



Original: English

No. ICC-01/05-01/08 A

Date: 7 December 2016

THE APPEALS CHAMBER

Before: Judge Christine Van den Wyngaert, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Howard Morrison
Judge Chile Eboe-Osuji
Judge Piotr Hofmański

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO

Public document

**Decision on Mr Bemba's request for leave to reply to the Prosecutor's Response
to the Document in Support of the Appeal**

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

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor
Ms Helen Brady

Counsel for the Defence
Mr Peter Haynes
Ms Kate Gibson

Legal Representative of Victims
Ms Marie-Edith Douzima-Lawson

REGISTRY

Registrar
Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III entitled “Judgment pursuant to Article 74 of the Statute” of 21 March 2016 (ICC-01/05-01/08-3343),

Having before it the “Appellant’s request for leave to file a reply to the ‘Prosecution’s Response to Appellant’s Document in Support of Appeal’” of 30 November 2016 (ICC-01/05-01/08-3475),

Renders the following

DECISION

1. Mr Jean-Pierre Bemba Gombo may file, by 16h00 on 20 December 2016, a reply, not exceeding 30 pages, to the “Prosecution’s Response to Appellant’s Document in Support of Appeal” in accordance with regulation 60 of the Regulations of the Court.
2. The deadline for the filing of the observations from the legal representative of victims, presenting the victims’ views and concerns with respect to the issues on appeal insofar as their personal interests are affected, is extended to 16h00 on 9 January 2017.
3. The deadline for the filing of the responses from Mr Jean-Pierre Bemba Gombo and the Prosecutor to the victims’ observations filed in accordance with the preceding paragraph is extended to 16h00 on 9 February 2017.

REASONS

I. PROCEDURAL HISTORY

1. On 21 March 2016, Trial Chamber III rendered its “Judgment pursuant to Article 74 of the Statute” convicting Mr Jean-Pierre Bemba Gombo (“Mr Bemba”) of the charges against him (“Conviction Decision”).¹

¹ ICC-01/05-01/08-3343.

2. On 19 September 2016, Mr Bemba filed the “Appellant’s document in support of the Appeal”² before the Appeals Chamber (“Document in Support of the Appeal”).
3. On 21 November 2016, the Prosecutor filed her response thereto (“Response”).³
4. On 30 November 2016, Mr Bemba requested leave to reply to the Response (“Request for Leave to Reply”).⁴
5. On 2 December 2016, the Prosecutor responded to the Request for Leave to Reply (“Response to Request for Leave to Reply”).⁵

II. MERITS

6. Mr Bemba submits that he should be given an opportunity to reply to the arguments in the Response on the interpretation of the notion of causation under article 28 of the Statute, given that it broaches, on appeal, arguments that were not advanced at trial and maintains that the Trial Chamber erred in law with respect to its finding on causation, whereas the Prosecutor did not appeal against the Conviction Decision on that point.⁶ Furthermore, Mr Bemba seeks to make submissions on an alleged institutional inconsistency in the practice of the Office of the Prosecutor concerning disclosure of materials obtained in relation to offences under article 70 of the Statute⁷ and to generally correct alleged misstatements and baseless or inconsistent assertions made by the Prosecutor in relation to the evidentiary record.⁸

7. The Prosecutor objects to the Request for Leave to Reply except in so far as it pertains to the merits of the Prosecutor’s arguments in the Response concerning the proper interpretation of the reference to causation in article 28 of the Statute.⁹ The Prosecutor is not opposed to the Appeals Chamber granting leave to file a limited reply on the question of the existence of any causation requirement in the interests of

² ICC-01/05-01/08-3434-Conf (A).

³ “Prosecution’s Response to Appellant’s document in support of the appeal”, ICC-01/05-01/08-3472-Conf (A).

⁴ “Appellant’s request for leave to file a reply to the ‘Prosecution’s Response to Appellant’s Document in Support of Appeal’”, ICC-01/05-01/08-3475 (A).

⁵ “Prosecution’s Response to Request for Leave to Reply to the ‘Prosecution’s response to Appellant’s Document in Support of Appeal’”, ICC-01/05-01/08-3478 (A).

⁶ Request for Leave to Reply, paras 14-15

⁷ Request for Leave to Reply, para. 16.

⁸ Request for Leave to Reply, para. 17.

⁹ Response to Request for Leave to Reply, para. 15.

a full and fair hearing on the proper interpretation of article 28 of the Statute – deemed an important issue and one assisted by hearing from the Defence.¹⁰ The Prosecutor submits that the Appeals Chamber should otherwise deny the request as the remaining issues do not warrant a reply or are unsubstantiated.¹¹ The Prosecutor submits that to the extent that a reply is authorised, it should be limited to 20 pages¹² and filed within 30 days of the Appeals Chamber’s order.¹³

8. Pursuant to regulation 60 (1) of the Regulations of the Court, the Appeals Chamber may order an appellant to file a reply whenever it considers it necessary in the interests of justice. The question of ordering the filing of a reply lies within the discretionary power of the Appeals Chamber and must be considered on a case-by-case basis.¹⁴ In the circumstances of the present case, the Appeals Chamber is persuaded by Mr Bemba’s submissions that a reply to the Response may assist the Appeals Chamber in its determination of the appeal, noting that the issues to which Mr Bemba wishes to reply are pertinent to the proper adjudication of the appeal. The Appeals Chamber considers that, in the circumstances, 30 pages is appropriate for the reply and emphasises that the reply should not repeat arguments already adduced in the Document in Support of the Appeal.

9. In light of the above, and recalling its decision of 15 April 2016,¹⁵ which allowed victims to participate in the appeal and to file observations presenting their views and concerns with respect to the issues on appeal insofar as their personal interests are affected within 30 days of the notification of the Response, the Appeals Chamber extends the deadline for the filing of those observations to 9 January 2017 to allow the legal representative of victims to take Mr Bemba’s reply into consideration. The deadline for the filing of the responses of Mr Bemba and the Prosecutor to the victims’ observations is correspondingly extended to 9 February 2017.

¹⁰ Response to Request for Leave to Reply, paras 1 and 10.

¹¹ Response to Request for Leave to Reply, paras 12-14.

¹² Response to Request for Leave to Reply, paras 19-20.

¹³ Response to Request for Leave to Reply, para. 22.

¹⁴ See *Prosecutor v Mathieu Ngudjolo Chui*, “Order on the filing of a reply under regulation 60 of the Regulations of the Court”, 12 July 2013, ICC-01/04-02/12-123-Conf (A), para. 7.

¹⁵ “Decision on the participation of victims in the appeal against Trial Chamber III’s ‘Judgment pursuant to Article 74 of the Statute’”, ICC-01/05-01/08-3369 (A).

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



Judge Christine Van den Wyngaert
Presiding Judge

Dated this 7th December 2016

At The Hague, The Netherlands