

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/04-01/06 A 4 A 5 A 6

Date: 3 October 2013

THE APPEALS CHAMBER

Before:

Judge Erkki Kourula, Presiding Judge

Judge Sang-Hyun Song

Judge Sanji Mmasenono Monageng

Judge Anita Ušacka

Judge Ekaterina Trendafilova

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF THE PROSECUTOR v. THOMAS LUBANGA DYILO

Public Document

Decision on a/2922/11's application to participate in the appeals proceedings



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

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor
Mr Fabricio Guariglia

Counsel for the Defence
Ms Catherine Mabilie
Mr Jean-Marie Biju Duval

Legal Representatives of Victims V01
Mr Luc Walley
Mr Franck Mulenda

Legal Representative of the Applicant
Mr Joseph Keta Orwinyo

Legal Representatives of Victims V02
Ms Carine Bapita Buyangandu
Mr Paul Kabongo Tshibangu
Mr Joseph Keta Orwinyo

REGISTRY

Registrar
Mr Herman von Hebel



The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Thomas Lubanga Dyilo against the decision of Trial Chamber I entitled “Judgment pursuant to Article 74 of the Statute” of 14 March 2012 (ICC-01/04-01/06-2842), and

In the appeals of Mr Thomas Lubanga Dyilo and the Prosecutor against the decision of Trial Chamber I entitled “Decision on Sentence pursuant to Article 76 of the Statute” of 10 July 2012 (ICC-01/04-01/06-2901),

Having before it the “Transmission of Consolidated Applications a/2922/11 and a/0333/10, in compliance with the Decision ICC-01/04-01/06-3045-Red2”, filed by the Registrar on 30 September 2013 (ICC-01/04-01/06-3051),

Renders the following

DECISION


1. Applicant a/2922/11 is authorised to participate in the present appeals proceedings for the purpose of presenting her views and concerns in respect of her personal interests in the issues on appeal.
2. The Legal Representatives of Victims V02 shall ensure that applicant a/2922/11’s views and concerns are incorporated into the consolidated observations of victims to be filed on 11 October 2013, to the extent that they are not repetitive of the observations that have already been filed on behalf of victims in the present proceedings.

REASONS

I. PROCEDURAL HISTORY

1. On 20 May 2013, the Registrar transmitted to the Appeals Chamber the applications of 32 individuals for participation in the present appeals against the “Judgment pursuant to Article 74 of the Statute” and the “Decision on Sentence pursuant to Article 76 of the Statute”, together with a report thereon.¹

2. On 27 August 2013, the Appeals Chamber authorised 30 of those individuals to participate in the present proceedings as victims for the purpose of presenting their views and concerns in respect of their personal interests, and authorised them to file consolidated

¹ “Transmission to the Appeals Chamber of a report on 32 applications to participate in the proceedings”, ICC-01/04-01/06-3029-Conf (A 4 A 5 A 6) (hereinafter: “Registrar’s Transmission of Victims’ Applications”). 

observations on the respective documents in support of the appeals² by 23 September 2013³ (hereinafter: “Decision on Victims’ Participation”). Regarding applicant a/2922/11⁴ (hereinafter: “Applicant”), the Appeals Chamber found that the differences between the account presented by the Applicant, who claims to have suffered harm as a result of the [REDACTED], and the account presented by [REDACTED], victim a/0333/10,⁵ raised serious doubts about the overall credibility of both applications.⁶ Therefore, the Appeals Chamber requested that the Registrar obtain clarification from the Applicant and victim a/0333/10 as to the significant differences between the narrative of events appearing in their respective application forms.⁷

3. On 20 September 2013, the Appeals Chamber extended the time limit for the filing of the 30 victims’ respective consolidated observations on the documents in support of the appeals to 16h00, on 11 October 2013.⁸

4. On 30 September 2013, the Registrar transmitted to the Appeals Chamber supplementary information that had been provided by the Applicant and victim a/0333/10 in order to clarify the apparently contradictory information contained in their respective application forms.⁹

II. MERITS

5. For the purposes of the present decision, the Appeals Chamber has applied the assessment criteria set out in the Decision on Victims’ Participation.¹⁰

6. The Appeals Chamber recalls that application a/2922/11 was submitted by a woman who established her identity by providing a copy of an electoral card.¹¹ The inconsistencies

² See ICC-01/04-01/06-2948-Conf; ICC-01/04-01/06-2949; ICC-01/04-01/06-2950.

