

UNITED
NATIONS



International Residual Mechanism
for Criminal Tribunals

No.: MICT-13-38-Misc.1

Date: 14 April 2021

Original English
:

THE PRESIDENT

Before: Judge Carmel Agius, President

Registrar: Abubacarr Tambadou

THE PROSECUTOR

v.

FELICIEN KABUGA

Public Redacted Version

MOTION FOR ORDER CONCERNING FROZEN BANK ACCOUNTS

The Office of the Prosecutor:
Serge Brammertz

Counsel for Felicien Kabuga:
Emmanuel Altit

Counsel for Francois Ndirabatwarc
and Catherine Mukakayange
Peter Robinson

Introduction

1. Francois Ngirabatware and Catherine Mukakayange respectfully request that the President assign this matter to a Single Judge or Trial Chamber to issue an order declaring that the United Nations International Residual Mechanism for Criminal Tribunals (“Mechanism”) and its predecessor, the International Criminal Tribunal for Rwanda (“ICTR”), no longer maintain any interest in freezing the accounts of Francois Ngirabatware and Catherine Mukakayange, nos. [REDACTED] and [REDACTED], at [REDACTED] Bank in Brussels, Belgium, and for the Registrar to serve a copy of that order on the [REDACTED] Bank and the government of Belgium.¹

Background

2. Felicien Kabuga was first indicted by the ICTR on 30 October 1997.² Subsequent indictments were filed against him on 29 August 1998,³ 12 October 2005,⁴ 14 April 2011,⁵ and 1 March 2021.⁶ He was arrested on 16 May 2020 in France.⁷ He is currently incarcerated at the United Nations Detention Unit in The Hague awaiting trial.

3. During the period when Mr. Kabuga was a fugitive, the Prosecution requested that various financial institutions and States freeze assets that it believed could be used to assist Kabuga in evading arrest. This included assets of Kabuga’s family members.

4. Francois Ngirabatware was married to one of Kabuga’s 13 children.⁸ Catherine Mukakayange is Francois Ngirabatware’s sister. At the request of the ICTR prosecutor, their bank accounts, nos. [REDACTED] and [REDACTED], at [REDACTED] Bank in Brussels, Belgium, were frozen on 11 March 2003. Mr. Ngirabatware’s and Ms. Mukakayange’s efforts to obtain access to these funds through the courts in Belgium were unsuccessful because those courts ruled that the government of Belgium was

¹ This motion is filed on a confidential basis because it reveals private banking information of the petitioners. A public redacted version is being filed simultaneously. It is requested that the petitioners be authorised to disclose the confidential version of this motion and any resulting decision or order to the bank, government of Belgium, and in connection with any court proceedings necessary to obtain return of the funds.

² *Prosecutor v Kabuga*, No. ICTR-97-22, *Indictment* (30 October 1997)

³ *Prosecutor v Bizimana, Karemera, Nzabonimana, Rwamakuba, Ndirumutse, Nzirorera, Kabuga, and Kajelijeli*, No. ICTR-98-44-I, *Confirmation and Disclosure of the Indictment* (29 August 1998)

⁴ *Prosecutor v Kabuga*, No. ICTR-98-44B-I, *Decision on the Amended Indictment* (12 October 2005)

⁵ *Prosecutor v Kabuga*, No. ICTR-98-44B-PT, *Amended Indictment* (14 April 2011)

⁶ *Prosecutor v Kabuga*, No. MICT-13-38-PT, *Prosecution’s Second Amended Indictment* (1 March 2021)

⁷ *Urgent Motion for Amendment of Order for Transfer* (20 May 2020)

⁸ They are currently divorced.

obligated to cooperate with the ICTR and the ICTR Prosecutor maintained that the funds should remain frozen so long as Felicien Kabuga was a fugitive.⁹

5. The funds in the two frozen accounts at [REDACTED] belong to Mr. Ndirabatware and Ms. Mukakayange. Felicien Kabuga was neither the source of those funds nor does he have any interest in them.¹⁰

Argument

6. Now that Felicien Kabuga has been arrested, there is no basis for the ICTR or the Mechanism to retain its freeze on the funds belonging to Mr. Ndirabatware and Ms. Mukakayange.

