

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 11 March 2014

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 “Defence Request for Withdrawal or Clarification of a Filing”

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

Ms Kate Gibson

Legal Representatives of the Victims

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

Detention Section

**Victims Participation and Other
Reparations Section**

Trial Chamber III ("Chamber" or "Trial Chamber") of the International Criminal Court ("Court") in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* ("Bemba case") issues the following Decision on "Defence Request for Withdrawal or Clarification of a Filing" ("Decision").

I. Background and submissions

1. On 20 January 2014, the Office of the Prosecutor ("prosecution") filed its "Prosecution's Request for leave to reply to Defence 'Response to the Prosecution's Application to Submit Additional Evidence'" ("Request for Leave to Reply").¹ The prosecution sought leave to reply to three issues raised by the defence of Mr Bemba ("defence"),² including the issue of:³

[w]hether the Accused is prejudiced by the disclosure of additional evidence of witness bribery and coaching when he and other members of his Defence team consciously and knowingly based their case on false evidence ("Prosecution Statement").

2. On 22 January 2014, the Chamber issued its "Decision on 'Prosecution's Request for leave to reply to 'Defence Response to the Prosecution's Application to Submit Additional Evidence'" ("Decision 2942"), in which it quoted the three issues identified by the prosecution, including the Prosecution Statement.⁴
3. On 31 January 2014, the defence filed its "Defence Request for Withdrawal or Clarification of a Filing" ("Defence Request"),⁵ in which it requests that the Chamber (i) order the prosecution to withdraw or clarify its Request for Leave to Reply; and (ii) redact or delete the Prosecution Statement from Decision 2942.⁶ The defence submits that "these assertions remaining as part of the

¹ Prosecution's Request for leave to reply to Defence "Response to the Prosecution's Application to Submit Additional Evidence", 20 January 2014, ICC-01/05-01/08-2940.

² Defence Response to the Prosecution's Application to Submit Additional Evidence, 15 January 2014, ICC-01/05-01/08-2937-Conf. A redacted version was filed simultaneously, ICC-01/05-01/08-2937-Red.

³ ICC-01/05-01/08-2940, paragraph 3.

⁴ Decision on 'Prosecution's Request for leave to reply to Defence Response to the Prosecution's Application to Submit Additional Evidence', 22 January 2014, ICC-01/05-01/08-2942, paragraph 3.

⁵ Defence Request for Withdrawal or Clarification of a Filing, 31 January 2014, ICC-01/05-01/08-2957.

⁶ ICC-01/05-01/08-2957, paragraph 8.

public record of the present case is inconsistent primarily with the right of Mr. Bemba to benefit from the presumption of innocence, and puts the current members of the Defence in a difficult professional position”.⁷ In this regard, the defence refers to its arguments set forth in a letter sent to the prosecution, in which it claims that the Prosecution Statement “was not only inconsistent with Article 66 of the Statute and the Prosecutor’s duty of impartiality and obligation to respect the rights of the accused pursuant to Article 54(1), but may also be viewed as an attempt to influence *sub judice* proceedings, and to undermine the ability of the Trial Chamber to view the Defence case in an impartial manner.”⁸

4. Regarding the reference to “other members of his Defence team”, the defence asserts that “[g]iven the largely confidential nature of the Article 70 proceedings, the public is not in a position to differentiate between the current and former composition of the Defence team, nor to ascertain whether any members of the current team are the subject of the Article 70 proceedings.”⁹ The defence further appends a response from Mr Jean-Jacques Badibanga to the defence’s letter (“Prosecution Email”), in which it is stated that the allegations in the Request for Leave to Reply “were confined to a context that was well known publicly following the arrest of five persons, including two defence team members” and that the prosecution made a clear statement during a status conference, indicating that there was no evidence of counsel in the current composition of the defence team being involved “in the alleged bribery scheme”.¹⁰

5. No response was filed to the Defence Request.

⁷ ICC-01/05-01/08-2957, paragraph 7.

⁸ ICC-01/05-01/08-2957, paragraph 3.

⁹ ICC-01/05-01/08-2957, paragraph 4; the letter from the defence to the prosecution is provided in Annex A to the Defence Request, ICC-01/05-01/08-2957-AnxA.

