

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/14-01/22

Date: 17 October 2023

PRE-TRIAL CHAMBER II

Before:

Judge Rosario Salvatore Aitala, Presiding

Judge Tomoko Akane

Judge Sergio Gerardo Ugalde Godínez

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF

THE PROSECUTOR v. MAXIME JEOFFROY ELI MOKOM GAWAKA

Confidential

Order in relation to the Prosecution's 'Notice of Withdrawal of the Charges against
Maxime Jeoffroy Eli Mokom Gawaka'

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

The Office of the Prosecutor

Mr Karim A. A. Khan
Mr Mame Mandiaye Niang
Ms Leonie von Braun

Counsel for Mr Mokom

Mr Philippe Larochelle

Legal Representatives of Victims

Mr Abdou Dangabo Moussa
Ms Marie-Edith Douzima-Lawson
Mr Yaré Fall
Ms Elisabeth Rabesandratana

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Mr Pieter Vanaverbeke

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

Mr Harry Tjonk

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

PRE-TRIAL CHAMBER II of the International Criminal Court issues this ‘Order in relation to the Prosecution’s “Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka”’.

1. On 10 December 2018, the Chamber issued a warrant of arrest for Maxime Jeoffroy Eli Mokom Gawaka (‘Mr Mokom’ and the ‘Warrant of Arrest’).¹
2. Following his arrest in the Republic of Chad, Mr Mokom was surrendered to the Court on 14 March 2022, and he made his first appearance before the Chamber on 22 March 2022.²
3. On 9 March 2023, the Prosecution submitted the ‘Document Containing the Charges’.³
4. The confirmation of charges hearing was held from 22 to 24 August 2023.⁴ On 24 August 2023, the Chamber ordered the Defence and the Prosecution to provide written submissions on any issues set out during the confirmation of charges hearing and, in particular, on Mr Mokom’s alleged contribution to the charged crimes, and Mr Mokom’s alleged *mens rea* in relation to the charged crimes. The initial submissions by the parties and participants were ordered to be provided by no later than 14 September 2023. Following variations of the time limits, the Chamber ordered the Prosecution and the Defence to provide responses by no later than 13 October 2023, and the Defence to provide its reply by no later than 20 October 2023.
5. On 16 October 2023, the Prosecution submitted the ‘Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka’ (the ‘Notice’),⁵ thereby

¹ ICC-01/14-01/22-2-US-Exp, confidential and *ex parte*, available only to the Prosecution (a redacted under seal, *ex parte*, only available to the Prosecutor and the Victims and Witnesses Unit, version was issued on 31 January 2019, ICC-01/14-01/22-2-US-Exp-Red; a public redacted version was issued on 22 March 2022, ICC-01/14-01/22-2-Red2).

² Order convening a hearing for the first appearance of Mr Mokom, 16 March 2022, ICC-01/14-01/22-21.

³ ICC-01/14-01/22-174-Conf-AnxA (with public redacted version filed on 13 March 2023, ICC-01/14-01/22-174-AnxA-Red and its French translation, ICC-01/14-01/22-174-Conf-AnxB), and annexes C1 and C2 (ICC-01/14-01/22-174-Conf-AnxC1, ICC-01/14-01/22-174-Conf-AnxC2).

⁴ Transcript of hearing, 22 August 2023 (ICC-01/14-01/22-T-006-Red-ENG and ICC-01/14-01/22-T-006-Red-FRA), Transcript of hearing, 23 August 2023 (ICC-01/14-01/22-T-007-Red-ENG and ICC-01/14-01/22-T-007-Red-FRA); Transcript of hearing, 24 August 2023 (ICC-01/14-01/22-T-008-Red-ENG and ICC-01/14-01/22-T-008-Red-FRA).

⁵ ICC-01/14-01/22-275-Conf.

notifying the Chamber of its withdrawal of all charges against Mr Mokom pursuant to article 61(4) of the Rome Statute (the 'Statute'), whilst indicating that, should the Chamber consider that 'leave is required to withdraw the charges at this stage, the Prosecution respectfully seeks the Chamber's permission pursuant to article 61(9)'.⁶

6. The Chamber observes that the present situation is not specifically addressed in the Statute. On the one hand, article 61(4) of the Statute regulates the withdrawal of charges '[b]efore the hearing'. On the other hand, article 61(9) of the Statute concerns the withdrawal of charges '[a]fter commencement of the trial'. The Notice has been provided after the commencement of the confirmation of charges hearing and before the issuance of the Chamber's decision pursuant to article 61(7) of the Statute. It follows that the Chamber must identify the appropriate legal basis governing the matter.

