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No. ICC-01/05-01/13 A A2 A3 A4 A5

Date: 23 November 2016

THE APPEALS CHAMBER

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Howard Morrison
Judge Geoffrey A. Henderson
Judge Piotr Hofmański

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 document

**Decision on requests for an extension of the time limit for the filing of the
documents in support of the appeal**

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 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

REGISTRY

Registrar
Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu, and Mr Narcisse Arido against the decision of Trial Chamber VII entitled “Judgment pursuant to Article 74 of the Statute” of 19 October 2016 (ICC-01/05-01/13-1989-Red),

Having before it the “Requête de la Défense de M. Babala visant à suspendre les échéances applicables à une potentielle procédure d’appel” dated 31 October 2016 and registered on 1 November 2016 (ICC-01/05-01/13-1996),

Having before it the “Prosecution’s response to Fidèle Babala Wandu’s request for an extension of time to file his appeal brief” of 7 November 2016 (ICC-01/05-01/13-2013),

Renders pursuant to regulation 35 (2) of the Regulations of the Court the following

DECISION

1. The time limit for the filing of the documents in support of the appeal is extended to 16h00 on Tuesday, 18 April 2017.
2. Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido are invited to specify briefly the legal findings of Trial Chamber VII which they intend to challenge on appeal by 16h00 on Tuesday, 14 February 2017.

REASONS

I. PROCEDURAL HISTORY

1. On 19 October 2016, Trial Chamber VII (“Trial Chamber”) delivered the “Judgment pursuant to Article 74 of the Statute”¹ (“Conviction Decision”) in which

¹ ICC-01/05-01/13-1989-Conf; a public redacted version was registered on the same date ([ICC-01/05-01/13-1989-Red](#)).

Mr Jean-Pierre Bemba Gombo (“Mr Bemba”), Mr Aimé Kilolo Musamba (“Mr Kilolo”), Mr Jean-Jaques Mangenda Kabongo (“Mr Mangenda”), Mr Fidèle Babala Wandu (“Mr Babala”) and Mr Narcisse Arido (“Mr Arido”) were convicted of various offences against the administration of justice.²

2. Mr Arido,³ Mr Babala,⁴ Mr Mangenda,⁵ Mr Bemba⁶ and Mr Kilolo⁷ filed appeals against the Conviction Decision.

3. On 31 October 2016, Mr Babala requested the Appeals Chamber to grant an extension of three months for the filing of his document in support of the appeal, or, in the alternative, to rule that the time limit for filing the document in support of the appeal start running from the date on which the Conviction Decision is notified in French⁸ (“Mr Babala’s Request for Extension of Time Limit”).

4. On 7 November 2016, the Prosecutor responded to Mr Babala’s Request for Extension of Time Limit⁹ (“Prosecutor’s Response”). In her response, the Prosecutor submits that she does not oppose Mr Babala’s request.¹⁰ In addition, the Prosecutor requests the Appeals Chamber to adopt a synchronised schedule for all documents in support of the appeal and to order all appellants to file, within the 90 day time limit prescribed in regulation 58 of the Regulations of the Court (“Regulations”), a detailed

² [Conviction Decision](#), pp. 455-457.

³ “Narcisse Arido’s Notice of Appeal against the Trial Chamber VII’s ‘Judgment pursuant to Article 74 of the Statute’ (ICC-01/05-01/13-1989-Conf)”, dated 31 October 2016 and registered on 1 November 2016, [ICC-01/05-01/13-1995 \(A\)](#).

⁴ “Notification d’appel de la Défense de M. Fidèle Babala Wandu à l’encontre du jugement rendu en application de l’article 74 du Statut par la Chambre de première instance VII le 19 octobre 2016”, [ICC-01/05-01/13-1999 \(A 2\)](#).

⁵ “Notice of Appeal”, 4 November 2016, [ICC-01/05-01/13-2006 \(A 3\)](#).

