

1 International Criminal Court
2 Appeals Chamber - Courtroom 1
3 Situation: Central African Republic
4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo - ICC-01/05-01/08
5 Single Judge Christine Van den Wyngaert
6 Appeals Judgment
7 Wednesday, 20 May 2015
8 (The hearing starts in open session at 11.00 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 SINGLE JUDGE VAN DEN WYNGAERT: Good morning.
13 Would the court officer please call the case.
14 THE COURT OFFICER: Thank you, your Honour.
15 The situation in the Central African Republic, in the case of The Prosecutor v.
16 Jean-Pierre Bemba Gombo, ICC-01/05-01/08.
17 We are in open session.
18 SINGLE JUDGE VAN DEN WYNGAERT: My name is Judge
19 Christine Van den Wyngaert. Judge Sanji Monageng is the Presiding Judge in this
20 appeal arising from the case of The Prosecutor versus Jean-Pierre Bemba Gombo.
21 Judge Monageng has requested me to deliver this judgment on her behalf.
22 May I ask the parties to introduce themselves for the record, starting with the
23 Prosecution.
24 MS BRADY: Good morning, your Honour. Helen Brady appearing on behalf of the
25 Prosecution. I'm here today with Mr Matthew Cross, appeals counsel. Thank you.

1 SINGLE JUDGE VAN DEN WYNGAERT: Thank you.

2 The Defence?

3 MR HAYNES: Good morning, your Honour. And apologies for the
4 over-representation on the part of the Defence, but I'm Peter Haynes. I'm here
5 together with Kate Gibson, Melinda Taylor and our legal assistants,
6 Natacha Lebaindre and Cécile Lecolle.

7 SINGLE JUDGE VAN DEN WYNGAERT: Thank you very much.

8 Today the Appeals Chamber is delivering its judgment on the appeal by Mr Bemba
9 against the decision of Trial Chamber III entitled "Decision on 'Defence Urgent
10 Motion for Provisional Release'" rendered on 23 December 2014.

11 In today's summary I will refer to that decision as the impugned decision or the
12 decision of the Trial Chamber.

13 I shall now summarise the Appeals Chamber's judgment and the reasons for it. The
14 summary is not part of the written judgment, which is the only authoritative account
15 of the Appeals Chamber's rulings and reasons. The written judgment will be made
16 available to the parties at the conclusion of this hearing.

17 Let me start with a brief procedural history. On 5 December 2014, Mr Bemba filed
18 an application for provisional release. The legal representative of victims and the
19 Prosecutor filed responses opposing this request on 12 December 2014. On 15
20 December 2014, Mr Bemba filed a reply to these responses. In the impugned
21 decision, the Pre-Trial Chamber rejected Mr Bemba's application for interim release.
22 The first ground of appeal relates to Article 58(1)(b)(i) of the Statute. This provision
23 provides for a person's detention where the Chamber is satisfied that it appears
24 necessary to ensure his appearance at trial. Mr Bemba argues that the Trial Chamber
25 erred in law in finding that a "trial" encompasses the deliberations period and, as a

1 result, that his detention continues to be necessary "to ensure his appearance at trial"
2 during deliberations.

3 The Appeals Chamber starts by noting that the ordinary meaning of the word "trial"
4 includes the determination of the matter in dispute.

5 It considers that this interpretation of the word "trial" is also appropriate in the light
6 of the purpose of Article 58(1)(b)(i) of the Statute. The presence of the accused is
7 required not only for the purposes of hearing the evidence against him or her, but
8 also to ensure the accused's availability for judgment and sentencing.

9 In the Appeals Chamber's view, it would determine the entire purpose of remanding
10 the accused persons in detention on the grounds that they are flight risks during the
11 evidentiary hearing, if they were ultimately to be released prior to the rendering of
12 the judgment, simply on the basis that their presence is not required for deliberations.

