



Original: English

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

Date: 29 March 2017

THE APPEALS CHAMBER

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

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 Mr Bemba's request for extension of the time and page limits for his
document 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
Ms Sarah Codde

Counsel for Aimé Kilolo Musamba
Mr Michael G. Karnavas
Mr Steven Powles

Counsel for Jean-Jacques Mangenda Kabongo
Mr Christopher Gosnell
Mr Peter Robinson

Counsel for Fidèle Babala Wandu
Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido
Mr Charles Achaleke Taku
Ms Beth Lyons

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 “Request for an extension of the page limit and deadline” of 24 March 2017 (ICC-01/05-01/13-2126 (A A2 A3 A4 A5)),

Having before it the “Correction to ‘Request for an extension of the page limit and deadline’” of 27 March 2017 (ICC-01/05-01/13-2127 (A A2 A3 A4 A5)),

Renders pursuant to regulations 35 (2) and 37 (2) of the Regulations of the Court the following

DECISION

1. The request for an extension of the time limit for filing the document in support of the appeal by Mr Bemba is rejected.
2. The request for an extension of the page limit for the document in support of the appeal of Mr Bemba is rejected.

REASONS

I. PROCEDURAL HISTORY

1. On 19 October 2016, Trial Chamber VII (“Trial Chamber”) rendered its “Judgment pursuant to Article 74 of the Statute”¹ (“Conviction Decision”).
2. Mr Narcisse Arido (“Mr Arido”),² Mr Fidèle Babala Wandu (“Mr Babala”),³ Mr Jean-Jacques Mangenda Kabongo (“Mr Mangenda”),⁴ Mr Jean-Pierre Bemba

¹ *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, [ICC-01/05-01/13-1989-Red](#).

² “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 \(A\)](#).

Gombo (“Mr Bemba”),⁵ and Mr Aimé Kilolo Musamba (“Mr Kilolo”) ⁶ filed appeals against the Conviction Decision.

3. On 23 November 2016, the Appeals Chamber extended the time limit for the filing of the documents in support of the appeals to 18 April 2017.⁷ It also invited Mr Arido, Mr Babala, Mr Mangenda, Mr Bemba and Mr Kilolo to specify briefly, by 14 February 2017, the legal findings of the Trial Chamber which they intended to challenge on appeal,⁸ which they did by filing detailed notices of appeal.⁹

4. On 23 March 2017, the Appeals Chamber, upon request by Mr Babala,¹⁰ extended by 15 pages the page limit for Mr Babala’s document in support of the appeal and, on its own motion, granted the same extension, *inter alia*, for Mr Bemba’s document in support of the appeal.¹¹

5. On 24 March 2017, Mr Bemba filed a request seeking a further extension of the time limit for filing his document in support of the appeal from 18 April to 26 April 2017 and the page limit for his document in support of the appeal by 35 additional

³ “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”, 2 November 2016, [ICC-01/05-01/13-1999 \(A2\)](#).

⁴ “Notice of Appeal”, 4 November 2016, [ICC-01/05-01/13-2006 \(A3\)](#).

⁵ “Notice of Appeal”, 7 November 2016, [ICC-01/05-01/13-2012 \(A4\)](#).

⁶ “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 \(A5\)](#).

⁷ “Decision on requests for an extension of the time limit for the filing of the documents in support of the appeal”, [ICC-01/05-01/13-2046 \(A A2 A3 A4 A5\)](#) (“Decision of 23 November 2016”), para. 18.

⁸ Decision of 23 November 2016, para. 21.

⁹ “Soumission de la Défense de M. Babala en exécution de l’ordonnance de la Chambre d’appel ICC-01/05-01/13-2046 A A2 A3 A5 [*sic*] A5”, 14 February 2017, [ICC-01/05-01/13-2107 \(A2\)](#); “Detailed Notice of Appeal”, 14 February 2017, [ICC-01/05-01/13-2108 \(A3\)](#); “Public Redacted Version of ‘Bemba Defence Filing Identifying Errors in the Trial Judgment’”, 31 January 2017, [ICC-01/05-01/13-2102-Red \(A4\)](#); “Aimé Kilolo Musamba’s submissions in compliance with ‘Decision on requests for an extension of the time limit for the filing of the documents in support of the appeal’ (ICC-01/05-01/13-2046)”, 14 February 2017, ICC-01/05-01/13-2109-Conf (A5); “Narcisse Arido’s Updated Detailed Notice of Appeal”, 22 February 2017, ICC-01/05-01/13-2110-Conf (A A2 A3 A4 A5).

