



Original: English

No. ICC-01/04-02/06 OA 6

Date: 17 July 2017

THE APPEALS CHAMBER

Before:

**Judge Sanji Mmasenono Monageng, Presiding Judge
Judge Christine Van den Wyngaert
Judge Howard Morrison
Judge Piotr Hofmański
Judge Raul C. Pangalangan**

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF THE PROSECUTOR v. BOSCO NTAGANDA

Public document

Decision on Mr Ntaganda's request for leave to reply

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 Stéphane Bourgon
Mr Christopher Gosnell

Legal Representatives of Victims
Ms Sarah Pellet
Mr Dmytro Suprun

REGISTRY

Registrar
Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Bosco Ntaganda against the decision of Trial Chamber VI entitled “Decision on Defence request for leave to file a ‘no case to answer’ motion” of 1 June 2017 (ICC-01/04-02/06-1931),

Having before it the “Request for Leave to Reply to the ‘Joint Response of the Common Legal Representatives of Victims to the Defence ‘Appeal from decision denying leave to file a ‘no case to answer motion’” and the Prosecution’s ‘Response to Bosco Ntaganda’s appeal against the decision denying leave to file a “no case to answer motion”” of 13 July 2017 (ICC-01/04-02/06-1986),

Renders, pursuant to regulation 24 (5), read with regulation 34 (c), of the Regulations of the Court, the following

DECISION

The request for leave to reply is rejected.

REASONS

I. PROCEDURAL HISTORY

A. Proceedings before the Trial Chamber

1. On 25 April 2017, Mr Bosco Ntaganda (“Mr Ntaganda”) filed a request before Trial Chamber VI (“Trial Chamber”), seeking “leave to file a motion of partial judgement of acquittal for the Counts 1 to 5, 7-8, 10-13 and 17-18 in relation to the ‘Second Attack’, and Count 17 in its totality [...]”¹ (“Request to File Partial Judgment Motion”).

2. On 1 June 2017, the Trial Chamber issued its decision denying the Request to File Partial Judgment Motion given, *inter alia*, “its broad discretion as to whether or not to pronounce upon such matters at this stage of proceedings” and the fact that

¹ “Request for leave to file motion for partial judgment of acquittal”, 25 April 2017, ICC-01/04-02/06-1879-Conf, para. 42.

“entertaining such a motion may also entail a lengthy process [...] and may thus not necessarily positively affect the expeditiousness of the trial, even if successful in part” (“Impugned Decision”).²

3. On 6 June 2017, Mr Ntaganda filed a request seeking leave to appeal the Impugned Decision.³

4. On 14 June 2017, the Trial Chamber granted Mr Ntaganda leave to appeal with respect to (i) “[w]hether the Chamber erred in permitting trial to proceed in respect of charges for which the Chamber declined to consider the sufficiency of the Prosecution’s evidence” and (ii) “[w]hether declining to entertain a Defence motion for a judgement of (partial) acquittal is a discretionary matter”.⁴

B. Proceedings before the Appeals Chamber

5. On 14 June 2017, Mr Ntaganda filed a “Notice of appeal and urgent request for suspensive effect”.⁵ On 19 June 2017, following an order by the Appeals Chamber⁶ and a response⁷ by the Prosecutor, the Appeals Chamber rejected Mr Ntaganda’s request for suspensive effect.⁸

6. On 27 June 2017, Mr Ntaganda filed the “Appeal from decision denying leave to file a ‘no case to answer motion’” (“Document in Support of the Appeal”).⁹

7. On 10 July 2017, the Prosecutor¹⁰ and the victims¹¹ filed their responses to the Document in Support of the Appeal (“Prosecutor’s Response to the Document in Support of the Appeal” and “Victims’ Response to the Document in Support of the Appeal” respectively).

² “Decision on Defence request for leave to file a ‘no case to answer’ motion”, 1 June 2017, [ICC-01/04-02/06-1931](#), (“Impugned Decision”) paras 25-26.

