

**UNITED
NATIONS**

**MICT-13-33
11-11-2016
(6 - 1/1403bis)**

**6/1403bis
JN**



Mechanism for International Criminal Tribunals

Case No.: MICT-13-33

Date: 19 October 2016

Original: French

SINGLE JUDGE

Before: Judge Jean-Claude Antonetti
Registrar: Mr John Hocking
Decision of: 19 October 2016

PROSECUTOR

v.

JEAN DE DIEU KAMUHANDA

PUBLIC

**DECISION ON MOTION FOR HEARING FOR PROSECUTION
WITNESS**

The Office of the Prosecutor
Mr Serge Brammertz
Mr Richard Karegyesa
Mr Abubacarr Tambadou
Ms Sunkarie Ballah-Conteh

Counsel for Jean de Dieu Kamuhanda
Mr Peter Robinson

Received by the Registry
Mechanism for International Criminal Tribunals

11/11/2016 11:49

A handwritten signature in black ink, appearing to be 'J.D.K.' with a flourish.

I, JEAN-CLAUDE ANTONETTI, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Single Judge in this case,¹

NOTING the Decision of 5 August 2016 rejecting Mr Kamuhanda’s motion to interview Witness GET on the ground that the Witness indicated in writing that he did not consent to the requested interview,²

NOTING the Decision of 10 August 2016 granting in part the motion of Mr Kamuhanda requesting the reclassification of the Registrar’s Submissions filed on 2 and 3 August 2016 as confidential documents (“Registrar’s Submissions”), and the Annex to these Submissions filed on 3 August 2016 as a confidential and *ex parte* document, and ordering the Registry to file a confidential version of the Annex,³

SEISED of a motion filed on 17 August 2016 in which Mr Kamuhanda seeks an oral hearing for Witness GET before a Single Judge to determine whether the Witness consents to being interviewed by Mr Kamuhanda’s counsel,⁴

CONSIDERING that Mr Kamuhanda claims that the Annex attached to the Registrar’s Submissions contains a paragraph with language that may discourage the witness from consenting to being interviewed by Mr Kamuhanda’s counsel,⁵

NOTING the Order of 13 September 2016 ordering the Registry’s Witness Support and Protection Unit to re-contact Witness GET to ascertain whether he has fully understood the purpose and scope of the interview requested by Mr Kamuhanda,⁶

¹ “Order Assigning a Single Judge to Review a Motion”, 6 September 2016 (the original version in English was rendered on 25 August 2016), p. 1.

² “Decision on Motion for Witness Interview”, 5 August 2016, p. 2. See also “Motion to Interview Prosecution Witness GET”, with confidential Annex, 15 July 2016 (the original version in English was filed on 2 July 2016).

³ “Decision on Motion to Reclassify Registrar’s Submissions”, 10 August 2016, p. 3.

⁴ “Motion for Oral Hearing for Prosecution Witness GET”, 9 September 2016 (the original version in English was filed on 17 August 2016) (“Motion”), paras 1 and 12.

⁵ Motion, paras 4 and 5.

⁶ “Interim Order for Filing Submissions”, 13 September 2016 (“Order of 13 September 2016”), p. 3.

CONSIDERING that I ordered the Registry's Witness Support and Protection Unit to ask Witness GET: (i) whether he still requires protective measures which he has been granted and, if so, for what reasons; (ii) whether he can confirm that he has no information in his possession that relates to the allegations of false testimony in Case No. ICTR-99-54A-T, *The Prosecutor v. Jean de Dieu Kamuhanda*, and if he does, to ask the witness to specify what information is in his possession; (iii) whether he has understood that the request of Mr Kamuhanda's counsel does not expose him to any danger as Mr Kamuhanda and his counsel are bound to protect the confidentiality of any information likely to identify the witness; (iv) whether he has properly understood the content of the written statement, which was drafted in English and which he signed; and (v) to inform me of the witness's answers to the aforementioned questions,⁷

