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No.: ICC-01/05-01/08
Date: 16 November 2018

TRIAL CHAMBER III

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Chang-ho Chung
Judge Kimberly Prost

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
*v. JEAN-PIERRE BEMBA GOMBO***

Public

Public redacted version of “Decision on the Defence's preliminary application for reclassification of filings, disclosure, accounts and partial unfreezing of Mr Bemba's assets”, 24 August 2018

Decision 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 Jean-Jacques Badibanga

Counsel for the Defence

Mr Peter Haynes QC
Ms Kate Gibson

Legal Representatives of the Victims

Ms Marie-Edith Douzima-Lawson

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

Xavier-Jean Keita

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Defence Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Trust Fund for Victims

Mr Pieter de Baan

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, having regard to Articles 64(6)(f) and 86 of the Rome Statute (“Statute”) and Regulation 23 *bis* of the Regulations of the Court, issues the following “Decision on the Defence's preliminary application for reclassification of filings, disclosure, accounts and partial unfreezing of Mr Bemba's assets”:

I. Procedural background

1. On 23 May 2008, Pre-Trial Chamber III issued a warrant of arrest against Mr Bemba.¹ The arrest warrant was followed by various requests for cooperation addressed to several States, with a view to identify, trace, freeze and seize the property and assets of Mr Bemba, subject to the rights of *bona fide* third parties.
2. On 20 October 2009, the Chamber in its previous composition found that Mr Bemba, although noting his considerable wealth,² had no power at the time to dispose freely of his assets and thus temporarily lacked sufficient means to pay for his defence (“Decision on legal assistance”)³ and ordered the Registry to provide advanced funding for Mr Bemba’s defence.⁴

¹ Warrant of Arrest for Jean-Pierre Bemba Gombo, 23 May 2008, ICC-01/05-01/08-1-tENG.

² Decision on legal assistance for the accused, 20 October 2009, ICC-01/05-01-08-567-Conf, para. 94 (a public redacted version was filed on 26 November 2009, ICC-01/05-01-08-567-Red).

³ Decision on legal assistance, ICC-01/05-01-08-567-Red, paras 105, 106.

⁴ Decision on legal assistance, ICC-01/05-01-08-567-Red, para. 111(v). The initial sum was € 30,150 per month, which changed in the following years to € 42,701 (see Decision on the Defence Application for Review of the Registrar’s Decision of 15 October 2010 on the Application for Adjustment of the Expenses and Fees of the Defence, 12 November 2010, ICC-01/05-01/08-1007-Conf, para. 39(i) (“Decision on the Defence Application for Review of the Registrar’s Decision”) (a public redacted version was filed on 7 December 2010, ICC-01/05-01/08-1007-Red); and subsequently to € 24,750 when the Trial stage ended (see ASP Twelfth Session 20-28 November 2013, Registry’s single policy document on the Court’s legal aid system, ICC-ASP/12/3). The Chamber has continuously confirmed that the funds advanced to Mr Bemba do not constitute legal aid and must be repaid, see Decision on legal assistance, ICC-01/05-01-08-567-Red, para. 110; “Decision on the defence application to lift Order iii) of the “Decision on legal assistance for the accused” dated 20 October 2009, 4 November 2009, ICC-01/05-01/08-596-US, para. 16 (a public redacted version was filed on 19 November 2009, ICC-01/05-01/08-596-Red); Decision on the defence request for adjustment of fees advanced by the Registry pursuant to Trial Chamber III’s Decision on legal assistance for the accused of 20 October 2009, 23 September 2010, ICC-01/05-01/08-897-Conf, para. 16 (“Decision on the defence request”) (a public redacted version was filed on 7 December 2010, ICC-01/05-01/08-897-Red); Decision on the Defence Application for Review of the Registrar’s Decision, ICC-01/05-01/08-1007-Red, paras 31, 33, 39(viii). See also [REDACTED].