³ “Urgent Request for leave to appeal ‘Decision on Defence request for leave to file a ‘no case to answer’ motion’”, 1 June 2017, ICC-01/04-02/06-1931”, 6 June 2017, [ICC-01/04-02/06-1937](#).

⁴ Transcript of 14 June 2017, ICC-01/04-02/06-T-209-CONF-ENG (ET), p. 24, line 15 to p. 26.

⁵ [ICC-01/04-02/06-1960](#) (OA 6).

⁶ “Order on the filing of responses”, 15 June 2017, [ICC-01/04-02/06-1964 \(OA 6\)](#), p. 3.

⁷ “Response to Mr Ntaganda’s urgent request for suspensive effect”, 15 June 2017, [ICC-01/04-02/06-1966](#) (OA 6).

⁸ “Decision on suspensive effect”, [ICC-01/04-02/06-1968](#) (OA 6).

⁹ [ICC-01/04-02/06-1975](#) (OA 6).

¹⁰ “Response to Bosco Ntaganda’s appeal against the decision denying leave to file a ‘no case to answer motion’”, [ICC-01/04-02/06-1982](#) (OA 6).

¹¹ “Joint Response of the Common Legal Representatives of Victims to the Defence ‘Appeal from decision denying leave to file a ‘no case to answer motion’””, [ICC-01/04-02/06-1983](#) (OA 6).

8. On 13 July 2017, Mr Ntaganda filed the “Request for Leave to Reply to the ‘Joint Response of the Common Legal Representatives of Victims to the Defence ‘Appeal from decision denying leave to file a ‘no case to answer motion’” and the Prosecution’s ‘Response to Bosco Ntaganda’s appeal against the decision denying leave to file a “no case to answer motion”” (“Request”).¹² On 14 July 2017, the victims filed the “Joint Response of the Common Legal Representatives of Victims to the Defence Request to Reply” (“Victims’ Response”).¹³ The victims oppose Mr Ntaganda’s Request.¹⁴

II. MERITS

9. The Appeals Chamber recalls that it has previously stated that

[...] the granting of leave to reply is a discretionary decision. [...] [R]egulation 24 (5) of the Regulations of the Court provides in relevant part that ‘[u]nless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated’. Thus, the Appeals Chamber would consider granting a request for leave to reply if these conditions are met, unless it considers that a reply would otherwise be necessary for the adjudication of the appeal [footnote omitted].¹⁵

10. Mr Ntaganda seeks leave to reply to four submissions raised in either the Victims’ Response to the Document in Support of the Appeal or the Prosecutor’s Response to the Document in Support of the Appeal, namely:

(i) ‘a Trial Chamber may legitimately decline to hear submissions as its duty to provide a reasoned opinion does not limit it in **its discretion to decide whether or not to receive substantive submissions on a procedure not expressly provided for**’;

(ii) ‘the Judges are in a position to discern whether the case presented by the Prosecution **is riddled with substantive flaws or other obvious special circumstances that would otherwise significantly affect the case against the Accused**’;

(iii) ‘the Pre-Trial Chamber (and a single judge of the Pre-Trial Chamber) **has broad powers under the Statute to oversee the legality of the**

¹² [ICC-01/04-02/06-1986](#) (OA 6). The Request was dated 12 July 2017 and registered on 13 July 2017.

¹³ [ICC-01/04-02/06-1992](#) (OA 6).

¹⁴ [Victims’ Response](#), para. 2.

¹⁵ “Decision on Mr Ntaganda’s request for leave to reply”, [ICC-01/04-02/06-1813](#) (OA 5), 3 March 2017, para. 8.

