

1 International Criminal Court

2 Pre-Trial Chamber III

3 Situation in the Central African Republic - ICC-01/05-01/08

4 Initial Appearance - Open Session

5 Friday, 4 July 2008

6 The hearing starts at 3.02 p.m.

7 COURT USHER: All rise. The International Criminal Court is now
8 in session.

9 JUDGE DIARRA (interpretation): The court is now in session.
10 Please be seated.

11 Is the interpretation system working? Thank you. It is working.

12 Security officers, please bring Mr. Jean-Pierre Bemba in.

13 Court Officer, please can you call the case. Please call the
14 case on the list for today.

15 COURT OFFICER (interpretation): Thank you, President. Situation
16 in the Central African Republic, case of the Prosecutor versus
17 Jean-Pierre Bemba.

18 JUDGE DIARRA (interpretation): Thank you. Before we start the
19 hearing, I would like to welcome everyone on behalf of my colleagues, my
20 colleague Hans-Peter Kaul and Madam Ekaterina Trendafilova.

21 I would now like to ask the parties at the hearing to introduce
22 themselves. The Prosecution, you have the floor to introduce your team.

23 MS. BENSOUDA: Thank you, Madam President. Madam President, your
24 Honours, the Office of the Prosecutor is represented this afternoon by
25 Ms. Petra Kneuer, senior trial lawyer; trial lawyer, Massimo Scaliotti;

1 trial lawyer, Cynthia Tai; judicial cooperation advisor, Miriam Spittler;
2 case manager, Frederique Besse. I am Fatou Bensouda, Deputy Prosecutor.
3 Thank you, Madam President.

4 JUDGE DIARRA (interpretation): The Defence, could you please
5 introduce your team, and I will let your client introduce himself later
6 himself.

7 MR. VAN DER SPOEL: Thank you, Madam President, members of the
8 Court. I would like to introduce firstly Mr. Kilolo from the Brussels
9 court, the Brussels bar. I think you know Mr. Keita of the Office of
10 Public Counsel. And I myself, I am Tjarda Van Der Spoel from the
11 Rotterdam court and Defence counsel at ICTY, ICTR, and ICC. Thank you.

12 JUDGE DIARRA (interpretation): Please forgive me for these
13 technical problems.

14 So I was saying you are provisional counsel to help
15 Mr. Jean-Pierre Bemba during this hearing. You fulfil the conditions to
16 provide assistance, but the decision is up to him.

17 Now, I would like to turn to Mr. Jean-Pierre Bemba.
18 Mr. Jean-Pierre Bemba, can you stand up, please, and introduce yourself?

19 MR. BEMBA GOMBO (interpretation): Jean-Pierre Bemba.

20 JUDGE DIARRA (interpretation): Your name and first name.

21 MR. BEMBA GOMBO (interpretation): Jean-Pierre Bemba.

22 JUDGE DIARRA (interpretation): Date of birth.

23 MR. BEMBA GOMBO (interpretation): 4th of November, 1962 in the
24 Democratic Republic of the Congo.

25 JUDGE DIARRA (interpretation): Profession?

1 MR. BEMBA GOMBO (interpretation): Senator.

2 JUDGE DIARRA (interpretation): So I note that you speak perfect
3 French, and therefore that we can communicate in that language. Thank
4 you.

5 Do you have anything to add to those identifying features?

6 MR. BEMBA GOMBO (interpretation): No.

7 JUDGE DIARRA (interpretation): Thank you. My colleagues and I
8 now need to know under Article 60 of the Rome Statute whether you were
9 informed of the crimes that you are charged of.

10 MR. BEMBA GOMBO (interpretation): Yes, I have, President.

11 JUDGE DIARRA (interpretation): Would you like the arrest warrant
12 that was issued on the 10th of June, 2008, to be read to you?

13 MR. BEMBA GOMBO (interpretation): That is not necessary,
14 President.

15 JUDGE DIARRA (interpretation): Thank you very much. We would
16 also like to know whether you have been informed when arriving upon Dutch
17 territory on the 3rd of June, 2008, of your rights as under Article 67 of
18 the Statute.

19 MR. BEMBA GOMBO (interpretation): Yes, that was done, President.

20 JUDGE DIARRA (interpretation): Thank you. Mr. Jean-Pierre
21 Bemba, now I would like to talk about the conditions under which you were
22 arrested and surrendered to the court and the conditions under which
23 you're detained in the Netherlands. Do you have any observations on
24 these conditions?

25 MR. BEMBA GOMBO (interpretation): Well, the conditions aren't

1 the best, not the ones I hoped for, but I have nothing to mention at this
2 time.

