



Original: English

No: ICC-01/05-01/13

Date: 15 March 2017

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul Pangalangan

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

**IN THE CASE OF
THE PROSECUTOR *v.* JEAN-PIERRE BEMBA GOMBO, AIMÉ KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE BABALA WANDU
AND NARCISSE ARIDO**

Public

**Aimé Kilolo Musamba's Notice of Intent to Request Continued Provisional Release
Pending Appeal**

Source: Defence for Aimé Kilolo Musamba

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo

Ms Melinda Taylor

Ms Mylène Dimitri

Counsel for Aimé Kilolo Musamba

Mr Michael G. Karnavas

Mr Steven Powles

Counsel for Jean-Jacques Kabongo Mangenda

Mr Christopher Gosnell

Mr Peter Robinson

Counsel for Fidèle Babala Wandu

Mr Jean-Pierre Kilenda Kakengi Basila

Prof. Jean Pierre Fofé Djofia Malewa

Counsel for Narcisse Arido

Mr Charles Achaleke Taku

Ms Beth Lyons

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(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

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

Mr. Aimé Kilolo Musamba, through his Counsels (“the Defence”) hereby gives notice of his intent to request the Trial Chamber to continue his provisional release following the pronouncement of the sentence. This notice is made necessary because the Prosecutor gave notice to the Trial Chamber that, “at the delivery of the Decision on Sentencing [she] will, with the Chamber’s leave, request the immediate remand to detention of any Convicted Person for whom the sentence imposed requires service of a further term of imprisonment.”¹ The Prosecutor provided no evidence or legal reasoning for her intent to seek leave to have Mr. Kilolo incarcerated pending his appeal.

I. FACTS

1. After spending 332 days in detention, the Single Judge of the Pre-Trial Chamber II ordered that Mr. Kilolo be released from custody pending trial.² Since his provisional release, he has traveled to and from Europe without violating any of the strict conditions of his provisional release. When the Prosecutor requested that Mr. Kilolo be incarcerated following the pronouncement of the Trial Judgement,³ the Trial Chamber continued Mr. Kilolo’s provisional release, because Mr. Kilolo complied at all times with the conditions of his provisional release, had reintegrated into society, and the maximum sentence for Article 70 offenses is a term of imprisonment of five years, a fine, or both.⁴
2. The Prosecutor has recently notified the Trial Chamber of her intent to request the remand into detention of any Convicted Person for whom a sentence imposes a term of imprisonment, following the Decision on Sentencing.⁵ The Prosecutor provided no evidence that Mr. Kilolo violated the terms of his provisional release, is a flight risk, poses a danger to himself or anyone else, or any other compelling reasons justifying Mr. Kilolo’s incarceration while his appeal is pending.

¹ ICC-01/05-01/13-2114, para. 3.

² Mr. Kilolo was arrested by the Belgian authorities on 23 November 2013 and was granted provisional release pending trial on 21 October 2014. *See* ICC-01/05-01/13-1989, para. 2; ICC-01/05-01/13-703.

³ ICC-01/05-01/13-T-51, p. 2, ll. 6-20.

⁴ ICC-01/05-01/13-T-51, p. 33, ll. 14-22; p. 34, ll. 1-13.

⁵ ICC-01/05-01/13-2114, para. 3.

II. APPLICABLE LAW

3. Article 60(2) of the Statute states:

A person subject to a warrant of arrest may apply for interim release pending trial. If the Pre-Trial Chamber is satisfied that the conditions set forth in article 58, paragraph 1, are met, the person shall continue to be detained. If it is not so satisfied, the Pre-Trial Chamber shall release the person, with or without conditions.

4. Article 58(1)(b) of the Statute states that the Pre-Trial Chamber may issue a warrant of arrest of a person if it is satisfied that the arrest of the person appears necessary:

- (i) To ensure the person's appearance at trial;
- (ii) To ensure that the person does not obstruct or endanger the investigation or the court proceedings; or
- (iii) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.

5. Article 81(3)(a) of the Statute states: "Unless the Trial Chamber orders otherwise, a convicted person shall remain in custody pending an appeal."

6. Article 83(b) of the Statute states: "When a convicted person's time in custody exceeds the sentence of imprisonment imposed, that person shall be released, except that if the Prosecutor is also appealing, the release may be subject to the conditions under subparagraph (c) below."

7. Article 81(4) of the Statute states: "Subject to the provisions of paragraph 3 (a) and (b), execution of the decision or sentence shall be suspended during the period allows for appeal and for the duration of the appeal proceedings."

