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**PRE-TRIAL CHAMBER II**

**Before:** Judge Antoine Kesia-Mbe Mindua, Presiding Judge  
Judge Tomoko Akane  
Judge Rosario Salvatore Aitala

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

*Public*

**Request for leave to appeal the 'Decision on Mr Bemba's claim for compensation and damages'**

**Source:** Mr. Jean-Pierre Bemba Gombo

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

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## A. INTRODUCTION

1. Mr. Bemba (“the Claimant”) hereby seeks leave to appeal Pre-Trial Chamber II’s (“the Pre-Trial Chamber”) *Decision on Mr. Bemba’s claim for compensation and damages* of 18 May 2020.<sup>1</sup>

2. The Claim<sup>2</sup> was comprised of two parts; (i) a request for compensation pursuant to article 85(3) of the Rome Statute (“the Statute”), which the Pre-Trial Chamber called the First Component; and (ii) a claim for damages arising from the Court’s negligence and/or breach of fiduciary duty in failing to preserve the Claimant’s property and assets, which was termed the Second Component.<sup>3</sup> The Pre-Trial Chamber’s decisions arising from both components are appealable under article 82(1)(d) of the Statute.

3. As for the First Component, the Appeals Chamber has held that appeals from decisions under article 85(1) of the Statute fall within the ambit of article 82(1)(d), in reasoning that applies equally to claims under article 85(3).<sup>4</sup> As for the Second Component, the Appeals Chamber has previously held in litigation concerning the seizure of an accused’s assets, that “the proper avenue” to bring issues before it relating to the seizing of assets “is by requesting leave to appeal from the relevant first-instance Chamber pursuant to article 82(1)(d) of the Statute”.<sup>5</sup> It has also encouraged first instance Chambers to interpret the two prongs of article 82(1)(d) “broadly” if it considers this necessary to ensure that the application of the Statute

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<sup>1</sup> [ICC-01/05-01/08-3694](#), Decision on Mr Bemba’s claim for compensation and damages, 18 May 2020 (“Decision” or “Impugned Decision”).

<sup>2</sup> [ICC-01/05-01/08-3673-Conf](#), Mr Bemba’s claim for compensation and damages, 8 March 2019, with public Annexes A, B, C, D and E, and confidential Annexes F, G, H and I (“Claim”).

<sup>3</sup> [Decision](#), para. 17.

<sup>4</sup> *Bemba et al*, Judgment on Mr Mangenda’s appeal against the “Decision on request for compensation for unlawful detention” [ICC-01/05-01/13-1964](#), 8 August 2016, paras. 9-18; *Bemba et al.*, Decision on the “Requête en appel de la défense de monsieur Aimé Kilolo Musamba contre la décision de la Chambre de première instance VII du 17 novembre 2015.”, [ICC-01/05-01/13-1533](#), 23 December 2015, para. 15; *Bemba et al*, Decision on Defence request seeking leave to appeal the ‘Decision on request for compensation for unlawful detention’, [ICC-01/05-01/13-1893](#), paras. 21-22.

<sup>5</sup> [ICC-01/05-01/13-1533](#), para. 15.

is consistent with internationally recognized human rights, pursuant to article 21(3).<sup>6</sup> Leave to appeal has been granted in similar situations, where doing so was found to remove any doubt as to the correctness of the impugned decision, thereby providing “a safety net for the integrity of the proceedings”.<sup>7</sup>

4. The present request for leave to appeal meets the requirements of article 82(1)(d) of the Statute. The decision gives rise to 12 appealable issues. Each of the issues emanates from the decision concerned and does not merely represent an abstract question or a hypothetical concern.<sup>8</sup> None of the 12 issues identified represents a mere disagreement or conflict of opinion with the Pre-Trial Chamber, but is in each case “an identifiable subject or topic requiring a decision for its resolution”.<sup>9</sup> Leave to appeal is warranted, because the Impugned Decision significantly affects the outcome of the proceedings, and granting leave to appeal constitutes the only avenue of appellate review.<sup>10</sup>

## **B. PROCEDURAL BACKGROUND**

5. The Claimant was arrested on 23 May 2008.<sup>11</sup> He was detained from that date for over a decade.

6. In May 2008, the Claimant’s property and assets in Portugal, Belgium, and the Democratic Republic of Congo were seized and frozen on the basis of applications filed by the Office of the Prosecutor,<sup>12</sup> granted by Pre-Trial Chamber III.<sup>13</sup> These

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<sup>6</sup> [ICC-01/05-01/13-1533](#), para. 16.

