



Original: English

No. ICC-01/14-01/22

Date: 19 August 2022

PRE-TRIAL CHAMBER II

Before:

Judge Rosario Salvatore Aitala, Presiding

Judge Antoine Kesia-Mbe Mindua

Judge Tomoko Akane

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF

THE PROSECUTOR v. MAXIME JEOFFROY ELI MOKOM GAWAKA

Public

Decision on legal representation further to the Appeals Chamber's judgment of
19 July 2022

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

The Office of the Prosecutor

Mr Karim A. A. Khan
Mr Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Mr Mokom

Mr Gregory Townsend, Duty Counsel

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Mr Pieter Vanaverbeke

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other
Appeals Chamber

PRE-TRIAL CHAMBER II of the International Criminal Court issues this decision on legal representation further to the Appeals Chamber’s judgment of 19 July 2022.

I. PROCEDURAL HISTORY

1. On 14 March 2022, Mr Maxime Jeoffroy Eli Mokom Gawaka (‘Mr Mokom’) was surrendered to the Court and arrived at the Detention Centre.
2. On 25 March 2022, the Chamber ordered the Registry to revoke its appointment of Mr Nicholas Kaufman (‘Mr Kaufman’) as Mr Mokom’s counsel due to an impediment to representation or a conflict of interest (the ‘25 March 2022 Order’).¹
3. On 1 April 2022, the Chamber instructed the Registry, *inter alia*, to appoint duty counsel for Mr Mokom.² That same day, Mr Gregory Townsend (‘Duty Counsel’) was appointed as duty counsel to Mr Mokom.³
4. On 4 April 2022, the Chamber held a status conference on the issue of Mr Mokom’s legal representation.⁴
5. On 14 April 2022, the Chamber granted Mr Mokom’s request for leave to appeal the 25 March 2022 Order in respect of two issues.⁵
6. On 19 July 2022, the Appeals Chamber issued its judgment on Mr Mokom’s appeal against the 25 March 2022 Order (the ‘Appeals Chamber Judgment’).⁶ The majority of the Appeals Chamber: (i) rejected the Defence’s arguments that the Pre-

¹ Order to the Registry concerning the appointment of Mr Nicholas Kaufman as counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka, ICC-01/14-01/22-26-Conf-Exp, confidential and *ex parte*, only available to the Prosecution, Mr Kaufman, Mr Mokom, and the Registry (a public redacted version was issued on 13 June 2022, [ICC-01/14-01/22-26-Red](#)).

² Order convening a status conference and instructing the Registry to appoint duty counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka, ICC-01/14-01/22-32-Conf-Exp, confidential and *ex parte*, only available to Mr Mokom and the Registry.

³ Notification of the Appointment of Mr Gregory Townsend as Duty Counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka, 4 April 2022, ICC-01/14-01/22-33-Conf-Exp, confidential and *ex parte*, only available to Mr Mokom and Registry, with Annex I, confidential and *ex parte*, only available to Mr Mokom and Registry.

⁴ [ICC-01/14-01/22-T-002-Red-ENG](#) and [ICC-01/14-01/22-T-002-Red-FRA](#).

⁵ Decision on Mr Mokom’s requests for reconsideration and leave to appeal the ‘Order on appointment of Mr Kaufman as Counsel for Mr Mokom’, ICC-01/14-01/22-43 (‘[Decision Granting Leave to Appeal](#)’).

⁶ Judgment on the appeal of Maxime Jeoffroy Eli Mokom Gawaka against the decision of Pre-Trial Chamber II of 25 March 2022 entitled “Order to the Registry concerning the appointment of Mr Nicholas Kaufman as counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka, ICC-01/14-01/22-70-Conf (OA), confidential (a public redacted version was issued on the same day, [ICC-01/14-01/22-70-Red](#) (OA)).