NOTING the Registrar's Submission filed on 27 September 2016 as a confidential document and the Annex to the Submission filed as a confidential and *ex parte* document ("Annex of 27 September 2016"), containing Witness GET's answers to the questions set out in the Order of 13 September 2016,⁸

NOTING the Decision of 7 October 2016 granting in part Mr Kamuhanda's motion seeking the reclassification of the filing of the Annex of 27 September 2016, ordering the Registry to file a confidential version of this Annex and inviting Mr Kamuhanda and the Prosecution to file confidential submissions, if any, , on its content,⁹

NOTING the submission filed as a confidential document on 10 October 2016 in which Mr Kamuhanda seeks that additional steps be taken to verify that the witness understands that Mr Kamuhanda's counsel has no intention of exposing him to any danger, or in the alternative, to render an order compelling the witness to meet Mr

⁷ Order of 13 September 2016, p. 3.

⁸ "Registrar's Submission Pursuant to Interim Order for Filing of Submissions of 13 September 2016", 5 October 2016 (the original version in English was filed on 27 September 2016)(confidential); Annex to "Registrar's Submission Pursuant to Interim Order for Filing of Submissions of 13 September 2016", 5 October 2016 (the original version in English was filed on 27 September 2016 (confidential and *ex parte*)).

⁹ "Decision on a Motion to Reclassify Annex to Registrar's Submissions", 7 October 2016 ("Decision of 7 October 2016"), p. 3. See also "Motion to Reclassify Registrar's Submission", 6 October 2016 (the original version in English was filed on 28 September 2016).

Kamuhanda's counsel in the presence of a representatives from the Registry's Witness Support and Protection Unit and from the Prosecution,¹⁰

CONSIDERING that Mr Kamuhanda moreover seeks the reclassification of the filing of his Submission of 10 October 2016 as a public document,¹¹

NOTING the submission filed as a confidential document on 14 October 2016 wherein the Prosecution argues that Mr Kamuhanda's requests are without merit and should be dismissed, since he does not present any arguments justifying renewed contact with the witness by the Registry's Witness Support and Protection Unit in order to ascertain whether he has fully understood the questions set out in the Order of 13 September 2016, nor does he present any argument in support of his request to compel the witness to meet with Mr Kamuhanda's counsel,¹²

CONSIDERING that the Prosecution has remarked that contacting the witness for a third time on the same matter should be avoided, because he could feel pressured and it could cause him anxiety,¹³

CONSIDERING that in his written responses, included in the Annex of 27 September 2016, the Witness does not consent to the interview sought by Mr Kamuhanda's counsel,¹⁴

CONSIDERING that pursuant to the Decision of 10 July 2000 rendered by Trial Chamber II of the International Criminal Tribunal for Rwanda ("ICTR") in the *Kamuhanda* case ordering protective measures requiring a member of the Kamuhanda

¹⁰ "Submission on Witness GET's Refusal to Be Interviewed", 10 October 2016 (confidential) ("Submission of 10 October 2016"), paras 3, 4 and 5.

¹¹ Submission of 10 October 2016, footnote 3.

¹² "Prosecution Response to Kamuhanda's Submission on Witness GET Refusal to Be Interviewed", 14 October 2016 (confidential) ("Submission of 14 October 2016"), paras 1, 4 and 6.

¹³ Submission of 14 October 2016, para. 6.

¹⁴ See Annex of 27 September 2016, 2/137 5bis and , 1/1375 bis (Registry's pagination).

