



Original: French

No.: **ICC-01/05-01/08**

Date: **5 July 2010**

APPEALS CHAMBER

Before: Judge Akua Kuenyehia
Judge Sang-Hyun Song
Judge Erkki Kourula
Judge Anita Ušacka
Judge Daniel David Ntanda Nsereko

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF

THE PROSECUTOR v. Jean-Pierre Bemba Gombo

Public Document

Urgent

Application for Suspensive Effect in relation to the Defence's Notice of Appeal against the Decision of Trial Chamber III of 24 June 2010 entitled *Decision on the Admissibility and Abuse of Process Challenge*

Source: Defence Team for Mr Jean-Pierre Bemba Gombo

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

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Other

1. On 24 June 2010, Trial Chamber III rendered its *Decision on the Admissibility and Abuse of Process Challenge*¹ (“the Impugned Decision”).
2. On 25 June 2010, Trial Chamber III issued its *Order postponing the commencement of the trial*,² setting 14-15 July 2010 as the date for opening speeches and 30 August 2010 for commencement of the hearing of evidence, following the judicial recess.
3. On 28 June 2010, the Defence for Mr Jean-Pierre Bemba Gombo (“the Accused”) filed its notice of appeal³ (“the Appeal”) against the Impugned Decision.
4. At a status conference held on 8 March 2010, the honourable Presiding Judge of Trial Chamber III had indicated that it was undoubtedly in the interests of justice for the question of admissibility to be resolved prior to the commencement of the trial:

*Right. Our view is that it is undoubtedly in the interests of justice for this challenge to be resolved prior to the commencement of the trial itself. Given that the accused is saying that this case should not be taking place in this court, we are of the view that that issue should be dealt with prior to the commencement of a trial which, it is suggested, should not be taking place. Therefore, in as expeditious a way as possible, we intend to resolve this application prior to the commencement of the trial.*⁴

5. The same views were expressed and developed by the Office of the Prosecutor at the same status conference as follows:

¹ ICC-01/05-01/08-802.

² ICC-01/05-01/08-803.

³ ICC-01/05-01/08-804-Corr2.

⁴ ICC-01/05-01/08-T20-Conf-Eng at p. 14 line 11.

There's also the option that an admissibility challenge may cause other circumstances, or follow-up incidences, which would then further delay the trial. So to start with a trial, to put it on hold with presenting the evidence, may not be the most expeditious way to proceed with that matter.⁵

6. The Defence endorses the foregoing observations of Pre-Trial Chamber III and contends that they also apply to the present appeal proceedings, given that the issue of admissibility has yet to be resolved. Furthermore, the Prosecution argued that the Court's limited budget would not be best used by commencing proceedings for the hearing of evidence that might be abandoned were the Appeal to be successful.

7. Article 82(3) of the Rome Statute stipulates that an appeal shall not of itself have suspensive effect unless the Appeals Chamber so orders, upon request, in accordance with the Rules of Procedure and Evidence. Rule 156 (5) of the Rules of Procedure and Evidence provides that such a request may be made by the party appealing.

8. Therefore, in accordance with all of the foregoing, the Defence hereby requests that the Appeals Chamber grant suspensive effect to the proceedings currently underway before Trial Chamber III, until such time as a judgment on the Appeal is given.

⁵ ICC-01/05-01/08-T20-Conf-Eng at p. 14 lines 6-10.

[signed]

Aimé Kilolo Musamba

Associate Counsel

[signed]

Nkwebe Liriss

Lead Counsel

Dated this 5 July 2010

At The Hague, The Netherlands