Trial Chamber erred in finding that Mr Kaufman was unable to provide effective representation and that it erred in failing to allow reasonable time to cure the conflict of interest; and (ii) remanded the matter to the Chamber and directed it to issue a new decision based upon all available information, setting out precise and detailed reasons as to whether there is an impediment to representation or a conflict of interest within the meaning of articles 12 and 16 of the Code of Professional Conduct for Counsel (the ‘Code’) to Mr Kaufman’s representation of Mr Mokom that cannot be remedied.⁷

7. On 22 July 2022, the Chamber ordered: (i) the Registry to maintain the mandate of Mr Townsend as Duty Counsel until a further decision on this matter; and (ii) Duty Counsel and the Prosecution to provide submissions on any issue arising out of the Appeals Chamber Judgment by no later than 29 July 2022 (the ‘First 22 July 2022 Order’).⁸

8. On the same date, the Chamber ordered the Prosecution and the Registry to provide submissions as to the possibility of either reclassifying the Warrant of Arrest for Mahamat Nouradine Adam (‘Mr Adam’ and ‘Mr Adam Warrant of Arrest’) issued in the Situation in the Central African Republic II (the ‘CAR II Situation’) and the decision issued by the Single Judge of the Chamber on 25 March 2021 rejecting the Prosecution’s request to inform Mr Kaufman of Mr Adam Warrant of Arrest⁹ (the ‘25 March 2021 Decision’) as public; or submitting confidential versions of these documents in the record of the present case by no later than 28 July 2022, together with any proposals and justifications for redactions if applicable (the ‘Second 22 July 2022 Order’).¹⁰ The same day the Chamber gave the aforementioned instruction, the Prosecution requested the Chamber to unseal Mr Adam Warrant of Arrest.¹¹ The Registry indicated that it opposes neither the reclassification of Mr Adam Warrant of

⁷ [Appeals Chamber Judgment](#), paras 66, 68.

⁸ Order to the Registry to Maintain the Mandate of Duty Counsel and to the Prosecution and Duty Counsel for Submissions, [ICC-01/14-01/22-73](#).

⁹ Decision on the ‘Prosecution’s Request to Inform Mr Nicholas Kaufman of the Existence of a Warrant of Arrest for Mahamat Nouradine Adam’, ICC-01/14-143-US-Exp.

¹⁰ Order to the Prosecution and Registry for Submissions Regarding the Warrant of Arrest against Mahamat Nouradine Adam, ICC-01/14-01/22-74-US-Exp, under seal and *ex parte*, only available to the Prosecution and Registry.

¹¹ Prosecution’s Request to unseal Warrant ICC-01/14-41-US-Exp and request for redactions to the Warrant, 22 July 2022, ICC-01/14-163-US-Exp, under seal and *ex parte*, only available to the Prosecution and Registry, with Annex I, under seal and *ex parte*, only available to the Prosecution and Registry (a public redacted version was issued on 29 July 2022, [ICC-01/14-163-Red](#)).

Arrest and the 25 March 2021 Decision nor their submission into the present case record (the ‘Registry Submissions’).¹²

9. On 27 July 2022, the Prosecution provided its submissions pursuant to the First 22 July 2022 Order (the ‘First Prosecution Submissions’)¹³ and the Second 22 July 2022 Order (the ‘Second Prosecution Submissions’).¹⁴ In the First Prosecution Submissions, the Prosecution avers that it has no further submissions to provide following the Appeals Chamber Judgment, and reiterates that it does not take any position on the merits, deferring to the Chamber’s discretion as to whether a conflict of interest or other impediment exist to Mr Kaufman’s representation of Mr Mokom, or whether any waiver would be sufficient. In the Second Prosecution Submissions, the Prosecution submits that (i) concurrent to the Second 22 July 2022 Order, it requested the Chamber to unseal Mr Adam Warrant of Arrest in the CAR II Situation and to issue a public redacted version thereof; and that (ii) it has no objection to the reclassification as public of the 25 March 2021 Decision.

