



Original: English

No. ICC-02/05-01/20 OA2

Date: 21 August 2020

THE APPEALS CHAMBER

Before:

**Judge Piotr Hofmański, Presiding
Judge Chile Eboe-Osuji
Judge Howard Morrison
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 document

**Decision on the Prosecutor's request to dismiss appeal brief *in limine*
and
Directions on the conduct of the appeal proceedings**

Directions 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 the Defence
Mr Cyril Laucci

REGISTRY

Registrar
Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Ali Muhammad Ali Abd-Al-Rahman against the decision of Pre-Trial Chamber II entitled ‘Decision on the Defence Request for Interim Release’ of 14 August 2020 (ICC-02/05-01/20-115),

Having before it the ‘Prosecution’s Request to dismiss *in limine* the “Mémoire d’appel de la décision ICC-01/06-01/20-115”’ of 20 August 2020 (ICC-02/05-01/20-122),

Pursuant to regulation 64(6) of the Regulations of the Court,

Issues the following

DECISION AND DIRECTIONS

- 1) The Prosecutor’s request to dismiss *in limine* the ‘Mémoire d’appel de la décision ICC-01/06-01/20-115 en vertu de l’Article 82-1-b du Statut de Rome’ is rejected.
- 2) The Appeals Chamber decides to proceed in this appeal by way of written submissions only.
- 3) The Prosecutor may respond to the ‘Mémoire d’appel de la décision ICC-01/06-01/20-115 en vertu de l’Article 82-1-b du Statut de Rome’ by 16h00 on 31 August 2020.

REASONS

1. On 14 August 2020, Pre-Trial Chamber II issued the ‘Decision on the Defence Request for Interim Release’¹ (the ‘Impugned Decision’) rejecting a request by Mr Ali Muhammad Ali Abd-Al-Rahman (‘Mr Abd-Al-Rahman’) for interim release pending trial.

2. On 19 August 2020, Mr Abd-Al-Rahman filed the ‘Mémoire d’appel de la décision ICC-01/06-01/20-115 en vertu de l’Article 82-1-b du Statut de Rome’² (the ‘Appeal Brief’).

¹ [ICC-02/05-01/20-115](#).

² ICC-02/05-01/20-120-Corr.

3. On 20 August 2020, the Prosecutor filed the ‘Prosecution’s Request to dismiss *in limine* the “Mémoire d’appel de la décision ICC-01/06-01/20-115”³ (the ‘Request’), requesting the Appeals Chamber, *inter alia*, to dismiss the Appeal Brief *in limine*. In support of this request, the Prosecutor notes that, instead of filing a notice of appeal and then waiting for the Appeals Chamber’s directions under regulation 64(5) and (6) of the Regulations of the Court, Mr Abd-Al-Rahman filed immediately an appeal brief;⁴ the Prosecutor submits that this impaired the Appeals Chamber’s ability to determine the conduct of the proceedings.⁵ She recalls the Appeals Chamber’s decision in the case of *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, where the Appeals Chamber dismissed *in limine* a notice of appeal that did not comply with the requirements of regulation 64(5) of the Regulations of the Court.⁶

4. On 21 August 2020, Mr Abd-Al-Rahman filed the ‘Acte d’appel de la décision ICC-02/05-01/20-115 en vertu de l’Article 82-1-b du Statut de Rome et de la norme 65-5 du Règlement de la Cour’, in which he submits that he proceeded to file the Appeal Brief immediately for reasons of expeditiousness and that there is no basis for dismissing that brief *in limine*.⁷

5. The Appeals Chamber recalls that pursuant to regulation 64(5) of the Regulations of the Court (the ‘Regulations’), the first step in an appeal brought under article 82(1)(b) of the Statute against a decision granting or denying release of a person being investigated or prosecuted is the filing of a notice of appeal, which must contain certain information as set out in the regulation. The Appeals Chamber will then, pursuant to regulation 64(6) of the Regulations, give directions for the conduct of the proceedings, which may include the holding of a hearing or proceeding by way of written submissions only.

6. In the present case, Mr Abd-Al-Rahman did not initially file a notice of appeal in terms of regulation 64(5) of the Regulations, but a document he refers to as ‘mémoire d’appel’ (‘appeal brief’), which contains not only the grounds of appeal that

³ ICC-02/05-01/20-122.

⁴ Request, para. 2.

⁵ Request, para. 4.

⁶ Request, para. 5, referring to Appeals Chamber, *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, [Decision on Mr Laurent Gbagbo’s Notice of Appeal](#), 5 October 2017, ICC-02/11-01/15-1047, para. 6.

⁷ ICC-02/05-01/20-125.

he raises against the Impugned Decision, but also the legal and/or factual reasons in support thereof.

7. Nevertheless, in the specific circumstances of the case and in view of the subsequent filing of a notice of appeal within the prescribed time limit, the Appeals Chamber does not consider it necessary in the interest of justice to dismiss the Appeal Brief *in limine*. The Appeals Chamber notes that, unlike the situation in the case of *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé* to which the Prosecutor refers, Mr Abd-Al-Rahman's Appeal Brief contains all the information required under regulation 64(5) of the Regulations, notably the grounds of appeal. Therefore, the Appeals Chamber is not prevented from exercising its discretion as to how to conduct the proceedings in this case. The Appeals Chamber rejects the Prosecutor's request to dismiss the Appeal Brief *in limine*.

8. In the specific circumstances of the case, and also in view of the ongoing COVID-19 pandemic, the Appeals Chamber considers that it is most appropriate to proceed with the appeal by way of written submissions only (regulation 64(6)(b) of the Regulations). As the Appeal Brief already contains the legal and/or factual reasons in support of Mr Abd-Al-Rahman's grounds of appeal, the Appeals Chamber considers that no further submissions from him are required. It therefore sets a time limit for the Prosecutor's written response to the Appeal Brief, namely 16h00 on 31 August 2020.

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



Judge Piotr Hofmański
Presiding

Dated this 21st day of August 2020

At The Hague, The Netherlands