3. On 8 June 2018, the Appeals Chamber by majority reversed Mr Bemba's conviction in this case, discontinuing the proceedings in relation to certain crimes, and acquitting Mr Bemba of all remaining charges brought against him⁵ ("Appeals Judgement").
4. On 17 July 2018, the Chamber issued an order pursuant to Rule 21(5) of the Rules of Procedure and Evidence, suspending its orders to advance legal assistance fees to Mr Bemba, and instructing Mr Bemba to repay the €1,886,736.87 advanced to him by the Court and to direct further communication with respect to the repayment, if any, to the Registry⁶ ("Rule 21(5) Order").
5. On 17 August 2018, the Defence filed a request seeking, *inter alia*, reclassification of under seal/*ex parte* documents, accounts in relation to frozen property, and [REDACTED]⁷ ("Defence Request"). The Defence argues, *inter alia*, that (i) there is no legal basis for any state or institution to interfere with Mr Bemba's rights over his property,⁸ (ii) the instruction to States Parties to protect Mr Bemba's assets was the product of judicial decisions under Articles 57(3) and 91(3) of the Statute, and accordingly a similar judicial decision is required to reverse the effects of those orders,⁹ and (iii) Mr Bemba is entitled to an accurate overview of the requests submitted and orders made to freeze his property, a precise inventory of frozen property, its location, and an account of its deterioration, depreciation or destruction.¹⁰ Furthermore, Mr Bemba acknowledges the "contractual relationship,"¹¹ created with the Court in relation to the legal assistance fees and

⁵ Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's "Judgment pursuant to Article 74 of the Statute", 8 June 2018, ICC-01/05-01/08-3636-Conf (a public redacted version was filed the same day, ICC-01/05-01/08-3636-Red).

⁶ Order in relation to advanced legal assistance fees, ICC-01/05-01/08-3651-US-Exp, page 5 (a public redacted version was filed on the same day, ICC-01/05-01/08-3651-Red).

⁷ Preliminary application for reclassification of filings, disclosure, accounts and partial unfreezing of Mr Bemba's assets, ICC-01/05-01/08-3654-Conf-Exp (a public redacted version was filed on 30 October 2018, ICC-01/05-01/08-3654-Red).

⁸ Defence Request, ICC-01/05-01/08-3654-Red, paras 2, 25. *See also* paras 26 to 41.

⁹ Defence Request, ICC-01/05-01/08-3654-Red, para. 1.

¹⁰ Defence Request, ICC-01/05-01/08-3654-Red, para. 3.

¹¹ Defence Request, ICC-01/05-01/08-3654-Red, para. 39.

submits that “the discharge of the freezing orders is a necessary prerequisite of Mr Bemba having the ability to pay his debts.”¹²

6. The Defence requests that the Chamber “[Reclassify] all under seal and/or *ex parte* filings, orders or decisions in the instant case concerning requests for cooperation to freeze Mr. Bemba’s assets, to be made available to Mr. Bemba (“Relief 1”); “[Order] each of the states which has imposed protective measures or freezing orders over the property of Mr. Bemba to provide an account in relation to each item of property frozen, identifying the same, specifying its precise location, and detailing at a minimum, its value throughout the period of its detention by the state or institution” (“Relief 2”); “[Order] that the Registry respond to the specific request for [REDACTED], within 48 hours of the filing of this request (“Relief 3”); and “[Order] that [REDACTED]” (“Relief 4”).¹³

II. Analysis

Requested Relief 1

7. In the Chamber’s view, observations by the Registry would assist the Chamber before it rules on Mr Bemba’s request for Relief 1.

Requested Relief 2 to 4

8. The Chamber notes that the cooperation requests in relation to Mr Bemba’s assets were issued under Part 9 of the Statute on the basis of the ongoing investigation and prosecution against Mr Bemba. These requests were transmitted to States for any action which could be taken in respect of Mr Bemba’s assets under their respective domestic laws.
9. The Chamber further recalls its previous position in the Rule 21(5) Order, in which it instructed Mr Bemba to “direct further communication with respect to

¹² Defence Request, ICC-01/05-01/08-3654-Red, para. 25.

¹³ Defence Request, ICC-01/05-01/08-3654-Red, pages 17 to 18.

the repayment, if any, to the Registry.”¹⁴ Noting that the outstanding legal assistance debt is based on a contractual obligation between the Court and Mr Bemba, the Chamber considers the Registry to be the competent body to conduct and arrange the repayment process in the way it sees fit, in consultation with Mr Bemba.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

ORDERS the Registry to file observations on the Defence’s request for reclassification of all under seal and *ex parte* filings not available to Mr Bemba, in relation to the matters set out above in paragraph 7, by 3 September 2018.

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



 Judge Geoffrey Henderson



 Judge Chang-ho Chung



 Judge Kimberly Prost

Dated this 16 November 2018

At The Hague, The Netherlands

¹⁴ Rule 21(5) Order, ICC-01/05-01/08-3651-Red, page 5.