

MICT-13-33
26-09-2015
(615 - 612)

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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: 28 September 2015

THE PROSECUTOR

v.

JEAN DE DIEU KAMUHANDA

Public

SECOND MOTION FOR ACCESS TO CONFIDENTIAL *INTER PARTES*
MATERIAL FROM THE *NSHOGOZA* CASE

Office of the Prosecutor:

Mr. Hassan Jallow

Mr. Richard Karegyesa

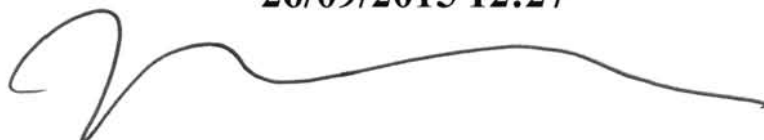
Jean de dieu Kamuhanda:

Mr. Peter Robinson, Counsel

Leonidas Nshogoza:

Ms. Allison Turner, Lead Counsel

Received by the Registry
Mechanism for International Criminal Tribunals
26/09/2015 12:27



1. On 31 August 2015, Jean de dieu Kamuhanda filed a request for access to all confidential *inter partes* material from the case of *Prosecutor v Nshogoza*, No. ICTR-07-91, pursuant to Rule 86.

2. On 21 September 2015, the Single Judge denied the motion and indicated that Mr. Kamuhanda should be more specific as to the particular confidential material that he wishes to obtain.¹

3. Mr. Kamuhanda now requests access to two specific categories of documents from the *Nshogoza* case: (1) Exhibit P2, a list of names; and (2) all transcripts of recordings or reports of interviews conducted by Special Counsel Loretta Lynch concerning the events at Gikomero Parish on 12 April 1994.

Exhibit P2

4. Exhibit P2 was a list of names of persons who were involved in the case, including those who had testified at Mr. Kamuhanda's trial. During the trial, witnesses referred to people by number from this exhibit, rather than by their names, so as not to reveal the names of protected witnesses in public session. The exhibit was admitted under seal.²

5. Without having access to Exhibit P2, it is difficult for Mr. Kamuhanda to comprehend the testimony of witnesses who testified at the *Nshogoza* trial about the events at Gikomero Parish for which Mr. Kamuhanda has been convicted, and particularly whether Witness GAA was present during those events.

6. For example, Prosecution Witness GAF, who also testified at Mr. Kamuhanda's trial testified that:

Number 15 told me that she had had a meeting with number 21 and that number 21 was trying to get her to influence her so that number 15 should come and assert that number 21 had never been present in Gikomero at the site of the events on 12 April 1994. And number 21 was, therefore, asking number 15 to possibly go and confirm this at the ICTR in Arusha.³

7. Witness GAA, who also testified at Mr. Kamuhanda's trial, testified that:

Sometimes I would meet number 8 and number 9 there, but every time I went to

¹ *Decision on Motion for Access to Confidential Inter Partes Material from the Nshogoza Case* (21 September 2015)

² *Nshogoza* Transcript of 9 February 2009 at p. 22

³ *Id.*, at p. 32

the meeting, I would go with number 64...I also travelled with number 10.⁴

8. There are countless other examples, throughout the public transcripts of the *Nshogoza* trial, where the testimony is incomprehensible without access to Exhibit P2.

9. Mr. Kamuhanda's new counsel is investigating the events at Gikomero Parish on 12 April 1994 in an effort to present new facts to the Residual Mechanism that would enable Mr. Kamuhanda to have his wrongful conviction reviewed and overturned. Subsequent testimony of prosecution witnesses who had testified at his trial, and other witnesses who discuss the events at Gikomero Parish, must be reviewed and understood in order for counsel to do his job. Therefore, Mr. Kamuhanda has a legitimate forensic purpose for seeking access to Exhibit P2.

