



Original: **English**

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

Date: 30/10/2018

TRIAL CHAMBER III

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Chang-ho Chung
Judge Kimberly Prost

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

Public Redacted
with confidential ex parte Annexes A and B

**Public Redacted version of “Mr. Bemba’s response to the “Redacted version of
Registry’s Submissions in relation to Protective Measures imposed on Mr
Bemba’s Assets””**

Source: Mr. Jean-Pierre Bemba Gombo

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

The Office of the Prosecutor

Counsel for Mr. Bemba

Peter Haynes QC

Kate Gibson

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

Applicants

(Participation/Reparation)

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Trust Fund for Victims

A. PROCEDURAL BACKGROUND

1. Mr. Bemba was acquitted on 8 June 2018, now four months ago. On 16 August 2018, Mr. Bemba asked this Trial Chamber, *inter alia*, to reclassify all under seal and *ex parte* material concerning requests for cooperation to freeze his assets, and order relevant States to provide a full accounting of the property frozen at the Court's request.¹ This request has been pending for seven weeks.

2. The Registry's Submissions,² filed on 27 September 2018, come 14 days after Mr. Bemba's Response of 13 September 2018.³ They are partially responsive to Mr. Bemba's filings, but also introduce new submissions that fall outside a response to Mr. Bemba's original request.

3. On this basis, counsel for Mr. Bemba wrote to Trial Chamber III on 1 October 2018, to signal Mr. Bemba's intention to reply to the Registry Submissions. By way of an email the following day, the Trial Chamber directed that any observations should be filed by 8 October 2018, pursuant to Regulation 34(b) of the Regulations of the Court. Pursuant to that email, Mr. Bemba files the following submissions.

4. In accordance with Regulation 23bis (2) of the Regulations of the Court, this filing is classified as confidential *ex parte* only available to the Registry and Mr. Bemba, as it refers to information about the personal situation of Mr. Bemba and responds to a filing with that same level of classification.

B. SUBMISSIONS

¹ ICC-01/05-01/08-3654-Conf-Exp.

² ICC-01/05-01/08-3658-US-Exp-Red ("Registry Submissions").

³ ICC-01/05-01/08-3657-Conf-Exp.

5. In the first paragraph of its Submissions, the Registry makes reference to the delivery of the Article 70 Re-Sentencing decision, as a catalyst for its filing.⁴ It notes that “Trial Chamber VII now ordered Mr Bemba ‘to pay the full amount of €300,000’ to the Court within three months of the Art 70 Decision”.⁵ The Registry then makes a direct link between the assets frozen in case ICC-01/05-01/08 and the fine imposed in the Article 70 case, claiming the matter of unfreezing the assets is “further complicated as Mr. Bemba still owes the Court [REDACTED] as a result of a contractual debt, and now, in the Article 70 case, is ordered to pay a fine of €300,000.00, possibly using his frozen assets”.

6. No such complication exists. Trial Chamber III has no jurisdiction to enforce a fine issued by Trial Chamber VII in a different case. By suggesting that Trial Chamber III can delay or refuse to order the lifting of the freezing orders, which are now “null and void”,⁶ on the basis of a fine issued by another Chamber, the Registry is asking that the Judges act illegally. Not only do the Registry submissions erroneously conflate the jurisdictions of Trial Chambers III and VII, they are more fundamentally flawed in that they premise that some legal basis exists, although not identified, that the remedy for the non-payment of a fine in the Article 70 case is the continued freezing of assets preserved for reparations in a case under Articles 5 and 7 of the ICC Statute. No such legal basis exists. Under Rule 146(5) of the Rules of Procedure and Evidence, should Mr. Bemba engage in the willful non-payment of any fine, the consequence is a term of imprisonment. Mr. Bemba observes, moreover, that the role of the Registry within the ICC is intended to be neutral. Concerning itself in this way with the enforcement of criminal penalties is scarcely consonant with that role.

⁴ ICC-01/05-01/08-3658-US-Exp-Red, para. 1.

⁵ ICC-01/05-01/08-3658-US-Exp-Red, para. 4.

⁶ ICC-01/05-01/08-3656-US-Exp-Red, para. 7.

