

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/05-01/08 OA 11

Date: 9 February 2015

THE APPEALS CHAMBER

Before:

**Judge Sanji Mmasenono Monageng, Presiding Judge
Judge Sang-Hyun Song
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Anita Ušacka**

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

Public document

Decision on the defence request to file additional submissions

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 Peter Haynes
Ms Kate Gibson

REGISTRY

Registrar
Mr Herman von Hebel



The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III entitled “Decision on ‘Defence Urgent Motion for Provisional Release’” of 23 December 2014 (ICC-01/05-01/08-3221),

Having before it the “Defence request to file additional submissions in support of its appeal against Trial Chamber III’s ‘Decision on “Defence Urgent Motion for Provisional Release”” of 27 January 2015 (ICC-01/05-01/08-3240)

After deliberation,

Renders unanimously

DECISION

The Request to File Additional Submissions is rejected.

REASONS

I. BACKGROUND AND PROCEDURAL HISTORY

1. On 23 December 2014, Trial Chamber III (hereinafter: “Trial Chamber”) rendered the “Decision on ‘Defence Urgent Motion for Provisional Release’”¹ (hereinafter: “Impugned Decision”) denying “in its entirety”² the request for provisional release of Mr Jean-Pierre Bemba Gombo (hereinafter: “Mr Bemba”).

2. On 12 January 2015, Mr Bemba filed the “Document in support of the Defence appeal against Trial Chamber III’s ‘Decision on “Defence Urgent Motion for Provisional Release””³ (hereinafter: “Document in Support of the Appeal”).

¹ ICC-01/05-01/08-3221.

² Impugned Decision, para. 64.

³ ICC-01/05-01/08-3230-Conf (OA 11); a public redacted version was filed on the same day (ICC-01/05-01/08-3230-Red (OA 11)). A decision extending the time limit for the filing of the document in support of the appeal was issued by the Appeals Chamber on 30 December 2014: “Decision on the extension of the time limit for the filing of the document in support of the appeal”, ICC-01/05-01/08-3227 (OA 11).

3. On 19 January 2015, the Prosecutor filed the “Prosecution Response to Defence Appeal against Trial Chamber III’s ‘Decision on “Defence Urgent Motion for Provisional Release”””.⁴

4. On 23 January 2015, in proceedings against Mr Bemba before Pre-Trial Chamber II (hereinafter: “Pre-Trial Chamber”) in relation to the alleged commission of offences under article 70 of the Statute, the “Decision on ‘Mr Bemba’s Request for provisional release”” was rendered (hereinafter: “Pre-Trial Chamber Decision on Release”).⁵ In this decision, the Pre-Trial Chamber determined that it was “necessary and appropriate to grant” Mr Bemba’s release as far as the article 70 proceedings were concerned.⁶

5. On 27 January 2015, Mr Bemba filed, pursuant to regulation 28 of the Regulations of the Court, the “Defence request to file additional submissions in support of its appeal against Trial Chamber III’s ‘Decision on “Defence Urgent Motion for Provisional Release”””⁷ (hereinafter: “Request to File Additional Submissions”).

6. On 28 January 2015, the Appeals Chamber invited the Prosecutor to respond to the Request to File Additional Submissions by 16h00 on 29 January 2015.⁸

7. On 29 January 2015, the Prosecutor filed the “Prosecution Response to Defence Request to File Additional Submissions in Support of its Appeal concerning Provisional Release”⁹ (hereinafter: “Response to the Request to File Additional Submissions”). The Appeals Chamber notes that elements of paragraphs 5-7 of the Response to the Request to File Additional Submissions enter into the merits of the proposed submissions by addressing in substance the impact of Mr Bemba’s release in the article 70 proceedings on the Appeals Chamber’s review. These parts of the Response to the Request to File Additional Submissions have been disregarded.

⁴ ICC-01/05-01/08-3235-Conf (OA 11); a public redacted version was filed on the same day (ICC-01/05-01/08-3235-Red (OA 11)).

⁵ ICC-01/05-01/13-798.

⁶ Pre-Trial Chamber Decision on Release, p. 4.

⁷ ICC-01/05-01/08-3240.

⁸ ICC-01/05-01/08-3241 (OA 11).

⁹ ICC-01/05-01/08-3242 (OA 11).

II. MERITS

8. The Request to File Additional Submissions relates to the second ground of appeal,¹⁰ which is whether the Trial Chamber erred in law by relying on factual findings from the confirmation of charges decision rendered by Pre-Trial Chamber II in the context of the article 70 proceedings to justify Mr Bemba's continued detention in the main case.¹¹

9. In the Request to File Additional Submissions, Mr Bemba submits that "[t]he Trial Chamber's reliance on Pre-Trial Chamber II's findings is a central issue on appeal". He argues that the fact that "these findings were not held to warrant continued detention in the [a]rticle 70 [c]ase necessarily impacts on the question of whether the Trial Chamber's approach was in error".¹² Accordingly, Mr Bemba seeks leave to file submissions "limited to the impact of Pre-Trial Chamber II's decision to provisionally release Mr Bemba in the Article 70 Case".¹³

