional duties.⁹ Because he belongs to an association, an attorney has duties that justify such an association in the interest of justice and the persons who are being tried. *Thus, the duty of the defence obliges an attorney to continue serving in the cases until their end ... He cannot abandon a case unless he has alerted the client on time so that he is able to ensure the defence of his interests.*¹⁰

18. Finally, the conduct of the attorney sweeps away the argument on the competence and professionalism of the Attorneys assigned to the Accused in conditions that we have continually deplored since January 2015. It is beyond belief that the Court was not able to draw conclusions from such a situation.

19. Having heard of Attorney Isaacar Hishamunda's withdrawal, the Accused asked for a *sine die* adjournment of the case long enough to resolve the matter of his lack of representation and to check whether the preliminary matters regarding the issue of witnesses had been lifted.

⁹ Tanayi MBUY – MBIYE, Attorney-at-Law, *La Profession d'avocat au Congo*, Second Edition, Editions Ntobo, pages 147 *et seq.*

¹⁰ *Idem. Op.cit.*, page 148.

20. Once more, the Court had no regard for the basic principles regulating the provision of Defence which, however, constitutes the very essence of the profession of attorney.¹¹

21. Faced with this situation, the Chamber will take note of what went on before the High Court, as the violations of the rights of the Accused continue to worsen and the conditions required for a fair trial have not been met.

II.2. The proceedings before the High Court continue in the same conditions as in March 2015

22. In implementing the Decision rendered on 29 September 2015, the High Court held proceedings to hear witnesses.

23. As in March 2015 the Accused was not represented, he did not have the right to examine the Prosecution or Defence witnesses. All his interventions were punctuated with diatribes and interruptions by the Chamber. He tried in vain to obtain the transcript of the hearings of 15 and 20 October 2015. He was denied this right.

24. In our last submission, we incessantly exposed the High Court's clear dislike of the Accused. Our fears proved well-founded at the public hearings of 15 and 20 October 2015.

25. The Chamber will take note that the violations that had been exposed in March 2015 are continuing as the Accused is deprived by the High Court of his right to a free choice of Counsel and to examine and cross-examine witnesses.

¹¹ E. PICARD, "Paradoxe sur la profession sur l'Avocat" in *Les Pandectes Belges*, Volume III, 1879, page 24.

26. As emphasised in our last submissions, the High Court is obsessed by its concern to conduct expeditious proceedings in violation of the basic rights of the Accused.

27. This situation displays clearly the violations that have not ceased to affect the Defence ever since Counsel for the Accused was replaced. Countless legal consequences followed, such as:

- Being deprived of the free choice of Counsel;
- Not being allowed to examine and cross-examine witnesses;
- The clear acknowledgement by assigned Counsel of their inability to take on the task assigned to them by the President of the Bar Association.
- The spectacular reversal of positions maintained thus far by the Prosecution Authorities by acknowledging explicitly the right of the Accused to the free choice of Counsel, the right to examine and cross-examine witnesses as a guarantee of a fair trial.
- The Chamber's refusal to take note of the compromise agreed on by the Prosecution and the Defence in order to guarantee a fair trial to the Accused.
- Attorney Isaacar Hishamunda's failure to appear.
- The confirmation of the Accused's concerns since Counsel was replaced.

- The obstruction by the Chamber through its refusal to allow the Accused to become familiar with the transcripts of the hearings of 15 and 20 October 2015.

28. Finally, there is cause to regret the intervention by Attorney Joseph Ngabonziza who, in the present proceedings, although having acknowledged his inability to ensure the defence of the Accused then revised his position by attempting to intervene during the witness hearings to offer a pretence of representing the Accused. The Accused does not feel that the said interventions had the slightest effect.

II.3. On the refusal by the Registry to grant the Accused's request to obtain the transcripts of the hearings

29. Since 15 October 2015, the Accused has been unjustly deprived of the right to obtain the transcripts of the hearings, making it impossible for the Defence to familiarise itself with their contents before pursuing the available legal options that present themselves in respect of the violation of the basic rights of the Accused.

30. There is cause to request, through separate proceedings, the application of Rule 56 of the Rules of Procedure and Evidence.

III. CONCLUSION

31. The present Chamber will take note of the manner in which the public hearings were held on 15 and 20 October 2015, and of the continuing violations of the basic rights of the Accused before the High Court.

32. It will also take into account the failure of Attorney Isaacar Hishamunda to appear, which has just demolished the Prosecution's

argument about the professional abilities and experience of the Attorney.

33. Finally, the Chamber will note that the violations of the rights of the Accused continue, and we have reached a point of no return that is likely to lead to the annulment of the referral Order.

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