7. As concerns the remainder of Mr. Bemba's outstanding legal fees, it is common ground that this constitutes a contractual debt to the Court.⁷ The frozen property and assets in question were frozen in order to preserve them so they could be used, in the event of a conviction, for a reparations process. Any suggestion that they should continue to be frozen as a result of a contractual debt is unfortunate, unfair and illegal, for the reasons set out in previous filings which are relied upon herein.⁸

8. Nor can the continued freezing of the assets on the basis of unpaid legal fees be reconciled with the Trial Chamber's conclusion that Mr. Bemba does not need access to his frozen assets in order to repay them. The Trial Chamber asserted in its Order of 17 July 2018 that Mr. Bemba had "the direct and/or indirect power to freely dispose of certain assets",⁹ and thereby "instructed" Mr. Bemba to repay the remaining advanced legal fees. Even leaving aside the questionable force or propriety of this "instruction",¹⁰ if the Trial Chamber takes the position that Mr. Bemba is able to repay the remaining fees through "freely disposing" of assets, then the freezing orders have no continuing practical purpose in this regard.

9. Moreover, the freezing orders are continuing to cause financial loss, on a daily basis, to people other than Mr. Bemba. Responding to the ICC's request for cooperation under Article 57 or 93 of the Statute, the States in question have frozen assets belonging to, *inter alia*, [REDACTED].¹¹ It is now clear that the Registry has a manifestly imperfect record of the property frozen by the various states.¹² In Portugal, in particular, the freezing of assets was indiscriminate. Facially, it appears that property belonging to any member of the Bemba family which could be

⁷ ICC-01/05-01/08-3655-US-Exp, para. 9; ICC-01/05-01/08-3656-US-Exp-Red, para. 6; ICC-01/05-01/08-3658-US-Exp-Red, para. 7.

⁸ *See, e.g.*, ICC-01/05-01/08-3654-Conf-Exp, paras. 37-41.

⁹ ICC-01/05-01/08-3651-Red, para. 7.

¹⁰ ICC-01/05-01/08-3654-Conf-Exp, paras. 38-41.

¹¹ ICC-01/05-01/08-3657-Conf-Exp, para. 8. *See also* Annex A: [REDACTED].

¹² ICC-01/05-01/08-3654-Conf-Exp, fn. 5, paras. 45-47.

located, was frozen and remains so. Even putting aside the question of whether this was legal in the first place, continuing to freeze assets of third parties on the basis that a portion of Mr. Bemba's legal fees are currently unpaid, is manifestly unlawful.

10. Necessarily, questions of civil liability for damages arise. Primarily, of course, it will rest with the national authorities. If, for example, the Portuguese authorities went beyond the proper scope of the request for assistance in seizing and freezing the assets of third parties, then liability may attach. If, however, the ICC Registry either gave instructions to freeze the assets of third parties, or was aware of it, and took no steps to correct the situation, then its behaviour may equally be regarded as tortious. Now that the Chamber is apprised of the situation (if indeed it had not been previously), its failure to act may amount to the Court itself, as an institution, not just acquiescing in illegality, but participating in it. The only reasonable mitigation of the ongoing damage is for the property to be returned to its owners immediately, with all accompanying paperwork, materials, and information, so that a full accounting can be undertaken and the loss reasonably assessed. As such, the urgency of a direction for the States to account for the property they have frozen is heightened.

11. In the case of Mr. Bemba, the impact of the continued freezing of his assets is becoming cruel and inhumane and potentially interfering with his right to family life. In 2018, without a bank account, it is impossible to obtain a telephone contract, or an internet connection, buy an aeroplane ticket, or lease a car. Mr. Bemba's reinsertion into modern society after 10 years of incarceration has been significantly hindered by an inability to provide bank account details to any service providers. Of greater concern, [REDACTED].¹³ Given that all bank accounts are currently

¹³ See Annex B.

frozen at the request of the ICC, this is impossible. The freezing orders are, therefore, jeopardizing his ability [REDACTED].

