

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/05-01/08 OA 3

Date: 9 July 2010

THE APPEALS CHAMBER

Before:
Judge Anita Ušacka, Presiding Judge
Judge Sang-Hyun Song
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Daniel David Ntanda Nsereko

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO

Public document

**Decision on the Request of Mr Bemba to Give Suspensive Effect to the Appeal
Against the “Decision on the Admissibility and Abuse of Process Challenges”**



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
Mr Fabricio Guariglia

Counsel for the Defence
Mr Nkwebe Liriss
Mr Aimé Kilolo Musamba

Legal Representatives of Victims
Ms Marie-Edith Douzima Lawson

The Office of Public Counsel for Victims
Ms Paolina Massidda

States Representatives
The Government of the Central African
Republic

REGISTRY

Registrar
Ms Silvana Arbia



The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III entitled “Decision on the Admissibility and Abuse of Process Challenges” of 24 June 2010 (ICC-01/05-01/08-802),

Having before it the “Demande de l’effet suspensif relatif à l’Acte d’Appel de la Défense contre la décision de la Chambre de Première Instance III du 24 Juin 2010 intitulée ‘*Decision on the Admissibility and Abuse of Process Challenge*’” of 5 July 2010 (ICC-01/05-01/08-809),

After deliberation,

Renders unanimously the following

DECISION

The request for suspensive effect is rejected.

REASONS

I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 24 June 2010, Trial Chamber III rendered the “Decision on the Admissibility and Abuse of Process Challenges”¹ (hereinafter: “Impugned Decision”), determining that the case against Mr Bemba before this Court is admissible.²
2. On 28 June 2010, Mr Bemba filed the “Defence Notice of Appeal Against the Decision of Trial Chamber III of 24 June 2010 entitled *Decision on the Admissibility and Abuse of Process Challenge*”³ (hereinafter: “Appeal”).
3. On 5 July 2010, Mr Bemba filed the “Demande de l’effet suspensif relatif à l’Acte d’Appel de la Défense contre la décision de la Chambre de Première Instance

¹ ICC-01/05-01/08-802.

² Impugned Decision, para. 261.

³ ICC-01/05-01/08-804-Corr2-tENG; Mr Bemba filed two corrigenda on 28 and 29 June 2010 respectively (ICC-01/05-01/08-Corr and ICC-01/05-01/08-Corr2-tENG); in the present decision, references are to the second corrigendum.



III du 24 Juin 2010 intitulée ‘*Decision on the Admissibility and Abuse of Process Challenge*’⁴ (hereinafter: “Request for Suspensive Effect”). Mr Bemba requests the Appeals Chamber to suspend the proceedings before Trial Chamber III until the Appeals Chamber has rendered its judgment on the present appeal.⁵ In support of his request, Mr Bemba recalls that the Presiding Judge of Trial Chamber III stated, during a status conference held on 8 March 2010, that it is in the interests of justice that the question of the admissibility of the case be resolved before the commencement of the trial.⁶ Mr Bemba recalls furthermore that during that status conference, the Office of the Prosecutor stated that the admissibility challenge may cause further delay and that to start the trial may not be the “most expeditious way to proceed with that matter”.⁷ Mr Bemba submits that these considerations also apply to the present appeal and that it would be an inadequate use of the Court’s resources to start with the presentation of evidence, which will have to be discontinued if the present appeal is successful.⁸

4. On 7 July 2010, Trial Chamber III issued the “Order concerning the postponement of the trial”⁹ (hereinafter: “Order Postponing the Trial”), postponing the hearing of the substantive case, which was scheduled to commence on 14 July 2010.¹⁰ The Trial Chamber found that the “consequence of the application to the Appeals Chamber for suspensive effect is that the trial, as a matter of principle, should not commence, at least until the application for suspension has been resolved” and that “[i]t would be inappropriate [...] to commence a trial when there is an outstanding issue [...] as to whether the proceedings (seemingly in their entirety) should be suspended”.¹¹ The Trial Chamber scheduled a status conference for 30 August 2010 *inter alia* to hear submissions on a new trial date.¹²

5. On 8 July 2010, the Prosecutor filed the “Prosecution’s response to Defence request for suspensive effect of the Defence appeal against the Decision on

⁴ ICC-01/05-01/08-809.

⁵ Request for Suspensive Effect, para. 8.

⁶ Request for Suspensive Effect, para. 4.

⁷ Request for Suspensive Effect, para. 5.

