

**UNITED  
NATIONS**



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No. IT-08-91-R75H.3  
Date: 10 June 2016  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Carmel Agius, Presiding  
Judge Liu Daqun  
Judge Christoph Flügge  
Judge Fausto Pocar  
Judge Koffi Kumelio A. Afande

**Registrar:** Mr. John Hocking

**Order of:** 10 June 2016

**PROSECUTOR**

v.

**MIĆO STANIŠIĆ  
STOJAN ŽUPLJANIN**

***PUBLIC***

**ORDER FOR SUBMISSIONS ON MOTION  
FOR REDACTED VERSION OF DECISION**

**The Office of the Prosecutor**

Ms. Laurel Baig

**Counsel for Mićo Stanišić**

Mr. Slobodan Zečević and Mr. Stéphane Bourgon

**Counsel for Stojan Župljanin**

Mr. Dragan Krgović, Ms. Tatjana Čmerić, and Mr. Christopher Gosnell

**Counsel for Jean de Dieu Kamuhanda**

Mr. Peter Robinson

**THE APPEALS CHAMBER** of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Appeals Chamber” and “Tribunal”, respectively);

**NOTING** the confidential and *ex parte* “Decision on Application Pursuant to Rule 75(H)”, issued by the Appeals Chamber in *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-R75H.3 on 5 December 2014 (“Decision”);

**BEING SEISED** of the “Motion for Redacted Version of Decision”, filed by Jean de Dieu Kamuhanda (“Kamuhanda”) on 4 April 2016 (“Motion”) seeking a public redacted version of the Decision;<sup>1</sup>

**NOTING** Kamuhanda’s submission that Judge Aminatta Lois Runeni N’Gum of the International Residual Mechanism for Criminal Tribunals (“MICT”) relied upon the Decision in a decision denying his request to have protective measures granted to Witness ALM rescinded<sup>2</sup> and that he is considering whether to seek leave to appeal the *Kamuhanda* Decision of 29 March 2016;

**NOTING** Kamuhanda’s submission that he therefore has a legitimate forensic purpose to access the Decision;<sup>3</sup>

**NOTING** that the Office of the Prosecutor of the Tribunal (“Prosecution”) does not oppose the Motion to the extent that it seeks access to the legal reasoning of the Decision and proposes that Kamuhanda be given access to only a redacted version of the paragraph containing this legal reasoning;<sup>4</sup>

**RECALLING** that a party is entitled to seek material from any source, including another case before the Tribunal, to assist in the preparation of its case if the material sought has been identified or described by its general nature and if a legitimate forensic purpose for such access has been shown;<sup>5</sup>

<sup>1</sup> Motion, paras 1, 4, 11.

<sup>2</sup> Motion, paras 2-3, referring to *Prosecutor v. Jean de Dieu Kamuhanda*, Case No. MICT-13-33, Decision on Motion to Rescind Protective Measures for Defence Witness ALM, 29 March 2016 (“*Kamuhanda* Decision of 29 March 2016”).

<sup>3</sup> Motion, para. 3. See Motion, paras 1, 4.

<sup>4</sup> Prosecution Response to Jean de Dieu Kamuhanda’s Motion for Redacted Version of Decision, 12 April 2016 (public with confidential and *ex parte* Annex) (“Response”), para. 2. The Prosecution further submits that the remaining contents of the Decision are irrelevant to Kamuhanda’s possible request for certification (see Response, paras 1-2).

<sup>5</sup> *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-A, Decision on Motion by Radovan Karadžić for Reconsideration of Decision on Motion for Access to Confidential Materials in the *Stanišić and Simatović* Case, 16 February 2015 (“*Stanišić and Simatović* Decision of 16 February 2015”), p. 3; *Prosecutor v. Vujadin Popović et al.*, Case Nos. IT-05-88-A & IT-09-92-T, Decision on Motion by Ratko Mladić for Access to Confidential Material, 20 February 2013 (“*Popović et al.* Decision of 20 February 2013”), p. 2.

**RECALLING** that the Appeals Chamber may grant access to confidential material wherever the party seeking access has demonstrated that such material may be of material assistance to its case;<sup>6</sup>

**RECALLING** that the requesting party may demonstrate the relevance of the material sought by showing the existence of a nexus between the applicant's case and the case from which such material is sought;<sup>7</sup>

**CONSIDERING** that Kamuhanda has identified the confidential and *ex parte* material sought with sufficient specificity;

**CONSIDERING** that in the specific circumstances of this Motion, Kamuhanda has demonstrated a nexus between his case and the Decision in that the Decision served as a basis to deny his request before the MICT;

**CONSIDERING** that the Decision may inform Kamuhanda's further steps in the proceedings and is therefore likely to assist his case materially;

**FINDING** that in the circumstances, Kamuhanda has shown a legitimate forensic purpose for access to a redacted version of the Decision;

**NOTING** that the Decision refers to two protected witnesses;

**EMPHASISING** that the protection of witnesses and victims is of utmost importance to the proper functioning of the Tribunal and, once protective measures have been ordered, they continue to have effect on appeal, or in any other proceedings, unless they are modified by the competent Chamber;<sup>8</sup>

**CONSIDERING** that in relation to matters concerning protected witnesses the Appeals Chamber may consult with the Victims and Witnesses Section of the Registry of the Tribunal ("VWS");

## **FOR THE FOREGOING REASONS**

**PURSUANT TO** Article 22 of the Statute of the Tribunal and Rules 54, 75, and 107 of the Rules of Procedure and Evidence;

<sup>6</sup> *Stanišić and Simatović* Decision of 16 February 2015, p. 3; *Prosecutor v Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-A, Decision on Goran Hadžić's Urgent Motion for Access to Audio Recordings in the *Stanišić and Simatović* Case, 28 August 2014, p. 2. See *Prosecutor v Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-A, Decision on Goran Hadžić's Motion for Access to Confidential Material in the *Stanišić and Simatović* Case, 1 November 2013 ("*Stanišić and Simatović* Decision of 1 November 2013"), para. 6; *Popović et al.* Decision of 20 February 2013, p. 2.

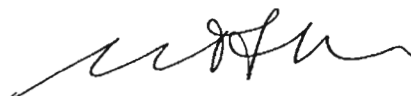
<sup>7</sup> *Stanišić and Simatović* Decision of 16 February 2015, p. 3; *Stanišić and Simatović* Decision of 1 November 2013, para. 6; *Popović et al.* Decision of 20 February 2013, p. 2.

<sup>8</sup> *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on the Prosecution's Motion Concerning Confidential Information in Vladimir Lazarević's Public Submissions, 31 March 2010 (confidential), para. 5.

**HEREBY ORDERS** the VWS to make submissions by 15 June 2016 on the redactions in the Decision it considers necessary in order to ensure effective protection of the two witnesses referred therein.

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

Dated this tenth day of June 2016,  
At The Hague,  
The Netherlands.



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Judge Carmel Agius  
Presiding Judge

**[Seal of the Tribunal]**