¹⁰ “Request from the Defence for Mr Babala for an extension to the page limit for its appeal brief”, 24 March 2017, [ICC-01/05-01/13-2121-tENG \(A2\)](#) (the original French version was filed on 21 March 2017 (ICC-01/05-01/13-2121)).

¹¹ “Decision on Mr Babala’s request for an extension of page limit for his document in support of the appeal”, [ICC-01/05-01/13-2124 \(A A2 A3 A4 A5\)](#) (“Decision of 23 March 2017”), paras 8-9.

pages¹² (“Request”).¹³ Certain arguments made in the Request were subsequently corrected by Mr Bemba on 27 March 2017.¹⁴

II. MERITS

A. Request for extension of time limit

6. The Appeals Chamber recalls that the documents in support of the appeals are due on 18 April 2017.¹⁵ Regulation 35 (2) of the Regulations of the Court provides that a Chamber may extend a time limit “if good cause is shown”.

7. Mr Bemba requests that the time limit for filing his document in support of the appeal be extended to 26 April 2017.¹⁶ This request was originally based on two independent arguments, namely that: (i) due to the rules regulating contacts with detained persons at the Detention Centre of the Court, Mr Bemba and his counsel might not be able to meet in person in the four days preceding the expiration of the time limit for the filing of the document in support of the appeal because of the commencement of the Easter holidays;¹⁷ and (ii) the discussion and consideration of the sentence issued by the Trial Chamber on 22 March 2017, having significant consequences for Mr Bemba and his family, have diverted time and resources from the preparation of the document in support of the present appeal.¹⁸

8. Mr Bemba subsequently corrected the premise of his first argument, stating that, contrary to his original argument in the Request, he and his counsel might be in a position to meet in person during the relevant days with the ordinary exception of Saturday and Sunday.¹⁹

¹² “Request for an extension of the page limit and deadline”, [ICC-01/05-01/13-2126 \(A A2 A3 A4 A5\)](#), with Annex A (ICC-01/05-01/13-2126-Conf-AnxA), paras 21-22.

¹³ While this decision is rendered before the filing of a response from the Prosecutor, the Appeals Chamber considers that this is done without prejudice to the Prosecutor.

¹⁴ “Correction to ‘Request for an extension of the page limit and deadline’”, [ICC-01/05-01/13-2127 \(A A2 A3 A4 A5\)](#) (“Correction to the Request”).

¹⁵ See Decision of 23 November 2016, para. 18.

¹⁶ Request, para. 22.

¹⁷ Request, paras 4-10.

¹⁸ Request, paras 12-13, referring to *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, “Decision on Sentence pursuant to Article 76 of the Statute”, 22 March 2017, ICC-01/05-01/13-2123-Corr.

¹⁹ Correction to the Request, para. 3.

9. The Appeals Chamber notes that in view of Mr Bemba's clarification regarding the possibility to meet his counsel at the Detention Centre during the Easter holidays, the argument brought in support of the requested extension of time limit is therefore limited to the impact of the pronouncement of the sentence on the preparation of Mr Bemba's document in support of the present appeal.

10. The Appeals Chamber is not persuaded that Mr Bemba has demonstrated good cause for the requested variation of the time limit. It is inherent in a conviction that a sentence, if not issued simultaneously, would follow shortly. Mr Bemba has been aware of this since the rendering of the Conviction Decision on 19 October 2016, and was notified on 23 February 2017 that the sentence would be pronounced on 22 March 2017.²⁰ It is thus reasonable to expect that Mr Bemba (and his counsel) would have organised their work leading to the upcoming filing of his document in support of the appeal factoring in that the sentence would be rendered in the meantime, and that such decision would likely have implications for Mr Bemba.

11. In addition, the Appeals Chamber is of the view that, even if since 22 March 2017 discussions on the implications of the sentence may have diverted time and resources from the finalisation of the document in support of the appeal against the Conviction Decision, Mr Bemba and his counsel would still have had sufficient time for the preparation of the document in support of the appeal. The Appeals Chamber recalls that it has already extended the time limit for the filing of the documents in support of the appeals in the present case by granting the appellants 180 days from the rendering of the Conviction Decision.²¹ This is twice the time limit provided under regulation 58 (1) of the Regulations of the Court for filing the document in support of the appeal against any conviction following which a sentence is typically pronounced.

12. The Appeals Chamber therefore finds that Mr Bemba has not demonstrated "good cause" within the meaning of regulation 35 (2) of the Regulations of the Court,

²⁰ "Order Scheduling the Delivery of the Decision on Sentencing", 23 February 2017, [ICC-01/05-01/13-2111](#), p. 3.

²¹ Decision of 23 November 2016, para. 18.

and accordingly rejects the request for extension of the time limit for filing the document in support of the appeal.

