



Original: English

No. ICC-01/05-01/13 A10

Date: 20 August 2019

THE APPEALS CHAMBER

Before:

Judge Howard Morrison, Presiding

Judge Chile Eboe-Osuji

Judge Piotr Hofmański

Judge Luz del Carmen Ibáñez Carranza

Judge Solomy Balungi Bossa

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 scope of the appeal of Mr Jean-Pierre Bemba Gombo

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 Mr Jean-Pierre Bemba Gombo
Ms Melinda Taylor
Ms Mylène Dimitri

Registrar

Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber VII entitled ‘Decision Re-sentencing Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba and Mr Jean-Jacques Mangenda Kabongo’ of 17 September 2018 (ICC-01/05-01/13-2312),

Renders the following

DECISION

Without prejudice to the Appeals Chamber’s power to dismiss other arguments on appeal as inadmissible at a later stage of the appellate proceedings, the following arguments raised in the above-mentioned appeal and specified in paragraph 18 of this decision are summarily dismissed:

- i. any request for reversal of the convictions of Mr Jean-Pierre Bemba Gombo, as set out in the ‘Judgment pursuant to Article 74 of the Statute’ (ICC-01/05-01/13-1989-Red) and confirmed in the ‘Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled “Judgment pursuant to Article 74 of the Statute”’ (ICC-01/05-01/13-2275-Red (A A2 A3 A4 A5));
- ii. arguments the effect of which would be to reverse or amend findings made in the ‘Judgment pursuant to Article 74 of the Statute’ (ICC-01/05-01/13-1989-Red); and
- iii. challenges to the evidentiary regime which Trial Chamber VII adopted in the conviction proceedings.

REASONS

I. INTRODUCTION

1. Following an initial guilty verdict for offences against the administration of justice pursuant to article 70 of the Statute,¹ the Appeals Chamber confirmed two of Mr Jean-Pierre Bemba Gombo's convictions, namely, the convictions for having corruptly influenced 14 defence witnesses² and for having solicited the giving of false evidence by these witnesses.³ The Appeals Chamber reversed Mr Bemba's conviction for having presented evidence that a party knows to be false or forged.⁴

2. Following the imposition of a sentence of one year imprisonment and a fine of 300,000.00 euros by Trial Chamber VII,⁵ the Prosecutor successfully appealed the suspended sentences and other sentencing matters. The Appeals Chamber reversed Mr Bemba's sentence and remanded the matter to the Trial Chamber for a new determination of the sentence.⁶ The Trial Chamber re-sentenced Mr Bemba to one year imprisonment and imposed a fine of 300,000.00 euros to be paid by Mr Bemba within three months of the Re-Sentencing Decision.⁷ Mr Bemba has appealed the Re-Sentencing Decision. The present decision dismisses summarily several of the arguments that Mr Bemba has raised in support of his appeal.

¹ 'Judgment pursuant to Article 74 of the Statute', ICC-01/05-01/13-1989-Conf (the '[Conviction Decision](#)'); a public redacted version was registered on the same date (ICC-01/05-01/13-1989-Red), p. 455.

² Under article 70(1)(a) of the Statute.

³ Under article 70(1)(c) of the Statute. 'Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled "Judgment pursuant to Article 74 of the Statute"', ICC-01/05-01/13-2275-Red (A A2 A3 A4 A5) (the '[Bemba et al. Appeal Judgment](#)'), para. 1631.

⁴ Under article 70(1)(b) of the Statute. [Bemba et al. Appeal Judgment](#), para. 1631.

⁵ 'Decision on Sentence pursuant to Article 76 of the Statute', ICC-01/05-01/13-2123-Corr, p. 99.

⁶ 'Judgment on the appeals of the Prosecutor, Mr Jean-Pierre Bemba Gombo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled "Decision on Sentence pursuant to Article 76 of the Statute"', ICC-01/05-01/13-2276-Conf-Exp (A6 A7 A8 A9 A10); a public redacted version was registered on 8 March 2018 (ICC-01/05-01/13-2276-Red), paras 361-362.

⁷ 'Decision Re-sentencing Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba and Mr Jean-Jacques Mangenda Kabongo', 17 September 2018, ICC-01/05-01/13-2312 (the '[Re-Sentencing Decision](#)'), pp. 50-51.

