

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/06 OA8
Date: 20 April 2007

THE APPEALS CHAMBER

Before: Judge Georghios M. Pikis (Presiding Judge)
Judge Philippe Kirsch
Judge Navanethem Pillay
Judge Sang-Hyun Song
Judge Erkki Kourula

Registrar: Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR v. THOMAS LUBANGA DYILO**

Public Document

**Reasons for the Appeals Chamber's Decision to Extend Time Limits for Defence
Documents issued on 3 April 2007**

The Office of the Prosecutor
Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda
Mr Fabricio Guariglia
Mr Ekkehard Withopf

Mr. Thomas Lubanga Dyilo

Legal Assistant
Véronique Pandanzyla

**Legal representative of victims a/0001/06,
a/0002/06 and a/0003/06**
Mr Luc Walley
Mr Franck Mulenda

Legal representative of victim a/0105/06
Ms Carine Bapita Buyangandu

The Appeals Chamber of the International Criminal Court (hereinafter the “Court”),

In the appeal of Mr. Thomas Lubanga Dyilo (the “Appellant”) of 30 January 2007 entitled “Defence Appeal Against the Pre-Trial Chamber’s ‘D cision sur la confirmation des charges’ of 29 January 2007” (ICC-01/04-01/06-797),

In the matter of the failure of the Appellant to submit the two documents within the time limit prescribed by the decision of 23 February 2007 entitled “Decision of the Appeals Chamber on the Defence application ‘Demande de suspension de toute action ou proc dure afin de permettre la d signation d’un nouveau Conseil de la D fense’ filed on 20 February 2007” (ICC-01/04-01/06-838),

Provides the following reasons for its decision issued on 3 April 2007 entitled “Appeals Chamber’s Decision to Extend Time Limits for Defence Documents” (ICC-01/04-01/06-857):

1. With the leave¹ of the Pre-Trial Chamber, counsel for the Appellant withdrew and ceased to represent Mr. Lubanga Dyilo. Parallel to soliciting the withdrawal of counsel, the Appellant moved² the Appeals Chamber to stay proceedings pending the selection and appointment of new counsel. The right to be represented by counsel is safeguarded by the Statute as the fundamental right of the accused and the person under charge by article 67 of the Statute and rule 121 (1) of the Rules of Procedure and Evidence respectively. The Appeals Chamber ruled out stay as explained in the reasoning³ of its decision of 23 February 2007⁴. “Stay of proceedings”, it was said, “for an indefinite or indeterminate period of time is an extreme measure, not lightly countenanced in any jurisdiction.” In essence, what the Appellant was seeking, as the Appeals Chamber

¹ See ICC-01/04-01/06-833-Conf.

² *Prosecutor v Thomas Lubanga Dyilo* “Demande de suspension de toute action ou proc dure afin de permettre la d signation d’un nouveau Conseil de la D fense” 20 February 2007 (ICC-01/04-01/06-830-Conf).

³ *Prosecutor v Thomas Lubanga Dyilo* “Reasons for ‘Decision of the Appeals Chamber on the Defence application ‘Demande de suspension de toute action ou proc dure afin de permettre la d signation d’un nouveau Conseil de la D fense’ filed on 20 February 2007’ issued on 23 February 2007” 9 March 2007 (ICC-01/04-01/06-844).

⁴ *Prosecutor v Thomas Lubanga Dyilo* “Decision of the Appeals Chamber on the Defence application ‘Demande de suspension de toute action ou proc dure afin de permettre la d signation d’un nouveau Conseil de la D fense’” 23 February 2007 (ICC-01/04-01/06-838).



affirmed, was “a respite in order to submit the documents due with the benefit of counsel’s help and advice.” “Envisioning”, in the words of the Appeals Chamber, “the length of time reasonably necessary for the choice of counsel and sequentially preparation for the filing of the expected submissions of the Appellant on the two subjects under consideration” the Appeals Chamber adjudged that a period of 28 days would be sufficient for the purpose. Consequently, the Appeals Chamber extended the time limited for the filing of the two documents by four weeks, a period ending on 23 March 2007.

2. On Tuesday, 20 March 2007, the Division of Victims and Counsel of the Registry brought to the notice of the Appeals Chamber that the Appellant did appoint counsel to represent him, transmitting to the Appeals Chamber a document, in a form provided by the Registry, in the nature of a power of attorney authorizing named counsel to act on his behalf.⁵ The filing of such a document does not complete the process of the appointment of counsel. What is needed is an indication from counsel that he/she is willing to represent the accused. In accordance with regulation 75 (1) of the Regulations of the Court, counsel must express his/her readiness to represent the person to the Registrar who shall thereafter see that a power of attorney is duly filed.⁶ Such willingness was not expressed by counsel to the Registrar as the Appeals Chamber was informed by a subsequent notification of the Registry.⁷ As may be gathered from the documents provided to the Appeals Chamber on 23 March 2007, counsel is still pondering acceptance of the brief.