Special Counsel material

10. At the conclusion of Mr. Kamuhanda's appeals hearing, the ICTR Appeals Chamber ordered the prosecution to investigate (1) allegations to the effect that Tribunal employees may have attempted to interfere with the witness who had given evidence in proceedings before this Tribunal; and (2) the possibility of false testimony given at the Appeals hearing.⁵

10. The prosecution retained an American lawyer, Loretta Lynch, to serve as Special Counsel to carry out the investigations ordered by the Appeals Chamber.⁶ Her investigation led to the indictment and guilty plea of Witness GAA for giving false testimony on Mr. Kamuhanda's behalf at the appeals hearing,⁷ and the indictment of Mr. Nshogoza for, *inter alia*, instigating and bribing Witness GAA to give false testimony.⁸

11. According to press reports, Ms. Lynch interviewed many witnesses over a two-year period during her investigation.⁹ Yet, all that has ever been disclosed to Mr. Kamuhanda, is a recording and transcript of her interview with Witness GAA.

12. Mr. Kamuhanda seeks access to all transcripts of recordings or reports of interviews conducted by Special Counsel Loretta Lynch concerning the events at

⁴ *Nshogoza* Transcript of 16 February 2009 at p. 42

⁵ Transcript of 19 May 2005, p. 51

⁶ Appointment of Special Counsel by the Prosecutor, ICTR/INFO-9-2-442.EN, 12 July 2005, available at <http://www.unict.org/en/news/appointment-special-counsel-prosecutor>

⁷ *Prosecutor v GAA*, No. ICTR-07-90-R77-I, *Judgement and Sentence* (4 December 2007)

⁸ *Prosecutor v Nshogoza*, No. ICTR-07-91-T, *Judgement* (7 July 2009). Mr. Nshogoza was convicted of disclosing confidential information and sentenced to 10 months imprisonment for that offense.

⁹ See <http://www.latimes.com/nation/politics/la-na-lynch-rwanda-20150124-story.html#page=1>

Gikomero Parish on 12 April 1994 which are contained in the *inter partes* disclosure from the prosecution to the *Nshogoza* defence maintained in the *Nshogoza* case file by the Registry.

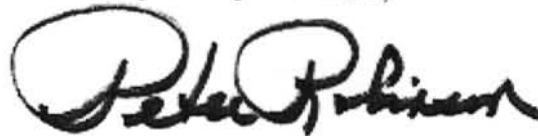
13. Mr. Kamuhanda has a legitimate forensic purpose for this material because any information about the events at Gikomero Parish for which he was convicted will assist his new counsel in his investigation to uncover new facts showing that Mr. Kamuhanda never participated in those events and that the prosecution witnesses who testified to that effect were not telling the truth.

Conclusion

14. Mr. Kamuhanda respectfully requests that the Single Judge order the Registry to provide him access to (1) Exhibit P2; and (2) all transcripts of recordings or reports of interviews conducted by Special Counsel Loretta Lynch concerning the events at Gikomero Parish on 12 April 1994 which are contained in the *inter partes* disclosure from the prosecution to the *Nshogoza* defence maintained in the *Nshogoza* case file.

Word count: 990

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

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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
Date Created/ Daté du :	26 September 2015	Date transmitted/ Transmis le : 26 September 2015	No. of Pages/ Nombre de pages : 4
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 :	SECOND MOTION FOR ACCESS TO CONFIDENTIAL INTER PARTES MATERIAL FROM THE NSHOGOZA CASE		
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"/> Ex Parte Prosecution excluded/ <i>Bureau du Procureur exclu</i>
	<input type="checkbox"/> Confidential/ <i>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"/> Strictly Confidential/ <i>Strictement confidentiel</i>	<input type="checkbox"/> Ex Parte other exclusion/ <i>autre(s) partie(s) exclue(s)</i> (specify/préciser) :	
Document type/ Type de document :	<input checked="" type="checkbox"/> Motion/ <i>Requête</i>	<input 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>)					
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