⁶ “Notice of Appeal”, 7 November 2016, [ICC-01/05-01/13-2012 \(A 4\)](#).

⁷ “Acte d’appel de la Défense de Maître Aimé Kilolo Musamba à l’encontre du ‘Judgment pursuant to Article 74 of the Statute’ (ICC-01/05-01/13-1989-Conf) rendu par la Chambre de première instance VII le 19 octobre 2016.”, dated 7 November 2016 and registered on 8 November 2016, [ICC-01/05-01/13-2015 \(A 5\)](#).

⁸ “Application by the Defence for Mr Babala for a variation of deadlines for any proceedings on appeal”, dated 31 October 2016 and registered on 9 November 2016, [ICC-01/05-01/13-1996-tENG \(A 2\)](#); original French version: “Requête de la Défense de M. Babala visant à suspendre les échéances applicables à une potentielle procédure d’appel”, dated 31 October 2016 and registered on 1 November 2016, [ICC-01/05-01/13-1996 \(A 2\)](#).

⁹ “Prosecution’s response to Fidèle Babala Wandu’s request for an extension of time to file his appeal brief”, [ICC-01/05-01/13-2013 \(A 2\)](#).

¹⁰ [Prosecutor’s Response](#), paras 2, 6.

notice of appeal outlining the findings of the Conviction Decision which the appellants intend to challenge on appeal (“Prosecutor’s New Requests”).¹¹

5. On 10 November 2016, Mr Mangenda responded to Mr Babala’s Request for Extension of Time Limit.¹² Mr Mangenda submits that he supports Mr Babala’s request to extend the time limit for the filing of his document in support of the appeal.¹³

6. On 17 November 2016, pursuant to an order issued by the Appeals Chamber,¹⁴ Mr Babala,¹⁵ Mr Bemba,¹⁶ Mr Arido¹⁷ and Mr Kilolo¹⁸ responded to the Prosecutor’s New Requests. Mr Mangenda did not respond to the Prosecutor’s second request.

II. MERITS

A. Submissions

7. In his Request for Extension of Time Limit, Mr Babala advances three sets of factors which, in his view, constitute good cause within the meaning of regulation 35 (2) of the Regulations for a three month extension for the filing of his document in support of the appeal.¹⁹ In the alternative, Mr Babala requests the Appeals Chamber to rule that the time limit for filing the document in support of the appeal start running from the date on which the Conviction Decision is notified in French.²⁰

¹¹ [Prosecutor’s Response](#), para. 13 (iii), (iv).

¹² “Response to ‘Requête de la Défense de M. Babala visant à suspendre les échéances applicables à une potentielle procédure d’appel’ (ICC-01/05-01/13-1996)”, [ICC-01/05-01/13-2021 \(A 2\)](#) (“Mr Mangenda’s Response”).

¹³ Mr Mangenda’s Response, para. 1.

¹⁴ “Order shortening time limit for responses”, 10 November 2016, [ICC-01/05-01/13-2023 \(A A 2 A 3 A 4 A 5\)](#).

¹⁵ “Réponse de la Défense de M. Fidèle Babala Wandu à ‘Prosecution’s response to Fidèle Babala Wandu’s request for an extension of time to file his appeal brief’ (ICC-01/05-01/13-2013 (A 2))”, [ICC-01/05-01/13-2032 \(A 2\)](#) (“Mr Babala’s Response”).

¹⁶ “Response to ‘Order shortening time limit for responses’”, [ICC-01/05-01/13-2033 \(A A 2 A 3 A 4 A 5\)](#) (“Mr Bemba’s Response”).

¹⁷ “Narcisse Arido’s Response to ‘Requête de la Défense de M. Babala visant à suspendre les échéances applicables à une potentielle procédure d’appel’ (ICC-01/05-01/13-1996)”, [ICC-01/05-01/13-2034 \(A 2\)](#) (“Mr Arido’s Response”).

