

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/05-01/08 OA 7

Date: 14 July 2011

THE APPEALS CHAMBER

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF THE PROSECUTOR

v.

JEAN-PIERRE BEMBA GOMBO

Confidential

Decision on the Participation of Victims in the Appeal against the "Decision on Applications for Provisional Release" of Trial Chamber III

AK

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
Mr Assingambi Zarambaud

Registrar

Ms Silvana Arbia

AK

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 Applications for Provisional Release" of 27 June 2011 (ICC-01/05-01/08-1565-Conf),

Having before it the "Réponse de la Représentante légale de victimes à 'Order on applications for victim participation'" of 7 July 2011 (ICC-01/05-01/08-1588-Conf), and the "Demande du Représentant légal de victimes, Maitre Zarambaud Assingambi à participer aux procédures d'appel" of 7 July 2011 (ICC-01/05-01/08-1589-Conf),

After deliberation,

By majority, Judge Song partly dissenting,

Renders the following

DECISION

- (i) The victims represented by Mr Assingambi Zarambaud, who have applied to participate in the present appeal, are granted the right to participate for the purpose of presenting their views and concerns with respect to their personal interests in the issues raised on appeal. They may file their submissions by 16h00 on Wednesday, 20 July 2011.
- (ii) Mr Bemba and the Prosecutor may file their responses to the submissions presented by the aforesaid victims by 16h00 on Tuesday, 26 July 2011.
- (iii) The application for participation by the victims represented by Ms Marie-Edith Douzima-Lawson is rejected.

REASONS

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 27 June 2011, Trial Chamber III (hereinafter: "Trial Chamber") issued its "Decision on Applications for Provisional Release"¹ (hereinafter: "Impugned Decision") in which the Trial Chamber rejected applications for interim release filed by Mr Bemba since "the conditions for the accused's detention under Article 58(l)(b) of the Statute continue to be met and that there has not been an inexcusable delay by the prosecution resulting in the accused being detained for an unreasonable period".²
2. On 29 June 2011, Mr Bemba filed an appeal against the Impugned Decision³ and on 1 July 2011 he filed his document in support of the appeal.⁴
3. On 4 July 2011, the Appeals Chamber ordered that victims wishing to participate in the present appeal may file their applications by 7 July 2011, and that Mr Bemba and the Prosecutor may file their responses by 11 July 2011.⁵
4. On 7 July 2011, Mr Assingambi Zarambaud filed an application to participate in the present appeal as Legal Representative of Victims (hereinafter: "First Application")⁶ listed in Confidential Annex 1 to his application (hereinafter: the "Victims"). In the First Application, the Victims submit that their interests are affected since Mr Bemba's release may threaten the safety of those Victims who have also appeared as witnesses against Mr Bemba and therefore have a "dual status"; they also aver that Mr Bemba may obstruct or endanger investigations or proceedings, and may pose a flight risk.⁷
5. On 7 July 2011, Ms Marie-Edith Douzima-Lawson also filed an application to participate in the present appeal as Legal Representative of Victims⁸ (hereinafter:

¹ ICC-01/05-01/08-1565-Conf.

² Impugned Decision, para. 73.

³ "Notification d'Appel de la Défense contre la décision de la Chambre de Première Instance III du 27 Juin 2011 intitulée 'Decision on Applications for Provisional Release'", ICC-01/05-01/08-1573-Conf.

⁴ "Document in support of Defence Appeal against Trial Chamber III's decision on Applications for Provisional Release, dated 27 June 2011", ICC-01/05-01/08-1586-Conf.

⁵ "Order on applications for victim participation", ICC-01/05-01/08-1587-Conf.

⁶ "Demande du Représentant légal de victimes, Maître Zarambaud Assingambi à participer aux procédures d'appel", ICC-01/05-01/08-1589-Conf.

⁷ First Application, paras 7-13.

⁸ "Réponse de la Représentante légale de victimes à 'Order on applications for victim participation'" ICC-01/05-01/08-1588-Conf.

“Second Application”), stating that “[l]es intérêts personnels des victimes que je représente sont étroitement concernés par cette procédure sur plusieurs plans que je me propose de développer”.⁹ The Second Application does not list the victims whom Ms Douzima-Lawson is representing.

6. On 11 July 2011, the Prosecutor filed his consolidated response to the First and Second Applications.¹⁰ The Prosecutor raised no objections to the participation of the victims, submitting that (i) the Trial Chamber had already recognised the status of victims; (ii) Mr Bemba’s detention “plainly affects the personal interests of the victims”; (iii) victims participation is appropriate for the issue on appeal; and (iv) Mr Bemba’s right to a fair and impartial trial would not be prejudiced since the Prosecutor and Mr Bemba have the opportunity to respond to the views and concerns presented by victims in this appeal.¹¹

II. DETERMINATION BY THE APPEALS CHAMBER

7. The Appeals Chamber has consistently held that with respect to victims’ participation in appeals brought under article 82 (1) (b) of the Statute, the following four cumulative criteria enumerated in article 68 (3) of the Statute must be fulfilled: (i) the individuals seeking participation must be victims in the case; (ii) their personal interests must be affected by the issues on appeal; (iii) their participation must be at an appropriate stage of the proceedings; and (iv) the manner of participation should neither cause prejudice to nor be inconsistent with the rights of the accused and a fair and impartial trial.¹²

⁹ Second Application, para. 9.

