

SEPARATE OPINION OF JUDGE EBOE-OSUJI

1. Ms Taylor had all along appeared among the counsel for Mr Bemba in the two cases in which he stood trial in this Court. They are the case now on appeal before this Chamber (the '*Bemba No 1*' case), and the case in which he and certain members of his defence team were indicted pursuant to article 70 of the Statute (the '*Bemba No 2*' case) on charges of obstruction of justice arising from their conduct in the *Bemba No 1* case. In *Bemba No 1*, Ms Taylor appeared as associate counsel for Mr Bemba, while she is lead counsel for him in *Bemba No 2*.

2. Ms Taylor now seeks leave to withdraw from *Bemba No 1*. Her request for leave to withdraw was precipitated by an administrative decision of the Registrar to cease or significantly reduce funding of Ms Taylor's appearance as counsel in both cases. It seems, according to her submissions, that she is now effectively left to choose which of the two cases to devote her representation. She has chosen to stay with *Bemba No 2*, where she is lead counsel; and to withdraw from *Bemba No 1*, where she is associate counsel. In the appreciation of the impact that her withdrawal may have on the *Bemba No 1* case, it may be significant to note that there are two other counsel that appear to rank ahead of her in the legal team: they are the lead counsel and the co-counsel. This is not at all to say that her role as associate counsel was insignificant; but the detail must be noted to the effect that the lead counsel and the co-counsel for Mr Bemba will continue their representation of Mr Bemba in the appeal even as Ms Taylor withdraws as associate counsel.

3. To the extent that the decision of the Appeals Chamber is founded on the foregoing considerations without more, I concur with it. Indeed, it is possible to leave the reasoning fully and simply at that. And I do so, from my own perspective.

4. Also from my perspective, I must make clear that other aspects of Ms Taylor's arguments for the leave to withdraw did not in any way inform, even by implication, the Appeals Chamber's consideration in granting the leave - as I understood those considerations.

5. Of particular concern in this regard is Ms Taylor's suggestion that the dictates of professional propriety (and possibly the need to protect the appeal judges from information that may compromise them as judges in the case) have either led her to seek independent legal advice from other lawyers constituted as an association, or led her to consider it wise to keep from the judges in the case some of the details of her reasons for withdrawing. Such an approach would be entirely unpersuasive to me. To the extent foreseeable, the Appeals Chamber must leave no room for its decision to be interpreted in the future as having ratified the strategy of counsel who would point to independent legal advice as a reason to keep information from the judges of this Court. For such would be an inconvenient and inappropriate litigation strategy in the circumstances of administration of justice in this Court. It should not be up to counsel (whether prosecution or defence) to decide to keep from judges information relevant to their decisions, on grounds that the counsel in question had obtained independent legal advice. The responsibility to do justice in a case before them belongs to the judges of this Court. It is a judicial responsibility that cannot be abdicated to any external agency (notwithstanding any question as to good faith or bad), on grounds of sensitivity of particular relevant information. It is particularly noted in that regard that the judges bearing that judicial responsibility in this Court are not lay jurors. Normatively, they are legal professionals of the most senior ranks. As professional judges, they are able to - and do regularly - delete from their consideration any information that came into their possession that ought not weigh on the scale of guilt and innocence. It is quite normal in criminal cases to provide to judges (as opposed to a jury) sensitive information in a case on an ex parte basis.

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



Judge Chile Eboe-Osuji

Dated this 25th day of July 2016

At The Hague, The Netherlands