

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08

Date: 13 December 2013

TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

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

Public

Decision on the requests made by Mr Kilenda on behalf of Mr Kilolo

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr Jean-Jacques Badibanga

Counsel for the Defence

Mr Peter Haynes

Legal Representatives of the Victims

Mr Assingambi Zarambaud

Ms Marie-Édith Douzima-Lawson

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Patrick Craig

Detention Section

Victims Participation and Reparations Section

Other

Mr Jean-Pierre Kilenda Kakengi Basila

Trial Chamber III (“Chamber”) of the International Criminal Court in the case of The Prosecutor v. Jean-Pierre Bemba Gombo (“*Bemba* case”) issues the following Decision on the requests made by Mr Kilenda on behalf of Mr Kilolo.

I. Background

1. On 20 November 2013, the Single Judge of Pre-Trial Chamber II, pursuant to Article 58 of the Rome Statute (“Statute”), issued a warrant of arrest against, *inter alia*, Mr Aimé Kilolo Musamba (“Mr Kilolo”) for alleged offences against the administration of justice in the *Bemba* case, punishable under Article 70 of the Statute (“Article 70 proceedings”).¹
2. On 27 November 2013, the Chamber issued a decision convening a public status conference in order to discuss, *inter alia*, the legal representation of the accused.² In its decision, the Chamber noted that it had been informed through the Director of the Division of Court Services, by email sent on the same date, that Mr Jean-Pierre Bemba Gombo (“Mr Bemba”) had decided to release Mr Kilolo from his mandate and that a new composition of the defence team had been discussed.³
3. On 28 November 2013, the Chamber held a public status conference in which issues related to the legal representation of the accused were discussed.⁴ During the status conference, Mr Bemba did not confirm the final composition of his defence team and requested that the Chamber grant him additional time to discuss the issue of his legal representation directly with Mr Kilolo.⁵

¹ Mandat d’arrêt à l’encontre de Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu et Narcisse Arido, 20 November 2013, ICC-01/05-01/13-1-Red2.

² Order convening a status conference, 27 November 2013, ICC-01/05-01/08-2907.

³ ICC-01/05-01/08-2907, paragraph 2.

⁴ Transcript of hearing on 28 November 2013, ICC-01/05-01/08-T-359-ENG-ET.

⁵ ICC-01/05-01/08-T-359-ENG ET, page 4, lines 11 to 23.

4. On 2 December 2013, Mr Jean-Pierre Kilenda Kakengi Basila ("Mr Kilenda"), duty counsel for Mr Kilolo in the Article 70 proceedings, filed the "Requête de Maître Aime KILOLO MUSAMBA tendant à obtenir l'autorisation d'accéder à tous les transcripts de la Conférence de Mise en Etat du 28 Novembre 2013, de tous les documents y afférents et de solliciter la surséance de l'examen de toute question liée à la réorganisation de l'équipe de défense de Monsieur Jean-Pierre BEMBA GOMBO en l'absence de son Conseil principal" ("Request 2913").⁶ In Request 2913, Mr Kilenda requests that the Chamber: (i) order the Registry to provide Mr Kilolo with full transcripts of the Status Conference held on 28 November 2013;⁷ (ii) order the Registry to provide Mr Kilolo with the 27 November 2013 email communication from the Director of the Division of Court Services to the Chamber;⁸ (iii) order the suspension of consideration of any matter related to the reorganisation of Mr Bemba's defence team in the absence of Mr Kilolo;⁹ and (iv) order the personal appearance of Mr Kilolo during any hearing or status conference related to the reorganisation of Mr Bemba's defence team.¹⁰

5. On 6 December 2013, Mr Kilenda filed the "Doléances de Maître Aime Kilolo Musamba Conseil principal dans l'Equipe de Mr. Jean-Pierre Bemba Gombo" ("Request 2914").¹¹ In Request 2914, Mr Kilenda requests that the Chamber: (i) order the Registry to make a computer with access to the case file in the *Bemba* case available to Mr Kilolo;¹² (ii) convene a status conference, as soon as practicable, in order to discuss issues related to the conduct of the

⁶ Requête de Maître Aime KILOLO MUSAMBA tendant à obtenir l'autorisation d'accéder à tous les transcripts de la Conférence de Mise en Etat du 28 Novembre 2013, de tous les documents y afférents et de solliciter la surséance de l'examen de toute question liée à la réorganisation de l'équipe de défense de Monsieur Jean-Pierre BEMBA GOMBO en l'absence de son Conseil principal, 2 December 2013, ICC-01/05-01/08-2913.

⁷ ICC-01/05-01/08-2913, page 6.

⁸ ICC-01/05-01/08-2913, page 7.

⁹ ICC-01/05-01/08-2913, page 7.

¹⁰ ICC-01/05-01/08-2913, page 7.

