

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-03/09

Date: 16 May 2013

TRIAL CHAMBER IV

Before: Judge Joyce Aluoch, Presiding Judge
Judge Silvia Fernández de Gurmendi
Judge Chile Eboe-Osuji

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF
THE PROSECUTOR *v.* ABDALLAH BANDA ABAKAER NOURAIN
AND SALEH MOHAMMED JERBO JAMUS**

Public

**Order requesting the parties' observations on the Common Legal
Representatives and the Registry's proposal on the severance of the case**

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr Adebowale Omofade

Counsel for the Defence

Mr Karim A.A. Khan

Mr Nicholas Koumjian

Legal Representatives of Victims

Ms Hélène Cissé

Mr Jens Dieckmann

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

1. On 23 April 2013, the defence for Mr Saleh Mohammed Jerbo Jamus ("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 notifies Trial Chamber IV ("Chamber"), that it received news on 20 April 2013, that "Mr Jerbo died in North Darfur, Sudan on the afternoon of 19 April 2013, and was buried the same day."²

2. Upon the Chamber's instruction,³ the Office of the Prosecutor ("prosecution"), the common legal representatives ("CLR") and the Registry were requested to file observations on the defence Notification, if any, by 6 May 2013. The Chamber specified that "[t]he observations may include submissions as to what the practicable and/or legal consequences should be with respect to the defence Notification, particularly whether there is any objection to terminating trial proceedings relating to Mr Saleh Mohammed Jerbo Jamus." Accordingly, on 6 May 2013, the prosecution⁴ and the CLR⁵ filed their respective observations on the defence Notification.

3. The prosecution recommends that the case against Mr Jerbo should remain open until official confirmation of Mr Jerbo's death.⁶ It submits, *inter alia*, that, despite the difficulty to obtain by either the Registry or the prosecution information relayed by the defence on Mr Jerbo's death, the prosecution is "taking steps to assess the veracity of the media reports submitted by the defence and will update the

¹ Public Redacted Version of 'Defence Notification of the Death of Mr Saleh Mohammed Jerbo Jamus' submitted on 21 April 2013, 23 April 2013, ICC-02/05-03/09-466-Red.

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

³ Email from the Legal Officer to Trial Chamber IV to the prosecution, the CLR and the Registry sent on 26 April 2013 at 15.29.

⁴ Prosecution's Observations Regarding the Defence Notification of the Death of Mr Saleh Mohammed Jerbo Jamus, ICC-02/05-03/09-471-Conf.

⁵ Observations des Représentants Légaux Communs sur la Notification de la Défence (ICC-02/05-03/09-466-Red), 6 May 2013, ICC-02/05-03/09-472 together with 8 public annexes.

⁶ ICC-02/05-03/09-471-Conf, paragraph 6.

Chamber accordingly”.⁷ The prosecution further suggests that “it may well be that Mr Jerbo’s relatives or members of his movement are in possession of a death certificate or similar documentation”.⁸

4. The CLR request the Chamber to sever the case to allow for the timely preparation of the case against Mr Banda in the interest of the victims they represent. They further request the Chamber to order the defence to take all necessary measures to contact Mr Jerbo’s family or members of his rebel group, JEM-Bashar, to obtain an official death certificate that would then allow for the Chamber to make its determination on the termination of the proceedings. To this end, the CLR specify that a death certificate is the usual official document delivered by a hospital or a health centre to relatives in order to certify a person’s death.⁹ The CLR also suggest, if need be, to request the defence or any relevant entity to carry out further investigations into Mr Jerbo’s death.¹⁰ In addition, the CLR appends 8 public annexes to its submissions consisting of media reports in English or Arabic relating to the possible circumstances of Mr Jerbo’s death.¹¹

5. The Registry was not able to comply with the Chamber’s instruction and filed its observations one day after the set deadline, on 7 May 2013, without any explanation.¹² The Chamber notes that the Registry, as both the prosecution and the CLR, recommends not terminating the proceedings against Mr Jerbo pending the provision to the Chamber of “a death certificate or any other equivalent proof [...]

⁷ ICC-02/05-03/09-471-Conf, paragraph 4.

⁸ ICC-02/05-03/09-471-Conf, paragraph 5.

⁹ ICC-02/05-03/09-472, paragraph 11.

¹⁰ ICC-02/05-03/09-472, paragraph 46.

¹¹ ICC-02/05-03/09-472-Anx1 to ICC-02/05-03/09-472-Anx8.