¹⁰ The response from Mr Badibanga to the defence is provided in Annex B to the Defence Request, ICC-01/05-01/08-2957-AnxB.

II. Analysis and conclusions

6. In accordance with Article 21(1) of the Rome Statute ("Statute"), in making its determination, the Chamber has considered Articles 64(2) and 66 of the Statute.
7. The proceedings in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda, Fidèle Babala Wandu and Narcisse Arido* ("case ICC-01/05-01/13") are currently under consideration by Pre-Trial Chamber II,¹¹ which, pursuant to Article 61(7) of the Statute, will have to determine whether there is "sufficient evidence to establish substantial grounds to believe" that the persons charged committed the crimes charged in case ICC-01/05-01/13, and to confirm, decline to confirm, or request the prosecution to consider providing further evidence or amending the charges. In the event that the Pre-Trial Chamber decides to confirm the charges, the case will be referred to the Trial Chamber, which will have to make a determination, pursuant to Article 66(3) of the Statute, as to whether or not it is "convinced of the guilt of the accused beyond reasonable doubt". Pending a decision to that effect, the persons charged are presumed innocent, in accordance with Article 66 of the Statute.
8. The Prosecution Statement provides, *inter alia*, that "[the accused] and other members of his Defence team consciously and knowingly based their case on false evidence". In the view of the Chamber, this statement presupposes facts that have not been verified or confirmed at this stage. The Chamber reminds the prosecution to exercise caution when phrasing its submissions and to refrain from making statements that might be interpreted as undermining the

¹¹ As case ICC-01/05-01/13 arises out of the situation in the Central African Republic, it is assigned to Pre-Trial Chamber II (*see* Decision assigning the situation in the Central African Republic to Pre-Trial Chamber III, 19 January 2005, ICC-01/05-1 and Decision on the constitution of Pre-Trial Chambers and on the assignment of the Central African Republic situation, 19 March 2009, ICC-01/05-22).

presumption of innocence.¹²

9. While regretting the phrasing of the Prosecution Statement, the Chamber is of the view that neither withdrawal or clarification of the Request for Leave to Reply nor redaction or deletion of the Prosecution Statement in Decision 2942 are warranted in the present circumstances.

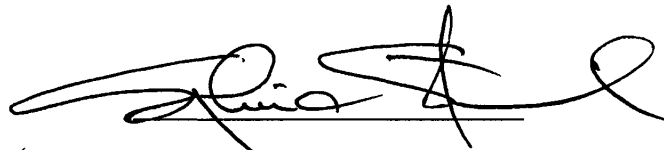
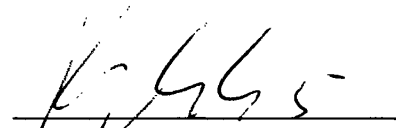
10. First, the Chamber notes that the Prosecution Statement was available in the public record of the *Bemba* case for 11 days before the defence raised an objection in the Defence Request. The Chamber further observes that in the Defence Request, the defence comments extensively on the Prosecution Statement, raises its concerns in relation to the reference to “other members of his Defence team”, and appends the Prosecution Email, which confirms the prosecution’s position that there is no evidence of counsel of the current defence team being involved in the “alleged bribery scheme”.¹³ Thus, any potential of the Prosecution Statement remaining in the public record causing prejudice to the accused or members of his defence team is minimised by the clarification provided in the Prosecution Email and submissions in the Defence Request. In addition, the Chamber underlines that both documents, the Defence Request and the Prosecution Email appended thereto, are duly registered in the public record of the case, enabling the public to contextualise the Prosecution Statement.

11. In light of the above, the Chamber hereby **REJECTS** the Defence Request.

¹² In this regard, the Chamber also notes the “Standards of conduct” set out in paragraphs 29 and 30 of the Code of Conduct for the Office of the Prosecutor, adopted by the Office of the Prosecutor and entered into force on 5 September 2013.

¹³ ICC-01/05-01/08-2957-AnxB, page 2.

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


Judge Sylvia Steiner
Judge Joyce Aluoch
Judge Kuniko Ozaki

Dated this 11 March 2014

At The Hague, the Netherlands