

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/04-01/07 A A2

Date: 24 July 2014

THE APPEALS CHAMBER

Before: **Judge Sanji Mmasenono Monageng, Presiding Judge**
Judge Sang-Hyun Song
Judge Cuno Tarfusser
Judge Erkki Kourula
Judge Joyce Aluoch

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF THE PROSECUTOR v. GERMAIN KATANGA

Public Document

Decision on the victims' requests to participate in the appeal 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
Ms Helen Brady

Counsel for the Defence
Mr David Hooper

Legal Representatives of Victims
Jean-Louis Gilissen
Fidel Nsita Luvengika

REGISTRY

Registrar
Mr Herman von Hebel



The Appeals Chamber of the International Criminal Court,

In the appeals of Mr Germain Katanga and the Prosecutor against the decision of Trial Chamber II entitled “Jugement rendu en application de l’article 74 du Statut” of 7 March 2014 (ICC-01/04-01/07-3436),

Having before it the “Soumission relative à la participation de victimes à la procédure d’appel contre le jugement concernant G. Katanga”, filed by the legal representative of the principal group of victims on 22 May 2014 (ICC-01/04-01/07-3483-Conf-Exp) and the “Soumission concernant la participation des victimes à la procédure d’appel relative au jugement rendu en application de l’article 74 du Statut à l’encontre de Germain Katanga”, dated 26 May 2014 and registered on 27 May 2014 (ICC-01/04-01/07-3486), filed by the legal representative of the group of former child soldiers,

Noting the “Defence Notice of Discontinuance of Appeal against the ‘Jugement rendu en application de l’article 74 du Statut’ rendered by Trial Chamber II on 7 April 2014”, filed by Mr Germain Katanga on 25 June 2014 (ICC-01/04-01/07-3497), and the “Notice of Discontinuance of the Prosecution’s Appeal against the Article 74 Judgment of Conviction of Trial Chamber II dated 7 March 2014 in relation to Germain Katanga”, filed by the Prosecutor on 25 June 2014 (ICC-01/04-01/07-3498),

Issues the following

DECISION

The above-mentioned requests to participate in the proceedings are dismissed as moot.

REASONS

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 7 March 2014, Trial Chamber II (hereinafter: “Trial Chamber”) delivered the “Jugement rendu en application de l’article 74 du Statut”¹ (hereinafter:

¹ ICC-01/04-01/07-3436.



“Conviction Decision”), in which Mr Germain Katanga (hereinafter: “Mr Katanga”) was found criminally responsible under article 25 (3) (d) of the Statute for one count of crimes against humanity, and four counts of war crimes.²

2. On 4 April 2014, following a request by Mr Katanga³ (hereinafter: “Katanga Request for Extension of Time”) and the Prosecutor’s response thereto,⁴ the Appeals Chamber extended the time limit for the parties to file their respective documents in support of the appeal to 8 September 2014.⁵

3. On 9 April 2014, Mr Katanga⁶ and the Prosecutor⁷ filed their respective notices of appeal against the Conviction Decision.

4. On 22 May 2014, the legal representative of the principal group of victims (hereinafter: “Victim Group I”) filed the “*Soumission relative à la participation de victimes à la procédure d’appel contre le jugement concernant G. Katanga*”⁸ (hereinafter: “First Request for Participation”), requesting that the Appeals Chamber authorise the 339 victims he represents to participate in the appeal proceedings⁹, authorise the participation of those who are legally entitled to represent the rights of the seven victims who died during the proceedings¹⁰ and authorise the participation of 14 new victim applicants, whose previous applications had not been submitted on time for the Trial Chamber’s consideration.¹¹

² Conviction Decision, pp. 709-710.

³ “Defence Application regarding the translation and Notification of the Article 74 Decision or, alternatively for an extension of the time limit to file an appeal”, dated 13 March 2014 and registered on 14 March 2014, ICC-01/04-01/07-3440.

⁴ “Prosecution’s Response to ‘Defence Application regarding the Translation and Notification of the Article 74 Decision, or alternatively, for an extension of the time limit to file an appeal’”, 17 March 2014, ICC-01/04-01/07-3442.

⁵ “Decision on the requests of Mr Germain Katanga and the Prosecutor relating to the time limits for their filings on appeal”, 4 April 2014, ICC-01/04-01/07-3454.

⁶ “Defence Notice of Appeal against the decision of conviction ‘*Jugment rendu en application de l’article 74 du Statut*’ rendered by Trial Chamber II, 7th March 2014”, 9 April 2014, ICC-01/04-01/07-3459.