B. Request for extension of page limit

13. Regulation 58 (5) of the Regulation of the Court provides that the document in support of the appeal shall not exceed 100 pages. The applicable page limit has already been extended by the Appeals Chamber for all the appellants, including Mr Bemba, to 115 pages.²² Pursuant to regulation 37 (2) of the Regulations of the Court, a Chamber may grant an extension of the page limit “in exceptional circumstances”.

14. Mr Bemba requests that the page limit for his document in support of the appeal be further extended by 35 pages to a total of 150 pages.²³ Mr Bemba submits that the fact that the Appeals Chamber granted Mr Babala 15 additional pages, rather than the requested 50 pages, should be considered “specific to the parameters of the Babala appeal” and should foresee the possibility that the other defendants may justify the need for additional pages.²⁴ Mr Bemba argues further that the scope of his prospective appeal is necessarily broader than that of Mr Babala because, while Mr Babala was found guilty as an accessory in relation to two offences under article 70 (1) (c) of the Statute that occurred in a span of few days, Mr Bemba was convicted pursuant to a common plan that encompassed 14 offences under articles 70 (1) (a), (b) and (c) over a period of approximately two years under article 25 (3) (a) and (b).²⁵ In addition, Mr Bemba avers that a further extension of the page limit for his document in support of the appeal is justified by the fact that the present appeal will provide him for the first time the opportunity to litigate a number of matters which he was previously denied standing to address or in relation to which requests for leave to appeal were denied.²⁶

15. The Appeals Chamber agrees that, in principle, Mr Bemba is not precluded from seeking a further extension of page limit for his document in support of the

²² See Decision of 23 March 2017, para. 9.

²³ Request, paras 21-22.

²⁴ Request, para. 16.

²⁵ Request, para. 18.

²⁶ Request, para. 19.

appeal by the mere fact that the Appeals Chamber has considered that 115 pages were adequate and sufficient for Mr Babala's document in support of the appeal. Each convicted person is in fact uniquely situated and whether exceptional circumstances exist justifying an extension of the number of pages for the purpose of an effective presentation of arguments in the documents in support of appeals depends on the breadth and prospective complexity of the issues that each of them is likely to bring to the attention of the Appeals Chamber in light, *inter alia*, of the scope of the individual conviction entered. However, in the present case the Appeals Chamber is not convinced that Mr Bemba has demonstrated the existence of "exceptional circumstances" warranting that the page limit be further extended from 115 to 150 pages.

16. The Appeals Chamber notes that Mr Bemba refers only in generic terms to the fact that his case is more complex than that expected to be presented by Mr Babala. In this regard, the Appeals Chamber recalls that, in considering that 115 pages were justified, sufficient and adequate for Mr Babala, it already took into account, not only the scope of purported legal, factual and procedural errors likely to be developed by Mr Babala in his own document in support of the appeal, but also, in more general terms, the overall breadth and complexity of the present appeal and the fact that it "raises multiple and complex issues, some of which will be brought before the Court for the first time".²⁷ As the Appeals Chamber already considered the likely overall features of the present appeal (besides Mr Babala's own particularities) for its determination that a further 50 pages were not warranted but that 15 additional pages were sufficient, a comparison between the positions of Mr Bemba and Mr Babala does not, in and of itself, justify a further extension of page limits to Mr Bemba's benefit.

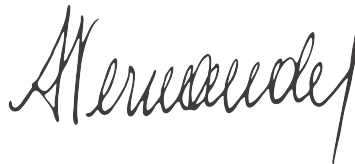
17. The Appeals Chamber is equally unconvinced by Mr Bemba's additional argument that a number of matters will be effectively litigated in the present appeal for the first time because he had not been granted leave to appeal in respect of such matters and had been unable to otherwise raise them before the relevant Chambers or the Presidency. The Appeals Chamber is of the view that this is not an exceptional

²⁷ Decision of 23 March 2017, para. 7.

circumstance in an appeal under article 81 of the Statute, for which 100 pages are ordinarily considered sufficient under regulation 58 (5) of the Regulations of the Court. Moreover, Mr Bemba provides no compelling reasons as why his appeal would be of such a nature, scope and complexity that 115 pages would not be sufficient to adequately present his arguments in his document in support of the appeal.

18. In light of these considerations, and recalling that Mr Bemba already benefits from an extension of the page limit for his document in support of the appeal by an additional 15 pages, the Appeals Chamber concludes that no exceptional circumstances exist, within the meaning of regulation 37 (2) of the Regulations of the Court, that warrant an extension of 35 additional pages.

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



Judge Silvia Fernández de Gurmendi
Presiding Judge

Dated this 29th day of March 2017