



Original: English

**No. ICC-01/09-01/20 OA
Date: 29 December 2020**

THE APPEALS CHAMBER

Before:

**Judge Howard Morrison, Presiding
Judge Chile Eboe-Osuji
Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa**

SITUATION IN THE REPUBLIC OF KENYA

IN THE CASE OF THE PROSECUTOR v. PAUL GICHERU

Public document

**Decision on the Office of Public Counsel for the Defence's request for time
extension**

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 Michael G. Karnavas

The Office of Public Counsel for the Defence

Mr Xavier-Jean Keïta
Ms Marie O’Leary

REGISTRY

Registrar

Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeal of the Office of Public Counsel for the Defence against the decision of Pre-Trial Chamber A entitled ‘Decision on the Applicability of Provisional Rule 165 of the Rules of Procedure and Evidence’ of 10 December 2020 (ICC-01/09-01/20-61),

Having before it the ‘OPCD Request for an Extension of Time’ of 24 December 2020 (ICC-01/09-01/20-70),

Pursuant to regulation 35(2) of the Regulations of the Court,

Renders the following

DECISION

The time limit for the filing of the appeal brief by the Office of Public Counsel for the Defence is extended to 16h00 on Friday, 8 January 2021.

REASONS

I. PROCEDURAL HISTORY

1. On 10 December 2020, Pre-Trial Chamber A (the ‘Pre-Trial Chamber’) issued the ‘Decision on the Applicability of Provisional Rule 165 of the Rules of Procedure and Evidence’ (the ‘Impugned Decision’).¹
2. On 16 December 2020, the Office of Public Counsel for the Defence (the ‘OPCD’) filed the ‘Request for leave to appeal the Decision on the Applicability of Provisional Rule 165’.²
3. On 18 December 2020, Mr Gicheru filed ‘Paul Gicheru’s Response to OPCD’s Request for Leave to Appeal the Decision on the Applicability of Provisional Rule 165’.³

¹ [ICC-01/09-01/20-61](#).

² [ICC-01/09-01/20-63](#) (submitted on 16 December 2020, notified on 17 December 2020).

³ [ICC-01/09-01/20-64](#).

4. On 21 December 2020, the Prosecutor filed the ‘Prosecution’s Response to OPCD’s “Request for leave to appeal the Decision on the Applicability of Provisional Rule 165”’.⁴

5. On 23 December 2020, the Pre-Trial Chamber issued the ‘Decision on the “Request for leave to appeal the Decision on the Applicability of Provisional Rule 165”’ granting leave to appeal and partly reformulating the issues for which leave was sought.⁵

6. On 24 December 2020, the OPCD filed the ‘OPCD Request for an Extension of Time’.⁶

II. MERITS

7. At the outset, the Appeals Chamber notes that provisional rule 165(2) of the Rules excludes recourse to interlocutory appeals under article 82(1)(d) of the Statute and provides that a panel of three judges shall decide appeals arising in proceedings for offences defined in article 70 of the Statute. However, as leave to appeal was granted by the Pre-Trial Chamber,⁷ and the subject-matter of the present appeal concerns the question of whether the provisional rule is applicable, this decision is issued by the Appeals Chamber in its full composition without prejudice to the merits of the appeal.

8. Pursuant to regulation 35(2) of the Regulations of the Court (the ‘Regulations’), a Chamber may extend or reduce a time limit if good cause is shown.

9. The OPCD requests an extension of the ten-day time limit applicable to its appeal brief under regulation 65(4) of the Regulations because it falls during a period when there are three official holidays, which reduces the time and personnel available to work on an appeal that concerns ‘substantial and novel matters’.⁸

10. The Appeals Chamber considers that the OPCD has shown good cause warranting a time extension for the filing of the appeal brief. Accordingly, the Appeals

⁴ [ICC-01/09-01/20-66](#).

⁵ ICC-01/09-01/20-68 (the ‘Decision Granting Leave to Appeal’).

⁶ ICC-01/09-01/20-70 (the ‘Request’).

⁷ Decision Granting Leave to Appeal, paras 32-33.

⁸ Request, paras 3-6.

Chamber determines that the time limit for the filing of the appeal brief by the OPCD is extended to 16h00 on Friday, 8 January 2021.

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



Judge Howard Morrison
Presiding

Dated this 29th day of December 2020

At The Hague, The Netherlands