7. The funds were originally frozen upon request of the ICTR Prosecutor pursuant to ICTR Rule 40(A)(iii) of its Rules of Procedure and Evidence, which provided:

(A) In case of urgency, the Prosecutor may request any State:

(i) To arrest a suspect and place him in custody;

(ii) To seize all physical evidence;

(iii) **To take all necessary measures to prevent the escape of a suspect or an accused, injury to or intimidation of a victim or witness, or the destruction of evidence.**

The State concerned shall comply forthwith, in accordance with Article 28 of the Statute.¹¹

8. On 29 April 2013, Mechanism Single Judge Vagn Joensen issued a warrant of arrest for Felicien Kabuga that included a request to all Member States of the United Nations to:

MAKE INQUIRIES to discover whether the Accused has assets located within the territory of the Member State and if so, to adopt provisional measures to freeze such assets, without prejudice to the rights of third parties;¹²

9. This order was issued pursuant to Mechanism Rule 63(D), which provides:

The Single Judge shall also issue an international arrest warrant in respect of the accused which shall be transmitted to all States. Upon request by the Prosecutor or proprio motu, after having heard the Prosecutor, the Single Judge may order a State or States to adopt provisional measures to freeze the assets of the accused, considering the gravity of the crimes charged and the level of responsibility of the accused, without prejudice to the rights of third parties.

⁹ See letter of ICTR Prosecutor to Belgian authorities dated 13 February 2012 attached as Annex A.

¹⁰ See declaration of Francois Ndirabatware attached as Annex B.

¹¹ (emphasis added). This is currently Rule 37 of the Mechanism's Rules of Procedure and Evidence.

¹² *Warrant of Arrest and Order for Transfer Addressed to All States* (29 April 2013), p. 2)

10. The Appeals Chamber of the ICTR has held that a third party whose assets are frozen by the Prosecutor has a right to request a judicial review by a Trial Chamber of that decision.¹³ Likewise, to the extent that the accounts are claimed to now be frozen pursuant to the Single Judge's order, Mr. Ngirabatware and Ms. Mukakayange are third parties prejudiced by that order and have the right to be heard.¹⁴

11. There is no basis for the Mechanism or ICTR to continue to block Mr. Ngirabatware and Ms. Mukakayange's access to their funds. The funds can no longer be frozen pursuant to ICTR Rule 40(A)(iii) because that provisional measure no longer applies after the arrest of Felicien Kabuga. The funds cannot be frozen pursuant to Mechanism Rule 63(D) because they are not assets of Felicien Kabuga and he has no interest in them whatsoever.

Conclusion

12. Francois Ngirabatware and Catherine Mukakayange have been deprived of access to their own funds for almost two decades simply because Mr. Ngirabatware had been married to one of Mr. Kabuga's 13 children. The Single Judge or Trial Chamber is respectfully requested to issue an order indicating that the Mechanism and ICTR no longer maintain any interest in freezing the bank accounts of Francois Ngirabatware and Catherine Mukakayange, nos. [REDACTED] and [REDACTED] at [REDACTED] Bank in Brussels, Belgium, and for the Registrar to serve a copy of that order on the [REDACTED] Bank and the government of Belgium.

¹³ *Miscellaneous, Kabuga Family*, No 01-A, *Appeal of the Family of Felicien Kabuga against Decisions of the Prosecutor and President of the Tribunal* (22 November 2002), p. 4

¹⁴ *Prosecutor v Turinabo et al*, No. MICT-18-116-AR80.1, *Decision on Appeals of the Decision related to Materials Seized from Dick Prudence Munyeshuli* (19 August 2019), para. 35

13. Such an order is needed for Mr. Ngirabatware and Ms. Mukakayange to once again obtain access to the funds to which they have so long been unjustly deprived.

Word count: 1223

Respectfully submitted,



PETER ROBINSON
Counsel for Francois Ngirabatware
and Catherine Mukayayange

ANNEX A

3

Service Droit International humanitaire
Royaume
14 02 2012



International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda
Kigali International Conference Centre
P.O. Box 2000, Kigali, Rwanda - G.P. 2000, Arusha, Tanzania
Tel: 25327 2000/2001 / 25327 2000 Fax: 25327 2000/2001 / 25327 2000/2001
OFFICE OF THE PROSECUTOR / BUREAU DU PROCUREUR

