

MICT-13-33
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(1306 - 1303)

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UNITED
NATIONS



Mechanism for International Criminal Tribunals

Case No.: MICT-13-33

Date: 8 August 2016

Original: English

BEFORE A SINGLE JUDGE

Before: Judge Aminatta Lois Runeni N'gum
Registrar: Mr. John Hocking
Decision of: 8 August 2016

PROSECUTOR

v.

JEAN DE DIEU KAMUHANDA

PUBLIC

**DECISION ON A MOTION FOR CERTIFICATION
TO APPEAL**

The Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Richard Karegyesa

Counsel for Jean de Dieu Kamuhanda:

Mr. Peter Robinson

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A handwritten signature in black ink, appearing to be 'Peter Robinson'.

Handwritten initials in black ink, possibly 'ARW'.

I, AMINATTA LOIS RUNENI N'GUM, Judge of the International Residual Mechanism for Criminal Tribunals ("Mechanism") and Single Judge in this case;¹

RECALLING the decision filed on 29 March 2016 in which I denied the request of Mr. Jean de Dieu Kamuhanda ("Kamuhanda") to rescind the protective measures granted by the International Criminal Tribunal for Rwanda ("ICTR") in the case of *The Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54, to Defence Witness ALM, who is deceased;²

RECALLING FURTHER the decision filed on 5 April 2016 in which, in view of the fact that the Decision of 29 March 2016 relied upon two confidential and *ex parte* decisions to which Kamuhanda had no access ("Confidential Decisions"),³ I granted his request for an extension of time to file any application for certification to appeal the Decision of 29 March 2016 by allowing him to file such an application within seven days of the filing of, *inter alia*, one or both of the public redacted versions of the Confidential Decisions;⁴

OBSERVING that public redacted versions of the Confidential Decisions were filed on 10 May 2016 and 29 June 2016;⁵

BEING SEISED OF a motion filed on 1 July 2016 in which Kamuhanda requests certification to appeal the Decision of 29 March 2016 contending that it: (i) erred in finding that Kamuhanda did not demonstrate a compelling showing of exigent circumstances justifying the rescission of Witness ALM's protective measures;⁶ and (ii) was contrary to one of the Confidential Decisions and several others related to the rescission of protective measures applicable to deceased witnesses and that it frustrates the goal of making records of the Mechanism, the ICTR, and the International

¹ Order Assigning a Single Judge to Consider an Application Pursuant to Rule 86(H), 15 March 2016.

² Decision on Motion to Rescind Protective Measures for Defence Witness ALM, 29 March 2016 ("Decision of 29 March 2016"), p. 3.

³ *Prosecutor v. Mičo Stanišić and Stojan Župljanin*, Case No. IT-08-91-R75H.3, Decision on Application Pursuant to Rule 75(H), 5 December 2014 (confidential and *ex parte*) and *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Application of the Prosecutor of the Tribunal for Variation of Protective Measures, 27 January 2010 (confidential and *ex parte*).

⁴ Decision on Motion for Extension of Time, 5 April 2016, p. 2. Rule 80(C) of the Rules of Procedure and Evidence of the Mechanism ("Rules") requires, *inter alia*, that requests for certification be filed within seven days of the filing of the impugned decision.

⁵ *Prosecutor v. Slobodan Milošević and Prosecutor v. Jean de Dieu Kamuhanda*, Case Nos. MICT-13-58 and MICT-13-33, Decision on a Motion for a Public Redacted Version of the 27 January 2010 Decision on Application of the Prosecutor of the Tribunal for Variation of Protective Measures, 10 May 2016, Annex, Registry pagination ("RP:") 89-81 and RP. 1239-1231; *Prosecutor v. Mičo Stanišić and Stojan Župljanin*, Case No. IT-08-91-R75H.3, Decision on Motion for Redacted Version of Decision, 29 June 2016, Annex, RP. 80-75.

