

MICT-13-33
12-05-2017
(1540 - 1536)

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THE MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

CASE No. MICT-13-33

THE PRESIDENT

Before: Judge Theodor Meron

Registrar: Olufemi Elias

Date Filed: 12 May 2017

THE PROSECUTOR

v.

JEAN DE DIEU KAMUHANDA

Public

MOTION TO INTERVIEW
PROSECUTION WITNESS GEK

Office of the Prosecutor:
Serge Brammertz
Richard Karegyesa
Sunkarie Ballah-Conteh

Jean de dieu Kamuhanda:
Peter Robinson

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Uwairopo

1. Jean de dieu Kamuhanda respectfully requests that the President, or a Single Judge designated by him, authorize him to interview Prosecution Witness GEK, if the witness consents.

2. Mr. Kamuhanda was convicted of genocide at the ICTR¹ and his conviction has been affirmed on appeal,² and in an initial request for review.³ He has maintained his innocence throughout the proceedings.⁴ He has engaged attorney Peter Robinson of the United States to represent him *pro bono* in his effort to overturn his wrongful conviction through a request for review at the Residual Mechanism.⁵ Mr.. Robinson has been granted access to the confidential material in Mr. Kamuhanda's case.⁶

3. As part of his investigation into possible new facts that might warrant review of Mr. Kamuhanda's conviction, counsel believes it is necessary to interview Prosecution Witness GEK.

4. The protective measures that currently apply to Mr.. Kamuhanda's case provide, *inter alia*:

(i) Requiring that the accused or his Defence Counsel shall make a written request, on reasonable notice to the Prosecution, to the Chamber or a Judge thereof, to contact any protected victim or potential Prosecution witnesses or any relative of such person; and requiring that when such interview has been granted by the Chamber or a Judge thereof, with the consent of such protected person or the parents of (sic) guardian of that person if that person is under the age of 18, that the Prosecution shall undertake all necessary arrangements to facilitate such interview.⁷

5. Judge Vagn Joensen, acting as Single Judge, upheld the requirement that Mr. Kamuhanda make a judicial request when he wanted to interview a prosecution witness.⁸ Judge Joensen also held that contact with the witness to ascertain his or her consent should be made by the WISP.⁹ He further granted Mr. Kamuhanda's request to have the

¹ *Prosecutor v Kamuhanda*, No. ICTR-99-54A-T, *Judgement* (22 January 2004)

² *Kamuhanda v Prosecutor*, No. ICTR-99-54A-A, *Judgement* (19 September 2005)

³ *Kamuhanda v Prosecutor*, No. ICTR-99-54A-R, *Decision on Request for Review* (25 August 2011)

⁴ Transcript of 19 May 2005 at pp. 96-97

⁵ *Request for Access* (30 March 2015) at para. 3

⁶ *Decision on Request for Access* (25 June 2015)

⁷ *Prosecutor v. Kamuhanda*, No. ICTR-99-50-I, *Decision on the Prosecutor's Motion for Protective Measures for Witnesses* (7 July 2000)

⁸ *Decision on Motion for Contact with Persons benefitting from Protective Measures* (10 March 2016) at para. 14

⁹ *Id.*, para. 19

WISP contact Prosecution Witness GAE, who had been implicated in discussions about giving false testimony at Mr. Kamuhanda's trial.¹⁰

6. Single Judge Jean-Claude Antonetti was assigned Mr. Kamuhanda's request to interview Prosecution Witness GET.¹¹ He also ordered the WISP to contact the witness to determine if the witness consented to the interview.¹²

7. Mr. Kamuhanda requests that the same procedure be used with respect to Witness GEK.

8. It has become necessary to interview Witness GEK due to information gathered in the course of the investigation into potential new facts that undermine Witness GEK's credibility. Newly discovered information related to witness credibility, has been held to potentially amount to a new fact.¹³

9. During the appeal proceedings in Mr. Kamuhanda's case, Witness GEK testified that two Tribunal employees had approached her at the United Nations safe house in Arusha while she was testifying in another case and offered to pay her money and give her other substantial assistance if she would recant her trial testimony in the *Kamuhanda* case.¹⁴

10. Counsel for Mr. Kamuhanda has now interviewed the two Tribunal employees, and each has stated that the testimony of Witness GEK on this issue was untrue. He has also obtained an interview with one of those employees conducted by Special Counsel Loretta Lynch, in which the employee confirmed that Witness GEK had lied during her testimony.¹⁵

¹⁰ *Id.*, at para. 23. Witness GAE subsequently declined to consent to meet with Mr. Kamuhanda's counsel.

