



**Cour
Pénale
Internationale**
**International
Criminal
Court**

La Présidence
The Presidency

**Internal memorandum
Memorandum interne**

To À	Judge Sanji Monageng	From De	The Presidency <i>Sang-Hyun Song</i>
Date	28 March 2013	Through Via	
Ref.	2013/PRES/00147-4	Copies	Hirad Abtahi; Volker Nerlich; Natasha Naidoo
Subject Objet	Decision on the request to be excused from the exercise of judicial functions in the Appeals Chamber pursuant to article 41 of the Rome Statute		

The Presidency, composed of the President (Judge Sang-Hyun Song), the Second-Vice-President (Judge Cuno Tarfusser) and Judge Akua Kuenyehia, hereby decides upon the request ("Request")¹ of Judge Sanji Monageng ("Applicant") of 27 March 2013 to be excused from her functions as a judge of the Appeals Chamber in the appeal of the "Decision on the Defence's Request for Disclosure of Documents in the Possession of the Office of the Prosecutor" ("Appeal") in the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus* ("Case") and all future appeals arising in the Case.

The Request for excusal from the Appeal and all future appeals arising in the Case is granted, for the following reasons.

Factual background

By memorandum dated 27 March 2013, the Applicant made the Request, pursuant to article 41(1) of the Rome Statute ("Statute") and rule 33 of the rules of Procedure and Evidence ("Rules"). In the same memorandum, the Applicant also requested the Presidency to excuse her, in her capacity as the First Vice-President, from the deliberations of the Presidency on the Request ("Second Request"). On 28 March 2013, noting article 41(1) of the Statute and

¹ 2013/PRES/00147.

rule 33 of the Rules, the remaining members of the Presidency granted the Second Request.² Pursuant to regulation 11(2) of the Regulations of the Court ("Regulations"), the Applicant was treated as unavailable for the purpose of the deliberations of the Presidency on the Request. On the same date, Judge Akua Kuenyehia assumed the responsibilities of the Applicant as a member of the Presidency for the purposes of the deliberations on the Request, in accordance with regulation 11(2) of the Regulations.³

The Request is based upon the previous involvement of the Applicant in the pre-trial phase of the case, during which she sat on the bench that: a) issued summonses to appear⁴ and b) rendered the "Decision on the confirmation of charges".⁵ A similar request, made on the same basis, was made by Judge Monageng for the previous appeal in the Case ("Previous Request"), the appeal of the "Decision on the defence request for a temporary stay of proceedings" and this request was granted by the Presidency.⁶

Decision

The Request is properly before the Presidency, in accordance with article 41 of the Statute and rule 33 of the Rules.

The Presidency notes that for so long as the relevant circumstances remain the same as they were when the Previous Request was made, the impartiality of the Applicant as a judge in any appeal arising in the Case might reasonably be doubted considering her previous involvement in the pre-trial phase of the Case. Thus, the Presidency, having considered the matter before it, finds the Request to be well founded, for the same reasons as in the Previous Request.

As such, the Applicant's Request for excusal in the present Appeal, as well as from all future appeals arising in the Case, is granted. The Presidency, pursuant to rule 38 of the Rules and regulations 12 and 15 of the Regulations, shall, for the purpose of the present Appeal, treat the Applicant as unavailable and proceed with her replacement in the Appeals Chamber.

² 2013/PRES/00147-2.

³ 2013/PRES/00147-3.

⁴ ICC-02/05-03/09-1.

⁵ ICC-02/05-03/09-121-Corr.

⁶ ICC-02/05-03/09-433-Anx.

From henceforth, the President of the Appeals Division shall promptly inform the Presidency of the advent of any appeal in the case, in order for it to proceed with the replacement of the Applicant in a timely fashion in accordance with this decision.

The Presidency notes that the Applicant has consented to the Presidency making public the Request and the Second Request and the reason for its decision upon those requests pursuant to rule 33(2) of the Rules. A copy of this decision and the requests shall be annexed to the decision of the Presidency replacing the applicant in the Appeals Chamber for the purpose of the Appeal.