⁶ Request for Certification to Appeal Decision on Motion to Rescind Protective Measures for Defence Witness ALM, 1 July 2016 ("Motion"), paras. 5, 6, 15.

Criminal Tribunal for the former Yugoslavia "available for future generations with as much transparency as possible";⁷

NOTING FURTHER that Kamuhanda argues that an immediate resolution of the issue presented by the proposed appeal would significantly affect the fair conduct of the proceedings in this case and would materially advance the proceedings as: (i) Kamuhanda intends to file a motion for review of his conviction and being unable to refer to Witness ALM by name will substantially affect his right to a public review of his conviction; and (ii) the possible rescission of protective measures for Witness ALM may encourage other witnesses "to come forward and agree to testify at a review hearing without protective measures", allowing "greater accountability for their version of events" and enhancing his right to a fair hearing.⁸

CONSIDERING that Kamuhanda has timely filed the Motion;

NOTING that the Prosecution has not filed a response to the Motion;

RECALLING that decisions on all motions, other than those challenging jurisdiction, are without interlocutory appeal save with certification by the relevant Chamber, and that under Rules 2(C) and 80(B) of the Rules, a Single Judge may grant certification to appeal if a decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Single Judge, an immediate resolution by the Appeals Chamber may materially advance the proceedings;

NOTING that Rule 80(B) of the Rules precludes certification absent a judicial determination that both of its requirements are satisfied,⁹ and that, even where both requirements are satisfied, certification is not automatic and that it remains within the discretion of the Single Judge;¹⁰

CONSIDERING that Kamuhanda has substantiated his argument that resolution by the Appeals Chamber of the issue raised by the Decision of 29 March 2016 would significantly affect his right

⁷ Motion, paras. 7-9.

⁸ Motion, paras. 10-13. Kamuhanda further asserts that a case before the ICTR where certification to appeal was granted is analogous to his situation and that it is in the interests of justice that the Appeals Chamber have the opportunity to provide definitive guidance on the issue of rescission of protective measures applicable to deceased witnesses. See Motion, paras. 14, 15, referring to *Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Certification of Appeal Concerning Prosecution Investigation of Protected Defence Witnesses, 21 July 2005, paras. 9, 11.

⁹ See *Prosecutor v. Jean Uwinkindi*, Case No. MICT-12-25-R14.1, Decision on Uwinkindi's Request for Certification to Appeal the Decision Denying His Request for Stay of Proceedings and for Oral Hearing, 22 October 2015 ("Uwinkindi Certification Decision of 22 October 2015"), p. 2 and references contained therein.

¹⁰ *Uwinkindi* Certification Decision of 22 October 2015, p. 2 and references contained therein. I also note that when determining whether to grant leave to appeal, the Single Judge "is not concerned with whether a decision was correctly

to a fair and public review, in part, given that he presently cannot refer to Witness ALM's name when seeking review of his convictions;

CONSIDERING that Kamuhanda has shown that the immediate resolution by the Appeals Chamber of the issue raised in the Decision of 29 March 2016 may materially advance the preparation of an application for review of his convictions and of any subsequent review proceedings;¹¹

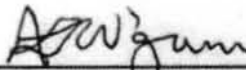
FINDING that Kamuhanda has satisfied the requirements of Rule 80(B) of the Rules;

PURSUANT TO Rules 55 and 80(B) the Rules,

HEREBY GRANT the Motion.

Done in English and French, the English version being authoritative.

Done this 8th of August 2016,
At Arusha,
Tanzania.



Judge Aminatta Lois Runeni N'gum
Single Judge

[Seal of the Mechanism]



reasoned or not". *Id.* I therefore do not address Kamuhanda's arguments as to the alleged errors in the Decision of 29 March 2016.

¹¹ I further consider that it would serve the interests of justice if the Appeals Chamber would rule on the issue of rescission of protective measures for deceased witnesses.



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