

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/05-01/08**
Date: **21 November 2008**

PRE-TRIAL CHAMBER III

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul
Judge Mauro Politi

***SITUATION IN THE CENTRAL AFRICAN REPUBLIC
THE CASE OF
THE PROSECUTOR
V. JEAN-PIERRE BEMBA GOMBO***

Public Document

Decision on the Request for Withdrawal of a Counsel

Decision to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Fatou Bensouda, Deputy Prosecutor
Petra Kneuer, Senior Trial Lawyer

Legal Representatives of the Victims

Counsel for the Defence for

Nkwebe Liriss
Tjarda E. Van der Spoel
Aimé Kilolo-Musamba
Karim Asad Ahmad Khan

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar
Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. **Pre-Trial Chamber III** (the “Chamber”) of the International Criminal Court (the “Court”) is seized with a “Request for Withdrawal”¹ from Mr Tjarda Eduard Van der Spoel (“Mr Van der Spoel”), one of the counsels of Mr Jean-Pierre Bemba Gombo (“Mr Jean-Pierre Bemba”).

2. The Chamber recalls that on 4 July 2008 Mr Van der Spoel as well as Mr Aimé Kilolo-Musamba accepted their assignments as duty counsels to represent Mr Jean-Pierre Bemba during his initial appearance.² The assignment of both counsels was extended for one month beginning on 5 July 2008³. On 8 August 2008 the two counsels accepted to represent Mr Jean-Pierre Bemba as his “associate counsels”⁴.

3. On 30 July 2008 Mr Jean-Pierre Bemba appointed Mr Nkwebe Liriss as his principal counsel⁵ who accepted to represent Mr Jean-Pierre Bemba on a *pro bono* basis.⁶

4. On 7 October 2008 Mr Van der Spoel notified the Registry that he had been officially appointed as a judge at the Criminal Appeals Court of The Hague starting on 1 December 2008, and thus requested to be removed from the ICC Defence Counsel list.⁷

5. On 17 November 2008 Mr Van der Spoel sought “leave to withdraw as temporary associate defence counsel from the Bemba case”.⁸

¹ ICC-01/05-01/08-258.

² ICC-01/05-01/08-36.

³ ICC-01/05-01/08-43-Anx1. concerning the assignment of Mr Van der Spoel and ICC-01/05-01/08-43-Anx2. concerning the assignment of Mr Aimé Kilolo-Musamba.

⁴ ICC-01/05-01/08-67-Anx1. concerning the assignment of Mr Van der Spoel and ICC-01/05-01/08-67-Anx2 concerning the assignment of Mr Aimé Kilolo-Musamba.

⁵ ICC-01/05-01/08-54-Anx1.

⁶ ICC-01/05-01/08-54-Anx2.

⁷ ICC-01/05-01/08-258, para. 3.

⁸ ICC-01/05-01/08-258, para. 7.

6. On 18 November 2008 the Registry transmitted to the Chamber a letter from Mr Jean-Pierre Bemba dated 11 November 2008 appointing Mr Karim Asad Ahmad Khan as his “co-lead counsel until the end of the confirmation of charges hearing”,⁹ who, following this appointment, has agreed on 13 November 2008 to represent Mr Jean-Pierre Bemba as “counsel in proceedings before the International Criminal Court”¹⁰. On 18 November 2008, Mr Karim Asad Ahmad Khan gave his solemn undertaking before the Court.¹¹ The Registry thus stated in its filing to the Chamber that “Mssrs. Khan and Richard Liriss Nkwebe will both be acting as counsel of record”.¹²

7. The Chamber notes article 67 of the Rome Statute (the “Statute”), rules 8 and 22(3) of the Rules of Procedure and Evidence (the “Rules”), regulation 78 of the Regulations of the Court (the “Regulations”) and articles 8, 15(2), 17(2), 18(2) and 18(5) of the Code of Professional Conduct for counsel (the “Code of Conduct”).

8. The Chamber notes that four counsels for the Defence are currently representing Mr Jean-Pierre Bemba in the proceedings, namely Mr Nkwebe Liriss as principal counsel, Mr Karim Asad Ahmad Khan as “co-lead counsel”, Mr Van der Spoel and Mr Aimé Kilolo-Musamba as “associate counsels” (the “Counsels for the Defence”).

9. The Chamber reminds the Registry and Counsels for the Defence that terms such as “co-lead counsel”, “associate counsel”, “temporary associate counsel” and “counsel of record” do not exist in the Statute, the Rules, the Regulations and the Code of Conduct.

⁹ ICC-01/05-01/08-261-Anx1.

¹⁰ ICC-01/05-01/08-261-Anx2.

¹¹ ICC-01/05-01/08-261-Anx3.

¹² ICC-01/05-01/08-261.

10. The Chamber considers that the reason for withdrawal put forward by Mr Van der Spoel, specifically his appointment as a judge at the Criminal Appeals Court of The Hague effective as of 1 December 2008, constitutes good cause to grant Mr Van der Spoel, pursuant to regulation 78 of the Regulations, leave to withdraw from the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*.

11. The Chamber is of the view that the said withdrawal, in agreement with Mr Jean-Pierre Bemba¹³, does not prejudice his Defence since, despite the withdrawal, Mr Jean-Pierre Bemba is still represented by three counsels, namely Mr Nkwebe Liriss as principal counsel, and Mr Karim Asad Ahmad Khan and Mr Kilolo-Musamba as counsels for the Defence. In these circumstances, the Chamber considers that the withdrawal of Mr Van der Spoel has no impact on the course of proceedings which will not be delayed and thus consents to it.

12. Furthermore, the Chamber notes that Mr Van der Spoel, acting as counsel for the Defence as defined in rule 22(3) of the Rules is, in the performance of his duties, subject to the Statute, the Rules, the Regulations and the Code of Conduct. The Chamber emphasizes that this applies also after his withdrawal with regard to his obligation of professional secrecy and confidentiality pursuant to articles 8, 17(2) and 18(2) of the Code of Conduct.

13. The Chamber also underlines the importance of Mr Van der Spoel's duty to promptly convey in accordance with articles 15(2) and 18(5) of the Code of Conduct, to the Counsels for the Defence, any communication that he received relating to the representation of Mr Jean-Pierre Bemba as well as the entire case file, including any material or document relating to it. The handover of all documents concerned is

¹³ ICC-01/05-01/08-258, para. 4.

without prejudice to Mr Van der Spoel's duties which subsist after the end of his representation.


FOR THESE REASONS, THE CHAMBER

a) grants leave to Mr Tjarda Van der Spoel, Counsel for the Defence, to withdraw from the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* ;

b) orders Mr Tjarda Van der Spoel to promptly convey before 1 December 2008 to the counsels for the Defence any communication that he received relating to the representation of Jean-Pierre Bemba Gombo as well as the entire case file, including any material or document relating to it ;

c) orders Mr Tjarda Van der Spoel to comply after his withdrawal with any provisions of the Statute, the Rules as well as the Code of Conduct relating to confidentiality.


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



Judge Ekaterina Trendafilova
Presiding Judge



Judge Hans-Peter Kaul



Judge Mauro Politi

Dated this Friday, 21 November 2008

At The Hague, The Netherlands