¹¹ Doléances de Maître Aime Kilolo Musamba Conseil principal dans l'Equipe de Mr. Jean-Pierre Bemba Gombo, 6 December 2013, ICC-01/05-01/08-2914.

¹² ICC-01/05-01/08-2914, page 8.

proceedings, including the question of the fairness of the trial.¹³

6. On 6 December 2013, the Registry filed the “Enregistrement d’une lettre de M. Jean-Pierre Bemba Gombo datée du 5 décembre 2013”,¹⁴ transmitting to the Chamber a letter from Mr Bemba in which he confirms that, while he has yet to resolve the issue of the final composition of his defence team, Mr Peter Haynes will continue to represent his interests before the Chamber for the time being.¹⁵
7. On 6 December 2013, the Chamber issued its Decision on the Registry’s “Enregistrement d’une lettre de M. Jean-Pierre Bemba Gombo datée du 5 décembre 2013” (“Decision 2918”),¹⁶ in which, in view of the content of Mr Bemba’s letter and in light of its obligations under the Statute, the Chamber decided that “the current Co-Counsel, Mr Peter Haynes, will continue acting as counsel for [Mr Bemba] until otherwise decided”.¹⁷ The defence did not file a request for leave to appeal in relation to this decision.

II. Analysis and Conclusion

8. In accordance with Article 21(1) of the Rome Statute (“Statute”), the Chamber has considered the following provisions: Articles 64(2), (6)(c) and (f), and 67(d) of the Statute.
9. The Chamber notes that the Office of the Prosecutor (“prosecution”) and the defence are the sole parties in trial proceedings.¹⁸ Additionally, the Chamber reiterates that while participants in the proceedings other than the

¹³ ICC-01/05-01/08-2914, page 8.

¹⁴ Enregistrement d’une lettre de M. Jean-Pierre Bemba Gombo datée du 5 décembre 2013, 6 December 2013, ICC-01/05-01/08-2915, with Annex ICC-01/05-01/08-2915-Anx.

¹⁵ ICC-01/05-01/08-2915-Anx, letter from Mr Jean-Pierre Bemba to the Presiding Judge on 5 December 2013.

¹⁶ Decision on the Registry’s “Enregistrement d’une lettre de M. Jean-Pierre Bemba Gombo datée du 5 décembre 2013”, ICC-01/05-01/05-2918.

¹⁷ ICC-01/05-01/05-2918, paragraph 5.

¹⁸ See Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victim’s Participation of 18 January 2008, 11 July 2008, ICC-01/04-01/06-1432, paragraph 93.

prosecution and defence are entitled to address the Chamber, “[p]articipants are only those specifically granted the right to participate in the proceedings by the relevant Chamber, e.g. legal representatives of victims or States”.¹⁹

10. Regarding Request 2913, Mr Kilolo, through Mr Kilenda, makes the requests comprised therein in his personal capacity and not on behalf of Mr Bemba. As Mr Kilolo is neither a party in the *Bemba* case himself nor a participant on his own behalf, he has no *locus standi* before this Chamber in his individual capacity. In turn, Mr Kilenda is neither a party nor a participant in the *Bemba* case and therefore has no *locus standi* to appear before this Chamber. Accordingly, Mr Kilolo is not entitled to make requests to this Chamber in his personal capacity and Mr Kilenda is not entitled to transmit requests to this Chamber on Mr Kilolo’s behalf.

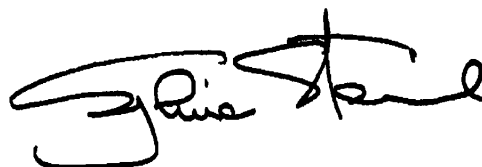
11. As to Request 2914, the Chamber notes that its Decision 2918, in view of the letter transmitted to the Chamber by Mr Bemba, designates Mr Peter Haynes as counsel for Mr Bemba until otherwise decided.²⁰ In light of Decision 2918, the Chamber considers that Request 2914 has become moot.

12. Considering the above, the Chamber does not deem it necessary to address the substantial arguments of the requests filed by Mr Kilenda and REJECTS Requests 2913 and 2914 *in limine*.

¹⁹ See Decision on the duty counsel's "Requête tendant à obtenir levée des mesures coercitives pesant sur le témoin D04-49 (Article 64-6-f du Statut de Rome), 26 November 2012, ICC-01/05-01/08-2440, paragraph 4, footnote 8. See also Decision on the prosecution and the defence applications for leave to appeal the "Decision giving notice to the parties and participants that the legal characterisation of the facts may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court" 3 September 2009, ICC-01/04-01/06-2107, paragraph 39 (noting that “participants” are the parties and the legal representatives of victims).

²⁰ ICC-1/05-01/05-2918, paragraph 5.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 13 December 2013

At The Hague, the Netherlands