

Public Annex B9: Electronic copy of academic authority

Appellant's submissions of the list of authorities for the oral hearing, pursuant to the Appeals Chamber's order ICC-01/05-01/08-3579

Sluiter, G., Friman, H., Linton, S., Vasiliev, S., Zappalà, S., eds., *International Criminal Procedure - Principles and Rules*, OUP 2013, pp. 971-972

c. Standard of review and powers of the Appeals Chamber

There is no express standard of review for Article 82 appeals in the legal texts. Rule 158(1) is confined to setting out the powers of the Appeals Chamber while Article 83(2) deals with the standard for Article 81 appeals and is not made (in the text itself) directly applicable to interlocutory appeals.²⁸⁰ Jurisprudence has, however, clarified the issue somewhat. The Appeals Chamber has found that errors must ‘materially affect’ the impugned decision²⁸¹ and that the appellant must set out ‘with sufficient precision, how [the] error would have materially affected the impugned decision’.²⁸² It has found that: ‘A decision is materially affected by an error of law if the Pre-Trial or Trial Chamber would have rendered a decision that is substantially different from the decision that was affected by the error, if it had not made the error.’²⁸³

In relation to errors of fact, the Appeals Chamber found that ‘it may justifiably interfere with a *sub judice* decision “if the findings of the [Chamber] are flawed on account of a misdirection on a question of law, a misappreciation of the facts founding its decision, a disregard of relevant facts, or taking into account facts extraneous to the *sub judice* issues”’.²⁸⁴ It considered this standard to be ‘equally applicable when reviewing a decision on the admissibility of a case’.²⁸⁵ It found that:

... its review is corrective and not *de novo*. It will therefore not interfere unless it is shown that the Pre-Trial or Trial Chamber committed a clear error, namely: misappreciated the facts, took into account irrelevant facts or failed to take into account relevant facts. As to the ‘misappreciation of facts’ the Appeals Chamber will not disturb a Pre-Trial or Trial Chamber’s evaluation of the facts just because the Appeals Chamber might have come to a different conclusion. It will interfere only in the case where it cannot discern how the Chamber’s conclusion could have reasonably been reached from the evidence before it.²⁸⁶

²⁸⁰ Rule 158(2) only refers to Art. 83(4), without providing further details.

²⁸¹ *Lubanga*, AC, ICC, 13 October 2006, para. 74; *Lubanga*, AC, ICC, 21 October 2008 (ICC-01/04-01/06-1487), para. 44; *Kony et al.*, AC, ICC, 23 February 2009, para. 40; *Katanga and Ngudjolo*, AC, ICC, 25 September 2009, para. 37; *Kony et al.*, AC, ICC, 16 September 2009, para. 83; *Bemba*, AC, ICC, 15 December 2011, para. 68. See further F. Eckelmans, ‘The First Jurisprudence of the Appeals Chamber of the ICC’, in C. Stahn and G. Sluiter (eds), *The Emerging Practice of the International Criminal Court* (Leiden: Martinus Nijhoff Publishers, 2009) 543–5.

²⁸² *Kony et al.*, AC, ICC, 16 September 2009, para. 48. See further *Bemba*, AC, ICC, 19 October 2010, paras 102–104 and 133–135; *Mbarushimana*, AC, ICC, 14 July 2011, para. 18.

²⁸³ *Situation in the DRC*, AC, ICC, 13 July 2006 (ICC-01/04-169), para. 84; *Katanga and Ngudjolo*, AC, ICC, 25 September 2009, para. 37.

²⁸⁴ *Bemba*, AC, ICC, 19 October 2010, para. 63. See further, in relation to rejection of appeals against decisions on interim release, *Katanga and Ngudjolo*, AC, ICC, 9 June 2008 (ICC-01/04-01/07-572), para. 25; *Bemba*, AC, ICC, 16 December 2008, para. 52; *Bemba*, AC, ICC, 2 December 2009, para. 61.

²⁸⁵ *Bemba*, AC, ICC, 19 October 2010, para. 63.

²⁸⁶ *Ruto et al.*, AC, ICC, 30 August 2011, para. 56.