<sup>7</sup> [ICC-01/05-01/13-1893](#), para. 22.

<sup>8</sup> [ICC-01/04-168](#), para. 9; [ICC-01/05-01/08-75](#), para. 11.

<sup>9</sup> [ICC-01/04-168](#), para. 9.

<sup>10</sup> [ICC-01/05-01/13-1893](#), para. 22.

<sup>11</sup> [ICC-01-05/01-08-1](#).

<sup>12</sup> [ICC-01/05-01/08-128-Conf-AnxA](#), para. 131.

<sup>13</sup> ICC-01/05-01/08-2-US-Exp (Mr. Bemba does not currently have access to this filing) cited in [ICC-01/05-01/08-37-Conf](#), fn. 2; [ICC-01/05-01/08-8](#); ICC-01/05-01/08-9-US-Exp (Mr. Bemba does not currently have access to this filing) cited in [ICC-01/05-01/08-37-Conf](#), fn. 4.

assets were frozen in order to be paid as reparations to victims in the Central African Republic in the event of a conviction.

7. The Claimant made repeated requests for the proper management of these frozen assets.<sup>14</sup> Between May 2008 and the present day, no steps have been taken to manage or preserve the value of the assets. No mortgages have been paid, nor have taxes, parking fees, or registration payments. Houses, cars and other physical property have disintegrated and deteriorated. The economic loss resulting from their mismanagement continues.

8. On 8 June 2018, the ICC Appeals Chamber acquitted the Claimant of all charges.<sup>15</sup>

9. On 22 October 2018, the Claimant notified the Presidency of his intention to file a claim for compensation, noting that in addition to compensation for his decade in prison, he would be seeking damages for the destruction of his personal property, in a claim that may also include submissions concerning “principles of agency law, trust law, fiduciary duties, and submissions including the desirability of third parties joining as interveners.”<sup>16</sup> The Claimant accordingly requested an extension of the page limit and time within which to file such a claim.<sup>17</sup>

10. On 30 October 2018, the Presidency designated Pre-Trial Chamber II to consider the Claimant’s request for an extension of the page limit and time and any subsequent request for compensation.<sup>18</sup>

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<sup>14</sup> See, for example, [ICC-01/05-01/08-1087-Conf-Exp-Anx3](#); [ICC-01/05-01/08-1563-Conf-Exp-AnxB](#); [T-15-CONF-EXP](#), p. 25, line 16 – p. 28, line 5.

<sup>15</sup> [ICC-01/05-01/08-3636-Conf](#).

<sup>16</sup> [ICC-01/05-01/08-3661-Conf](#), para 26.

<sup>17</sup> [ICC-01/05-01/08-3661-Conf](#).

<sup>18</sup> [ICC-01/05-01/08-3662-Conf-Exp](#).

11. On 13 November 2018, with reference to the Claimant's submissions as to "the complexity of the case, the duration of the proceedings regarding Mr. Bemba's property which span a decade, and the novelty of the litigation", the Pre-Trial Chamber considered it "appropriate to guarantee the rights of Mr Bemba to the highest possible extent" and granted the extensions sought.<sup>19</sup>

12. On 8 March 2019, the Claim was filed.

13. On 14 March 2019, the Pre-Trial Chamber issued its *Order on the conduct of the proceedings related to 'Mr Bemba's claim for compensation and damages'*,<sup>20</sup> in which it asked the Registry to submit its observations on the Claim, noting that "the Defence submissions relate to the functions of the Registry".<sup>21</sup> It also convened an oral hearing "in order for the parties to present orally their observations to the Chamber on the Claim,"<sup>22</sup> to which it also invited the Registry.

