

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 20 October 2009

TRIAL CHAMBER III

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge Joyce Aluoch

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

Public

Summary of the Decision on legal assistance for the accused

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

The Office of the Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor

Ms Petra Kneuer, Senior Trial Lawyer

Legal Representatives of the Victims

Ms Marie-Edith Douzima-Lawson

Ms Paolina Massidda

Counsel for the Defence

Mr Nkwebe Liriss

Mr Aimé Kilolo-Musamba

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

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber III (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court” or “ICC”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* has delivered a Decision (“the main Decision”) on legal assistance for the accused, of which the text below is a slightly amended extract.

I. Summary

1. The accused is clearly a man of considerable means, in the sense that he appears to ‘own’, or to have a proprietary interest in, various kinds of property (*e.g.* buildings, cars, companies), and there are bank accounts held in his sole name, in a number of different countries.
2. A detailed analysis of his known wealth is not the proper subject-matter of the main Decision; although important elements of it are set out therein, from a practical point of view (at this stage in the trial) there is a single, albeit critical, question that this Court must address – whether in the immediate future the accused will have sufficient means to pay for his legal assistance in order to prepare his defence to the charges confirmed by the Pre-Trial Chamber.
3. Notwithstanding Mr Bemba’s evident resources, there are serious issues over defence funding that have been considered by the Pre-Trial Chamber, and which were brought to the attention of the trial judges in advance of, and during, the first trial status conference. This history is set out and analysed *in extenso* hereafter, but significantly the members of the accused’s defence team have not been paid since March 2009.

4. The accused has a statutory entitlement to adequate time and facilities for the preparation of his defence and to be tried without undue delay (Article 67 of the Rome Statute), and the Trial Chamber has unhesitatingly concluded that given the resources currently available to Mr Bemba, he is seriously at risk of being denied the opportunity properly to prepare for a timely trial before the ICC. In the Chamber's view, the combined effect of the current lack of access on the part of the Court and the accused to the assets that have been traced and identified, together with the refusal by the Registrar to provide temporary financial assistance, even on a *pro tem* basis (with a mechanism for repayment to the Court once the accused's funds are released), have placed Mr Bemba in this regrettable position.

5. For the reasons rehearsed extensively in the main Decision, the Trial Chamber now orders an immediate resolution of the current funding impasse so as to enable this case to proceed in a timely and fair manner. Once certain safeguards are in place (as set out at the end of this extract), the Registrar is to provide funding in the sum of €30,150 a month (as previously identified by her as reasonable for legal assistance); this sum is to be paid retrospectively to March 2009, and ongoing until there is a material change in circumstances (*e.g.* funds from elsewhere become available, the trial ends or a fresh application for funding is decided under Regulation 85 of the Regulations of the Court).

6. The Chamber is not prepared to condone the possibility of a further period (of more than *de minimis* length) during which defence funding is unavailable and uncertain.

7. The Chamber is well aware that the Court generally, and the Registrar individually, have an onerous responsibility not to waste the scarce resources of this institution. Further, there is the risk of an unfortunate public perception if the Court is seen to fund an apparently wealthy accused. For those reasons, the Chamber emphasizes that it has every expectation that any monies advanced to the accused at this stage will be reimbursed to the Court if the Registrar fully discharges her obligations, with the Chamber's assistance. The Chamber wholly supports the pre-conditions for legal assistance suggested by the Office of the Prosecutor ("prosecution") in its filing of 9 October 2009 (see paragraph 84 of the main Decision), and the Chamber will issue a second Decision in the near future (following an *ex parte* status conference) as to the steps that it considers should be taken immediately to ensure that the available sources of funding are secured. These are extremely important issues that should be pursued resolutely and resolved speedily.

II. Orders

8. For these reasons, **the Registrar is ordered immediately:**
- i) To secure an up-to-date sworn declaration from the accused setting out the current position as regards the means over which he has direct or indirect enjoyment or the power freely to dispose, together with all the relevant information (printed or otherwise) available to him on this issue;

- ii) To secure a declaration from the accused on his patrimony, including any inheritance from his father;
- iii) To secure a legally binding power of attorney and a power of sale in favour of the Registrar over the villa in Portugal (in accordance with the applicable national law), which is to be sold, *inter alia*, to refund the accused's legal assistance (to the extent that this is funded by the Court);¹
- iv) To secure an appropriate, legally enforceable document, signed by the accused enabling the Court to be repaid out of the funds of the accused, as and when they become available; **and only when i), ii), iii) and iv) above have been complied with**
- v) To provide funding in the sum of €30,150 a month (this sum is to be paid retrospectively to March 2009, and ongoing until there is a material change in circumstances).

If these orders have not been implemented in their entirety by Monday 1 November 2009 at 16.00, the Chamber is to be provided with written notification, together with reasons.

The Chamber will fix a trial date once it has been notified that this Decision has been implemented.

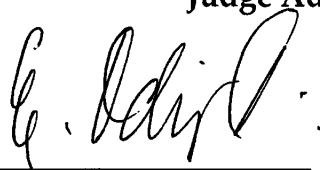
¹ If there are other identifiable items of property which should sensibly be included in this provision, the Registrar is to make an immediate application to the Chamber to include them.

The Chamber will publish a public version of the full Decision once the Prosecutor and the Registrar have filed their submissions on suggested necessary redactions, by 16.00 on 3 November 2009.

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge Joyce Aluoch

Dated this 20 October 2009

At The Hague, The Netherlands