

MICT-13-33
15-11-2017
(1589 - 1586)

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THE MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

CASE No. MICT-13-33

THE PRESIDENT

Before: Judge Theodor Meron

Registrar: Olufemi Elias

Date Filed: 15 November 2017

THE PROSECUTOR

v.

JEAN DE DIEU KAMUHANDA

Public

MOTION TO INTERVIEW
PROSECUTION WITNESS GEB

Office of the Prosecutor:
Serge Brammertz

Jean de dieu Kamuhanda:
Peter Robinson

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Mwaipopo

1. Jean de dieu Kamuhanda respectfully requests that the President, or a Single Judge designated by him, authorize him to interview Prosecution Witness GEB, if the witness consents.

2. Mr. Kamuhanda was convicted of genocide at the ICTR¹ and his conviction has been affirmed on appeal,² and in an initial request for review.³ He has maintained his innocence throughout the proceedings.⁴ He has engaged attorney Peter Robinson of the United States to represent him *pro bono* in his effort to overturn his wrongful conviction through a request for review at the Residual Mechanism.⁵ Mr.. Robinson has been granted access to the confidential material in Mr. Kamuhanda's case,⁶ and recognised by the Registrar as Mr. Kamuhanda's *pro bono* counsel.⁷

3. As part of his investigation into possible new facts that might warrant review of Mr. Kamuhanda's conviction, counsel believes it is necessary to interview Prosecution Witness GEB.

4. The protective measures that currently apply to Mr.. Kamuhanda's case provide, *inter alia*:

(i) 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 person; and requiring that when such interview has been granted by the Chamber or a Judge thereof, with the consent of such protected person or the parents of (sic) 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.⁸

5. Judge Vagn Joensen, acting as Single Judge, upheld the requirement that Mr. Kamuhanda make a judicial request when he wanted to interview a prosecution witness.⁹ Judge Joensen also held that contact with the witness to ascertain his or her consent

¹ *Prosecutor v Kamuhanda*, No. ICTR-99-54A-T, *Judgement* (22 January 2004)

² *Kamuhanda v Prosecutor*, No. ICTR-99-54A-A, *Judgement* (19 September 2005)

³ *Kamuhanda v Prosecutor*, No. ICTR-99-54A-R, *Decision on Request for Review* (25 August 2011)

⁴ Transcript of 19 May 2005 at pp. 96-97

⁵ *Request for Access* (30 March 2015) at para. 3

⁶ *Decision on Request for Access* (25 June 2015)

⁷ *Registrar's Notice of Recognition of Pro Bono Counsel* (31 October 2017)

⁸ *Prosecutor v. Kamuhanda*, No. ICTR-99-50-I, *Decision on the Prosecutor's Motion for Protective Measures for Witnesses* (7 July 2000)

⁹ *Decision on Motion for Contact with Persons benefitting from Protective Measures* (10 March 2016) at para. 14

should be made by the WISP.¹⁰ He further granted Mr. Kamuhanda's request to have the WISP contact Prosecution Witness GAE, who had been implicated in discussions about giving false testimony at Mr. Kamuhanda's trial.¹¹

6. Single Judge Jean-Claude Antonetti was assigned Mr. Kamuhanda's request to interview Prosecution Witness GET.¹² He also ordered the WISP to contact the witness to determine if the witness consented to the interview.¹³

7. Single Judge Gberdao Gustave Kam was assigned to Mr. Kamuhanda's request to interview Prosecution Witness GEK.¹⁴ He also ordered the WISP to contact the witness to determine if the witness consented to the interview.¹⁵

8. Mr. Kamuhanda requests that the same procedure be used with respect to Witness GEB.

9. It has become necessary to interview Witness GEB due to information gathered in the course of the investigation into potential new facts that undermines Witness GEB's credibility. Newly discovered information related to witness credibility, has been held to potentially amount to a new fact.¹⁶

10. Witness GEB testified at Kamuhanda's trial on 12 April 1994, he saw Kamuhanda sitting in the front seat of a pick-up which passed him by on the road. There were about 20 Interahamwe in the back, some of whom were carrying weapons.¹⁷ About 30 minutes later, he heard gunshot noise coming from the Gikomero Parish.¹⁸ Judge Maqutu dissented from the finding that Witness GEB's sighting of the Accused on the road to Gikomero Parish Compound on 12 April 1994 was credible.¹⁹

¹⁰ *Id.*, para. 19

¹¹ *Id.*, at para. 23. Witness GAE subsequently declined to consent to meet with Mr. Kamuhanda's counsel.

¹² *Motion to Interview Prosecution Witness GET* (2 July 2016). Witness GET subsequently declined to consent to meet with Mr. Kamuhanda's counsel.

¹³ *Order for Submissions regarding a Motion to Interview a Witness* (19 July 2016)

¹⁴ *Motion to Interview Prosecution Witness GEK* (12 May 2017)

¹⁵ *Order for Submissions* (8 June 2017) Witness GEK subsequently declined to consent to meet with Mr. Kamuhanda's counsel.

¹⁶ *Ntabakuze v Prosecutor*, No. MICT-14-77-R, *Decision on Ntabakuze's Pro Se Motion for Assignment of an Investigator and Counsel in Anticipation of his Request for Review* (19 January 2015) at fn. 43; *Kajelijeli v Prosecutor*, No. ICTR-9844A-R, *Decision on Request for Review* (29 May 2013) at para. 24; *Muvunyi v Prosecutor*, No. ICTR-00-55A-R, *Decision on Request for Variation of Protective Measures and Request for Review* (28 September 2012) at para. 22.

¹⁷ *Prosecutor v Kamuhanda*, No. ICTR-99-54A-T, *Judgement* (22 June 2004) at para. 300

¹⁸ *Id.*, para. 301

¹⁹ *Id.*, para. 444.

11. In his investigation for a potential motion for review of judgement, counsel for Mr. Kamuhanda has developed information that indicates that Witness GEB provided false testimony at the Kamuhanda trial. For example, perpetrators who were in the pick-up truck that transported Interahamwe to Gikomero Parish to carry out the attack on 12 April, and who have now served their sentences for that crime, have provided statements to Mr. Kamuhanda's counsel that Mr. Kamuhanda was not with them and had no involvement in the attack.

12. Counsel for Mr. Kamuhanda believes that this new information may convince Witness GEB to now tell the truth and admit that his testimony at Mr. Kamuhanda's trial was false.

13. For these reasons, it is respectfully requested that the President, or a Single Judge, order the WISP to contact Prosecution Witness GEB to determine if he consents to meet with counsel for Mr. Kamuhanda.

Word count: 1024

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Peter Robinson".

PETER ROBINSON

Counsel for Jean de Dieu Kamuhanda



**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE
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Date Created/ Daté du :	15 November 2017	Date transmitted/ Transmis le :	15 November 2017
Original Language / Langue de l'original :	<input checked="" type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda
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