



Original: **English**

No.: **ICC-01/04-01/07**

Date: **29 July 2014**

THE APPEALS CHAMBER

Before: Judge Sanji Mmasenono Monageng, Presiding Judge
Judge Sang-Hyun Song
Judge Cuno Tarfusser
Judge Erkki Kourula
Judge Joyce Aluoch

SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO

**IN THE CASE OF
THE PROSECUTOR v. GERMAIN KATANGA**

PUBLIC

**Defence observations on the
Decision on the victims' requests to participate in the appeal proceedings**

Source: Defence for Germain Katanga

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

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REGISTRY

Registrar

Mr Herman von Hebel

1. By its 'Decision on the victims' requests to participate in the appeal proceedings',¹ the Appeals Chamber decided that, given the procedural history of the case, the victim's requests were moot and must be dismissed.
2. In paragraph 15 of its Decision the defence notes that the Chamber stated as follows;

15. Finally, while not directly related to the First and Second Requests for Participation, the Appeals Chamber notes with concern that, in the Katanga Request for Extension of Time, Mr Katanga, inter alia, requested that the Appeals Chamber order that the notification of the Conviction Decision be deemed to have occurred on the day he is notified of the English translation of that decision. The request was made on the basis that his counsel, Mr David Hooper, "can best be described as 'struggling' in the French language" and that "[i]n a nutshell, he does not understand on if", whereas the Annex to the Katanga Notice of Discontinuance contains, inter alia, a statement signed by Mr Hooper that is written in French. This raises doubts as to the correctness of Mr Katanga's submissions in support of the Katanga Request for Extension of Time as regards Mr Hooper's command of the French language. Nevertheless, as the proceedings in the present appeal are terminated, the Appeals Chamber will not consider this issue any further."

3. Given that the chamber 'notes with concern' and goes on to state that the matter 'raises doubts' as to the correctness of Mr Katanga's submissions it is only fair and necessary that the defence be able to respond to what amounts to the raising of doubts as to the credibility of the drafter of the filing – namely, Lead Counsel – as a fairness to the defence and to Mr Katanga, and to further inform the Appeals Chamber on a matter on which it has expressed itself to be 'concerned'.
4. Lead Counsel can but repeat that he 'struggles in the French language' – as anyone who has sought to have a conversation with him in French will agree and, indeed, found reading the judgement of conviction, written in a high, erudite manner and addressing complex legal issues, extremely difficult. The translation service of the Registry has since provided English translations upon which counsel has been dependent for a full understanding of the judgment. He could not have understood it without the benefit of such translation. The filing reflected the necessity for such translation. The filing requesting an extension of time in order for counsel to receive such translation reflected a reasonable and justifiable concern.

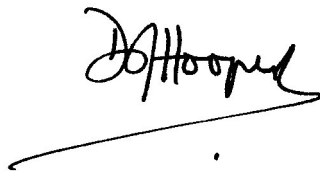
¹ ICC-01/04-01/07-3505, 24 July 2014.

5. As to the statement written in French, annexed to the filing on Discontinuance, and referred to in paragraph 15 extracted above, Lead Counsel drafted the statement in English and it was subsequently translated into French by the French Case Manager. It was this translated portion that was then made part of the single document that was signed by Mr Katanga, it all then being in French, for the benefit and full understanding of Mr Katanga.
6. The defence are at a loss to understand how the signing of such a statement by Counsel can be viewed as being incompatible with his assertion of 'struggling' with the French language. The fair and logical conclusion was surely that Counsel must have been assisted in drafting the written statement in French, as was indeed the case. Instead, in its Decision, the Appeals Chamber advanced, in a public filing, an incorrect and adverse inference, implying a deceit, despite the obvious and benign alternative being readily to hand. As Judge Robinson stated in his Opinion in Aleksovski:

"No court can function efficiently without a relationship of trust between counsel and the judges. Counsel is an officer of the court, and in judicial proceedings quite often a court must act on counsel's word, which, given as an officer of the court, is accepted as true, unless there is good reason to doubt his bona fides."²

7. The defence greatly regrets that that principle was not applied in the present case.

Respectfully submitted,



David Hooper Q.C.

Dated this 29th of July 2014
London

² Prosecutor v. Aleksovski, IT-95-14/1-AR77, Judgement on Appeal by Anto Nobile against Finding of Contempt, 30 May 2001, Separate Opinion of Judge Patrick Robinson, para. 2.