



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

1794/H

ICTR-99-54A-A
07 April 2006
(1794/H-1791/H)

IN THE APPEALS CHAMBER

Before:

Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Liu Daqun
Judge Theodor Meron
Judge Wolfgang Schomburg

Registrar:

Mr. Adama Dieng

Decision of:

7 April 2006

ICTR Appeals Chamber

Date: 07 April 2006
Action: R.J.
Copied To: Sec. Prof. of Service

PROSECUTOR

v.

Jean de Dieu KAMUHANDA

Case No. ICTR-99-54A-A

**Decision on Jean de Dieu Kamuhanda's Request Related to
Prosecution Disclosure and Special Investigation**

Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. James Stewart
Ms. Dior Fall
Mr. Abdoulaye Seye

Counsel for the Defence:

Ms. Aïcha Condé

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS

NAME / NOM: KEEI... KUMELID... A... ACANDE

SIGNATURE: [Signature] DATE: 07 April 2006

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1. The Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Serious Violations Committed in the Territory of Neighbouring States, between 1 January and 31 December 1994 ("Appeals Chamber", "Tribunal") is seized with a request, filed on 13 March 2006 by Jean de Dieu Kamuhanda, to dismiss Prosecution submissions related to a recent filing and to issue various orders related to an ongoing investigation into false testimony.¹

2. On 19 September 2005, the Appeals Chamber dismissed Mr. Kamuhanda's appeal from his conviction and life sentence, entered by Trial Chamber II on 22 January 2004, for genocide and crimes against humanity.² Presently, Mr. Kamuhanda has no proceedings before the Tribunal. The Appeals Chamber recalls, however, that it directed the Prosecution, pursuant to Rule 77(C)(i) of the Rules of Procedure and Evidence of the Tribunal ("Rules"), to investigate discrepancies arising from testimony given during the hearing of the merits of the appeal and the consequent possibility of false testimony.³ As a result, the Prosecutor appointed a Special Counsel to conduct the investigation which is ongoing and near completion.⁴

3. On 3 March 2006, the Prosecution disclosed to Mr. Kamuhanda a confidential transcript of closed session testimony given by Defence Witness 7/14 in *Prosecutor v. Rwamakuba*, ICTR Case No. 98-44C-T.⁵ In a statement accompanying its disclosure, the Prosecution explained that it disclosed this transcript because the witness provided evidence "relevant" to Mr. Kamuhanda.⁶ The Prosecution stated that Witness 7/14 testified that Witnesses GET and GEK in the *Kamuhanda* trial organized false testimony against Mr. Kamuhanda.⁷ The Prosecution added that it had also provided the transcripts to the Special Counsel appointed by the Prosecutor to investigate allegations of false testimony in the *Kamuhanda* case.⁸

¹ *The Prosecutor v. Kamuhanda*, Case No. ICTR-1999-54A-A, Conclusions en réplique à la requête du procureur sur le fondement de l'article 75F, filed 13 March 2006 ("Kamuhanda Request").

² *Kamuhanda v. The Prosecutor*, Case No. ICTR-1999-54A-A, Judgement, 19 September 2005; *The Prosecutor v. Kamuhanda*, Case No. ICTR-1999-54A-T, Judgement and Sentence, 22 January 2004.

³ See *Kamuhanda v. The Prosecutor*, Case No. ICTR-1999-54A-A, Oral Decision on Rule 115 and Contempt of False Testimony, 19 May 2005.

⁴ *The Prosecutor v. Kamuhanda*, Case No. ICTR-1999-54A-A, Prosecution Reply by Way of Clarification in Relation to Jean de Dieu Kamuhanda's Response to the "Prosecutor's Disclosure Pursuant to Rule 75(F) of the Rules, of the Confidential Transcript of Defence Witness 7/14, in *Prosecutor v. Rwamakuba*", filed 20 March 2006, paras. 10, 11 ("Prosecution Reply").

⁵ *The Prosecutor v. Kamuhanda*, Case No. ICTR-1999-54A-A, Prosecutor's Disclosure Pursuant to Rule 75(F) of the Rules, of the Confidential Transcript of Defence Witness 7/14, in *Prosecutor v. Rwamakuba*, filed 3 March 2006 ("Prosecution Disclosure"). See also *The Prosecutor v. Kamuhanda*, Case No. ICTR-1999-54A-A, Corrigendum to Submissions Accompanying the Prosecutor's Disclosure Pursuant to Rule 75(F) of the Rules, of the Confidential Transcript of Defence Witness 7/14, in *Prosecutor v. Rwamakuba*, filed 31 March 2006.

⁶ Prosecution Disclosure, para. 2.

⁷ Prosecution Disclosure, para. 2.