Prosecution’s investigation and to protect the suspect’s rights during an investigation; and,

(iv) ‘**any significant deviation at trial from the evidence relied on by the Prosecution during the confirmation of charges proceedings [...] may inform the Chamber’s exercise of discretion** on whether or not to entertain a ‘no case to answer’ motion before hearing the evidence of the Defence’ [footnotes omitted, emphasis in original].¹⁶

11. According to Mr Ntaganda, a reply is justified as these submissions either “constitute propositions whose specificity could not have been reasonably addressed in the Defence Appeal, and in respect of which the Appeals Chamber would benefit from further analysis” or “misconceive the nature of the discretion exercised in the Impugned Decision in a manner that could not have been reasonably foreseen or responded to in advance”.¹⁷ Mr Ntaganda further contends that, “[e]ven assuming that these are not new ‘issues,’ they are arguments of such specificity that they could not reasonably have been anticipated or addressed in the appeal submissions”.¹⁸

12. The victims argue that issue (i) “is not a new one, and the argument, that the Defence could not foresee the specificity of the proposition, should be dismissed” (footnote omitted).¹⁹ In more specific terms, the victims contend that they “made extensive submissions on their understanding of the legal framework of the Court in relation to ‘no case to answer’ motions” in the Victims’ Response to the Document in Support of the Appeal and, therefore, Mr Ntaganda “had ample opportunity to make submissions in this regard” in his Document in Support of the Appeal (footnote omitted).²⁰ Furthermore, in the submission of the victims, issue (ii) “is also not a ‘new issue’”.²¹ In this regard, the victims assert that this issue concerns “submissions previously made before the Trial Chamber” (footnote omitted)²² and “could, in any

¹⁶ [Request](#), para. 1 referring to Victims’ Response to the Document in Support of the Appeal, paras 20 and 26 and Prosecutor’s Response to the Document in Support of the Appeal, paras 11 and 14 respectively.

¹⁷ [Request](#), para. 2.

¹⁸ [Request](#), para. 4.

¹⁹ [Victims’ Response](#), para. 15.

²⁰ [Victims’ Response](#), para. 15.

²¹ [Victims’ Response](#), para. 16.

²² [Victims’ Response](#), para. 16.

event, have been reasonably anticipated, given the subject matter of the present appeal”²³.

13. The Appeals Chamber notes that Mr Ntaganda merely points to issues arising from the Victims’ Response to the Document in Support of the Appeal or the Prosecutor’s Response to the Document in Support of the Appeal without demonstrating why they are new and could not reasonably have been anticipated by him. The Appeals Chamber considers that, in relation to issue (i), Mr Ntaganda expresses mere disagreement with the response of the victims regarding his submissions on the extent of the Trial Chamber’s discretion to hear a no case to answer motion.²⁴ Furthermore, issues (ii) to (iv) elaborate upon specific submissions presented by Mr Ntaganda, namely the circumstances that would require the Trial Chamber to hear a no case to answer motion,²⁵ the characterisation of the proceedings against Mr Ntaganda as adversarial,²⁶ and the nature of the confirmation of charges procedure.²⁷ In the view of the Appeals Chamber, the responses of the Prosecutor and victims to these submissions are not of such a nature to amount to new issues which Mr Ntaganda could not reasonably have anticipated.

14. The Appeals Chamber further notes that, beyond reiterating that the aforementioned issues are “of such specificity that they could not reasonably have been anticipated or addressed in the appeal submissions”,²⁸ Mr Ntaganda does not explain why a reply to the aforementioned issues is otherwise warranted. Having considered the nature of the issues identified by Mr Ntaganda in the circumstances of the present appeal, the Appeals Chamber does not consider that a reply to these issues is necessary for the adjudication of the appeal.

15. In these circumstances, the Appeals Chamber rejects the Request.

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

²³ [Victims’ Response](#), para. 17.

²⁴ [Document in Support of the Appeal](#), para. 24.

²⁵ [Document in Support of the Appeal](#), paras 4, 9.

²⁶ [Document in Support of the Appeal](#), paras 15, 16.

²⁷ [Document in Support of the Appeal](#), para. 18.

²⁸ [Request](#), para. 4.



Judge Sanji Mmasenono Monageng

Presiding Judge

Dated this 17th day of July 2017.

At The Hague, The Netherlands