



Original: **English**

No.: **ICC-01/14-01/22**

Date: **28/09/2022**

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Presiding Judge
Judge Antoine Kesia-Mbe Mindua
Judge Tomoko Akane

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka

PUBLIC

Request for Leave to Appeal Decision ICC-01/14-01/22-80

Source: Gregory Townsend, Duty Counsel

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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Counsel for the Defence

Mr Gregory Townsend, Duty Counsel

Legal Representatives of the Victims

Legal Representatives of the Applicant

Unrepresented Victims

Unrepresented

Applicants

(Participation/Reparation)

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
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Detention Section

**Victims Participation and Reparations
Section** **Other**

Introduction

1. Pursuant to the Appeals Chamber's '*Decision on the admissibility of the appeal*' of 27 September 2022¹ and Article 82(1)(d) of the Rome Statute, Mr. Maxime Jeoffroy Eli Mokom Gawaka (Mr. Mokom) files this request seeking leave to appeal Pre-Trial Chamber II's '*Decision on legal representation further to the Appeals Chamber's judgment of 19 July 2022*' (the Impugned Decision), issued on 19 August 2022.²
2. Mr. Mokom concurs with the procedural history provided by the Appeals Chamber in its Decision of 27 September 2022.³

Relevant Statutory Provision

3. Article 82(1)(d) of the Rome Statute permits appellate review of an interlocutory decision that 'involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.'

Submissions

4. Mr. Mokom seeks the leave of the Pre-Trial Chamber to appeal the Impugned Decision. The Pre-Trial Chamber already identified an issue arising in the Impugned Decision, which is suitable for appeal.⁴ Mr. Mokom adopts this very issue which the Pre-Trial Chamber already defined as follows:

*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.*⁵

¹ ICC-01/14-01/22-91 (ruling, *inter alia*, at para. 23, on the 'calculation of time limits' for leave to appeal the Impugned Decision).

² ICC-01/14-01/22-80.

³ ICC-01/14-01/22-91, paras. 1-7.

⁴ ICC-01/14-01/22-80, para. 30 (citing Public Redacted 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-Red, para. 68).

⁵ ICC-01/14-01/22-80, para. 30.

5. The Pre-Trial Chamber also previously concluded that resolution of the above-defined issue would: (a) meet the test for granting leave to appeal, and (b) significantly affect the fair and expeditious conduct of proceedings, when it held that:

The [Pre-Trial] 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'.⁶

6. Falling within the issue for which Mr. Mokom seeks leave to appeal (at paragraph 4 above), Mr. Mokom submits that the Impugned Decision makes errors of law and fact, including the following:

- i) confusing the differing remedial requirements for the purpose of an impediment to representation as opposed to a conflict of interest,
- ii) erroneously concluding that the pertinent interests were so intertwined by virtue of their substantial similarity and fundamental incompatibility that remedial measures should be precluded,
- iii) erroneously concluding that Mr. Kaufman's conduct should preclude any remedial measures, and;
- iv) disregarding the written documentation designed to remedy any possible conflict of interest.

7. Finally, the Pre-Trial Chamber, more than one month ago, already stressed '*the importance of the matter at hand and the time the litigation about Mr Mokom's legal representation has already taken so far*'.⁷ Implicit therein is the understanding that an immediate resolution by the Appeals Chamber of the identified issue will materially advance proceedings, inter alia, by providing for Mr. Mokom's right to be represented by permanent counsel of his choice, and avoiding further delay of the confirmation proceedings.

⁶ Ibid, para. 29 (emphasis added).

⁷ Ibid.

Conclusion

8. For the reasons stated above, the Pre-Trial Chamber is respectfully requested to grant leave to appeal the Impugned Decision.

A handwritten signature in blue ink that reads "Gregory Townsend". The signature is written in a cursive style with a large initial 'G'.

Gregory Townsend,
Duty Counsel

The Hague, The Netherlands
Wednesday, September 28, 2022