

**UNITED
NATIONS**

MICT-13-33
11-06-2015
(444 - 442)

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Mechanism for International Criminal Tribunals

Case No: MICT-13-33

Date: 10 June 2015

Original: English

SINGLE JUDGE

Before: Judge Vagn Joensen

Registrar: Mr. John Hocking

In Re.

Prosecutor v. Jean de Dieu Kamuhanda

PUBLIC

**REGISTRAR'S RULE 31(B) SUBMISSION FOLLOWING THE
"ORDER FOR SUBMISSIONS" OF 20 MAY 2015**

The Office of the Prosecutor

Hassan B. Jallow
Richard Karegyesa
Sunkarie Ballah-Conteh

Counsel for Jean de Dieu Kamuhanda

Peter Robinson

**Received by the Registry
Mechanism for International Criminal Tribunals**

11/06/2015 16:33

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1. Pursuant to Rule 31(B) of the Rules of Procedure and Evidence of the Mechanism for International Criminal Tribunals (“Rules” and “Mechanism”, respectively), and the Order for Submissions rendered on 20 May 2015,¹ the Registrar brings the following observations to the attention of the Single Judge.
2. On 30 March 2015, Counsel for Mr. Jean de Dieu Kamuhanda filed a motion requesting access to “all of the public and confidential material in [Mr. Kamuhanda’s] case”, before the International Criminal Tribunal for Rwanda (“ICTR”), “except those documents filed by the prosecution that remain classified as *ex parte*”.² Counsel “does not dispute the right of the Registrar to require that access to the confidential material in [Mr. Kamuhanda’s] case be approved in an *inter partes* proceeding”.³
3. Counsel submits that variation of the protective measures ordered in the *Kamuhanda* case is not required.⁴ Specifically, Counsel submits that the order for protective measures issued in the ICTR case applies broadly to “the defence”, which would also include present Counsel.⁵ Counsel also submits that he need not establish a “legitimate forensic purpose” for access to the material, because he is “now Mr. Kamuhanda’s permanent counsel at the Mechanism for all purposes”.⁶ Lastly, Counsel asserts that, in the event he must show a legitimate purpose for access to the material, such a purpose exists where access to the material is required to evaluate a potential request for review of Mr. Kamuhanda’s conviction.⁷
4. In its response, the Prosecution submits that Counsel must seek a variation of protective measures pursuant to Rule 86(F) of the Rules.⁸ The Prosecution submits that Rule 86(F) applies because Counsel was not privy to the “first proceedings” in *Kamuhanda*, which ended with the delivery of the Appeals Judgement in the case, and Counsel has been engaged for the purpose of initiating new proceedings before the Mechanism.⁹ The Prosecution further submits that because Counsel’s appointment is temporary and for a limited purpose, a

¹ *The Prosecutor v. Kamuhanda*, Case No. MICT-13-33, Order for Submissions, 20 May 2015, p. 1.

² *The Prosecutor v. Kamuhanda*, Case No. MICT-13-33, Request for Access, 30 March 2015, para. 7.

³ *Id.*, para. 8.

⁴ *Id.*, para. 10.

⁵ *Id.*, para. 11.

⁶ *Id.*, para. 12-13, distinguishing *The Prosecutor v. Dragomir Milosevic*, Case No. IT-98-29/1-A, Decision on Motion Seeking Variation of Protective Measures Pursuant to Rule 75(G), 12 July 2012.

⁷ *Id.*, paras. 14-18.

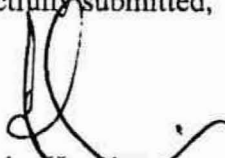
⁸ *The Prosecutor v. Kamuhanda*, Case No. MICT-13-33, Prosecutor’s Response to Kamuhanda’s Request for Access, 8 April 2015, para. 6.

⁹ *Id.*, para. 3.

variation of protective measures is required.¹⁰ The Prosecution does not oppose a variation of the protective measures in the case, provided that Counsel furnish the power of attorney appointing him as Counsel for Mr. Kamuhanda, and also upon confirmation that Counsel is on the Mechanism's list of counsel and that Counsel has signed an undertaking with the Mechanism agreeing to respect the confidentiality of disclosures.¹¹

5. Regarding the status of Counsel, the Registrar confirms that on 10 March 2015, Mr. Kamuhanda filed a power of attorney with the Mechanism designating Counsel "to represent [him] in connection with [his] Review proceedings before the [Mechanism]".¹² On 25 March 2015, Counsel submitted an undertaking with the Mechanism agreeing, *inter alia*, to preserve the confidentiality of Mr. Kamuhanda's proceedings before the Mechanism and not to disclose confidential information and documents granted access to him.¹³ The Registrar also confirms that on 8 April 2014, Counsel was admitted to the list of counsel maintained by the Registry pursuant to Rule 43 of the Rules.¹⁴
6. Regarding Counsel's access to material in the case, in circumstances such as the case at bar where new Counsel has been engaged in post-conviction proceedings, the Registry, as a matter of course, advises Counsel that judicial authorisation is required in order to access confidential materials. The Registrar defers to the Single Judge as to whether, under the present circumstances, a variation of protective measures is required.
7. The Registrar remains at the Single Judge's disposal should further information be required.

Respectfully submitted,



John Hocking
Registrar

Dated this 10th day of June, 2015
At The Hague,
The Netherlands.

¹⁰ *Id.*, para. 4, citing *The 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.

¹¹ *Id.*, para. 6.

¹² See Confidential Annex I.

¹³ See Confidential Annex II.

¹⁴ See Confidential Annex III. The Registrar notes, however, that Counsel represents Mr. Kamuhanda on a pro bono basis, and has not been assigned pursuant to Rule 43 of the Rules, as Mr. Kamuhanda is not a "suspect" or "accused" under the Rules.