

MICT-13-33
16/09/2015
(595-591)

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UNITED
NATIONS



Mechanism for International Criminal Tribunals

Case No. MICT-13-33

Date: 16 September 2015

Original: English

SINGLE JUDGE

Before: Judge Vagn Joensen, Single Judge

Registrar: Mr. John Hocking

Decision of: 16 September 2015

THE PROSECUTOR

v.

JEAN DE DIEU KAMUHANDA

PUBLIC

**DECISION ON MOTION FOR APPOINTMENT OF AMICUS CURIAE PROSECUTOR
TO INVESTIGATE PROSECUTION WITNESS GEK**

The Office of the Prosecutor

Hassan Bubacar Jallow
Richard Karegyesa
Sunkarie Ballah-Conteh

Counsel for Jean de Dieu Kamuhanda

Peter Robinson

Received by the Registry
Mechanism for International Criminal Tribunals
16/09/2015 11:58

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1. I, VAGN JOENSEN, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) am seised of a motion filed by Jean de Dieu Kamuhanda (“Kamuhanda”) in which he requests the appointment of an *amicus curiae* Prosecutor to complete investigations into allegations of contempt and false testimony by Prosecution Witness GEK (the “Witness”) during Kamuhanda’s trial before the International Criminal Tribunal for Rwanda (“ICTR”).¹

I. BACKGROUND

2. On 19 May 2005, the ICTR Appeals Chamber, during the hearing of the appeal against Kamuhanda’s judgement, heard testimony from a number of witnesses, including Prosecution Witness GEK, who made various allegations against two ICTR employees.² The Appeals Chamber subsequently directed the Prosecutor to investigate pursuant to Rule 77(C)(i) and Rule 91(B)(i) of the ICTR Rules of Procedure and Evidence (“ICTR Rules”) (1) allegations that Tribunal employees may have attempted to interfere with the Witness who had given evidence in proceedings before the ICTR; and (2) the possibility of false testimony given at the Appeals hearing (“Investigation Decision”).³
3. On 3 August 2015, Kamuhanda filed a motion stating that the Prosecutor failed to investigate the allegations arising from the Kamuhanda appeal proceedings and, therefore, requests that a Single Judge issue an Order appointing an *amicus curiae* Prosecutor to complete the investigations identified in the Investigation Decision (“Application”).⁴
4. On 10 August 2015, I was assigned as Single Judge to rule on the Application.⁵

¹ Motion for Appointment of Amicus Curiae Prosecutor to Investigate Prosecution Witness GEK, 3 August 2015, paras. 1, 28 (“Application”).

² *Jean de Dieu Kamuhanda v. The Prosecutor*, Case No. ICTR-99-54-A, T. 19 May 2005 (CS), pp. 6-9; T. 19 May 2005, p. 49.

³ *Jean de Dieu Kamuhanda v. The Prosecutor*, Case No. ICTR-99-54-A, Oral Decision on Rule 115 and Contempt and False Testimony, 19 May 2005, pp. 50-51 (“Investigative Decision”).

⁴ Application, paras. 9-12, 26, 28.

⁵ Order Assigning a Single Judge, 10 August 2015.



5. On 11 August 2015, the Prosecution filed a response and argued that I do not have jurisdiction to set aside the Investigation Decision and, thus, the Application should be dismissed.⁶
6. On 20 August 2015, Kamuhanda filed his reply.⁷

II. DELIBERATIONS

7. As referenced above, Kamuhanda's present Application relates to evidence which was adduced during the hearing of the appeal against his judgement. On 19 May 2005, the Appeals Chamber rendered the Investigation Decision and further noted that "the Appeals Chamber stresses that in so directing the Prosecutor, it leaves it to his discretion to take the eventual steps and measures which he deems necessary and appropriate under the circumstances".⁸
8. On 7 April 2006, the Appeals Chamber rendered a decision related to Kamuhanda's request for the Chamber to issue orders related to the Investigation Decision and the ongoing investigation into false testimony and reiterated that the "Appeals Chamber left it to the Prosecutor's discretion to take the eventual steps and measures which he may deem necessary and appropriate under the circumstances".⁹
9. Kamuhanda further raised the issue of the investigation in his request for review of the appeals judgement and submitted that "the Prosecution committed contempt of court by failing to conclude the Special Investigation", which the Prosecution had initiated pursuant to

⁶ Prosecution Response to Motion for Appointment of Amicus Curiae Prosecutor to Investigate Prosecution Witness GEK, 11 August 2015, paras. 4-8.

⁷ Reply Brief: Motion for Appointment of Amicus Curiae Prosecutor, 20 August 2015. I note that Kamuhanda filed an application for leave to reply on 13 August 2015, which I granted on 19 August 2015. See Application for Leave to Reply: Motion for Appointment of Amicus Curiae Prosecutor, 13 August 2015; Decision on Application for Leave to Reply: Motion for Appointment of Amicus Curiae Prosecutor, 19 August 2015.

⁸ Investigative Decision, pp. 50-51.

⁹ *The Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54-A, Decision on Jean de Dieu Kamuhanda's Request Related to Prosecution Disclosure and Special Investigation, 7 April 2006, paras. 2, 7.



the Investigation Decision.¹⁰ In its decision dated 25 August 2011, the Appeals Chamber dismissed Kamuhanda's submission by once again referring to the directions in its Investigation Decision and by stating that "these provisions indicate that instructions to investigate possible contempt are made 'with a view to the preparation and submission of an indictment.' The Appeals Chamber considers that the filing of a concluding report is therefore not necessarily required and that it was within the Prosecution's discretion instead to file indictments against Witness GAA and Nshogoza. Accordingly, Kamuhanda's submission that the Prosecution committed contempt is without merit".¹¹

10. I note that pursuant to Article 4(2) of the Transitional Arrangements annexed to Security Council Resolution 1966 (2010) jurisdiction over contempt and false testimony matters before the ICTR passed to the Mechanism as of 1 July 2012. However, decisions taken by an ICTR Trial or Appeals Chamber while properly seized of the matter and prior to the 1 July 2012 transfer date retain their validity before the Mechanism.¹²

11. Considering that prior to the transfer date the Appeals Chamber, seized with the Kamuhanda case, decided pursuant to Rules 77 and 91 of the ICTR Rules which steps should be taken in light of the testimony that was given before it and later determined that the Prosecutor had acted within the directives in the Appeals Chamber's Investigation Decision, I find that I do not have jurisdiction to revisit the matter.

FOR THE FOREGOING REASONS, I

I. DISMISS the Application from Jean de Dieu Kamuhanda in its entirety.

Done in English and French, the English being authoritative.

¹⁰ *Jean de Dieu Kamuhanda v. The Prosecutor*, Case No. ICTR-99-54-A, Decision on Request for Review, 25 August 2011, para. 62.

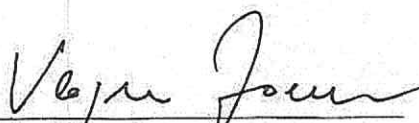
¹¹ *Id.*, para. 65.

¹² *In Re. Deogratias Sebureze and Maximilien Turinabo*, Case Nos. MICT-13-40-R90 and MICT-13-41-R90, Decision on Deogratias Sebureze and Maximilien Turinabo's Motions on the Legal Effect of the Contempt Decision and Order Issued by the ICTR Trial Chamber, 20 March 2013, para. 12.

Done this 16th day of September 2015,
At Arusha,
Tanzania



[Seal of the Mechanism]



Judge Vagn Joensen
Single Judge