

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/05-01/08 OA 9

Date of the original: 19 October 2011

Date of the redacted version: 15 December 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

Public Redacted Version

Decision on “Application of Legal Representative of Victims Mr Zarambaud Assingambi for leave to participate in the appeals proceedings following the Defence appeal of 21 September 2011”

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 the Victims
Mr Assingambi Zarambaud

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 accused’s application for provisional release in light of the Appeals Chamber’s judgment of 19 August 2011” of 26 September 2011 (ICC-01/05-01/08-1789-Conf),

Having before it the “Application of Legal Representative of Victims Mr Assingambi Zarambaud for leave to participate in the appeals proceedings following the Defence appeal of 27 September 2011” of 4 October 2011 (ICC-01/05-01/08-1817-Conf-tENG),

After deliberation,

Unanimously,

Renders the following

DECISION

- (i) The victims represented by Mr Assingambi Zarambaud, who have applied to participate in the present appeal, except those referred to as “a/??32/10” and “a/7/14 05”, 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 Monday, 24 October 2011.
- (ii) Mr Bemba and the Prosecutor may file their responses to the submissions presented by the aforesaid victims by 16h00 on Wednesday, 26 October 2011.

REASONS

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 27 June 2011, Trial Chamber III (hereinafter: “Trial Chamber”) rendered its “Decision on Applications for Provisional Release”¹ in which the Trial Chamber rejected Mr Bemba’s applications for interim release. On 29 June 2011, Mr Bemba

¹ ICC-01/05-01/08-1565-Conf.

filed an appeal against that decision.² On 7 July 2011, both Mr Assingambi Zarambaud³ and Ms Marie-Edith Douzima-Lawson,⁴ on behalf of the victims they represent, filed their respective applications to participate in that appeal. On 14 July 2011, the Appeals Chamber granted the victims represented by Mr Assingambi Zarambaud the right to participate in the appeal.⁵

2. On 19 August 2011, in its “Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 27 June 2011 entitled ‘Decision on Applications for Provisional Release’”⁶ (hereinafter: “*Bemba OA7 Judgment*”), the Appeals Chamber directed Trial Chamber III to reconsider Mr Bemba’s request for interim release to [REDACTED].

3. On 26 September 2011, Trial Chamber III rendered the “Decision on the accused’s application for provisional release in light of the Appeals Chamber’s judgment of 19 August 2011”, rejecting Mr Jean-Pierre Bemba Gombo’s application for provisional release.⁷

4. On 27 September 2011, Mr Bemba filed the “Defence appeal against Trial Chamber III’s decision of 26 September 2011 entitled ‘*Decision on the accused’s application for provisional release in light of the Appeals Chamber’s judgment of 19 August 2011*’”.⁸

5. On 4 October 2011, Mr Assingambi Zarambaud filed the “Application of Legal Representative of Victims Mr Assingambi Zarambaud for leave to participate in the appeals proceedings following the Defence appeal of 27 September 2011”⁹

² “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 Provisionnal [sic] Release*’”, ICC-01/05-01/08-1573-Conf.

³ “Demande du Représentant légal de victimes, Maître Zarambaud Assingambi à participer aux procédures d’appel”, ICC-01/05-01/08-1589-Conf.

⁴ “Response of the Legal Representative of victims to the ‘Order on applications for victim participation’” ICC-01/05-01/08-1588-Conf-tENG.

⁵ “Decision on the Participation of Victims in the Appeal against the ‘Decision on Applications for Provisional Release’ of Trial Chamber III”, ICC-01/05-01/08-1597-Conf. This document was reclassified as public on 26 September 2011.

⁶ ICC-01/05-01/08-1626-Conf. A Public Redacted version was filed on 12 September 2011 as ICC-01/05-01/08-1626-Red.

⁷ ICC-01/05-01/08-1789-Conf. A public redacted version was filed on 27 September 2011 as ICC-01/05-01/08-1789-Red.

⁸ ICC-01/05-01/08-1793-Conf-tENG.

⁹ ICC-01/05-01/08-1817-Conf-tENG.

(hereinafter: the “Victims’ Application”), with a list of victims he is representing filed as Confidential Annex 1 (hereinafter: “Victims”).¹⁰

6. On 11 October 2011, the Appeals Chamber issued an “Order on the filing of a response to the application by victims for participation in the appeal against the ‘Decision on the accused’s application for provisional release in light of the Appeals Chamber’s judgment of 19 August 2011’ of Trial Chamber III”.¹¹ The Appeals Chamber ordered the Prosecutor and Mr Bemba to file responses to that request by 14 October 2011. The Appeals Chamber disregarded the observations of Mr Zarambaud,¹² which had been filed without the leave of the Appeals Chamber.

7. On 14 October 2011, the Prosecutor responded to the Victims’ Application, submitting that it should be granted.¹³ The Defence did not file any observations.

