

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/05-03/09
Date: 26 October 2026

TRIAL CHAMBER IV

Before: Judge Kimberly Prost, Presiding Judge
Judge Keebong Paek
Judge Nicolas Guillou

SITUATION IN DARFUR, SUDAN

***IN THE CASE OF THE PROSECUTOR
v. ABDALLAH BANDA ABAKAER NOURAIN***

Public

Public redacted version of "Prosecution's observations regarding the severance of the case against Mr. Jerbo from the case Mr. Banda and the potential termination of proceedings against Mr. Jerbo", ICC-02/05-03/09-494-Conf, dated 2 August 2013

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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☒ Legal Representatives of the Victims

☐ Legal Representatives of the Applicants

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☐ The Office of Public Counsel for Victims

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Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

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I. Introduction

1. The Prosecution submits that the proceedings against Mr. Abdallah Banda Abakaer Nourain ("Mr. Banda") should be severed from the proceedings against Mr. Saleh Mohammed Jerbo Jamus ("Mr. Jerbo").
2. The Prosecution does not object to termination of proceedings against Mr. Jerbo. However such termination should be "without prejudice" i.e. any decision terminating proceedings should include a caveat that if information confirming that Mr. Jerbo is in fact alive becomes available, the charges against him could be again pursued.
3. The Court and the Defence should take reasonable steps to obtain the death certificate [REDACTED].

II. Procedural background

4. On 23 April 2013, the Defence for Mr. Banda and Mr. Jerbo filed the "Public Redacted Version of 'Defence Notification of the Death of Mr. Saleh Mohammed Jerbo Jamus' submitted on 21 April 2013" ("Notification")¹ in which it notified Trial Chamber IV ("Chamber") that on 20 April 2013 it had received news that "Mr. Jerbo died in North Darfur, Sudan on the afternoon of 19 April 2013, and was buried the same day."² On 10 May 2013³ and 20 June 2013,⁴ respectively, the Defence filed two confidential updates to the Defence Notification ("Updates"). Following the Chamber's Orders to file observations on the Defence Notification and the

¹ ICC-02/05-03/09-466-Red.

² ICC-02/05-03/09-466-Red, paragraph 2.

³ ICC-02/05-03/09-475-Conf.

⁴ ICC-02/05-03/09-486-Conf.

Updates,⁵ the Defence,⁶ the Office of the Prosecutor,⁷ the common legal representative⁸ and the Registry⁹ made submissions on, *inter alia*, the appropriateness of the proposals to sever the case against Mr. Jerbo from the case against Mr. Banda and to terminate the proceedings against Mr. Jerbo.

5. On 18 July 2013, the Chamber held a status conference (“18 July Status Conference”) during which it heard testimonies under oath from two individuals regarding the circumstances surrounding the reported death of Mr. Jerbo.¹⁰ At the end of the status conference, the Chamber ordered the Prosecution and Common Legal Representatives to make any additional written submissions on severance and termination of proceedings by 2 August 2013,¹¹ and the Defence to file any response one week thereafter.¹²

III. Confidentiality

6. Pursuant to Regulation 23*bis* of the Regulations of the Court, the Prosecution submits these observations confidentially because they refer to the identities and testimonies of two individuals who testified during a closed session hearing.

IV. Prosecution’s Observations

Whether The Case Against Mr. Jerbo Should Be Severed From The Case Against Mr. Banda

⁵ Email from the Legal Officer of the Chamber to the parties and participants on 26 April 2013 at 15:19; “Order requesting the parties’ observations on the Common Legal Representatives and the Registry’s proposal on the severance of the case”, 16 May 2013, ICC-02/05-03/09-476 and “Order to the defence and the Registry following the “Update to Defence Notification of the Death of Mr. Saleh Mohammed Jerbo Jamus”, 10 June 2013, ICC-02/05-03/09-485-Conf.

⁶ ICC-02/05-03/09-480.

⁷ ICC-02/05-03/09-479-Conf.

⁸ ICC-02/05-03/09-472.

⁹ ICC-02/05-03/09-487-Conf.

¹⁰ ICC-02/05-03/09-488; ICC-02/05-03/09-T-22-CONF-ENG.

¹¹ ICC-02/05-03/09-T-22-CONF-ENG, page 72, page 73, lines 1-21.

¹² ICC-02/05-03/09-T-22-CONF-ENG, page 72 line 25, page 73, lines 1-12.

7. As submitted previously,¹³ the Prosecution does not object to the case of Mr. Jerbo being severed from that of Mr. Banda with the sole caveat that all reasonable steps to ascertain the veracity of reports of Mr. Jerbo's death first be exhausted before severance occurs. Since the Defence had already proposed that [REDACTED] testify before the Chamber as to their knowledge of the circumstances surrounding Mr. Jerbo's death, the Prosecution considered it prudent to explore this avenue before the issue of severance is resolved.¹⁴ These two individuals have now testified before the Chamber under oath. Therefore the Prosecution submits that it is now appropriate for Mr. Jerbo's case to be severed from the case of Mr. Banda.

Whether Proceedings Against Mr. Jerbo Should Be Terminated

8. The Prosecution notes that termination has only been granted at this court upon the provision of compelling evidence of death, such as a death certificate issued by governmental authorities,¹⁵ and forensic identity verification of the remains of the deceased.¹⁶
9. In the case of Mr. Jerbo, there has been no such evidence. In fact, for a period of time, the only available information concerning his death was from media reports¹⁷ and information that had been provided to the Defence.¹⁸ At the 18 July Status Conference, however, the Chamber heard testimony under oath, from two individuals [REDACTED] who both offered further information on the circumstances surrounding Mr. Jerbo's death.