10. The Prosecutor submits that "the matter which the Defence wishes to address is wholly irrelevant, and therefore cannot assist the Appeals Chamber in determining this appeal".¹⁴ She therefore submits that the Request to File Additional Submissions should be dismissed.¹⁵

11. Regulation 28 (1) of the Regulations of the Court vests the Appeals Chamber with discretionary power to "order the participants to clarify or provide additional details on any document". The Appeals Chamber has previously held that it has discretion under regulation 28 of the Regulations of the Court to order further submissions by parties or participants when "it is necessary for the proper disposal of the Appeal [...] bearing in mind the principle of equality of arms and the need for expeditious proceedings".¹⁶

¹⁰ Request to File Additional Submissions, para. 8; Document in Support of the Appeal, paras 21-30.

¹¹ Document in Support of the Appeal, paras 21-30.

¹² Request to File Additional Submissions, para. 8.

¹³ Request to File Additional Submissions, para. 10.

¹⁴ Response to the Request to File Additional Submissions, para. 1.

¹⁵ Response to the Request to File Additional Submissions, para. 1.

¹⁶ "Decision on the Prosecutor's 'Application for Leave to Reply to "Conclusions de la défense en réponse au mémoire d'appel du Procureur"', 12 September 2006, ICC-01/04-01/06-424 (OA 3), para. 7. See also "Decision on the 'Prosecution's Application under Regulation 28 to provide Clarification or

12. The Appeals Chamber notes, however, that the present request does not seek to “clarify or provide additional details” on a document before the Appeals Chamber. Rather, Mr Bemba’s proposed additional submissions relate to the impact on the present appeals proceedings of a judicial decision that post-dates the Impugned Decision.

13. The Appeals Chamber recalls that “its function is corrective in nature and ‘the scope of proceedings on appeal is determined by the scope of the relevant proceedings before the Pre-Trial Chamber’” (footnote omitted).¹⁷ For the purposes of the present review, the Appeals Chamber considers that it would not be appropriate for it to consider information that was unavailable to the Trial Chamber and did not form part of its analysis in rendering the Impugned Decision. As the proposed additional submissions would address matters beyond the scope of the present appeal, the Request to File Additional Submissions is rejected.

14. Finally, the Appeals Chamber recalls that it has stated that the parties and participants to appeals proceedings are required “to add to the end of their filing a short, signed statement” certifying the total number of words and the document’s compliance with the requirements of regulation 36 of the Regulations of the Court.¹⁸ It is noted that Mr Bemba did not comply with this requirement in either the Document in Support of the Appeal or the Request to File Additional Submissions.

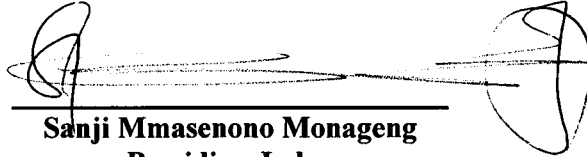
Additional Details which Impact on the Appeals against the Decisions to Stay the Proceedings and Release the Accused”, 13 October 2008, ICC-01/04-01/06-1476 (OA 12 and OA 13), para. 3; “Decision on the Application on behalf of the Government of Kenya for Leave to reply to the ‘Prosecution’s response to the “Appeal of the government of Kenya against the Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute”’, 1 August 2011, ICC-01/09-01/11-239, para. 9.

¹⁷ “Judgment on the appeal of Mr Abdullah Al-Senussi against the decision of Pre-Trial Chamber I of 11 October 2013 entitled ‘Decision on the admissibility of the case against Abdullah Al-Senussi’”, 24 July 2014, ICC-01/11-01/11-565 (OA 6), para. 57; “Judgment on the appeal of Libya against the decision of Pre-Trial Chamber I of 31 May 2013 entitled ‘Decision on the admissibility of the case against Saif Al-Islam Gaddafi’”, ICC-01/11-01/11-547-Conf (OA 4); public redacted version: ICC-01/11-01/11-547-Red (OA 4), para. 43.

¹⁸ *Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, “Judgment on the appeals of William Samoei Ruto and Mr Joshua Arap Sang against the decision of Trial Chamber V (A) of 17 April 2014 entitled ‘Decision on Prosecutor’s Application for Witness Summonses and resulting Request for State Party Cooperation’”, 9 October 2014, ICC-01/09-01/11-1598 (OA 7 OA 8), para. 26, referring to *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, “Judgment on the appeal of Mr Abdullah Al-Senussi against the decision of Pre-Trial Chamber I of 11 October 2013 entitled ‘Decision on the admissibility of the case against Abdullah Al-Senussi’”, 24 July 2014, ICC-01/11-01/11-565 (OA 6), para. 32.

The Appeals Chamber emphasises that, for the purposes of future filings in appeals proceedings, this certification must be provided.

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



Sanji Mmasenono Monageng
Presiding Judge

Dated this 9th day of February 2015

At The Hague, The Netherlands