¹² Registry’s observations on the “Public Redacted Version of ‘Defence Notification of the Death of Mr Saleh Mohammed Jerbo Jamus’ submitted on 21 April 2013” (ICC-02/05-03/09-466-Red) dated 23 April 2013, 7 May 2013, ICC-02/05-03/09-473.

which can certify the death of Mr Jerbo".¹³ The Registry makes a further recommendation similar to the one formulated by the CLR, namely that the case against Mr Jerbo may be severed from the case against Mr Banda. The Registry further specifies the impact of such severance of the case on the issues of witnesses, victims' participation, interpretation, legal aid and judicial cooperation.¹⁴ Although the Registry did not file its submissions by the set deadline as aforesaid, the Chamber finds that the Registry's observations are mainly along the same lines as those filed by the CLR. Therefore, on an exceptional basis, the parties are requested to take the Registry's observations into consideration in their respective responses. The Registry is reminded to comply with time limits set by the Chamber otherwise seek extension in accordance with Regulation 35 of the Regulations of the Court.

6. On 10 May 2013, the defence confidentially filed an update to the Defence Notification,¹⁵ indicating, *inter alia*, that no death certificate or any other document from a government authority recording Mr Jerbo's death was issued.¹⁶
7. The Chamber is of the view that further observations by the parties on the potential factual and legal consequences of Mr Jerbo's death, if officially confirmed, would be of assistance. In particular, the Chamber would be assisted by the parties' observations on the appropriateness of the CLR's and Registry's proposal to sever the case against Mr Jerbo from the case against Mr Banda. In accordance with

¹³ ICC-02/05-03/09-473, paragraph 9.

¹⁴ ICC-02/05-03/09-473, paragraphs 13 to 17.

¹⁵ Update to Defence Notification of the Death of Mr Saleh Mohammed Jerbo Jamus (ICC-02/05-03/09-466-Conf), 10 May 2013, ICC-02/05-03/09-475-Conf and confidential *ex parte* Annex A only available to the defence to the Update to Defence Notification of the Death of Mr Saleh Mohammed Jerbo Jamus (ICC-02/05-03/09-466-Conf), 10 May 2013, ICC-02/05-03/09-475-Conf-Exp-AnxA.

¹⁶ ICC-02/05-03/09-475-Conf, paragraph 6. The Chamber notes that the present Order refers to a document filed confidentially. However, in light of the principle of publicity of the proceedings enshrined in Articles 64(7) and 67(1) of the Rome Statute, the present Order is filed publicly. To the extent that the Order makes reference to the existence of, or, to a limited extent, the content of document filed on a confidential or *ex parte* basis, the Chamber considers that the information concerned does not warrant confidentiality or, as the case may be, *ex parte* treatment at this time.

Article 64(5) of the Rome Statute ("Statute"), the parties are herewith put on notice that the Chamber may direct that there be severance of the cases.

Level of confidentiality of ICC-02/05-03/09-466-Conf-AnxA and ICC-02/05-03/09-471-Conf

8. The defence confidentially annexed to its Notification a press article reporting an armed confrontation between two factions of the Justice and Equality Movement in North Darfur on 19 April 2013.¹⁷ As stated by the defence, the Chamber notes that this article does not contain details of casualties. The Chamber notes that this annex consists of a press article accessible by the public at large on the Internet. In addition, the same press article has been publicly annexed to the CLR's Submissions.¹⁸ The Chamber is therefore of the view that the confidential treatment of this annex is no longer warranted.
9. The prosecution confidentially filed its observations on the defence Notification arguing that such Notification was filed confidentially as well. However, the Chamber notes that the defence filed a public redacted version of its Notification on 23 April 2013. Having reviewed the redactions applied by the defence in its Notification, the Chamber is of the view that the prosecution's observations do not reveal any information warranting a confidential treatment. The Chamber considers therefore that the prosecution's observations can be re-classified as public.
10. For the foregoing reasons, pursuant to Article 64(5) of the Statute and Regulations 23bis3, 24, 28 and 34 of the Regulations of the Court, the Chamber hereby:

¹⁷ ICC-02/05-03/09-466-Conf-AnxA.

¹⁸ ICC-02/05-03/09-472-Anx8.

- (i) **orders** the defence to file any further submissions as to the feasibility and possible time frame for obtaining an official document certifying Mr Jerbo's death, if any;
- (ii) **orders** the prosecution to submit any further information relating to Mr Jerbo's death;
- (iii) **notifies** the parties that the Chamber may direct that there be severance of the case against Mr Jerbo from the case against Mr Banda.
- (iv) **orders** the prosecution and the defence to file their observations on the appropriateness of the CLR's and Registry's proposal to sever the case against Mr Jerbo from the case against Mr Banda, by 28 May 2013; and
- (v) **orders** the reclassification as public of confidential Annex A to the defence Notification (ICC-02/05-03/09-466- Conf-AnxA) and document ICC-02/05-03/09-471-Conf.

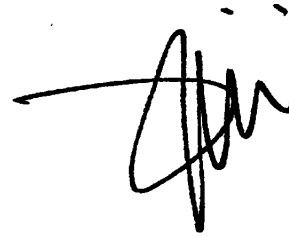
Done in both English and French, the English version being authoritative.



Judge Joyce Aluoch



Judge Fernández de Gurmendi



Judge Chile Eboe-Osuji

Dated this 16 May 2013

At The Hague, The Netherlands