¹⁸ “Réponse de la Défense de Monsieur Aimé Kilolo Musamba à ‘Prosecution’s response to Fidèle Babala Wandu’s request for an extension of time to file his appeal brief’ of 7 November 2016 (ICC-01/05-01/13-2013 (A2))”, [ICC-01/05-01/13-2036 \(A 2\)](#) (“Mr Kilolo’s Response”).

¹⁹ [Mr Babala’s Request for Extension of Time Limit](#), para. 1.

²⁰ [Mr Babala’s Request for Extension of Time Limit](#), para. 1.

8. First, referring to rule 144 of the Rules of Procedure and Evidence (“Rules”), Mr Babala submits that the Conviction Decision is currently only available in English and neither he nor his defence team are English speakers.²¹ Second, Mr Babala submits that the Conviction Decision addresses “new and intricate issues of law and fact” that will require a meticulous analysis.²² In this regard, Mr Babala recalls that this is the first case addressing offences under article 70 of the Statute and the first one in which five co-accused are involved.²³ Mr Babala also refers to the novelty of the procedure for admitting evidence applied by the Trial Chamber.²⁴ Finally, Mr Babala recalls that the sentencing proceedings are ongoing, which will require his defence to deal with appeal and sentencing proceedings at the same time.²⁵

9. In her response, the Prosecutor submits that she does not oppose the Request for Extension of Time Limit and that the complexity of the case and the appeal constitute good cause within the meaning of regulation 35 (2) of the Regulations.²⁶ By reference to regulation 63 (1) (b) of the Regulations, the Prosecutor further suggests that, if the Appeals Chamber grants the Request for Extension of Time Limit, a schedule should be established whereby all documents in support of the appeal in the case are filed on the same date.²⁷ In her view, the synchronised filing of all documents in support of the appeal would streamline and expedite appeal proceedings as well as significantly facilitate the filing of the Prosecutor’s consolidated response.²⁸

10. With respect to Mr Babala’s other arguments, the Prosecutor notes that it is unclear why the timetable set in the sentencing proceedings would necessarily pose difficulties in filing the document in support of the appeal by the second half of January 2017.²⁹ Regarding the availability of the Conviction Decision only in English, the Prosecutor submits that Mr Babala has already received five out of the seven

²¹ [Mr Babala’s Request for Extension of Time Limit](#), paras 12-13.

²² [Mr Babala’s Request for Extension of Time Limit](#), para. 13.

²³ [Mr Babala’s Request for Extension of Time Limit](#), para. 13.

²⁴ [Mr Babala’s Request for Extension of Time Limit](#), para. 14.

²⁵ [Mr Babala’s Request for Extension of Time Limit](#), para. 15.

²⁶ [Prosecutor’s Response](#), paras 2, 6.

²⁷ [Prosecutor’s Response](#), paras 3, 7.

²⁸ [Prosecutor’s Response](#), para. 7.

²⁹ [Prosecutor’s Response](#), para. 8.

sections of the Conviction Decision in French.³⁰ The Prosecutor also recalls that the evidence relied upon in the Conviction Decision is available in French.³¹

11. Referring to the Appeals Chamber's decision rendered in the case of the *Prosecutor v. Jean-Pierre Bemba Gombo* ("Bemba Conviction Appeal"),³² the Prosecutor requests the Appeals Chamber to require the appellants to file, by 18 January 2017, "a detailed notice of appeal outlining, at the least, the findings to be challenged on appeal".³³

12. In his response, Mr Mangenda supports Mr Babala's Request for Extension of Time Limit and requests "that any such extension also be accorded to any other appellant to ensure a unified briefing schedule."³⁴ Mr Mangenda refers to the factual, legal and procedural complexity of the case.³⁵ He submits that granting the extension sought would facilitate "a more orderly procedure", given that, in his view, the Trial Chamber's decision on sentences "may, directly or indirectly, be relevant to the appeal [against the Conviction Decision]".³⁶ Mr Mangenda further argues that the "current state of translations is a further consideration that favours granting the requested extension of time".³⁷ He finally contends that the requested extension is reasonable and appropriate.³⁸

13. In his response to the Prosecutor's New Requests, Mr Babala submits that he does not object to granting both of them.³⁹ With respect to the request concerning a detailed notice of appeal, Mr Babala requests the Appeals Chamber to allow the amendment of the grounds of appeal set out in such notice after a full French translation of the Conviction Decision has been received.⁴⁰ In this regard, Mr Babala notes that the Trial Chamber's clarification with respect to the absence of a need to

³⁰ [Prosecutor's Response](#), para. 9.

