

**UNITED
NATIONS**



International Residual Mechanism
Criminal Tribunals

Case no: MICT-13-38-PT
Date of original: 6 May 2021
Date: 6 May 2021

Original: French

BEFORE THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Graciela Susana Gatti Santana
Judge Elizabeth Ibanda-Nahamya

Registrar: Mr Abubacarr Tambadou

**THE PROSECUTOR
v.
FÉLICIEN KABUGA**

PUBLIC DOCUMENT

Public Redacted Version of “Motion Seeking a Stay of Proceedings against Félicien Kabuga
and, in the Alternative, His Provisional Release”

Counsel for the Defence:

Emmanuel Altit

The Office of the Prosecutor:

Serge Brammertz

On the classification:

1. The present motion is filed as a confidential document as it refers to [REDACTED] and, furthermore, as the motion refers to submissions which are themselves confidential.

I. Procedural background

2. On 15 March 2021, the Defence filed a submission wherein it emphasised Félicien Kabuga's [REDACTED] health, requesting a stay of proceedings; it noted that should the stay of proceedings be denied, it intended to file a motion seeking Félicien Kabuga's provisional release.¹

3. On 6 April 2021, the Single Judge issued an order wherein he deemed that "[REDACTED]." The Single Judge further ordered the "[REDACTED]".²

4. [REDACTED].

5. On 13 April 2021, the Registrar informed the Single Judge that the [REDACTED]".³

6. On 14 April 2021, the Registrar filed a new report from the UNDU Medical Officer.

7. On 17 April 2021, the Defence responded to the Registrar's submissions of 13 and 14 April 2021. The Defence mentioned, in particular, that [REDACTED]. Moreover, the Defence informed the Judge [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]

8. [REDACTED].

9. On 28 April 2021, the Registrar filed a new report from the UNDU Medical Officer.

10. [REDACTED].

¹ *The Prosecutor v. Félicien Kabuga*, MICT-13-38, Defence Submission in Compliance with Order of Pre-Trial Judge of 9 March 2021, 15 March 2021.

² *The Prosecutor v. Félicien Kabuga*, MICT-13-38, Order Concluding the Written Exchanges Procedure for the Status Conference, 6 April 2021, Annex B.

³ [REDACTED].

11. [REDACTED].

II. Discussion

1. Félicien Kabuga's health

12. As a preliminary matter, the Defence would like to remind the Chamber [REDACTED].

13. [REDACTED]: “[REDACTED],”⁴ [REDACTED]: “[REDACTED].”

14. With respect to the state of health, the Registrar's submission of 13 April 2021 and the report from the UNDU Medical Officer of 14 April 2021 presents [REDACTED]. [REDACTED].⁵ [REDACTED] [REDACTED]⁶

15. Since then, [REDACTED]. In his report of 28 April 2021, the UNDU Medical Officer informed the Chamber and the Parties that:

- [REDACTED];
- [REDACTED];
- [REDACTED];
- [REDACTED]

16. In his report, the Medical officer describes a [REDACTED].

17. Moreover, the Medical Officer describes [REDACTED].

18. In his report, the Medical Officer indicated [REDACTED]

19. The report indicates that, [REDACTED].

⁴ [REDACTED].

⁵ *Ibid.*, para. 9.

⁶ Report of 14 April 2021, para. 2.

2. In the first instance, on the request for a stay of proceedings

20. In its submission of 15 March 2021, the Defence emphasised that [REDACTED].

21. Today, [REDACTED], it seems that [REDACTED].

22. The Defence respectfully submits that the Chamber and the Parties now have sufficient [REDACTED] information available to them to conclude that a stay of proceedings is needed.

23. Firstly, the Chamber is now able to see at this time that Félicien Kabuga is not fit to stand trial, [REDACTED],⁷ [REDACTED].

24. Secondly, the Defence – [REDACTED]⁸ – submits that today, [REDACTED] to continue proceedings in these circumstances would constitute a serious violation of Félicien Kabuga’s rights, which would undermine the fairness of the trial itself. “[I]f no fair trial can be held, the object of the judicial process is frustrated and the process must be stopped.”⁹ Moreover, [REDACTED], which even further justifies the Chamber using its discretion to terminate proceedings immediately.

25. For the Defence, a stay of proceedings is [REDACTED] — [REDACTED] a matter of humanity and respect for the Accused’s dignity: international justice must be exemplary and must not ignore the most fundamental requirements in respect of humanity. International justice must be exemplary in the way it treats the accused and respects their rights. Nothing can justify continuing proceedings at any cost, at the expense of the Accused, his rights and the fairness of the trial itself. [REDACTED].

