

MICT-13-33  
30-03-2015  
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THE MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

CASE No. MICT-13-33

THE PRESIDENT

Before: Judge Theodor Meron

Registrar: Mr. John Hocking

Date Filed: 30 March 2015

THE PROSECUTOR

v.

JEAN DE DIEU KAMUHANDA

*Public*

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REQUEST FOR ACCESS

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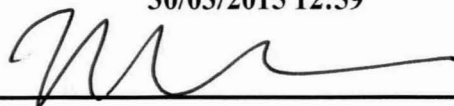
Office of the Prosecutor:

Mr. Hassan Jallow

Jean de dieu Kamuhanda:

Mr. Peter Robinson, Counsel

Received by the Registry  
Mechanism for International Criminal Tribunals  
30/03/2015 12:59



1. Jean de dieu Kamuhanda was convicted on 22 January 2004 by a Trial Chamber of the ICTR for leading a massacre of Tutsis at the Gikomero Protestant Parish and for supplying weapons used in the killings in Gikomero commune.<sup>1</sup> The ICTR Appeals Chamber affirmed his convictions for genocide and extermination on 19 September 2005.<sup>2</sup> The ICTR Appeals Chamber denied a petition for review of the convictions on 25 August 2011.<sup>3</sup>

2. Mr. Kamuhanda was represented at all stages of his case by Me. Aicha Conde of France.

3. On 10 March 2015, Mr. Kamuhanda filed a power of attorney with the Mechanism designating Mr. Peter Robinson of the United States as his counsel for purposes of seeking review before the Mechanism of his conviction at the ICTR.

4. Mr. Robinson is on the List of Counsel admitted to practice before the Mechanism.

5. On 25 March 2015, Mr. Robinson filed an undertaking with the Mechanism agreeing to serve as Mr. Kamuhanda's counsel and to respect the confidentiality of any disclosures made to him.

6. Mr. Robinson requested access from the Registry of the Mechanism to the confidential material in Mr. Kamuhanda's ICTR case. The Registry advised that in order to obtain such access, a motion would have to be brought before the President. This is that motion.

7. Mr. Kamuhanda requests that Mr. Robinson be given access to all of the public and confidential material in his case, except those documents filed by the prosecution that remain classified as *ex parte*.

8. Mr. Kamuhanda does not dispute the right of the Registrar to require that access to the confidential material in his case be approved in an *inter partes* proceeding before the President or a Single Judge designated by him. Such a proceeding provides an opportunity for the prosecution or the Registrar to raise any issues of conflict of interest or qualification of counsel before providing him or her with access to confidential material.

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<sup>1</sup> *Prosecutor v Kamuhanda*, No. ICTR-95-54A-T, *Judgement* (22 January 2004)

<sup>2</sup> *Kamuhanda v Prosecutor*, No. ICTR-95-54A-A, *Judgement* (19 September 2005)

<sup>3</sup> *Kamuhanda v Prosecutor*, No. ICTR-95-54A-R, *Decision on Request for Review* (25 August 2011)

9. Mr. Kamuhanda is confident that Mr. Robinson is fully qualified to represent him and has no conflict of interest in doing so.

10. Mr. Kamuhanda contends that making material from his own case file available to his new counsel does not require a variance of any protective measures ordered in his case and that Rule 86 has no application in such circumstances.

11. The *Decision on the Prosecutor's Motion for Protective Measures for Witnesses* (7 July 2000) in the Kamuhanda case applies to "the defence", "Defence Counsel" or "persons working on the immediate defence team". No variation of this decision is required when a new member of the "defence" joins the case.

12. The ICTY's decision in the *Dragomir Milosevic* case is distinguishable because in that case the person seeking access had a temporary status as counsel assigned to make an assessment of potential grounds for seeking review of a conviction.<sup>4</sup> In this case, Mr. Robinson is now Mr. Kamuhanda's permanent counsel at the Mechanism for all purposes.

13. Therefore, no "legitimate forensic purpose" for access to the confidential material in Mr. Kamuhanda's case need be established.

14. Should it be determined that such a purpose is required, that requirement is satisfied because complete access to public and confidential material from the case is necessary to determine whether new information meets the requirements of a "new fact" warranting review, and to be able to verify whether the new information was previously litigated.

15. In addition, conducting a factual investigation to uncover new facts requires access to public and confidential factual material including all disclosures and exhibits, to determine, *inter alia*, whether Mr. Kamuhanda received all of the disclosure he was entitled to, and whether evidence uncovered by new defence investigation was available to prior counsel through the exercise of due diligence. Disclosure of information concerning all persons who benefit from protective measures, whether called as a witness or not, is required so that Mr. Robinson does not inadvertently contact protected witnesses in the course of his factual investigation.

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<sup>4</sup> *Prosecutor v Milosevic*, No. IT-98-29/1-A, *Decision on Motion Seeking Variation of Protective Measures Pursuant to Rule 75(G)* (12 July 2012) at para. 7

16. Therefore, if a legitimate forensic purpose is required for Mr. Robinson to have access to his client's file, that purpose has been shown to exist.

17. The only material that should be excluded from the access afforded to Mr. Robinson is material filed by the prosecution classified as *ex parte*.

18. The limitation placed upon access in the *Dragomir Milosevic* decision at the ICTY denying access to "confidential material which does not relate specifically to confidential evidence" should not apply in this instance. First, unlike in that case, there is no variation of protective measures sought or needed. Second, information from protected witnesses who were not called during the trial is the very kind of information that has been and may well be relevant in this case.<sup>5</sup> And third, as noted above, unless Mr. Robinson knows the identity of protected witnesses, he cannot respect the protective measures during his investigation as he has undertaken to do.

19. Mr. Robinson is committed to work tirelessly, and with full respect for the rules, to free Mr. Kamuhanda. When he was a defence counsel in California, he helped to free a man who had served 25 years of a life sentence for a crime he did not commit. It was the most rewarding experience of his career as a lawyer. He decided to use his experience in international criminal cases to work on behalf of an innocent person who has been wrongfully convicted at one of the international tribunals. Mr. Kamuhanda is that person. He had nothing to do with the crimes committed in Gikomero commune for which he has been wrongfully convicted.

20. Access to the entire material in the case is a necessary step in a long road to free Mr. Kamuhanda. It is respectfully requested that such access be granted without unnecessary limitations or delay.

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<sup>5</sup> For example, Prosecution Witness GEX, who was not called during the trial, provided information to the Appeals Chamber in this case about collusion of potential prosecution witnesses against Mr. Kamuhanda. (Transcript of Appeals Hearing of 18 May 2005 at p. 43)

Word count: 1129

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter Robinson". The signature is written in a cursive style with large, rounded letters.

PETER ROBINSON  
Counsel for Jean de dieu Kamuhanda



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