



Original: English

No. ICC-01/04-02/06 OA 5

Date: 23 January 2017

THE APPEALS CHAMBER

Before:

**Judge Sanji Mmasenono Monageng, Presiding Judge
Judge Christine Van den Wyngaert
Judge Howard Morrison
Judge Piotr Hofmański
Judge Raul C. Pangalangan**

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF THE PROSECUTOR v. BOSCO NTAGANDA

Public

Decision on the “Corrected version of ‘Application on behalf of Mr Ntaganda for variation of time limit for the filing of the document in support of the Appeal’, 17 January 2017, ICC-01/04-02/06-1720”

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 Stéphane Bourgon
Mr Christopher Gosnell

Legal Representatives of Victims
Ms Sarah Pellet
Mr Dmytro Suprun

REGISTRY

Registrar
Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Bosco Ntaganda against the decision of Trial Chamber VI entitled “Second decision on the Defence’s challenge to the jurisdiction of the Court in respect of Counts 6 and 9” of 4 January 2017 (ICC-01/04-02/06-1707),

Having before it the “Corrected version of ‘Application on behalf of Mr Ntaganda for variation of time limit for the filing of the document in support of the Appeal’, 17 January 2017 ICC-01/04-02/06-1720”, registered on 19 January 2017 (ICC-01/04-02/06-1720-Corr),

Renders, pursuant to regulation 35 (2), read with regulation 33 of the Regulations of the Court, the following

DECISION

The request for an extension of time for the filing of Mr Bosco Ntaganda’s document in support of the appeal is rejected.

REASONS

I. PROCEDURAL HISTORY

1. On 4 January 2017, Trial Chamber VI rendered the “Second decision on the Defence’s challenge to the jurisdiction of the Court in respect of Counts 6 and 9” (“Impugned Decision”)¹ holding that it had jurisdiction over the conduct charged pursuant to Counts 6 and 9.

2. On 10 January 2017, Mr Bosco Ntaganda (“Mr Ntaganda”) filed the “Appeal on behalf of Mr Ntaganda against Trial Chamber VI’s ‘Second decision on the Defence’s challenge to the jurisdiction of the Court in respect of Counts 6 and 9’, ICC-01/04-02/06-1707”.²

¹ ICC-01/04-02/06-1707.

² ICC-01/04-02/06-1710.

3. On 17 January 2017, Mr Ntaganda filed an “Application on behalf of Mr Ntaganda for variation of time limit for the filing of the document in support of the Appeal”. A corrigendum to this filing was registered on 19 January 2017³ (“Request”).

4. On 19 January 2017, the Prosecutor filed the “Prosecution’s response to Mr Ntaganda’s application for variation of time limit for the filing of the document in support of the Appeal”⁴ (“Prosecutor’s Response”).

5. On 20 January 2017, the Common Legal Representative of the former child soldiers (“Legal Representative”) filed the “Former Child Soldiers’ response to the ‘Application on behalf of Mr Ntaganda for variation of time limit for the filing of the document in support of the Appeal’”⁵ (“Legal Representative’s Response”).

II. MERITS

6. Regulation 64 (2) of the Regulations of the Court provides that, with respect to appeals filed under rule 154, the appellant “shall file a document in support of the appeal [...] within 21 days of notification of the relevant decision”.

7. Mr Ntaganda seeks an extension of this time limit by seven days and submits in support thereof that the appeal in question “involves an inherently complex area of law concerning the jurisdiction of the Court in regards to Counts 6 and 9 and the correct interpretation of Article 8 of the Statute”.⁶ In addition, he submits that the Trial Chamber “widened the scope of this already complex legal issue” by “deciding that it has jurisdiction in respect of the charges in Counts 6 and 9 not only in the context of a non-international armed conflict [...] but also during an international armed conflict [...]”.⁷ In his view, this extension of the scope involves distinct issues and arguments that have not been previously addressed or researched by the Defence.⁸ Furthermore, Mr Ntaganda points out that “the Defence has just embarked on the

³ See “Corrected version of ‘Application on behalf of Mr Ntaganda for variation of time limit for the filing of the document in support of the Appeal’, 17 January 2017, ICC-01/04-02/06-1720”, ICC-01/04-02/06-1720-Corr (OA5).

⁴ ICC-01/04-02/06-1734.

⁵ ICC-01/04-02/06-1735.

⁶ Request, paras 1, 7.

⁷ Request, para. 8.

⁸ Request, para. 8.

eight[h] evidentiary block”, presumably pleading that the ongoing work load and/or competing priorities in relation to the trial necessitate an extension of time for the filing of the document in support of the appeal.⁹ Lastly, Mr Ntaganda states that “[a]n extension of 7 days” would cause no prejudice to the victims or Prosecution nor would it unduly delay the ongoing proceedings.¹⁰

8. The Prosecutor opposes the Request, arguing that it fails to meet the standard required under regulation 35 and that Mr Ntaganda fails to justify his inability to meet the requisite time limit.¹¹ She adds that the extension of the legal issue to international armed conflicts in the Impugned Decision is of “relatively minor significance to its *ratio decidendi*”, as the case would proceed on “the assumption that the conflict is *non-international*”.¹² The Prosecutor notes that Mr Ntaganda has been on notice that a second appeal on these legal issues was “likely” and considers that he has been in a “privileged position of having extensively reviewed and litigated the same issues several times over the course of three years”.¹³ Further, the Prosecutor requests a similar extension for its response, should the Request be granted.¹⁴