10. On 28 July 2022, the Chamber, issued a public redacted version of Mr Adam Warrant of Arrest.¹⁵

11. On the same date, Duty Counsel provided his submissions pursuant to the First 22 July 2022 Order.¹⁶ Duty Counsel submits that three pieces of new information - a document signed in April 2022 by both Mr Mokom and Client 1 (the ‘April 2022 Document’),¹⁷ a letter from Mr Kaufman addressed to Mr Adam on 18 May 2022 terminating his representation of the latter (the ‘18 May 2022 Letter’)¹⁸ and an affidavit signed by Mr Kaufman on 24 July 2022 before a notary public (the ‘24 July 2022 Affidavit’)¹⁹ - provide a sufficient factual basis to satisfy the Chamber that any

¹² Registry's submissions regarding the Warrant of Arrest against Mahamat Nouradine Adam, ICC-01/14-01/22-77-US-Exp, under seal and *ex parte*, only available to the Prosecution and Registry.

¹³ Prosecution’s Submissions in respect of the Chamber’s Order (ICC-01/14-01/22-73), [ICC-01/14-01/22-75](#).

¹⁴ Prosecution’s Submissions regarding the Warrant of Arrest for Mahamat Nouradine Adam, ICC-01/14-01/22-76-US-Exp, under seal and *ex parte*, only available to the Prosecution and Registry.

¹⁵ Public Redacted Version of ‘Warrant of Arrest for Mahamat Nouradine Adam’, 7 January 2019, [ICC-01/14-41-Red2](#); See also Decision on the ‘Prosecution’s Request to unseal Warrant ICC-01/14-41-US-Exp and request for redactions to the Warrant’, ICC-01/14-164-US-Exp, under seal and *ex parte*, only available to the Prosecution and Registry;.

¹⁶ Submissions pursuant to Order ICC-01/14-01/22-73, [ICC-01/14-01/22-78](#), with confidential annexes I-III.

¹⁷ ICC-01/14-01/22-78-Conf-AnxI.

¹⁸ ICC-01/14-01/22-78-Conf-AnxII.

¹⁹ ICC-01/14-01/22-78-Conf-AnxIII.

discernible and latent impediment or conflict of interest already has been cured or can be cured. Besides this documentation, Duty Counsel submits, *inter alia*, that, (i) at the status conference on 4 April 2022, Mr Mokom voluntarily revealed that Mr Kaufman had explained to him the nature of a conflict of interest and had hidden nothing from him, and reiterated his desire to have Mr Kaufman act as his counsel; (ii) the Prosecution has not, at any stage, argued that there is any specific confidential information submitted to the Chamber, and not disclosable to the Defence, which could impact Mr Kaufman's capacity to represent Mr Mokom to the best of his ability; and (iii) Mr Kaufman has accepted that a timelier submission of the additional documentation could have assuaged the Chamber's concerns regarding the potential for a conflict.

12. On 1 August 2022, Duty Counsel argued, *inter alia*, that the 'cases' against Mr Adam and Mr Mokom do not overlap, because Mr Adam Warrant of Arrest 'exclusively' concerns crimes allegedly committed at the *Office Central de Répression du Banditisme* and the *Comité Extraordinaire pour la Défense des Acquis Démocratiques*, and that the charges brought against Mr Mokom are unrelated. According to Duty Counsel, 'the alleged crimes of [Mr] Adam relate to a totally different time period and geographical location than the allegations against Mr. Mokom' and 'there is nothing to suggest that the nature and scope of the allegations against [Mr] Adam would prevent Mr. Kaufman from representing Mr. Mokom'.²⁰

III. DETERMINATION

13. Before addressing the merits, two preliminary matters must be addressed.

14. First, as a result of later submissions and/or reclassification of filings, the current level of classification of various filings is no longer necessary. The Chamber issues the following reclassification orders. The Registry is instructed to reclassify:

- (i) the 25 March 2021 Decision as public in the record of the CAR II Situation;
- and

²⁰ Response to Prosecution Request ICC-01/14-163-Red, ICC-01/14-01/22-79-Conf-Exp. Duty Counsel made these submissions in a response to the Prosecution's request to unseal Mr Adam Warrant of Arrest filed in the CAR II Situation.

- (ii) the Second Prosecution Submissions, the Registry Submissions and the Second 22 July 2022 Order as public in the record of the present case.

