

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-02/05-01/20**

Date: **20 August 2020**

THE APPEALS CHAMBER

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

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF
THE PROSECUTOR v.
ALI MUHAMMAD ALI ABD-AL-RAHMAN (“ALI KUSHAYB”)**

Public

**Prosecution’s Request to dismiss *in limine* the
“Mémoire d’appel de la décision ICC-01/06-01/20-115”**

Source: Office of the Prosecutor

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

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**Victims Participation and Reparations
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Other

I. INTRODUCTION

1. On 14 August 2020 Mr Abd-Al-Rahman filed his Appeal Brief against the decision of the Single Judge of Pre-Trial Chamber II rejecting his request for interim release.¹ In so doing, he failed to comply with regulation 64(5) of the Regulations of the Court (“RoC”) by not filing the required notice of appeal. He further circumvented the Appeals Chamber’s discretionary power to decide on the conduct of the proceedings pursuant to regulation 64(6) of the RoC. Therefore, the Appeals Chamber should dismiss *in limine* the Appeal Brief. In the alternative, should the Appeals Chamber decide to accept the Appeal Brief and conduct the appeal proceedings in writing, it should set out a deadline for the Prosecution to file a written response to the Appeal Brief.

II. SUBMISSIONS

2. On 14 August 2020, Single Judge Rosario Salvatore Aitala (“Single Judge”), acting for Pre-Trial Chamber II (“Chamber”), issued his Decision rejecting Mr Abd-Al-Rahman request for interim release.² On 19 August 2020, instead of filing a notice of appeal, Mr Abd-Al-Rahman filed his Appeal Brief seeking the reversal of the Decision and his release.³

3. However, for appeals under article 82(1)(b), rule 154(1) and regulation 64(5) of the RoC require the appellant to file a notice of appeal within five days from the notification of the decision. Within two days of the filing of the notice of appeal, the Appeals Chamber will issue directions for the conduct of the proceedings under regulation 64(6), which may include “[s]cheduling a hearing to be held no later than 10 days from the notification of the notice of appeal”⁴ or “proceeding by way of written submissions only and setting a timetable therefor”.⁵

4. The filing of a notice of appeal under regulation 64(5)—introduced by amendment of 12 July 2017—is not a mere formality left to the discretion of the parties. Rather, it is a mandatory requirement which allows the Appeals Chamber to exercise its discretion in

¹ ICC-02/05-01/20-120 (“Appeal Brief”).

² ICC-02/05-01/20-115 (“[Decision](#)”).

³ Appeal Brief.

⁴ RoC, regulation 64(6)(a).

⁵ RoC, regulation 64(6)(b).

governing the conduct of the proceedings. By failing to file a notice of appeal, and submitting the Appeal Brief instead, Mr Abd-Al-Rahman has effectively impaired the Appeals Chamber's ability to determine the conduct of the proceedings—including following a different course of action such as scheduling a hearing with no written submissions.

5. In the *Gbagbo* case, the Appeals Chamber considered that “a central purpose of the [July 2017] amendment of the regulations was to expedite appeals proceedings in respect of appeals against decision on interim release”⁶ and noted that “[t]o allow the Appeals Chamber to give these directions, and, in particular, determine whether to proceed by way of a hearing or by way of written submissions only, it is essential that the appellant provide in the notice of appeal the information required under regulation 64 (5) (e) of the Regulations of the Court, as amended”.⁷ The Appeals Chamber further recalled that “[r]egulation 29 of the Regulations of the Court provides that ‘[i]n the event of non-compliance by a participant with the provisions of any regulation [...] the Chamber may issue any order that is deemed necessary in the interests of justice’”.⁸

6. The Appeals Chamber should dismiss *in limine* Mr Abd-Al-Rahman's Appeal Brief. If Mr Abd-Al-Rahman still wishes to appeal the Decision he should file a notice of appeal under regulation 64(5) within the five-day deadline set out in rule 154(1). In the alternative, should the Appeals Chamber decide to accept the Appeal Brief and to conduct the appeal proceedings in writing, it should set out a deadline for the Prosecution to respond to the Appeal Brief. In the current circumstances (with the ongoing COVID-19 pandemic), the Prosecution agrees that the appeal proceedings can be expeditiously conducted in writing. Since Mr Abd-Al-Rahman has already filed his arguments on the merits of the appeal, there would be no need to receive further submissions from him.

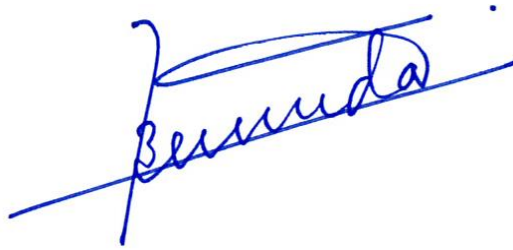
⁶ ICC-02/11-01/15-1047 (“[Gbagbo NoA Decision](#)”), para. 6.

⁷ [Gbagbo NoA Decision](#), para.6.

⁸ [Gbagbo NoA Decision](#), para.6.

III. Conclusion

7. For the reasons above, the Prosecution respectfully requests the Appeals Chamber to dismiss *in limine* the Appeal Brief. In the alternative, the Appeals Chamber should set a deadline for the Prosecution to file a written response to the Appeal Brief.



Fatou Bensouda, Prosecutor

Dated this 20th day of August 2020
At The Hague, The Netherlands