

UNITED  
NATIONS

MICT-13-33-R86.2  
08-10-2015  
(653/1 - 649)

653/1  
ZS



Mechanism for International Criminal Tribunals

Case No: MICT-13-33

Date: 08 October 2015

Original: English

**THE SINGLE JUDGE**

Before: Judge Vagn Joensen

Registrar: Mr. John Hocking

The Prosecutor

v.

Jean de Dieu Kamuhanda

**PROSECUTION RESPONSE TO SECOND MOTION FOR ACCESS  
TO CONFIDENTIAL *INTER PARTES* MATERIAL FROM THE  
*NSHOGOZA* CASE**

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

Jean de Dieu Kamuhanda  
Peter Robinson, Counsel

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09/10/2015 09:52

A handwritten signature in black ink, appearing to read 'McCall' followed by a flourish.

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## I. INTRODUCTION

1. Kamuhanda's "Second Motion for Access to Confidential *Inter Partes* Material from the *Nshogoza* Case" should be dismissed in its entirety as he has once again failed to identify a legitimate forensic purpose for access to the confidential material requested, or indeed that the requested material is likely to materially assist his case.

2. By decision dated 21 September 2015, Kamuhanda was directed by the Single Judge to use the public material accessible to him from the *Nshogoza* case and the material in his possession from the *Kamuhanda* case, to identify with greater specificity the witnesses and exhibits related to the points of overlap between his case and the *Nshogoza* case, in order to facilitate his access to the specific material relevant to his case.<sup>1</sup>

3. In his present application, Kamuhanda requests access to confidential Prosecution evidence, exhibit P2, from the *Nshogoza* case, containing a list of witnesses involved in the *Nshogoza* case. According to Kamuhanda, the exhibit contains the names of some witnesses who also testified in the *Kamuhanda* case.<sup>2</sup> Kamuhanda argues that he requires the exhibit in order to understand the substance of the testimony contained in the open session transcripts from the *Nshogoza* case.<sup>3</sup>

4. Kamuhanda also requests access to all the transcripts of recordings or reports of interviews conducted by Special Counsel during her investigations into false testimony and witness tampering in the *Kamuhanda* case, which concern the events at Gikomero. Kamuhanda argues that any information about the events at Gikomero Parish for which he was convicted will assist him to uncover new facts that will prove his innocence.<sup>4</sup>

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<sup>1</sup>*The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. MICT-13-33, Decision on Motion for Access to Confidential *Inter Partes* Material from the *Nshogoza* Case, 21 September 2015, para.10.

<sup>2</sup>*The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. MICT-13-33, Second Motion for Access to Confidential *Inter Partes* Material from the *Nshogoza* Case, 28 September 2015, para. 4.

<sup>3</sup>*The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. MICT-13-33, Second Motion for Access to Confidential *Inter Partes* Material from the *Nshogoza* Case, 28 September 2015, para. 5-8.

<sup>4</sup>*The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. MICT-13-33, Second Motion for Access to Confidential *Inter Partes* Material from the *Nshogoza* Case, 28 September 2015, para. 5-8, 13.

## II. SUBMISSIONS

5. The Prosecutor submits that knowledge of the contents of exhibit P.2 does not affect the substance of the open session transcripts available to Kamuhanda in any way. Kamuhanda fails to demonstrate how the identity of specific individuals from the *Nshogoza* case affects the narrative of the incidents contained in the open session transcripts available to him.

6. Moreover, in addition to having access to open session material from the *Nshogoza* case, Kamuhanda received, from the ICTR Prosecutor, extensive disclosures of confidential material from the *Nshogoza* case on 28 May 2009 and 14 January 2010, pursuant to Rule 68 of the ICTR Rules, including closed session transcripts and witness statements. It is incredulous that the entire collection (numbering 157 documents or 3473 pages, 4 video clips, 8 audio recordings) of material available to Kamuhanda from the *Nshogoza* case, both public and confidential, is unintelligible without access to exhibit P2.

7. Further, not all of the witnesses listed in exhibit P.2 from the *Nshogoza* case, testified in Kamuhanda's case.<sup>5</sup> The exhibit therefore undoubtedly makes reference to individuals whose testimonies in the *Nshogoza* case have no relevance to the facts of the Kamuhanda case, particularly as the premise of the two cases is completely different. Kamuhanda has once again, in his motion made a general reference to only two witnesses who testified in both his case and the *Nshogoza* case, Witnesses GAF and GAA, without providing details of any additional common witnesses or indeed their relevance to his case.<sup>6</sup> In his decision of 21 September 2015, the Single Judge found that merely making a general reference to witnesses who were involved in both cases is insufficient to establish a legitimate forensic purpose for access to confidential information.<sup>7</sup>

8. Kamuhanda has failed to advance any legitimate reason for access to the identifying information contained in exhibit P2. His present request is oppressive and amounts to another fishing expedition which must fail.