12. For the avoidance of doubt, Mr. Bemba does not accept that the Registry cannot take steps to unfreeze assets in the absence of an order from the Trial Chamber.¹⁴ The Registry is a populous organ of the court, heavily staffed with lawyers who are well aware of its duties and responsibilities, and which commonly acts *proprio motu* in relation to matters which are *sub judice*.¹⁵ Steps to unfreeze Mr. Bemba's assets, seized on the basis of then "null and void"¹⁶ orders, should have begun on 8 June 2018. Had the Registry understood that it required a judicial order before moving to unfreeze Mr. Bemba's assets, an application to that end should have been ready to file that same day. No argument can reasonably be made, despite having been attempted in other filings before this Trial Chamber,¹⁷ that the idea that an adversarial criminal trial could result in an acquittal was beyond anyone's contemplation. The Registry's protracted failure to seise the Chamber (if it truly believed that to be necessary) reveals a worrying reluctance on the part of the institution to accept its own judgments and decisions.

13. In any event, the Registry is wrong to assert that Mr. Bemba "seized the Chamber, *inter alia*, with requests for lifting the protective measures imposed on [REDACTED]." ¹⁸ Mr. Bemba's request was that the Trial Chamber "order that the Registry respond to the specific request for the [REDACTED] impounded by authorities in Portugal, within 48 hours of the filing of this request."¹⁹ This request was ignored, and is now moot. The money spent [REDACTED], can simply be added to the financial loss which he and others continue to incur as a result of the

¹⁴ ICC-01/05-01/08-3658-US-Exp-Red, para. 6.

¹⁵ See, e.g., ICC-01/05-01/08-2441-Conf and annexes: [REDACTED]. (see ICC-01/05-01/08-2421-Conf, para. 2).

¹⁶ ICC-01/05-01/08-3656-US-Exp-Red, para. 7.

¹⁷ ICC-01/05-01/08-3647, at e.g. paras. 28-31.

¹⁸ ICC-01/05-01/08-3658-US-Exp-Red, para. 6.

¹⁹ ICC-01/05-01/08-3654-Conf-Exp, para. 54 (emphasis added).

ongoing application of the freezing orders, which the Registry concedes were rendered “null and void” on the afternoon of 8 June 2018.²⁰

14. The Registry Submissions seek guidance from the Trial Chamber as to whether the notification to the relevant states of the closure of the proceedings due to the acquittal of Mr. Bemba would mean that “protective measures taken on the basis of the Chamber’s requests would be null and void, [REDACTED].”²¹ The lack of legal basis for the continued freezing of Mr. Bemba’s assets has been set out in full in previous filings.²² Mr. Bemba accordingly invites the Trial Chamber to instruct the Registry to contact the relevant States and direct them to discharge all freezing orders imposed on Mr. Bemba and all third parties, whether over property known to the Registry or otherwise, within seven days of the Chamber’s order. The freezing orders took a matter of days to impose, they should take no longer to discharge.

C. REQUEST FOR AN EXPEDITIOUS DECISION

15. States and institutions continue to execute freezing orders imposed at the request of the ICC four months after Mr. Bemba’s acquittal, amounting to an unlawful interference with his personal property, and the personal property of an unknown number of third parties. Mr. Bemba’s original request for the reclassification of all material relevant to the freezing orders and an order to the relevant states for a full accounting of seized and frozen property has now been pending for seven weeks. With every day that passes, the financial and economic loss resulting from the freezing of this property necessarily increases. Mr. Bemba respectfully requests that a decision from this Trial Chamber disposing of all issues

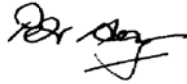
²⁰ ICC-01/05-01/08-3656-US-Exp-Red, para. 7.

²¹ ICC-01/05-01/08-3658-US-Exp-Red, para. 9.

²² *See, e.g.*, ICC-01/05-01/08-3654-Conf-Exp, paras. 26-37.

before it, namely the discharge of the freezing orders, the reclassification of filings and the orders for accounts, be issued as a matter of urgency.

The whole respectfully submitted.

A handwritten signature in black ink, appearing to read 'Peter Haynes', with a stylized flourish at the end.

Peter Haynes QC
Lead Counsel of Mr. Jean-Pierre Bemba

Done at The Hague, The Netherlands, 30 October 2018