¹³ ICC-02/05-03/09-479-Conf.

¹⁴ *Ibid.*

¹⁵ See for example, ICC-01/11-01/11-28. See further *The Prosecutor v. Dragan Gagovic*, IT-96-23, "Order Granting Leave To Withdraw Indictment", 30 July 1999; *The Prosecutor v. Slobodan Milosevic*, Case no. IT-02-54-T, "Order Terminating The Proceedings", 14 March 2006; *The Prosecutor v. Sam Bockarie*, Case no. SCSL-2003-04-PT, "Withdrawal of Indictment," 8 December 2003.

¹⁶ See ICC-02/04- 01/05-248. See further *The Prosecutor v. Milan Kovacevic*, Case no. IT-97-24, "Order Terminating Proceedings Against Milan Kovacevic", 24 August 1998 (terminating proceedings based on physician's report of death of the accused).

¹⁷ ICC-02/05-03/09-466-AnxA.

¹⁸ ICC-02/05-03/09-475-Conf, para 4-5.

10. [REDACTED].¹⁹ [REDACTED]²⁰ [REDACTED].²¹ [REDACTED]²² [REDACTED].²³

11. [REDACTED],²⁴ [REDACTED].²⁵ [REDACTED].²⁶ [REDACTED],²⁷ [REDACTED]²⁸
[REDACTED].²⁹ [REDACTED]³⁰ [REDACTED].

12. Generally, the Prosecution found [REDACTED] to be credible. Both individuals satisfactorily confirmed their identities (i.e. that they are in fact who they say they are).³¹ Their accounts [REDACTED],³² [REDACTED]³³ are relatively consistent. Both witnesses also positively identified Mr. Jerbo in a photograph.³⁴ [REDACTED].³⁵ The Prosecution notes additionally that both witnesses testified under oath and appeared to appreciate the importance of telling the truth as well as the consequences of failing to do so.³⁶

13. It should be pointed out that the testimonies of [REDACTED] contained certain inconsistencies and gaps. [REDACTED].³⁷ [REDACTED].³⁸ [REDACTED].³⁹ The Prosecution does not believe these discrepancies to be fatal to the testimonies [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ [REDACTED].

²² [REDACTED].

²³ [REDACTED].

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ [REDACTED].

³⁰ [REDACTED].

³¹ [REDACTED].

³² [REDACTED].

³³ [REDACTED].

³⁴ See [REDACTED] description at ICC-02/05-03/09-T-22-CONF-ENG, page 16, lines 1-13. See identification by [REDACTED] at page 37, lines 4-9 of the same document. The Prosecution notes however that the witnesses did not make the identification via a photo-board with multiple photos – but by merely confirming that the person in the single photograph shown to the witness was Mr. Jerbo.

³⁵ [REDACTED].

³⁶ ICC-02/05-03/09-T-22-CONF-ENG, page 7 lines 18-25, page 8 lines 1-2, page 34 lines 20-25, page 35 lines 1-25, page 36 lines 1-5.

³⁷ [REDACTED].

³⁸ [REDACTED].

³⁹ [REDACTED].

14. [REDACTED].⁴⁰ [REDACTED].⁴¹ Consequently, the Prosecution submits that the Court should take reasonable steps to obtain these documents. The Prosecution observes that, unlike in other cases where proceedings have been terminated on the strength of such documentation, the documents referred to by the witnesses would not emanate from any governmental authority in the Sudan. Therefore it remains unclear whether these two documents could really serve as official confirmation of Mr. Jerbo's death so as to add value to the information currently before Chamber.
15. In sum, the testimonies of [REDACTED], add weight to the proposition that Mr. Jerbo is indeed deceased, notwithstanding that there still remains no official confirmation of his death. The death certificates discussed above appear to be the only outstanding step that could be explored. While these documents may be of assistance, as stated earlier, they are not issued by an official government authority. Absent any further suggestions from the other parties/participants, there appear to be no other steps that can be taken to confirm the reports of his death apart from attempting to obtain the "death certificates" referred to by the witnesses.
16. Consequently, the Prosecution does not object to the termination of proceedings against Mr. Jerbo. Pursuant to Article 25(1) of the Rome Statute, "[t]he Court shall have jurisdiction over natural persons pursuant to this Statute". Therefore the Chamber cannot exercise jurisdiction over Mr. Jerbo if he is deceased and the appropriate course is for the proceedings against him to be terminated. However, because there is no conclusive evidence of his death, termination of the proceedings against him should be made subject to the condition that the proceedings against

⁴⁰ [REDACTED].

⁴¹ [REDACTED].

him may be again pursued should information become available that he is still alive.⁴²

V. Conclusion

17. The Prosecution submits that the proceedings against Mr. Jerbo should be severed from the proceedings against Mr. Banda.
18. The Prosecution requests that the proceedings against Mr. Jerbo be terminated without prejudice i.e. that the proceedings against him may be again pursued should information become available that he is still alive.



Mame Mandiaye Niang, Acting Prosecutor

Dated this 26th day of October 2026

At The Hague, The Netherlands

⁴² This approach is supported by the practice in the ad hoc tribunals. See *The Prosecutor v. Goran Borovnica*, Case No. IT-95-3-I “Order Granting Leave To Withdraw Indictment Without Prejudice”, 21 April 2005. (“...should information confirming that the Accused is alive become available, the charges against the Accused could be again pursued...”).