

MICT-13-33

12-01-2016

(752 - 750)

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THE MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

CASE No. MICT-13-33

THE PRESIDENT

Before: Judge Theodor Meron

Registrar: Mr. John Hocking

Date Filed: 12 January 2016

THE PROSECUTOR

v.

JEAN DE DIEU KAMUHANDA

*Public*

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MOTION TO RESCIND PROTECTIVE MEASURES  
FOR DEFENCE WITNESSES ENQ-1 and ENQ-2

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Office of the Prosecutor:

Mr. Hassan Jallow

Mr. Richard Karegyesa

Jean de dieu Kamuhanda:

Mr. Peter Robinson, Counsel

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Mechanism for International Criminal Tribunals  
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1. Jean de dieu Kamuhanda respectfully requests, pursuant to Rule 86(H), that the President designate a Single Judge to consider rescinding the protective measures for Defence Witnesses ENQ-1 and ENQ-2.<sup>1</sup>

### **Background**

2. Defence Witness ENQ-1 testified at Mr. Kamuhanda's trial with protective measures on 6 February 2003. His true identity was contained on the pseudonym sheet admitted as Exhibit D68.

3. Defence Witness ENQ-2 testified at Mr. Kamuhanda's trial with protective measures on 6 and 10 February 2003. His true identity was contained on the pseudonym sheet admitted as Exhibit D69.

3. Both witnesses were investigators of the ICTR Office of the Prosecutor who interviewed Mr. Kamuhanda after his arrest. Neither continues to be employed by the ICTR or the MICT.

### **Argument**

4. MICT Rule 86(H) provides that:

A judge or bench in another jurisdiction, parties in another jurisdiction authorised by an appropriate judicial authority, or a victim or witness for whom protective measures have been ordered by the ICTY, the ICTR, or the Mechanism may seek to rescind, vary, or augment protective measures ordered in proceedings before the ICTY, the ICTR, or the Mechanism by applying to the President of the Mechanism, who shall refer the application to a Single Judge or to the Chamber remaining seised of the proceedings.

5. Rule 86(I) provides that:

The Chamber determining an application under paragraphs (G) and (H) above shall ensure through the Victims and Witnesses Section that the protected victim or witness has given consent to the rescission, variation, or augmentation of protective measures; however, on the basis of a compelling showing of exigent circumstances or where a miscarriage of justice would otherwise result, the Chamber may order proprio motu the rescission, variation, or augmentation of protective measures in the absence of such consent.

6. Rule 86(J) provides that:

A victim or witness may waive in whole or in part protective measures granted

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<sup>1</sup> The President may wish to make the designation applicable to all such motions in this case to avoid this step each time a motion to rescind protective measures is made.

pursuant to this Rule after being advised by a Trial Chamber or the Victims and Witnesses Section of the consequences thereof. The waiver must be made before a Trial Chamber or in a written statement signed by the victim or witness and an officer of the Victims and Witnesses Section

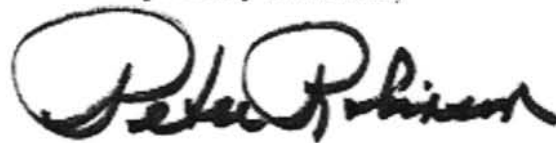
7. Mr. Kamuhanda hereby requests, pursuant to Rule 86(H) that the President designate a Single Judge to direct the WISP to obtain a written statement from Witness ENQ-1 and ENQ-2 in which, having been advised of the consequences, they indicate whether they are willing to waive the protective measures pursuant to Rule 86(J), and then, if they agree to waive the protective measures, for the Single Judge to consider and order rescission of those protective measures pursuant to Rule 86(I).<sup>2</sup>

8. Should the protective measures be rescinded, Mr. Kamuhanda requests that Exhibits D68 and D69, the pseudonym sheets of Witnesses ENQ-1 and ENQ-2, be reclassified as public.

9. Mr. Kamuhanda believes that it is important that as much information from his case be as public as possible, as he has been wrongfully convicted of crimes he did not commit through the false evidence of persons hiding behind pseudonyms. Whatever reason may have existed for allowing prosecution investigators to testify with pseudonyms during the trial, those reasons no longer exist given the passage of time and separation from service by the investigators.

Word count: 649

Respectfully submitted,



PETER ROBINSON  
Counsel for Jean de dieu Kamuhanda

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<sup>2</sup> Mr. Kamuhanda's own efforts to contact the witnesses have been unsuccessful.



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MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS/  
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Case Name/ Affaire :	Prosecutor v Kamuhanda		Case Number/ Affaire n° : MICT 13-33
Date Created/ Daté du :	12 January 2016	Date transmitted/ Transmis le :	12 January 2016
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Classification Level/ Catégories de classification :	<input checked="" type="checkbox"/> Unclassified/ Non classifié	<input type="checkbox"/> Ex Parte Defence excluded/ Défense exclue	<input type="checkbox"/> Other/ Autre (specify/préciser) :
Document type/ Type de document :	<input checked="" type="checkbox"/> Motion/ Requête	<input type="checkbox"/> Submission from parties/ Écritures déposées par des parties	<input type="checkbox"/> Indictment/ Acte d'accusation
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