In view of these forthcoming reclassifications, the Chamber will refer to the content of the aforementioned documents in the present decision.

15. Second, the Chamber notes Duty Counsel's submission that, should the Chamber have formulated its reasoning *in the interim*, the fairness of the proceedings would dictate that Mr Mokom be afforded the opportunity to address such reasoning in advance of any further decision, but that such an exercise is unnecessary given the provision of the additional documentation. Such a course of action would lack any legal basis or rationale and would also run contrary to the established practice of the Court. The Chamber recalls that in the First 22 July 2022 Order, it afforded the parties and participants with the opportunity to set out their submissions in connection with the Appeals Chamber Judgment, when it ordered 'the Prosecution and Duty Counsel to provide submissions on any issue arising out of the Appeals Chamber Judgment'. In addition, the Chamber observes that the present matter will be scrutinised again by the Appeals Chamber, as discussed below in paragraphs 29-30.

16. Following the Appeals Chamber's consideration of the matter, the Chamber now sets the 'further reasons' for its findings in the 25 March 2022 Order, in light of the materials submitted by Mr Kaufman or Duty Counsel after 25 March 2022 - addressed in paragraphs 24 to 27 below - and of documents at the time classified as confidential or under seal which now have been made public. Whilst in light of the classification of the relevant information at the time, the Chamber had set out its reasoning in a more general manner in order to prevent exposing information that was confidential or under seal, the Chamber will now be able to provide further reasons in support of its findings that there is an impediment to representation or a conflict of interest within the meaning of articles 12 and 16 of the Code to Mr Kaufman's representation of Mr Mokom that cannot be remedied.

17. With reference to the finding set out by the Chamber in its 25 March 2022 Order that the proceedings during which Mr Kaufman's represented other clients are

substantially related to these proceedings²¹, the Chamber further observes what follows.

18. Mr Kaufman has represented a person referred to before the Chamber as P-1019, or as ‘Client 1’ by the Appeals Chamber, in the context of an interview conducted by the Prosecution in 2018, pursuant to article 55(2) of the Statute.²² In addition, Mr Kaufman has represented Mr Adam, against whom an warrant of arrest has been issued in the CAR II Situation. Both persons who were represented by Mr Kaufman are alleged to have been high-ranking members of the Seleka, the armed movement that opposed the group Mr Mokom allegedly was part of, in the violence that led to the referral of the CAR II situation to the Court. Both the warrants of arrest for Mr Adam and Mr Mokom set out that, on the basis of the information presented to the Chamber at the time, there are reasonable grounds to believe that a non-international armed conflict existed between the Seleka and the movement that (during the relevant time) became the Anti-Balaka.²³ Members of each of the parties to the conflict, i.e. the Seleka and the Anti-Balaka, allegedly also conducted widespread and systematic attacks against the civilian population and those perceived to be collectively responsible for, complicit with, or supportive of the opposing side.²⁴ In both warrants of arrest, this Chamber concluded that there are reasonable grounds to believe that, following the coup d’état by the Seleka on 24 March 2013, a pro-Bozizé countermovement was organised, which would become known as the Anti-Balaka, with the aim of, *inter alia*, removing Michel Djotodia from power, as well as defending against and ousting the Seleka from the CAR;²⁵ and that the fighting between these groups culminated in the attack on Bangui on 5 December 2013 and led to the resignation of Michel Djotodia.²⁶ Mr Mokom and Mr Adam are alleged to each have held senior roles in these opposing groups. Similar

²¹ See [25 March 2022 Order](#), para. 10.

²² Email from OTP to the Chamber, 18 March 2022, at 09:41; Email from Mr Kaufman to the Chamber, 17 March 2022, at 23:24.

²³ Public Redacted Version of ‘Warrant of Arrest for Maxime Jeoffroy Eli Mokom Gawaka’, 10 December 2018 (ICC-01/14-01/22-2-US-Exp), ICC-01/14-01/22-2-Red2 ([‘Mr Mokom Warrant of Arrest’](#)), para. 12; [Mr Adam Warrant of Arrest](#), para. 16.