3 JUDGE DIARRA (interpretation): Thank you. Under Article 60 of
4 the Rome Statute you can make a request for provisional release during
5 this hearing, and I suggest that you consult your counsel on this. Yes?

6 MR. VAN DER SPOEL: (Microphone not activated)... solid document
7 we have only had some disclosure today. I've only met my client for the
8 first time this morning to discuss this matter so we'll do it later on,
9 we hope in a fortnight's time, but we are a little bit handicapped with
10 our information because I read through the documents and the Prosecutor
11 tells us and tells you that they are afraid that my client will flee or
12 otherwise endanger the case. So I would like my dear opponents to
13 disclose that information, that we can use that information before filing
14 the request for provisional release -- for conditional release, sorry.
15 That's my first remark on provisional release. I don't know if you want
16 us to have the floor on any other observations or issues you would like
17 to raise.

18 JUDGE DIARRA (interpretation): No, thank you very much. I would
19 like to ask your learned colleague whether he has anything to add.

20 MR. KILOLO MUSAMBA LUBEMBA (interpretation): Thank you,
21 President. My colleagues and I wanted to draw your attention to the
22 provisions of Article 55 of the Rome Statute which I believe have been
23 violated, which signifies that the procedures should be null and void. I
24 would like to go directly to the substance of this question.

25 Article 55(1) --

1 JUDGE DIARRA (interpretation): Could you please tell me what
2 issue is leading to this submission, because I didn't raise any such
3 issue. I just asked you whether or not you intend to make a request for
4 provisional release at this stage of the proceedings.

5 MR. MR. KILOLO MUSAMBA LUBEMBA (interpretation): No request for
6 provisional release will be put.

7 JUDGE DIARRA (interpretation): I would like to know what
8 question you want to raise so that we can understand it.

9 MR. MR. KILOLO MUSAMBA LUBEMBA (interpretation): Well, actually
10 to help you what I wanted to do was just state that the proceedings are
11 null and void because of the provisions of the ICC, and I would like to
12 speak about this now or later depending on your -- what you prefer.

13 JUDGE DIARRA (interpretation): Well, you know the Statute as
14 well as I do, and you know as I do that this initial appearance is not
15 here for any submissions, you know this.

16 MR. MR. KILOLO MUSAMBA LUBEMBA (interpretation): Yes. Actually,
17 it's an agreement with my colleagues that we decided not to go into the
18 substance. What we wanted to mention was just an issue relating to the
19 procedure.

20 (The Trial Chamber confers)

21 MR. KILOLO MUSAMBA LUBEMBA (interpretation): Do you authorise
22 me, President?

23 JUDGE DIARRA (interpretation): Well, I rely on your wisdom to
24 stay within the framework of the procedure.

25 MR. KILOLO MUSAMBA LUBEMBA (interpretation): I do not intend to

1 go into the merits, but I just wanted to raise some preliminary
2 observations which I believe are very important, because, and I will say
3 this very briefly. I'm not going into the merits, but I know we are not
4 here at the confirmation hearing. This is the initial appearance, and I
5 would just like to raise if you allow, raise the fact that Article 55 of
6 the Rome Statute provides for the fact that -- for -- that -- the fact
7 that a person cannot be arbitrarily arrested or detained and deprived of
8 their -- his or her liberty except on such grounds and in accordance with
9 such procedures as established in the Statute. This is the procedure
10 under Article 55(2) of the Statute, which also provides that any person
11 charged shall be given the possibility to have legal assistance of the
12 person's choosing and to be questioned in the presence of their counsel
13 unless they've renounced their right to have counsel, the assistance of a
14 counsel.

15 These are three provisions of the ICC, and we're talking here
16 about three documents of the ICC, the first being the arrest warrant of
17 the 23rd of May, and the second dated 25 May 2008 was executed by
18 Belgium, which accepted -- the Belgium examining magistrate accepted an
19 arrest warrant. But the arrest warrant issued by the ICC wasn't executed
20 in the way provided for as -- during the preliminary questioning. We --
21 Mr. Bemba was asked whether he would like to choose counsel, and he
22 answered that, yes, he had selected Mr. Pierre Legros, but you will see
23 from the documents that were communicated that at no moment, at no
24 stage -- this counsel was not contacted at any stage, and therefore this
25 international arrest warrant dated 23rd of May was not properly executed.

1 Thereafter, this very arrest warrant was cancelled and replaced
2 by a second arrest warrant dated 10 June 2008, and there is a big problem
3 with this, because it appears that both arrest warrants are null and void
4 as Mr. Bemba, who should also have been entitled to questioning for the
5 second arrest warrant wasn't, and he should also have been provided with
6 the assistant of a counsel.

