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9-3-2012
(6915-6912)

MICT-12-08
27/07/2012
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**Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda**

OFFICE OF THE PRESIDENT

Before: Judge Vagn Joensen, *President*
Registrar: Adama Dieng
Date: 9 March 2012

JUDICIAL RECORDS ARCHIVES
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PROSECUTOR v. NIYITEGEKA

Case No. ICTR-96-14

PROSECUTOR v. NTAKIRUTIMANA et al.

Case No. ICTR-96-10/17

PROSECUTOR v. NYIRAMASUHUHO et al.

Case No. ICTR-98-42

PROSECUTOR v. BIZIMUNGU et al.

Case No. ICTR-99-50

PROSECUTOR v. NDINDILYIMANA et al.

Case No. ICTR-00-56

PROSECUTOR v. NDINDABAHIZI

Case No. ICTR-01-71

**REPLY TO THE KANYABASHI RESPONSE TO 'JACQUES MUNGWARERE'S
SECOND URGENT MOTION FOR ACCESS TO MATERIAL and
NOTICE UNDER RULE 67(D)'**

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C/o The Honorable Louis Z. Charbonneau

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I. INTRODUCTION:

1. The Defence for Kanyabashi opposes the Mungwarere motion on two grounds, as enumerated at paragraph 5 of the Kanyabashi Response¹: firstly, that the Mungwarere request for disclosure amounts to a fishing expedition in that no link has been established between the Kanyabashi witnesses and fabrication in Kibuye, and secondly, that the Kanyabashi witnesses only agreed to testify if their identities remained secret.

II. THE MUNGWARERE REQUEST IS NOT A 'FISHING EXPEDITION':

2. With regard to the first ground, that the disclosure request amounts to a fishing expedition, The Kanyabashi Defence elaborates an argument with regards to a lack of geographic nexus between the events in the Kanyabashi case and those in the Mungwarere case. With respect, it is submitted that this argument is misguided.
3. The Appeals Chamber, in the very passage cited by Kanyabashi, has indicated that "a factual nexus may be established, for example, 'if the cases stem from events alleged to have occurred in the same geographic area at the same time', although this may not always be necessary ..."² [Emphasis added].
4. Indeed, the present case is one in which, it is submitted, that a specific geographic congruity is irrelevant. The nexus is based upon the nature of the evidence sought, that is, evidence pertaining to systematic fabrication of evidence in Rwandan genocide trials, which evidence is a central tenet of the defence of Mr. Mungwarere. It is that evidence of fabrication, and not the specific events being tried in the

¹ Réponse de Joseph Kanyabashi à la procédure Intitulée *Jacques Mungwarere's Second Urgent Motion for Access to Material and Notice Under Rule 67(D)*; ICTR-96-15-T; ICTR-98-42-A; 6 March 2012.

² *Prosecutor v. Rutaganda*, Case No. ICTR-96-3-R, Decision on Rutaganda's Appeal Concerning Access to Confidential Materials in the *Karemera et al.* case (AC), 10 July 2009, para. 28; *See also Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Callixte Nzabonimana's Motion for Access to Exhibit DNZ-461, 23 August 2010, para. 6. ("Karemera Decision")

Kanyabashi case that establishes the nexus between the two cases, and thus, establishes the legitimate forensic purpose of the request for disclosure.

5. It is submitted that seeking evidence referred to in an ICTR trial judgement³ that relates to instances where witnesses may have been coached by *IBUKA* to falsely accuse people of genocide, does *not* amount to a fishing expedition, especially in light of the fact that this will be a central issue in the coming Mungwarere trial.

III. THE IDENTITY OF THE KANYABASHI WITNESSES WILL BE PROTECTED UNDER THE TERMS OF THE MUNGWARERE REQUEST:

6. The second ground concerns the protection measures issued with regards to the evidence sought, more particularly that the identity of witnesses not be known to the public.
7. With respect, it is submitted that this argument is also misguided. The Defence for Mungwarere has made no request to reveal any protected information to the public. The Mungwarere motion specifically envisages the protection measures remaining in place, and being varied only in so far as necessary to permit the Mungwarere Defence access to the evidence.
8. As discussed in the Mungwarere motion, Rule 75(F)(i) of the Rules, provides for the extension of existing protective measures to enlarge the group of persons bound by them and allow for access to protected information, without the need for any variation of these protective measures under Rule 75(G) and therefore the consent of the concerned witnesses.
9. Kanyabashi does not offer any evidence indicating that the witnesses on behalf of whom he opposes the Mungwarere motion have any objection to their evidence being used, not by the public, but by officers of the Court (as all Counsel in Canada are) bound by the same protection measures that were issued in the *Butare* case. As the

³ *Nyiramasuhuko et al.*, Trial Judgment, 24 June 2011, paras 246-384

Defence for Mungwarere makes abundantly clear in its motion, it offers to abide by any protection measures in place. Such extension of protection measures, even to parties not bound by the initial order has been granted in the past.

IV. CONCLUSION:

10. For the aforementioned reasons, the Defence for Mungwarere prays the Trial Chamber to reject Kanyabashi's objections to the disclosure sought by Mungwarere.

FOR ALL THE ABOVE REASONS, MAY IT PLEASE THE HONOURABLE CHAMBER TO:

REJECT the Kanyabashi objection to disclosure

and

ORDER the disclosure of the requested Material to the Defence of Jacques Mungwarere.

9 March 2011



Me. Philippe Larochelle



**TRANSMISSION SHEET / FICHE DE TRANSMISSION
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