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

Date: **10 May 2024**

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Presiding Judge
Judge Tomoko Akane
Judge Sergio Gerardo Ugalde Godínez

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

Public

Public Redacted Version of “Prosecution’s Observations on the ‘Defence Request for Review of the Registrar’s Decision on Legal Assistance and for a Stay of Proceedings’, (ICC-01/14-01/22-178-Conf)” (ICC-01/14-01/22-185-Conf)

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) objects to the ‘Defence Request for Review of the Registrar’s Decision on Legal Assistance and for a Stay of Proceedings’, specifically as regards the imposition of a stay until the issue of funding the Defence is resolved (“Request”).¹

2. Per Pre-Trial Chamber II’s (“Chamber”) 27 March 2023 direction, the submissions below are limited to this sole issue in the Request,² which *first*, fails to satisfy the high threshold for a stay of the proceedings, whether or not temporary. *Second*, viewed alternatively as a request to postpone the confirmation of charges hearing, the Request is pre-mature.

II. CONFIDENTIALITY

3. This filing is classified as “Confidential” pursuant to regulation 23bis(2) of the Regulations of the Court since it refers to documents and evidence subject to the same classification.

III. SUBMISSIONS

a. The threshold for a stay of proceedings is not met

4. A stay of proceedings is a drastic and exceptional measure,³ warranted only when breaches of the rights of the Accused are such as to make it impossible to present a defence within the framework of these rights. Depending on whether a fair trial is possible at a later stage, a stay of proceedings can be temporary or permanent.⁴

5. The Appeals Chamber has held that “the power of a court of law to stay proceedings should be *sparingly* exercised”.⁵ The types of conduct that form a basis for

¹ ICC-01/14-01/22-178-Conf, para. 4.

² Email from Pre-Trial Chamber II, dated 27 March 2023, at 11:37.

³ See ICC-01/04-01/10-264, p. 5, (referring ICC-01/04-01/06-2582, para. 55). See also, ICC-01/04-01/06-1486, para. 77; ICC-01/04-01/06-772, para. 37; ICC-01/05- 01/08-3273, para. 12; ICC-02/11-01/11-212, para. 91.

⁴ See ICC-02/04-01/15-1147, para. 14 (citing ICC-01/04-01/06-1486, paras. 78-83; ICC-01/04-01/06-772, para. 39; and ICC-01/04-02/06-1883, para. 60).

⁵ ICC-01/04-01/06-772, para. 3 (emphasis added).

a stay of proceedings due to an abuse of the judicial process are typically “delays in bringing the accused to justice, broken promises to the accused with regard to his prosecution and bringing the accused to justice by illegal and devious means”.⁶ They are conducts “that entail unfairness of such a nature that it cannot be resolved, rectified or corrected in the subsequent course of the proceedings”.⁷ Such is not the case here.

i. The Prosecution’s case has been reduced

6. The Defence’s assertion that the Prosecution case has expanded, and that the filing of the Document Containing the Charges (“DCC”) and its Annexes has increased its workload⁸ is unavailing. Equally, the further contention that the belated issuance of the Registrar’s Decision warrants a temporary stay of the proceedings until the Registrar provides the Defence with the “necessary resources”,⁹ is flawed.

ii. The resource determination does not amount to an abuse of process

7. Even assuming *arguendo* that the Defence’s claimed entitlement to nine Full Time Equivalent (“FTE”) is correct — [REDACTED]¹⁰ — the provision with three FTEs does not amount to a serious abuse of process justifying a stay of the proceedings, even temporarily. This is especially the case given the nature and *limited* scope of ICC confirmation proceedings in general and, *in casu*, the efforts made by the Chamber (and Prosecution) to ensure their expeditiousness in accordance with its statutory obligations.¹¹ As the charged crimes are substantially reduced in the DCC in comparison to the Warrant of Arrest,¹² the evidence that is necessary for the preparation of the Defence is not co-extensive with the 30,000 documents disclosed in the *Yekatom and Ngaissona* case put at the Defence’s disposal, but much less by far.

⁶ ICC-01/04-01/10-264, p. 6, (*citing* ICC-01-04-01/06-772, para. 29).

⁷ ICC-01/04-01/10-264, p. 5 (*citing* ICC-01/04/01/06-1401, para. 91).

⁸ ICC-01/14-01/22-178-Conf, paras. 43-44.

⁹ ICC-01/14-01/22-178-Conf, para. 50; *see also* para. 48.

¹⁰ *See* ICC-01/14-01/22-183-Conf, para. 15-16 [REDACTED].

¹¹ *See* ICC-01/04-02/06-73, para. 13; ICC-02/04-01/15-206, para. 25, ICC-01/14-01/18-199, para. 30.

¹² ICC-01/14-01/22-2-Red2, pp. 36-37.