¹¹ *Motion to Interview Prosecution Witness GET* (2 July 2016). Witness GET subsequently declined to consent to meet with Mr. Kamuhanda's counsel.

¹² *Order for Submissions regarding a Motion to Interview a Witness* (19 July 2016)

¹³ *Ntabakuze v Prosecutor*, No. MICT-14-77-R, *Decision on Ntabakuze's Pro Se Motion for Assignment of an Investigator and Counsel in Anticipation of his Request for Review* (19 January 2015) at fn. 43; *Kajelijeli v Prosecutor*, No. ICTR-9844A-R, *Decision on Request for Review* (29 May 2013) at para. 24; *Muvunyi v Prosecutor*, No. ICTR-00-55A-R, *Decision on Request for Variation of Protective Measures and Request for Review* (28 September 2012) at para. 22.

¹⁴ Transcript of 19 May 2005, p. 49 (The actual testimony was given in closed session at pp. 6-9)

¹⁵ *Decision on Third Motion to Compel Disclosure of Witness GEK Material* (21 March 2017)

11. The Prosecution has refused to disclose any information from Witness GEK's interview with Loretta Lynch, and the Single Judge declined to order its production for inspection.¹⁶

12. Counsel for Mr. Kamuhanda has also now interviewed a person who Witness GEK testified was present at her home and received weapons from Mr. Kamuhanda prior to the Gikomero Parish attack. That person has stated that the testimony of Witness GEK was false and that no such event took place. This evidence was not presented at Mr. Kamuhanda's trial.

13. Counsel for Mr. Kamuhanda believes that this further information as to lies told by Witness GEK may convince her to now tell the truth and admit that her testimony at Mr. Kamuhanda's trial and appeal hearing was false.

14. For these reasons, it is respectfully requested that the President, or a Single Judge, order the WISP to contact Prosecution Witness GEK to determine if she consents to meet with counsel for Mr. Kamuhanda.

15. It is further requested that the WISP be instructed not to require the witness to agree that:

"I fully understand the meaning and implications of my personal decision and therefore commit myself, through this document, not to hold WISP and the Mechanism in general accountable for any moral and material prejudice which I might suffer from my decision as to whether to participate in such an interview."

16. This language is included in the WISP form presented to witnesses when conveying a request for interview. It unnecessarily discourages a witness from consenting to an interview by implying that the witness may suffer "moral and material prejudice" from participating in an interview.

17. Single Judge Antonetti, upon learning that this language had been included in the consent form for Witness GET, ordered that the witness be re-contacted and advised that the request of Mr. Kamuhanda's counsel does not expose him to any danger as Mr. Kamuhanda's counsel is bound to protect the confidentiality of any information likely to identify the witness.¹⁷

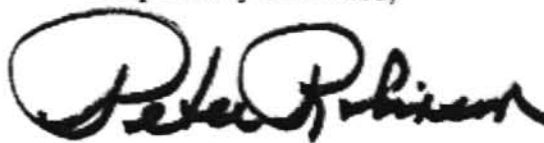
¹⁶ *Decision on Third Motion to Compel Disclosure of Witness GEK Material* (21 March 2017), p. 5

¹⁷ *Interim Order for Filing of Submissions* (13 September 2016) *Cf Decision on a Request to Recontact Witness GAE* (14 October 2016) noting that the submission that the language discouraged Witness GAE from consenting was "speculative".

18. In order to ensure that the advice given by the WISP to Witness GEK is neutral and accurate, and does not infringe on the principle that a witness is not the property of either party, it is respectfully requested that this language not be included if and when Witness GEK is asked if she consents to be interviewed by counsel for Mr. Kamuhanda.

Word count: 1288

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
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Case Name/ Affaire :	Prosecutor v Kamuhanda	Case Number/ Affaire n° :	MICT 13-33
Date Created/ Daté du :	12 May 2017	Date transmitted/ Transmis le :	12 May 2017
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