

Pursuant to the Appeals Chamber's order ICC-01/14-01/22-324, dated 13 February 2024, this document is reclassified as "Public"

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Original: English**

**No. ICC-01/14-01/22 OA4**

**Date: 8 February 2024**

**THE APPEALS CHAMBER**

**Before:**

**Judge Solomy Balungi Bossa, Presiding  
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 JEOFFROY ELI MOKOM GAWAKA**

**URGENT**

**Confidential**

**Decision on the request for suspensive effect and order concerning submissions  
on admissibility**

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**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, Prosecutor  
Ms Helen Brady

**Counsel for the Defence**

Mr Philippe Larochelle

**REGISTRY**

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**Registrar**

Mr Osvaldo Zavala Giler

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The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Maxime Jeoffroy Eli Mokom Gawaka against the decision of Pre-Trial Chamber II entitled "Decision pursuant to Rule 185 of the Rules of Procedure and Evidence" of 18 January 2024 (ICC-01/14-01/22-309-Red),

Having before it the "Notice of Appeal against 'Decision pursuant to Rule 185 of the Rules of Procedure and Evidence', ICC-01/14-01/22-309-Conf-Exp and Request for Suspensive Effect", filed by Mr Maxime Jeoffroy Eli Mokom Gawaka on 24 January 2024 (ICC-01/14-01/22-312-Red), and

Having before it the "Appeal against 'Decision pursuant to Rule 185 of the Rules of Procedure and Evidence', ICC-01/14-01/22-309-Conf-Exp", filed by Mr Maxime Jeoffroy Eli Mokom Gawaka on 7 February 2024 (ICC-01/14-01/22-318-Red),

Considering that, before addressing the merits of this appeal, it is necessary to examine whether the present appeal is admissible,

*Renders* unanimously the following

## DECISION

1. The Defence for Mr Maxime Jeoffroy Eli Mokom Gawaka is invited to make submissions on the admissibility of the appeal, not exceeding 10 pages, by 16h00 on Thursday, 15 February 2024, in a classification available to the Prosecutor.
2. Should the Defence for Mr Maxime Jeoffroy Eli Mokom Gawaka file submissions on the admissibility of the appeal, the Prosecutor may respond thereto, by filing submissions not exceeding 10 pages, by 16h00 on Thursday, 22 February 2024.
3. The Appeals Chamber grants the request for suspensive effect of the aforementioned decision of Pre-Trial Chamber II (ICC-01/14-01/22-309-Red).

## REASONS

### I. PROCEDURAL HISTORY

1. On 17 October 2023, Pre-Trial Chamber II (hereinafter: "Pre-Trial Chamber") issued the "Order in relation to the Prosecution's 'Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka'",<sup>1</sup> in which the Pre-Trial Chamber, *inter alia*, noted the Prosecutor's withdrawal of charges against Mr Mokom, and "terminate[d] the proceedings against him with immediate effect".<sup>2</sup>

2. On 18 January 2024, the Pre-Trial Chamber issued the "Decision pursuant to Rule 185 of the Rules of Procedure and Evidence" (hereinafter: "Impugned Decision").<sup>3</sup>

3. On 24 January 2024, the Defence for Mr Mokom (hereinafter: "Defence") filed its notice of appeal against the Impugned Decision (hereinafter: "Notice of Appeal"),<sup>4</sup> in which it, *inter alia*, made a request for suspensive effect of the Impugned Decision (hereinafter: "Request for Suspensive Effect").<sup>5</sup>

4. On 7 February 2024, the Defence filed its appeal brief against the Impugned Decision.<sup>6</sup>

5. On the same day, the Registry filed the "Registry's Report on Consultations with the States pursuant to Order ICC-01/14-01/22-309" (hereinafter: "Registry Report").<sup>7</sup>

### II. ORDER ON FILING OF SUBMISSIONS ON ADMISSIBILITY

6. The Appeals Chamber considers it appropriate at this stage to receive submissions on the admissibility of the appeal, and thus invites the Defence to file observations by

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<sup>1</sup> [ICC-01/14-01/22-276](#) (hereinafter: "17 October 2023 Order").