8. Notwithstanding the relatedness of the *Yekatom and Ngaissona* case, less than 5,000 items are assessed as material to the Defence's preparation in one form or another, given the stage and the scope of the charges involved. These comprise approximately 1,500 INCRIM items; 2,700 Rule 77 items; and over 100 PEXO items. Under such circumstances, the Defence's assertion that it is required to review all documents migrated from the *Yekatom and Ngaissona* case to prepare for the confirmation hearing, and that its inability to do so warrants a stay of the proceedings *unless* additional resources are provided,¹³ is conclusory and incorrect. Neither the statutory disclosure regime nor article 67 support the Defence's contention. Consequently, a stay of proceedings is not justifiable.

b. The confirmation hearing need not be postponed

9. As noted, viewed alternatively, the Defence seeks to postpone the confirmation proceedings to a yet unknown date. However, even under the less stringent standard for such relief under rule 121(7) of the Rules of Procedure and Evidence ("Rules"),¹⁴ the Request fails.

i. The date for the confirmation hearing is reasonable

10. The Chamber set 22 August 2023 as the date for the confirmation hearing after seeking and considering the observations of the Prosecution and the Defence. In its observations, the Defence underlined the importance of moving swiftly, since Mr. Mokom's detention had already been lengthy.¹⁵ Notably, the Chamber emphasised that until 22 August 2023, the Defence would already have had *additional* time to prepare.¹⁶

11. It bears underscoring that this date was set without the benefit of the DCC (which had not yet been filed), and which substantially *reduced* the charges and charged incidents as compared to those contained in the Warrant of Arrest. It was also

¹³ ICC-01/14-01/22-178-Conf, paras. 32, 50.

¹⁴ See e.g., ICC-01/09-01/20-103, para. 25 (*internal citations omitted*).

¹⁵ ICC-01/14-01/22-145, para. 10.

¹⁶ ICC-01/14-01/22-151, para. 11.

set in advance of the completion of disclosure, which was correspondingly and significantly reduced, fully in accordance with the Chamber's express direction to disclose material "truly relevant" to the preparation of the Defence. The scheduled date therefore already contemplated time sufficient for the Defence to prepare for a much larger case than that ultimately charged.

12. Moreover, in setting the confirmation date, the Chamber properly understood and considered that the approximately 30,000 documents migrated in the *Yekatom and Ngaissona* did not all comprise items "material" to the preparation of the Mokom Defence¹⁷. Again, the divergence of charges and incidents as between the two matters confirms the correctness of that understanding. Thus, while the Defence may wish to consult these documents, doing so at this stage and in view of the scope of the charges, is not "material" to its adequate preparation within the meaning and requirements of the Statute, the Court's regulatory framework, or its practice.

13. Given the ample time afforded the Defence in which to prepare for a significantly reduced Prosecution case at confirmation, at this juncture, there is no concrete indication that the scheduled hearing date is problematic — much less, untenable. The Request for a postponement is thus pre-mature at best.

ii. The impact of the current Defence resources on its prospective preparation is not sufficiently substantiated

14. Resources are a permanent challenge within the context of the Court's work. However, the Request is merely conclusory in respect of any impediment to the Defence's capacity to effectively prepare for a reduced Prosecution case in the time allotted, and fails to demonstrate any substantive deficiency at this stage. The Prosecution further notes that the Defence team is composed of highly qualified personnel.

¹⁷ See ICC-01/14-01/22-157, para. 32.

iii. An indefinite adjournment is unwarranted

15. The Defence suggests no adjourned date for the confirmation hearing to be held if it is postponed.

16. As formulated, the Request indicates, in a peremptory way, that the Defence shall maintain that it is not in a position to prepare effectively, if the Registrar does not provide the requested resources.¹⁸ Such a position cannot be held indefinitely. Nor, would this be consistent with the Statute, absent any specific showing that the current level of staffing is presently affecting the Defence's preparation adversely, in contravention of article 67(1). In this respect, the Request is unworkable.

iv. A status conference to review the situation may be appropriate

17. Subsidiarily, should the Chamber construe the Request as seeking the postponement of the confirmation hearing pending resolution of the Defence's alleged staffing issue, the Prosecution would request that the Chamber hold a status conference 45 days from now, subject to further submissions from the Parties at such time.

18. The Prosecution considers that this would best allow the Chamber to assess the prevailing situation and to determine what further steps may be necessary, including whether or to what extent the confirmation proceedings may need to be adjourned.

¹⁸ ICC-01/14-01/22-178-Conf, para. 50.

IV. CONCLUSIONS

19. For the above reasons, the Prosecution opposes the Defence request for a stay of proceedings, or alternatively, a request to postpone the hearing on the confirmation of charges.



Karim A. A. Khan KC, Prosecutor

Dated this 10th day of May 2024
At The Hague, The Netherlands