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No. ICC-01/05-01/13 A A2 A3 A4 A5

Date: 14 August 2017

THE APPEALS CHAMBER

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Howard Morrison
Judge Geoffrey A. Henderson
Judge Piotr Hofmański

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 document

**Order on reclassification of documents and Reasons for the “Decision on
requests for variation of time limits for a request for leave to reply”**

**Order and Reasons for a 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 Jean-Pierre Bemba Gombo
Ms Melinda Taylor
Ms Mylène Dimitri

Counsel for Aimé Kilolo Musamba
Mr Michael G. Karnavas

Counsel for Jean-Jacques Mangenda Kabongo
Mr Christopher Gosnell
Mr Peter Robinson

Counsel for Fidèle Babala Wandu
Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido
Mr Charles Achaleke Taku
Ms Beth Lyons

REGISTRY

Registrar
Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu, and Mr Narcisse Arido against the decision of Trial Chamber VII entitled “Judgment pursuant to Article 74 of the Statute” of 19 October 2016 (ICC-01/05-01/13-1989-Red),

Having before it the “Requête de la Défense de M. Babala demandant la suspension de l’échéance applicable à une requête visant à solliciter l’autorisation pour soumettre une réplique à la «*Prosecution’s Consolidated Response to the Appelants’* [sic] *Documents in Support of Appeal*» (ICC-01/05-01/13-2170-Conf)” of 11 July 2017 (ICC-01/05-01/13-2171-Conf (A2)),

Having before it the “Request to Join the Application of ‘Requête de la Défense de M. Babala demandant la suspension de l’échéance applicable à une requête visant à solliciter l’autorisation pour soumettre une réplique à la «*Prosecution’s Consolidated Response to the Appelants’* [sic] *Documents in Support of Appeal*» (ICC-01/05-01/13-2170-Conf)” of 13 July 2017 (ICC-01/05-01/13-2173 (A2)),

Having before it “Narcisse Arido’s Response in Support of Fidèle Babala Wandu’s Request for the Deadline to File its Request For Leave to Reply to Prosecution’s Response to Run from the Date of Notification of Complete French Translation and Request for Extension of Time under Regulation 35” of 13 July 2017 (ICC-01/05-01/13-2174 (A2)),

Hereby renders its reasons for the “Decision on requests for variation of time limits for a request for leave to reply” of 14 July 2017 (ICC-01/05-01/13-2175) and *issues* the following

ORDER

The Registrar is directed to reclassify as public filings ICC-01/05-01/13-2171-Conf and ICC-01/05-01/13-2174-Conf.

REASONS

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 19 October 2016, Trial Chamber VII rendered the “Judgment pursuant to Article 74 of the Statute”¹ (“Conviction Decision”).
2. Mr Narcisse Arido (“Mr Arido”),² Mr Fidèle Babala Wandu (“Mr Babala”),³ and Mr Jean-Pierre Bemba Gombo (“Mr Bemba”)⁴ filed appeals against the Conviction Decision, and on 24 April 2017, they submitted their respective documents in support of the appeal.⁵
3. On 10 July 2017, the Prosecutor filed her consolidated response to, *inter alia*, Mr Arido’s, Mr Babala’s, and Mr Bemba’s documents in support of the appeal⁶ (“Prosecutor’s Response”).
4. On 11 July 2017, Mr Babala filed a request seeking a suspension of the 3-day time limit under regulation 34 (c) of the Regulations of the Court (“Regulations”) for the filing of a request for leave to reply to the Prosecutor’s Response until he receives the official translation of the Prosecutor’s Response⁷ (“Mr Babala’s Request”).

¹ ICC-01/05-01/13-1989-Conf; a public redacted version was registered on the same date ([ICC-01/05-01/13-1989-Red](#)).

² “Narcisse Arido’s Notice of Appeal against the Trial Chamber VII’s ‘Judgment pursuant to Article 74 of the Statute’ (ICC-01/05-01/13-1989-Conf)”, dated 31 October 2016 and registered on 1 November 2016, [ICC-01/05-01/13-1995 \(A\)](#).

³ “Notification d’appel de la Défense de M. Fidèle Babala Wandu à l’encontre du jugement rendu en application de l’article 74 du Statut par la Chambre de première instance VII le 19 octobre 2016”, 2 November 2016, [ICC-01/05-01/13-1999 \(A2\)](#).

⁴ “Notice of Appeal”, 7 November 2016, [ICC-01/05-01/13-2012 \(A4\)](#).

⁵ “Narcisse Arido’s Document in Support of Appeal Pursuant to Article 81, ICC-01/05-01/13-2145-Conf, with annexes. A corrected version was registered on 8 May 2017 (ICC-01/05-01/13-2145-Conf-Corr) and a public redacted version of the corrected version was registered on 31 May 2017 ([ICC-01/05-01/13-2145-Corr-Red](#)); “Mémoire d’appel de la Défense de M. Fidèle Babala Wandu sur le verdict de culpabilité”, ICC-01/05-01/13-2147-Conf, with annexes. A public redacted version was registered on 30 May 2017 ([ICC-01/05-01/13-2147-Corr-Red](#)) and the English version was registered on 10 July 2017 (ICC-01/05-01/13-2147-Conf-Corr-tENG); “Defence Document in Support of Appeal”, ICC-01/05-01/13-2144-Conf with annexes. A public redacted version was filed on 4 May 2017 ([ICC-01/05-01/13-2144-Red](#)).

