

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

**No: ICC-01/14-01/22 OA3**

**Date: 3 October 2022**

**THE APPEALS CHAMBER**

**Before:** Judge Solomy Balungi Bossa, Presiding Judge  
Judge Piotr Hofmański  
Judge Luz del Carmen Ibáñez Carranza  
Judge Marc Perrin de Brichambaut  
Judge Gocha Lordkipanidze

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II  
IN THE CASE OF  
*THE PROSECUTOR v. MAXIME JOFFROY ELI MOKOM GAWAKA***

**Public**

**Prosecution's Response to Mr Mokom's Appeal against Pre-Trial Chamber II's Decision  
on legal representation further to the Appeals Chamber's judgment of 19 July 2022**

**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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Mr Mame Mandiaye Niang

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**Counsel for Mr Mokom**

Mr Gregory Townsend (Duty Counsel)

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

Mr Pieter Vanaverbeke

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## SUBMISSIONS

1. On 19 July 2022, the Appeals Chamber reversed Pre-Trial Chamber II’s decision ordering the Registry to revoke its appointment of Mr Nicholas Kaufman as Mr Mokom’s counsel.<sup>1</sup> The Appeals Chamber, by majority, remanded the matter to the Pre-Trial Chamber, directing 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 under articles 12 and 16 of the Code of Professional Conduct for counsel to Mr Kaufman’s representation of Mr Mokom that cannot be remedied.<sup>2</sup> On 19 August 2022, the Pre-Trial Chamber issued a new decision, finding that there remained an impediment to representation or a conflict of interest under articles 12 and 16 of the Code in relation to Mr Kaufman’s representation of Mr Mokom and setting out its reasons.<sup>3</sup> The Pre-Trial Chamber also *proprio motu* granted leave to appeal on one issue.<sup>4</sup> Mr Mokom and the Prosecution filed their submissions in the appeal.<sup>5</sup>

2. On 27 September 2022, the Appeals Chamber found unanimously that the appeal was inadmissible (since leave had been improperly granted) and dismissed it.<sup>6</sup> Nonetheless, the Appeals Chamber found that the Parties could seek leave to appeal, with time running from when its decision was notified.<sup>7</sup> Two days later, Mr Mokom sought leave to appeal, advancing the same issue the Pre-Trial Chamber had previously certified.<sup>8</sup> The Pre-Trial Chamber granted leave to appeal.<sup>9</sup> Mr Mokom then filed his appeal brief.<sup>10</sup>

3. In his third appeal, Mr Mokom advances largely the same arguments as his second appeal.<sup>11</sup> Accordingly, and consistent with its earlier position before the Appeals Chamber,<sup>12</sup>

<sup>1</sup> ICC-01/14-01/22-70-Red (“[Counsel Appointment AD](#)”), para. 69; ICC-01/14-01/22-70-Anx-Red (“[Counsel Appointment AD Dis Op](#)”), para. 22.

<sup>2</sup> [Counsel Appointment AD](#), para. 68.

<sup>3</sup> ICC-01/14-01/22-80 (“[Legal Representation Decision](#)”), paras. 13-28.

<sup>4</sup> [Legal Representation Decision](#), paras. 29-30.

<sup>5</sup> ICC-01/14-01/22-81 (“[Second Appeal](#)”) and ICC-01/14-01/22-84 (“[Prosecution Response to Second Appeal](#)”).

<sup>6</sup> ICC-01/14-01/22-91 (“[Appeal Admissibility AD](#)”), paras. 12-23.

<sup>7</sup> [Appeal Admissibility AD](#), para. 23.

<sup>8</sup> ICC-01/04-01/22-92 (“[Request for Leave to Appeal](#)”), para. 4.

<sup>9</sup> ICC-01/14-01/22-94 (“[ALA Decision](#)”). *See also* ICC-01/14-01/22-93 (“[Prosecution Response to Request for Leave to Appeal](#)”).

<sup>10</sup> ICC-01/14-01/22-95 (“[Third Appeal](#)”).

<sup>11</sup> [Third Appeal](#), paras. 1-38. *But see* paras. 8, 33 (arguing the PTC’s alleged failure to consider documentation as a separate fourth error), in contrast to [Second Appeal](#), paras. 5, 33 (raising the issue, but arguing only three distinct errors).

<sup>12</sup> ICC-01/14-01/22-48-Red (“[Prosecution Response to First Appeal](#)”), para. 4; [Prosecution Response to Second Appeal](#), para. 2.

the Prosecution does not take a position on the factual issues raised by this Appeal. It also recalls that it did not take a position on the merits before the Pre-Trial Chamber.<sup>13</sup>

4. The Prosecution defers to the Appeals Chamber's resolution of the Appeal.



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**Karim A. A. Khan KC, Prosecutor**

Dated this 3<sup>rd</sup> day of October 2022  
At The Hague, The Netherlands

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<sup>13</sup> *Contra* [Third Appeal](#), para. 34(f) (suggesting that the Prosecution had not “substantiate[d] an evidence-based conflict of interest”). *See e.g.*, ICC-01/14-01/22-75 (“[Prosecution 27 July 2022 Submissions](#)”), para. 2.