

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/07 OA 7
Date: 27 June 2008

THE APPEALS CHAMBER

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

THE PROSECUTOR v. GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI

Public document

Reasons for the “Decision on the ‘Application for Extension of Time Limits Pursuant to Regulation 35 of the Regulations of the Court to Allow the Defence to Submit its Observations on the Prosecutor's Appeal regarding the Decision on Evidentiary Scope of the Confirmation Hearing and Preventative Relocation’”



Decision/Order/Judgment to be notified in accordance with regulation 31 of the Regulations of the Court to:

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor

Counsel for Mr Katanga

Mr David Hooper
Mr Goran Sluiter

Counsel for Mr Ngudjolo Chui

Mr Jean-Pierre Kilenda Kakengi Basila
Ms Maryse Alié

REGISTRY

Registrar

Ms. Silvana Arbia



The Appeals Chamber of the International Criminal Court,

In the Prosecutor's appeal (hereafter "the appellant") pursuant to the decision of Pre-Trial Chamber I of 18 April 2008 entitled "Decision on Evidentiary Scope of the Confirmation Hearing, Preventive Relocation and Disclosure under Article 67 (2) of the Statute and Rule 77 of the Rules" (ICC-01/04-01/04-411-Conf-Exp),

In the application of Mr Mathieu Ngudjolo Chui dated 12 June 2008, entitled "Application for Extension of Time Limits Pursuant to Regulation 35 of the *Regulations of the Court* to Allow the Defence to Submit its Observations on the Prosecutor's Appeal regarding the *Decision on Evidentiary Scope of the Confirmation Hearing and Preventive Relocation*" (ICC-01/04-01/07-586-tENG),

Provides the following reasons for its decision issued on 20 June 2008 entitled "Decision on the 'Application for Extension of Time Limits Pursuant to Regulation 35 of the Regulations of the Court to Allow the Defence to Submit its Observations on the Prosecutor's Appeal regarding the Decision on Evidentiary Scope of the Confirmation Hearing and Preventative Relocation'" (ICC-01/04-01/07-614):

1. The Prosecutor appealed the decision of the Pre-Trial Chamber on the evidentiary scope of the confirmation hearing and preventive relocation. He submitted his document in support of the appeal on 2 June. On 12 June one of the respondents, Mr Chui, sought an extension of time to make his written response to the appeal. The other respondent, Mr Katanga, filed his response on 13 June, the last day of the period set by the Regulations for making response to the document in support of the appeal. Regulation 65 (5) stipulates that in appeals taken under rule 155, the time for making a response to the document in support of the appeal is 10 days.

2. The reasons put forward in support of the application may be summed up as follows: Counsel for the applicant is heavily burdened with the preparation of the case of Mr Chui for the confirmation hearing, due to commence on 27th June. Pressure of work in that direction makes it difficult to respond to the document in support of the appeal

No.: ICC-01/04-01/07 OA 7

3/6



within the time fixed by the regulations. Consequently, he moves that the time for filing the response be extended to a date after the conclusion of the confirmation hearing.

3. The Prosecutor opposes the application, arguing that no good cause is shown for upholding the application. A similar application, he informs, before the Single Judge, was rejected. Irrespective of anything else, he submitted that the extension sought is excessive, a factor not to be ignored.

4. Regulation 35 (2) empowers the Chamber to extend the time limit prescribed by the Regulations for the submission of a document if good cause is shown to that end. In its decision of 30th May 2006¹, the Appeals Chamber refused an application for extension sought on grounds of inability to submit full grounds of appeal, as the founding cause was not substantiated. On the other hand, technical problems in the way of preparing and filing the document in support of the appeal were found to provide a good cause for extension in the decision of the Appeals Chamber of 12 October 2006.² Extension was likewise approved in the decision of the Appeals Chamber of 3 July 2006³ because the decision of the Pre-Trial Chamber granting leave was notified outside normal working hours on a Friday.

5. In its decision of 21 February 2007⁴, the Appeals Chamber sought to depict the grounds that may substantiate a good cause in the context of regulation 35 (2): "Such reasons as may found a good cause are necessarily associated with a party's duties and obligations in the judicial process. A cause is good, if founded upon reasons associated with a person's capacity to conform to the applicable procedural rule or regulation or the directions of the Court. Incapability to do so must be for sound reasons, such as would objectively provide justification for the inability of a party to comply with his/her

¹ *Prosecutor v. Lubanga Dyilo* "Decision on the Appellant's Application for an Extension of the Time Limit for the Filing of the Document in Support of the Appeal and Order Pursuant to Regulation 28 of the Regulations of the Court" 30 May 2006 (ICC-01/04-01/06-129).

² *Prosecutor v. Lubanga Dyilo* "Decision on the Request by Mr. Thomas Lubanga Dyilo for an Extension of Time" 12 October 2006 (ICC-01/04-01/06-562).

³ *Prosecutor v. Lubanga Dyilo* "Decision on the 'Prosecutor's Motion for Extensions of the Time and Page Limits'" 3 July 2006 (ICC-01/04-01/06-177).

⁴ *Prosecutor v. Lubanga Dyilo* "Reasons for the 'Decision of the Appeals Chamber on the request of counsel to Mr. Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court of 7 February 2007' issued on 16 February 2007" 21 February 2007 (ICC-01/04-01/06-834)



obligations”⁵. In that case, the Appeals Chamber found illness of counsel and sequential temporary inability to represent his client as providing a good cause. Nearer to our case is the decision of the Appeals Chamber of 11 July 2006⁶, in which the time for submission of a document was extended in face of the heavy burden of work confronting counsel in preparing for the confirmation hearing. The Prosecutor, in his opposition to the application, does not dispute, directly at least, the voluminousness of the work counsel for the applicant has to do in preparation for the confirmation hearing.

6. There is nothing before us casting doubt on the correctness of the factual basis upon which the application is founded. Sequentially, there is merit in the application, but not for the length of the extension sought. As the Appeals Chamber observed in “Reasons for the Appeals Chamber’s Decision to Extend Time Limits for Defence Documents issued on 3 April 2007”⁷, “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.”⁸ Sequentially, any departure from the time limits set by the Rules or Regulations of the Court must not derail the proceedings from their ordained course, requiring that they be conducted and concluded within a reasonable time.

Therefore, the Appeals Chamber did not extend the time for the submission of the response of the applicant to the date sought, limiting the extension to 3rd July 2008.

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

⁵ *Ibid*, para. 7.

⁶ *Prosecutor v. Lubanga Dyilo* “Decision on the application by Counsel for Mr. Thomas Lubanga Dyilo to extend the time limit for the filing of the response to the Prosecutor’s document in support of the appeal” 11 July 2006 (ICC-01/04-01/06-190).

⁷ *Prosecutor v. Lubanga Dyilo* “Reasons for the Appeals Chamber’s Decision to Extend Time Limits for Defence Documents issued on 3 April 2007” 20 April 2007 (ICC-01/04-01/06-871).

⁸ *Ibid.*, para 4.





Judge Georghios M. Pikis
Presiding Judge

Dated this 27th day of June 2008

At The Hague, The Netherlands