



Original: **English**

No.: ICC-01/05-01/13
Date: **15 November 2016**

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul C. Pangalangan

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 Arido Defence Request for Leave to Appeal the Decision on Requests
for Variation of Deadlines in the Sentencing Calendar**

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo

Ms Melinda Taylor

Counsel for Aimé Kilolo Musamba

Mr Paul Djunga Mudimbi

Counsel for Jean-Jacques Mangenda Kabongo

Mr Christopher Gosnell

Counsel for Fidèle Babala Wandu

Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Mr Charles Achaleke Taku

Legal Representatives of Victims

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

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Others

Trial Chamber VII ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, having regard to Article 82(1)(d) of the Rome Statute ('Statute') and Regulation 23 *bis* of the Regulations of the Court, issues the following 'Decision on Arido Defence Request for Leave to Appeal the Decision on Requests for Variation of Deadlines in the Sentencing Calendar'.

1. On 2 November 2016, the Chamber rejected a request by, *inter alia*, the defence team for Mr Arido ('Arido Defence') to suspend and vary the deadlines in the sentencing calendar until a full French translation of the judgment is available.¹
2. On 4 November 2016, the Arido Defence requested leave to appeal this decision ('Request')² on the following issue: 'whether the Trial Chamber erred in its rejection of the Defence requests for the suspension or variation of the sentencing deadlines where the Accused has not be provided the entire judgment, thus violating the fair trial rights of the Accused'.
3. On 9 November 2016, the Office of the Prosecutor opposed the Request.³
4. Article 82(1)(d) of the Statute sets out the following requirements for the granting of a request for leave to appeal:
 - i. whether the issue at hand would significantly affect:
 - (i) The fair and expeditious conduct of the proceedings or
 - (ii) The outcome of the trial; and
 - ii. in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

¹ Decision on Requests for Variation of Deadlines in the Sentencing Calendar, ICC-01/05-01/13-2001. *See also* Judgment pursuant to Article 74 of the Statute, 19 October 2016, ICC-01/05-01/13-1989-Red (confidential version notified on the same day); Sentencing Calendar, 20 October 2016, ICC-01/05-01/13-1990.

² Narcisse Arido's Request for Leave to Appeal the 'Decision on Requests for Variation of Deadlines in the Sentencing Calendar' (ICC-01/05-01/13-2001), ICC-01/05-01/13-2004-Conf.

³ Prosecution's Response to "Narcisse Arido's Request for Leave to Appeal the 'Decision on Requests for Variation of Deadlines in the Sentencing Calendar' (ICC-01/05-01/13-2001)", ICC-01/05-01/13-2016-Conf.

5. With respect to the particular question of the meaning of an appealable ‘issue’, the Appeals Chamber has stated:

An issue is an identifiable subject or topic requiring a decision for its resolution, not merely a question over which there is disagreement or conflicting opinion. [...] An issue is constituted by a subject the resolution of which is essential for the determination of matters arising in the judicial cause under examination.⁴

6. The definition of an appealable issue requires the parties to articulate discrete issues for Appeals Chamber resolution – it is generally insufficient to argue that the entirety of the Chamber’s reasoning is erroneous when requesting leave to appeal.⁵
7. The Arido Defence, by merely reiterating its request and thereby challenging the totality of the Chamber’s previous reasoning, fails to identify a sufficiently discrete appealable issue. As the leave to appeal criteria are cumulative, this conclusion means that the relief sought must be rejected.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the relief sought in the Request; and

ORDERS the Registry to reclassify ICC-01/05-01/13-2004-Conf and ICC-01/05-01/13-2016-Conf as ‘public’.

⁴ Appeals Chamber, *Situation in the Democratic Republic of the Congo*, Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal, 13 July 2006, ICC-01/04-168, para. 9.

⁵ Decision on Babala Defence request for leave to appeal ICC-01/05-01/13-800, 27 March 2015, ICC-01/05-01/13-877, paras 7, 10-11. *See also* Trial Chamber V(A), *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on the joint defence request for leave to appeal the decision on witness preparation, 11 February 2013, ICC-01/09-01/11-596, para. 11; Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, Decision on three applications for leave to appeal, 29 November 2012, ICC-02/11-01/11-307, para. 70 (the parties cannot ‘seek leave to litigate *ex novo* before the Appeals Chamber the entire decision’).

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



Judge Bertram Schmitt, Presiding Judge



Judge Marc Perrin de Brichambaut



Judge Raul C. Pangalangan

Dated 15 November 2016

At The Hague, The Netherlands