9. The Legal Representative opposes the Request, noting that the circumstances of the present case are distinguishable from those where extension of time was previously granted by the Appeals Chamber.¹⁵ The Legal Representative adds that it is not sufficient to base a request for extension of time in cases of interlocutory appeals on a heavy workload; rather, regard must be had to the “legal and factual complexity of the issue on appeal”.¹⁶ In respect of the argument concerning the complexity of the legal issue, the Legal Representative advances arguments similar to those of the Prosecutor, enumerating the five occasions where the said issue was addressed and litigated.¹⁷ She adds that the present appeal constitutes a “second

⁹ Request, para. 9.

¹⁰ Request, para. 10.

¹¹ Prosecutor’s Response, para. 4.

¹² Prosecutor’s Response, para. 6.

¹³ Prosecutor’s Response, para. 8. *See further* para. 5, where the Prosecutor lists occasions where Mr Ntaganda developed and made submissions on the law pertinent to the appeal.

¹⁴ Prosecutor’s Response, paras 9-10.

¹⁵ Legal Representative’s Response, para. 7.

¹⁶ Legal Representative’s Response, para. 8.

¹⁷ Legal Representative’s Response, para. 10.

attempt” by Mr Ntaganda to challenge the Court’s jurisdiction over Counts 6 and 9.¹⁸ Lastly, the Legal Representative requests a “similar extension” to file her response to the document in support of the appeal so as to be “allotted equal time”.¹⁹

10. Regulation 35 (2) of the Regulations of the Court permits a Chamber to “extend or reduce a time limit if good cause is shown [...]”. The Appeals Chamber has granted requests “if founded upon reasons associated with a person’s capacity to conform to the applicable procedural rule or regulation or the directions of the Court.”²⁰ It further elaborated that the incapability must be such “as would objectively provide justification for the inability of a party to comply with his/her obligations”.²¹

11. At the outset, the Appeals Chamber recognises the complexity of the legal issues at hand. However, for the reasons that follow, the Appeals Chamber is unpersuaded that this coupled with Mr Ntaganda’s competing workload before the Trial Chamber is sufficient objective justification to establish ‘good cause’ warranting an extension of the time limit.

12. The Appeals Chamber notes, as submitted by the Prosecutor and the Legal Representative of the Victims, that the issues likely to arise in this appeal have been previously litigated by Mr Ntaganda in the course of the pre-trial, trial and appeal proceedings.²² In these circumstances, the complexity of the issues arising cannot justify an extension of time. As to Mr Ntaganda’s contention that the Impugned Decision widens the scope of the legal issues which requires additional time for

¹⁸ Legal Representative’s Response, para. 11.

¹⁹ Legal Representative’s Response, para. 12.

²⁰ *Prosecutor v. Thomas Lubanga Dyilo*, “Reasons for the ‘Decision of the Appeals Chamber on the request of counsel to Mr. Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court of 7 February 2007’ issued on 16 February 2007”, 21 February 2007, ICC-01/04-01/06-834, para. 9.

²¹ *Supra*.

²² Pre-trial: Transcript of the hearing dated 13 February 2014, ICC-01/04-02/06-T-10-RED-ENG, p. 27. “*Conclusions écrites de la Défense de Bosco Ntaganda suite à l’Audience de confirmation des charges*”, 14 April 2014, ICC-01/04-02/06-292-Red2, paras 250-263; trial: “Application on behalf of Mr Ntaganda challenging the jurisdiction of the Court in respect of Counts 6 and 9 of the Document containing the charges”, 1 September 2015, ICC-01/04-02/06-804; “Consolidated submissions challenging jurisdiction of the Court in respect of Counts 6 and 9 of the Updated Document containing the charges”, 7 April 2016, ICC-01/04-02/06-1256; appeal: “Appeal on behalf of Mr Ntaganda against Trial Chamber VI’s ‘Decision on the Defence’s challenge to the jurisdiction of the Court in respect of Counts 6 and 9’, ICC-01/04-02/06-892”, 19 October 2015, ICC-01/04-02/06-909.

research by the Defence, the Appeals Chamber finds that Mr Ntaganda fails to demonstrate why this is so.

13. With respect to Mr Ntaganda's workload, the Appeals Chamber has previously recognised that a concurrent heavy work load coupled with the complexity of the legal issues may warrant an extension of the statutory time limits.²³ However, in circumstances such as the present, where an appellant is challenging the jurisdiction of the Court for a second time, the Appeals Chamber is not convinced that the Defence's concurrent trial workload is a justifiable reason to extend time.

14. Consequently, the Appeals Chamber rejects the Request.

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



Judge Sanji Mmasenono Monageng
Presiding Judge

Dated this 23rd day of January 2017

At The Hague, The Netherlands

²³ "Decision on the 'Urgent request on behalf of Mr Ntaganda seeking an extension of time limit to submit the Document in Support of the Appeal'", 28 September 2016, ICC-01/04-02/06-1549 (OAA4), para. 10.