



Mechanism for International Criminal Tribunals

Case No.: MICT-13-33

Date: 13 June 2016

Original: English

BEFORE A SINGLE JUDGE

Before: Judge Vagn Joensen
Registrar: Mr. John Hocking
Decision of: 13 June 2016

PROSECUTOR

v.

JEAN DE DIEU KAMUHANDA

PUBLIC

**DECISION ON A MOTION
TO COMPEL FULL DISCLOSURE OF MATERIAL
RELATED TO WITNESS GEK**

The Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Richard Karegyesa
Ms. Sunkarie Ballah-Conteh

Counsel for Mr. Jean de Dieu Kamuhanda:

Mr. Peter Robinson

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Mechanism for International Criminal Tribunals
13/06/2016 12:14

A handwritten signature in black ink, appearing to be 'T. D. B.', written over a rectangular stamp area.

A handwritten mark or signature in black ink, consisting of a large, stylized letter 'V' with a small dot below it.

I, VAGN JOENSEN, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Single Judge in this case:¹

NOTING that, on 7 October 2015, Mr. Jean de Dieu Kamuhanda filed a motion requesting disclosure of allegedly exculpatory material, which related to the alleged attempt to influence Prosecution Witness GEK to recant her testimony in the *Kamuhanda* trial by a former employee of the International Criminal Tribunal for Rwanda (“ICTR”);²

NOTING that, on 25 November 2015, I granted the Motion of 7 October 2015, in part, and ordered the Prosecution to submit to me, in the presence of a representative of the Mechanism’s Registry, the allegedly exculpatory material identified in the Motion of 7 October 2015 in an *ex parte* hearing so that I could rule on the issue of disclosure;³

NOTING that, on 15 and 21 December 2015, I held *ex parte* hearings during which the Prosecution, in the presence of Registry representatives, presented material for inspection in accordance with the Decision of 25 November 2015;⁴

NOTING that, on 29 February 2016, I granted the Motion of 7 October 2015 and ordered the Prosecution to disclose to Kamuhanda in an appropriate form all exculpatory information contained in the record of the interview with the former ICTR employee identified in his motion;⁵

BEING SEISED OF the “Motion to Compel Full Disclosure of Witness GEK Material”, filed on 16 April 2016 (“Motion”), in which Kamuhanda submits that the audio recording disclosed by the Prosecution in accordance with the Decision of 29 February 2016 was edited to delete portions of the interview with the former ICTR employee and requests an order requiring the Prosecution to make full disclosure of the recording of the interview;⁶

¹ Order Assigning a Single Judge to Consider an Application, 13 October 2015, p. 1.

² Motion to Compel Disclosure of Witness GEK Exculpatory Material, 7 October 2015 (“Motion of 7 October 2015”).

³ Decision on Motion to Compel Disclosure of Witness GEK Material, 25 November 2015 (“Decision of 25 November 2015”), paras. 10, 11.

⁴ Minutes of Proceedings, dated 15 December 2015, filed on 16 December 2015, p. 1; Minutes of Proceedings, dated 21 December 2015, filed on 22 December 2015, p. 1. *See also* Further Decision on Motion to Compel Disclosure of Witness GEK Material, 29 February 2016, p. 2.

⁵ Further Decision on Motion to Compel Disclosure of Witness GEK Material, 29 February 2016 (“Decision of 29 February 2016”), p. 2.

⁶ Motion, paras. 5, 7, 8, 14. Kamuhanda also submits that the Prosecution provided the material it was required to disclose in audio format because it has never been transcribed. *See* Motion, para. 4.

