

MICT-13-33  
25-05-2017  
(1545 - 1543)

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UNITED  
NATIONS



Mechanism for International Criminal Tribunals

Case No: MICT-13-33

Date: 25 May 2017

Original: English

**THE SINGLE JUDGE**

Before: Judge Gberdo Gustave Kam

Registrar: Mr. Olufemi Elias

**The Prosecutor**

v.

**Jean de Dieu Kamuhanda**

**PROSECUTION RESPONSE TO DEFENCE MOTION TO  
INTERVIEW PROSECUTION WITNESS GEK**

**Office of the Prosecutor**  
Richard Karegyesa  
Sunkarie Ballah-Conteh

**Jean de Dieu Kamuhanda**  
Peter Robinson, Counsel

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## I. SUBMISSIONS

1. Kamuhanda's request to interview Witness GEK is not justified, is an impermissible attempt to embark on a fishing expedition and should be denied.
2. Kamuhanda seeks permission to interview Witness GEK, if the witness consents, in order to convince her to "tell the truth" and admit that her testimony at Kamuhanda's trial and appeal hearing was false.<sup>1</sup>
3. Kamuhanda fails to provide sufficient justification to warrant the unnecessary intrusion of Witness GEK's privacy, especially considering that his case has been tried to final judgement.<sup>2</sup> A Single Judge in this case has previously noted that judicial oversight and sufficient justification to contact protected witnesses is required to ensure finality in completed cases,<sup>3</sup> and also because "repeatedly approaching protected witnesses on the same matter is likely to cause anxiety for the witnesses and should be avoided".<sup>4</sup>
4. Kamuhanda, who currently has no case before the mechanism,<sup>5</sup> should not be permitted to remedy his failings by relitigating matters that were exhaustively discussed and dismissed by the Appeals Chamber.<sup>6</sup> On the issue of the alleged false testimony of GEK the Appeals Chamber stated:

"The new information submitted by Kamuhanda concerning the alleged fabrication of evidence against him does not warrant review. The alleged fabrication of evidence was already considered by the Trial Chamber. Significantly, the Appeals Chamber exhaustively addressed the issue in

<sup>1</sup> *The Prosecutor v Jean De Dieu Kamuhanda*, MICT-13-33, Motion to Interview Prosecution Witness GEK, 12 May 2017, paras 13 (Defence Motion)

<sup>2</sup> See *The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. MICT-13-33, Decision on Motion for Contact With Persons Benefitting From Protective Measures, 10 March 2016, para. 14; *The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. MICT-13-33-R86.2, Second Decision on Motion for Access to Confidential Material from the Nshogoza Case, 9 November 2015, para. 5.

<sup>3</sup> *The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. MICT-13-33, Decision on Motion for Contact With Persons Benefitting From Protective Measures, 10 March 2016, para. 14.

<sup>4</sup> *The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. MICT-13-33, Decision on Motion for Contact With Persons Benefitting From Protective Measures, 10 March 2016, para. 14.

<sup>5</sup> See: *The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. MICT-13-33, Decision on Motion for Contact With Persons Benefitting From Protective Measures, 10 March 2016, para. 14; *The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. MICT-13-33-R86.2, Second Decision on Motion for Access to Confidential Material from the Nshogoza Case, 9 November 2015, para. 5.

<sup>6</sup> *Jean De Dieu Kamuhanda v. The Prosecutor*, Decision on Request for Review, 25 August 2011, particularly paras. 11, 27-30, 50-51. See also MICT-13-33-AR90/108.1, Decision on Kamuhanda's Appeal of Decision on Motion for Appointment of Amicus Curiae to Investigate Prosecution Witness GEK, 8 December 2015, particularly paras. 3-7 and 14-17 which summarize Kamuhanda's repeated but unsuccessful attempts to relitigate this issue.

assessing Kamuhanda's additional evidence on appeal...the additional evidence is therefore not a new fact, but simply additional evidence of facts already at issue in proceedings".<sup>7</sup>

5. Additionally, the Appeals Chamber also held that statements from the Tribunal employees denying their involvement in attempting to bribe GEK to alter her testimony would not be helpful in assessing GEK's credibility, and denied Kamuhanda's application to proffer their evidence during the appeal.<sup>8</sup> Said statements therefore, which have previously been rejected by the Appeals Chamber, cannot provide justification for Kamuhanda's extant application to interview GEK.<sup>9</sup> Indeed, it would be wholly inappropriate to now permit Kamuhanda to interview GEK, solely with a view to "convincing" her to recant her testimony.

6. Should Kamuhanda believe he is in possession of 'new evidence' that potentially casts doubt on GEK's testimony and credibility, he should file a request for review based on that purported evidence.<sup>10</sup>

7. In view of the foregoing, Kamuhanda's request to interview GEK should be denied. Should however the Judge grant the request, the Prosecution wishes to have a representative from his office present during the proposed interview.

Dated at Arusha this 25<sup>th</sup> day of May, 2017

  
Richard Karegyesa  
Senior Legal Officer

Word Count  
686

<sup>7</sup> *Jean De Dieu Kamuhanda v. The Prosecutor*, Decision on Request for Review, 25 August 2011 para 53.

<sup>8</sup> *The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. ICTR-99-54-A, Appeals Hearing, TT 19 May 2005, p.50.

<sup>9</sup> Defence Motion paras. 10 and 13

<sup>10</sup> Presumably, in the event a review hearing is held pursuant to Rule 147, Kamuhanda would have the opportunity to interview the witness.



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