

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-13-38-T

Date: 3 February 2023

Original: English

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**IN THE TRIAL CHAMBER**

**Before:** Judge Iain Bonomy, Presiding  
Judge Mustapha El Baaj  
Judge Margaret M. deGuzman  
Judge Ivo Nelson de Caires Batista Rosa, Reserve Judge

**Registrar:** Mr. Abubacarr M. Tambaou

**Order of:** 3 February 2023

**PROSECUTOR**

v.

**FÉLICIEN KABUGA**

***PUBLIC***

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**FURTHER ORDER ON PROCEEDINGS**

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**Office of the Prosecutor:**

Mr. Serge Brammertz  
Mr. Rashid S. Rashid  
Mr. Rupert Elderkin

**Counsel for Mr. Félicien Kabuga:**

Mr. Emmanuel Altit  
Ms. Françoise Mathe

**THE TRIAL CHAMBER** of the International Residual Mechanism for Criminal Tribunals (“Trial Chamber” and “Mechanism”, respectively) seized of this case;<sup>1</sup>

**RECALLING** that, on 22 December 2022, the Trial Chamber adjourned the proceedings until after the judicial recess, with the resumption of the trial initially scheduled for 17 January 2023,<sup>2</sup> which was subject to it taking a final decision on arrangements for the trial proceedings after the judicial recess in view of the parties’ submissions on the independent medical experts report filed on 12 December 2022;<sup>3</sup>

**RECALLING** that, on 12 and 30 January 2023, having received medicals reports from the Medical Officer at the United Nations Detention Unit (“UNDU”) indicating that Mr. Félicien Kabuga’s health was affected by an intercurrent health incident and that, while in recovery, he was still experiencing significant levels of fatigue, the Trial Chamber ordered that the trial proceedings remain adjourned until 7 February 2023, without prejudice to the pending litigation on the Accused’s fitness for trial;<sup>4</sup>

**NOTING** the pending litigation regarding Mr. Kabuga’s fitness to stand trial;<sup>5</sup>

**BEING SEISED OF** a confidential motion for reconsideration of the Order of 30 January 2023, wherein the Defence submits that resumption of the trial proceedings on 7 February 2023, or in the short to medium term, is incompatible with Mr. Kabuga’s state of health;<sup>6</sup>

<sup>1</sup> See Order Assigning a Reserve Judge, 16 January 2023, pp. 1, 2. See also Decision Under Rule 19(E), 10 January 2023, p. 1; Order Replacing a Judge and Assigning a Reserve Judge, 26 August 2022, pp. 1, 2; Order Assigning a Trial Chamber, 1 October 2020, p. 1. Judge Rosa, who was recently assigned as a Reserve Judge in the present case, did not participate in the consideration of this order.

<sup>2</sup> Transcript 22 December 2022 p. 33.

<sup>3</sup> Order for Submissions in Relation to the Joint Monitoring Report and on Request for Access, 15 December 2022 (confidential) (“Order of 15 December 2022”), pp. 1, 2. See also Registrar’s Submission in Relation to the “Decision on Félicien Kabuga’s Fitness to Stand Trial and to Be Transferred to and Detained in Arusha” of 13 June 2022, 12 December 2022 (public, with confidential Annex), paras. 4, 5, Annex, Registry Pagination 4626-4617.

<sup>4</sup> Order on Proceedings, 30 January 2023 (“Order of 30 January 2023”), p. 1. See also Registrar’s Submission in Relation to the “Order Following Initial Appearance” of 25 November 2020, 4 January 2023 (public, with confidential Annex), Annex, Registry Pagination (“RP.”) 4711; Registrar’s Submission in Relation to the “Order Following Initial Appearance” of 25 November 2020, 11 January 2023 (public, with confidential Annex), Annex, RP. 4734, 4733; Registrar’s Submission in Relation to the “Order Following Initial Appearance” of 25 November 2020, 26 January 2023 (public, with confidential Annex), Annex, RP. 4856, 4855.

<sup>5</sup> See Order of 15 December 2022, pp. 1, 2; Prosecution’s Submission Pursuant to the 15 December 2022 “Order for Submissions in Relation to the Joint Monitoring Report”, 22 December 2022 (confidential, with confidential Annex); Defence Submissions in Response to the Chamber’s Order of 15 December 2022, 4 January 2023 (original French version filed on 29 December 2022; confidential); Motion Seeking that 1) the Chamber Pronounce Félicien Kabuga Unfit to Stand Trial and, 2) Alternatively, an Order for a Medical Report to be Conducted by the Panel of Experts as Soon as Possible, 19 January 2023 (original French version filed on 14 January 2023; confidential); Prosecution Response to Félicien Kabuga’s Request to Be Pronounced Unfit or for an Order for an Expedited Expert Medical Report, 19 January 2023 (confidential).

**NOTING** the response filed by the Prosecution on 2 February 2023<sup>7</sup> and the request for leave to reply filed by the Defence on 3 February 2023;<sup>8</sup>

**CONSIDERING** that the timing and manner in which the Trial Chamber will resume proceedings after the recess remains contingent on the state of Mr. Kabuga's health and is subject to the outcome of the pending litigation of his fitness to stand trial;

**CONSIDERING** that, following further consultation with the UNDU Medical Officer on 2 February 2023, it appears that the state of Mr. Kabuga's health has not changed since the last medical report, that it is not medically recommended to recommence proceedings under the existing trial modalities, and that his recovery may materially benefit from an additional period of rest;

**CONSIDERING** that the next medical report from the UNDU Medical Officer is expected to be filed on 8 February 2023;

**FOR THE FOREGOING REASONS,**

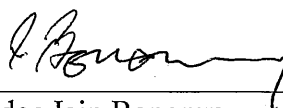
**ORDERS** that the trial proceedings remain adjourned until 14 February 2023;

**ADVISES** the parties that a further order on the conduct of proceedings will be issued before that date as appropriate; and

**DISMISSES** the Motion for Reconsideration and the Request for Leave to Reply as moot.

Done in English and French, the English version being authoritative.

Done this 3rd day of February 2023,  
At The Hague,  
The Netherlands

  
\_\_\_\_\_  
Judge Iain Bonomy  
Presiding Judge

**[Seal of the Mechanism]**

<sup>6</sup> *Demande de reconsidération de la décision de la Chambre du 30 janvier 2023 ordonnant la reprise des audiences le 7 février 2023, afin que les audiences soient suspendues le temps que les experts indépendants se prononcent sur l'aptitude de Félicien Kabuga à être jugé, seule mesure permettant de préserver les droits fondamentaux et la santé de Félicien Kabuga*, 31 January 2023 (confidential) ("Motion for Reconsideration"), paras. 38-50, p. 8.

<sup>7</sup> Prosecution Response to the Defence Request for Reconsideration of the Trial Chamber Order of 30 January 2023, Pertaining to the Resumption of Trial, 2 February 2023 (confidential), paras. 1-10.

<sup>8</sup> *Demande d'autorisation de répliquer à la "Prosecution response to the Defence request for Reconsideration of the Trial Chamber Order of 30 January 2023, Pertaining to the Resumption of Trial"*, 3 February 2023 (confidential) ("Request for Leave to Reply"), paras. 41-44, p. 6



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