

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13
Date: 23 January 2015

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF *THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO, AIMÉ KILOLO MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE BABALA WANDU and NARCISSE ARIDO*

Public

Decision on the “Requête de M. Fidèle Babala Wandu visant à obtenir les observations de la République Démocratique du Congo concernant l’exécution du mandat d’arrêt émis par la Cour pénale internationale” submitted by Mr Babala on 22 January 2015

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

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo

Melinda Taylor

Counsel for Aimé Kilolo Musamba

Paul Djunga Mudimbi

Counsel for Jean-Jacques Mangenda Kabongo

Jean Flamme

Counsel for Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Göran Sluiter

Legal Representatives of Victims

Legal Representatives of Applicants

**The Office of Public Counsel for
Victims**

The Office of Public Counsel for the Defence

States Representatives

Competent authorities of the
Democratic Republic of the Congo

REGISTRY

Registrar

Herman von Hebel

Detention Section

I, Judge Cuno Tarfusser, having been designated as Single Judge of Pre-Trial Chamber II of the International Criminal Court;

NOTING the “Requête de M. Fidèle Babala Wandu visant à obtenir les observations de la République Démocratique du Congo concernant l’exécution du mandat d’arrêt émis par la Cour pénale internationale” dated 22 January 2015 (“Mr Babala’s Request”)¹, seeking that the Chamber (i) request the authorities of the Democratic Republic of the Congo (“DRC”) to submit observations “sur la façon dont le mandat d’arrêt décerné par Elle a été exécuté en ce qui concerne l’arrestation et la saisie des biens”, in particular as regards items which, it is alleged, would have been seized by those authorities in the context of Mr Babala’s arrest and never transmitted to the Registrar of the Court; and /or (ii) order the Registrar to transmit to the DRC authorities the correspondence attached as Annex 2 to the Request;

NOTING articles 57(3)(c), 67, 86 and 93(l) of the Statute, rules 15 and 43, 81 and 176 of the Rules of Procedure and Evidence (“Rules”), regulation 23*bis* of the Regulations of the Court (“Regulations”) and regulation 25 of the Regulations of the Registry;

CONSIDERING that, as stated in the Request, the Defence for Mr Babala is seeking the assistance of the Court in a matter relating to the “droit fondamental du respect de la propriété et à l’interdiction imposée par tous les instruments internationaux des droits de l’homme de priver arbitrairement une personne de sa propriété”, with particular regard to its wish to “faire toute la lumière sur la confiscation illégale des biens de son client, à récupérer ces derniers le cas échéant ou à défaut à faire établir les responsabilités”;

¹ ICC-01/05-01/13-797-Conf and Confidential Annexes 1 through 3 thereto.

CONSIDERING that, accordingly, the subject matter of Mr Babala's Request, rather than relating to the "conduite effective et efficace de la Défense", amounts to a possible complaint *vis-à-vis* the authorities of the DRC, as such entirely extraneous not only to the subject and scope and these proceedings, but also, more broadly, to the jurisdiction of the Court;

CONSIDERING that both the States Parties' statutory obligation to cooperate with the Court and the ensuing powers of the Court are set forth and strictly limited to the purposes of "the investigation and prosecution of crimes within the jurisdiction of the Court";

CONSIDERING that this functional limitation of the States Parties' obligation to provide cooperation, and of the Court's powers to request it, is explicitly stated both in article 86 of the Statute, the general provision establishing such obligation, and in article 93(1), providing that States Parties shall comply with requests for "other forms of assistance" emanating from the Court only to the extent that such assistance can be deemed aimed at "facilitating the investigation and prosecution of crimes within the jurisdiction of the Court";

CONSIDERING that, since the type of cooperation requested by Mr Babala cannot be regarded as instrumental to either the investigation or the prosecution of crimes within the jurisdiction of the Court, the Request must be dismissed *in limine*;

CONSIDERING, by the same token, that it appears nevertheless appropriate to provide Mr Babala with full access to the remaining part of the record concerning his arrest which is still classified as confidential *ex parte*;

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

DISMISSES Mr Babala's Request;

DECIDES that confidential, ex parte annexes 1 through 10 to document ICC-01/05-01/13-24-Conf shall be reclassified as “confidential ex parte Registrar and Defence for Mr Babala”.

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

A handwritten signature in blue ink, appearing to read 'Cuno Tarfusser', is written over a horizontal line.

Judge Cuno Tarfusser
Single Judge

Dated this Friday, 23 January 2015

The Hague, The Netherlands