

UNITED
NATIONS

MICT-13-33
11-08-2015
(538 - 536)

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Mechanism for International Criminal Tribunals

Case No: MICT-13-33

Date: 11 August 2015

Original: English

SINGLE JUDGE

Before: Judge Vagn Joensen

Registrar: Mr. John Hocking

The Prosecutor

v.

Jean de Dieu Kamuhanda

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

Office of the Prosecutor
Hassan Bubacar Jallow
Richard Karegyesa
Sunkarie Ballah-Conteh

Jean de Dieu Kamuhanda
Peter Robinson, Counsel

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I. INTRODUCTION

1. On 3 August 2015, Jean de Dieu Kamuhanda filed his *Motion for Appointment of Amicus Curiae to Investigate Prosecution Witness GEK for False Testimony* (the Application). Kamuhanda requests the Single Judge, pursuant to Rule 108(B), to order that an *amicus curiae* prosecutor be appointed to carry out an investigation against Prosecution Witness GEK for giving 'false testimony' during Kamuhanda's trial.
2. The application is based on the grounds: (i) that the Prosecutor failed to investigate allegations that Tribunal employees attempted to interfere with GEK's testimony in Kamuhanda¹ and, (ii) that there are strong grounds for believing that GEK gave false testimony when she appeared before the Appeals Chamber on 19 May 2005.²
3. In sum, Kamuhanda requests the Single Judge to set aside the Appeals Chamber Order of 19 May 2005,³ and substitute it with an Order appointing *amicus curiae* to investigate allegations against GEK.
4. The Prosecutor submits that Kamuhanda's application should not be entertained by the Single Judge for want of jurisdiction.

II. SUBMISSIONS

5. *First*, Kamuhanda relies on Rule 108(B) which, however, cannot be construed to confer upon the Single Judge the power to set aside an order of the Appeals Chamber. A plain and ordinary reading of Rule 108(B), construed in the context of Part Six of the MICT Rules of Procedure and Evidence, clearly limits its application to the initiation of appropriate action in the course of proceedings before the Trial Chambers and does not extend to matters already initiated by the Appeals Chamber. Kamuhanda cites no other legal basis for a Single Judge's power to vary or otherwise set aside a decision and order of the Appeals Chamber, with the result that his application should fail for want of jurisdiction.⁴

¹ *Prosecutor v. Jean de Dieu Kamuhanda*, Case No. MICT-13-33, Motion for Appointment of Amicus Curiae Prosecutor to Investigate GEK, 3 August 2015, paras. 9-11.

² *Ibid* para. 15-16.

³ *Jean de Dieu Kamuhanda v. the Prosecutor*, Case No. ICTR-99-54-A, T. 19 May 2005, p.49 -51.

⁴ See *Prosecutor v Zlatko Aleksovski*, IT-95-14/1-A, Appeal Judgement, 24 March 2000, para 113 for the proposition that decisions of the Appeals Chamber are binding on Trial Chambers.

6. *Second*, Kamuhanda's application is an impermissible attempt to circumvent a previous decision of the Appeals Chamber dismissing his request for replacement of the Prosecutor in investigating the allegations of witness tampering and false testimony,⁵ while advancing grounds that were equally found to be without merit by the Appeals Chamber in his request for review.⁶

7. In both instances the Appeals Chamber reiterated that, when it directed the Prosecutor to investigate allegations of witness tampering and false testimony during the Kamuhanda Rule 115 appeals hearing, it expressly left it to the Prosecutor's discretion to take the eventual steps and measures which he deemed necessary and appropriate under the circumstances.⁷ On both occasions the Appeals Chamber declined to question the exercise of prosecutorial discretion.

8. For the reasons outlined above the Prosecutor submits that the Single Judge lacks the jurisdiction to set aside the decision and order of the Appeals Chamber and should summarily dismiss the extant application.

Word Count: 784

Dated at Arusha this 11th day of August 2015



Richard Karegyesa
Senior Legal Officer



Sunkarie Ballah-Conteh
Legal Advisor

⁵ *Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54A-A, Decision on Jean de Dieu Kamuhanda's Request Related to Prosecution Disclosure and Special Investigation, 7 April 2006, para.7. Nowhere in the extant application does Kamuhanda even acknowledge this decision or his *Conclusions en Replique a la Requete du Procureur le Fondement de l'Article 75 F* of 13 March 2006, pp 3 and 4 where he had requested the replacement of the Prosecutor with an independent investigator.

⁶ *Jean de Dieu Kamuhanda v. the Prosecutor*, Case No. ICTR-99-54A-R, Decision on Request for Review, 25 August 2011, paras 45-55. Kamuhanda deliberately refuses in the extant application to acknowledge that the purported "new facts" he relies upon, arising from the *Rwamakuba* and *Nshogoza* cases, were considered by the Appeals Chamber and found to be without merit. Similarly, the Appeals Chamber in its Oral Decision of 19 May 2005 rejected Kamuhanda's motion to call the two "Tribunal employees" as sur-rebuttal witnesses against GEK: See Kamuhanda T. 19 May 2005 p28 and pp49-50.

⁷ *Ibid*, Decision on Request for Review, para 65; See also fn 3 and 4 *supra*



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