III. ARGUMENT

A. Mr. Kilolo is not a flight risk or a danger to anyone

8. While the Prosecutor claims that the Mangenda and Arido requests are premature, she has notified the Trial Chamber of her intent to seek leave to have Mr. Kilolo incarcerated following the delivery of the Decision on Sentencing without any justifiable reasons or proof.⁶
9. The Prosecutor provides no proof that any circumstances have changed since the Trial Chamber's decision following the pronouncement of the Trial Judgement.⁷ "[T]here is no evidence that [Mr. Kilolo] will attempt to flee the jurisdiction of the court, even knowing that [he has] been convicted."⁸
10. Article 81(3)(a) of the Statute is inapplicable in this case because Mr. Kilolo has not "remained" in custody. He has been out of detention since 21 October 2014. For the sake of brevity, arguments made in the Mangenda request,⁹ paragraphs 11-13 are adopted and incorporated by reference here.
11. As detailed in his Sentencing Submissions,¹⁰ Mr. Kilolo is not a flight risk because:
 - He has continued to cooperate with the Court.
 - Since his release from detention, Mr. Kilolo has informed the Registry of all trips outside Belgium that exceeded 24 hours.
 - Mr. Kilolo informed the Registry of all trips outside Belgium even before the Trial Chamber made such notice a condition of his provisional release.
 - Mr. Kilolo has attended all but two and a half days of the 39 days of court hearings held by the Trial Chamber.¹¹
 - Mr. Kilolo has also made arrangements with the Counsel Support Section to attend the upcoming sentencing hearing, including booking a hotel for his stay in The Hague.

⁶ ICC-01/05-01/13-2114, para. 3.

⁷ ICC-01/05-01/13-2114; ICC-01/05-01/13-T-51, pp. 33-34.

⁸ ICC-01/05-01/13-T-51, p. 33, ll. 14-16.

⁹ ICC-01/05-01/13-2112.

¹⁰ ICC-01/05-01/13-2087, paras. 27-29.

¹¹ The Trial Chamber excused Mr. Kilolo from attendance at court in the afternoon of 21 October 2015, on 22 October 2015 and 11 March 2016. See ICC-01/05-01/13-1410-Conf and ICC-01/05-01/13-1410-Conf-Exp-Anx; ICC-01/05-01/13-1681. See also, ICC-01/05-01/13-T-44-ENG ET WT, p. 2, ll. 5-6.

12. Mr. Kilolo is not a danger to himself or others because:

- Prior to Mr. Kilolo's arrest in the Article 70 case, he had no disciplinary record with the Brussels Bar.¹²
- Prior to Mr. Kilolo's arrest in the Article 70 case, he was not subject to any criminal prosecution.
- During the 875 days in which Mr. Kilolo has been out of detention on provisional release, he has not been accused of any crime.

13. Revoking Mr. Kilolo's provisional release is tantamount to enforcing his sentence.

Article 81(4) provides that the sentence should be suspended during the appeal. The maximum sentence for an Article 70 offense is a term of incarceration of five years, a fine, or both.¹³ If Mr. Kilolo's provisional release is not continued, it is highly likely that he will serve his entire sentence while his appeal is pending.¹⁴ Considering that the Trial Judgement could be overturned, he would serve time that he should not serve. Time that he could not make up, or be compensated for. Seemingly, the Trial Chamber factored this into consideration when it continued Mr. Kilolo's provisional release after the pronouncement of the Trial Judgement.¹⁵

B. Mr. Kilolo's current activities show that his provisional release should be continued pending appeal

14. Mr. Kilolo has engaged and reintegrated into society.¹⁶ According to Mr. Kilolo, since pronouncement of the Trial Judgement, he has:

- Been appointed as Chief of the Cabinet of the Ministry of Tourism of the Democratic Republic of Congo on 3 January 2017.

¹² CAR-D21-0013-0018.

¹³ ICC-01/05-01/13-T-51, p. 34, ll. 1-2.

¹⁴ So far Mr. Kilolo has served 11 months. Under Article 78(2) of the Statute, "the Court may deduct any time otherwise spent in detention in connection with conduct underlying the crime."

¹⁵ ICC-01/05-01/13-T-51, p. 34, ll. 1-2.

¹⁶ See ICC-01/05-01/13-T-15, p. 33, ll. 19-22.

- Participated in projects focusing on the issue of healthcare for children and babies by going on field visits, supplying medicine, and helping with organizing the transfers of extremely ill patients to urban medical centers.
- Participated in projects focusing on fighting against Cholera by improving access to drinking water supplies.
- Participated in projects focusing on access to education by raising awareness of the importance of school education in the fight against illiteracy and by promoting the creation of training centers for schools for teachers.
- Participated in projects aiming at fighting against hunger in remote and landlocked villages by transforming abandoned lands into farmlands.

IV. CONCLUSION

Mr. Kilolo has complied – and by all indicators will continue to comply – with all conditions of his provisional release. He is not a flight risk, has not obstructed or endangered the proceedings, and is not a danger to himself or others. And other than asserting her intent to seek leave to have Mr. Kilolo incarcerated, the Prosecutor provides no evidence or any compelling reasons why the Trial Chamber should incarcerate Mr. Kilolo for the duration of his appeal. If the Prosecutor has such evidence, she should produce it immediately to show cause for Mr. Kilolo's incarceration.

Date: 15 March 2017,
The Hague, the Netherlands.

Respectfully submitted,



Mr. Michael G. Karnavas
Lead counsel for Mr. Aimé Kilolo Musamba

A handwritten signature in black ink, appearing to read "Steven Powles". The signature is written in a cursive, slightly slanted style.

Mr. Steven Powles
Co-counsel for Mr. Aimé Kilolo Musamba