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**International
Criminal
Court**

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No.: ICC-01/05-01/13
Date: 26 September 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***

Confidential

**Prosecution's Response to Mr Babala's Request for Leave to Reply to
"Prosecution's Consolidated Response to Mr Bemba's, Mr Babala's, and Mr
Arido's Appeals against the Sentencing Decision"**

Source: Office of the Prosecutor

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

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Introduction

1. Mr Fidèle Babala seeks leave to reply to the Prosecution's consolidated response to his appeal against the article 76 decision in this case, under regulation 24(5) of the Regulations of the Court.¹ This request should be dismissed.

Confidentiality

2. This response is filed confidentially, consistent with regulation 23*bis*(2), because it responds to the Request, which bears this classification. The Prosecution will file a public redacted version of this response once Babala files a public redacted version of his Request.

Submissions

3. Babala erroneously relies on regulation 24(5) of the Regulations of the Court to request leave to reply to the Prosecution's Consolidated Response.² The Appeals Chamber has stated that regulation 60(1) is, instead, the applicable provision.³ Further, Babala fails to show that his proposed submissions will assist the Appeals Chamber to determine the appeals against the article 76 decision. Instead, he incorrectly accuses the Prosecution of distorting the truth, and repeats his arguments already advanced in his Sentencing Brief.⁴

A. Babala must at least show that his proposed submissions will assist the Appeals Chamber to determine the appeals

4. Regulation 60(1)—and not regulation 24(5) as Babala asserts⁵— provides that the Appeals Chamber may order an appellant to file a reply whenever it considers it

¹ See ICC-01/05-01/13-2228-Conf A6 A7 A8 ("Request"). See also ICC-01/05-01/13-2203-Conf ("Consolidated Response"). The Prosecution will refer to Mr Fidèle Babala Wandu as "Babala".

² See Request para. 8.

³ ICC-01/05-01/13-2196 A A2 A3 A4 A5, para. 9. See also ICC-01/05-01/13-2197 A A2 A3 A4 A5 ("Conviction Appeal Reply Decision"), para. 18 and ICC-01/05-01/13-2226 ("Sentence Appeal Reply Decision") A6 A7 A8 A9, para. 7.

⁴ See ICC-01/05-01/13-2166-Conf (Babala's Sentencing Brief").

⁵ Request para. 8.

necessary in the interests of justice. This is a discretionary determination which will be decided on a case-by-case basis.⁶ In this context, the Prosecution considers that the Appeals Chamber should ordinarily be guided by the principles developed in the jurisprudence related to regulation 24(5).⁷ This follows from the basic premise that the Parties have no right to reply, and the interests of procedural fairness and judicial economy in promoting comprehensive, well-considered, and clear appellate submissions. These considerations are common to regulations 24(5) and 60 alike.

5. The Appeals Chamber has recently stated that it will not permit a reply if the moving party has not established that “further submissions on the issues identified” will assist to determine the appeals.⁸ The Prosecution submits that the Appeals Chamber should take this same approach in deciding the Request. Consequently, for the reasons which follow, it should be dismissed.

B. Babala’s proposed submissions will not assist the Appeals Chamber

6. First, Babala’s observations regarding the Prosecution’s submissions are unfounded. His assertions that “*le Procureur ne respecte pas cette exigence de vérité [...] dans le seul but d’induire la Chambre en erreur [...]*”⁹ and “*le Procureur altère la vérité en alléguant un fait faux, préjudiciable à l’accusé*”¹⁰ are unsupported. Such vague, unsubstantiated and incorrect allegations cannot justify Babala’s reply.¹¹

7. Second, Babala merely repeats, and expresses his intention to further repeat in his reply, submissions that he has already made in his Sentencing Brief. The three topics that he identifies as meriting a reply fail to either identify which of the

⁶ Conviction Appeal Reply Decision, para. 18.

⁷ See Conviction Appeal Reply Decision, para. 15 (recalling this submission).

⁸ Conviction Appeal Reply Decision, para. 18.

⁹ Request, para. 14.

¹⁰ Request, para. 16.

¹¹ Request, paras. 14-20.

Prosecution's submissions he seeks leave to reply to,¹² or merely re-argue his position on the existence of a "*faux scenario*", the use of codes, Babala's innocence, alleged evidentiary deficiencies and the Trial Chamber's evidentiary regime.¹³

8. Further, even if, *arguendo*, the Prosecution had misread Babala's submissions, this would not justify Babala's reply.¹⁴ The Appeals Chamber has the submissions of both Parties before it and can assess and rule upon Babala's arguments.

C. Application of regulation 34(c) to matters under regulation 60

9. The Prosecution notes the Appeals Chamber's observation that regulation 60, which governs the Request, "does not prescribe any time limit for the submission of requests for leave to reply and, accordingly, the Appeals Chamber has discretion to set a deadline for any such request."¹⁵ Consequently, on 15 September 2017, it set a time limit for Babala and the Prosecution to file any request for leave to reply to the Prosecution's and Bemba's, Babala's and Arido's appeals against the Sentencing Decision.¹⁶ The Appeals Chamber did not however set a time limit for the respondents to respond to the requests.

10. It is the Prosecution's view that if the deadline for the submission of *requests* for leave to reply under regulation 34(c) does not apply, then neither can the (even more abbreviated) two-day deadline for *responses* to such requests under the same provision. Nonetheless, out of an abundance of caution, and mindful that the Appeals Chamber has not yet confirmed this interpretation, the Prosecution has filed this response within the two-day deadline.

¹² See Request, paras. 22-23 (on "*Le Procureur n'a pas vraiment répondu au mémoire d'appel de la Défense sur la sentence*"). See also Request para. 37 (simply noting that "*le Procureur parle de crimes et non pas d'offenses*").

¹³ See Request, paras. 24-27 (on "*La nécessité de rétablir la vérité des faits*") and paras. 28-37 (on "*La nécessité de rétablir le droit dans sa justesse et son rigueur*").

¹⁴ Request, paras. 33 and 35.

¹⁵ Sentence Appeal Reply Decision, para. 7.

¹⁶ *Ibid*, para. 14.

11. Clarification by the Appeals Chamber that the response deadline in regulation 34(c) does not apply to matters governed by regulation 60 may, however, be of general assistance to the Parties and participants in future proceedings.

Conclusion

12. For all the reasons above, the Appeals Chamber should reject the Request.



Fatou Bensouda, Prosecutor

Dated this 26th day of September 2017¹⁷

At The Hague, The Netherlands

¹⁷ This submission complies with regulation 36, as amended on 6 December 2016: ICC-01/11-01/11-565 OA6, para. 32.