II. DETERMINATION BY THE APPEALS CHAMBER

8. 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.¹⁴

9. In respect of the Victims’ Application, all four criteria for victim participation are fulfilled. As to the first criterion, the Appeals Chamber notes that the Trial

¹⁰ ICC-01/05-01/08-1817-Conf-Anx1.

¹¹ ICC-01/05-01/08-1837-Conf.

¹² “Observations of Mr Zarambaud Assingambi, Legal Representative of Victims, on the Defence appeal brief dated 3 October 2011”, 6 October 2011, ICC-01/05-01/08-1832-Conf-tENG.

¹³ “Prosecution’s response to ‘Application of Legal Representative of Victims Mr Zarambaud Assingambi for leave to participate in the appeals proceedings following the Defence appeal of 27 September 2011’ (ICC-01/05-01/08-1817-Conf)”, ICC-01/05-01/08-1842-Conf.

¹⁴ *Prosecutor v. Thomas Lubanga Dyilo*, “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.

Chamber has granted victim status to the victims represented by Mr Assingambi Zarambaud,¹⁵ except for those referred to as “a/??32/10” and “a/ 7/14 05” in his annex,¹⁶ since those pseudonyms do not refer to any victim in that case. The Appeals Chamber notes that Mr Assingambi Zarambaud failed to identify in his application the decisions granting victim status to the Victims. The Appeals Chamber reiterates that it is the duty of a legal representative who applies for victims’ participation to refer specifically to the relevant decisions granting victim status to each of the victims he or she represents in his application for participation.¹⁷

10. 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”.¹⁸ 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.”¹⁹

¹⁵ Victim status for the victims represented by Mr Assingambi Zarambaud as listed in ICC-01/05-01/08-1817-Conf-Anx1 was granted in the following decisions: “Fourth Decision on Victims’ Participation”, dated 12 December 2008 and registered on 15 December 2008, ICC-01/05-01/08-320, pp. 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”, 22 February 2010, ICC-01/05-01/08-699, para 39; “Corrigendum to the Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings”, 12 July 2010, ICC-01/05-01/08-807-Corr; “Decision on 772 applications by victims to participate in the proceedings”, 18 November 2010, ICC-01/05-01/08-1017; “Decision on 653 applications by victims to participate in the proceedings”, 23 December 2010, ICC-01/05-01/08-1091; “Corrigendum to the Decision on 401 applications by victims to participate in the proceedings and setting a final deadline for the submission of new victims’ applications to the Registry”, 21 July 2011, ICC-01/05-01/08-1590-Corr.

¹⁶ ICC-01/05-01/08-1817-Conf-Anx1, p. 4 and 7.

¹⁷ See *Prosecutor v. Thomas Lubanga Dyilo*, “Order on the Filing of a Clarification to the ‘Demande de participation en appel contre la décision d’arrêt du procès pour abus de procédure, date du 08 juillet 2010 (ICC-01/04-01/06-2517-Conf) et contre la décision de mise en liberté de l’accusé, datée du 15 juillet 2010 (ICC-01/04-01/06-T-314)’”, 3 August 2010, ICC-01/04-01/06-2547 (OA 18); *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, “Decision on the Participation of Victims in the Appeals of Mr Katanga Against the ‘Decision on the Modalities of Victim Participation at Trial’”, 24 May 2010, ICC-01/04-01/07-2124 (OA 11), para. 6.

¹⁸ *Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, “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.

¹⁹ *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 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


11. The Appeals Chamber has previously held that where the underlying issue on appeal was whether the accused should be granted interim release, the issue affects a victim's personal interest.²⁰ Since the present appeal concerns the risk of Mr Bemba not appearing for trial and the security of some victims, their personal interests are affected.

12. 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, in particular, in light of the potential consequences of the present appeal.

13. 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 does not cause prejudice to, nor is it 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.

Judge Sang-Hyun Song appends a separate opinion in relation to this decision.

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



Judge Erkki Kourula
Presiding Judge

Dated this 15th day of December 2011

At The Hague, The Netherlands

“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.

²⁰ ICC-01/05-01/08-566 (OA 2), para. 17.

Separate Opinion of Judge Song

1. I disagree with the approach taken by the majority regarding victim participation in appeals brought under article 82 (1) (b) of the Statute. In my view, victims who have been permitted to participate in proceedings giving rise to an appeal under that provision are participants within the meaning of regulations 64 (4) and 65 (5) of the Regulations of the Court.²¹ As participants, they therefore have the right to file a response to the document in support of the appeal. There is need neither for them to apply for participation nor for the Appeals Chamber to rule on such applications. Therefore, I agree that the victims covered by the Victims' Application are entitled to participate before the Appeals Chamber, but in my view there was no need for them to apply for participation, nor for the Appeals Chamber to rule on this application.

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

Judge Sang-Hyun Song

Dated this 19th day of October 2011

At The Hague, The Netherlands

²¹ As consistently expressed since my first dissenting opinion in *Prosecutor v. Thomas Lubanga Dyilo*, "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), pp. 55-57.