⁷ “Prosecution’s Appeal against Trial Chamber II’s ‘*Jugment rendu en application de l’article 74 du Statut*’”, 9 April 2014, ICC-01/04-01/07-3462.

⁸ ICC-01/04-01/07-3483-Conf-Exp (A A2) with confidential annex ICC-01/04-01/07-3483-Conf-Red2-Corr-Anx; public redacted version: ICC-01/04-01/07-3483-Red3-Corr with annex ICC-01/04-01/07-3483-Red3-Corr-Anx.

⁹ First Request for Participation, paras 7 *et seq.*, p. 16.

¹⁰ First Request for Participation, paras 19-24, p. 16.

¹¹ First Request for Participation, paras 25 *et seq.*, p. 16.

5. On 27 May 2014, the legal representative of the group of former child soldiers (hereinafter: “Victim Group II”) filed the “Soumission concernant la participation des victimes à la procédure d’appel relative au jugement rendu en application de l’article 74 du Statut à l’encontre de Germain Katanga”¹² (hereinafter: “Second Request for Participation”), requesting that the victims he represents be allowed to participate in the appeal proceedings.¹³

6. On 13 June 2014, Mr Katanga filed the “Defence Response to the Legal Representatives of Victims Requests to Participate in the Appeal Proceedings”.¹⁴

7. On 25 June 2014, Mr Katanga filed the “Defence Notice of Discontinuance of Appeal against the ‘Jugement rendu en application de l’article 74 du Statut’ rendered by Trial Chamber II on 7 April 2014”¹⁵ (hereinafter: “Katanga Notice of Discontinuance”), giving notice of the discontinuance of his appeal pursuant to rule 152 (1) of the Rules of Procedure and Evidence.¹⁶ Attached to the Katanga Notice of Discontinuance was a public annex¹⁷ (hereinafter: “Annex to the Katanga Notice of Discontinuance”), comprising a statement signed by counsel for Mr Katanga, Mr David Hooper, as well as a statement by Mr Katanga. On the same day, the Prosecutor filed the “Notice of Discontinuance of the Prosecution’s Appeal against the Article 74 Judgment of Conviction of Trial Chamber II dated 7 March 2014 in relation to Germain Katanga” (hereinafter: “Prosecutor’s Notice of Discontinuance”),¹⁸ noting the Katanga Notice of Discontinuance¹⁹ and indicating that “the Prosecution discontinues its appeal against the Article 74 Judgment in relation to Germain Katanga”.²⁰

8. On 26 June 2014, Victim Group I filed the “Observations des victimes sur le désistement d’appel du Procureur contre le jugement concernant G. Katanga”,²¹ submitting, *inter alia*, that the victims were not notified in advance of the Prosecutor’s

¹² ICC-01/04-01/07-3486.

¹³ Second Request for Participation, para. 5.

¹⁴ Registered on 16 June 2014, ICC-01/04-01/07-3491.

¹⁵ ICC-01/04-01/07-3497.

¹⁶ Katanga Notice of Discontinuance, para. 3.

¹⁷ ICC-01/04-01/07-3497-AnxA.

¹⁸ ICC-01/04-01/07-3498.

¹⁹ Prosecutor’s Notice of Discontinuance, para. 1.

²⁰ Prosecutor’s Notice of Discontinuance, para. 3.

²¹ ICC-01/04-01/07-3499 (hereinafter: “Victim Group I’s Observations on Discontinuance of Appeal”).

decision to withdraw her appeal,²² as well as expressing doubts regarding the Prosecutor's submission that Mr Katanga expressed his "sincere regret" to the victims of Bogoro just a few weeks after the announcement of his sentence and in the context of their mutual discontinuance of their appeals.²³

9. On 27 June 2014, the Prosecutor filed the "Prosecution's Response to the Observations of the Legal Representative of the main group of Victims filed on 26 June 2014",²⁴ submitting that "[t]he decision to discontinue [her] appeal took into account all of the relevant factors, including sensitivity to the interests of victims in the present case" and that she "took the decision in conformity with her statutory obligations and in the responsible exercise of her prosecutorial discretion".²⁵

10. On 30 June 2014, Victim Group II filed the "Communication du Représentant légal des victimes enfants soldats relative au double désistement d'appel dans le dossier *Le Procureur c. Germain Katanga et Annexe publique*",²⁶ with a public annex,²⁷ expressing, *inter alia*, surprise at the Prosecutor's Notice of Discontinuance and submitting that this course of action would close all hope of reparations for the victims for the crime of using child soldiers.²⁸

