



United Nations  
Nations Unies



International  
Criminal Tribunal  
for the former  
Yugoslavia

Tribunal Pénal  
International pour  
l'ex-Yougoslavie

<b>STATUS</b>	Public	<b>D/ A</b>	41
<b>CASE/AFFAIRE NO.</b>	IT-08-91-R75H.3 Stanisic & Zupljanin (Rule 75H)	<b>DATE</b>	04/04/2016
<b>FROM/DE</b>	RAM DORAISWAMY, COURT OFFICER		
<b>APPROVED FOR DISTRIBUTION APPROUVE POUR DISTRIBUTION PAR</b>	Ram DORAISWAMY		
<b>TO/A</b>	<p><b>President's Office/ <i>Président:</i></b></p> <p><b>Appeals Chamber/ <i>Chambre d'appel:</i></b> Judge Agius, Judge Liu, Judge Fluegge, Judge Pocar, Judge Afande</p> <p><b>Senior Legal Officer/ <i>Juriste hors-classe:</i></b></p> <p><b>Prosecutor/ <i>Procureur:</i></b></p> <p><b>Prosecutor Team/ <i>Le Bureau du Procureur:</i></b></p> <p><b>Case Manager/ <i>Commis aux affaires:</i></b></p> <p><b>Defense Counsel/ <i>Conseil de la Défense:</i></b> Mr S. Zecevic, Mr. S. Bourgon, Mr D. Krgovic, Ms T. Cmeric</p> <p><b>Registrar/ <i>Greffier:</i></b> Mr. J. Hocking</p> <p><b>WVS Coordinator/ <i>Coordinateur de la SVT:</i></b></p> <p><b>OLAD/ <i>Bureau de l'aide juridictionnelle et de la défense:</i></b></p> <p><b>Communication Services/ <i>Service Communication:</i></b></p> <p><b>Courtroom Operations/ <i>Opérations en salle d'audience:</i></b> Mr. R. Doraiswamy</p> <p><b>Judicial Records Unit/ <i>Service des dossiers judiciaires:</i></b> Mr. S.R. Haider</p>		
<b>PLEASE FIND ATTACHED/VEUILLEZ TROUVER CI-JOINT</b>			
Motion for redacted version of Decision, submitted by Defence counsel on 2 April 2016			
<b>COMMENTS</b>			
Also filed in MICT-13-33. Counsel for the Applicant: Mr. Peter Robinson (1)			

Churchillplein 1,  
2517 JW The Hague  
P O Box 13888,  
2501 EW The Hague.  
Netherlands

Churchillplein 1,  
2517 JW La Haye  
B.P 13888, 2501 EW  
La Haye Pays-Bas

Tel : 31-70-512 5689 /  
8751  
Fax : 31-70-512 8558

<b>RECEIVED/RECU</b>	<b>FILED/ENREGISTRE</b>
04/04/2016	04/04/2016

For guidelines regarding filing procedures, please see the Directive for the Court Management and Support Services Section Judicial Services Section Registry, IT/121/Rev. 2, Part XI: Provision of Documents.

Pour les procédures concernant le dépôt des documents, voir la Directive relative à la Section d'administration et d'appui judiciaire, Services judiciaires, Greffe, IT/121/Rev.2, Titre XI: Communication des documents.

**Confidentiality statement:**

The email notification and its attachments may contain confidential and privileged information and is intended to be for the use of the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of the document(s) is prohibited.

If you have received the document(s) in error, please notify the court assistants at CourtAssistants@un.org and delete the material from your computer immediately.

**Déclaration de confidentialité :**

Ce courrier électronique et les documents qui y sont joints sont susceptibles de contenir des informations confidentielles ou couvertes par le secret professionnel. Ils sont exclusivement destinés aux personnes ou organismes dont le nom est indiqué ci-dessus.

Dans l'hypothèse où vous auriez reçu ce courrier électronique par erreur, veuillez noter que toute divulgation, reproduction, diffusion ou utilisation de ces documents est rigoureusement interdite. Le cas échéant, merci de bien vouloir signaler cette erreur en écrivant à l'adresse suivante: CourtAssistants@un.org et supprimer immédiatement les documents en question de votre ordinateur.

THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

CASE No. IT-08-91-R75H.3  
CASE No. MICT-13-33

IN THE APPEALS CHAMBER

Before: Judge Carmel Agius, Presiding  
Judge Liu Daqin  
Judge Christoph Flugge  
Judge Fausto Pocar  
Judge Koffi Kumelio Affande

Registrar: Mr. John Hocking

Date: 2 April 2016

THE PROSECUTOR

v.

MICO STANISIC &  
STOJAN ZUPLJANIN

THE PROSECUTOR

v.

JEAN DE DIEU KAMUHANDA

*Public*

---

MOTION FOR REDACTED VERSION  
OF DECISION

---

The Office of the Prosecutor:  
Mr. Serge Brammertz

Counsel for the Appellants:  
Mr. Slobodan Zecevic and Mr. Stephane Bourgon for Mico Stanisic  
Mr. Dragan Krgovic and Ms. Tatjana Cmeric for Stojan Zupljanin

Counsel for the Applicant:  
Mr. Peter Robinson for Jean de dieu Kamuhanda

1. Jean de dieu Kamuhanda respectfully moves for the issuance of a redacted version of the *Decision on Application pursuant to Rule 75(H)* (5 December 2014).

2. On 29 March 2016, MICT Single Judge Aminatta Lois Runeni N’Gum denied Mr. Kamuhanda’s *Motion to Rescind Protective Measures for Defence Witness ALM* (5 March 2016).<sup>1</sup> In doing so, she relied upon the *ex parte* and confidential decision cited above.

3. Mr. Kamuhanda is considering seeking leave to appeal the Single Judge’s decision in his case. He has a legitimate forensic purpose to access the *Stanisic & Zupljanin* decision in order to decide whether to appeal, and, if so, to formulate grounds for an application for certification to appeal.<sup>2</sup> However, because that decision was filed *ex parte* and confidential, only the Single Judge and Prosecutor have access to it.

4. Therefore, Mr. Kamuhanda respectfully requests that the Appeals Chamber order that a redacted version of the decision be issued and disclosed to Mr. Kamuhanda which allows him to understand the legal reasoning in the decision while maintaining the protection of the identity of the witness involved.

5. Mr. Kamuhanda and his counsel also take this opportunity to express to the Appeals Chamber their concern with what appears to be a widespread practice at the ICTY and MICT of entertaining *ex parte* motions for variation of protective measures from national authorities or the prosecution without any notice to the defence or an opportunity to be heard.

6. Surely such proceedings could be conducted *inter partes*, which appropriate redactions, if there is a will on behalf of the judges to do so. The defence has an important interest in being heard when variance of protective measures is sought.

7. Knowledge that a witness is giving evidence in another proceeding may assist the defence in discovering subsequent transcripts or statements of that witness in national proceedings that may reveal new facts or include inconsistent statements or the provision of benefits that could call into question the accuracy or credibility of the witness’ testimony in the underlying case.

---

<sup>1</sup> *Prosecutor v Kamuhanda*, No. MICT-13-33, *Decision on Motion to Rescind Protective Measures for Defence Witness ALM* (29 March 2016)

<sup>2</sup> *Prosecutor v Kamuhanda*, No. MICT-13-33, *Request for Extension of Time to Seek Certification to Appeal Decision on Motion to Rescind Protective Measures for Defence Witness ALM* (31 March 2016)

8. Where a protected witness subsequently consents to testify in another jurisdiction without protective measures, the defence may also be prompted to request that the witness consent to rescission of his protective measures in the ICTY or MICT case, thus promoting the right to a public trial.

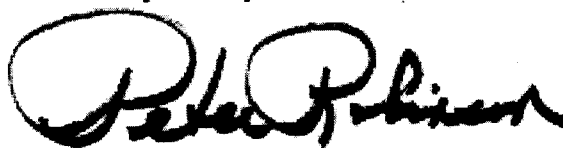
9. Finally, the defence may often be of genuine assistance to the national authorities by calling to its attention other relevant evidence that those authorities may wish to consider that contradicts or impeaches the requested testimony of the witness.

10. Mr. Kamuhanda and his counsel urge the judges not to freely exclude the defence from such proceedings in the future.

11. In any event, Mr. Kamuhanda respectfully requests that the Appeals Chamber order a redacted version of the *Decision on Application pursuant to Rule 75(H)(5) December 2014*) be issued and disclosed to him.

Word Count: 652

Respectfully submitted,

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

PETER ROBINSON

Counsel for Jean de dieu Kamuhanda