

**Cour
Pénale
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**International
Criminal
Court**

Original: **English**

No.: **ICC-01/05-01/13**

Date: **24 March 2016**

TRIAL CHAMBER VI

Before: Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Chang-ho Chung

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***

Public

**Prosecution's request to dismiss *in limine* Jean-Jacques Mangenda Kabongo's
request for leave to reply to the Prosecution's response on his request to appeal
"Decision on request for compensation for unlawful detention"**

Source: Office of the Prosecutor

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

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Submissions

1. Jean-Jacques Mangenda Kabongo’s request for leave to reply¹ to the Prosecution’s response opposing his attempted appeal of Trial Chamber VI’s decision rejecting his compensation claim² should be dismissed *in limine*. The Request is transparently an unauthorized reply—filed without first obtaining the Chamber’s leave, and in flagrant violation of regulation 24(5) of the Regulations of the Court³ and the Appeals Chamber’s guidance.⁴

2. Not only is the Mangenda Defence’s attempt to appeal the Compensation Decision misguided,⁵ its transparent attempt to put additional arguments on the record without the Chamber’s prior authorisation is inappropriate. Indeed, the Request includes not only substantive arguments,⁶ but voluminous Extracts of Commentaries⁷—all material the Mangenda Defence should have considered initially in its Request for leave to appeal. To claim now that these Extracts of Commentaries are provided pursuant to regulation 23(3)⁸—absent the Chamber’s leave—circumvents this Court’s process.

3. Moreover, the Mangenda Defence is not new to this practice. It has bypassed the requirement to seek leave before advancing substantive arguments in reply on

¹ ICC-01/05-01/13-1734-Corr (“Request” or “Request for Leave to Reply”); ICC-01/05-01/13-1734-AnxA (“List of Authorities”); ICC-01/05-01/13-1734-AnxB (“Extracts of Commentaries”).

² ICC-01/05-01/13-1663 (“Decision” or “Compensation Decision”). *See also* ICC-01/05-01/13-1704 (“Request for leave to appeal”); ICC-01/05-01/13-1715 (“Prosecution’s response to Request for leave to appeal”).

³ Regulation 24(5) of the Regulations of the Court states “[p]articipants may only reply to a response with the leave of the Chamber, unless otherwise provided in these Regulations.”

⁴ ICC-01/04-01/06-824 OA7 (“*Lubanga* Appeals Decision of 13 February 2007”), para. 68 stating “[t]he Appeals Chamber disapproves of a practice of the filing of a substantive reply prior to leave being granted by the Appeals Chamber, which in and of itself may also give rise to the rejection of an application for leave.”; *see also* ICC-01/05-01/08-602 OA2 (“*Bemba* Appeals Decision of 9 November 2009”), para. 9, in the context of rule 103 of the Rules of Procedure and Evidence, “[t]he submissions of substantive observations is only permissible after a Chamber has decided to invite or grant leave to do so.”

⁵ *See e.g.*, Prosecution’s response to Request for leave to appeal, paras. 1-25.

⁶ *See* Request, paras. 3-12.

⁷ Extracts of Commentaries, pp. 1-22 (amounting to 22 pages of additional material).

⁸ Regulation 23(3) of the Regulations of the Court states “[s]ubject to any order of the Chamber, a participant shall file, with each document, copies of any authorities relied upon or, if appropriate, internet links.” *Contra* Request, Extracts of Commentaries.

several occasions before Trial Chamber VII.⁹ Moreover, this very Chamber has cautioned the Mangenda Defence for failing to properly anticipate issues in its initial submissions, when it rejected its compensation claim.¹⁰

4. For these reasons, and in light of the Appeals Chamber's disapproval of such circumvention of the rules,¹¹ the Request for Leave to Reply, and the annexed List of Authorities and Extracts of Commentaries, should be dismissed *in limine*. If, however, the Chamber is minded to consider the substance of the Request, the Prosecution requests the opportunity to address the merits of the arguments raised.

5. The Prosecution requests the Chamber to dismiss *in limine* the Request for Leave to Reply.



Fatou Bensouda, Prosecutor

Dated this 24th day of March 2016

At The Hague, The Netherlands

⁹ See e.g. ICC-01/05-01/13-1206-Conf, paras. 1, 3; ICC-01/05-01/13-1215-Conf, para. 1 and ICC-01/05-01/13-1743-Conf, paras. 1, 4, bringing this practice to the attention of Trial Chamber VII.

¹⁰ Compensation Decision, paras. 8, 17, noting first the Mangenda Defence's Request for leave to reply to the Prosecution response to the article 85(1) compensation request (ICC-01/05-01/13-1467-Conf), and stating that "[a]s a preliminary matter, pursuant to [r]egulation 24(5) of the Regulations, the Chamber recalls that participants may only reply to a response with the leave of the Chamber." The Chamber further noted that "[i]t would [not] have been assisted by further submissions on any of the identified issues." It observed, additionally, "[t]hat the first issue, in particular, should have been anticipated by the Defence when it initially filed its Request in the context of addressing the unlawfulness of the detention." The Chamber rejected the request for leave to reply.

¹¹ *Lubanga* Appeals Decision of 13 February 2007, para. 68. See also ICC-02/11-01/12-75-Red OA ("*Simone Gbagbo* Admissibility Appeal Decision"), para. 44, where the Appeals Chamber dismissed *in limine* submissions inappropriately advanced.