

MICT-13-33
05-04-2016
(1008 - 1003)

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THE MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

CASE No. MICT-13-33

THE SINGLE JUDGE

Before: Judge Vagn Joensen

Registrar: Mr. John Hocking

Date Filed: 5 April 2016

THE PROSECUTOR

v.

JEAN DE DIEU KAMUHANDA

Public

MOTION FOR RE-CLASSIFICATION
AND DISCLOSURE OF TRANSCRIPTS
OF *EX PARTE* HEARINGS

Office of the Prosecutor:
Mr. Serge Brammertz
Mr. Richard Karegyesa

Jean de dieu Kamuhanda:
Mr. Peter Robinson

Received by the Registry
Mechanism for International Criminal Tribunals
05/04/2016 06:41



1. On 25 November 2015, the Single Judge granted in part Mr. Kamuhanda's *Motion to Compel Disclosure of Witness GEK Material* and ordered that the Prosecution submit all relevant material to the Single Judge in an *ex parte* hearing for his inspection.¹

2. Thereafter, according to the Official Minutes, the Single Judge conducted an *ex parte* hearing in Arusha between 11:00 and 11:12 on 15 December 2015, at which time representatives of the prosecution appeared and made submissions.

3. According to the Official Minutes, the Single Judge conducted another *ex parte* hearing in Arusha between 15:00 and 15:30 on 21 December 2015, at which time representatives of the prosecution again appeared and made further submissions.

4. Counsel for Mr. Kamuhanda was not notified of these sessions nor invited to attend.

5. On 29 February 2016, after having reviewed the material submitted by the prosecution, the Single Judge ordered that "the prosecution disclose to Kamuhanda, as soon as practicable and in an appropriate form, the record of interview with the former ICTR employee referred to in the Motion."²

6. Counsel for Mr. Kamuhanda received a CD Rom containing excerpts of the interview of the former ICTR employee on 29 March 2016.

7. Mr. Kamuhanda now moves that the transcripts of the two *ex parte* hearings be reclassified from *ex parte* and disclosed to him.

8. It is well established that all proceedings before the Mechanism shall be public unless there are exceptional reasons for keeping them confidential.³ Now that the material has been disclosed to Mr. Kamuhanda, there is no reason to maintain the transcripts of the hearing in an *ex parte* status.

9. Mr. Kamuhanda also has a legitimate forensic purpose for reviewing the transcripts because the prosecution has withheld parts of the interview from disclosure. It is important to know what was said during the 42 minutes of court hearing about the scope of the disclosure that should be made to the defence. Mr. Kamuhanda has

¹ *Decision on Motion to Compel Disclosure of Witness GEK Material* (25 November 2015) at para. 11

² *Further Decision on Motion to Compel Disclosure of Witness GEK Material* (29 February 2016) at p. 2

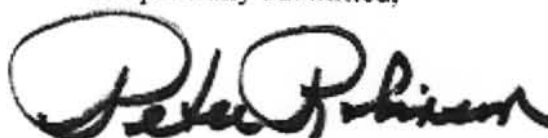
³ *Prosecutor v Lukic*, No. MICT-14-67-R.1, *Decision on Sreten Lukic's Application for Review* (8 July 2015) at para. 8; *Prosecutor v Kamuhanda*, No. MICT-12-33-R86.1, *Decision on a Motion to Reclassify a Submission by the Registry* (5 February 2016), p. 2; *Prosecutor v Oric*, No. MICT-14-79, *Decision on an Application for Leave to Appeal the Single Judge's Decision of 10 December 2015* (17 February 2016) at para. 8

requested that he receive the entire contents of the recording of the interview and wishes to bring a motion to compel that disclosure if the prosecution continues to withhold such material.⁴

10. Therefore, the Single Judge is respectfully requested to order that the transcripts of the *ex parte* hearings on 15 and 21 December 2015 be reclassified from *ex parte* and disclosed to Mr. Kamuhanda.

Word count: 575

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter Robinson". The signature is written in a cursive, flowing style with large, rounded letters.

PETER ROBINSON
Counsel for Jean de dieu Kamuhanda

⁴ See redacted letter to prosecution, attached as Annex "A".

ANNEX “A”

PETER ROBINSON
Defence Counsel
**Residual Mechanism for
International Criminal Tribunals**
Churchillplein 1
2517JW The Hague
Netherlands
E-mail: peter@peterrobinson.com

3 April 2016

Mr. Richard Karegyesa
Office of the Prosecutor
Mechanism for International
Criminal Tribunals
AICC Complex
P.O. Box 6106
Arusha, Tanzania

Re: Prosecutor v Jean de dieu Kamuhanda
MICT No. 13-33

Dear Mr. Karegyesa,

I have now listened to the CD of the interview of [redacted] by Loretta Lynch that you disclosed pursuant to the decision of the Single Judge.

I note that several parts of the interview were not disclosed to me. Instead of disclosing the entire interview, your office chopped up the interview and deleted several parts from the disclosure made to me.

From listening to the portions that were disclosed, it appears that your office continues to withhold information that is exculpatory under Rule 73 and material to the preparation of Mr. Kamuhanda's defence under Rule 71(B). Particularly, your office appears to have withheld sections of the interview in which [redacted] identifies persons who may have assisted Witness GEK in giving false evidence at Mr. Kamuhanda's Appeals Hearing.

The information about those persons, and their identity, is exculpatory because it may tend to show that Witness GEK lied during her testimony, and it is material to the preparation of Mr. Kamuhanda's defence because it will allow me to contact such persons and develop further evidence of Witness GEK's false testimony which can be used in a motion for review of Mr. Kamuhanda's wrongful conviction.

Mr. Richard Karegyesa
--page two--

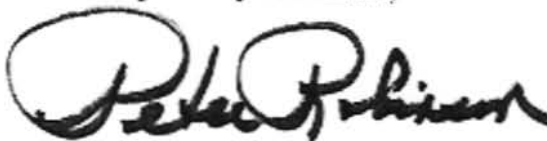
The withholding of these parts of the interview is prejudicing Mr. Kamuhanda because it is delaying his ability to establish grounds for review and extending the imprisonment of an innocent man.

I therefore request that you disclose the recording of the interview of [redacted] in its entirety to me.

If you have not done so by Friday, 8 April 2016, I will seek an order compelling you to do so.

Thank you very much for your consideration of this request.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter Robinson". The signature is written in a cursive, flowing style with large, connected letters.

PETER ROBINSON
Counsel for Jean de dieu Kamuhanda



**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE
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Case Name/ Affaire :	Prosecutor v Kamuhanda	Case Number/ Affaire n° :	MICT 13-33
Date Created/ Daté du :	5 April 2016	Date transmitted/ Transmis le :	5 April 2016
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Title of Document/ Titre du document :	MOTION FOR RE-CLASSIFICATION AND DISCLOSURE OF TRANSCRIPTS OF EX PARTE HEARINGS		
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