Defence team to obtain first the witness's consent before conducting any interviews with the latter,¹⁵

CONSIDERING that on two occasions Witness GET indicated in writing that he did not consent to the requested meeting,¹⁶

CONSIDERING, consequently, that Mr Kamuhanda's motion seeking to compel the witness to appear so that he can be interviewed by Mr Kamuhanda's counsel is unwarranted in this instance,

CONSIDERING that in these circumstances the witness cannot be compelled to testify because of his status as a protected witness but that, for the purpose of establishing the truth, the Defence could communicate with him through all the appropriate means that comply with the protective measures ordered by the ICTR Trial Chamber in the *Kamuhanda* case, in order to obtain information with the aim of preparing a motion for review, on strict condition that the protective measures remain in force and, in particular, that the witness's identity or location be not disclosed to a third party,

CONSIDERING that the Mechanism is responsible for ensuring the protection of victims and witnesses,¹⁷

CONSIDERING that maintaining the confidentiality of the Submission of 10 October 2016 is justified as it discloses information related to the witness's answers

¹⁵ The Trial Chamber ordered protective measures requiring that "the accused or his Defence Counsel shall make a written request, on reasonable notice to the Prosecution, to the Chamber or a Judge thereof, to contact any protected victim or potential Prosecution witnesses or any relative of such a person; and requiring that when such interview has been granted by the Chamber or a Judge thereof, with the consent of such protected persons or the parents of/ guardian of that person if that person is under the age of 18, that the Prosecution shall undertake all necessary arrangements to facilitate such interview". See *The Prosecutor v. Jean de Dieu Kamuhanda*, Case no. ICTR-99-54-I, "Decision on the Prosecutor's Motion for Protective Measures for Witnesses", 10 July 2000, paras 2 (i) and 9, and p. 6.

¹⁶ See Annex of 27 September 2016, Decision of 5 August 2016, p. 2; Registrar's Submission, para. 2; Annex to "Registrar's Supplementary Submission Pursuant to Order of 19 July 2016", 8 August 2016 (the original version in English was filed on 3 August 2016 as a confidential document).

¹⁷ See Article 20 of the Statute of the Mechanism ("Statute").

included in the Annex of 27 September 2016 and that, pursuant to my Decision of 7 October 2016, these answers must remain confidential,¹⁸

FOR THE FOREGOING REASONS,

PURSUANT TO Article 20 of the Statute and Rule 55 of the Rules of Procedure and Evidence of the Mechanism,

DENY the Motion,

DENY Mr Kamuhanda's motion seeking the reclassification of the Submission of 10 October 2016.

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

Single Judge,

/signed/

Jean-Claude Antonetti

Done this nineteenth day of October 2016,

In Arusha,

Tanzania

[Seal of the Mechanism]



¹⁸ Decision of 7 October 2016, p. 3.



**TRANSMISSION SHEET FOR FILING OF TRANSLATIONS
WITH THE ARUSHA BRANCH OF
THE MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS**

To	MICT Registry				
From	<input checked="" type="checkbox"/> ICTY CLSS		<input type="checkbox"/> ICTR LSS		
Original Submitting Party	<input checked="" type="checkbox"/> Chambers	<input type="checkbox"/> Defence	<input type="checkbox"/> Prosecution	<input type="checkbox"/> Other	
Case Name	Kamuhanda	Case Number	MICT-13-33	No. of Pages	6
Original Document No.	MICT-13-33-0199		Translation Reference No.	REG48592	
Date of Original	19/10/2016	Original Language	<input type="checkbox"/> English	<input checked="" type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Date Transmitted	11/11/2016	Language of Translation	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Title of original document	Décision relative à une requête aux fins de la tenue d'une audience avec un témoin à chargé				
Title of translation	Decision on Motion for Hearing for Prosecution Witness				
Classification Level	<input checked="" type="checkbox"/> Unclassified <input type="checkbox"/> Confidential <input type="checkbox"/> Strictly Confidential		<input type="checkbox"/> Ex Parte Defence excluded <input type="checkbox"/> Ex Parte Prosecution excluded <input type="checkbox"/> Ex Parte R86(H) Applicant excluded <input type="checkbox"/> Ex Parte Amicus Curiae excluded <input type="checkbox"/> Ex Parte other exclusion (specify):		
Document type/ Type de document:	<input type="checkbox"/> Indictment	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book	<input type="checkbox"/> Notice of Appeal	
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