

MICT-13-33  
20-08-2015  
(553 - 551)

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THE MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

CASE No. MICT-13-33

Before: Judge Vagn Joensen, Single Judge

Registrar: Mr. John Hocking

Date Filed: 20 August 2015

THE PROSECUTOR

v.

JEAN DE DIEU KAMUHANDA

*Public*

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REPLY BRIEF:  
MOTION FOR APPOINTMENT OF  
AMICUS CURIAE PROSECUTOR

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Office of the Prosecutor:

Mr. Hassan Jallow

Mr. Richard Karegyesa

Ms. Sunkarie Ballah-Conteh

Jean de dieu Kamuhanda:

Mr. Peter Robinson, Counsel

**Received by the Registry**  
**Mechanism for International Criminal Tribunals**  
**20/08/2015 15:50**



1. Jean de dieu Kamuhanda hereby responds, with leave,<sup>1</sup> to the *Prosecution Response to Motion for Appointment of Amicus Curiae Prosecutor to Investigate Prosecution Witness GEK*.

2. The Prosecution contends that the Single Judge is without jurisdiction to appoint an *amicus curiae* prosecutor because to do so would be to set aside an order of the ICTR Appeals Chamber.<sup>2</sup> This argument is without merit as, after 1 July 2012, only the Residual Mechanism has jurisdiction to initiate contempt proceedings arising from the ICTR.<sup>3</sup>

3. The Single Judge has, in the past, referred to the original Chamber the issue of whether there was reason to believe that contempt may have been committed.<sup>4</sup> In the instant case, the Appeals Chamber that issued the original order for investigation was comprised of Judges Meron, Shahabuddeen, Mumba, Schomburg, and Weinberg de Roca. Only Judge Meron remains a Judge of the ICTR or the Mechanism. Mr. Kamuhanda would have no objection if the Single Judge wished to invite Judge Meron to provide his views on the instant motion.

4. The prosecution next contends that the issue raised by the motion has already been decided twice—first, when the Appeals Chamber declined to replace the Prosecutor in 2006 and second, when denying the motion for review in 2011.<sup>5</sup>

5. However, in the 2006 decision, the failure of the prosecutor to complete, or even pursue, the investigation of (1) the allegations to the effect that Tribunal employees may have attempted to interfere with the witness who had given evidence in proceedings before this Tribunal; and (2) the possibility of false testimony given at the Appeals hearing by Witness GEK was not before the Appeals Chamber nor known to the defence.

6. Similarly, in the 2011 review decision, the information that the prosecutor had not completed or even pursued the investigation of the above allegations was neither

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<sup>1</sup> *Decision on Application for Leave to Reply: Motion for Appointment of Amicus Curiae Prosecutor* (19 August 2015)

<sup>2</sup> *Response* at para. 5

<sup>3</sup> *In Re Sebureze & Turinabo*, No. MICT-13-40&41-R90, *Decision on Deogratias Sebureze and Maximilieb Turinabo's Motions on the Legal Effect of the Contempt Decision and Order Issued by the ICTR Trial Chamber* (20 March 2013)

<sup>4</sup> *Prosecutor v Karadzic*, No. MICT-13-55-R90.3, *Decision to Invite the ICTY Trial Chamber in the Karadzic Case to Determine whether there is "Reason to Believe" that Contempt has been Committed by Members of the Office of the Prosecutor* (21 July 2014)

<sup>5</sup> *Response* at paras. 6-7

before the Appeals Chamber nor known to the defence. The Appeals Chamber did not have the information now before the Single Judge that the two WVSS employees had emphatically stated that Witness GEK's allegations were false.

7. The prosecution also refers to the decision of the Appeals Chamber during the 2005 appeals hearing not to call the two WVSS witnesses to testify at that time.<sup>6</sup> This supports the instant motion for appointment of an *amicus curiae* prosecutor, since the Appeals Chamber expected the prosecution to do that job as part of its investigation and it failed to do so.

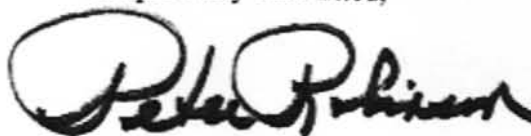
8. Similarly, Mr. Kamuhanda is not challenging a decision made in the discretion of the prosecution. He is contending that the prosecution never conducted or completed the investigation ordered by the Appeals Chamber. While the eventual steps and measures of the investigation were left to the discretion of the prosecution,<sup>7</sup> it did not have the discretion not to conduct the investigation at all. The instant motion seeks an *amicus curiae* prosecutor not to exercise a different discretion, but to do the job that the prosecution never did.

9. It is notable that in its response, the prosecution fails to contest or refute the factual allegations of the motion that (1) GEK provided false testimony at the Appeals hearing and (2) the prosecution failed to investigate the issues referred to above.

10. For all of the above reasons, it is respectfully requested that an *amicus curiae* prosecutor be appointed to investigate these allegations.

Word count: 747

Respectfully submitted,



PETER ROBINSON  
Counsel for Jean de dieu Kamuhanda

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<sup>6</sup> Response at fn. 6

<sup>7</sup> Transcript of 19 May 2005 at p, 51