⁸ Request for Suspensive Effect, para. 6.

⁹ ICC-01/05-01/08-811.

¹⁰ See Trial Chamber III, “Order postponing the commencement of the trial”, 25 June 2010, ICC-01/05-01/08-803, para. 3.

¹¹ Order Postponing the Trial, para. 5.

¹² Order Postponing the Trial, para. 6.

Admissibility and Abuse of Process”¹³ (hereinafter: “Response to Request for Suspensive Effect”). The Prosecutor submits that Mr Bemba has failed to demonstrate that suspensive effect should be granted to avoid irreparable damage to the appellant.¹⁴ In the Prosecutor’s view, the fact that Trial Chamber III considered it undesirable to commence the trial before it had decided on the admissibility challenge brought by Mr Bemba does not mean that it is also undesirable that the trial commences while an appeal is pending.¹⁵ The Prosecutor underlines that the Court’s legal framework does not require the admissibility of a case to be decided before the trial commences.¹⁶ Furthermore, the Prosecutor argues that the Appeals Chamber cannot grant the remedy sought by Mr Bemba, namely a stay of the proceedings before the Trial Chamber.¹⁷ In his submission, the result of ordering suspensive effect is that the decision under appeal cannot be implemented, but suspensive effect “does not extend to the suspension of other decisions or proceedings before the first instance Chamber, unless this is an unavoidable consequence of the suspending the implementation of the decision under appeal”.¹⁸ If the Appeals Chamber were to grant suspensive effect, this would “only mean that the Trial Chamber must consider the issue of admissibility to remain undetermined”.¹⁹ The Prosecutor submits that it is for the Trial Chamber to decide whether to commence the trial in such circumstances.²⁰

II. MERITS

6. The Appeals Chamber previously explained:

Article 82 (3) of the Statute provides that an appeal shall not have suspensive effect “unless the Appeals Chamber so orders, upon request, in accordance with the Rules of Procedure and Evidence.” Rule 156 (5) of the Rules of Procedure and Evidence provides that “[w]hen filing an appeal, the party appealing may request that the appeal have suspensive effect in accordance with article 82, paragraph 3.” The decision on such a request is within the discretion of the Appeals Chamber. Therefore, when faced with a request for suspensive effect, the Appeals Chamber will consider the specific circumstances of the case and

¹³ ICC-01/05-01/08-814.

¹⁴ Response to Request for Suspensive Effect, para. 4.

¹⁵ Response to Request for Suspensive Effect, para. 4.

¹⁶ Response to Request for Suspensive Effect, para. 5.

¹⁷ Response to Request for Suspensive Effect, para. 7.

¹⁸ Response to Request for Suspensive Effect, para. 7.

¹⁹ Response to Request for Suspensive Effect, para. 8.

²⁰ Response to Request for Suspensive Effect, para. 8.

the factors it considers relevant for the exercise of its discretion under the circumstances.²¹

7. In the present case and for the following reasons, the Appeals Chamber rejects the Request for Suspensive Effect.

8. The Appeals Chamber notes that rule 156 (5) of the Rules of Procedure and Evidence provides that “[w]hen filing the appeal, the party appealing may request that the appeal have suspensive effect in accordance with article 82, paragraph 3” (emphasis added). The present appeal is brought under article 82 (1) (a) of the Statute against a decision on admissibility. For such appeals, rule 154 (1) of the Rules of Procedure and Evidence provides that the appellant must file an appeal within five days of notification of the decision appealed.²² Thus, for appeals against a decision on admissibility, the “appeal” in terms of rule 156 (5) is the document filed pursuant to rule 154 of the Rules of Procedure and Evidence. Any request for suspensive effect must be made in the appeal, which will generally be the first filing of the appellant before the Appeals Chamber. This requirement is logical because of the urgent nature of requests for suspensive effect, and because of the need for clarity as early as possible as to whether a request for suspensive effect is made.