26. [REDACTED].

3. In the alternative, on the request for provisional release

⁷ *The Prosecutor v. Félicien Kabuga*, MICT-13-38, Defence Submission in Compliance with Order of Pre-Trial Judge of 9 March 2021, 15 March 2021, Annex A.

⁸ [REDACTED].

⁹ ICC-01-04-01/06-772-tFRA, para. 37.

27. In the unlikely event that the Chamber finds the request for a stay of proceedings premature, it should then order provisional release for Félicien Kabuga [REDACTED].

28. In accordance with Rule 68 of the RPE and the jurisprudence of the *ad hoc* tribunals, the Chamber may order provisional release for an Accused if it is satisfied that (i) the Accused, if released, will appear for trial or will surrender into detention at the conclusion of the fixed period, (ii) the Accused, if released, will not pose a danger to any victim, witness, or other persons; and (iii) special circumstances exist warranting such release,¹⁰ after giving the host country and the State to which the accused seeks to be released the opportunity to be heard.¹¹

29. It may order provisional release at any stage of proceedings prior to the rendering of the judgement and it may take into consideration the existence of sufficiently compelling humanitarian grounds.¹²

30. Moreover, a Chamber can grant provisional release while allowing an Accused to waive his right to be present at any potential hearings: “Rule 68 (B) of the Rules envisages that provisional release may be ordered at stages of the trial involving hearings and the presentation of evidence to the extent that the accused continues to satisfy the conditions for provisional release, is represented by counsel, and has voluntarily and unequivocally waived his right to be present in the courtroom during that stage of the ongoing trial.”¹³

¹⁰ *The Prosecutor v. Mladic*, MICT-13-56-A, Public Redacted Version of the "Decision on a Motion For Provisional Release on Humanitarian Grounds" filed on 12 April 2018, 8 June 2018, para. 10; *The Prosecutor v. Tolimir*, MICT-15-95-ES, Public Redacted Version of the "Decision on Motion for Provisional Release" Filed on 28 January 2016, public redacted version, 23 February 2016, para. 8; *The Prosecutor v. Jadranko Prlić et al.*, Case no. IT-94-74-A, Public Redacted Version of the "Decision on Valentin Ćorić's Motion Seeking Provisional Release" Issued on 12 March 2015, 14 May 2015, paras 3 and 11; *The Prosecutor v. Jovica Stanišić and Franko Simatović*, MICT-15-96-PT, Decision on Stanišić's Motion for Provisional Release, 19 July 2017, para. 11; *The Prosecutor v. Prlić et al*, IT-04-74-AR65.35, Decision on the Prosecution's Appeal of the Decision on Further Extension of Milivoj Petković's Provisional Release, 12 June 2012, para. 5.

¹¹ *The Prosecutor v. Mladic*, MICT-13-56-A, Public Redacted Version of the "Decision on a Motion For Provisional Release on Humanitarian Grounds" filed on 12 April 2018, 8 June 2018, para. 10.

¹² *The Prosecutor v. Stanišić and Simatović*, MICT-15-96-PT, Decision on Stanišić's Motion for Provisional Release, 19 July 2017, para. 11; *The Prosecutor v. Stanišić and Simatović*, MICT-15-96-PT, Decision on Stanišić's Urgent Motion for Provisional Release, 22 December 2015, para. 8.

¹³ *The Prosecutor v. Stanišić and Simatović*, MICT-15-96-PT, Decision on Stanišić's Motion for Provisional Release, 19 July 2017, para. 14.

31. The Defence considers that there are now [REDACTED] grounds for the release of Félicien Kabuga from prison.

32. Firstly, the Defence notes that all the conditions for such provisional release have been met. In particular, [REDACTED].

33. Secondly, as mentioned above, [REDACTED]. [REDACTED].

34. Thirdly, [REDACTED]

35. [REDACTED]. [REDACTED].

36. [REDACTED].

37. The Defence would like to bring to the Chamber's attention [REDACTED].

38. In terms of practicality, the Defence submits [REDACTED].

FOR THE FOREGOING REASONS, THE TRIAL CHAMBER IS RESPECTFULLY REQUESTED TO:

In the first instance:

- **Order** a stay of the proceedings against Félicien Kabuga;

In the alternative:

- **Grant** provisional release to Félicien Kabuga [REDACTED];

Consequently,

- [REDACTED].

Number of words /in the original/: 2,988

/signed/

Emmanuel Altit
Counsel for Félicien Kabuga

Done on 6 May 2021 in The Hague, The Netherlands