

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-01/05-01/13 OA
Date: 19 June 2014**

THE APPEALS CHAMBER

Before:
Judge Sang-Hyun Song, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Anita Ušacka

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

**Order on the reclassification of documents and decision on
request for leave to reply**

phs

Order and 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
Mr James Stewart, Deputy Prosecutor

Counsel for Mr Jean-Pierre Bemba Gombo
Mr Nicholas Kaufman

Counsel for Mr Aimé Kilolo Musamba
Mr Ghislain M. Mabanga

Counsel for Mr Jean-Jacques Mangenda Kabongo
Mr Jean Flamme

Counsel for Mr Fidèle Babala Wandu
Mr Jean-Pierre Kilenda

Counsel for Mr Narcisse Arido
Mr Göran Sluiter

Registrar
Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the “Requête aux fins de récusation de l’Accusation dans le cadre de l’enquête et des poursuites visant M. Aimé Kilolo Musamba” dated 28 February 2014 and registered on 3 March 2014 (ICC-01/05-01/13-233-Conf),

Having before it the “Prosecution’s Request for Reclassification of ICC-01/05-01/13-481-Conf” dated 12 June 2014 and registered on 13 June 2014 (ICC-01/05-01/13-493-Conf-Exp), and the “Demande aux fins de réplique à la réponse du Procureur ICC-01/05-01/13-481 conf 10-06-2014 à l’addendum à la demande de récusation de l’Accusation dans le cadre de l’enquête et des poursuites visant M. Aimé KILOLO MUSAMBA et M. Jean-Jacques KABONGO MANGENDA” dated 11 June 2014 and registered on 12 June 2014 (ICC-01/05-01/13-486-Conf), to which a corrigendum dated 12 June 2014 and registered on 13 June 2014 was filed (ICC-01/05-01/13-486-Conf-Corr),

Pursuant to regulation 23 *bis* (3) of the Regulations of the Court,

Issues the following

ORDER AND DECISION

- (1) The Registrar shall reclassify documents ICC-01/05-01/13-481-Conf, ICC-01/05-01/13-481-Conf-AnxA and ICC-01/05-01/13-481-Conf-AnxB as confidential, *ex parte*, available to the Defence of Mr Aimé Kilolo Musamba and the Prosecutor only.
- (2) The Defence for Mr Jean-Pierre Bemba Gombo, the Defence for Mr Jean-Jacques Mangenda Kabongo, the Defence for Mr Fidèle Babala Wandu and the Defence for Mr Narcisse Arido are directed to delete the email notification of documents ICC-01/05-01/13-481-Conf, ICC-01/05-01/13-481-Conf-AnxA and ICC-01/05-01/13-481-Conf-AnxB, delete or destroy any electronic or hardcopy thereof and maintain the confidentiality of the protected information.
- (3) Mr Jean-Jacques Mangenda Kabongo’s application ICC-01/05-01/13-486-Conf-Corr is rejected.

REASONS

1. Mr Aimé Kilolo Musamba (hereinafter: “Mr Kilolo”) filed confidentially the “Requête aux fins de récusation de l’Accusation dans le cadre de l’enquête et des poursuites visant M. Aimé Kilolo Musamba” dated 28 February 2014 and registered on 3 March 2014 (ICC-01/05-01/13-233-Conf).

2. Subsequently, Mr Kilolo filed confidentially the “Addendum à la Requête aux fins de récusation de l’Accusation dans le cadre de l’enquête et des poursuites visant M. Aimé Kilolo Musamba (ICC-01/05-01/13-233-Conf)” dated 1 June 2014 and registered on 2 June 2014.¹

3. On 10 June 2014, the Prosecutor filed confidentially the “Prosecution Response to the Kilolo Defence’s Addendum to its Request for the disqualification of the Prosecutor, the Deputy Prosecutor and the other members of the Office of the Prosecutor from the case against Kilolo”² (hereinafter: “Response”), attaching two annexes that were also classified as confidential³ (hereinafter: “Annexes”).

4. Mr Jean-Jacques Mangenda Kabongo (hereinafter: “Mr Mangenda”) filed confidentially the “Demande aux fins de réplique à la réponse du Procureur ICC-01/05-01/13-481 conf 10-06-2014 à l’addendum à la demande de récusation de l’Accusation dans le cadre de l’enquête et des poursuites visant M. Aimé KILOLO MUSAMBA et M. Jean-Jacques KABONGO MANGENDA” dated 11 June 2014 and registered on 12 June 2014⁴ to which he filed a corrigendum dated 12 June 2014 and registered on 13 June 2014⁵ (hereinafter: “Request for Leave to Reply”), indicating that he wishes to reply to the Response.

5. Subsequently, the Prosecutor filed confidentially, *ex parte*, available to the Appeals Chamber and the Prosecutor only, the “Prosecution’s Request for Reclassification of ICC-01/05-01/13-481-Conf” dated 12 June 2014 and registered on

¹ ICC-01/05-01/13-449-Conf.

² ICC-01/05-01/13-481-Conf.

³ ICC-01/05-01/13-481-Conf-AnxA; ICC-01/05-01/13-481-Conf-AnxB.

⁴ ICC-01/05-01/13-486-Conf.

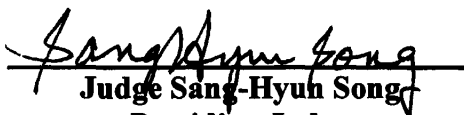
⁵ ICC-01/05-01/13-486-Conf-Corr.

13 June 2014⁶ (hereinafter: “Prosecutor’s Request”), in which the Prosecutor indicates that the Response was “inadvertently filed with the wrong classification”⁷ and that “[t]he result of the incorrect classification is that the Prosecution Response was notified to all Defence teams in the CAR Article 70 case”.⁸ She requests that “(i) the Prosecution Response be reclassified as ‘Confidential, *Ex Parte*, only available to the Prosecution and the Kilolo Defence’; and (ii) the Appeals Chamber direct the parties to treat the filing as if were classified as such from the beginning.”⁹

6. In light of the Prosecutor’s submissions in the Prosecutor’s Request, the Appeals Chamber orders the Registrar to reclassify the Response and the Annexes to confidential, *ex parte*, available to the Prosecutor and Mr Kilolo only. The Appeals Chamber also orders that the Defence teams who received the Response only because it was incorrectly classified destroy the notification email as well as any copies of the Response and the Annexes that they may have and maintain the confidentiality of the information contained therein.

7. As to the Request for Leave to Reply, the Appeals Chamber notes that Mr Mangenda was notified of the Response only because it was incorrectly classified. In addition, the Appeals Chamber does not consider that further submissions in reply to the Response are needed. The Request for Leave to Reply is therefore rejected.

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


Judge Sang-Hyun Song
Presiding Judge

Dated this 19th day of June 2014.

At The Hague, The Netherlands

⁶ ICC-01/05-01/13-493-Conf-Exp.

⁷ ICC-01/05-01/13-493-Conf-Exp, para. 2.

⁸ Prosecutor’s Request, para. 5.

⁹ Prosecutor’s Request, para. 10.