²⁴ [Mr Mokom Warrant of Arrest](#), para. 13; [Mr Adam Warrant of Arrest](#), para. 17.

²⁵ [Mr Mokom Warrant of Arrest](#), para. 6; [Mr Adam Warrant of Arrest](#), para. 14.

²⁶ [Mr Mokom Warrant of Arrest](#), para. 7; [Mr Adam Warrant of Arrest](#), para. 15.

findings regarding the contextual elements led, in part, to the confirmation of charges against Messrs Yekatom, Ngaïssona and Said.²⁷

19. The Chamber has assessed the finding of Trial Chamber V, relied upon by Duty Counsel, that proceedings related to investigation of Seleka crimes are not ‘substantially the same as’ or ‘substantially related to’ *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* case (the ‘*Yekatom and Ngaïssona* case’), which deals with crimes allegedly committed by members of the Anti-Balaka.²⁸ This finding arose out of the specific facts before Trial Chamber V, and was made in relation to a counsel representing the interests of the defence pursuant to a measure adopted under article 56 of the Statute and subsequently representing one of the accused in the *Yekatom and Ngaïssona* case. The present situation is however distinguishable in that Mr Kaufman represented two persons for whom warrants of arrest have been issued (i.e. Mr Adam and Mr Mokom). Differently to Trial Chamber V’s determination, the Chamber therefore considers that, for the purposes of the present matter, the proceedings involving Mr Kaufman’s other clients, and in particular with regard to Mr Adam, are substantially related to the proceedings against Mr Mokom, insofar as both arose from the conflict between the armed movements of which Mr Adam and Mr Mokom are respectively believed to have been high ranking members.

20. Concerning the Chamber’s finding in the 25 March 2022 Order that the interests of P-1019 and Mr Adam diverge from those of Mr Mokom to such a degree that it prevents Mr Kaufman from effectively representing Mr Mokom, and that those interests are fundamentally incompatible,²⁹ the Chamber further observes what follows.

21. In addition to taking into consideration the nature and scope of the conflict as detailed above, the Chamber also took into account the alleged roles and status of P-1019 and Mr Adam within the Seleka. Both P-1019 and Mr Adam are alleged to have been prominent figures of the Seleka at the relevant time. In particular, Mr Adam would

²⁷ See for instance, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona, 20 December 2019, [ICC-01/14-01/18-403-Red](#), para. 63; *The Prosecutor v. Mahamat Said Abdel Kani*, Decision on the confirmation of charges against Mahamat Said Abdel Kani, 9 December 2021, [ICC-01/14-01/21-218-Red](#), para. 52

²⁸ Decision on the Second Prosecution Submission on the Appointment of Defence Counsel, 17 March 2021, ICC-01/14-01/18-916-Conf.

²⁹ [25 March 2022 Order](#), paras 12-13.

have been the leader of a faction of the Seleka, the Minister for Security officially in charge and *de facto* in control of a detention facility, and the director general of another detention facility after stepping down as Minister for Security.³⁰ The interests of persons who would have occupied high level functions/roles within the Seleka at the time of the relevant events, radically diverge from and are necessarily incompatible with those of Mr Mokom, who is alleged to have been a high-ranking member of the opposing movement,³¹ the Anti-Balaka. In the view of the Chamber, the representation of clients belonging to opposing sides in which they occupy senior roles, especially in the context of a conflict between two groups with relatively small leaderships, whose factions and alliances changed several times, is incompatible. Being, or having been, close to senior members of opposing sides, or being perceived as such, objectively affects a counsel's ability to effectively and impartially represent a client, irrespective of the counsel's good faith and professionalism.

