

1 International Criminal Court  
2 Appeals Chamber - Courtroom 1  
3 Situation: Darfur, Sudan  
4 In the case of The Prosecutor v. Abdallah Banda Abakaer Nourain - ICC-02/05-03/09  
5 Presiding Judge Sang-Hyun Song  
6 Appeals Chamber Judgment  
7 Tuesday, 3 March 2015  
8 (The hearing starts in open session at 10.30 a.m.)  
9 THE COURT USHER: All rise.  
10 The International Criminal Court is now in session.  
11 Please be seated.  
12 PRESIDING JUDGE SONG: Good morning. First of all, excuse me for my sunken  
13 voice.  
14 Court officer, would you like to call the case, please.  
15 THE COURT OFFICER: Thank you, Mr President. The situation in Darfur, Sudan,  
16 in the case of The Prosecutor versus Abdallah Banda Abakaer Nourain,  
17 ICC-02/05-03/09.  
18 We are in open session.  
19 PRESIDING JUDGE SONG: Thank you.  
20 My name is Judge Sang-Hyun Song and I am the Presiding Judge on this appeal  
21 arising from the case of the Prosecutor versus Abdallah Banda Abakaer Nourain.  
22 May I ask the parties to introduce themselves for the record, starting with the  
23 Defence.  
24 MS LAWRIE: Good morning, Mr President. For Mr Banda today are Anand Shah,  
25 Joshua Bishay and myself, Leigh Lawrie.

1 PRESIDING JUDGE SONG: Thank you.

2 The Office of the Prosecutor?

3 MS BRADY: Good morning, Mr President. Helen Brady, senior appeals counsel;  
4 and I'm here today with Mr Julian Nicholls, senior trial lawyer; and Mr Reinhold  
5 Gallmetzer, appeals counsel. Thank you.

6 PRESIDING JUDGE SONG: Thank you very much.

7 And victims representatives.

8 MS OMBENI: (Interpretation) Thank you very much, your Honour. The counsel  
9 unable to come, our legal teams for victims will be represented exceptionally today by  
10 Mr Daw Elbait Salih, who is our assistant in the field, and by myself, Evelyne Ombeni,  
11 who is responsible for the case. Thank you.

12 PRESIDING JUDGE SONG: Thank you very much. Today the Appeals Chamber  
13 is delivering its judgment on Mr Banda's appeal against the decision of Trial Chamber  
14 IV entitled "Warrant of arrest for Abdallah Banda Abakaer Nourain." That decision  
15 was rendered on 11 September 2014.

16 In today's summary, I will refer to this decision as the Impugned Decision.

17 I shall now summarise the Appeals Chamber's judgment and the reasons for it. This  
18 summary is not part of the written judgment, which is the only authoritative account  
19 of the Appeals Chamber's ruling and reasons. The written judgment, which is  
20 unanimous, will be made available to the parties at the conclusion of this hearing.

21 I shall start with a brief procedural history. On 27 August 2009, Pre-Trial Chamber I  
22 issued a summons to appear for Mr Banda, without prejudice to a review of this  
23 decision at a later stage. The trial date initially set for 5 May 2014 was vacated by the  
24 Trial Chamber on 16 April 2014. The Trial Chamber later decided that the trial  
25 should commence on 18 November 2014. After receiving various submissions from

1 the parties and participants on the question of Mr Banda's appearance for trial, the  
2 Trial Chamber issued, by majority, Judge Eboe-Osuji dissenting, the Impugned  
3 Decision.

4 In the Impugned Decision, the Trial Chamber concluded, on the basis of its review in  
5 accordance with Article 58(1)(b)(i) of the Rome Statute that a warrant of arrest  
6 appeared necessary to ensure Mr Banda's presence at trial.

7 Further to an application from Mr Banda, the Trial Chamber, by majority, Judge  
8 Eboe-Osuji dissenting in part, granted leave to appeal one issue arising from the  
9 Impugned Decision. The issue is whether the Trial Chamber "erred in not hearing  
10 further from the Defence on the appropriateness of replacing the summons to appear  
11 by a warrant of arrest after being satisfied that the accused would not appear  
12 voluntarily for his trial."

13 On appeal, Mr Banda argues that the Trial Chamber erred when it issued the  
14 Impugned Decision without providing him with an opportunity to be further heard  
15 on the legal and factual basis as well as on the propriety of replacing the summons to  
16 appear with a warrant of arrest. In Banda's view, the Trial Chamber was required, in  
17 accordance with the audi alteram partem principle, to invite and consider  
18 submissions from him before replacing the summons to appear with a warrant of  
19 arrest.

20 The Appeals Chamber notes that Mr Banda, while generally alleging that the issue on  
21 appeal is a procedural one, does not demonstrate that in the absence of the alleged  
22 error, the decision would have substantially differed from the one rendered, as is  
23 required under the Appeals Chamber's jurisprudence.

24 Despite this deficiency, the Appeals Chamber has addressed the alleged procedural  
25 error, namely whether the Trial Chamber was required to hear further from Mr Banda

1 before issuing the warrant of arrest.

2 The Appeals Chamber considers that, in the circumstances of the present case, this  
3 question falls within the Trial Chamber's discretion as to the conduct of the  
4 proceedings under Article 64 of the Statute.

5 In this respect, the Appeals Chamber recalls that it will not interfere with the Trial  
6 Chamber's exercise of discretion save (i) where the exercise of discretion is based on  
7 erroneous interpretation of the law; (ii) where it is exercised on patently incorrect  
8 conclusion of fact; or (iii) where the decision is so unfair and unreasonable as to  
9 constitute an abuse of discretion.

10 The Appeals Chamber finds that Mr Banda has not established that the Trial  
11 Chamber's exercise of discretion in the case at hand was erroneous.

12 For the reasons given in the written judgment, the Appeals Chamber finds that the  
13 Trial Chamber's decision was not based on an erroneous interpretation of the law and  
14 that the Trial Chamber's discretion was not exercised on the basis of a patently  
15 incorrect conclusion of facts or that its decision was so unfair and unreasonable that it  
16 constituted an abuse of discretion. In this context, the Appeals Chamber notes that  
17 Mr Banda has not identified any relevant facts that were either ignored or erroneously  
18 relied upon.

19 As Mr Banda has not identified any error on the part of the Trial Chamber, it is not  
20 necessary for the Appeals Chamber to consider whether any such error materially  
21 affected the Impugned Decision.

22 In the above circumstances, the Appeals Chamber deems it appropriate to confirm the  
23 Impugned Decision. The appeal of Mr Banda is therefore rejected.

24 This concludes my summary of the judgment. My last task is to thank the  
25 interpreters, court reporters and court officers.

- 1 The session is now closed.
- 2 THE COURT USHER: All rise.
- 3 (The hearing ends in open session at 10.41 a.m.)