II. SUBMISSIONS OF THE PARTIES

3. Mr Bemba is appealing the Re-Sentencing Decision on the following three grounds of appeal:⁸

(i) The Trial Chamber did not comply with the Appeals Chamber's directions on the determination of the new sentence.⁹ It also erred in relying on a 'flawed' evidentiary regime and as a result his convictions should be quashed.¹⁰

(ii) The Trial Chamber abused its discretion, and erred in law and procedure, by failing to remedy 'the cumulative impact of egregious violations of [his] rights'.¹¹ As a result, the decisions on conviction and sentence should be reversed.¹²

(iii) The Trial Chamber abused its discretion by imposing a disproportionate sentence and fine, failed to consider relevant considerations and erred in law by imposing a sentence, which exceeds the level of his culpability.¹³

4. More specifically under his first ground of appeal, Mr Bemba challenges the Trial Chamber's approach to evidence.¹⁴ Referring to the separate opinions of Judge Van den Wyngaert, Judge Morrison and Judge Eboe-Osuji in the Appeals Chamber's judgment in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (the 'Main Case'),¹⁵ Mr Bemba submits that the Appeals Chamber 'affirmed that [his] conviction was produced through an *ultra vires* system for the admission of evidence'.¹⁶ Mr Bemba argues that the only remedy to the Trial Chamber's erroneous approach to evidence is to quash the convictions, including through the procedure set out in article 81(2)(b) of the Statute.¹⁷

⁸ ['Notice of Appeal'](#), 18 October 2018, ICC-01/05-01/13-2313 (A10); 'Article 82(1)(a) [*sic*] Appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber VII entitled "Decision Re-sentencing Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba and Mr Jean-Jacques Mangenda Kabongo', 17 December 2018, ICC-01/05-01/13-2315 (A10) (the '[Appeal Brief](#)'), with [annex A](#) (ICC-01/05-01/13-2315-AnxA (A10)) and annex B (ICC-01/05-01/13-2315-Conf-AnxB (A10)).

⁹ [Appeal Brief](#), paras 2, 3-16.

¹⁰ [Appeal Brief](#), paras 2, 17-37, 59, 71, 196.

¹¹ [Appeal Brief](#), p. 45.

¹² [Appeal Brief](#), para. 154.

¹³ [Appeal Brief](#), p. 79.

¹⁴ [Appeal Brief](#), paras 2-37.

¹⁵ *The Prosecutor v. Jean-Pierre Bemba Gombo*, '[Separate Opinion of Judge Van den Wyngaert and Judge Morrison](#)', 8 June 2018, ICC-01/05-01/08-3636-Anx2; '[Concurring Separate Opinion of Judge Eboe-Osuji](#)', 14 June 2018, ICC-01/05-01/08-3636-Anx3.

¹⁶ [Appeal Brief](#), para. 48. *See also* para. 35.

¹⁷ [Appeal Brief](#), paras 59-64. *See also* paras 2, 71, 77, 196.

5. The Prosecutor responds that the Appeals Chamber should summarily dismiss sections of Mr Bemba's first ground of appeal that attempt to re-litigate his convictions confirmed on appeal, which exceed the scope of an appeal against the Re-Sentencing Decision.¹⁸ Therefore, the Prosecutor requests that the Appeals Chamber summarily dismiss paragraphs 18-23, 31 and 35 of section B, as well as sections C and D of the first ground of appeal.¹⁹

6. Having been granted leave to reply to the Prosecutor's Response with respect to the scope of his appeal,²⁰ Mr Bemba replies that the issues he raises on appeal are not 'final and settled', and that the Appeals Chamber does have the power to overturn his convictions.²¹ He argues further that the Appeals Chamber's decision to remand sentencing issues to the Trial Chamber was 'manifestly unsound'.²² He maintains also that his acquittal in the Main Case is a "new fact", and procedural development, which demonstrates that the evidential system in this case is not "fit for purpose".²³

III. DETERMINATION BY THE APPEALS CHAMBER

7. In light of the parties' submissions and in the interest of the efficiency of the proceedings, the Appeals Chamber has decided to address the scope of Mr Bemba's appeal at this stage, rather than leaving this matter to the judgment on the appeal.

