

MICT-13-33-AR90/108.1
27-10-2015
(697 - 695)

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THE MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

CASE No. MICT-13-33AR90/108.1

THE APPEALS CHAMBER

Before: Judge Theodor Meron
Judge Joseph E. Chiondo Masanche
Judge Ben Emmerson

Registrar: Mr. John Hocking

Date Filed: 27 October 2015

THE PROSECUTOR

v.

JEAN DE DIEU KAMUHANDA

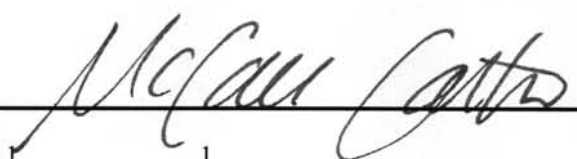
Public

REPLY BRIEF:
APPEAL OF DECISION ON JURISDICTION TO
INVESTIGATE PROSECUTION WITNESS GEK

Office of the Prosecutor:
Mr. Hassan Jallow
Mr. Richard Karegyesa
Mr. Steffan Wirth

Jean de dieu Kamuhanda:
Mr. Peter Robinson, Counsel

Received by the Registry
Mechanism for International Criminal Tribunals
27/10/2015 01:09



1. Jean de dieu Kamuhanda has appealed from the *Decision on Motion for Appointment of Amicus Curiae Prosecutor to Investigate Prosecution Witness GEK* (16 September 2015) contending that the Single Judge rendered an incorrect interpretation of governing law when holding that the Residual Mechanism lacked jurisdiction to initiate an investigation into allegations of contempt and false testimony occurring before the ICTR Appeals Chamber.

2. On 23 October 2015, there was filed the *Prosecution Response to Kamuhanda's Appeal*. Mr. Kamuhanda now replies.

3. Mr. Kamuhanda notes that the *Response* was filed confidentially. He requests that the Appeals Chamber order the prosecution to file a public redacted version.

4. The crux of the *Response* is that the Single Judge was justified in finding that the test for reconsideration was not met.¹ But that is not the issue presented by this appeal. What is being appealed is the Single Judge's decision that the Residual Mechanism has no **jurisdiction** to reconsider a matter that had been decided by the ICTR Appeals Chamber.

5. The appeal presents an important question of jurisdiction of the Residual Mechanism. The prosecution has already used the decision to argue that the Mechanism has no jurisdiction to modify a protective measures decision of an ICTR Trial Chamber.² Its failure to support the Single Judge's decision on jurisdiction in its *Response* can only be an indication that the decision cannot be defended on those grounds.

6. The prosecution is also incorrect in casting Mr. Kamuhanda's motion for appointment of an *amicus curiae* prosecutor as a motion for reconsideration.³ The motion does not challenge the ICTR Appeals Chamber's decision to direct the prosecution to investigate the allegation that Tribunal employees had sought to influence Witness GEK to change her testimony. Rather, it contends that since the prosecution failed to conduct that investigation, a new investigation should be ordered, and that such an investigation should be pursued by an *amicus curiae* prosecutor.

¹ *Response* at paras. 11-13

² *Prosecution Consolidated Response to ADAD-ICTR and ADC-ICTY Amicus Briefs* (21 September 2015) at para. 6

³ *Response* at paras. 9-10

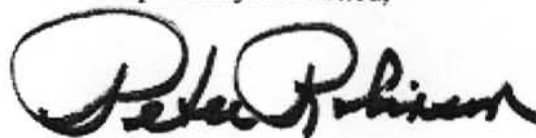
7. However, even if the motion were to be construed as a motion for reconsideration based upon new material circumstances that have arisen that did not exist at the time of the original decision (the fact that the investigation was never carried out), the Residual Mechanism would have the jurisdiction to reconsider that decision.

8. As pointed out in Mr. Kamuhanda's brief, the ICTR refused to file his Motion for Reconsideration before the Appeals Chamber. Therefore, if the Residual Mechanism does not have jurisdiction to reconsider decisions of the ICTR (or ICTY), there is no forum for a convicted person, or the prosecution for that matter, to remedy an injustice when new information arises or to even modify protective measures to allow access to confidential material to States or third parties. Such an interpretation of the Residual Mechanism's jurisdiction would render it virtually impotent.

9. For any and all of the above reasons, the Appeals Chamber should find that the Single Judge committed an error of law when deciding that he lacked jurisdiction to consider Mr. Kamuhanda's motion, and remand the matter to the Single Judge to decide the motion on its merits.

Word count: 623

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter Robinson". The signature is written in a cursive, flowing style with large, connected letters.

PETER ROBINSON
Counsel for Jean de dieu Kamuhanda