

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-03/09

Date: 16 April 2014

TRIAL CHAMBER IV

Before: Judge Joyce Aluoch, Presiding Judge
Judge Silvia Fernández de Gurmendi
Judge Chile Eboe-Osuji

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF
*THE PROSECUTOR v. ABDALLAH BANDA ABAKAER NOURAIN***

Public

Public redacted Decision vacating the trial date of 5 May 2014

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 Julian Nicholls

Counsel for the Defence

Mr Karim A.A. Khan

Legal Representatives of Victims

Ms Hélène Cissé

Mr Jens Dieckmann

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Deputy Registrar

Victims and Witnesses Unit

Mr Patrick Craig

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber IV (“Chamber”) of the International Criminal Court (“Court”) in the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain*, acting pursuant to Articles 58(7), 63(1), and 64(2) of the Rome Statute and Rule 132 of the Rules of Procedure and Evidence, by Majority (Judge Eboe-Osuji dissenting in part), issues the following “Decision vacating the trial date of 5 May 2014”.

1. On 6 March 2013, the Chamber issued the “Decision concerning the trial commencement date, the date for final prosecution disclosure, and summonses to appear for trial and further hearings”, in which it set the trial date for 5 May 2014.¹
2. On 11 March 2014 and 3 April 2014, the Registry filed confidential redacted versions available to the defence for Mr Abdallah Banda Abakaer Nourain (“Mr Banda”) and the Office of the Prosecutor (“prosecution”) of the “Submission of the Registry pursuant to regulation 24bis of the Regulations of the Court on the trial preparation” and the “Second Submission of the Registry pursuant to regulation 24bis of the Regulations of the Court on the trial preparation”.² [REDACTED].
3. On 7 April 2014, the Chamber held, *inter alia*, a confidential status conference, at which the parties and the Registry were requested to make their observations on trial preparation.³ [REDACTED].⁴
4. [REDACTED].⁵

¹ Decision concerning the trial commencement date, the date for final prosecution disclosure, and summonses to appear for trial and further hearings, 6 March 2013, ICC-02/05-03/09-455, paragraph 25(ii).

² Submission of the Registry pursuant to regulation 24bis of the Regulations of the Court on the trial preparation, 3 April 2014, ICC-02/05-03/09-543-Conf-Red only available to the defence and the prosecution and the Second Submission of the Registry pursuant to regulation 24bis of the Regulations of the Court on the trial preparation, 3 April 2014, ICC-02/05-03/09-550-Conf-Red only available to the defence and the prosecution.

³ Order scheduling a status conference, 4 April 2014, ICC-02/05-03/09-551 (with confidential annex), ICC-02/05-03/09-551-Conf-Anx and transcript of public hearing on 7 April 2014, ICC-02/05-03/09-T-24 and transcript of confidential hearing on 7 April 2014, ICC-02/05-03/09-T-25-CONF-EXP-ENG.

⁴ [REDACTED].

⁵ Decision subsequent to the status conference of 7 April 2014, 10 April 2014, ICC-02/05-03/09-553-Conf, paragraph 9.

5. On 11 April 2014, the defence requested disclosure of a security report referenced by the Registry at the 7 April status conference. The Chamber granted this request on the same day.⁶
6. On 14 April 2014, the defence filed confidentially its 'Defence Submissions pursuant to "Decision subsequent to the status conference of 7 April 2014"' (ICC-02/05-03/09-553-Conf) ("defence's Submission").⁷
7. On the same day, the defence filed an additional confidential request ("document ICC-02/05-03/09-561-Conf").⁸
8. On 15 April 2014, the prosecution filed its response to the defence's Submission,⁹ proposing not to start its preparations to bring its witnesses to The Hague until such time as there is confirmation that the accused will appear for his trial.¹⁰
9. On 15 April 2014, the defence requested that: (i) the trial start date of 5 May 2014 be vacated, (ii) a status conference be scheduled for September 2014 and (iii) a trial start date be set for March 2015.¹¹
10. [REDACTED].
11. [REDACTED]. However, in light of the logistical difficulties the Registry has encountered to date [REDACTED], the commencement date of 5 May 2014 is clearly not feasible.

⁶ Email from Legal Officer of the Trial Division to the Registry, 11 April 2014 at 18.59. *See also* ICC-02/05-03/09-559-Conf (and confidential annex).

⁷ Defence Submissions pursuant to "Decision subsequent to the status conference of 7 April 2014" (ICC-02/05-03/09-553-Conf), 14 April 2014, ICC-02/05-03/09-560-Conf.

⁸ ICC-02/05-03/09-561-Conf.

⁹ Prosecution Response to "Defence Submissions pursuant to *Decision subsequent to the status conference of 7 April* (ICC-02/05-03/09-553-Conf)", 15 April 2014, ICC-02/05-03/09-562-Conf.

¹⁰ ICC-02/05-03/09-562-Conf, paragraph 4.

¹¹ Defence Request to Vacate the Trial Commencement Date, 15 April 2014, ICC-02/05-03/09-563-Conf-Red (confidential redacted version notified 16 April 2014).

12. In order to make a fully informed decision as to what further steps to take, the Chamber¹² considers it necessary to receive detailed submissions from the Registry and the prosecution as appropriate no later than 6 May 2014, including submissions on the following:¹³

[REDACTED].

13. For the foregoing reasons, the Chamber:


- (i) Decides to vacate the date of the commencement of the trial;
- (ii) Orders the prosecution and the Registry to file the submissions specified at paragraph 12; and
- (iii) Dismisses the defence's outstanding requests for relief in filing ICC-02/05-03/09-563-Conf, without prejudice to these issues being raised again after receipt of the submissions sought by the Chamber.

Judge Eboe-Osuji appends a partially dissenting opinion.

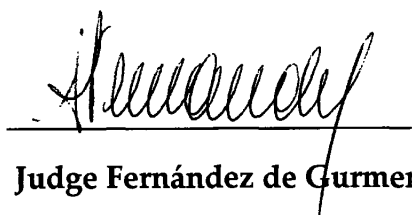
¹² Pursuant to Regulations 24(1) and 24 *bis* of the Regulations of the Court.

¹³ ICC-02/05-03/09-561-Conf.

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



Judge Joyce Aluoch



Judge Fernández de Gurmendi



Judge Chile Eboe-Osuji

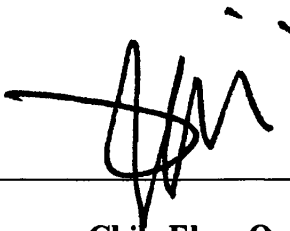
Dated this 16 April 2014

At The Hague, The Netherlands

PARTLY DISSENTING OPINION OF JUDGE EBOE-OSUJI

1. It is to be regretted that the trial is not starting on 5 May 2014, as scheduled. But, it is understood that it is the desire of both parties that the date as currently set be vacated.
2. Be that as it may, I see no reason at all for not setting a new trial date immediately – to a date this year. From my understanding of the situation, both parties have indicated that it is possible to start the trial at various points this year. The Prosecution suggested September 2014. The Defence initially indicated October this year as a possibility; but, for one reason or another, they more clearly prefer a date in March 2015.
3. Experience will amply show that there is almost always a reason that a party, the court administration or a judge will have for not starting a trial. But, for the sake of justice for society and victims, a trial of confirmed charges must start at some point, in spite of some of those reasons.
4. In my own view, it is entirely possible—and most desirous—to set a date immediately to a time this year, but in March 2015 at any rate, for the trial in this case to start in earnest.

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



Chie Eboe-Osuji
Judge

Dated 16 April 2014
At The Hague, The Netherlands