7. The Chamber considers that, in the current circumstances, the Notice is appropriately addressed under article 61(4) of the Statute. The confirmation of charges hearing has not yet been concluded as the parties are still to submit written submissions on the merits of the case. In this regard, the Chamber recalls that it has previously indicated that the 60-day time limit for the Chamber's decision on the Prosecutor's request to confirm the charges against Mr Mokom, as set out in regulation 53 of the Regulations of the Court, shall start running following the expiry of the time limit for the final written submissions, that is 20 October 2023.⁷ In the view of the Chamber, the confirmation of charges hearing serves, *inter alia*, to discuss the merits of the Prosecution's allegations for the benefit of all parties and participants, including the Prosecution. As the confirmation of charges hearing has not yet ended, the Chamber has, at present, neither engaged in the evaluation of the evidence nor initiated its deliberations. Article 61(9) of the Statute, to the contrary, regulates the withdrawal of charges after the Chamber has already issued a decision confirming the charges, as a result of which the Prosecution requires the Chamber's permission to do so. In these circumstances, it is the Chamber's view that the Prosecution is only bound to notify the Chamber of the reasons for the withdrawal of the charges.

⁶ Notice, para. 1.

⁷ Email from Chamber to the Defence, 3 October 2023, at 11:38.

8. The Chamber observes that the Notice, in compliance with article 61(4) of the Statute, provides reasons for the Prosecution's withdrawal of the charges against Mr Mokom, although these reasons are limited and lack additional information in support. Given the language of article 61(4) of the Statute, the withdrawal of charges is a matter of prosecutorial discretion in the current circumstances, falling squarely within the limits of the prerogatives of the Prosecution. As a result, the Chamber will not scrutinise the reasons put forward by the Prosecution to support its decision to withdraw the charges against Mr Mokom.

9. In light of the foregoing, the Chamber takes note of the Prosecution's withdrawal of the charges against Mr Mokom and terminates the proceedings against him with immediate effect. With the withdrawal of the charges, the Warrant of Arrest 'shall cease to have effect' under article 61(10) of the Statute. The Chamber additionally recalls that, in view of the right to liberty, pre-trial detention is the exception and not the rule. Therefore, as of the notification of the present order, there is no longer a legal title for the continued detention of Mr Mokom. As a result, the Chamber instructs the Registry to ensure that Mr Mokom is released from the ICC Detention Centre today.

10. The Chamber is aware that the sudden termination of the case means that arrangements will have to be made before Mr Mokom can be transferred to a State which is obliged to receive him or to another State.⁸ The Registry shall immediately make all necessary arrangements for these purposes, including by liaising with Mr Mokom and the Defence, as well as the relevant States, in particular the Central African Republic and the Host State. However, in view of the absence of a legal title for Mr Mokom's pre-trial detention under the Statute, the Registry shall ensure that the conditions of Mr Mokom's temporary stay pending his transfer do not in any way amount to a deprivation of liberty and that no restrictions are placed on his freedom of communication or his freedom of movement within the territory of the Host State. The Registry is further instructed to provide Mr Mokom with the reasonably necessary assistance in the interim period pending his transfer to allow him to enjoy his rights as a free person.

⁸ See rule 185(1) of the Rules of Procedure and Evidence; article 48(1) of the Headquarters Agreement between the International Criminal Court and the Host State.

11. The termination of the present case also renders moot all matters pending before the Chamber, including the Chamber's periodic review of Mr Mokom's detention under article 60(3) of the Statute and any written submissions to be submitted following the confirmation of charges hearing. The Chamber retains jurisdiction to consider residual matters, including any review and possible reclassification of confidential filings, which shall remain confidential unless otherwise decided.

12. Finally, noting that the Notice is classified as confidential, the Chamber orders the Prosecution to file a public redacted version of the Notice (ICC-01/14-01/22-275-Conf), or to indicate that it can be reclassified as public, by no later than 18 October 2023.

FOR THESE REASONS, THE CHAMBER HEREBY

NOTES the Prosecution's withdrawal of charges against Mr Mokom;

TERMINATES the proceedings in the present case;

VACATES the Warrant of Arrest;

ORDERS Mr Mokom's immediate release from the ICC Detention Centre;

INSTRUCTS the Registry to effectuate Mr Mokom's immediate release from the ICC Detention Centre;

INSTRUCTS the Registry to make all necessary arrangements to transfer Mr Mokom to a State which is obliged to receive him or to another State;

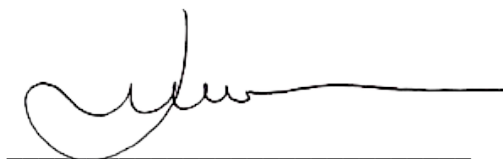
INSTRUCTS the Registry to consult with the Host State to ensure that any temporary conditions of stay of Mr Mokom do not result in any deprivation of liberty or restriction of any freedoms;

INSTRUCTS the Registry to provide Mr Mokom with the reasonably necessary assistance in the interim period pending his transfer;

DECLARES moot all pending matters before the Chamber; and

FINDS that it retains jurisdiction regarding residual matters.

Done in English. A French translation will follow. The English version remains authoritative.



Judge Rosario Salvatore Aitala
Presiding



Judge Tomoko Akane



Judge Sergio Gerardo
Ugalde Godínez

Dated this Tuesday, 17 October 2023.

At The Hague, The Netherlands.