

MICT-13-33  
26-09-2015  
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THE MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

CASE No. MICT-13-33

THE SINGLE JUDGE

Before: Judge Vagn Joensen

Registrar: Mr. John Hocking

Date Filed: 28 September 2015

THE PROSECUTOR

v.

JEAN DE DIEU KAMUHANDA

*Public*

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SECOND MOTION FOR ACCESS TO CONFIDENTIAL *INTER PARTES*  
MATERIAL FROM THE *NSHOGOZA* CASE

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Office of the Prosecutor:

Mr. Hassan Jallow

Mr. Richard Karegyesa

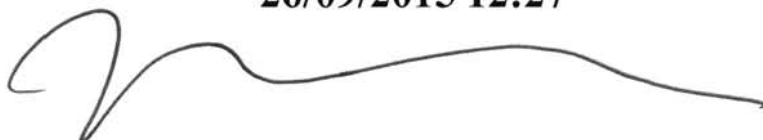
Jean de dieu Kamuhanda:

Mr. Peter Robinson, Counsel

Leonidas Nshogoza:

Ms. Allison Turner, Lead Counsel

**Received by the Registry**  
**Mechanism for International Criminal Tribunals**  
**26/09/2015 12:27**



1. On 31 August 2015, Jean de dieu Kamuhanda filed a request for access to all confidential *inter partes* material from the case of *Prosecutor v Nshogoza*, No. ICTR-07-91, pursuant to Rule 86.

2. On 21 September 2015, the Single Judge denied the motion and indicated that Mr. Kamuhanda should be more specific as to the particular confidential material that he wishes to obtain.<sup>1</sup>

3. Mr. Kamuhanda now requests access to two specific categories of documents from the *Nshogoza* case: (1) Exhibit P2, a list of names; and (2) all transcripts of recordings or reports of interviews conducted by Special Counsel Loretta Lynch concerning the events at Gikomero Parish on 12 April 1994.

#### **Exhibit P2**

4. Exhibit P2 was a list of names of persons who were involved in the case, including those who had testified at Mr. Kamuhanda's trial. During the trial, witnesses referred to people by number from this exhibit, rather than by their names, so as not to reveal the names of protected witnesses in public session. The exhibit was admitted under seal.<sup>2</sup>

5. Without having access to Exhibit P2, it is difficult for Mr. Kamuhanda to comprehend the testimony of witnesses who testified at the *Nshogoza* trial about the events at Gikomero Parish for which Mr. Kamuhanda has been convicted, and particularly whether Witness GAA was present during those events.

6. For example, Prosecution Witness GAF, who also testified at Mr. Kamuhanda's trial testified that:

Number 15 told me that she had had a meeting with number 21 and that number 21 was trying to get her to influence her so that number 15 should come and assert that number 21 had never been present in Gikomero at the site of the events on 12 April 1994. And number 21 was, therefore, asking number 15 to possibly go and confirm this at the ICTR in Arusha.<sup>3</sup>

7. Witness GAA, who also testified at Mr. Kamuhanda's trial, testified that:

Sometimes I would meet number 8 and number 9 there, but every time I went to

<sup>1</sup> *Decision on Motion for Access to Confidential Inter Partes Material from the Nshogoza Case* (21 September 2015)

<sup>2</sup> *Nshogoza* Transcript of 9 February 2009 at p. 22

<sup>3</sup> *Id.*, at p. 32

the meeting, I would go with number 64...I also travelled with number 10.<sup>4</sup>

8. There are countless other examples, throughout the public transcripts of the *Nshogoza* trial, where the testimony is incomprehensible without access to Exhibit P2.

9. Mr. Kamuhanda's new counsel is investigating the events at Gikomero Parish on 12 April 1994 in an effort to present new facts to the Residual Mechanism that would enable Mr. Kamuhanda to have his wrongful conviction reviewed and overturned. Subsequent testimony of prosecution witnesses who had testified at his trial, and other witnesses who discuss the events at Gikomero Parish, must be reviewed and understood in order for counsel to do his job. Therefore, Mr. Kamuhanda has a legitimate forensic purpose for seeking access to Exhibit P2.

#### **Special Counsel material**

10. At the conclusion of Mr. Kamuhanda's appeals hearing, the ICTR Appeals Chamber ordered the prosecution to investigate (1) 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.<sup>5</sup>

10. The prosecution retained an American lawyer, Loretta Lynch, to serve as Special Counsel to carry out the investigations ordered by the Appeals Chamber.<sup>6</sup> Her investigation led to the indictment and guilty plea of Witness GAA for giving false testimony on Mr. Kamuhanda's behalf at the appeals hearing,<sup>7</sup> and the indictment of Mr. Nshogoza for, *inter alia*, instigating and bribing Witness GAA to give false testimony.<sup>8</sup>

11. According to press reports, Ms. Lynch interviewed many witnesses over a two-year period during her investigation.<sup>9</sup> Yet, all that has ever been disclosed to Mr. Kamuhanda, is a recording and transcript of her interview with Witness GAA.

12. Mr. Kamuhanda seeks access to all transcripts of recordings or reports of interviews conducted by Special Counsel Loretta Lynch concerning the events at

<sup>4</sup> *Nshogoza* Transcript of 16 February 2009 at p. 42

<sup>5</sup> Transcript of 19 May 2005, p. 51

<sup>6</sup> Appointment of Special Counsel by the Prosecutor, ICTR/INFO-9-2-442.EN, 12 July 2005, available at <http://www.unict.org/en/news/appointment-special-counsel-prosecutor>

<sup>7</sup> *Prosecutor v GAA*, No. ICTR-07-90-R77-I, *Judgement and Sentence* (4 December 2007)

<sup>8</sup> *Prosecutor v Nshogoza*, No. ICTR-07-91-T, *Judgement* (7 July 2009). Mr. Nshogoza was convicted of disclosing confidential information and sentenced to 10 months imprisonment for that offense.

<sup>9</sup> See <http://www.latimes.com/nation/politics/la-na-lynch-rwanda-20150124-story.html#page=1>

Gikomero Parish on 12 April 1994 which are contained in the *inter partes* disclosure from the prosecution to the *Nshogoza* defence maintained in the *Nshogoza* case file by the Registry.

13. Mr. Kamuhanda has a legitimate forensic purpose for this material because any information about the events at Gikomero Parish for which he was convicted will assist his new counsel in his investigation to uncover new facts showing that Mr. Kamuhanda never participated in those events and that the prosecution witnesses who testified to that effect were not telling the truth.

**Conclusion**

14. Mr. Kamuhanda respectfully requests that the Single Judge order the Registry to provide him access to (1) Exhibit P2; and (2) all transcripts of recordings or reports of interviews conducted by Special Counsel Loretta Lynch concerning the events at Gikomero Parish on 12 April 1994 which are contained in the *inter partes* disclosure from the prosecution to the *Nshogoza* defence maintained in the *Nshogoza* case file.

Word count: 990

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter Robinson". The signature is stylized with large, flowing loops and a cursive style.

PETER ROBINSON  
Counsel for Jean de dieu Kamuhanda