

UNITED
NATIONS



Mechanism for International Criminal Tribunals

Case No: MICT-13-33

Date: 27 November 2017

Original: English

THE SINGLE JUDGE

Before: Judge Seymour Panton

Registrar: Mr. Olufemi Elias

The Prosecutor

v.

Jean de Dieu Kamuhanda

**PROSECUTION RESPONSE TO MOTION TO INTERVIEW
PROSECUTION WITNESS GEB**

Office of the Prosecutor

Veronic Wright
Thembile Segoete
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Jean de Dieu Kamuhanda

Peter Robinson, Counsel

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I. SUBMISSIONS

1. Kamuhanda's request to interview Witness GEB is unjustified, is an impermissible attempt to embark on a fishing expedition, which is prohibited by the jurisprudence of the Tribunal and should be denied.¹

2. Kamuhanda fails to provide sufficient justification to warrant the unnecessary intrusion of Witness GEB's privacy, especially considering that his case has been tried to final judgment.²

3. GEB testified as a Prosecution witness in Kamuhanda's case from 12-13 September 2001. His credibility and the veracity of his evidence were extensively challenged by Kamuhanda during cross examination.³ The ICTR Trial Chamber evaluated GEB's evidence and credibility when making its decision and found him to be credible.⁴ The Appeals Chamber confirmed the Trial Chamber's decision in this regard.⁵

4. Furthermore, on the issue of the alleged false testimony of Prosecution witnesses, which Kamuhanda seeks to re-open, the Appeals Chamber stated:

“The new information submitted by Kamuhanda concerning the alleged fabrication of evidence against him does not warrant review. The alleged fabrication of evidence was already considered by the Trial Chamber. Significantly, the Appeals Chamber exhaustively addressed the issue in assessing Kamuhanda's additional evidence on appeal...the additional evidence is therefore not a new fact, but simply additional evidence of facts already at issue in proceedings”.⁶

¹ See *Prosecutor v. Dragomir Milosevic*, Case No. IT-98-29-1/A, Decision on Radovan Karadzic's Motion for Access to Confidential Material in the *Dragomir Milosevic* Case, 19 May 2009, para. 11.

² See *The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. MICT-13-33, Decision on Motion for Contact With Persons Benefitting From Protective Measures, 10 March 2016, para. 14; *The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. MICT-13-33-R86.2, Second Decision on Motion for Access to Confidential Material from the Nshogoza Case, 9 November 2015, para. 5.

³ See *The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. ICTR-99-54A-T, T. 12 September 2001, pp. 49-123, T.13 September 200, pp.4-22.

⁴ *The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. ICTR-99-54A-T, Judgment and Sentence, 22 January 2004, paras.440-444.

⁵ *The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. ICTR-99-54A-A, Judgment, 19 September 2005, paras.163-250.

⁶ *Ibid*, para 53.


5. Kamuhanda, who currently has no case before the mechanism,⁷ should not be permitted to remedy his failings by re-litigating matters that were exhaustively discussed and dismissed by the Trial and Appeals Chamber.⁸

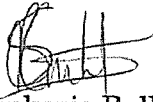
6. A Single Judge in this case has previously noted that judicial oversight and sufficient justification to contact protected witnesses is required to ensure finality in completed cases,⁹ and also because "repeatedly approaching protected witnesses on the same matter is likely to cause anxiety for the witnesses and should be avoided".¹⁰

7. Should Kamuhanda believe he has in his possession 'new evidence' that potentially casts doubt on GEB's testimony and credibility, he should file a request for review based on that purported evidence. It would be wholly inappropriate to allow him the opportunity to pressure the witness into changing his testimony to reflect Kamuhanda's own version of "the truth".¹¹

8. Notwithstanding the foregoing, should the Chamber grant Kamuhanda's request the Prosecutor wishes to have a representative from his office present during the proposed interview.

Dated at Arusha this 27th day of November 2017


Veronic Wright
Senior Legal Officer


Sankarie Ballah-Conteh
Legal Advisor

^{7 7} See: *The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. MICT-13-33, Decision on Motion for Contact With Persons Benefitting From Protective Measures, 10 March 2016, para. 14; *The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. MICT-13-33-R86.2, Second Decision on Motion for Access to Confidential Material from the Nshogoza Case, 9 November 2015, para. 5.

⁸ *Jean De Dieu Kamuhanda v. The Prosecutor*, Decision on Request for Review, 25 August 2011, particularly paras. 11, 27-30, 50-51.

⁹ *The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. MICT-13-33, Decision on Motion for Contact With Persons Benefitting From Protective Measures, 10 March 2016, para. 14.

¹⁰ *The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. MICT-13-33, Decision on Motion for Contact With Persons Benefitting From Protective Measures, 10 March 2016, para. 14.

¹¹ See: *The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. MICT-13-33, Motion to Interview Prosecution Witness GEB, 15 November 2017, para. 12. Kamuhanda claims that he seeks to convince Witness GEB to tell the truth and admit that his testimony at Kamuhanda's trial was false.

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