⁶ “Prosecution’s Consolidated Response to the Appellants’ Documents in Support of Appeal”, ICC-01/05-01/13-2170-Conf.

⁷ “Requête de la Défense de M. Babala demandant la suspension de l’échéance applicable à une requête visant à solliciter l’autorisation pour soumettre une réplique à la «Prosecution’s Consolidated Response to the Appellants’ [sic] Documents in Support of Appeals» (ICC-01/05-01/13-2170-Conf)”, ICC-01/05-01/13-2171-Conf, paras. 1-2, p. 7.

Mr Babala claims that since neither he nor his defence team can work in English, he cannot provide instructions to his defence team for a potential application for leave to reply in the absence of a French translation of the Prosecutor's Response, which is only available in English, is 362 pages long and presents "considerable developments" with respect to his submissions on appeal.⁸ In support of his submission, Mr Babala refers to article 67 (1) (a) and (f) of the Statute and rule 144 of the Rules of Procedure and Evidence ("Rules").⁹

5. On 13 July 2017, Mr Bemba filed a request seeking an extension of the time limit for the filing of a request for leave to reply to the Prosecutor's Response by 10 additional days from the notification date of the response¹⁰ ("Mr Bemba's Request"). Mr Bemba states that he supports Mr Babala's position regarding the need to obtain a French translation of the Prosecutor's Response.¹¹ He avers that given the length and the complex issues raised in the Prosecutor's Response, it would be in the interests of justice to grant the requested extension of time for the preparation of the request for leave to reply.¹² According to Mr Bemba, regulation 60 of the Regulations provides that the Appeals Chamber is vested with the power to request a reply when it "considers it necessary in the interests of justice".¹³ Mr Bemba argues that regulation 60 of the Regulations is the *lex specialis* and that therefore "it governs the specific procedure for submitting both a request for leave to reply, and the reply itself".¹⁴ He further submits that the jurisprudence of the Appeals Chamber supports his contention that regulation 24 of the Regulations does not apply to appeals filed under article 81 of the Statute.¹⁵

6. On the same date, Mr Arido filed a similar request under regulation 34 (c) of the Regulations seeking a variation of the time limit for the filing of a request for leave to reply to the Prosecutor's Response by extending it by 21 days from the date when he

⁸ Mr Babala's Request, paras 1, 13-15, 17.

⁹ Mr Babala's Request, paras 8-9.

¹⁰ "Request to Join the Application of 'Requête de la Défense de M. Babala demandant la suspension de l'échéance applicable à une requête visant à solliciter l'autorisation pour soumettre une réplique à la «Prosecution's Consolidated Response to the Appelants' [sic] Documents in Support of Appeals» (ICC-01/05-01/13-2170-Conf)", ICC-01/05-01/13-2173, paras 1, 15.

¹¹ Mr Bemba's Request, para. 13.

¹² Mr Bemba's Request, paras 13-14.

¹³ Mr Bemba's Request, paras 5, 12.

¹⁴ Mr Bemba's Request, para. 2.

¹⁵ Mr Bemba's Request, paras 5-12.

will receive the French translation of the Prosecutor's Response¹⁶ ("Mr Arido's Request"). Mr Arido submits that since he is francophone, he is unable to understand and identify issues raised in the English version of the Prosecutor's Response.¹⁷ He argues that the length and complex issues developed in the Prosecutor's Response and the absence of a French translation of the response constitute good cause to vary the time limit.¹⁸

7. On 14 July 2017, the Appeals Chamber rendered its "Decision on requests for variation of time limits for a request for leave to reply"¹⁹ extending the time limit for the filing of any request for leave to reply to Monday, 24 July 2017 and stating that the reasons for the decision would be given in due course.

II. REASONS

8. The Appeals Chamber recalls that, pursuant to regulation 60 (1) of the Regulations, the Appeals Chamber may order an appellant to file a reply whenever it considers it necessary in the interests of justice. As set out in previous jurisprudence of the Appeals Chamber, the question of whether the filing of a reply is necessary "lies within the discretionary power of the Appeals Chamber and must be considered on a case-by-case basis".²⁰

9. The Appeals Chamber recalls that "[a]lthough not specifically mentioned in regulation 60 of the Regulations of the Court, an appellant may request, and accordingly, trigger the powers of the Appeals Chamber to order the filing of a reply under said regulation".²¹ In this connection, the Appeals Chamber notes that regulation 60 of the Regulations does not prescribe any time limit for the submission of requests for leave to reply and, accordingly, the Appeals Chamber has discretion to

¹⁶ "Narcisse Arido's Response in Support of Fidèle Babala Wandu's Request for the Deadline to File its Request For Leave to Reply to Prosecution's Response to Run from the Date of Notification of Complete French Translation and Request for Extension of Time under Regulation 35", ICC-01/05-01/13-2174, paras 1-2, 9, 11, 13.