<sup>2</sup> [17 October 2023 Order](#), para. 9, p. 6.

<sup>3</sup> [ICC-01/14-01/22-309-Red](#).

<sup>4</sup> [Notice of Appeal against "Decision pursuant to Rule 185 of the Rules of Procedure and Evidence", ICC-01/14-01/22-309-Conf-Exp and Request for Suspensive Effect, 24 January 2024](#), ICC-01/14-01/22-312-Red (confidential *ex parte* version (ICC-01/14-01/22-312-Conf-Exp) filed on 24 January 2024, public redacted version filed on 26 January 2024).

<sup>5</sup> [Notice of Appeal](#), paras 35-37.

<sup>6</sup> Appeal against "Decision pursuant to Rule 185 of the Rules of Procedure and Evidence", ICC-01/14-01/22-309-Conf-Exp, ICC-01/14-01/22-318-Conf-Exp (public redacted version was filed on 8 February 2024, ICC-01/14-01/22-318-Red).

<sup>7</sup> ICC-01/14-01/22-319-Conf-Exp.

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16h00 on Thursday, 15 February 2024, in a classification available to the Prosecutor. Should the Defence file submissions on the admissibility of the appeal, the Prosecutor may respond thereto, by filing submissions not exceeding 10 pages, by 16h00 on Thursday, 22 February 2024.

### III. REQUEST FOR SUSPENSIVE EFFECT

7. In the Notice of Appeal, the Defence submits that the implementation of the Impugned Decision will (i) create an irreversible situation that could not be corrected; (ii) lead to irreversible consequences; and (iii) defeat the purpose of the appeal.<sup>8</sup>

8. In support of the request, the Defence first contends that, without the Appeals Chamber' order that the present appeal will have suspensive effect on the Impugned Decision, Mr Mokom will be placed in an irreversible situation from 8 February 2024 in which he "will lose any ability to seek or receive assistance [in respect of his transfer] from the Court"; and "will be erroneously characterised as being under the exclusive jurisdiction of the Host State authorities, who may place him in immigration detention, expel him from the territory, or take other steps which will make it immeasurably harder for him to be ultimately transferred to a safe third State".<sup>9</sup> Second, the Defence argues that "even if the Appeals Chamber were to find in favour of Mr Mokom", the consequences of the implementation of the Impugned Decision, "including being removed from his present and only accommodation", will be irreversible.<sup>10</sup> Lastly, the Defence avers that the implementation of the Impugned Decision will defeat the purpose of the appeal, "which is aimed at preventing the passing of responsibility of Mr Mokom's welfare between the Court and the Host State in a manner [that] is [...] undignified and traumatic for him, and to prompt a humane, reasonable, and final resolution to the question of where he will spend the rest of his life".<sup>11</sup>

9. Article 82(3) of the Statute provides that "an appeal shall not of itself have suspensive effect unless the Appeals Chamber so orders, upon request, in accordance

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<sup>8</sup> [Notice of Appeal](#), paras 36-37.

<sup>9</sup> [Notice of Appeal](#), para. 36.

<sup>10</sup> [Notice of Appeal](#), para. 36.

<sup>11</sup> [Notice of Appeal](#), para. 37.

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with the Rules". An application for suspensive effect may be made pursuant to rule 156(5) of the Rules of Procedure and Evidence.

