

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 19 November 2009

TRIAL CHAMBER III

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge Joyce Aluoch

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
v. JEAN-PIERRE BEMBA GOMBO**

Public

**Redacted version of "Decision on the defence application to lift Order iii) of the
"Decision on legal assistance for the accused" dated 20 October 2009"**

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

The Office of the Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor
Ms Petra Kneuer, Senior Trial Lawyer

Counsel for the Defence

Mr Nkwebe Liriss
Mr Aimé Kilolo-Musamba

Legal Representatives of the Victims

Ms Marie-Edith Douzima-Lawson
Ms Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber III ("Trial Chamber" or "Chamber") of the International Criminal Court ("Court" or "ICC"), in the case of The Prosecutor v. Jean-Pierre Bemba Gombo hereby delivers the following Decision on the defence application to lift Order iii) of the "Decision on legal assistance for the accused" dated 20 October 2009.¹

1. In its "Decision on legal assistance for the accused" ("Decision") Trial Chamber III, on 20 October 2009, issued the following Orders:²

8. For these reasons, the Registrar is ordered immediately:

i) To secure an up-to-date sworn declaration from the accused setting out the current position as regards the means over which he has direct or indirect enjoyment or the power freely to dispose, together with all the relevant information (printed or otherwise) available to him on this issue;

ii) To secure a declaration from the accused on his patrimony, including any inheritance from his father;

iii) To secure a legally binding power of attorney and a power of sale in favour of the Registrar over the villa in Portugal (in accordance with the applicable national law), which is to be sold, inter alia, to refund the accused's legal assistance (to the extent that this is funded by the Court);

iv) To secure an appropriate, legally enforceable document, signed by the accused enabling the Court to be repaid out of the funds of the accused, as and when they become available; and only when i), ii), iii) and iv) above have been complied with

v) To provide funding in the sum of €30,150 a month (this sum is to be paid retrospectively to March 2009, and ongoing until there is a material change in circumstances).

If these orders have not been implemented in their entirety by Monday 1 November 2009 at 16.00, the Chamber is to be provided with written notification, together with reasons.

The Chamber will fix a trial date once it has been notified that this Decision has been implemented.

2. Orders i), ii) and iv) have been completed, apparently satisfactorily.³

¹ Transcript of hearing on 28 October 2009, ICC-01/05-01/08-T-15-CONF-EXP-ENG-ET, page 1, line 17 to page 2, line 4.

² Summary of the Decision on legal assistance for the accused, 20 October, ICC-01/05-01/08-568, paragraph 8.

³ [REDACTED].

3. As to iii), [REDACTED]⁴ or [REDACTED]⁵ [REDACTED].
4. Various reasons have been advanced for this reluctance or refusal on Mr Bemba's part to facilitate the sale of this property. [REDACTED].⁶ [REDACTED]. The defence particularly highlighted other sources of finance that it submitted should be pursued to raise funds before the Portuguese property is sold.⁷
5. [REDACTED].⁸ The response of the Registrar to this assertion, however, is contradictory and unclear. At paragraph 11 of her Report of 2 November 2009, the Registrar stated:

[REDACTED].

Yet the following is set out in the next paragraph:

[REDACTED].

6. [REDACTED]. This lack of clarity on the part of the Registrar is markedly unhelpful.
7. [REDACTED].⁹ Indeed, although a large quantity of documents from Portugal has been filed with the Court, which the Registrar received on 7 September 2009,¹⁰ the Registrar has not submitted any analysis of them for the Chamber's benefit, no doubt – at least in part – because of their extent and the need to obtain translations of the principle items. [REDACTED].¹¹

⁴ [REDACTED].

⁵ [REDACTED].

⁶ ICC-01/05-01/08-T-15-CONF-EXP-ENG-ET, page 6, lines 19 – 20.

⁷ ICC-01/05-01/08-T-15-CONF-EXP-ENG-ET, page 6, line 12 to page 8, line 19.

⁸ ICC-01/05-01/08-T-15-CONF-EXP-ENG-ET, page 9, lines 1 – 13.

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED], ICC-01/05-01/08-582-Conf-Exp (see particularly annexes 1 and 2).

8. [REDACTED],¹² [REDACTED]¹³ [REDACTED].¹⁴
9. [REDACTED],¹⁵[REDACTED].¹⁶[REDACTED].¹⁷ [REDACTED].¹⁸
10. [REDACTED]. The Chamber is not confident that the necessary work will be undertaken speedily or that the results will necessarily provide sufficient clarity; indeed, the Registrar when referring in her 2 November 2009 Report to Pre-Trial Chamber II's order of 18 September 2009 – [REDACTED]¹⁹ The Chamber is troubled that this research does not appear to have commenced, given the clear terms of the order of Pre-Trial Chamber II that was handed down 7 weeks ago.
11. This is a highly unsatisfactory situation. [REDACTED].²⁰ [REDACTED].²¹ [REDACTED].
12. Furthermore, at the core of this issue lies the wholesale lack of clarity as to who is legally competent to provide an enforceable power of attorney and power of sale over this property. [REDACTED].
13. This accused has been in custody in The Hague since 3 July 2008. The charges have been confirmed; the Trial Chamber has been constituted; and trial

¹² Memorial, Journal Officiel du Grand-Duché de Luxembourg, Recueil des Sociétés et Associations, no.1043, pages 50024 to 50027.

