

MICT-13-33-AR90/108.1
27-10-2015
(697 - 695)

697
JN

THE MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

CASE No. MICT-13-33AR90/108.1

THE APPEALS CHAMBER

Before: Judge Theodor Meron
Judge Joseph E. Chiondo Masanche
Judge Ben Emmerson

Registrar: Mr. John Hocking

Date Filed: 27 October 2015

THE PROSECUTOR

v.

JEAN DE DIEU KAMUHANDA

Public

REPLY BRIEF:
APPEAL OF DECISION ON JURISDICTION TO
INVESTIGATE PROSECUTION WITNESS GEK

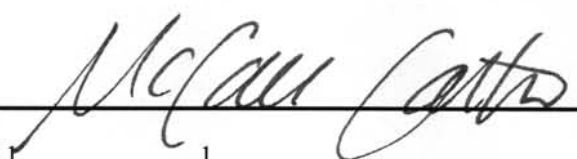
Office of the Prosecutor:

Mr. Hassan Jallow
Mr. Richard Karegyesa
Mr. Steffan Wirth

Jean de dieu Kamuhanda:

Mr. Peter Robinson, Counsel

Received by the Registry
Mechanism for International Criminal Tribunals
27/10/2015 01:09



1. Jean de dieu Kamuhanda has appealed from the *Decision on Motion for Appointment of Amicus Curiae Prosecutor to Investigate Prosecution Witness GEK* (16 September 2015) contending that the Single Judge rendered an incorrect interpretation of governing law when holding that the Residual Mechanism lacked jurisdiction to initiate an investigation into allegations of contempt and false testimony occurring before the ICTR Appeals Chamber.

2. On 23 October 2015, there was filed the *Prosecution Response to Kamuhanda's Appeal*. Mr. Kamuhanda now replies.

3. Mr. Kamuhanda notes that the *Response* was filed confidentially. He requests that the Appeals Chamber order the prosecution to file a public redacted version.

4. The crux of the *Response* is that the Single Judge was justified in finding that the test for reconsideration was not met.¹ But that is not the issue presented by this appeal. What is being appealed is the Single Judge's decision that the Residual Mechanism has no **jurisdiction** to reconsider a matter that had been decided by the ICTR Appeals Chamber.

5. The appeal presents an important question of jurisdiction of the Residual Mechanism. The prosecution has already used the decision to argue that the Mechanism has no jurisdiction to modify a protective measures decision of an ICTR Trial Chamber.² Its failure to support the Single Judge's decision on jurisdiction in its *Response* can only be an indication that the decision cannot be defended on those grounds.

6. The prosecution is also incorrect in casting Mr. Kamuhanda's motion for appointment of an *amicus curiae* prosecutor as a motion for reconsideration.³ The motion does not challenge the ICTR Appeals Chamber's decision to direct the prosecution to investigate the allegation that Tribunal employees had sought to influence Witness GEK to change her testimony. Rather, it contends that since the prosecution failed to conduct that investigation, a new investigation should be ordered, and that such an investigation should be pursued by an *amicus curiae* prosecutor.

¹ *Response* at paras. 11-13

² *Prosecution Consolidated Response to ADAD-ICTR and ADC-ICTY Amicus Briefs* (21 September 2015) at para. 6

³ *Response* at paras. 9-10

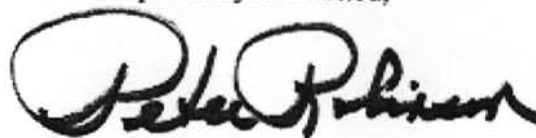
7. However, even if the motion were to be construed as a motion for reconsideration based upon new material circumstances that have arisen that did not exist at the time of the original decision (the fact that the investigation was never carried out), the Residual Mechanism would have the jurisdiction to reconsider that decision.

8. As pointed out in Mr. Kamuhanda's brief, the ICTR refused to file his Motion for Reconsideration before the Appeals Chamber. Therefore, if the Residual Mechanism does not have jurisdiction to reconsider decisions of the ICTR (or ICTY), there is no forum for a convicted person, or the prosecution for that matter, to remedy an injustice when new information arises or to even modify protective measures to allow access to confidential material to States or third parties. Such an interpretation of the Residual Mechanism's jurisdiction would render it virtually impotent.

