



Original: English

**No. ICC-01/04-02/06 OA6
Date: 28 June 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 document

Decision on request to suspend the trial proceedings

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 “Decision on Defence request for leave to file a ‘no case to answer’ motion” of 1 June 2017 (ICC-01/04-02/06-1931),

Having before it the “Appeal from decision denying leave to file a ‘no case to answer motion’” of 27 June 2017 (ICC-01/04-02/06-1975), in which a request for the suspension of the trial proceedings pending resolution of the appeal is made,

Issues the following

DECISION

The request for the suspension of the trial proceedings pending resolution of the appeal is dismissed *in limine*.

REASONS

I. PROCEDURAL HISTORY

A. Proceedings before the Trial Chamber

1. On 25 April 2017, Mr Bosco Ntaganda (“Mr Ntaganda”) filed a request before Trial Chamber VI (“Trial Chamber”), seeking “leave to file a motion of partial judgement of acquittal for the Counts 1 to 5, 7-8, 10-13 and 17-18 in relation to the ‘Second Attack’, and Count 17 in its totality [...]”¹ (“Request to File Partial Judgment Motion”).

2. On 1 June 2017, the Trial Chamber issued its decision denying the Request to File Partial Judgment Motion given, *inter alia*, “its broad discretion as to whether or not to pronounce upon such matters at this stage of proceedings” and the fact that “entertaining such a motion may also entail a lengthy process [...] and may thus not

¹ “Request for leave to file motion for partial judgment of acquittal”, 25 April 2017, ICC-01/04-02/06-1879-Conf, para. 42.

necessarily positively affect the expeditiousness of the trial, even if successful in part”.²

3. On 6 June 2017, Mr Ntaganda filed a request seeking leave to appeal the Impugned Decision.³

4. On 14 June 2017, the Trial Chamber granted Mr Ntaganda leave to appeal with respect to (i) “[w]hether the Chamber erred in permitting trial to proceed in respect of charges for which the Chamber declined to consider the sufficiency of the Prosecution’s evidence” and (ii) “[w]hether declining to entertain a Defence motion for a judgement of (partial) acquittal is a discretionary matter”.⁴

B. Proceedings before the Appeals Chamber

5. On 14 June 2017, Mr Ntaganda filed a request for suspensive effect in his appeal against the Impugned Decision.⁵

6. On 16 June 2017, the Appeals Chamber rejected the request for suspensive effect, noting that, with his request for suspensive effect, Mr Ntaganda sought the suspension of the trial proceedings, but that this result could not be attained through the suspension of the Impugned Decision.⁶

7. On 27 June 2017, Mr Ntaganda filed the “Appeal from decision denying leave to file a ‘no case to answer motion’”⁷ (“Document in Support of the Appeal”), requesting, *inter alia*, that the Appeals Chamber, on an interim basis, suspend the proceedings before the Trial Chamber pending the resolution of the appeal (“Request for Suspension”).⁸ He submits that, “[i]f the Appeals Chamber does not issue this order by, at the latest, 28 June 2017, then areas that concern the proposed request for judgment of acquittal may start to be addressed in Mr Ntaganda’s testimony” and that

² “Decision on Defence request for leave to file a ‘no case to answer’ motion”, 1 June 2017, [ICC-01/04-02/06-1931](#), (“Impugned Decision”) paras 25-26.

³ “Urgent Request for leave to appeal ‘Decision on Defence request for leave to file a ‘no case to answer’ motion’, 1 June 2017, ICC-01/04-02/06-1931”, 6 June 2017, [ICC-01/04-02/06-1937](#).

⁴ Transcript of 14 June 2017, ICC-01/04-02/06-T-209-CONF-ENG (ET), p. 24, line 15 to p. 26.

⁵ “Notice of appeal and urgent request for suspensive effect”, 14 June 2017, ICC-01/04-02/06-1960 (OA6) (“Request for Suspensive Effect”), para. 29.

⁶ “Decision on suspensive effect”, ICC-01/04-02/06-1968 (OA6) (“Decision on Suspensive Effect”), para. 9.

⁷ ICC-01/04-02/06-1975 (OA6).

⁸ Document in Support of the Appeal, paras 6, 31.

“[o]nce that point is reached, then it would no longer be appropriate to interrupt proceedings”.⁹

II. MERITS

8. The Appeals Chamber notes that, with the Request for Suspension, Mr Ntaganda seeks the suspension of the trial proceedings pending the outcome of the present appeal and therefore in essence the same relief as that sought with his request for suspensive effect made earlier in the proceedings and rejected by the Appeals Chamber with its Decision on Suspensive Effect. Mr Ntaganda does not explain why the Appeals Chamber should reconsider the Decision on Suspensive Effect or on what legal basis the Appeals Chamber could grant the relief sought with the Request for Suspension. The Appeals Chamber recalls that in the context of interlocutory appeals, “[an application designed to stay proceedings] is a remedy unknown to the Statute and wholly separate from the one envisaged by article 82 (3) of the Statute”,¹⁰ meaning that the only interim relief expressly recognised by this provision of the Statute in respect of interlocutory appeals is the suspension of the decision subject to appeal.

9. In these circumstances, the Request for Suspension is dismissed *in limine* .

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


Judge Sanji Mmasenono Monageng
Presiding Judge

Dated this 28th day of June 2017.

At The Hague, The Netherlands

⁹ Document in Support of the Appeal, para. 6; see also para. 31.

¹⁰ *Prosecutor v. Joseph Kony et al.*, “Decision on the Prosecutor's ‘Application for Appeals Chamber to Give Suspensive Effect to Prosecutor's Application for Extraordinary Review’”, 13 July 2006, [ICC-02/04-01/05-92](#) (OA), para. 3. *See also* para. 4 (In common law courts, “power to stay resides with the trial court, not the appeal court. Romano-Germanic jurisdictions too, as in Germany, make provision for stay of criminal proceedings pending the outcome of civil proceedings where the dispute concerns in essence a civil matter; there again jurisdiction to stay lies with the trial court.”)