14. On 9 May 2019, the Pre-Trial Chamber held an oral hearing. The submissions centred on the question of damages arising from the destruction of the Claimant's property and assets.<sup>23</sup> The Pre-Trial Chamber asked questions and solicited further information from the parties on the question of damages arising from the destruction of the Claimant's assets and property.<sup>24</sup> The Registry representatives made extensive submissions which were adverse to the Claimant's position.<sup>25</sup>

15. During the 9 May 2019 oral hearing, the Presiding Judge of the Pre-Trial Chamber praised the parties' written submissions, including the Claim,

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<sup>19</sup> [ICC-01/05-01/08-3664](#).

<sup>20</sup> [ICC-01/05-01/08-3675](#).

<sup>21</sup> [ICC-01/05-01/08-3675](#), para. 8.

<sup>22</sup> [ICC-01/05-01/08-3675](#), para. 7.

<sup>23</sup> [ICC-01/05-01/08-T-376-ENG ET WT](#), p. 4, lines 4-9; p. 5, line 19 – p. 15, line 7; p.24, line 2-22; p. 27, line 25 – p. 29, line 17; p. 32, line 1 – p. 33, line 5; p. 34, line 1 – p. 37, line 19; p. 38, line 10 – p. 40, line 16.

<sup>24</sup> [ICC-01/05-01/08-T-376-ENG ET WT](#), p. 27, line 25 – p. 28, line 7; p. 30, line 22 – p. 31, line 5; p. 33, lines 8-11.

<sup>25</sup> [ICC-01/05-01/08-T-376-ENG ET WT](#), p. 34, line 1 – p. 37, line 19.

characterising them as “clear”, “quite exhaustive” and the pleadings themselves “stellar”, despite the “extremely complicated and difficult” nature of the matter.<sup>26</sup>

16. Over 12 months later, on 18 May 2020, Pre-Trial Chamber II rendered the Impugned Decision.

## C. SUBMISSIONS

### 1. The Decision is appealable under Article 82 of the Statute

17. As noted above, the Claim was comprised of two parts. The First Component was a request for compensation pursuant to article 85(3) of the Statute on the basis that the Main Case constituted a grave and manifest miscarriage of justice. The Second Component was a claim for damages arising from the Court’s negligence and/or breach of fiduciary duty in failing to preserve the Claimant’s property and assets. The Pre-Trial Chamber’s decisions arising from both components are appealable under article 82(1)(d) of the Statute.

#### *a) Appealability of the First Component*

18. Although there is no direct right of appeal for decisions on compensation issued pursuant to article 85(1) of the Statute,<sup>27</sup> they can be appealed if they meet the requirements of article 82(1)(d). The Appeals Chamber has previously entertained appeals from decisions under article 85(1) of the Statute on the basis that compensation proceedings can be viewed as stand-alone or ancillary proceedings, separate from the prosecution of accused before the Court, and “this

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<sup>26</sup> [ICC-01/05-01/08-T-376-ENG ET WT](#), p. 3, line 17-18: “Personally, I think that the filings are excellent, both in terms of content and substance”; p. 40, lines 20-23: “I think we have all noticed that this is an extremely complicated and difficult matter. I would like to thank everyone for their filings which were very clear, quite exhaustive, and I would also like to thank you for your pleadings which have been stellar.” See *contra*, [Decision](#), paras. 16, 23.

<sup>27</sup> [ICC-01/05-01/13-1893](#), para. 13; Situation in the Democratic Republic of the Congo, Appeals Chamber, Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal, 13 July 2006, [ICC-01/04-168](#), paras. 35 and 39.

does not justify the parties of the possibility of appellate intervention throughout the conduct of such proceedings”.<sup>28</sup>