A. Preliminary matter: scope of the Reply

8. The Appeals Chamber notes that in his Reply, Mr Bemba raises arguments regarding the Appeals Chamber's decision to remand sentencing issues to the Trial Chamber.²⁴ The Appeals Chamber observes that Mr Bemba was granted leave to reply to the Prosecutor's Response with respect to the limited issue of the scope of his appeal.²⁵ His present arguments on the decision to remand exceed the issue with

¹⁸ 'Prosecution's Response to Bemba's "Article 82(1)(a) [*sic*] Appeal" against the Re-sentencing Decision', 18 February 2019, ICC-01/05-01/13-2320 (A10) (the '[Response](#)'), with [annex A](#) (ICC-01/05-01/13-2320-AnxA (A10)), paras 3, 5-10, 32-63, 68-69, 73-74.

¹⁹ [Response](#), paras 7-9, fn. 211.

²⁰ '[Decision on Mr Jean-Pierre Bemba Gombo's requests for leave to reply](#)', 5 July 2019, ICC-01/05-01/13-2333 (A10) (the 'Decision on Leave to Reply'), para. 22.

²¹ 'Reply to the Article 81(2)(a) Appeal against the Resentencing [*sic*] Decision', 15 July 2019, ICC-01/05-01/13-2334 (A10) (the '[Reply](#)'), paras 1, 20.

²² [Reply](#), paras 1, 13-17.

²³ [Reply](#), para. 18.

²⁴ [Reply](#), paras 1, 13-19.

²⁵ [Decision on Leave to Reply](#), para. 22.

respect to which the Appeals Chamber granted leave to reply. In these circumstances, the Appeals Chamber will only consider those submissions in the Reply that pertain to the issue of scope of the appeal, raised in the Response. It therefore declines to consider any submissions related to the Appeals Chamber's decision to remand sentencing issues to the Trial Chamber.

B. Scope of Mr Bemba's appeal

9. For the reasons that follow, the Appeals Chamber agrees with the Prosecutor that some of Mr Bemba's arguments on appeal exceed the permissible scope of an appeal against sentence and must be summarily dismissed.

10. The present appeal concerns the Trial Chamber's decision on Mr Bemba's sentence. However, the relief which Mr Bemba seeks on appeal (both in his Appeal Brief and Reply) includes reversing or quashing his convictions. The Appeals Chamber recalls that it has confirmed Mr Bemba's conviction for having corruptly influenced 14 defence witnesses under article 70(1)(a) of the Statute and for having solicited the giving of false evidence by these witnesses under article 70(1)(c) of the Statute.²⁶

11. Furthermore, in the *Bemba et al.* Appeal Judgment, the Appeals Chamber specifically considered Mr Bemba's argument that the Trial Chamber had erred by 'failing to issue a reasoned determination concerning the admissibility of individual items of evidence'.²⁷ It concluded that 'the procedure set out and implemented by the Trial Chamber for the submission of evidence at trial was consistent with the legal framework of this Court'.²⁸ It also found no merit in Mr Bemba's submissions concerning an alleged violation of his right to present evidence under article 67(1)(e) of the Statute.²⁹

²⁶ [Bemba et al. Appeal Judgment](#), para. 1631.

²⁷ '[Defence Document in Support of the Appeal](#)', 4 May 2017, ICC-01/05-01/13-2144-Red (A4), paras 188-202.

²⁸ [Bemba et al. Appeal Judgment](#), para. 601.

²⁹ [Bemba et al. Appeal Judgment](#), paras 625, 627.

1. Whether Mr Bemba can rely on article 81(2)(b) of the Statute

12. With respect to Mr Bemba's request that his convictions be quashed on the basis of article 81(2)(b) of the Statute,³⁰ the Appeals Chamber finds that Mr Bemba's reliance on that provision is inapposite and his arguments in this regard are rejected.

13. Article 81(2)(b) concerns the Appeals Chamber's discretionary power to set aside a conviction 'on an appeal against sentence' and provides that

[i]f on an appeal against sentence the Court considers that there are grounds on which the conviction might be set aside, wholly or in part, it may invite the Prosecutor and the convicted person to submit grounds under article 81, paragraph 1 (a) or (b), and may render a decision on conviction in accordance with article 83.