13 The Appeals Chamber further considers that a contextual reading of Article 58(1)(b)(i)
14 of the Statute supports this interpretation. In this regard, it is noteworthy that it
15 continued detention of an acquitted person in exceptional circumstances having
16 regard inter alia to the concrete risk of flight. In the Appeals Chamber's view, it
17 would seem illogical for the Statute to explicitly provide for the possibility of
18 continuing a person's detention following his or her acquittal on the grounds that he
19 or she represents a flight risk pending appeal, if it did not also envisage the possibility
20 of keeping the person in detention during deliberations, pending the delivery of that
21 judgment.

22 Therefore, the Appeals Chamber finds no legal error in the Trial Chamber's
23 determination that the deliberations period is encompassed in the "trial."

24 The Appeals Chamber also understands Mr Bemba's arguments under this ground of
25 appeal to raise the question of whether the Trial Chamber erred in finding that the

1 commencement of deliberations is not a changed circumstance requiring modification
2 of its prior ruling on the necessity of detention.

3 The Appeals Chamber notes that in the impugned decision the Trial Chamber
4 concluded that the closure of evidence and the start of deliberations does not mean
5 that the condition under Article 58(1)(b)(i) is no longer met. The Trial Chamber
6 found that the commencement of deliberations does not alter the four factors relied
7 upon by the Chamber in its previous decision that the accused poses a flight risk.

8 The Appeals Chamber finds that the Trial Chamber's conclusions were not
9 unreasonable. In the context of this case, there was no indication that the
10 commencement of deliberations, although a changed circumstance, would have any
11 impact on the risk that Mr Bemba would abscond previously identified under Article
12 58(1)(b)(i) of the Statute.

13 Finally, the Appeals Chamber rejects Mr Bemba's argument, under this ground of
14 appeal, that the Trial Chamber committed an error of law by failing to engage with
15 his submissions on the practice of the ICTY. The Appeals Chamber considers that
16 the Trial Chamber indicated with sufficient clarity the basis of its decision and was
17 not required to exhaustively address the arguments of the parties.

18 The first ground of appeal is, therefore, dismissed.

19 I shall now turn to the second ground of appeal.

20 Mr Bemba's second ground of appeal is that the Trial Chamber erred in law by
21 relying on factual findings from Pre-Trial Chamber II's decision to confirm the
22 charges in proceedings against Mr Bemba for offences against the administration of
23 justice.

24 I will refer to this decision as the Pre-Trial Chamber's confirmation decision.

25 Mr Bemba argues that the Trial Chamber erred in relying on the Pre-Trial Chamber's

1 confirmation decision to add an additional justification for his detention under Article
2 58(1)(b)(ii) of the Statute to ensure that he does not obstruct or endanger the
3 investigation or court proceedings.

4 The Appeals Chamber is not persuaded by Mr Bemba's arguments under this ground
5 of appeal.

6 First, the Appeals Chamber notes that the standard of "substantial grounds to believe"
7 applicable to the purposes of confirmation of charges is higher than that applicable
8 under Article 58(1)(b)(ii) of the Statute. In relation to this latter standard, the
9 Appeals Chamber has previously held that in order for continued detention to be
10 justified it must "appear" to be necessary. The question of what "appears to be
11 necessary" revolves around the possibility, not the inevitability, of a future
12 occurrence.

13 Second, the Appeals Chamber notes that, in the present case, the Trial Chamber relied
14 on the fact that charges had been confirmed against Mr Bemba in relation to offences
15 of corruptly influencing witnesses and presenting false evidence and soliciting the
16 commission of the offence of giving false testimony. These offences had allegedly
17 been carried out in the context of the case before the Trial Chamber. The relevance
18 of these charges to an assessment as to whether the arrest of Mr Bemba appears
19 necessary to ensure that he does not obstruct or endanger the investigation or the
20 court proceedings is, in principle, evident.

