



Original: English

No. ICC-01/14-01/22

Date: 14 April 2022

PRE-TRIAL CHAMBER II

Before:

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF

THE PROSECUTOR v. MAXIME JEOFFROY ELI MOKOM GAWAKA

PUBLIC

Decision on Mr Kaufman's requests for reconsideration and leave to appeal the
'Order on appointment of Mr Kaufman as Counsel for Mr Mokom'

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

The Office of the Prosecutor

Mr Karim A. A. Khan
Mr Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Mr Mokom

Mr Gregory Townsend (Duty Counsel)

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

**The Office of Public Counsel
for the Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Mr Pieter Vanaverbeke

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

Mr Harry Tjonk

**Victims Participation and Reparations
Section**

Other

Mr Nicholas Kaufman

PRE-TRIAL CHAMBER II of the International Criminal Court issues this decision on Mr Nicholas Kaufman’s (‘Mr Kaufman’) requests for reconsideration and leave to appeal the Chamber’s order concerning the appointment of Mr Kaufman as counsel for Mr Maxime Jeffroy Eli Mokom Gawaka (‘Mr Mokom’). The present decision is issued under the classification ‘public’ to ensure the publicity of the proceedings. All those involved in the litigation are to refrain from revealing information beyond what is contained in this decision.

I. Procedural History

1. On 10 December 2018, the Chamber issued a warrant of arrest for Mr Mokom.¹ Following his arrest in the Republic of Chad, Mr Mokom was surrendered to the Court on 14 March 2022, and arrived at the Detention Centre that same day.
2. On 15 March 2022, Mr Mokom expressed to the Registry his wish that Mr Kaufman be appointed as his counsel.² Following the acceptance by Mr Kaufman to act as such,³ the Registry formally appointed Mr Kaufman as counsel for Mr Mokom, for an (initial) period of 30 days, on 16 March 2022.⁴ That same day, the Registry notified the Chamber of Mr Kaufman’s appointment as counsel for Mr Mokom, annexing information about the aforementioned steps.⁵
3. On 17 March 2022, the Chamber ordered Mr Kaufman, the Prosecution, and the Registry to submit observations, by way of email, on any potential conflict of interest regarding the appointment of Mr Kaufman as counsel for Mr Mokom.⁶ These observations were provided on 17 and 18 March 2022.⁷

¹ ICC-01/14-01/22-2-Red2.

² Annex I to the ‘Notification of the Appointment of Mr Nicholas Kaufman as Counsel for Mr Maxime Jeffroy Eli Mokom Gawaka’, ICC-01/14-01/22-22-AnxI.

³ ICC-01/14-01/22-22-Conf-AnxII.

⁴ ICC-01/14-01/22-22-Conf-AnxIII.

⁵ Notification of the Appointment of Mr Nicholas Kaufman as Counsel for Mr Maxime Jeffroy Eli Mokom Gawaka, ICC-01/14-01/22-22, and three public annexes and one confidential annex.

⁶ Email from the Chamber to the Prosecution and to the Registry, at 14:19; Email from the Chamber to Mr Kaufman, at 14:24.

⁷ Email from Mr Kaufman to the Chamber, 17 March 2022, at 23:24; Email from the Prosecution to the Chamber, 18 March 2022, at 09:41; and Email from the Registry to the Chamber, 18 March 2022, at 10:02.

4. On 22 March 2022,⁸ Mr Mokom made his first appearance before the Chamber, represented by Mr Kaufman, pursuant to the Chamber's permission.⁹
5. On 25 March 2022, the Chamber issued the 'Order on appointment of Mr Kaufman as Counsel for Mr Mokom' (the '25 March 2022 Order'),¹⁰ finding, *inter alia*, that 'the role played by Mr Kaufman in other proceedings before the Court constitutes a conflict of interest within the meaning of articles 12 and 16 of the Code of Professional Conduct for Counsel [...], and as such forms an impediment to his representing of Mr Mokom in the present proceedings'. It therefore instructed the Registry to revoke its appointment of Mr Kaufman as counsel for Mr Mokom and make the necessary arrangements, including by consulting with Mr Mokom, to appoint counsel within the shortest possible timeframe.
6. On the same date, the Registry revoked Mr Kaufman's appointment as counsel for Mr Mokom.¹¹
7. On 28 and 30 March 2022, the Registry transmitted submissions from Mr Kaufman requesting the Chamber to reconsider¹² (the 'Request for Reconsideration') and to grant leave to appeal the 25 March 2022 Order (the 'Request for Leave to Appeal').¹³
8. On 4 April 2022, in order to provide Mr Mokom with an opportunity to express his views and concerns on the matter of his legal representation, the Chamber convened a status conference on in the presence of Mr Mokom, assisted by duty counsel, and representatives of the Registry.¹⁴

⁸ See Order convening a hearing for the first appearance of Mr Mokom, 16 March 2022, ICC-01/14-01/22-21.