19. The Appeals Chamber reasoned that compensation proceedings under article 85(1) involve a two-step process that requires at least two distinct decisions on the part of the first instance Chamber. In the case of article 85(1), these were (i) a decision on the unlawfulness of the arrest or detention under article 85(1); and (ii) a decision on the request for compensation which concludes or brings to an end the compensation proceedings. As such, the Appeals Chamber held that the preliminary decision on the unlawfulness of the arrest or detention “represents only the first decision in a two-step decision-making process” and for that reason “it may be considered an interlocutory decision within the meaning of article 82(1)(d) of the Statute”. In the Appeals Chamber’s view, this was the case even if the decision has the effect of denying the right to receiving compensation and thereby bringing the proceedings to an end.<sup>29</sup>

20. Compensation proceedings under article 85(3) involve the same two-step process that requires at least two distinct decisions on the part of the first instance Chamber. In the case of article 85(3), these are (i) a decision on whether there has been a grave and manifest miscarriage of justice; and (ii) a decision on the request for compensation which concludes or brings to an end the compensation proceedings. The decision on whether a defendant has been the victim of a grave and manifest miscarriage of justice is the first of a two-step process, and as such “may be considered an interlocutory decision within the meaning of article 82(1)(d) of the Statute”.<sup>30</sup> As such the decision arising from the First Component of the Claim is appealable under article 82(1)(d).

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<sup>28</sup> [ICC-01/05-01/13-1964](#), para. 16.

<sup>29</sup> [ICC-01/05-01/13-1964](#), para. 17.

<sup>30</sup> [ICC-01/05-01/13-1964](#), para. 17.



***b) Appealability of the “Second Component”***

21. The decision arising from the Second Component also falls within the scope of appealable decisions under article 82(1)(d). In litigation concerning the seizure of an accused’s assets in the *Bemba et al* case, the Appeals Chamber held that it could not entertain a request for appeal as of right, but that “the proper avenue” to bring issues before it relating to the seizing of assets “is by requesting leave to appeal from the relevant first-instance Chamber pursuant to article 82(1)(d) of the Statute”.<sup>31</sup> In the same decision, the Appeals Chamber stressed that where human rights considerations were at issue, a first instance Chamber should interpret the two prongs of article 82(1)(d) “broadly” if it considers this necessary to ensure that the application of the Statute is consistent with internationally recognized human rights, pursuant to article 21(3).<sup>32</sup>

22. This is consistent with previous Appeals Chamber rulings, whereby a first instance Chamber should have regard to the “crucial” word in the second prong of article 82(1)(d), being “advance”, meaning to “move forward”.<sup>33</sup> In light of the finality of the Impugned Decision, and the fact that there would otherwise be no opportunity to “advance the proceedings” at hand apart from granting leave to appeal under article 82(1)(d) of the Statute, this would accordingly “constitute an appropriate avenue to remove any doubt as to the correctness of the Impugned Decision and would provide a ‘safety net for the integrity of the proceedings’”<sup>34</sup>

23. The Pre-Trial Chamber’s rejection of the Second Component of the Claim, constitutes a final determination of the question of whether the Claimant’s fundamental human rights have been violated by the seizure and destruction of his property in a manner inconsistent with international and domestic practice regarding the treatment of seized assets, and the obligation to maintain their

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<sup>31</sup> [ICC-01/05-01/13-1533](#), para. 15.

<sup>32</sup> [ICC-01/05-01/13-1533](#), para. 16.

<sup>33</sup> [ICC-01/04-168](#), para. 15.

<sup>34</sup> [ICC-01/05-01/13-1893](#), para. 21; [ICC-01/04-168](#), para. 15.

value.<sup>35</sup> Through the Second Component, the Claimant claimed a violation of his right to own property of which shall not be arbitrarily deprived.<sup>36</sup> An avenue of appeal ought to stem therefrom, and would be consistent with the Appeals Chamber's concern to ensure that article 82(1)(d) is interpreted "broadly" in such circumstances.<sup>37</sup> This is so, according to the Appeals Chamber, "even if such a decision has [...] the effect of denying the right to receive compensation and thereby brings the compensation proceedings to an end."<sup>38</sup> As such, the fact that the Pre-Trial Chamber refused the claim for damages on the basis of a lack of jurisdiction to decide it<sup>39</sup> does not render the decision unappealable. By contrast, this mitigates in favour of leave to appeal being granted, in providing a 'safety net for the integrity of the proceedings'"<sup>40</sup>

## **2. Leave to appeal is justified pursuant to article 82(1)(d)**

24. A decision is subject to appeal, pursuant to article 82(1)(d) where it:

involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the [...] Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

This article confers no discretion to deny leave when the conditions therein are satisfied.