³¹ [Prosecutor's Response](#), para. 9.

³² "Decision on Mr Bemba's request for an extension of time for the filing of his document in support of the appeal", 15 April 2016, [ICC-01/05-01/08-3370 \(A\)](#).

³³ [Prosecutor's Response](#), para. 11.

³⁴ [Mr Mangenda's Response](#), para. 1.

³⁵ [Mr Mangenda's Response](#), para. 3.

³⁶ [Mr Mangenda's Response](#), para. 2.

³⁷ [Mr Mangenda's Response](#), para. 4.

³⁸ [Mr Mangenda's Response](#), para. 5.

³⁹ [Mr Babala's Response](#), paras 8-9.

⁴⁰ [Mr Babala's Response](#), para. 9.

receive a full French translation of the Conviction Decision concerned the sentencing proceedings, rather than the appeal proceedings against the conviction.⁴¹

14. Mr Bemba does not oppose granting the Prosecutor’s New Requests.⁴² In his view, the filing of a detailed notice of appeal “would expedite the appellate process and assist the parties to identify and focus on the issues in dispute.”⁴³ Nevertheless, Mr Bemba submits that the filing of such a document should not preclude him from either withdrawing or including additional grounds in his document in support of the appeal.⁴⁴

15. Mr Arido supports the request for an extension of the time limit for the filing of the documents in support of the appeal.⁴⁵ He agrees that the complexity of the issues raised, the novel practices applied during trial proceedings, and the unavailability of a full French translation of the Conviction Decision warrant an extension by three months, which in his view, “is reasonable and proportionate”.⁴⁶ Mr Arido recalls in this regard that he is francophone and submits that granting the extension would enable his defence to take “focused, defined, and in-depth” instructions from him.⁴⁷ However, Mr Arido opposes the Prosecutor’s request to order the filing of a detailed notice of appeal.⁴⁸ In this respect, he submits that: (i) the amount of time and resources required to prepare the detailed notice of appeal would distract him from working on the document in support of the appeal; (ii) such notice of appeal would be of no assistance; and (iii) ordering the filing of such a document is unfair because it “force[s] the Defence’s hand before it has selected its precise lines of appeal”.⁴⁹

16. In his response, Mr Kilolo submits that he does not oppose the Prosecutor’s New Requests.⁵⁰ Mr Kilolo further submits that in setting the time limits for the filing of the detailed notice of appeal and the document in support of the appeal, the

⁴¹ [Mr Babala’s Response](#), para. 10 referring to Trial Chamber VII, “Decision on Requests for Variation of Deadlines in the Sentencing Calendar”, 2 November 2016, [ICC-01/05-01/13-2001](#), para. 13.

⁴² [Mr Bemba’s Response](#), para. 2.

⁴³ [Mr Bemba’s Response](#), para. 3.

⁴⁴ [Mr Bemba’s Response](#), para. 4.

⁴⁵ [Mr Arido’s Response](#), para. 3.

⁴⁶ [Mr Arido’s Response](#), paras 3-7.

⁴⁷ [Mr Arido’s Response](#), para. 5.

⁴⁸ [Mr Arido’s Response](#), para. 8.

⁴⁹ [Mr Arido’s Response](#), para. 8.

⁵⁰ [Mr Kilolo’s Response](#), para. 7.

