

UNITED  
NATIONS

MICT-13-33  
08-04-2015  
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Mechanism for International Criminal Tribunals

Case No: MICT-13-33

Date: 08 April 2015

Original: English

**THE OFFICE OF THE PRESIDENT**

**Before: Judge Vagn Joensen**

**Registrar: Mr. John Hocking**

**THE PROSECUTOR**

**v.**

**JEAN DE DIEU KAMUHANDA**

**PROSECUTOR'S RESPONSE TO KAMUHANDA'S REQUEST FOR ACCESS**

**Office of the Prosecutor**

Hassan Bubacar Jallow  
Richard Karegyesa  
Sunkarie Ballah-Conteh

**Jean De Dieu Kamuhanda**

Mr. Peter Robinson

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*Anomaeaf*

## I. INTRODUCTION

1. On 30 March 2015, Jean De Dieu Kamuhanda filed a request for access to confidential material in his case file for his attorney, Mr. Peter Robinson (Motion for access). The Applicant states in his motion that he retained Peter Robinson as his attorney, on 10 March 2015, for the purpose of seeking review before the Mechanism of his ICTR conviction of 22 January 2004,<sup>1</sup> which was affirmed by the ICTR Appeals Chamber on 19 September 2005.<sup>2</sup>
2. The Prosecutor hereby files his response.

## II. SUBMISSIONS

3. The Prosecutor submits that Peter Robinson was not privy to the Kamuhanda proceedings “the first proceedings”, which ended on 19 September 2005 with the Appeals Chamber judgement. Since his purported appointment of new Counsel to pursue a Review is a new undertaking for the initiation of new proceedings before the Mechanism, the Applicant is required to seek variation of the protective measures that were granted in the first proceedings in order for Counsel to access the confidential material from that case.

4. Moreover, much like in the *Milosevic case*, Counsel has been retained for the limited purpose of establishing whether sufficient grounds exist to initiate a review of the Applicant’s case.<sup>3</sup> There is no indication in the application, that counsel’s appointment is anything other than temporary given its limited purpose.<sup>4</sup> In this regard, as in the *Milosevic case*, the Applicant is required to seek a variation of the protective measures ordered in the first proceedings before access can be granted.<sup>5</sup>

5. Rule 86(f) of the Mechanism Rules of Procedure and Evidence provides that protective measures ordered in any proceedings before the ICTY, ICTR or the Mechanism, apply *mutatis mutandis* in any other proceedings before the Mechanism (“second proceedings”), unless they are rescinded, varied or augmented

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<sup>1</sup>*Prosecutor v. Jean De Dieu Kamuhanda*, Case No. ICTR-95-54A-T, Judgement, 22 January 2004.

<sup>2</sup>*Prosecutor v. Jean De Dieu Kamuhanda*, Case No. ICTR-95-54A-A, Appeals Judgement, 19 September 2005.

<sup>3</sup>*Prosecutor v. Dragomir Milosevic*, Case No. IT-98-29/1-A, Decision on Motion Seeking Variation of Protective Measures Pursuant to Rule 75(G), para. 12.

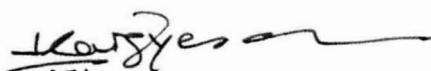
<sup>4</sup>*Prosecutor v. Dragomir Milosevic*, Case No. IT-98-29/1-A, Decision on Motion Seeking Variation of Protective Measures Pursuant to Rule 75(G), paras. 2, 3, 7 and 12.

<sup>5</sup>*Prosecutor v. Dragomir Milosevic*, Case No. IT-98-29/1-A, Decision on Motion Seeking Variation of Protective Measures Pursuant to Rule 75(G).

in accordance with the Rules. Furthermore, a party seeking variation of these protective measures is required to establish that there is a legitimate forensic purpose for the access.<sup>6</sup>

6. The Applicant states in his motion that his counsel requires access to the confidential material from his ICTR case in order to determine whether new information obtained meets the requirements of a “new fact” warranting review.<sup>7</sup> The Prosecutor notes that the Applicant has demonstrated that there is a legitimate forensic purpose for the access.<sup>8</sup> Therefore, provided that Mr. Robinson furnishes the Single Judge with the power of attorney appointing him as Counsel for Kamuhanda, confirmation that he is on the Mechanism’s list of counsel and that he has signed an undertaking with the Mechanism agreeing to respect the confidentiality of any disclosures made to him, the Prosecutor does not oppose a variation of the protective measures in force granting him access to *inter partes* material in his client’s ICTR case file.

Dated at Arusha this 8<sup>th</sup> day of April 2015



**Richard Karegyesa**  
Senior Legal Officer



**Sunkarie Ballah-Conteh**  
Legal Advisor

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<sup>6</sup> *Bagosora v. Prosecutor*, Case No. ICTR-98-41-A, Decision on Augustin Ngirabatware’s Motion for Disclosure of Confidential Material Relating to Witness DBN, 8 June 2010, paras. 10-12.

<sup>7</sup> *The Prosecutor v Jean De Dieu Kamuhanda*, Case No. MICT-13-33, Request for Access, 30 March 2015, paras. 13-14.

<sup>8</sup> *Ibid.*



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