



Original: English

No. ICC-01/14-01/22

Date: 7 November 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

Order to Mr Mokom to provide submissions on interim release

Order 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

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 order to Mr Mokom to provide submissions on interim release.

I. Procedural history

1. On 10 December 2018, the Chamber issued the Warrant of Arrest for Maxime Jeoffroy Eli Mokom Gawaka ('Mr Mokom' and 'Warrant of Arrest').¹
2. On 14 March 2022, Mr Mokom was surrendered to the Court and arrived at the Detention Centre.
3. 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').²
4. On 1 April 2022, the Chamber instructed the Registry to, *inter alia*, appoint duty counsel for Mr Mokom.³ On the same day, Mr Gregory Townsend was appointed as duty counsel for Mr Mokom.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 majority of the Appeals Chamber: (i) rejected the Defence's arguments that the 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

¹ ICC-01/14-01/22-2-US-Exp (a redacted, under seal, *ex parte*, only available to the Prosecutor and the Victims and Witnesses Unit, version was issued on 31 January 2019, ICC-01/14-01/22-2-US-Exp-Red; a public redacted version was issued on 22 March 2022, [ICC-01/14-01/22-2-Red2](#)).

² 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](#)).

³ 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.

⁴ 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 the Registry, with Annex I, confidential and *ex parte*, only available to Mr Mokom and the Registry.

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.

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 to Mr Kaufman’s representation of Mr Mokom that cannot be remedied (the ‘Appeals Chamber Judgment’).⁶

7. On 19 August 2022, the Chamber: (i) provided further reasons for the 25 March 2022 Order pursuant to the Appeals Chamber Judgment and, upon doing so, confirmed that Order; and (ii) *proprio motu* granted Mr Mokom leave to appeal its decision in respect of one issue (the ‘19 August 2022 Decision’).⁷

8. On 27 September 2022, the Appeals Chamber declared the appeal submitted by the Defence pursuant to the 19 August 2022 Decision inadmissible (the ‘Admissibility Decision’).⁸

9. On 29 September 2022, the Chamber granted Mr Mokom’s request for leave to appeal the 19 August 2022 Decision in respect of the identical issue identified previously by the Chamber *proprio motu*.⁹

II. Analysis

10. The Chamber recalls that it is a well-established principle of international human rights law that detention prior to conviction is exceptional in nature and must be strictly limited to what is necessary.¹⁰ In addition, the Appeals Chamber has found that

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, paras 66, 68 (a public redacted version was issued on the same day, [ICC-01/14-01/22-70-Red](#) (OA)).

⁷ [Decision on legal representation further to the Appeals Chamber’s judgment of 19 July 2022](#), ICC-01/14-01/22-80, paras 16-30.

⁸ Decision on the admissibility of the appeal, ICC-01/14-01/22-91 (OA2).

⁹ Decision granting Mr Mokom’s request for leave to appeal the 19 August 2022 Decision on legal representation, ICC-01/14-01/22-94.

¹⁰ Pre-Trial Chamber II, *the Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, [Decision on the ‘Prosecution’s Request to Amend Charges pursuant to Article 61\(9\) and for Correction of the Decision on the Confirmation of Charges, and Notice of Intention to Add Additional Charges](#), 14 May 2020, ICC-01/14-01/18-517, public, para. 26.

‘a Chamber may [...] determine that a detained person has been in detention for an unreasonable period, even in the absence of inexcusable delay by the Prosecutor’.¹¹

11. In the Warrant of Arrest, it was determined that the conditions stipulated in article 58(1)(b) of the Statute for issuing a warrant for Mr Mokom’s arrest had been met.¹² Mr Mokom has been in pre-trial detention for more than seven months since his arrest and surrender on 14 March 2022. At the same time, the present proceedings have been delayed on account of the litigation before the Appeals Chamber in relation to Mr Mokom’s legal representation, in particular following the Admissibility Decision. Indeed, the initiation of critical procedural steps to move these proceedings forward hinges on the appointment of permanent counsel for Mr Mokom. This, above all, concerns the commencement of the disclosure process and, following its conclusion, the submission of the document containing the charges together with the list of the evidence the Prosecution intends to rely upon for the confirmation of charges hearing.¹³ As a result, it is clear that the confirmation of charges hearing, which was scheduled to commence on 31 January 2023,¹⁴ will have to be postponed under rule 121(7) of the Rules of Procedure and Evidence (the ‘Rules’). As the matter of Mr Mokom’s legal representation is pending and it remains unknown when permanent counsel can be appointed, the Chamber is unable to set a new date for the hearing at present.

