



Mechanism for International Criminal Tribunals

Case No.: MICT-14-77-R90.1

Date: 25 July 2016

Original: English

BEFORE A SINGLE JUDGE

Before: Judge Joseph E. Chiondo Masanche
Registrar: Mr. John Hocking
Decision of: 25 July 2016

PROSECUTOR

v.

ALOYS NTABAKUZE

PUBLIC

**DECISION ON NTABAKUZE'S MOTION TO VACATE
THE DECISION OF 23 MAY 2016**

The Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Richard Karegyesa
Ms. Sunkarie Ballah-Conteh

Counsel for Mr. Aloys Ntabakuze:

Ms. Sandrine Gaillot

Received by the Registry
Mechanism for International Criminal Tribunals
25/07/2016 09:18

A handwritten signature in black ink, appearing to be 'Mr. J. D. G.', written over a white background within a black rectangular box.

I. JOSEPH E. CHIONDO MASANCHE, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and Single Judge in this case:¹

NOTING the final Judgement against Aloys Ntabakuze issued by the Appeals Chamber of the International Criminal Tribunal for Rwanda (“ICTR”) on 8 May 2012, affirming Ntabakuze’s convictions for genocide, extermination and persecution as crimes against humanity, and violence to life as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, and imposing a sentence of 35 years of imprisonment;²

NOTING that the ICTR Appeals Chamber upheld, *inter alia*, the finding that Para-Commando Battalion soldiers, under Ntabakuze’s effective control, participated in the killings on 11 April 1994 at Nyanza hill;³

RECALLING that, on 23 March 2016, I dismissed Ntabakuze’s motion in which he argued that the Prosecution had breached its disclosure obligations by failing to disclose at trial a statement given by a member of the 1st Muvumba Battalion (“Statement”) as well as other potentially exculpatory material, but that I ordered, in the interests of expediency, that the Prosecution provide Ntabakuze with an additional copy of the Statement;⁴

RECALLING that, on 23 May 2016, I dismissed Ntabakuze’s motion in which he argued, *inter alia*, that the Prosecution had failed to comply with the Decision of 23 March 2016 by not providing an additional copy of the Statement to Ntabakuze;⁵

BEING SEISED OF “Ntabakuze’s Motion to Vacate the Single Judge’s 23 May 2016 Decision on Ntabakuze’s 12 May 2016 Motion” filed on 28 June 2016 (“Motion”), in which Ntabakuze submits that, due to a distribution error, his reply filed on 20 May 2016 (“Reply”)⁶ was not considered in the

¹ Order Assigning a Single Judge to Consider an Application, 18 May 2016, p. 1. See also *Prosecutor v. Aloys Ntabakuze*, Case No. MICT-14-77-R, Order Assigning a Single Judge to Consider an Application, 3 March 2016, p. 1.

² *Aloys Ntabakuze v. The Prosecutor*, Case No. ICTR-98-41A-A, Judgement, 8 May 2012 (“Appeal Judgement”), paras. 5, 313, 317.

³ See, e.g., Appeal Judgement, paras. 5, 189, 202, 313.

⁴ *Prosecutor v. Aloys Ntabakuze*, Case No. MICT-14-77-R, Decision on Ntabakuze’s Motion for Disclosure of Exculpatory Material, 23 March 2016 (“Decision of 23 March 2016”), pp. 1, 2. See *Prosecutor v. Aloys Ntabakuze*, Case No. MICT-14-77-R, Ntabakuze’s Motion for Disclosure of Exculpatory Material in the Prosecution’s Custody pursuant to Rules 71(B) and (C), 72 (D), 73 and 74 of MICT Rules, 28 February 2016 (confidential).

⁵ Decision on Ntabakuze’s Motion for Contempt and to Seek Execution of Order of 22 March 2016, 23 May 2016 (“Decision of 23 May 2016”), pp. 1, 2.

⁶ Ntabakuze’s Reply to the Prosecutor’s Response to Ntabakuze’s Motion for Execution of Decision on Motion for Disclosure of Exculpatory Material, 20 May 2016.