21 Finally, the Appeals Chamber considers that the Trial Chamber did not adopt the
22 conclusions of the Pre-Trial Chamber in the sense of endorsing its findings on the
23 merits, or its evaluation of the evidence. Rather, as part of the assessment of the
24 existence of a risk under Article 58(1)(b)(ii) of the Statute, the Trial Chamber took into
25 account the fact that charges had been confirmed against Mr Bemba for offences

1 against the administration of justice and assessed this fact in light of all the
2 circumstances of the case.

3 In view of the foregoing, the Appeals Chamber finds that the Trial Chamber did not
4 err in law relying on the fact that charges had been confirmed against Mr Bemba for
5 offences against the administration of justice, for the purposes of its analysis as to
6 whether Mr Bemba's detention appeared necessary under Article 58(1)(b)(ii) of the
7 Statute. Mr Bemba has not raised arguments regarding the reasonableness of the
8 Trial Chamber's factual conclusions and this question is therefore not addressed by
9 the Appeals Chamber.

10 Mr Bemba's third ground of appeal is that the Trial Chamber erred in denying
11 provisional release on the basis that it was not clear that the Kingdom of Belgium had
12 offered to accept him and to enforce conditions.

13 First, the Appeals Chamber notes that the Trial Chamber did not, as argued by
14 Mr Bemba, deny conditional release because it was in doubt as to the willingness of
15 the Kingdom of Belgium to receive him. Rather, it denied conditional release on the
16 basis that there is no condition short of detention at the seat of the Court that would
17 be sufficient to mitigate the accused's flight risk.

18 Second, the Appeals Chamber notes that there was no concrete proposal for
19 conditional release by a State before the Chamber in this case. Moreover, had such a
20 proposal been received, adherence to the relevant Appeals Chamber ruling to which
21 Mr Bemba refers in the Bemba OA 7 judgment would have required the Trial
22 Chamber to request further information only if it found that the State's observations
23 were insufficient to enable it to make an informed decision on conditional release.

24 As the Appeals Chamber has subsequently clarified, the Bemba OA 7 judgment in no
25 way indicated a general obligation on the Trial Chamber to seek observations in the

1 case of doubt as to submissions by a State in relation to interim release, let alone in a
2 situation such as the present one where the State has not indicated its willingness or
3 ability to receive the said person.

4 The Appeals Chamber also recalls its previous ruling that the obligation to specify
5 possible conditions of release and, if necessary, to seek further information are only
6 triggered when: First, the Chamber is considering conditional release; second, a
7 State has indicated a general willingness and ability to accept a detained person into
8 its territory; and, three, the Chamber does not have sufficient information before it to
9 make an informed decision.

10 In the present case, the Trial Chamber, in considering conditional release, concluded
11 that there is no condition short of detention at the seat of the Court that would be
12 sufficient to mitigate the accused's flight risk or the risk that the accused might
13 obstruct or endanger court proceedings.

14 The Appeals Chamber considers that the Trial Chamber could have elaborated
15 further on the reasons for this view. Nevertheless, it is clear that an assessment of
16 the possibility of conditional release was carried out in the light of the current
17 circumstances of the case, and the Appeals Chamber can discern no error in the Trial
18 Chamber's reasoning in this regard.

19 In these circumstances and based on the facts of this case, the Appeals Chamber can
20 discern no error in the Trial Chamber's conclusion that it was not necessary to
21 convene a status conference with State representatives to discuss the implementation
22 of appropriate conditions and logistical arrangements for an eventual period of
23 provisional release. The Trial Chamber was convinced that it was necessary to
24 maintain Mr Bemba's detention at the Court and, based on the facts of the case before
25 it, it did not consider conditional release to be a realistic possibility. The Appeals

- 1 Chamber therefore finds that the Trial Chamber did not err in declining to grant
2 conditional release without hearing from the Kingdom of Belgium as to the possibility
3 of conditional release on its territory.
4 For these reasons the Appeals Chamber confirms the impugned decision.
5 This concludes the summary of the judgment. It remains only to thank the parties,
6 the interpreters and the court reporters.
7 The decision is now closed -- the session is now closed.
8 THE COURT USHER: All rise.
9 (The hearing ends in open session at 11.15 a.m.)