10. As regards the suspensive effect of an appeal under article 82(3) of the Statute, the Appeals Chamber has consistently held that "the decision to order that an appeal has suspensive effect is discretionary",<sup>12</sup> and that when examining a request for suspensive effect, "it will consider the specific circumstances of the case and the factors it considers relevant for the exercise of its discretion under these circumstances".<sup>13</sup> The Appeals Chamber has summarised the circumstances in which it may exercise its discretion to grant suspensive effect as follows:

In past decisions, the Appeals Chamber, when deciding on requests for suspensive effect, has considered whether the implementation of the decision under appeal (i) "would create an irreversible situation that could not be corrected, even if the Appeals Chamber eventually were to find in favour of the appellant", (ii) would lead to consequences that "would be very difficult to correct and may be irreversible", or (iii) "could potentially defeat the purpose of the appeal".<sup>14</sup>

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<sup>12</sup> See for example *Situation in the Bolivarian Republic of Venezuela I*, [Decision on the Bolivarian Republic of Venezuela's request for suspensive effect of Pre-Trial Chamber I's "Decision authorising the resumption of the investigation pursuant to article 18\(2\) of the Statute"](#), 20 July 2023, ICC-02/18-53 (OA) (hereinafter: "*Venezuela OA Decision on Suspensive Effect*"), para. 10; *Situation in the Republic of the Philippines*, [Decision on request for suspensive effect of Pre-Trial Chamber I's "Authorisation pursuant to article 18\(2\) of the Statute to resume the investigation" of 26 January 2023 \(ICC-01/21-56\)](#), 27 March 2023, ICC-01/21-67 (OA) (hereinafter: "*Philippines OA Decision on Suspensive Effect*"), para. 15; *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, [Decision on Mr William Samoei Ruto's request for suspensive effect](#), 17 June 2014, ICC-01/09-01/11-1370 (OA7 OA8), para. 6; *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Decision on the Request of Mr Bemba to Give Suspensive Effect to the Appeal Against the "Decision on the Admissibility and Abuse of Process Challenges"](#), 9 July 2010, ICC-01/05-01/08-817 (OA3), para. 6.

<sup>13</sup> [Venezuela OA Decision on Suspensive Effect](#), para. 10; [Philippines OA Decision on Suspensive Effect](#), para. 15; *The Prosecutor v. Omar Hassan Ahmad Al-Bashir*, [Decision on Jordan's request for suspensive effect of its appeal against the decision on the non-compliance by Jordan with the request for the arrest and surrender of Mr Omar Al-Bashir](#), 6 April 2018, ICC-02/05-01/09-333 (OA2), para. 8, referring to *Situation on registered vessels of the Union of the Comoros, The Hellenic Republic and the Kingdom of Cambodia*, [Decision on suspensive effect](#), 6 August 2015, ICC-01/13-43 (OA), para. 7; *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, [Decision on the Prosecutor's urgent request for suspensive effect of the "Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido" of 21 October 2014](#), 22 October 2014, ICC-01/05-01/13-718 (OA9), para. 5.

<sup>14</sup> *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Decision on the Request of Mr Bemba to Give Suspensive Effect to the Appeal Against the "Decision on the Admissibility and Abuse of Process Challenges"](#), 9 July 2010, ICC-01/05-01/08-817 (OA3), para. 11. See also [Venezuela OA Decision on Suspensive Effect](#), para. 10; [Philippines OA Decision on Suspensive Effect](#), para. 15; *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman*, [Decision on request for suspensive effect](#), 25 August 2020, ICC-02/05-01/20-134 (OA), para. 6; *Situation on registered vessels of the Union of the Comoros, The Hellenic Republic and the Kingdom of Cambodia*, [Decision on the Prosecutor's request for suspensive effect](#), 31 January 2019, ICC-01/13-81 (OA2), para. 10.

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11. Without prejudice to the Appeals Chamber's eventual determination on the admissibility of the present appeal and, if found to be admissible, the merits of the appeal, the Appeals Chamber finds the Defence's arguments on suspensive effect to be persuasive. In particular, the Appeals Chamber considers that the implementation of the Impugned Decision, which may be reversed or amended on appeal, would defeat the purpose of the present appeal.

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



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**Judge Solomy Balungi Bossa**  
**Presiding**

Dated this 8<sup>th</sup> day of February 2024

At The Hague, The Netherlands