Decision of 23 May 2016 and, therefore, requests that I “withdraw” the Decision of 23 May 2016 and issue a new decision, following a consideration of all of the submissions of the parties;⁷

NOTING that the Prosecution did not file a response to the Motion:

NOTING that the Reply was distributed only on 22 June 2016,⁸ and that, according to the Registry, the delay in the distribution was due to an error not attributable to Ntabakuze;⁹

NOTING that, in the Reply, Ntabakuze argued that the additional copy of the Statement provided to him by the Prosecution demonstrates that the Statement was not disclosed to him at trial as: (i) there is no proof of service of the Statement to Ntabakuze’s counsel in the trial record; (ii) the additional copy provided by the Prosecution bears an exhibit number from a different case; and (iii) had it been part of the trial record, the Statement would have affected the ICTR Trial and Appeals Chamber’s conclusion concerning the presence of Para-Commando Battalion soldiers in Nyanza hill at the relevant time;¹⁰

CONSIDERING that Ntabakuze is essentially seeking reconsideration of both the Decision of 23 March 2016 and the Decision of 23 May 2016 and that I have inherent discretionary authority to reconsider a prior decision if a clear error of reasoning has been demonstrated or if it is necessary in order to prevent an injustice;¹¹

CONSIDERING that, pursuant to Rule 153(A) of the Rules of Procedure and Evidence of the Mechanism (“Rules”), Ntabakuze may file a reply only with the leave of the Single Judge and that, in the present case, Ntabakuze did not seek such leave:

RECALLING, nevertheless, that, in the Decision of 23 March 2016, I considered that the Statement was disclosed to Ntabakuze during the trial proceedings on the basis of the relevant trial transcripts;¹²

⁷ Motion, para. 10.

⁸ See Registrar’s Submission Pursuant to Rule 31(B) of the Rules, 22 June 2016 (confidential) (“Registrar’s Submission”), para. 8.

⁹ Registrar’s Submission, para. 9.

¹⁰ See Reply, paras. 7-9; Motion, paras. 6-8.

¹¹ See *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. MICT-13-52-R86H.1, Public Redacted Version of the 14 May 2014 Decision on Prosecution Motion for Reconsideration or Certification of Decision on Application Pursuant to Rule 86(H), 10 February 2016, para. 5 and references cited therein; *Prosecutor v. Jean de Dieu Kamuhanda*, Case No. MICT-13-33-AR90/108.1, Decision on Kamuhanda’s Appeal of Decision on Motion for Appointment of *Amicus Curiae* Prosecutor to Investigate Prosecution Witness GEK, 8 December 2015, para. 16 and references cited therein.

¹² See Decision of 23 March 2016, p. 2, referring to *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, T 3 May 2005, pp. 29, 30; *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, T 13 November 2006 pp. 23 (closed session) (referring to K0100536-K0100546), 35. See also Reply, RP, 373-363 (K0100536-K0100546).

CONSIDERING that the fact that the Statement may not have been tendered into evidence and assigned an exhibit number, thus becoming part of the trial record, does not, in and of itself, demonstrate that it was not disclosed to Ntabakuze by the Prosecution at trial, or that there is other exculpatory material in the custody or under the control of the Prosecution which has not been disclosed to Ntabakuze:

CONSIDERING that, in these circumstances, the fact that the additional copy of the Statement provided by the Prosecution bears an exhibit number from a different case does not, as such, demonstrate that the Statement was not disclosed to Ntabakuze at trial:

NOTING that the issue of whether the Statement would have affected the ICTR Appeals Chamber's conclusion concerning the presence of Para-Commando Battalion soldiers in Nyanza hill is a matter to be considered when and if Ntabakuze files a request for review of his conviction;¹³

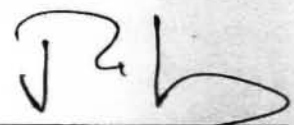
FINDING, therefore that, even if I had considered the substance of the Reply, it would have neither changed the outcome of the Decision of 23 May 2016 nor would have led to reconsideration of the Decision of 23 March 2016;

FINDING, therefore, that Ntabakuze has failed to demonstrate that reconsideration of the Decisions of 23 March and 23 May 2016 is necessary due to a clear error of reasoning or in order to prevent an injustice:

DO HEREBY DISMISS the Motion in its entirety.

Done in English and French, the English version being authentic.

Done this 25th day of July 2016,
At Arusha,
Tanzania.



Judge Joseph E. Chiondo Masanche
Single Judge

[Seal of the Mechanism]



3

¹³ See Rule 146(A) of the Rules.



**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 checked="" type="checkbox"/> Chambers/ <i>Chambre</i>	<input type="checkbox"/> Defence/ <i>Défense</i>	<input type="checkbox"/> Prosecution/ <i>Bureau du Procureur</i>
Case Name/ Affaire :	Prosecutor v. Aloys Ntabakuze		Case Number/ Affaire n° : MICT-14-77-R90.1
Date Created/ Daté du :	25 July 2016	Date transmitted/ Transmis le : 25 July 2016	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 :	Decision on Ntabakuze's Motion to Vacate the Decision of 23 May 2016		
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 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 checked="" 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 : (Word version of the document is attached/ La version Word est jointe)</i>
<input type="checkbox"/> English/ <i>Anglais</i> <input checked="" type="checkbox"/> French/ <i>Français</i> <input checked="" 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