¹⁰ “Consolidated Prosecution’s response to requests by victims to participate in appeal against the ‘Decision on Applications for Provisional Release’ (ICC-01/05-01/08-1565-Conf)”, ICC-01/05-01/08-1591-Conf.

¹¹ ICC-01/05-01/08-1591-Conf, paras 9-13.

¹² “Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled ‘Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo’”, 13 February 2007, ICC-01/04-01/06-824 (OA 7), paras 44-45; “Reasons for the ‘Decision on the Participation of Victims in the Appeal against the ‘Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa’””, 20 October 2009, ICC-01/05-01/08-566 (OA 2), para. 15.

A. First Application

8. In respect of the First Application, all four criteria for participation of the Victims are fulfilled. As to the first criterion, the Appeals Chamber notes that the Trial Chamber has recognised the Victims as victims in the case against Mr Bemba.¹³

9. Second, regarding the Victims' personal interests, the Appeals Chamber recalls that "any determination [...] of whether the personal interests of victims are affected in relation to a particular appeal will require careful consideration on a case-by-case basis".¹⁴ Furthermore, the Appeals Chamber has emphasised that "[i]n seeking to demonstrate that their personal interests are affected, victims should generally ensure, *inter alia*, that express reference is made to the specific facts behind their individual applications, and the precise manner in which those facts are said to fall within the issue under consideration on appeal."¹⁵

10. The Appeals Chamber recalls that it has previously held that where the underlying issue on appeal was whether the accused would stand trial, this issue affects a victim's personal interest in presenting his or her views at trial.¹⁶ Since the present appeal concerns the risk of Mr Bemba not appearing for trial, the Victims' personal interests are affected. Moreover, the security of those Victims with "dual status" may be affected by the outcome of the present appeal.

11. Third, the Appeals Chamber considers that the present appeal is at a stage of the proceedings in which the participation of the Victims is appropriate.

¹³ Victim status was granted in the following decisions: "Fourth Decision on Victims' Participation", 15 December 2008, ICC-01/05-01/08-320, pages 36-37; "Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants", ICC-01/05-01/08-699, 22 February 2010, para 23; "Corrigendum to the Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings", ICC-01/05-01/08-807-Corr, 12 July 2010.

¹⁴ *Prosecutor v. Thomas Lubanga Dyilo*, "Decision of the Appeals Chamber on the Joint Application of Victims a/0001/06 to a/0003/06 and a/0105/06 concerning the 'Directions and Decision of the Appeals Chamber' of 2 February 2007", 13 June 2007, ICC-01/04-01/06-925 (OA 8), para. 28.

¹⁵ *Prosecutor v. Joseph Kony and others*, "Decision on the Participation of Victims in the Appeal", 27 October 2008, ICC-02/04-01/05-324 (OA 2), para. 13; *Situation in Uganda*, "Decision on the Participation of Victims in the Appeal", 27 October 2008, ICC-02/04-164 (OA), para. 11; *Prosecutor v. Jean-Pierre Bemba Gombo*, "Reasons for the 'Decision on the Participation of Victims in the Appeal against the 'Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa'", 20 October 2009, ICC-01/05-01/08-566 (OA 2), para. 15.

¹⁶ ICC-01/05-01/08-566 (OA 2), para. 17.

12. As to the manner of participation, the Appeals Chamber considers that the Victims in the present appeal will be limited to the written presentation of their views and concerns with respect to their personal interests relating to the issues raised in this appeal. Mr Bemba and the Prosecutor will be permitted to reply to the Victims' views and concerns, in accordance with rule 91 (2) of the Rules of Procedure and Evidence. In the view of the Appeals Chamber, this manner of participation is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. The fourth criterion for victim participation under article 68 (3) of the Statute is therefore satisfied.


B. Second Application

13. The Appeals Chamber recalls that it has previously held in this case that the "facts or issues underlying one appeal on interim release may be different from another and thus it is necessary for victims, in future applications, to demonstrate with sufficient particularity and clarity the link between the specific issues on appeal and the effect of such issues on their personal interests".¹⁷

14. The Appeals Chamber notes that the Second Application does not list the victims who are represented by Ms Douzima-Lawson. Nor does the Second Application explain in any detail why the appeal affects the personal interests of the victims represented by her. In these circumstances, the Second Application must be rejected.

Judge Song's partly dissenting opinion will follow in due course.

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



Judge Erkki Kourula
Presiding Judge

¹⁷ "Decision on the Participation of Victims in the Appeal against the 'Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence' of Trial Chamber III", 18 August 2010, ICC-01/05-01/08-857 (OA4), para. 10.

Dated this 14th day of July, 2011

At The Hague, The Netherlands

No: ICC-01/05-01/08 OA 7

8/8