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<sup>5</sup>*The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. MICT-13-33, Second Motion for Access to Confidential *Inter Partes* Material from the *Nshogoza* Case, 28 September 2015, para. 4.

<sup>6</sup>*The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. MICT-13-33, Second Motion for Access to Confidential *Inter Partes* Material from the *Nshogoza* Case, 28 September 2015, paras. 5-7

<sup>7</sup>*The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. MICT-13-33, Decision on Motion for Access to Confidential *Inter Partes* Material from the *Nshogoza* Case, 21 September 2015, para.9.

9. Similarly, Kamuhanda's request for access to all the transcripts of recordings or reports of interviews conducted by Special Counsel relating to the events at Gikomero Parish, which were disclosed in the *Nshogoza* case, is impermissibly broad. He has failed to identify a legitimate forensic purpose for access to this material beyond what he has already received.

10. Kamuhanda's assertion that any material concerning the events at Gikomero Parish for which he was convicted, arising from the special investigations conducted by Special Counsel, is likely to assist him in uncovering new facts that exonerate him, is fundamentally flawed.<sup>8</sup> The Prosecutor notes that a geographical nexus is not always enough to establish the relevance of the material sought. A case specific analysis is required each time.<sup>9</sup> In the case at bar, the Single Judge has found that there is no geographical or temporal overlap between the *Nshogoza* case, and Kamuhanda's case.<sup>10</sup>

11. Special Counsel was appointed by the Prosecutor in 2005, to investigate allegations of witness tampering and false testimony arising from the Kamuhanda case between 2004 and 2005, as ordered by the Appeals Chamber.<sup>11</sup> The interviews conducted by Special Counsel pursuant to the appointment would therefore have focused exclusively on allegations of witness tampering and false testimony arising during that period, and not on Kamuhanda's liability for the incidents that occurred at Gikomero Parish in 1994. The interviews would therefore be largely irrelevant to Kamuhanda's criminal liability for the events at Gikomero Parish. It stands to reason that they would not materially assist his case in anyway.

12. The Prosecutor submits that having failed to establish a legitimate forensic purpose for access to the requested material, Kamuhanda is only entitled to material which may suggest his innocence or mitigate his guilt, or which affects the credibility of the Prosecution evidence adduced during his trial.<sup>12</sup> In this regard, the Prosecutor notes that the ICTR Prosecutor disclosed, to Kamuhanda, potentially exculpatory material from the *Nshogoza* case on 28 May 2009 and also on 14 January 2010. This disclosure included material emanating from Special Counsel's

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<sup>8</sup>*The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. MICT-13-33, Second Motion for Access to Confidential *Inter Partes* Material from the *Nshogoza* Case, 28 September 2015, para. 4.

<sup>9</sup>*Rutaganda v. the Prosecutor*, Case No. ICTR96-3-R, Decision on Rutaganda's Appeal Concerning Access to Confidential Material in the Karemera et al. Case, 10 July 2009, para. 13.

<sup>10</sup>*The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. MICT-13-33, Decision on Motion for Access to Confidential *Inter Partes* Material from the *Nshogoza* Case, 21 September 2015, para.8.

<sup>11</sup>*Jean De Dieu Kamuhanda v The Prosecutor*, Case No. ICTR-99-54A-A, Oral Decision of 19 May 2005.

<sup>12</sup> MICT Rule 73, ICTR Rule 68.

investigations, including statements taken from several protected witnesses during the investigations. It was on the basis of these disclosures that Kamuhanda filed his "Mémoire en Demande en Révision", dated 20 May 2010, requesting a review of the final judgment against him. A careful reading of Kamuhanda's request for review reveals that Kamuhanda received much more than just a recording and transcripts of Special Counsel's interview with Witness GAA. He in fact received the statements of several witnesses made to the Special Counsel as is evident from the attached confidential annex.<sup>13</sup>

13. Despite being in possession of substantial material from the *Nshogoza* case that would enable him identify with greater particularity documents relating to the alleged points of overlap in compliance with the Single Judges Decision,<sup>14</sup> Kamuhanda has failed to do so with the result that his application must fail.

Dated at Arusha this 08<sup>th</sup> day of October 2015

  
Richard Karegyesa  
Senior Legal Officer

  
Sunkate Ballah-Conteh  
Legal Advisor

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1500

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<sup>13</sup> Confidential Log of material disclosed to Kamuhanda by the OTP on 28 May 2009 and 14 January 2010.

<sup>14</sup> *The Prosecutor v. Jean De Dieu Kamuhanda*, Case No. MICT-13-33, Decision on Motion for Access to Confidential *Inter Partes* Material from the *Nshogoza* Case, 21 September 2015, para.10.