7 These are would laws that aren't provided for under Belgium law,
8 but they are under the Rome Statute. They are additional provisions for
9 persons that are accused under the laws of the ICC. So this is
10 problematic today to the extent that on the 10th of June the ICC issued a
11 third document, the request for arrest and surrender.

12 JUDGE DIARRA (interpretation): I'm sorry, apparently you are
13 going too fast for the interpreters, so please slow down so that the
14 English-speaking people among us can also listen to you.

15 MR. KILOLO MUSAMBA LUBEMBA (interpretation): Well, I guess you
16 don't want me to start again, do you?

17 JUDGE DIARRA (interpretation): Well, I would also like to remind
18 you that you said that you were going to be very brief and to bear in
19 mind the status of this present hearing, because our --

20 MR. KILOLO MUSAMBA LUBEMBA (interpretation): Well, thank you
21 very much for respecting the Defence's rights, but I would just like to
22 finish by saying that indeed on the 10th of June when Pre-Trial Chamber
23 III issued a request for arrest and surrender to Belgium that the request
24 states that the execution of this request for arrest and surrender must
25 be based on the second arrest warrant dated 10 June 2008, but this arrest

1 warrant was not executed in Belgium. There was no Belgium arrest warrant
2 in execution of this. And in view of all this, I wanted to draw your
3 attention to this issue and point out to the fact that this procedure for
4 arrest and surrender is tainted by this procedure. And I will not go on
5 further unless you authorise Mr. Jean Xavier Keita, who has come here
6 from the Office of Public Counsel for Defence, to come and add something
7 to what I have just said. Thank you.

8 JUDGE DIARRA (interpretation): We suggest that you submit
9 Mr. Keita's submissions in writing. And you have the right to receive
10 all the support you need, but please send a submission by -- in writing,
11 not to change the status of this hearing for the initial appearance.

12 MR. KILOLO MUSAMBA LUBEMBA (interpretation): Thank you very
13 much. I will take note of this whilst having stated what I've stated
14 today.

15 JUDGE DIARRA (interpretation): We take note of everything you
16 have stated today, and after the hearing we will deal as -- with your
17 submission as is due.

18 MR. KILOLO MUSAMBA LUBEMBA (interpretation): Yes.

19 MR. Keita (interpretation): I would just like to modify what is
20 on the transcript. I am not here as a representative of the Office of
21 Public Counsel for the Defence here intending to make a written
22 submission. I don't intend to do that. My role is under Regulation 77,
23 and I am here to assist, but I do not, on behalf of the office, intend to
24 make any written submission, and I didn't want there to be any confusion
25 concerning this.

1 JUDGE DIARRA (interpretation): Thank you. If you agree, I would
2 like to continue, because under Rule 121 of the Rules of Procedure and
3 Evidence, we have to set a date for the confirmation hearing, and the
4 Chamber set as the date the 4th of November, which would leave you
5 sufficient time to prepare your defence.

6 Now, I would like to ask the Office of the Prosecutor to note
7 this date. If necessary, we can push the date back. If that is
8 necessary we will inform all the parties, but we would like all parties
9 to stick to this date.

10 I would now like at this stage to ask the Office of the
11 Prosecutor whether they have any observations.

12 MS. BENSOUDA: Madam President, your Honours, the Office of the
13 Prosecutor does not have any observations at this stage.

14 JUDGE DIARRA (interpretation): Thank you.

15 Mr. Jean-Pierre Bemba Gombo and counsel, do you have any
16 observations at this stage of the proceedings?

17 MR. VAN DER SPOEL: No thank you, your Honour.

18 JUDGE DIARRA (interpretation): Colleagues, Judge Kaul and Judge
19 Trendafilova, do you have any observations at this stage?

20 JUDGE KAUL (interpretation): No, President.

21 JUDGE DIARRA (interpretation): Thank you, Judge Kaul.

22 Judge Trendafilova.

23 JUDGE TRENDAFILOVA (interpretation): (Previous translation
24 continues) ... (In English) Since we have discussed the date of the
25 confirmation hearing.

1 JUDGE DIARRA (interpretation): This closes the initial hearing,
2 the initial appearance hearing, on our schedule today, the Prosecutor
3 against Jean-Pierre Bemba Gombo.

4 Now, I would like to ask security to take Mr. Jean-Pierre Bemba
5 Gombo out of the room.

6 Thank you. The hearing is closed.

7 The hearing ends at 3.26 p.m.

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