25. An appealable issue is one that emanates from the ruling of the Impugned Decision concerned and does not merely represent an abstract question or a hypothetical concern.<sup>41</sup> An appealable issue does not represent a mere disagreement

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<sup>35</sup> See e.g. [Claim](#), paras. 133-138.

<sup>36</sup> [Claim](#), para. 155.

<sup>37</sup> [ICC-01/05-01/13-1533](#), para. 16.

<sup>38</sup> [ICC-01/05-01/13-1964](#), para. 17.

<sup>39</sup> [Decision](#), para. 61.

<sup>40</sup> [ICC-01/05-01/13-1893](#), para. 21; [ICC-01/04-168](#), para. 15.

<sup>41</sup> [ICC-01/04-168](#), para. 9; [ICC-01/05-01/08-75](#), para. 11.

or conflict of opinion with the Pre-Trial Chamber, but must be “an identifiable subject or topic requiring a decision for its resolution”.<sup>42</sup>

26. The Impugned Decision gives rise to the following twelve issues which satisfy these requirements:

- i. Whether an Article 85(3) claim can only be supported by matters which have never been raised at trial or on appeal.<sup>43</sup>
- ii. The proper definition of when a matter is “settled” by a Chamber.
- iii. Whether Articles 57, 93, 96 and 97 of the Statute and Rule 176 of the Rules exclude or limit the Court’s liability for tortious acts.
- iv. Whether Articles 57, 93, 96 and 97 of the Statute and Rule 176 of the Rules confer liability on cooperating States when they carry out requests for assistance issued by the ICC.
- v. Whether the Pre-Trial Chamber erred in law in seeking the views of the Registry,<sup>44</sup> which resulted in submissions and evidence adverse to the Claimant on which it ultimately relied,<sup>45</sup> when it had “no jurisdiction over the Second Component of the Claim”.<sup>46</sup>
- vi. Whether the Pre-Trial Chamber erred in fact and in law by concluding that statutory provisions seem to place responsibility for the proper execution of

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<sup>42</sup> [ICC-01/04-168](#), para. 9.

<sup>43</sup> [Decision](#), paras. 23, 25-31.

<sup>44</sup> [ICC-01/05-01/08-3675](#), para. 8. *See also* [ICC-01/05-01/08-3681-Conf-Exp-Red2](#), [ICC-01/05-01/08-3689-Conf-Exp-Red2](#) and [ICC-01/05-01/08-T-376-ENG ET WT](#), p. 34, line 1 – p. 37, line 19.

<sup>45</sup> [Decision](#), paras. 55, 58.

<sup>46</sup> [Decision](#), para. 61.

a cooperation request primarily with the requested States,<sup>47</sup> without considering the domestic and international practice raised by the Claimant,<sup>48</sup> or evidence of the Court instructing the requesting States directly in relation to the cooperation requests and their resultant deference to the Court's instructions.<sup>49</sup>

- vii. Whether there is a distinction in law between the ICC's liability for consequential loss as the initiator of injunctive orders, and the Registry's internal responsibilities.<sup>50</sup>
- viii. Whether the limited role of the Registry of a court to act as channel of communication is determinative of the question of that court's liability as a whole for tortious acts.<sup>51</sup>
- ix. Whether a decision determining a claim for damages requires, as a condition precedent, an express mandate from the Presidency of the ICC.
- x. Whether the Pre-Trial Chamber erred in law in finding it had no jurisdiction to determine the claim for damages without seeking clarification from the Presidency as to the limits of its mandate.<sup>52</sup>
- xi. Whether a decision that a first instance Chamber has no jurisdiction to determine a claim for damages, without inviting submissions from the parties on this question, violates the rules of natural justice.<sup>53</sup>

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<sup>47</sup> [Decision](#), para. 57.

