

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/05-01/13**
Date: **21 October 2014**

THE APPEALS CHAMBER

Before: Judge Sanji Mmasenono Monageng
Judge Sang-Hyun Song
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Anita Ušacka

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF

THE PROSECUTOR

*v. JEAN-PIERRE BEMBA GOMBO, AIME KILOLO MUSAMBA, JEAN-JACQUES
MANGENDA KABONGO, FIDELE BABALA WANDU AND NARCISSE ARIDO*

**URGENT
Public**

Prosecution's Notice of Appeal of the "Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido" of 21 October 2014 and Urgent Request for Suspensive Effect of the Decision pending Appeal

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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Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section Other

Appeal pursuant to Article 82(1)(b) of the Rome Statute

1. The Office of the Prosecutor (“Prosecution”) hereby appeals the Single Judge’s “Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido” dated 21 October 2014 in the case of *The Prosecutor v Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido* (ICC-01/05-01/13)¹, pursuant to Article 82(1)(b) of the Rome Statute (“Statute”), Rule 154(1) of the Rules of Procedure and Evidence (“Rules”) and Regulation 64(1) of the Regulations of the Court (“RoC”).² In its appeal, the Prosecution will request that the Appeals Chamber overturn the Decision ordering the release of Messrs. Kilolo, Mangenda, Babala and Arido, and order their continued detention.

Urgent Request for Suspensive Effect

2. The Prosecution also requests suspensive effect of the Decision until the Appeals Chamber has ruled on the merits of this appeal, pursuant to Article 82(3) of the Statute and Rule 156(5) of the Rules. Not granting suspensive effect of the Decision would cause irreparable prejudice to the Prosecution by defeating the purpose of its appeal. Further, suspensive effect of the Decision pending the appeal is necessary to prevent irreversible consequences to the proceedings against the four suspects caused by their release.

3. In similar circumstances, the Appeals Chamber has recognised that releasing an accused pending appeal against the release decision could defeat the purpose of the appeal, as well as the appeals against other related decisions.³ The object of

¹ ICC-01/05-01/13-703 (“Decision”).

² “An appeal filed under Rule 154 shall state: (a) The name and number of the case or situation; (b) The title and date of the decision being appealed; (c) The specific provision of the Statute pursuant to which the appeal is filed; (d) The relief sought.”

³ ICC-01/04-01/06-1444 OA12, paras.9-10.

suspension is to avert adverse consequences to the proceedings that follow from acting upon the decision given by the first instance court.⁴

4. Suspensive effect of the Decision is required to preserve the object of the Prosecution's appeal. Additionally, releasing the four suspects in the present circumstances, pending the outcome of this appeal, would have "far reaching",⁵ "adverse and possibly dire consequences"⁶ on the proceedings against the suspects themselves. It has been previously recognised that all of the suspects pose concrete flight risks, and that the existence of a network of supporters behind them and the availability of financial means could facilitate their absconding from the Court's jurisdiction.⁷ In these circumstances, there is a real danger that they may not appear at trial or when summoned by this Court, frustrating the entire purpose of the proceedings against them. There is also no guarantee the suspects could be arrested again. Once released, it may be impossible to bring them back into the Court's jurisdiction. The suspects will be released to four different jurisdictions that are not obliged to monitor them. Indeed, the Decision imposes no additional conditions to the release, apart from the suspects' own commitment to appear at trial.⁸ Apprehension of these suspects required a massive effort by the Prosecution and the concerned authorities in the first place; there is no guarantee that any such co-operation will be forthcoming should the suspects abscond.⁹ Any potential reversal of the Decision by the Appeals Chamber would be rendered futile if the Court were

⁴ ICC-01/04-01/06-1290-Anx OA11, Dissenting Opinion of Judge Pikis, para.9. Decisions on suspensive effect are left to the discretion of the Chamber, which should "consider the specific circumstances of the case and the factors it considers relevant for the exercise of its discretion under these circumstances." (ICC-01/04-01/06-1290 OA11, para.7). In determining whether to exercise such discretion, it has been stated that the "guiding principle in the exercise of the discretion of the Court lies in the evaluation of the consequences that enforcement of an erroneous decision, if that is found to be the case by the decision of the Appeals Chamber, could have on the proceedings before the first instance court." (ICC-01/04-01/06-1290-Anx OA11, Dissenting Opinion of Judge Pikis, para.9).

⁵ ICC-01/04-01/06-1347 OA9 & 10, paras.22-23.

⁶ ICC-01/04-01/06-1290-Anx OA11, Dissenting Opinion of Judge Pikis, para. 12.

⁷ ICC-01/05-01/13-588, paras.13-14 ; ICC-01/05-01/13-261, paras.29-31 ; ICC-01/05-01/13-258, paras.18-20 ; ICC-01/05-01/13-259, para.22.

⁸ Decision, p.6.

⁹ See ICC-01/05-01/13-612, para.28; ICC-01/05-01/13-588, para. 26; ICC-01/05-01/13-588, para.18. See for example, ICC-01/05-01/13-612, para.33; ICC-01/05-01/13-611, para.21.

unable to secure their re-arrest or if the suspects were to interfere with the investigation or renew any commission of crimes within the jurisdiction of the Court.

Relief Sought

5. Accordingly, the Prosecution respectfully requests that the Appeals Chamber:
 - i. Accept this appeal against the “Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido” pursuant to Article 82(1)(b) of the Statute, Rule 154(1) of the Rules and Regulation 64(1) of the RoC; and
 - ii. Grant suspensive effect to such an appeal, pursuant to Article 82(3) of the Statute and Rule 156(5) of the Rules, on an expedited basis.



Fatou Bensouda, Prosecutor

Dated this 21st day of October 2014

At The Hague, The Netherlands

Word Count: 1067¹⁰

¹⁰ It is hereby certified that this document contains the number of words specified and complies in all respects with the requirements of Regulation 36 of the RoC. This statement (52 words), not itself included in the word count, follows the Appeals Chamber’s direction to “all parties” appearing before it: ICC-01/11-01/11-565 OA6, para.32.