

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/05-01/13**

Date: **4 November 2016**

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul Pangalangan

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

**IN THE CASE OF
THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO, AIMÉ KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE BABALA
WANDU AND NARCISSE ARIDO**

Confidential

**Narcisse Arido's Request for Leave to Appeal the
'Decision on Requests for Variation of Deadlines in the Sentencing Calendar'
(ICC-01/05-01/13-2001)**

Source: Counsel for Narcisse Arido

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

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I. SUBMISSIONS

1. On 2 November 2016, Trial Chamber VII ('Trial Chamber') rejected the Arido and Babala Defence request¹ ('Defence Request') for a variation of the Sentencing Schedule in its "Decision on Requests for Variation of Deadlines in the Sentencing Calendar"² ('Impugned Decision'). The Trial Chamber's rejection is based on its conclusion that "targeted French draft translations [...] are all that is necessary to provide for sentencing purposes under Article 67(1)(b) of the Statute."³

2. The Arido Defence hereby seeks leave to appeal the Impugned Decision, pursuant to Article 82(1)(d), on the issue of *whether the Trial Chamber erred in its rejection of the Defence requests for the suspension or variation of the sentencing deadlines where the Accused has not be provided the entire judgment, thus violating the fair trial rights of the Accused.*

3. The Arido Defence includes by reference its prior submission on the law applicable to requests for leave to appeal.⁴

4. The Impugned Decision analysed the Defence Request only within a narrow interpretation of Article 67(1)(f)⁵ while the Defence Request emphasised that the issue at stake in its request was the right of Mr. Arido to prepare and present his defence, under Article 67. These rights do not end with the rendering of the Judgment, but continue through the sentencing, appellate and other post-conviction remedies phases. Here, the rights under Article 67(1)(f) must be understood within the context of Mr. Arido's right to prepare for the sentencing phase.

5. Fairness demands that Mr. Arido be given the opportunity to identify all factors that would mitigate his sentence. This means that Mr. Arido must be able to read and understand the complete Judgment to exercise his rights. There may be mitigating factors that only he can identify following a reading of the whole Judgment as his Defence team lacks direct access to his memory. The provision of a fully-translated Judgment clearly is part of this preparation.

¹ ICC-01/05-01/13-1992.

² ICC-01/05-01/13-2001.

³ Impugned Decision, para. 14.

⁴ ICC-01/05-01/13-1950, paras 3-8.

⁵ Impugned Decision, p. 3, and paras 9 and 14.

6. The Court's jurisprudence has recognised that fair trial rights extend through "all stages of the proceedings".⁶ Moreover, Article 67 suggests that the minimum guarantees must be generously interpreted, so as to ensure the defence is placed, insofar as possible, on an equal footing with the Prosecution, in order to protect fully the right of the accused to a fair trial.⁷

7. The Impugned Decision impacts upon the fair and expeditious conduct of proceedings. The failure to identify a relevant factor at this stage has the potential to elongate, or indeed prompt, an appeal against the sentence. As noted above, the denial of the opportunity for Mr. Arido to properly identify mitigating factors, including possible witnesses on his behalf, is unfair. Granting an appeal at this stage would materially advance the proceedings so that mitigating factors are timely raised with the Trial Chamber.

II. CONCLUSION

8. In light of the above, the Arido Defence respectfully requests Trial Chamber VII to grant it leave to appeal the Impugned Decision on the above issue.



Chief Charles Achaleke Taku, Counsel for Mr. Arido

Dated this 4th Day of November 2016

Burundi

⁶ ICC-01/05-01/08-424, para. 31.

⁷ ICC-01/04-01/06-1091, para. 18.