³ “Decision on 32 applications to participate in proceedings”, ICC-01/04-01/06-3045-Conf-Exp; A Confidential redacted *inter partes* version and a public redacted version were simultaneously rendered, see ICC-01/04-01/06-3045-Conf-Red and –Red2.

⁴ Annex 23 to “Transmission to the Appeals Chamber of 32 Victims’ Applications for participation in compliance with the Decision ICC-01/04-01/06-3026”, 20 May 2013, ICC-01/04-01/06-3028-Conf-Exp-Anx23.

⁵ ICC-01/04-01/06-2474-Conf-Exp-Anx11, whose participation was authorised by the Trial Chamber on 13 December 2010 (see ICC/04-01/06-2659-Conf-Corr).

⁶ Decision on Victims’ Participation, para. 125.

⁷ Decision on Victims’ Participation, para. 166.

⁸ “Decision on requests for an extension of the time limit”, ICC-01/04-01/06-3050.

⁹ “Transmission of Consolidated Applications a/2922/11 and a/0333/10, in compliance with the Decision ICC-01/04-01/06-3045-Red2”, 30 September 2013, ICC-01/04-01/06-3051, together with two confidential *ex parte* annexes.

¹⁰ Decision on Victims’ Participation, paras 13-19.

¹¹ Decision on Victims’ Participation, para. 123.

identified in the Decision on Victims' Participation by the Appeals Chamber between the account of the Applicant and the account presented [REDACTED]¹²

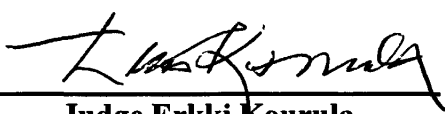
7. According to the supplementary information and clarifications provided by the Applicant and by victim a/0333/10, [REDACTED]¹³

8. On the basis of a *prima facie* assessment of the information contained in the consolidated applications of the Applicant and victim a/0333/10 and the clarification provided as to the apparent inconsistencies in the accounts, the Appeals Chamber is satisfied that there are credible grounds for suggesting that the Applicant suffered harm as a result of the crimes with which Mr Lubanga was charged. Accordingly, the Applicant has established, *prima facie*, that she is a victim within the meaning of rule 85 (a) of the Rules of Procedure and Evidence for the purposes of participating in the present appeal proceedings.

9. The Appeals Chamber notes that the Applicant has indicated that she is represented by Mr Keta¹⁴ and that the Legal Representatives of Victims V02, of which Mr Keta is a member, have stated that they are available to represent the Applicant in these proceedings.¹⁵ Accordingly, the Applicant is represented by the Legal Representatives of Victims V02.

10. The Legal Representatives of Victims V02 shall ensure that the Applicant's views and concerns are incorporated into the consolidated observations of victims to be filed on 11 October 2013, to the extent that they are not repetitive of the observations that have already been filed on behalf of victims in the present proceedings.

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


Judge Erkki Kourula
Presiding Judge

Dated this 3rd day of October 2013

At The Hague, The Netherlands

¹² Decision on Victims' Participation, para. 125.

¹³ ICC-01/04-01/06-3051-Conf-Exp-Anx1, p. 22.

¹⁴ ICC-01/04-01/06-3028-Conf-Exp-Anx23, p. 6.

¹⁵ Registrar's Transmission of Victims' Applications, paras 6-7.