



Original: English

**No. ICC-02/05-01/20 OA
Date: 25 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 request for suspensive effect

Decision 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 Defence request under article 67(1)(f) of the Rome Statute’ of 10 July 2020 (ICC-02/05-01/20-94),

Having before it the ‘Mémoire d’appel de la décision ICC-02/05-01/20-94’ of 13 August 2020 (ICC-02/05-01/20-111), in which Mr Abd-Al-Rahman makes a request under article 82(3) of the Statute and rule 156(5) of the Rules of Procedure and Evidence,

Pursuant to article 82(3) of the Statute,

Renders the following

DECISION

The request for suspensive effect is rejected.

REASONS

I. PROCEDURAL HISTORY

1. On 10 July 2020, the Single Judge on behalf of Pre-Trial Chamber II (the ‘Pre-Trial Chamber’) rejected Mr Abd-Al-Rahman’s request for an order to the Registry ‘to provide the Defence team with the interpretation and translation services that are necessary for the preparation of the suspect’s defence and for his communication with the Defence team [...] pursuant to article 67(1)(f) of the Statute’ (the ‘Impugned Decision’).¹

2. On 13 August 2020, having been granted leave to appeal under article 82(1)(d) of the Statute,² Mr Abd-Al-Rahman filed his appeal against the Impugned Decision and requested that the Registry be ordered on an interim basis, under article 82(3) of the Statute and rule 156(5) of the Rules of Procedure and Evidence (the ‘Rules’), to

¹ [Decision on the Defence request under article 67\(1\)\(f\) of the Rome Statute](#), ICC-02/05-01/20-94, para. 6; p. 9, referring to [Requête en vertu de l’Article 67-1-f](#), 25 June 2020, ICC-02/05-01/20-7 (the ‘Request’).

² [Decision on the Defence Request for Leave to Appeal the ‘Decision on Defence Request under article 67\(1\)\(f\) of the Rome Statute’](#), 7 August 2020, ICC-02/05-01/20-109.

comply with regulation 97(1) of the Regulations of the Court pending the resolution of the merits of the appeal (the ‘Request for Suspensive Effect’).³

3. On 19 August 2020, the Prosecutor responded to the Request for Suspensive Effect, arguing that suspending the effect of the Impugned Decision will not yield the result that Mr Abd-Al-Rahman wishes to achieve, and that, in any event, he has failed to show that implementing the Impugned Decision would lead to irreversible consequences or that the legal framework obliges the Registrar to provide interpretation services during the pending appeal.⁴

II. MERITS

4. Article 82(3) of the Statute provides:

An appeal shall not of itself have suspensive effect unless the Appeals Chamber so orders, upon request, in accordance with the Rules of Procedure and Evidence.

5. The Appeals Chamber has previously stated that

‘[s]uspension involves the non-enforcement of a decision, the subject of an appeal’. Suspensive effect thereby maintains the position as it was prior to the issuing of the Impugned Decision’.⁵

6. The Appeals Chamber recalls that the decision on a request for suspensive effect is within the discretion of the Appeals Chamber.⁶ When examining such a request, the Appeals Chamber ‘will consider the specific circumstances of the case and the factors it considers relevant for the exercise of its discretion under these circumstances’.⁷ The Appeals Chamber has summarised the circumstances in which it has previously exercised its discretion to grant suspensive effect as follows:

³ Mémoire d’appel de la décision ICC-02/05-01/20-94, ICC-02/05-01/20-111, para. 41.

⁴ Prosecution response to the request for suspensive effect, ICC-02/05-01/20-121, paras 6, 7, 9.

⁵ *Prosecutor v. Mathieu Ngudjolo Chui*, Decision on the request of the Prosecutor of 19 December 2012 for suspensive effect, 20 December 2012, ICC-01/04-02/12-12, para. 17; *Prosecutor v. Joseph Kony et al.*, [Decision on the Prosecutor’s “Application for Appeals Chamber to Give Suspensive Effect to Prosecutor’s Application for Extraordinary Review”](#), 13 July 2006, ICC-02/04/01/5-92, para. 6.

⁶ *See Prosecutor v. Jean-Pierre Bemba Gombo*, [“Decision on the Request of the Prosecutor for Suspensive Effect”](#), 3 September 2009, ICC-01/05-01/08-499 (OA 2), para. 11.

⁷ *Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, [“Decision on the Prosecutor’s urgent request for suspensive effect of the “Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido” of 21 October 2014”](#), 22 October 2014, ICC-01/05-01/13-718 (OA 9), para. 5, referring to previous jurisprudence.

In past decisions, the Appeals Chamber, when deciding on requests for suspensive effect, has considered whether the implementation of the decision under appeal (i) “would create an irreversible situation that could not be corrected, even if the Appeals Chamber eventually were to find in favour of the appellant”, (ii) would lead to consequences that “would be very difficult to correct and may be irreversible”, or (iii) “could potentially defeat the purpose of the appeal”.⁸ [Footnotes omitted]

7. The Appeals Chamber considers that the Request for Suspensive Effect in the present case cannot be granted for two reasons.

8. First, the position before the issuance of the Impugned Decision was that the Principal Counsel had been informed by the Registrar that interpretation services would not be provided to facilitate interviews with his client Mr Abd-Al-Rahman from 26 June 2020.⁹ This triggered the application before the Pre-Trial Chamber pursuant to article 67(1)(f) of the Statute, in which Mr Abd-Al-Rahman requested that the Registrar be ordered to provide the Defence team with the interpretation and translation services deemed necessary.¹⁰ Therefore, prior to the issuance of the Impugned Decision, Mr Abd-Al-Rahman was not benefitting from the interpretation and translation services sought. In the Impugned Decision, the Pre-Trial Chamber rejected the request for provision of those services. As a result of that decision Mr Abd-Al-Rahman’s situation has not changed and if the effect of the Impugned Decision is suspended, Mr Abd-Al-Rahman’s position will remain unchanged.

9. Second, even assuming that the interim relief requested is available in the circumstances, despite the obstacles just outlined, the Appeals Chamber is not persuaded that implementation of the Impugned Decision ‘would create an irreversible situation that could not be corrected’, ‘would lead to consequences that “would be very difficult to correct”’, or ‘could potentially defeat the purpose of the appeal’. In this regard, it notes that Mr Abd-Al-Rahman has been able to communicate with his defence team in the absence of interpretation services provided by the Registry through his Case Manager.¹¹ Although Mr Abd-Al-Rahman submits that this distribution of resources has had an impact on the preparation of the defence,

⁸ *Prosecutor v. Jean-Pierre Bemba Gombo*, ‘[Decision on the Request of Mr Bemba to Give Suspensive Effect to the Appeal Against the “Decision on the Admissibility and Abuse of Process Challenges”](#)’, 9 July 2010, ICC-01/05-01/08-817 (OA 3), para. 11.

⁹ Request, para. 5.


¹⁰ Request, pp. 5-6.

¹¹ Request, para. 5.

the Appeals Chamber is not satisfied that any consequences of this arrangement would be difficult to correct through, for instance, adjustments to the pre-trial schedule, in the event that Mr Abd-Al-Rahman's appeal is resolved in his favour.

10. In these circumstances, the Request for Suspensive Effect must be rejected, without prejudice to the determination as to the merits of the appeal. Nevertheless, the Appeals Chamber recognises the urgency of the situation with respect to the preparation of the defence and will endeavour to resolve this matter with all due expedition.

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


Judge Piotr Hofmański
Presiding

Dated this 25th day of August 2020

At The Hague, The Netherlands