3. It can be safely inferred from the above that the absence of counsel is the cause for the non-filing by the Appellant of the documents due to be filed by 23 March 2007, as directed by the Court. Confronted with this state of affairs, the Appeals Chamber examined whether it should proceed with the determination of the issues pending before the Chamber or whether it should afford the Appellant a further opportunity to submit such documents with the aid of counsel to be appointed.

⁵ *Prosecutor v Thomas Lubanga Dyilo* “Désignation de Maître Catherine Mabilie comme conseil de la défense de M Thomas Lubanga Dyilo” 20 March 2007 (ICC-01/04-01/06-845).

⁶ See also article 11 of the Code of Professional Conduct for counsel.

⁷ See ICC-01/04-01/06-851-Conf-Exp.



4. The right to legal representation by counsel of one's choice like every other human right of a litigant must be exercised in a manner attuned to and consistent with the principles of a fair trial, with which it is interwoven, and within the framework of the Statute, the Rules of Procedure and Evidence and the Regulations of the Court. Hence, it must be exercised with due regard to the requisites of a fair trial, including those designed to assure that the proceedings are conducted and concluded within a reasonable time. The expeditious conduct of the proceedings is stipulated by article 64 (2) of the Statute as an inseverable incident of the due conduct of the judicial process and as a separate requisite coincident with a fair trial.

5. The question to be answered is whether there is justification for the extension of the time limited for the submission of the relevant documents. The reasons that prompted the decision of 23 February 2007 to extend the time still exist, namely absence of counsel. That in itself is not conclusive. Much depends on the reasonableness of the steps taken to secure the services of counsel. The Appellant sought to secure the services of a counsel, the process moved far enough to the point of the Appellant executing a document in the nature of a power of attorney. The appointment of counsel has not been finalized.

6. The Appeals Chamber envisioned that four weeks would be sufficient for the task (of appointing counsel) including preparation of the documents due for filing by the Appellant. Had the Appellant been inactive in seeking the services of counsel, the Appeals Chamber would, no doubt, conclude that no further extension should be granted. As it is, the Appeals Chamber cannot but give the Appellant a further opportunity for his efforts to bear fruition. On the other hand, the judicial process cannot be allowed to come to a halt. A further period of six weeks will be allowed and time for the submission of the relevant documents will be extended accordingly which, added to the four weeks already allowed, brings the total to a period of ten weeks. Beyond that, in the present case, proceedings before the Appeals Chamber cannot remain at a standstill owing to the non-appointment of counsel. In the reasoning to the decision of 23 February 2007 issued on 9 March 2007, the Appeals Chamber explains that, in necessitous circumstances envisaged by regulation 73 (2) of the Regulations of the Court, duty counsel can represent the




accused or a person under charge. The necessity will arise for the invocation of the provisions of regulation 73 (2) of the Regulations of the Court, if the documents in question are not submitted within the extended time owing to the absence of counsel to represent the Appellant, who, as he has already indicated, regards the assistance of counsel as necessary for the pursuit of his case. Regulation 73 (2) of the Regulations of the Court aims to harmonize the ends of a fair and expeditious trial with the rights of the accused or a person under charge. It is specifically designed to address the situation where a person has not yet secured legal assistance and yet wishes such aid for his/her defence. Regulation 73 (2) is applicable in cases "where the person requires urgent legal assistance". Such would be the case if the documents in question are not submitted within the time limited by this decision owing to the absence of counsel. The Registrar is expected to look into the matter in time in order to be able to proceed, if need arises, with the appointment of duty counsel before and, if not possible, at the time of the expiration of the period specified for the submission of the documents.

7. In virtue of the provisions of regulation 29 of the Regulations of the Court, the Appeals Chamber decided to extend the period within which the relevant documents must be filed, by six weeks, as decided. If the deadline is transgressed owing to the non-representation of the Appellant by counsel, then the Registrar is directed to proceed with the appointment of duty counsel taking account of the wishes of the Appellant as to duty counsel to be appointed. The time for the submission of the relevant documents must necessarily be extended for one more week to make possible the submission of the documents to be filed by duty counsel.

8. It must be clarified that the appointment of duty counsel is made neither in lieu of the appointment of counsel of the Appellant's choice nor is it meant to supplant counsel if one is appointed in the meantime. The authority of duty counsel will be confined to representing the Appellant in the submission of the two documents under consideration.

Done in both English and French, the English version being authoritative.





Judge Georghios M. Pikis
Presiding Judge

Dated this 20th day of April 2007

At The Hague, The Netherlands