



Original: English

No. ICC-01/05-01/08 A

Date: 4 September 2017

THE APPEALS CHAMBER

Before: Judge Christine Van den Wyngaert, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Howard Morrison
Judge Chile Eboe-Osuji
Judge Piotr Hofmański

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO

Public document

Decision on Mr Bemba's request for measures concerning the availability of funds

Decision to be notified in accordance with regulation 31 of the Regulations of the Court to:

The Office of the Prosecutor

Ms Fatou Bensouda

Ms Helen Brady

Counsel for the Defence of Mr Jean-Pierre Bemba Gombo in ICC-01/05-01/13

Ms Melinda Taylor

Ms Mylène Dimitri

Legal Representative of Victims

Ms Marie-Edith Douzima-Lawson

Counsel for the Defence of Mr Jean-Pierre Bemba Gombo

Mr Peter Haynes

Ms Kate Gibson

REGISTRY

Registrar

Mr Herman von Hebel

Other

Trial Chamber III

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III entitled “Judgment pursuant to Article 74 of the Statute” of 21 March 2016 (ICC-01/05-01/08-3343),

Having before it the “Amended Application for Measures to be Taken to Ensure the Availability of Funds” of 27 July 2017 (ICC-01/05-01/08-3548-Red),

Renders unanimously the following

DECISION

The above-mentioned request is dismissed *in limine*.

REASONS

1. On 30 June 2017, counsel for Mr Jean-Pierre Bemba Gombo (“Mr Bemba”) in the case of the *Prosecutor v. Jean-Pierre Bemba Gombo et al.* (“Article 70 Case”) filed an application¹ (“Original Request”), seeking assistance from the Appeals Chamber to obtain information regarding the available funds of one bank account in his name and requesting the Appeals Chamber to take the necessary steps “to ensure the availability to the Court of the funds in this account”.²

2. On 11 July 2017, the Prosecutor filed her response, requesting the rejection of Mr Bemba’s Original Request.³ In her response, the Prosecutor notes that reparations proceedings are currently ongoing before Trial Chamber III (“Trial Chamber”).⁴ She submits that a chamber of the Court should remain seized of the matter concerning the contents of the bank account but takes no position as to whether this function should be carried out by the Trial Chamber or the Appeals Chamber.⁵

¹ “Bemba Defence Application to Lift the Freeze Ordered by Trial Chamber III Regarding Specific Assets”, [ICC-01/05-01/08-3537](#).

² Original Request, para. 10.

³ “Prosecution’s response to Mr Bemba’s application concerning the freezing order (ICC-01/05-01/08-3537)”, ICC-01/05-01/08-3540-Conf. A public redacted version was filed on the same date ([ICC-01/05-01/08-3540-Red](#)) (“Response to Original Request”), para. 32.

⁴ Response to Original Request, para. 28.

⁵ Response to Original Request, para. 29.

3. On 24 July 2017, and pursuant to an order of the Appeals Chamber,⁶ the Registry informed that the authorities of the Democratic Republic of the Congo (“DRC”) had provided the relevant information sought by Mr Bemba concerning his assets.⁷

4. On 27 July 2017, counsel for Mr Bemba in the Article 70 Case filed a document: (i) withdrawing his Original Request; (ii) requesting the Appeals Chamber to “amend the freezing order, to the extent required, to enable the Defence, through the Registry, to request the DRC bank to convert the funds immediately to US dollars”; and (iii) requesting the reclassification of the information provided by the Registry (ICC-01/05-01/08-3545-Conf-Exp-Anx1) in order for it to be available on a confidential *ex parte* counsel for Mr Bemba in the Article 70 Case and Prosecution only basis⁸ (“Request”).