¹³ Memorial, Journal Officiel du Grand-Duché de Luxembourg, Recueil des Sociétés et Associations, no.1251, page 60038.

¹⁴ Memorial, Journal Officiel du Grand-Duché de Luxembourg, Recueil des Sociétés et Associations, no.2028, page 97298.

¹⁵ [REDACTED].

¹⁶ ICC-01/05-01/08-T-15-CONF-EXP-ENG-ET, page 10, lines 16 – 19.

¹⁷ [REDACTED].

¹⁸ ICC-01/05-01/08-582-Conf-Exp, paragraph 3.

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ [REDACTED].

preparations must begin immediately.²² Against that background, the Chamber repeats paragraph 105 of its Decision of 20 October 2009:

Since October 2008, the Pre-Trial Chamber and latterly the Trial Chamber have been concerned with the inability on the part of the accused to access his property and assets in order to fund his defence and support his family. [...], no significant advance has been achieved in the attempt to make the accused's funds available in order to fund his defence and to support his family. In the Chamber's unequivocal view this means that the accused now lacks sufficient means to pay for his defence. The immediate and critical consequence is that his rights, first, to "have adequate [...] facilities for the preparation of the defence"; second, "to be tried without undue delay"; and, third, "to legal assistance of the accused's choosing" are each seriously imperilled if this situation is permitted to continue. Put bluntly, under the present arrangements the accused cannot take any meaningful steps to prepare for his trial.²³

14. Furthermore, the Chamber repeats that "[...] the accused since March 2009 has lacked sufficient funds to pay for his defence, and in the Chamber's judgment the Registrar is under an obligation (pursuant to Regulation 85 of the Regulations of the Court) to pay the figure (€30,150) she previously identified as reasonable for legal assistance retrospectively to that date, and ongoing until there is a material change in circumstances (*e.g.* funds from elsewhere become available, the trial ends or a fresh application for funding is decided under Regulation 85 of the Regulations of the Court)".²⁴

15. It is now clear that Order iii) of the Decision of 20 October 2009 is misconceived (because it is presently uncertain whether or not the accused has the necessary authority to authorise the sale of the property), and maintaining this requirement will unreasonably extend a situation in which the accused **lacks sufficient means to pay** for his legal assistance under Article 67 of the Rome Statute ("Statute"). The Chamber, therefore, grants the defence application pursuant to Article 64(6)(f) of the Statute and hereby lifts

²² See also Order on disclosure of evidence by the Office of the Prosecutor, ICC-01/05-01-08-590, 4 November 2009, in which the Trial Chamber ordered that the prosecution must effect its disclosure obligations in their entirety by 30 November 2009.

²³ Decision on legal assistance for the accused, 20 October 2009, ICC-01/05-01/08-567-US-Exp, paragraph 105. A public redacted version of this Decision including this paragraph will be published shortly.

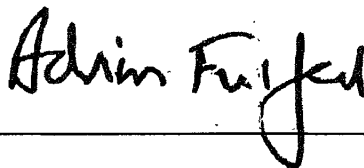
²⁴ ICC-01/05-01/08-567-US-Exp, paragraph 108. A public redacted version of this Decision including this paragraph will be published shortly.

Order iii). In the result, given that conditions i), ii) and iv) have been complied with, the Order contained in paragraph 111 v) of the Decision of 20 October 2009 is to be implemented, in full and immediately. It follows that the Chamber [REDACTED].²⁵ The lack of progress by the Registry on these issues to date has led the Chamber to conclude that there is no sufficient prospect that in a month's time the position will be materially more certain.

16. The Chamber will continue the process that it has already initiated of investigating closely with the Registry and the Office of the Prosecutor ("prosecution") the steps that need to be taken to reimburse the Court out of the funds that have been seized, in order to meet, *inter alia*, the costs of Mr Bemba's legal assistance.
17. In this Decision the Chamber has referred to parts of documents and submissions that were filed or advanced *ex parte*. The Chamber has ensured that there are no confidentiality issues which justify retaining that level of protection for the purposes of the present Decision.
18. The Registrar in her Report of 2 November 2009, which was provided to the Chamber, the prosecution and the defence, revealed certain matters which were communicated to the Chamber purely on an *ex parte* basis. This breach of confidentiality should not happen again, and the Chamber's consent must always be sought for wider dissemination of protected material.
19. The prosecution and the Registry are requested to propose redactions to the Decision by 11 November 2009, in order for the Chamber to issue a public version.

²⁵ [REDACTED].

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge Joyce Aluoch

Dated this 19 November 2009

At The Hague, The Netherlands