Date: 13 février 2012
Réf: OIP/2012/P-RK/013

Vos Réf : WLJ5/CT-44-42/5213/PW/2012/023
WLJ5/CT-44-42/5213/PW/2011/026

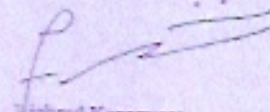
Objet : Etat actuel du dossier relatif à notre Commission Rogatoire en cause de François Ndirabuwera et Catherine Mukakayunga exécutée par l'autorité Belge en date du 11 mars 2003 dans l'affaire Félicien Kabuga

Chère Madame Warnotte,

Faisant suite à vos deux lettres datées 15 décembre 2011 et 1 février 2012 (appel) dont l'objet est repris en marge, nous demandons que la saisie des comptes bancaires exécutée à la demande du Tribunal pénal international pour le Rwanda se maintienne pour les motifs suivants:

1. Le Procès «Le Procureur contre Félicien Kabuga est en cours au Tribunal ;
2. Les recherches aux fins d'arrestation de Monsieur Kabuga se poursuivent ;
3. Les raisons à l'origine de la décision de saisir les comptes bancaires de M. Ndirabuwera et de Mme Mukakayunga restent d'actualité.

Nous vous prions d'agréer, Madame, l'expression de notre considération distinguée.

for 
Richard Karegyesa
Chef des Poursuites

Mme Pauline Warnotte, Attaché
SPF Justice
Direction générale Législation, Libertés et Droits fondamentaux
Service de droit international humanitaire
115 boulevard de Waterloo
1000 Bruxelles, Belgique

ANNEX B

DECLARATION OF FRANCOIS NGIRABATWARE

I, FRANCOIS NGIRABATWARE, do hereby declare under penalty of perjury, that the following is true and correct:

1. I am the owner of bank account no [REDACTED] at the [REDACTED] Bank in Brussels, Belgium. My sister, Catherine Mukayayange, is the owner of bank account [REDACTED] at the same bank.

2. I was married to Claudine Twagirihirwe, one of Felicien Kabuga's 13 children, in 1995. We are now divorced.

3. The funds in my account are owned by me. Felicien Kabuga was not the source of any of those funds and has no interest whatsoever in any of those funds.

4. The funds in my sister's account are owned by her. Felicien Kabuga was not the source of any of those funds and has no interest whatsoever in any of those funds.

5. Since we were denied access to the funds in our accounts in 2003, we have been trying to obtain access through the BNP Fortis Bank and through the courts of Belgium. All our efforts have been met by the same response—the funds were frozen at the request of the International Criminal Tribunal for Rwanda ("ICTR") and the bank and government of Belgium are required to cooperate with that request.

6. In 2011, the courts in Belgium requested that the ICTR clarify its position as to the freezing of those accounts. The letter in Annex A from the ICTR Prosecutor was received by the court and has prevented us from accessing our accounts.

7. In order for us to access our accounts, we need a decision from the United Nations International Residual Mechanism for Criminal Tribunals, as the successor to the ICTR, that we can take to the bank, and the Belgian courts, if necessary, stating that the Mechanism and ICTR no longer maintain any interest in freezing our bank accounts.

8. We would greatly appreciate the court issuing the requested order.

DATED: 12/4/2021

/s/ Francois Ngirabatware
FRANCOIS NGIRABATWARE



I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

To/ À :	IRMCT Registry/ <i>Greffe du MIFRTP</i>	<input checked="" type="checkbox"/> Arusha/ <i>Arusha</i>	<input type="checkbox"/> The Hague/ <i>La Haye</i>
From/ De :	<input type="checkbox"/> Chambers/ <i>Chambre</i>	<input type="checkbox"/> Defence/ <i>Défense</i>	<input type="checkbox"/> Prosecution/ <i>Bureau du Procureur</i>
		<input checked="" type="checkbox"/> Other/ <i>Autre</i> :	Petitioners
Case Name/ Affaire :	Prosecutor v Kabuga	Case Number/ Affaire n° :	MICT-13-38-Misc.1
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<input type="checkbox"/> Decision/ <i>Décision</i>	<input type="checkbox"/> Submission from parties/ <i>Écritures déposées par des parties</i>	<input type="checkbox"/> Affidavit/ <i>Déclaration sous serment</i>	<input type="checkbox"/> Notice of Appeal/ <i>Acte d'appel</i>
<input type="checkbox"/> Order/ <i>Ordonnance</i>	<input type="checkbox"/> Submission from non-parties/ <i>Écritures déposées par des tiers</i>	<input type="checkbox"/> Indictment/ <i>Acte d'accusation</i>	

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