

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Annex I

Public



Original: **English**

No.: **ICC-01/14-01/22**

Date: **20/07/2022**

PRE-TRIAL CHAMBER II

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka

PUBLIC & URGENT

**Request for Immediate Access to Mr Mokom
and to the Confidential Record of the Case**

Source: **Defence**

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

The Office of the Prosecutor

Karim A. A. Khan
Mame Mandiaye Niang
Kweku Vanderpuye

Counsel for the Defence

Nicholas Kaufman
Gregory Townsend (Duty Counsel)

Legal Representatives of the Victims

Legal Representatives of the Applicant

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar
Peter Lewis

Counsel Support Section
Pieter Vanaverbeke

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section** **Other**

Introduction

1. On 19 July 2022, the Appeals Chamber rendered its *“Judgment on the appeal of Maxime Jeoffroy Eli Mokom Gawaka against the decision of Pre-Trial Chamber II of 25 March 2022 entitled “Order to the Registry concerning the appointment of Mr. Nicholas Kaufman as counsel for Maxime Jeoffroy Eli Mokom Gawaka” (ICC-01/14-01/22-70-Conf)“* (“the Impugned Order” and “the Judgment” respectively).

2. At paragraph 68 of the Judgment, the majority of the Appeals Chamber noted that it was *“unable to discern how the Pre-Trial Chamber arrived at the ultimate determination that it would be necessary to remove Mr. Kaufman as Counsel”*.

3. For the above reason, inter alia, the Appeals Chamber, by a majority, **reversed** the Impugned Order revoking Counsel’s mandate and remanded the issue to the Pre-Trial Chamber to provide further reasons for its decision.

Submission

4. In light of the aforementioned, Counsel’s standing must be viewed as it was on the eve of the delivery of the Impugned Order.

5. Shortly after the delivery of the Judgment, Counsel wrote to the Registry requesting immediate access to Mr. Mokom and to the confidential record of the case. Given that no immediate response was received, Counsel supplemented his request, this morning, with an enquiry as to whether the Registry had sought instructions from Chambers on how to respond to Counsel’s request citing paragraph 31 of the Judgment.¹

¹ *“the importance of ensuring that the case record is as complete as possible, particularly in view of potential appeals”*.

6. The Registry replied today, 20.7.22, **denying** both Counsel's request for reinstatement² and his supplemental request for access to any correspondence between it and Chambers (for a lack of legal justification).³

7. The Registry opined as follows:

Based on both the Appeals Chamber Judgment (as well as the dissenting opinion), it is the Registry's understanding that, pending the Pre-Trial Chamber II decision, as directed by the Appeals Chamber in the above-mentioned judgement, the Registry has no indication that Mr Townsend's appointment by PRE-Trial Chamber II has come to [...] and, as such, Counsel Townsend continues to represent the interest of Mr Mokom, pending this decision.

8. Counsel submits that the Registry is mistaken. Duty Counsel's appointment was deemed necessary to assist Mr. Mokom at a status conference on 4 April 2022 and to represent him in the context of proceedings before the Appeals Chamber.⁴ Those proceedings have now terminated, and a judgment has been rendered.

9. In due course, the Pre-Trial Chamber will issue its "*precise and detailed*"⁵ reasons for either revoking Counsel's mandate or, hopefully, affirming it. Either way, that ultimate decision will be a totally new ruling which may be appealed. Since, it is even conceivable that no future appeal may be filed, it cannot logically be concluded that the appeal, determined by way of judgment in ICC-01/14-01/22-70, is an ongoing process. Duty Counsel's role has thus terminated. Had the Appeals Chamber desired Duty Counsel's continuing role, being fully aware of the reasons for his appointment, it would have stated such. The Judgment made no such provision for Duty Counsel to continue his role until the delivery of further reasons by the Pre-Trial Chamber. The reason for this is clear. As hinted above, no time limit was set for the Pre-Trial Chamber to deliver such further reasons and the Pre-Trial Chamber itself could possibly revise its former conclusions after

² Email of CSS to Counsel sent at 14:52 (Hague Time).

³ Email of CSS to Counsel sent at 16:43 (Hague Time).

⁴ ICC-01/14-01/22-T-002 at line 10.

⁵ ICC-01/14-01/22-70 at para. 68.

considering the “*additional client documentation*”⁶ which was supplied during the appeal process. Counsel is best placed to provide the necessary “*additional client documentation*” and should himself give the explanations pertaining thereto.

10. Finally, the plain and logical reading of the dispositive part of the Judgment is that the revocation of Counsel’s mandate is currently void. In other words, until the Pre-Trial Chamber provides “*precise and detailed*” reasons, no justifiable grounds for dismissing Counsel presently exist and his standing is, automatically, restored.

11. Disclosure continues and Counsel assures the Pre-Trial Chamber that he will act diligently to ensure a timely and concise confirmation hearing confined to a few discrete issues.

Urgency

12. This request is filed urgently because of the basic right of Mr Mokom to consult counsel of his choice which is currently being denied by the Registry which has adopted, with respect, an erroneous stance in a proceeding in which it is meant to be a neutral party.

13. This request is also filed urgently to allow a speedy decision which, if positive, will allow Counsel to travel immediately to The Hague to meet Mr. Mokom. Counsel notes that the Court’s summer recess will commence on Friday 22 July 2022, and that, thereafter, it will be difficult to arrange necessary administrative procedures with the Registry. The urgency of this request is, furthermore, necessitated by the extenuating circumstances advanced by Duty Counsel for requesting a variation of the date for the delivery of the Judgment. Mr. Mokom will require the immediate presence of Counsel during the summer recess who will be able to counsel him on the evidence soon to be disclosed.⁷

⁶ ICC-01/14-01/22-70 at fn 89.

⁷ ICC-01/14-01/22-62 at para 25 citing 22 July 2022 as the date for completion of Prosecution disclosure.

14. Given the premise underlying the request contained herein, this document is filed by Counsel and not by Duty Counsel whose duties, as mentioned, have terminated. Counsel has nothing but gratitude to Duty Counsel for the considerate way he has handled this sensitive matter with the highest regard for the concerns of Mr. Mokom and maximum collegiality shown to Counsel.

Relief Sought

15. The Pre-Trial Chamber is respectfully requested to order the Registry to recognize the herein undersigned as Counsel of record until it takes any further reasoned decision to the contrary. The Pre-Trial Chamber is also requested to order the Registry to permit herein undersigned Counsel immediate contact with Mr. Mokom and to allow him access to the confidential case record.

Nicholas Kaufman

Counsel for Maxime Mokom

Jerusalem, Israel
Wednesday, July 20, 2022