



Original: English

No. ICC-01/05-01/13 A A9

Date: 22 May 2017

THE APPEALS CHAMBER

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Howard Morrison
Judge Geoffrey A. Henderson
Judge Piotr Hofmański

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

**Decision on the Prosecutor's request in relation to the Registry transmission of a
document received from Mr Aimé Kilolo Musamba**

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
Ms Helen Brady

Counsel for Jean-Pierre Bemba Gombo
Ms Melinda Taylor
Ms Mylène Dimitri

Counsel for Aimé Kilolo Musamba
Mr Michael G. Karnavas

Counsel for Jean-Jacques Mangenda Kabongo
Mr Christopher Gosnell
Mr Peter Robinson

Counsel for Fidèle Babala Wandu
Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido
Mr Charles Achaleke Taku
Ms Beth Lyons

REGISTRY

Registrar
Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeals of Mr Jean-Pierre Bemba Gombo, Mr Fidèle Babala Wandu, Mr Narcisse Arido and the Prosecutor against the decision of Trial Chamber VII entitled “Decision on Sentence pursuant to Article 76 of the Statute” of 22 March 2017 (ICC-01/05-01/13-2123-Corr),

Having before it the “Prosecution’s request in relation to ‘Registry Transmission of a Document received from Mr. Aimé Kilolo Musamba’” of 3 May 2017 (ICC-01/05-01/13-2151 (A)),

Issues the following

DECISION

1. The above-mentioned request is rejected.
2. Document ICC-01/05-01/13-2157-Conf-Exp is reclassified as public.
3. The Registrar is directed to transmit to the Presidency the letter filed as document ICC-01/05-01/13-2135-Conf-Exp-AnxI.

REASONS

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 22 March 2017, Trial Chamber VII (“Trial Chamber”) rendered its “Decision on Sentence pursuant to Article 76 of the Statute”¹ (“Sentencing Decision”), in which the Trial Chamber imposed on Mr Aimé Kilolo Musamba (“Mr Kilolo”), *inter alia*, a fine of thirty thousand Euros, to be paid within three months of the Sentencing Decision.²

2. On 7 April 2017, the Registry transmitted to the Appeals Chamber a letter received from Mr Kilolo³ (“Letter”), classifying this letter as confidential *ex parte*,

¹ [ICC-01/05-01/13-2123-Corr](#).

² [Sentencing Decision](#), p. 99.

³ Annex I to “Registry Transmission of a Document received from Mr Aimé Kilolo Musamba”, ICC-01/05-01/13-2135-Conf-Exp-AnxI.

only available to Mr Kilolo's Defence and the Registry, on the ground that "it contains Mr Kilolo's personal financial information".⁴

3. On 24 April 2017, the Prosecutor filed an appeal against the Sentencing Decision.⁵

4. On 3 May 2017, the Prosecutor filed a request seeking access to parts of the Letter "that relate to [Mr Kilolo's] ability to pay his fine" in order for her to "present a full and informed sentencing appeal"⁶ ("Request").

5. Upon an order from the Appeals Chamber,⁷ Mr Kilolo filed his response on 10 May 2017⁸ ("Response"), in which he opposes the Prosecutor's requested access to the Letter on the grounds that (i) it is not relevant to the Prosecutor's appeal against Mr Kilolo's sentence; (ii) it does not concern Mr Kilolo's ability to pay the imposed fine; and (iii) the Request should have been filed with the Presidency.⁹

II. MERITS

6. The Appeals Chamber notes that, while the Registry's Transmission and the Request are public, both the Letter and the Response are currently classified as confidential *ex parte* documents. Although the present decision contains information that is included in these confidential *ex parte* documents, the Appeals Chamber considers that this information does not warrant confidential treatment and may be made publicly available. The same applies to the Response which, in the Appeals Chamber's view, does not contain any information that is not already public or should otherwise be kept confidential. Therefore, the Appeals Chamber, pursuant to regulation 23 *bis* (2) of the Regulations of the Court, directs the Registrar to reclassify as public the Response.

⁴ "Registry Transmission of a Document received from Mr Aimé Kilolo Musamba", [ICC-01/05-01/13-2135](#) ("Registry's Transmission"), para 2.

⁵ "Prosecution's Notice of Appeal against the Trial Chamber VII's 'Decision on Sentence pursuant to Article 76 of the Statute'", [ICC-01/05-01/13-2146](#).

⁶ "Prosecution's request in relation to 'Registry Transmission of a Document received from Mr. Aimé Kilolo Musamba'", [ICC-01/05-01/13-2151](#), paras 1, 3.

⁷ "Order on the filing of a response", 5 May 2017, [ICC-01/05-01/13-2155](#).

⁸ "Response to the 'Prosecution's request in relation to 'Registry Transmission of a document received from Mr. Aimé Kilolo Musamba' (ICC-01/05-01/13-2151)'", ICC-01/05-01/13-2157-Conf-Exp.

⁹ Response, p. 3.

7. The Appeals Chamber observes that the Letter concerns the implementation mechanisms for Mr Kilolo's payment of the fine imposed on him by the Trial Chamber as part of his sentence. The Appeals Chamber does not consider that the information contained in the Letter could be of any relevance for the Prosecutor's appeal against Mr Kilolo's sentence – or any of her outstanding submissions before the Appeals Chamber for that matter. This is because the Letter, rather than containing Mr Kilolo's "personal financial information" as stated by the Registry, exclusively relates to the enforcement of the imposed fine, which is a separate matter from the judicial proceedings currently unfolding before the Appeals Chamber.

8. In this regard, the Appeals Chamber recalls that pursuant to rule 199 of the Rules of Procedure and Evidence ("Rules"), read in conjunction with Part 10 of the Statute to the extent applicable to the present case in accordance with rule 163 (3) of the Rules, the responsibility with respect to the enforcement of sentences lies with the Presidency. The Letter should thus have been transmitted to the Presidency, rather than to the Appeals Chamber. The applicable law in relation to the process of enforcement does not foresee that information be ordinarily shared with the Prosecutor. In light of this, and considering that, in any case, the Letter does not contain information relevant to the appeal proceedings, the Request is rejected. In addition, the Appeals Chamber directs the Registrar to transmit the Letter to the Presidency.

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


Judge Silvia Fernández de Gurmendi
Presiding Judge

Dated this 22nd day of May 2017

At The Hague, The Netherlands