22. Furthermore, the information before the Chamber showed that, in 2020, Mr Kaufman received a power of attorney from Mr Adam.³² As is set out in the 25 March 2021 Decision, Mr Kaufman enquired with the Prosecution as to the existence of a warrant of arrest for Mr Adam on several occasions since 2019, including on one occasion following the arrest of Mr Said, and, on that basis, the Prosecution contemplated discussing the possibility of Mr Adam's surrender with Mr Kaufman.³³ In the course of such exchanges, and as part of his representation of Mr Adam, Mr Kaufman must have obtained information from Mr Adam in connection with events relevant to these proceedings. Indeed, in his 18 May 2022 Letter, Mr Kaufman indicates that he has terminated Mr Adam's representation in full knowledge that no information he had acquired from him 'can be used to Mr Mokom's advantage', and that there was no expectation that he, Mr Kaufman, 'should withhold information obtained from [Mr Adam] relevant to Mr Mokom defence'.³⁴ As set out in the 25 March 2022 Order, Mr Kaufman would be precluded from using any information obtained in connection with his representation of Mr Adam to his detriment, also if it would benefit Mr Mokom.

³⁰ [Mr Adam Warrant of Arrest](#), para. 19.

³¹ [Mr Mokom Warrant of Arrest](#), para. 16.

³² See ICC-01/14-138-US-Exp-AnxA.

³³ 25 March 2021 Decision, para. 2.

³⁴ ICC-01/14-01/22-78-Conf-AnxII, page 3.

23. As set out in details above, and having taken into consideration the additional submissions of the parties as well as the new information provided, the Chamber remains convinced that there is an impediment to representation or a conflict of interest within the meaning of articles 12 and 16 of the Code in relation to Mr Kaufman's representation of Mr Mokom.

24. Turning to the Chamber's finding that the above mentioned impediment to representation or conflict of interest cannot be remedied as provided under articles 12(1)(a) and 16(3) of the Code,³⁵ the Chamber notes that Duty Counsel refers to the April 2022 Document, which is designed to waive the existence of an impediment to representation or a conflict of interest in relation to P-1019, and submits that Mr Kaufman's services for this person have effectively terminated given that he will, almost certainly, not be called as a Prosecution witness in this case. According to Duty Counsel, Mr Mokom and P-1019 agreed to the mutual sharing of information that could impact the defence of one another. In the view of the Chamber, the April 2022 Document does not remedy the impediment or conflict of interests with regard to P-1019. In light of his representation of multiple persons relevant to the CAR II situation, including another potential suspect, it would have been incumbent on Mr Kaufman to raise a potential conflict of interest with the Registry and have been forthcoming about his representation of these other persons. The Chamber, by coincidence, was aware of Mr Kaufman's representation of P-1019 and Mr Adam, and raised the issue *proprio motu*. However, it should not have been for the Chamber to have brought the matter to light, but for Mr Kaufman.

25. Only in response to the Chamber's query, Mr Kaufman sought waivers and ended his representation of other clients involved in the CAR II situation. Besides the fact that this raises questions about Mr Kaufman's transparency and ability to fully engage in Mr Mokom's defence, the Chamber considers that this impacts the value of the subsequent documents provided to the Chamber.

26. The Chamber notes in this regard that, since the issuance of the 25 March 2022 Order, Mr Kaufman wrote the 18 May 2022 letter, by which, according to Duty Counsel, Mr Kaufman terminated his representation of Mr Adam. This letter was only provided to two individuals with whom Mr Adam is normally in contact, and not Mr

³⁵ [25 March 2022 Order](#), para. 14.

Adam himself. In the view of the Chamber, this letter does not suffice to remedy the aforementioned impediment or conflict of interest with regard to Mr Adam. Indeed, the fact that Mr Kaufman's representation of Mr Adam may now have ended, only after the intervention of the Chamber, does not cancel out the fact that any information obtained by Mr Kaufman in the context of his representation of Mr Adam in connection with events which are relevant to these proceedings, could affect his continued representation of Mr Mokom. Whilst the Chamber does not call Mr Kaufman's integrity as to the use of information into doubt, it is of the view that Mr Kaufman's engagement with Mr Adam objectively impairs his ability to fully and unreservedly pursue the interests of Mr Mokom in the present proceedings. The information he learned during his contacts with Mr Adam cannot be mechanically set aside, and could be detrimental to Mr Mokom at some stage of the proceedings.

27. For the same reasons, the Chamber considers that Mr Kaufman's 24 July 2022 Affidavit is not sufficient to remedy the said impediment or conflict of interest.