⁹ Email from the Chamber to Mr Kaufman, at 17:45. On 18 March 2022, in light of the imminence of the first appearance for which Mr Mokom required representation, and without prejudice to the Chamber's determination of the matter, the Chamber permitted Mr Kaufman to represent Mr Mokom at the first appearance.

¹⁰ ICC-01/14-01/22-26-Conf-Exp.

¹¹ Letter from the Counsel Support Section to Mr Kaufman entitled 'Revocation of your appointment as counsel in the case ICC-01/14-01/22', CSS/2022/182.

¹² ICC-01/14-01/22-27-Conf-Exp. Mr Kaufman's submissions are contained in the document annexed to the filing of the Registry (ICC-01/14-01/22-27-Conf-Exp-AnxI).

¹³ ICC-01/14-01/22-30-Conf-Exp. Mr Kaufman's submissions are contained in the document annexed to the filing of the Registry (ICC-01/14-01/22-30-Conf-Exp-AnxI).

¹⁴ ICC-01/14-01/22-32-Conf-Exp; ICC-01/14-01/22-T-002-CONF-EXP-ENG.

9. On the same day, by way of email, Mr Kaufman requested the Chamber to reclassify as confidential the Requests for Reconsideration and Leave to Appeal so as to enable to Prosecution to respond to them (the ‘Reclassification Request’).¹⁵

10. On 8 April 2022, duty counsel for Mr Mokom filed a request for reconsideration and a request for leave to appeal the 25 March 2022 Order.¹⁶

II. Determination by the Chamber

11. As a preliminary matter, the Chamber, having been copied in Mr Kaufman’s email to the Registry of 30 March 2022 at 18:10, notes Mr Kaufman’s statement to the effect that he would have ‘communicated [...] to the legal and diplomatic authorities who were advising [him] prior to the initial appearance and shortly thereafter’, about the matter of Mr Kaufman’s legal representation of Mr Mokom. The Chamber notes with concern that Mr Kaufman discussed a confidential pending matter with external actors.¹⁷ With regard to the Reclassification Request, the Chamber notes that, following its instructions,¹⁸ the Registry gave the Prosecution access to the Requests for Reconsideration and Leave to Appeal. Accordingly, the Reclassification Request is moot.

12. Turning to the Requests for Reconsideration and Leave to Appeal, the Chamber notes that Mr Kaufman’s status in the present proceedings derived solely and was intrinsically linked to his representation of Mr Mokom, as per his appointment by the Registry.¹⁹ Mr Kaufman, as counsel for Mr Mokom (or as a private individual for that matter), does not *himself* have legal standing to appeal the 25 March 2022 Order, as this power lies solely with Mr Mokom. Mr Mokom may act through legal representation to convey his wishes to the Chamber. Conversely, as a result of the Registry’s revocation of Mr Kaufman’s appointment, Mr Kaufman can no longer act on behalf of Mr Mokom to request reconsideration or leave to appeal the 25 March 2022 Order.

¹⁵ Email from Mr Kaufman to the Chamber, 4 April 2022 at 22:45.

¹⁶ Request for Reconsideration of Order ICC-01/14-01/22-26-Conf-Exp, dated 7 April 2022 (registered and notified on 8 April 2022), ICC-01/14-01/22-36-Conf-Exp; Request Seeking Leave to Appeal Order ICC-01/14-01/22-26-Conf-Exp, dated 7 April 2022 (registered and notified on 8 April 2022), ICC-01/14-01/22-37-Conf-Exp.

¹⁷ See in this regard articles 8 and 18 of the Code of Professional Conduct for Counsel.

¹⁸ Email from the Chamber to the Registry, 11 April 2022, at 17:14.

¹⁹ For representation agreement, see article 11 of the Code of Professional Conduct for Counsel.

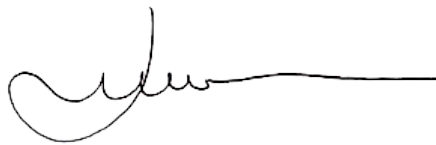
13. For these reasons, the Chamber hereby dismisses *in limine* the requests by Mr Kaufman that were submitted after his appointment as counsel for Mr Mokom was revoked, namely the requests transmitted to the Chamber on 28 and 30 March 2022, respectively.

FOR THE AFOREMENTIONED REASONS, THE CHAMBER HEREBY

DISMISSES the Request for Reconsideration and the Request for Leave to Appeal *in limine*; and

INSTRUCTS the Registry to transmit the present decision to Mr Kaufman.

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



Judge Rosario Salvatore Aitala

Presiding



Judge Antoine Kesia-Mbe Mindua



Judge Tomoko Akane

Dated this Thursday, 14 April 2022

At The Hague, The Netherlands