

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

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

Date: 14 June 2021

Original English

BEFORE THE SINGLE JUDGE

Before: Judge Mahandrisoa Edmond Randrianirina

Registrar: Abubacarr Tambadou

THE PROSECUTOR

v.

FELICIEN KABUGA

Public

RESPONSE TO REGISTRAR'S SUBMISSION

The Office of the Prosecutor:

Serge Brammertz

Rashid Rashid

Rupert Elderkind

Counsel for Felicien Kabuga:

Emmanuel Altit

**Counsel for Francois Ngirabatware
and Catherine Mukakayange**

Peter Robinson

1. Francois Ngirabatware and Catherine Mukayayange hereby respond to the *Registrar's Submission in Relation to the Motions for Orders Concerning Frozen Assets* (9 June 2021).

2. In his submission, the Registrar contended that:

The assets identified in the First Motion may also be relevant to a determination of the Accused's disposable means, however the source of the funds remains unclear at this time. Consequently, further investigation would be required by the Registry under the Directive and Guidelines, as to the provenance of these assets.¹

3. The Registrar requested that the Single Judge defer his adjudication of the motion until "the Registry has meaningfully assessed Felicien Kabuga's indigency status."²

4. The Registrar's request should be denied for three reasons:

5. First, despite the accounts being frozen since 2003 at the request of the ICTR Prosecutor, there is not a scintilla of evidence that Felicien Kabuga was the source of the funds in the frozen accounts of Francois Ngirabatware and Catherine Mukayayange. The declarations of Mr. Ngirabatware and Ms. Mukayayange specifically provide to the contrary.³ No facts have been brought forward by the Prosecution or the Registrar to contradict that.

6. Second, there are adequate funds in the accounts of Mr. Kabuga and his children that are the subject of case MICT-13-38-Misc.2 to fund the costs of his defence. It is unnecessary for the return of the funds of Mr. Ngirabatware and Ms. Mukayayange to be delayed while the Registrar conducts an investigation into Mr. Kabuga's means.

7. Third, the further delay is contrary to Mechanism Rule 63(D), which requires that provisional measures to freeze the assets of the accused be "without prejudice to the rights of third parties". Mr. Ngirabatware and Ms. Mukayayange, who have been deprived of their funds since 2003, would be prejudiced by any further delay in

¹ *Registrar's Submission in Relation to the Motions for Orders Concerning Frozen Assets* (9 June 2021), para. 8

² *Id.*, para. 9


³ *Motion for Order Concerning Frozen Bank Accounts*, Annex B, paras. 3-4; *Request for Leave to Reply and Reply: Motion for Order Concerning Frozen Bank Accounts*, Annex B, paras. 3-4; Annex C, paras. 3-4

the release of those funds, particularly where no facts exist after all these years that Mr. Kabuga is the source of those funds or has any claim to them.

8. The Prosecution has had information about the frozen accounts for 18 years, including bank records that it has presented, in part, to the Single Judge.⁴ In all of this time it has uncovered no evidence that the funds originated with Felicien Kabuga. The Registrar's investigation into the means of the accused in the *Praljak* and *Karadzic* cases lasted for 8 and 9 years each.⁵ It would be a miscarriage of justice to continue to deprive Mr. Ngirabatware and Ms. Mukayayange of their own funds based on the mere, unfounded speculation that the funds may have originated with Felicien Kabuga.

9. For all of these reasons, the Registrar's request that the Single Judge defer his adjudication of this motion should be denied. The long-delayed return of the property of two innocent third parties should not be delayed any longer.

Word count: 683

Respectfully submitted,

PETER ROBINSON
Counsel for Francois Ngirabatware
and Catherine Mukakayange

⁴ Confidential Annexes to *Prosecution Response to Motion for Order Concerning Frozen Bank Accounts* (28 April 2021) and *Prosecution Opposition to Request for Leave to Reply: Frozen Bank Accounts Motion* (11 May 2021)

⁵ *Prosecutor v Prlic et al*, No. IT-04-74-A, *Public Redacted Version of the 25 July 2013 Decision on Slobodan Praljak's Motion for Review of the Registrar's Decision on Means* (28 August 2013)(9-year investigation); *Prosecutor v Karadzic*, No. MICT-13-55-A, *Decision on a Motion to Review the Registrar's Decision on Indigence* (24 June 2016)(8-year investigation)



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 |
| Date Created/ Daté du : | 14 June 2021 | Date transmitted/ Transmis le : | 14 June 2021 |
| | | No. of Pages/ Nombre de pages : | 3 |
| Original Language / Langue de l'original : | <input checked="" type="checkbox"/> English/ <i>Anglais</i> | <input type="checkbox"/> French/ <i>Français</i> | <input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) : |
| | | <input type="checkbox"/> Kinyarwanda / <i>B/C/S</i> | |
| Title of Document/ Titre du document : | RESPONSE TO REGISTRAR'S SUBMISSION | | |
| Classification Level/ Catégories de classification : | <input checked="" type="checkbox"/> Unclassified/ <i>Non classifié</i> | <input type="checkbox"/> Ex Parte Defence excluded/ <i>Défense exclue</i> | <input type="checkbox"/> Ex Parte Prosecution excluded/ <i>Bureau du Procureur exclu</i> |
| | <input type="checkbox"/> Confidential/ <i>Confidentiel</i> | <input type="checkbox"/> Ex Parte R86(H) applicant excluded/ <i>Art. 86 H) requérant exclu</i> | <input type="checkbox"/> Ex Parte Amicus Curiae excluded/ <i>Amicus curiae exclu</i> |
| | <input type="checkbox"/> Strictly Confidential/ <i>Strictement confidentiel</i> | <input type="checkbox"/> Ex Parte other exclusion/ <i>autre(s) partie(s) exclue(s)</i> (specify/préciser) : | |
| Document type/ Type de document : | | | |
| <input type="checkbox"/> Motion/ <i>Requête</i> | <input type="checkbox"/> Judgement/ <i>Jugement/Arrêt</i> | <input type="checkbox"/> Book of Authorities/ <i>Recueil de sources</i> | <input type="checkbox"/> Warrant/ <i>Mandat</i> |
| <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 checked="" type="checkbox"/> Submission from non-parties/ <i>Écritures déposées par des tiers</i> | <input type="checkbox"/> Indictment/ <i>Acte d'accusation</i> | |

II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT

| |
|---|
| <input type="checkbox"/> Translation not required/ <i>La traduction n'est pas requise</i> |
| <input checked="" type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ <i>La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction :</i> (Word version of the document is attached/ <i>La version Word est jointe</i>) |
| <input type="checkbox"/> English/ <i>Anglais</i> <input checked="" type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) : |
| <input type="checkbox"/> Filing Party hereby submits both the original and the translated version for filing, as follows/ <i>La partie déposante soumet l'original et la version traduite aux fins de dépôt, comme suit :</i> |
| Original/ Original en <input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda / <i>B/C/S</i> <input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) : |
| Translation/ Traduction en <input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda / <i>B/C/S</i> <input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) : |
| <input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s)/ <i>La partie déposante soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s) :</i> |
| <input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) : |