11. On 2 July 2014, the Prosecutor filed the "Prosecution's Response to the *Communication* of the Legal Representative of the child soldier group of victims",²⁹ again submitting, *inter alia*, that "the decision to discontinue its appeal took into account all of the relevant factors, including sensitivity to the interests of victims in the present case".³⁰

II. MERITS

12. With the First and Second Requests for Participation, Victim Groups I and II seek leave to participate in the appeals against the Conviction Decision. The Appeals

²² Victim Group I's Observations on Discontinuance of Appeal, paras 3, 10, 12.

²³ Victim Group I's Observations on Discontinuance of Appeal, para. 9.

²⁴ ICC-01/04-01/07-3500 (hereinafter: "Prosecutor's Response to Victim Group I's Observations on Discontinuance of Appeal").

²⁵ "Prosecutor's Response to Victim Group I's Observations on Discontinuance of Appeal", para. 8.

²⁶ ICC-01/04-01/07-3501.

²⁷ ICC-01/04-01/07-3501-Anx (hereinafter: "Victim Group II Annex").

²⁸ Victim Group II Annex.

²⁹ ICC-01/04-01/07-3502 (hereinafter: "Prosecutor's Response to Victim Group II's Observations on Discontinuance of Appeal").

³⁰ Prosecutor's Response to Victim Group II's Observations on Discontinuance of Appeal, para. 3.

Chamber recalls the Katanga Notice of Discontinuance, giving notice of the discontinuance of his appeal pursuant to rule 152 (1) of the Rules of Procedure and Evidence, and the Prosecutor's Notice of Discontinuance informing the Appeals Chamber of her decision to discontinue her appeal.

13. The Appeals Chamber observes that rule 152 (1) of the Rules of Procedure and Evidence stipulates that “[a]ny party who has filed an appeal may discontinue the appeal at any time before judgement has been delivered. In such case, the party shall file with the Registrar a written notice of discontinuance of appeal. The Registrar shall inform the other parties that such a notice has been filed”. Accordingly, the Appeals Chamber notes that it is within the party's discretion to discontinue an appeal and that the Court's legal framework does not provide for a role of the Appeals Chamber therein.³¹

14. The Appeals Chamber further notes that due to the discontinuance, the appeal proceedings in the present case are terminated. The Appeals Chamber considers that, as a consequence, the First and Second Requests for Participation are moot and must be dismissed.

15. Finally, while not directly related to the First and Second Requests for Participation, the Appeals Chamber notes with concern that, in the Katanga Request for Extension of Time, Mr Katanga, *inter alia*, requested that the Appeals Chamber order that the notification of the Conviction Decision be deemed to have occurred on the day he is notified of the English translation of that decision.³² The request was made on the basis that his counsel, Mr David Hooper, “can best be described as ‘struggling’ in the French language” and that “[i]n a nutshell, he does not understand it”,³³ whereas the Annex to the Katanga Notice of Discontinuance contains, *inter alia*, a statement signed by Mr Hooper that is written in French. This raises doubts as to the correctness of Mr Katanga's submissions in support of the Katanga Request for Extension of Time as regards Mr Hooper's command of the French language.

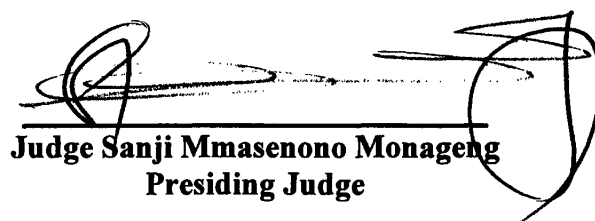
³¹ See *Prosecutor v. Thomas Lubanga Dyilo*, “Decision on Thomas Lubanga Dyilo's brief relative to discontinuance of appeal”, 3 July 2006, ICC-01/04-01/06-176 (OA 2), para. 8: “A notice of discontinuance is neither subject to approval by nor acknowledgement from the Court”.

³² ICC-01/04-01/07-3440, paras 1, 7, 18.

³³ ICC-01/04-01/07-3440, para. 9.

Nevertheless, as the proceedings in the present appeal are terminated, the Appeals Chamber will not consider this issue any further.

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



Judge Sanji Mmasenono Monageng
Presiding Judge

Dated this 24th day of July 2014

At The Hague, The Netherlands