5. In his Request, Mr Bemba notes that the funds in the DRC bank account are held in Congolese francs.⁹ In his view, this raises a significant risk of further devaluation as “the value of these funds might depreciate substantially due to significant currency fluctuations in the DRC”.¹⁰ Mr Bemba submits that, in order to prevent further loss, protection measures should be put in place.¹¹ In particular, Mr Bemba requests amendment of the freezing order in order to enable the Defence, through the Registry, to request the DRC bank to convert the funds immediately to US dollars.¹²

6. On 2 August 2017, the Prosecutor filed a notice on a confidential *ex parte*, only available to the Prosecutor and the Registry basis, bringing to the attention of the Appeals Chamber information related to proceedings concerning the bank account in

⁶ “Order for submission on Mr Bemba’s application regarding frozen assets”, 10 July 2017, [ICC-01/05-01/08-3539](#).

⁷ “The Registrar’s submission pursuant to the ‘Order for submissions on Mr Bemba’s application regarding frozen assets’ (ICC-01/05-01/08-3539)”, ICC-01/05-01/08-3545 with “Annex 1 Confidential EX PARTE only available to the Prosecution, Defence and Defence in ICC-01/05-01/13”, ICC-01/05-01/08-3545-Conf-Exp-Anx1.

⁸ “Amended Application for Measures to be Taken to Ensure the Availability of Funds”, ICC-01/05-01/08-3548-Conf-Exp, para. 16; a public redacted version was registered on 7 August 2017 ([ICC-01/05-01/08-3548-Red](#)).

⁹ Request, para. 9

¹⁰ Request, para. 9.

¹¹ Request, paras 10-14.

¹² Request, paras 15-16.

question that are currently pending before the Trial Chamber.¹³ This information is currently classified as confidential, *ex parte*, only available to the Prosecutor and the Registry.

7. The Appeals Chamber recalls that Mr Bemba has appealed both the “Judgment pursuant to Article 74 of the Statute” of 21 March 2016¹⁴ and the “Decision on Sentence pursuant to Article 76 of the Statute” of 21 June 2016¹⁵ (“Sentencing Decision”). These appeals are currently pending before the Appeals Chamber. As a result, the Appeals Chamber considers that it has jurisdiction to rule on matters relating to the freezing of Mr Bemba’s assets in the context of case ICC-01/05-01/08.

8. That said, the Appeals Chamber notes that the Sentencing Decision did not impose a fine on Mr Bemba, nor did it order the forfeiture of proceeds, property or assets pursuant to article 77 (2) of the Statute, while proceedings in relation to reparations are currently pending before the Trial Chamber. Indeed, proceedings relating to the specific bank account to which the Request refers are currently pending before the Trial Chamber, on a confidential *ex parte*, only available to the Prosecutor and the Registry basis. With respect to the classification of this and other proceedings concerning the freezing of Mr Bemba’s assets, whether or not all or some of them should be or remain confidential *ex parte* or under seal is for now a question for the Trial Chamber to consider, without prejudice to any eventual appellate jurisdiction of the Appeals Chamber. In these circumstances, the Appeals Chamber considers that it would be inappropriate to exercise its jurisdiction at this time over the matters raised in the Request; in the view of the Appeals Chamber, currently such matters would be more appropriately dealt with by Trial Chamber III. The Appeals Chamber therefore rejects the Request.

9. The Appeals Chamber notes that Mr Bemba is also requesting reclassification of the information provided by the Registry in annex 1 to document ICC-01/05-01/08-3545-Conf-Exp-Anx1 in order to be available on a confidential *ex parte* counsel for Mr Bemba in the Article 70 Case and Prosecution only basis.¹⁶

¹³ “Prosecution’s notice regarding Mr Bemba’s ‘[a]mended application’ concerning the freezing order (ICC-01/05-01/08-3548)”, ICC-01/05-01/08-3551-Conf-Exp.

¹⁴ [ICC-01/05-01/08-3343](#).

¹⁵ [ICC-01/05-01/08-3399](#).

¹⁶ Request, para. 16 (c).

However, the Appeals Chamber observes that the annex in question was filed confidential *ex parte*, available to the Prosecutor, counsel for Mr Bemba in the present case and counsel for Mr Bemba in the Article 70 Case. As such, Mr Bemba's request is moot.

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



Judge Christine Van den Wyngaert
Presiding Judge

Dated this 4th day of September 2017

At The Hague, The Netherlands