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4. In his submissions, Mr. Kamuhanda raises issues related to the use of the disclosed transcripts in review proceedings and questions related to the special investigation generally. Mr. Kamuhanda characterizes the Prosecution's filing as a request to the Appeals Chamber to preclude the use of the transcript in an eventual request for review under Rule 120.⁹ This is perhaps due to the fact that the Prosecution filing disclosing the transcript was accompanied by a discussion of why, in its view, the transcripts did not constitute a "new fact" in the event that Mr. Kamuhanda were to use the evidence in review proceedings pursuant to Rule 120.¹⁰ In its response to Mr. Kamuhanda's submissions, the Prosecution clarifies that its original filing was simply a fulfilment of its continuing disclosure obligations under Rule 68(E), and not an attempt to prevent the use of the transcript.¹¹ Nonetheless, in reply, Mr. Kamuhanda persists in his objections to the Prosecution's submission and additionally seeks the disclosure of transcripts of testimony of six other witnesses from the *Rwamakuba* case.¹² Mr. Kamuhanda does not elaborate in any detail on the specific relevance of that evidence to him.

5. The Appeals Chamber considers that the Prosecution's original filing is a routine disclosure pursuant to Rule 68. At this stage, the Prosecution's submissions which accompanied its filing of the disclosed material are both irrelevant and premature, and the Appeals Chamber does not take them into account. It is for Mr. Kamuhanda to determine what use, if any, to make of the disclosed material. In addition, the Appeals Chamber does not find it appropriate to consider Mr. Kamuhanda's request for additional disclosure. Mr. Kamuhanda presently has no case pending before the Appeals Chamber. Furthermore, he has not identified any failing on the Prosecution's part in discharging its continuing disclosure obligations.¹³ The Appeals Chamber highlights that Mr. Kamuhanda may obtain public transcripts from the Registry and direct any request for confidential material to the Chamber seized of the given case.¹⁴

6. Mr. Kamuhanda also complains that, despite repeated requests on his part, the Special Counsel appointed by the Prosecutor to investigate possible false testimony in his case has not yet interviewed either him or his counsel.¹⁵ Consequently, Mr. Kamuhanda asks the Appeals Chamber

⁹ Prosecution Disclosure, para. 3.

¹⁰ Kamuhanda Request, p. 2.

¹¹ Prosecution Disclosure, paras. 5-15.

¹² Prosecution Reply, paras. 3-5.

¹³ *The Prosecutor v. Kamuhanda*, Case No. ICTR-1999-54A-A, Conclusions en duplique à la requête du Procureur sur le fondement de l'article 75 F, filed 28 March 2006, pp. 1, 2 ("Kamuhanda Reply").

¹⁴ The Appeals Chamber also observes that the Prosecution has recently provided Mr. Kamuhanda with the requested material. See *The Prosecutor v. Kamuhanda*, Case No. ICTR-1999-54A-A, Prosecution's Disclosure Pursuant to Rule 75(F) of the Rules of the Transcript of the Testimony of Defence Witnesses 1/5, 3/1, 3/11, 3/22, 7/3, and 9/31 in *Prosecutor v. Rwamakuba*, filed 31 March 2006.

¹⁵ See, e.g., *The Prosecutor v. Galić*, Case No. IT-98-29-A, Decision on Momčilo Perišić Motion Seeking Access to Confidential Material in the Galić Case, 16 February 2006.

¹⁶ Kamuhanda Request, pp. 2, 3; Kamuhanda Reply (annexes).
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to order the Prosecution to cease its investigation or, in the alternative, to allow him and his counsel an opportunity to be heard.¹⁶ In any event, he requests the Appeals Chamber to fix a date for the filing of the Special Counsel's final report and to provide him with a copy.¹⁷ The Prosecution responds that Mr. Kamuhanda's request is inappropriate, emphasizing its discretion and independence in the conduct of the investigation.¹⁸

7. In directing the Prosecution to investigate the possibility of false testimony, the Appeals Chamber left it to the Prosecutor's discretion to take the eventual steps and measures which he may deem necessary and appropriate under the circumstances.¹⁹ Moreover, Rule 70(A) provides that reports prepared in connection with the investigation of a case are not subject to disclosure.²⁰ Consequently, Mr. Kamuhanda's requests related to the investigation lack merit.

8. For the foregoing reasons, the Appeals Chamber dismisses Mr. Kamuhanda's request in all respects.

Done this 7th day of April 2006,
At The Hague,
The Netherlands.


Judge Fausto Pocar
Presiding

[Seal of the Tribunal]

¹⁶ Kamuhanda Request, p. 4.

¹⁷ Kamuhanda Request, p. 4; Kamuhanda Reply, pp. 2, 3.

¹⁸ Prosecution Reply, paras. 6-11.

¹⁹ *Kamuhanda v. The Prosecutor*, Case No. ICTR-1999-54A-A, Oral Decision on Rule 115 and Contempt of False Testimony, 19 May 2005 ("The Appeals Chamber stresses that in so directing the Prosecutor, it leaves it to his discretion to take the eventual steps and measures which he deems necessary and appropriate under the circumstances.").

²⁰ This does not mean that the Prosecution is excused from providing Mr. Kamuhanda with any exculpatory material obtained in the course of the investigation in some other form.

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