9. This application of rule 156 (5) of the Rules of Procedure and Evidence was previously established in the Decision in *Bemba* OA 2 on a request for suspensive effect by the Prosecutor. In that decision, the Appeals Chamber explained that requesting suspensive effect in the appeal filed under rule 154 of the Rules of Procedure and Evidence is a basic requirement under rule 156 (5).²³ Although the Decision in *Bemba* OA 2 concerned an appeal under article 82 (1) (b) of the Statute against a decision granting release of the person being investigated or prosecuted, whereas the present appeal is brought under article 82 (1) (a) of the Statute against a

²¹ *Prosecutor v. Jean-Pierre Bemba Gombo*, “Decision on the Request of the Prosecutor for Suspensive Effect”, 3 September 2009, ICC-01/05-01/08-499 (OA 2) (hereinafter: “Decision in *Bemba* OA 2”), para. 11 (references omitted); confirming an approach developed in *Prosecutor v. Thomas Lubanga Dyilo*, “Decision on the request of Mr. Thomas Lubanga Dyilo for suspensive effect of his appeal against the oral decision of Trial Chamber I of 18 January 2008”, 22 April 2008, ICC-01/04-01/06-1290 (OA 11), para. 7 (hereinafter: “Decision in *Lubanga* OA 11”).

²² Regulation 64 (2) of the Regulations of the Court provides for a document in support of the appeal, to be filed after the appeal.

²³ Decision in *Bemba* OA 2, para. 10.

decision on admissibility, both types of appeals require the appellant to file an appeal within time limits stipulated in rule 154 of the Rules of Procedure and Evidence.

10. Turning to the circumstances of the present appeal, the Appeals Chamber firstly notes that Mr Bemba did not provide any explanation as to why he did not request suspensive effect when filing the Appeal, but instead made the request in a separate document filed seven days later. Secondly, the Appeals Chamber observes that the Request for Suspensive Effect was filed after the expiry of the time limit for the filing of the appeal under rule 154 (1) of the Rules of Procedure and Evidence.²⁴ Again, Mr Bemba did not provide any explanation as to why he did not file the Request for Suspensive Effect within the time limit. This merits the rejection of the Request for Suspensive Effect.

11. In addition, the Appeals Chamber considers that granting suspensive effect is not necessary in the circumstances of the case. In past decisions, the Appeals Chamber, when deciding on requests for suspensive effect, has considered whether the implementation of the decision under appeal (i) “would create an irreversible situation that could not be corrected, even if the Appeals Chamber eventually were to find in favour of the appellant”,²⁵ (ii) would lead to consequences that “would be very difficult to correct and may be irreversible”,²⁶ or (iii) “could potentially defeat the purpose of the appeal”.²⁷ In the present appeal, Mr Bemba submits that commencing the hearing of evidence would be an inadequate use of the Court’s resources, but he does not put forward any arguments that support the conclusion that the implementation of the Impugned Decision could lead to an irreversible situation or could potentially defeat the purpose of the appeal. As stated above, in the Impugned Decision the Trial Chamber decided that the case against Mr Bemba is admissible. Even if the trial proceedings continue, this would neither lead to an irreversible situation nor defeat the purpose of the appeal, since the Appeals Chamber is able to reverse, confirm or amend the Impugned Decision irrespective of whether the

²⁴ The time limit expired on 30 June 2010.

²⁵ Decision in *Lubanga* OA 11, para. 8.

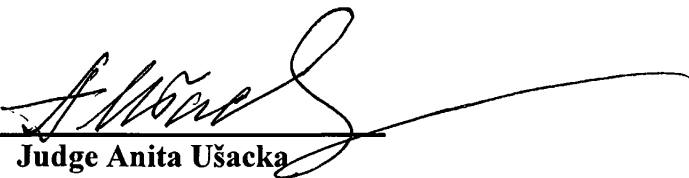
²⁶ *Prosecutor v. Thomas Lubanga Dyilo*, “Decision on the Requests of the Prosecutor and the Defence for suspensive effect of the appeals against Trial Chamber I’s Decision on Victim’s Participation of 18 January 2008”, 22 May 2008, ICC-01/04-01/06-1347 (OA 9, OA 10), para. 23. See also paras 19-20.

²⁷ *Prosecutor v. Thomas Lubanga Dyilo*, “Reasons for the decision on the request of the Prosecutor for suspensive effect of his appeal against the ‘Decision on the release of Thomas Lubanga Dyilo’”, 22 July 2008, ICC-01/04-01/06-1444 (OA 12), para. 10. See also Decision in *Bemba* OA 2, para. 13.

proceedings before Trial Chamber III continue. In addition, if the Appeals Chamber eventually decides to grant Mr Bemba's appeal, any ongoing proceedings could be discontinued at that time.

12. In light of the above, the Appeals Chamber determines that the request for suspensive effect is rejected.

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



Judge Anita Ušacka
Presiding Judge

Dated this 9th day of July 2010

At The Hague, The Netherlands