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No.: **ICC-01/05-01/13**

Date: **02/07/2019**

APPEALS CHAMBER

Before: Judge Howard Morrison, President
Judge Chile Eboe-Osuji,
Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa

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

Request for an Appeals Hearing in Connection with the Defence Appeal against the decision of Trial Chamber VII entitled "Decision Re-sentencing Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba and Mr Jean-Jacques Mangenda Kabongo"

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

The Office of the Prosecutor

Fatou Bensouda
James Stewart
Helen Brady

Counsel for the Defence of Mr Jean-Pierre Bemba Gombo

Melinda Taylor

Counsel for the Defence of Mr Aimé Kilolo Musamba

Michael G. Karnavas

Counsel for the Defence of Jean-Jacques Mangenda Kabongo

Christopher Gosnell
Peter Robinson

Legal Representatives of the Victims

Unrepresented Victims

The Office of Public Counsel for Victims

States' Representatives

Legal Representatives of the Applicants

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for the Defence

Xavier-Jean Keïta

Amicus Curia

Registrar

Peter Lewis

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section **Other**

Introduction

1. The Article 70 Defence for Mr. Jean-Pierre Bemba respectfully requests the Appeals Chamber to convene an appellate hearing to discuss key legal and procedural issues arising from the Defence Appeal against the decision of Trial Chamber VII entitled “Decision Re-sentencing Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba and Mr Jean-Jacques Mangenda Kabongo”.¹

Submissions

2. The Appeals Chamber has clarified that,²

the decision to hold an oral hearing in appeal proceedings against final judgments is discretionary and made on a case-by-case basis. Such decisions should be based primarily on the potential utility of an oral hearing, namely whether it would assist the Appeals Chamber in clarifying and resolving the issues raised in the appeal. In the present case, the Appeals Chamber finds that a hearing, limited to hearing the parties and participants on the confined issues raised on appeal, would be useful in assisting the Appeals Chamber in its decision-making process.

3. Notwithstanding the discretionary nature of such a determination, the Appeals Chamber has deemed it appropriate and useful to convene such a hearing in connection with its adjudication of the substantive appeals heard in every ICC case, apart from the *Bemba et al.* appeals against conviction and sentence. The Appeals Chamber has even convened a hearing in connection with the second round of appeals against reparations, filed in the *Lubanga* case,³ thus demonstrating that the fact that a case has already been before the Appeals Chamber, does not lessen the importance of full and informed appellate inquiry, and the utility of public debate on the issues before it.

¹ ICC-01/05-01/13-2315.

² ICC-01/04-02/12-199, para. 13.

³ ICC-01/04-01/06-3419.

4. The issues set out in the Defence appeal against sentence touch on novel and complex legal and procedural issues concerning the proper interpretation of core provisions of the Rome Statute and the Rules of Procedure and Evidence, including Articles 69(4) and Article 74(2) of the Statute. As a result of the Appeals Chamber's decision not to convene an appellate hearing prior to its March 2018 judgment,⁴ these issues were never the subject of adversarial debate.
5. Since the parties were not aware of the Appeals Chamber's intention to remand the case back to Trial Chamber VII for a new sentence, the Defence also did not have an occasion to address, within the context of its original appeal against conviction, the possible prejudice that would ensue in such re-sentencing proceedings, from the lack of a clear evidential record and related rulings. As a result, when the Appeals Chamber rendered its March 2018 judgment, it did not have the benefit of oral argument and inquiry as concerns the full legal and practical implications of the evidential regime adopted by Trial Chamber VII.
6. The evidential difficulties and ambiguities arising from the application of this evidential regime to the re-sentencing phase have now shed further light on the extent to which such a regime is compatible with the particular adversarial framework of the Court. It is therefore an opportune time to expose this issue to the rigours of oral debate between the parties, and scrutiny from the bench, with a view to ensuring that the Appeals Chamber is well-placed to rule on this critical issue, and to thereby clarify the applicable law at the ICC on this point.

⁴ ICC-01/05-01/13-2275-Red, para. 48.

7. The scheduling of such a hearing would facilitate the fair and expeditious resolution of this case. As put succinctly by the Prosecution,⁵

Holding an oral hearing for final appeals may also enhance the expedition of the proceedings. Once the parties focus their arguments on the crucial issues arising from their written filings, the final resolution of the case can proceed more efficiently. The day spent hearing a final appeal may even cut short the deliberations phase of the case. Indeed, “[o]ral argument gives the lawyer an opportunity to furnish the court with a magnifying power to the lens, to focus on how the relevant segments of the grand mosaic fit together.”

8. There is also no set deadline for requesting such a hearing, as reflected by the fact that the Appeals Chamber granted a Prosecution request to convene a hearing in the *Ngudjolo* case, which was filed a year after the last written submission was filed.⁶ Given that several requests for leave to reply are pending before the Appeals Chamber, it was reasonable for the Defence to allow some time to elapse in order to verify whether there would be further written submissions, before requesting oral argument on such submissions.

Relief sought

9. For the reasons set out above, the Defence for Mr. Bemba respectfully requests the Honourable Appeals Chamber to schedule an oral hearing, in connection with the Defence Appeal against the decision of Trial Chamber VII entitled “Decision Re-sentencing Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba and Mr Jean-Jacques Mangenda Kabongo”.⁷

⁵ ICC-01/04-02/12-193-Red, para. 16, citing Idisert, Ruggero J., *Winning on Appeal: Better Briefs and Oral Argument*, 2nd Ed., (NITA: 2003), p.30.

⁶ ICC-01/04-02/12-271-Corr, pp. 7-9.

⁷ ICC-01/05-01/13-2315.



Melinda Taylor
Counsel for Mr. Jean-Pierre Bemba

Dated this 2nd day of July 2019

The Hague, The Netherlands