<sup>48</sup> [Claim](#), paras. 139-142.

<sup>49</sup> See [Claim](#), paras. 123, 126-132.

<sup>50</sup> [Decision](#), paras. 56-58.

<sup>51</sup> *Ibid.*

<sup>52</sup> [Decision](#), paras. 60-61.

<sup>53</sup> *Ibid.*

- xii. Whether a Pre-Trial Chamber can properly be understood as being impartial towards a Claimant where it fails to accord due respect to a Claimant's acquittal by the Appeals Chamber;<sup>54</sup> and accords little or no weight to the Claimant's legal and factual submissions, relying instead on unsubstantiated assertions from the Registry.<sup>55</sup>

27. The first and second issues are appealable. Both arise directly from the Impugned Decision and are not abstract questions or hypothetical concerns. The first relates to the scope of the evidence a Claimant can offer in support an allegation of grave and manifest miscarriage of justice; an identifiable topic requiring a decision for its resolution. As is the question of when a matter is "settled" by a Chamber, being a term for which no definition is offered in the Impugned Decision, but the employment of which served as a basis for excluding all of the evidence raised in support of the Article 85(3) claim.

28. Issues three and four are also appealable. The proper scope and application of the Court's statutory regime, relied upon by the Chamber to dismiss the Claim, is an identifiable subject that arises directly from Impugned Decision, and a resolution of which is essential to the judicial disposition in question. Neither are abstract questions or hypothetical concerns; they are concrete identifiable topics which require a resolution.

29. Issue five concerns the Pre-Trial Chamber's opening of the evidential and briefing record of the Second Component of this Claim to the Registry, who took a position directly adverse to that of the Claimant, when the Pre-Trial Chamber knew that apparently it had no jurisdiction to decide it. This raises issues not only of fairness, but also the wasting of Court resources through soliciting both written and oral submissions that were, in the view of the Pre-Trial Chamber, entirely unnecessary. This is an identifiable topic which addresses a question of law that is

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<sup>54</sup> [Decision](#), paras. 4, 26, 28.

<sup>55</sup> [Decision](#), paras. 55, 57-58.

essential for the determination of matters relevant to the dismissal of the Claim. It is not a hypothetical or abstract question but arises directly from the Impugned Decision.

30. The sixth issue is also appealable, given that it relates directly to the basis of the Impugned Decision, and the correctness in law of directing responsibility towards the States without consideration of any of the pleadings demonstrating the opposite. As such, it is a concrete question arising directly from the Impugned Decision, rather than being an abstract question or hypothetical concern, and requires a decision for its resolution.

31. The seventh and eight issues concern a significant premise on which the Pre-Trial Chamber relied, namely that the Court's responsibility for the issuance of a request for cooperation does not implicate either the Office of the Prosecutor that made the request, or the Chamber that granted it, but only the Registry whose mandate was to transmit it. Whether a distinction in law exists on this basis is an issue the resolution of which is essential for the determination of matters arising in the judicial cause under examination. The issues emanate directly from the Impugned Decision and are neither abstract nor hypothetical.

32. The ninth, tenth and eleventh issues go to the heart of the Second Component of the Impugned Decision, namely the Pre-Trial Chamber's finding that it had no jurisdiction to decide this aspect of the Claim. The Claimant is not merely disagreeing with this decision, but pointing to three identifiable issues arising from it which require a decision for their resolution; whether a decision on damages requires as a condition precedent an express mandate from the Presidency; whether a decision of this kind should have been preceded by a clarification from the Presidency which set the mandate in question; and whether submissions from the parties should have been sought in accordance with the rules of natural justice.