¹⁷ Mr Arido's Request, para. 10.

¹⁸ Mr Arido's Request, paras 4-5, 8.

¹⁹ ICC-01/05-01/13-2175 (A A2 A3 A4 A5), p. 3.

²⁰ See *Prosecutor v. Jean-Pierre Bemba Gombo*, "Decision on Mr Bemba's request for leave to reply to the Prosecutor's Response to the Document in Support of the Appeal", 7 December 2016, [ICC-01/05-01/08-3480 \(A\)](#), para. 8 and jurisprudence referred therein.

²¹ *Prosecutor v. Thomas Lubanga Dyilo*, "Order on the filing of a reply under regulation 60 of the Regulations of the Court", 21 February 2013, [ICC-01/04-01/06-2982 \(A5 A6\)](#), para. 6.

set a deadline for any such request. In the present case, the Appeals Chamber is not persuaded by Mr Arido's and Mr Babala's argument that they need to receive a French translation of the Prosecutor's Response in order to be in a position to prepare and file a request for leave to reply thereto. The Appeals Chamber notes that English and French are both working languages of the Court, and that, in accordance with regulation 39 (1) of the Regulations, documents and materials filed with the Registry shall be in English or French. It was thus legitimate for the Prosecutor to file the Response in English. In addition, while regulation 40 (3) of the Regulations provides that decisions and orders be translated into the other working language of the Court, the same does not apply to any other "documents and materials". Therefore, and as already explained by the Appeals Chamber in this regard, "there is no requirement that filings of parties and participants submitted in English be translated into French, or vice versa".²² Accordingly, the Appeals Chamber finds that no need for translation of the Prosecutor's Response into French arises merely from the fact that French is a working language of the Court.

10. The Appeals Chamber turns now to the question of whether the legal instruments of the Court require that the Prosecutor's Response be translated into French – not as a working language of the Court but as the language that Mr Babala and Mr Arido fully understand and speak – for the purpose of their potential requests for leave to reply to the Response. In support of his request, Mr Babala refers to article 67 (1) (a) and (f) of the Statute and rule 144 of the Rules.²³ Article 67 (1) (a) of the Statute provides that an accused has the right to be informed of the nature, cause and content of the charges in a language which he or she fully understands and speaks. This provision is clearly not applicable to the Response. The provision of rule 144 (2) of the Rules is equally not applicable to the matter under consideration, as this provision guarantees the accused's right to receive in the language which he or she fully understands and speaks only certain, specified types of decisions – and does not extend to other types of decisions or orders and, even less, to filings of parties or participants.

²² *Prosecutor v. Laurent Gbagbo*, "Decision on Mr Gbagbo's request for translation and an extension of time for the filing of a response to the document in support of the appeal", 22 August 2013, [ICC-02/11-01/11-489 OA 5](#), para. 10.

²³ Mr Babala's Request, paras 8-9.

11. Article 67 (1) (f) of the Statute is in principle applicable to the case at hand. It guarantees the right of the accused to have, free of any cost, such translations as are “necessary to meet the requirements of fairness”. The Appeals Chamber does not consider that either Mr Arido or Mr Babala suffers any prejudice from not receiving the translation and it, therefore, considers that fairness does not require that Mr Arido and Mr Babala should receive the Response in a language they fully understand and speak in order to prepare a request for leave to reply. The document at issue is a response to, *inter alia*, the documents in support of the appeal that were filed by Mr Babala and Mr Arido – presumably with their direct participation in the identification of the issues that they wanted to bring to the attention of the Appeals Chamber. The Appeals Chamber is satisfied that, even without a translation of the Response, Mr Arido and Mr Babala, duly assisted by their respective counsel, will be able to consider whether the Response raises issues that necessitate a reply, and accordingly make the determination of whether to request leave of the Appeals Chamber to file a reply.


12. In light of the above reasons and for the sake of efficiency and judicial economy, the Appeals Chamber finds it appropriate to order that any request for leave to reply to the Response be filed by 16h00 on Monday, 24 July 2017.

13. Finally, the Appeals Chamber notes that Mr Babala filed his request as a confidential filing explaining that this level of classification was justified by the level of classification of the Prosecutor’s Response, but that he does not oppose to the reclassification of his request as public, as it does not reveal any information on the content of the Prosecutor’s Response or any confidential information from the record of the case.²⁴ Similarly, Mr Arido’s Request was filed as a confidential filing because it responds to a confidential submission - the Prosecutor’s Response.²⁵ In these circumstances, the Appeals Chamber considers that there is no reason to maintain Mr Babala’s Request and Mr Arido’s Request as confidential documents, and thus, orders their reclassification as public.

²⁴ Mr Babala’s Request, para. 3.

²⁵ Mr Arido’s Request, fn. 1.

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


Judge Silvia Fernández de Gurmendi
Presiding Judge

Dated this 14th day of August 2017

At The Hague, The Netherlands