NOTING that, according to Kamuhanda, during the interview, the former ICTR employee indicated that one of his colleagues had encouraged Witness GEK to testify that the employee had tried to influence the witness to recant her testimony on Mr. Kamuhanda's behalf;⁷

NOTING Kamuhanda's submission that the Prosecution should disclose as exculpatory material the deleted portions of the audio recording which identify the former ICTR employee's colleague as interviewing this individual may lead to the discovery of information that affects the credibility of Witness GEK;⁸

NOTING the "Prosecution Response to Motion to Compel Full Disclosure of Witness GEK Material", filed on 28 April 2016, in which the Prosecution submits: (i) that it has disclosed to Kamuhanda all potentially exculpatory portions of the interview with the former ICTR employee in accordance with its obligations; (ii) that the former ICTR employee's suspicions that another individual may have encouraged Witness GEK to implicate the employee in influencing the witness to recant her testimony are unfounded; and (iii) that the confidential portions of the record of interview with the ICTR employee, that were not disclosed, are not exculpatory, have no relevance to Kamuhanda's criminal liability, and are not likely to assist his case in any way;⁹

CONSIDERING that the Prosecution's obligation to disclose exculpatory material, which is essential to a fair trial, needs to be interpreted broadly and that information is considered exculpatory if it may affect the credibility of Prosecution evidence;¹⁰

RECALLING my finding in the Decision of 25 November 2015 that any transcript of an interview with the former ICTR employee containing statements to the effect that Witness GEK had fabricated her account related to him should be disclosed to Kamuhanda as potentially exculpatory as it may affect the credibility of Prosecution evidence;¹¹

⁷ Motion, para. 8.

⁸ Motion, paras. 9, 10, 13.

⁹ Prosecution Response to Motion to Compel Full Disclosure of Witness GEK Material, 28 April 2016 ("Response"), paras. 1, 4-6. The Prosecution also submits that, in any event, Kamuhanda suffers no prejudice given that he claims to have access to the employee. See Response, n. 3.

¹⁰ Rule 73(A) of the Rules of Procedure and Evidence of the Mechanism ("Rules"); *Augustin Ndirabatware v. The Prosecutor*, Case No. MICT-12-29-A, Decision on Augustin Ndirabatware's Motion for Sanctions for the Prosecution and for an Order for Disclosure, 15 April 2014, para. 12; *Justin Mugenzi and Prosper Mugiraneza v. The Prosecutor*, Case No. ICTR-99-50-A, Decision on Motions for Relief for Rule 68 Violations, 24 September 2012, para. 7; *Callixte Kalimanzira v. The Prosecutor*, Case No. ICTR-05-88-A, Judgement, 20 October 2010, para. 18; *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Judgement, 19 April 2004, para. 178.

¹¹ Decision of 25 November 2015, para. 9; Decision of 29 February 2016, p. 1.



CONSIDERING that during the *ex parte* hearings the Prosecution provided me with a copy of the audio recording of the former ICTR employee's interview with the special counsel in its entirety for inspection;

CONSIDERING that my review of the audio recording confirms that during his interview the former ICTR employee alleged that Witness GEK had fabricated her account related to the employee and suggested that she may have been encouraged to do so by other ICTR employees;

FINDING that, to the extent that other ICTR employees would corroborate these allegations, they may be in possession of potentially exculpatory information and that, therefore, their identity should be disclosed to Kamuhanda;

FINDING FURTHER that Kamuhanda has not demonstrated that any other part of the recording that remains undisclosed contains potentially exculpatory information;

PURSUANT TO Rule 73 of the Rules;

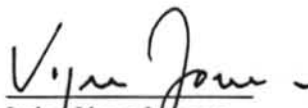
HEREBY GRANT the Motion, in part;

ORDER the Prosecution to disclose to Kamuhanda any portion of the audio recording identifying other individuals who may have encouraged Witness GEK to fabricate her account related to the former ICTR employee or to provide this information in some other form; and

DISMISS the Motion in all other respects.

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

Done this 13th day of June 2016,
At Arusha,
Tanzania


Judge Vagn Joensen
Single Judge

[Seal of the Mechanism]





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Date Created/ Daté du :	13 June 2016	Date transmitted/ Transmis le :	13 June 2016
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