28. The Chamber has paid due regard to Mr Mokom's right to be represented by counsel of his own choosing and his express desire to have Mr Kaufman act as his counsel. However, as already noted in the 25 March 2022 Order, Mr Mokom's right to choose counsel is not without limits.³⁶ The Chamber, which is duty bound to ensure the fairness of the proceedings and protect the suspect's fundamental right to a defence at all times, remains convinced that, in the particular circumstances of this case, and as shown by the above reasons, Mr Mokom's fundamental right to effective legal representation outweighs his choice to be represented by Mr Kaufman.

29. The Chamber recalls having stated that '[l]egal representation goes to the heart of the right to a fair trial and therefore significantly affects the fair and expeditious conduct of the proceedings.'³⁷ Further noting the importance of the matter at hand and the time the litigation about Mr Mokom's legal representation has already taken so far, and with a view to limiting further effects on the expeditiousness of the proceedings, the Chamber considers that Mr Mokom ought to be granted leave to appeal the present decision pursuant to Article 82(1)(d) of the Statute already at this stage.

³⁶ [25 March 2022 Order](#), para. 17.

³⁷ [Decision Granting Leave to Appeal](#), para. 27.

30. As held by the Appeals Chamber, '[b]y the plain terms of article 82(1)(d) of the Statute, a Pre-Trial or Trial Chamber may certify [...] a decision on its own accord'.³⁸ An immediate resolution by the Appeals Chamber would ensure that any doubts in connection with the scope of Mr Mokom's right to be assisted by counsel of his own choice are promptly and authoritatively dispelled. In its initial consideration of the matter, the Appeals Chamber has found that it was 'unable to discern how the Pre-Trial Chamber arrived at the ultimate determination that it would be necessary to remove Mr Kaufman as counsel', because the reasons underlying the Chamber's determination 'are not fully set out' in the 25 March 2022 Order.³⁹ It has therefore remanded the issue to the Chamber 'to provide further reasons'. In these circumstances, it is only appropriate that the Appeals Chamber is given an opportunity to pronounce on the further reasons, as set out in the present decision. The Chamber therefore *proprio motu* grants Mr Mokom leave to appeal the following issue before the Appeals Chamber:

Whether the Chamber, on the basis of the further reasons exposed in the 'Decision on legal representation further to the Appeals Chamber's judgment of 19 July 2022', erred in finding that there is an impediment to representation or a conflict of interest within the meaning of articles 12 and 16 of the Code of Professional Conduct for Counsel to Mr Kaufman's representation of Mr Mokom that cannot be remedied.⁴⁰

³⁸ Appeals Chamber, *Situation in the Democratic Republic of the Congo*, Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal, 13 July 2006, [ICC-01/04-168](#), para. 20.

³⁹ [Appeals Chamber Judgment](#), para. 68.

⁴⁰ See the Appeals Chamber's language at the end of paragraph 68 of the [Appeals Chamber Judgment](#).

FOR THESE REASONS, THE CHAMBER HEREBY

CONFIRMS the 25 March 2022 Order on the basis of the reasons set forth in the present decision pursuant to the Appeals Chamber Judgment;

GRANTS Mr Mokom's leave to appeal the present decision, as indicated in paragraph 30;

ORDERS the Registry to maintain the mandate of Mr Townsend as Duty Counsel until the resolution of the issue of Mr Mokom's legal representation; and

ORDERS the Registry to reclassify the 25 March 2021 Decision (ICC-01/14-143-US-Exp) as public in the record of the CAR II Situation; and to reclassify the Second 22 July 2022 Order (ICC-01/14-01/22-74-US-Exp), the Second Prosecution Submissions (ICC-01/14-01/22-76-US-Exp) as well as the Registry Submissions (ICC-01/14-01/22-77-US-Exp) as public in the record of the present case.

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



Judge Rosario Salvatore Aitala

Presiding



Judge Antoine Kesia-Mbe Mindua



Judge Tomoko Akane

Dated this Friday, 19 August 2022

At The Hague, The Netherlands