9. For any and all of the above reasons, the Appeals Chamber should find that the Single Judge committed an error of law when deciding that he lacked jurisdiction to consider Mr. Kamuhanda's motion, and remand the matter to the Single Judge to decide the motion on its merits.

Word count: 623

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter Robinson". The signature is fluid and cursive, with the first name "Peter" and last name "Robinson" clearly distinguishable.

PETER ROBINSON
Counsel for Jean de dieu Kamuhanda



**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE
MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS/
FICHE DE TRANSMISSION POUR LE DÉPÔT DE DOCUMENTS DEVANT LE
MÉCANISME POUR LES TRIBUNAUX PÉNAUX INTERNATIONAUX**

I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

To/ À :	MICT Registry/ <i>Greffe du MTPI</i>	<input checked="" type="checkbox"/> Arusha/ <i>Arusha</i>	<input type="checkbox"/> The Hague/ <i>La Haye</i>
From/ De :	<input type="checkbox"/> Chambers/ <i>Chambre</i>	<input checked="" type="checkbox"/> Defence/ <i>Défense</i>	<input type="checkbox"/> Prosecution/ <i>Bureau du Procureur</i> <input type="checkbox"/> Other/ <i>Autre :</i>
Case Name/ Affaire :	Prosecutor v Kamuhanda		Case Number/ Affaire n° : MICT 13-33-AR90/108.1
Date Created/ Daté du :	27 October 2015	Date transmitted/ Transmis le :	27 October 2015
Original Language / Langue de l'original :	<input checked="" type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
Title of Document/ Titre du document :	REPLY BRIEF: APPEAL OF DECISION ON JURISDICTION TO INVESTIGATE PROSECUTION WITNESS GEK		
Classification Level/ Catégories de classification :	<input checked="" type="checkbox"/> Unclassified/ <i>Non classifié</i>	<input type="checkbox"/> Ex Parte Defence excluded/ <i>Défense exclue</i>	
	<input type="checkbox"/> Confidential/ <i>Confidentiel</i>	<input type="checkbox"/> Ex Parte Prosecution excluded/ <i>Bureau du Procureur exclu</i>	
	<input type="checkbox"/> Strictly Confidential/ <i>Strictement confidentiel</i>	<input type="checkbox"/> Ex Parte R86(H) applicant excluded/ <i>Art. 86 H) requérant exclu</i>	
		<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ <i>Amicus curiae exclu</i>	
		<input type="checkbox"/> Ex Parte other exclusion/ <i>autre(s) partie(s) exclue(s)</i> (specify/préciser) :	
Document type/ Type de document :	<input type="checkbox"/> Motion/ <i>Requête</i>	<input checked="" type="checkbox"/> Submission from parties/ <i>Écritures déposées par des parties</i>	<input type="checkbox"/> Indictment/ <i>Acte d'accusation</i>
	<input type="checkbox"/> Decision/ <i>Décision</i>	<input type="checkbox"/> Submission from non-parties/ <i>Écritures déposées par des tiers</i>	<input type="checkbox"/> Warrant/ <i>Mandat</i>
	<input type="checkbox"/> Order/ <i>Ordonnance</i>	<input type="checkbox"/> Book of Authorities/ <i>Recueil de sources</i>	<input type="checkbox"/> Notice of Appeal/ <i>Acte d'appel</i>
	<input type="checkbox"/> Judgement/ <i>Jugement/Arrêt</i>	<input type="checkbox"/> Affidavit/ <i>Déclaration sous serment</i>	

II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT

<input type="checkbox"/> Translation not required/ <i>La traduction n'est pas requise</i>					
<input checked="" type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ <i>La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction :</i> (Word version of the document is attached/ <i>La version Word est jointe</i>)					
<input type="checkbox"/> English/ <i>Anglais</i>	<input checked="" type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :	
<input type="checkbox"/> Filing Party hereby submits both the original and the translated version for filing, as follows/ <i>La partie déposante soumet l'original et la version traduite aux fins de dépôt, comme suit :</i>					
Original/ Original en	<input type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
Translation/ Traduction en	<input type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
<input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s)/ <i>La partie déposante soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s) :</i>					
<input type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :	

Send completed transmission sheet to/ *Veillez soumettre cette fiche dûment remplie à :*
JudicialFilingsArusha@un.org OR/OU JudicialFilingsHague@un.org

Rev: April 2014/Rév. : Avril 2014