

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: **ICC-01/05-01/13**
Date: **21 October 2014**

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Cuno Tarfusser
Judge Christine Van den Wyngaert

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF

THE PROSECUTOR

*v. JEAN-PIERRE BEMBA GOMBO, AIME KILOLO MUSAMBA, JEAN-JACQUES
MANGENDA KABONGO, FIDELE BABALA WANDU AND NARCISSE ARIDO*

**URGENT
Public**

**Urgent Motion for Interim Stay of the "Decision ordering the release of Aimé
Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and
Narcisse Arido"**

Source: Office of the Prosecutor

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

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Unrepresented Applicants for Participation/Reparation

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Detention Section

Victims Participation and Reparations Section Other

Introduction

1. On an urgent basis, the Office of the Prosecutor (“Prosecution”) requests Pre-Trial Chamber II to stay the execution of the Single Judge’s decision ordering the interim release of Messrs. Kilolo, Mangenda, Babala, and Arido (“Four Suspects”).¹

2. Concurrent with this request, the Prosecution has filed its Notice of Appeal under Article 82(1)(b) of the Rome Statute (“Statute”) and Rule 154(1) of the Rules of Procedure and Evidence (“Rules”), and sought an order from the Appeals Chamber for suspensive effect of the Decision.² It remains necessary, however, to seek an interim stay from Pre-Trial Chamber II, pending resolution by the Appeals Chamber of the request for suspensive effect, to preserve the object of the Prosecution’s requests.

Submissions

3. It is well established that the release of a suspect or an accused person pending an appeal against the release decision may frustrate the purpose of the appeal.³ For this reason, the Appeals Chamber has previously ordered suspensive effect of such release decisions once it is seised of the case.⁴

4. There is good reason to believe that the Appeals Chamber may grant suspensive effect once requested. Particularly relevant to the Appeals Chamber’s assessment may be the Single Judge’s previous findings that the detention of the Four Suspects is necessary to secure their presence at trial⁵ and the limited nature of

¹ ICC-01/05-01/13-703 (“Decision”).

² See Art.82(3) of the Statute; Rule 156(5) of the Rules.

³ See e.g. ICC-01/04-01/06-1444 OA12 (“*Lubanga* Decision”), especially para.9.

⁴ E.g. *Lubanga* Decision, paras.9-10 (ordering suspensive effect of a decision to release Mr Lubanga on the basis *inter alia* of “previous findings of the Pre-Trial and Trial Chambers that his detention is necessary to secure his presence at trial”).

⁵ See e.g. ICC-01/05-01/13-588, paras.13-15; ICC-01/05-01/13-261, paras.26-31; ICC-01/05-01/13-258, paras.16-22; ICC-01/05-01/13-259, paras.22-31.

the conditions imposed on the Four Suspects by the Single Judge in the Decision,⁶ notwithstanding the absence of any material change in circumstances.

5. The Pre-Trial Chamber's urgent stay of the Decision is necessary pending resolution by the Appeals Chamber of the Prosecution's request for suspensive effect, in light of the Decision's instruction to the Registrar to "promptly make all the practical arrangements which are necessary and appropriate for the purposes of the enforcement of this decision," and the consequential risk that the Four Suspects will be released from the ICC Detention Unit forthwith.⁷ The Prosecution emphasises that the Pre-Trial Chamber is not itself requested to authorise suspensive effect, which is a power confined to the Appeals Chamber,⁸ but only to take the necessary measures to prevent the Appeals Chamber's power being frustrated. Pre-Trial Chambers and Trial Chambers must have the power to stay their own decisions in order to preserve a power expressly granted to the Appeals Chamber under Article 82(3) of the Statute. The *Lubanga* Trial Chamber recognised the correctness of this approach,⁹ even when ordering the release of an accused consequent upon a stay for abuse of process.¹⁰

Relief Sought

6. For the reasons above, the Pre-Trial Chamber should stay the execution of the Decision on an interim basis, until such time as the Appeals Chamber has decided on whether an order for suspensive effect is merited.

⁶ See Decision, p.5.

⁷ See Decision, p.7.

⁸ See e.g. ICC-01/04-01/10-469, p.5.

⁹ See ICC-01/04-01/06-2536, para.2 (citing the oral decision of the Trial Chamber: "This order shall not be enforced until the five day time limit for an appeal has expired. If an appeal is filed within the five day time limit against this order granting release, and if a request is made to suspend its effect, the accused shall not leave detention until the Appeals Chamber has resolved whether this order granting release is to be suspended").

¹⁰ See ICC-01/04-01/06-2536, para.11.



Fatou Bensouda, Prosecutor

Dated this 21st day of October 2014

At The Hague, The Netherlands