These are neither abstract questions nor hypothetical concerns, but arise directly from the Impugned Decision

33. The twelfth issue arises from the Pre-Trial Chamber's approach to the Claimant's acquittal by the Appeals Chamber, including characterising it as being based on a standard of review which was "far from being uncontroversial";<sup>56</sup> referring to and citing at length from the minority opinion,<sup>57</sup> and referring to the Claimant being "acquitted by Majority",<sup>58</sup> despite this departing from the practice of referring to defendants as "convicted" or "acquitted". In these circumstances, whether the Pre-Trial Chamber can properly understood as being impartial towards the Claimant is an issue which arises directly from the Impugned Decision. It is neither abstract nor hypothetical and comprises an identifiable subject which requires a resolution by the Appeals Chamber.

34. The Impugned Decision addresses a plethora of legal issues, some of which give rise to the identifiable subjects or topics set out above, which require a resolution. While the Claimant disagrees with other aspects of the Impugned Decision, he has limited his request for appeal to those issues that squarely fall within the scope of article 82(1)(d) and has not engaged on the merits or correctness of the Decision.

### **3. The Decision significantly affects the outcome of the proceedings, and leave to appeal constitutes the only avenue of appellate review**

35. The Appeals Chamber has held that the parties should not be deprived of appellate intervention during proceedings which are ancillary and separate from the criminal prosecution of an accused before the Court.<sup>59</sup> In line with this approach, the relevant proceedings at issue are those arising from the Claim.

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<sup>56</sup> [Decision](#), para. 28.

<sup>57</sup> [Decision](#), para. 28.

<sup>58</sup> [Decision](#), paras. 4, 26, 28.

<sup>59</sup> [ICC-01/05-01/13-1964](#), para. 15.

36. The Impugned Decision, by rejecting the Claimant's request for compensation under article 85(3) of the Statute, and his claim for damages arising from the negligent mismanagement of his property and assets, necessarily affects the outcome of the proceedings, by essentially "denying Mr. Bemba's right to receive compensation and thereby bring[ing] the compensation proceedings to an end".<sup>60</sup> In this way, a decision by the Appeals Chamber would materially advance the proceedings, meaning "move [them] forward",<sup>61</sup> and indeed would constitute the only means by which this could occur. The Impugned Decision will not be revisited in the context of other proceedings, with the ICC case against the Claimant having ended with his June 2018 acquittal, and is therefore fully dispositive of the litigation.

37. Moreover, the Impugned Decision is of precisely the character which warrants a "broad" interpretation of the two limbs of article 82(1)(d), in order to ensure compliance with the requirements of article 21(3) of the Statute. In the plainest terms, the Claimant lost a decade of his life. His property and assets, the majority of which remain frozen, have been decimated in value, despite his consistent pleas that the Registry take steps to ensure their value was maintained, as required by law. The Impugned Decision therefore directly addresses the fundamental human rights to a fair trial, an expeditious trial, and to own property. Appellate review is warranted, particularly given the novelty of the many complex legal issues raised by the Claim, and the Impugned Decision.

38. The Pre-Trial Chamber has previously held that in relation to this litigation, it was "appropriate to guarantee the rights of Mr Bemba to the highest possible

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<sup>60</sup> [ICC-01/05-01/13-1964](#), para. 17.

<sup>61</sup> [ICC-01/04-168](#), para. 15.

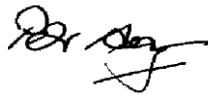


extent”.<sup>62</sup> Allowing appellate review of this significant decision would be consistent with this aim.

#### D. CONCLUSION

39. Given the above, including the finality of the Impugned Decision, the importance of the interests at issue, and the satisfaction of the conditions under article 82(1)(d) of the Statute, the Claimant submits that leave to appeal the Impugned Decision should be granted, with the Pre-Trial Chamber certifying the 12 appealable issues identified herein for appeal. This would constitute “an appropriate avenue to remove any doubt” as to the correctness of the Impugned Decision and would provide a “safety net for the integrity of the proceedings”.<sup>63</sup>

The whole respectfully submitted.



Peter Haynes QC

Lead Counsel for Mr. Jean-Pierre Bemba

Done at The Hague, The Netherlands, 25 May 2020

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<sup>62</sup> [ICC-01/05-01/08-3664](#), para. 6.

<sup>63</sup> [ICC-01/05-01/13-1893](#), para. 21; [ICC-01/04-168](#), para. 15.