Appeals Chamber should take into consideration the fact that the date of notification of a complete French translation of the Conviction Decision is not yet known.⁵¹

B. Determination by the Appeals Chamber

17. In relation to appeals against convictions, regulation 58 (1) of the Regulations provides that “the appellant shall file a document in support of the appeal within 90 days of notification of the relevant decision”. Pursuant to regulation 35 (2) of the Regulations, a “Chamber may extend or reduce a time limit if good cause is shown [...]”.

18. In the circumstances of the present case, the Appeals Chamber is satisfied that good cause exists for an extension of the 90 day time limit prescribed in regulation 58 of the Regulations. In this regard, the Appeals Chamber is persuaded by the parties’ submissions regarding: (i) the anticipated factual, legal and procedural complexity of the appeal and the novelty of the legal issues to be addressed;⁵² (ii) the ongoing sentencing proceedings before the Trial Chamber, to which the defence teams are currently dedicating time and resources;⁵³ and (iii) the unavailability of the complete French translation of the Conviction Decision.⁵⁴ The Appeals Chamber has also taken into account the fact that the Prosecutor and the appellants have agreed that the requested extension of time is reasonable. Accordingly, the Appeals Chamber determines that the time limit for the filing of the document in support of the appeal is extended to 16h00 on Tuesday, 18 April 2017.

19. As regards the Prosecutor’s request that the Appeals Chamber order “all appellants to file a detailed notice of appeal”,⁵⁵ the Appeals Chamber observes that Mr Babala, Mr Bemba and Mr Kilolo do not oppose the Prosecutor’s request and Mr Mangenda has not made submissions in relation thereto.⁵⁶ In line with the practice followed in the *Bemba* Conviction Appeal, the Appeals Chamber considers that it is in

⁵¹ [Mr Kilolo’s Response](#), para. 8.

⁵² [Mr Babala’s Request for Variation of Time Limits](#), paras 13-14; [Prosecutor’s Response](#), para. 6; [Mr Mangenda’s Response](#), para. 3; [Mr Arido’s Response](#), paras 3-4.

⁵³ [Mr Babala’s Request for Extension of Time Limit](#), para. 15.

⁵⁴ [Mr Babala’s Request for Variation of Time Limits](#), paras 12-13; [Mr Mangenda’s Response](#), para. 4; [Mr Arido’s Response](#), paras 5-6.

⁵⁵ [Prosecutor’s Response](#), para. 13 (iv).

⁵⁶ [Mr Babala’s Response](#), para. 4; [Mr Bemba’s Response](#), paras 2-3; [Mr Kilolo’s Response](#), para. 7.

the interest of the efficient conduct of the proceedings that Mr Bemba, Mr Kilolo, Mr Mangenda, Mr Babala and Mr Arido inform the Appeals Chamber briefly of, at the very least, the legal findings in the Conviction Decision that they intend to challenge, without prejudice to the actual formulation of the grounds of appeal that they wish to advance in their documents in support of the appeal subsequently filed.

20. The Appeals Chamber is unpersuaded by Mr Arido's arguments against the Prosecutor's request. In this regard, the Appeals Chamber considers that the preparation of a document indicating the legal findings that Mr Arido intends to challenge is not so onerous that it would outweigh the benefits of such a document to the efficient conduct of the proceedings. Furthermore, given that the filing of a detailed notice of appeal is without prejudice to the actual formulation of the grounds of appeal that the appellants may wish to advance in their documents in support of the appeal, the Appeals Chamber does not consider that requiring the appellants to file such a notice would be unfair.

21. For the foregoing reasons, and in light of the fact that a complete French translation of the Conviction Decision is not likely to be provided sufficiently in advance of 18 January 2017 (deadline proposed by the Prosecutor), the Appeals Chamber considers it appropriate that the appellants specify briefly the legal findings of the Trial Chamber which they intend to challenge on appeal by 16h00 on Tuesday, 14 February 2017.

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



Judge Silvia Fernández de Gurmendi
Presiding Judge

Dated this 23rd day of November 2016

At The Hague, The Netherlands