12. In light of this delay and the additional protraction to be expected as a result of the pending adjudication of the Defence’s appeal from the 19 August 2022 Decision by the Appeals Chamber, the Chamber, as the ultimate guarantor of Mr Mokom’s rights, considers that, in the specific circumstances of the present proceedings, it is appropriate to consider the question of interim release. As a result, the Chamber, orders Mr Mokom, in case he wishes to apply for interim release pursuant to article 60(2) of the Statute, to submit a substantiated application to this effect by no later than 14 November 2022. Any such application shall also include: (i) a proposal as to the State(s) Mr Mokom would seek to be released to; (ii) submissions as to whether or not any conditions

¹¹ Appeals Chamber, *the Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu And Narcisse Arido*, [Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber II of 23 January 2015 entitled “Decision on ‘Mr Bemba’s Request for provisional release’”](#), 29 May 2015, ICC-01/05-01/13-970, public, para. 23.

¹² [Warrant of Arrest](#), para. 20.

¹³ [Order on the conduct of the confirmation of charges proceedings](#), 27 June 2022, ICC-01/14-01/22-62, public, paras 27, 35.

¹⁴ [Transcript of hearing](#), 22 March 2022, ICC-01/14-01/22-T-001-Red-ENG, p. 11.

restricting liberty should be imposed under rule 119 of the Rules; and (iii) any other relevant considerations. The Prosecution shall respond to any such application by no later than 18 November 2022.

13. Furthermore, the Chamber notes regulation 51 of the Regulations of the Court, which stipulates that, ‘[f]or the purposes of a decision on interim release, the Pre-Trial Chamber shall seek observations from the host State and from the State to which the person seeks to be released’, and rule 119(3) of the Rules, which provides in the relevant part that, ‘[b]efore imposing or amending any conditions restricting liberty, the Pre-Trial Chamber shall seek the views of [...] any relevant State’. In this regard, it is recalled that ‘a State willing and able to accept the person concerned ought to be identified prior to a decision on conditional release’.¹⁵

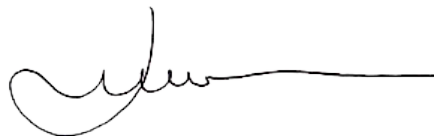
14. So as to expedite this process, the Chamber additionally orders the Registry to liaise with Duty Counsel in the event Mr Mokom decides to submit an application for interim release, with a view to directly commencing consultations with the Host State and the State(s) to which Mr Mokom proposes to be released to. In such a case, the Registry shall, even if not specifically requested by Mr Mokom, also consult with the Netherlands, as the Host State, as to its willingness to accept Mr Mokom onto its territory for the purposes of interim release and to enforce any conditions restricting liberty to be imposed. The Registry shall invite the competent authorities of the State(s) concerned to submit their observations within the shortest possible delay. Upon receipt of such observations, the Registry shall transmit them to the Chamber together with a report describing the consultation process.

¹⁵ Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Public Redacted Version of Judgment on the appeal of the Prosecutor against Pre-Trial Chamber II’s “Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa”](#), 2 December 2009, ICC-01/05-01/08-631-Red (OA2), public, para. 106.

FOR THESE REASONS, THE CHAMBER HEREBY

- (a) **ORDERS** Mr Mokom, if he wishes to apply for interim release, to submit a substantiated application to this effect in accordance with the present decision, by no later than 14 November 2022;
- (b) **ORDERS** the Prosecution to respond to any application submitted by Mr Mokom, by no later than 18 November 2022; and
- (c) **ORDERS** the Registry to liaise with Duty Counsel in the event Mr Mokom decides to submit an application for interim release, with a view to directly commencing consultations with the Host State and the State(s) to which Mr Mokom proposes to be released to, including the Netherlands, in accordance with the present decision.

Done in both English. A French translation will follow, but the English version remains authoritative.



Judge Rosario Salvatore Aitala

Presiding



Judge Antoine Kesia-Mbe Mindua



Judge Tomoko Akane

Dated this Monday, 7 November 2022.

At The Hague, The Netherlands.