14. The Appeals Chamber considers that this provision concerns proceedings in which the convicted person filed an appeal against his or her sentence only. It notes in this connection that article 81(2)(c) of the Statute, which applies to appeals against conviction, replicates the procedure set out in article 81(2)(b). Article 81(2)(c) of the Statute refers to 'an appeal against conviction *only*' (emphasis added). By contrast, the above-quoted article 81(2)(b) does not contain the term 'only'. Nonetheless, the Appeals Chamber considers that the provision applies only in a situation where there has been no appeal against the conviction. This is because, if there has been an appeal against the conviction, the Appeals Chamber already has the power to rule on the conviction and there is no need to resort to the procedure under article 81(2)(b). Thus, article 81(2)(b) and (c), respectively, concern cases where the convicted person filed an appeal either against sentence only or against conviction only. These provisions enable the Appeals Chamber to set aside a conviction or set aside or reduce a sentence, despite that conviction or sentence not having been challenged by the convicted person.

15. For these reasons, the Appeals Chamber finds that Mr Bemba, who already appealed his convictions, cannot now seek to apply the procedure set out in article 81(2)(b) of the Statute,

³⁰ [Appeal Brief](#), para. 64. *See also* para. 59.

2. *Whether other avenues are available to raise grounds on which Mr Bemba's conviction could be set aside*

16. The Appeals Chamber recalls that a separate provision – article 84 – regulates revision of conviction.³¹ This regime is separate from appeals under article 81. Article 84 applies to the ‘final judgment of conviction’ and thus also to decisions on conviction which have already been appealed against and confirmed on appeal. Article 84 provides for three strictly construed scenarios where revision may be sought: (a) a discovery of new evidence; (b) a new discovery that decisive evidence was false, forged or falsified; and (c) a serious misconduct or breach of duty by one or more of the judges participating in conviction. Mr Bemba does not argue that any of these scenarios is made out in the present case.

3. *Conclusion*

17. In view of the foregoing, the Appeals Chamber will not consider Mr Bemba's request for a reversal of his convictions. Similarly, it will not consider arguments, the effect of which would be to reverse or amend a finding made in the Conviction Decision. The Appeals Chamber also declines to consider arguments against the Trial Chamber's approach to the evidence in the Conviction Decision.

18. The Appeals Chamber summarily dismisses the following aspects of Mr Bemba's appeal:

- i. any request for reversal of his convictions;³²

³¹ Article 84(1) of the Statute reads:

‘The convicted person or, after death, spouses, children, parents or one person alive at the time of the accused's death who has been given express written instructions from the accused to bring such a claim, or the Prosecutor on the person's behalf, may apply to the Appeals Chamber to revise the final judgement of conviction or sentence on the ground that:

- (a) New evidence has been discovered that:
 - (i) Was not available at the time of trial, and such unavailability was not wholly or partially attributable to the party making application; and
 - (ii) Is sufficiently important that had it been proved at trial it would have been likely to have resulted in a different verdict;
- (b) It has been newly discovered that decisive evidence, taken into account at trial and upon which the conviction depends, was false, forged or falsified;
- (c) One or more of the judges who participated in conviction or confirmation of the charges has committed, in that case, an act of serious misconduct or serious breach of duty of sufficient gravity to justify the removal of that judge or those judges from office under article 46.’

³² For example, see [Appeal Brief](#), paras 35, 59, 63, 64, 65-68, 71, 76-77, 196.

- ii. arguments of which the effect would be to reverse or amend findings made in the Conviction Decision;³³ and
- iii. challenges to the evidentiary regime which the Trial Chamber adopted in the conviction proceedings.³⁴

The Appeals Chamber points out that this is without prejudice to its power to dismiss other arguments on appeal as inadmissible at a later stage of the proceedings.

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



Judge Howard Morrison
Presiding

Dated this 20th day of August 2019

At The Hague, The Netherlands

³³ For example, *see* [Appeal Brief](#), paras 24-37, 42-47, 74.

³⁴ For example, *see* [Appeal Brief](#), paras 17-24, 35, 38-39, 41-42, 48-63, 65, 70-73.