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No. ICC-01/05-01/13 A6 A7 A8 A9

Date: 15 September 2017

THE APPEALS CHAMBER

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Howard Morrison
Judge Geoffrey A. Henderson
Judge Piotr Hofmański

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**

Public document

Decision setting a time limit for requests for leave to reply

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

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor
Ms Helen Brady

Counsel for Jean-Pierre Bemba Gombo
Ms Melinda Taylor
Ms Mylène Dimitri

Counsel for Aimé Kilolo Musamba
Mr Michael G. Karnavas

Counsel for Jean-Jacques Mangenda Kabongo
Mr Christopher Gosnell
Mr Peter Robinson

Counsel for Fidèle Babala Wandu
Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido
Mr Charles Achaleke Taku
Ms Beth Lyons

REGISTRY

Registrar
Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeals of Mr Jean-Pierre Bemba Gombo, Mr Fidèle Babala Wandu, Mr Narcisse Arido and the Prosecutor against the decision of Trial Chamber VII entitled “Decision on Sentence pursuant to Article 76 of the Statute” of 22 March 2017 (ICC-01/05-01/13-2123-Corr),

Having before it “Narcisse Arido’s Request to Extend the Deadline to File its Request for Leave to Reply to ‘Prosecution’s Consolidated Response to Mr Bemba’s, Mr Babala’s, and Mr Arido’s Appeals against the Sentencing Decision’ Starting from the Date of Notification of Complete French Translation of the Prosecution Response” of 25 August 2017 (ICC-01/05-01/13-2208 (A6 A7 A8)),

Having before it the “Adjonction de la Défense de M. Babala à « Narcisse Arido’s Request to Extend the Deadline to File its Request for Leave to Reply to ‘Prosecution’s Consolidated Response to Mr Bemba’s, Mr Babala’s, and Mr Arido’s Appeals against the Sentencing Decision’ Starting from the Date of Notification of Complete French Translation of the Prosecution Response » (ICC-01/05-01/13-2208)” of 30 August 2017 (ICC-01/05-01/13-2211 (A6 A7 A8)),

Renders the following

DECISION

1. Any request by Mr Babala for leave to reply to the “Prosecution’s Consolidated Response to Mr Bemba’s, Mr Babala’s, and Mr Arido’s Appeals against the Sentencing Decision” must be filed by 16h00 on Friday, 22 September 2017.
2. Any request by the Prosecutor for leave to reply to Mr Bemba’s, Mr Kilolo’s, or Mr Mangenda’s response to the “Prosecution’s Document in Support of Appeal against Trial Chamber VII’s ‘Decision on Sentence pursuant to Article 76 of the Statute’” must be filed by 16h00 on Friday, 22 September 2017.

REASONS

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 22 March 2017, Trial Chamber VII (“Trial Chamber”) rendered its “Decision on Sentence pursuant to Article 76 of the Statute”¹ (“Sentencing Decision”).
2. Mr Babala,² Mr Arido,³ Mr Bemba,⁴ and the Prosecutor⁵ each filed appeals against the Sentencing Decision.
3. On 21 August 2017, the Prosecutor filed a consolidated response to Mr Babala’s, Mr Arido’s, and Mr Bemba’s appeal briefs (“Prosecutor’s Response”).⁶
4. On the same date on which the Prosecutor’s Response was filed, Mr Bemba,⁷ Mr Kilolo,⁸ and Mr Mangenda⁹ filed their respective responses to the “Prosecution’s

¹ [ICC-01/05-01/13-2123-Corr.](#)

² “Notification d’appel de la Défense de M. Fidèle Babala Wandu à l’encontre de la «*Decision on Sentence pursuant to Article 76 of the Statute*» (ICC-01/05-01/13-2123) rendue par la Chambre de première instance VII”, 13 April 2017, [ICC-01/05-01/13-2139](#) (A7); “Mémoire d’appel de la Défense de M. Fidèle Babala Wandu contre la sentence prononcée par la Chambre de première instance VII (ICC-01/05-01/13-2123-Corr)”, 21 June 2017, ICC-01/05-01/13-2166-Conf (A7).

³ “Narcisse Arido’s Notice of Appeal against the Trial Chamber VII’s ‘Decision on Sentence pursuant to Article 76 of the Statute’ (ICC-01/05-01/13-2123-Corr)”, 20 April 2017, [ICC-01/05-01/13-2141](#) (A6); “Narcisse Arido’s Document in Support of Appeal Against Sentence Pursuant to Article 81”, 21 June 2017, ICC-01/05-01/13-2169-Conf (A6).

⁴ “Bemba Defence Notice of Appeal against Decision Sentence pursuant to Article 76 of the Statute, (ICC-01/05-01/13-2123) by Trial Chamber VII”, 24 April 2017, [ICC-01/05-01/13-2142](#) (A8); “Defence Document in Support of the Appeal against the Sentence”, 21 June 2017, ICC-01/05-01/13-2167-Conf (A8); a public redacted version was filed on 28 June 2017 ([ICC-01/05-01/13-2167-Red \(A8\)](#)).

⁵ “Prosecution’s Notice of Appeal against Trial Chamber VII’s ‘Decision on Sentence pursuant to Article 76 of the Statute’”, 24 April 2017, [ICC-01/05-01/13-2146 \(A9\)](#); “Prosecution’s Document in Support of Appeal against Trial Chamber VII’s ‘Decision on Sentence pursuant to Article 76 of the Statute’”, 21 June 2017, ICC-01/05-01/13-2168-Conf (A9); a public redacted version was filed on 24 July 2017 ([ICC-01/05-01/13-2168-Red \(A9\)](#)).

⁶ “Prosecution’s Consolidated Response to Mr Bemba’s, Mr Babala’s, and Mr Arido’s Appeals against the Sentencing Decision”, ICC-01/05-01/13-2203-Conf (A6 A7 A8).

⁷ “Bemba Defence Response to Prosecution’s Appeal Brief on Sentence”, ICC-01/05-01/13-2202-Conf-Exp (A9); a confidential redacted version was filed on the same day (ICC-01/05-01/13-2202-Conf-Red (A9)).

⁸ “Aimé Kilolo Musamba’s Response to the Prosecution’s Document in Support of Appeal against Trial Chamber VII’s Decision on Sentence pursuant to Article 76 of the Statute (ICC-01/05-01/13-2168-Conf)”, ICC-01/05-01/13-2204-Conf (A9); a corrected version was filed on 29 August 2017 (ICC-01/05-01/13-2204-Conf-Corr (A9)); a public redacted version of the corrected version was filed on 30 August 2017 ([ICC-01/05-01/13-2204-Corr-Red \(A9\)](#)).

⁹ “Response to Prosecution’s Document in Support of Appeal against Trial Chamber’s VII’s ‘Decision on Sentence pursuant to Article 76 of the Statute’”, ICC-01/05-01/13-2201-Conf (A9).

Document in Support of Appeal against Trial Chamber VII’s ‘Decision on Sentence pursuant to Article 76 of the Statute’”.

5. On 25 August 2017, Mr Arido requested that the Appeals Chamber order the Registry to provide a translation of the Prosecutor’s Response in a language he understands, specifically in French, and sought, under regulation 35 (2) of the Regulations of the Court (“Regulations”), a variation of the time limit to file a request for leave to reply to the Prosecutor’s Response to allow him sufficient time to review and analyse the French translation of the Prosecutor’s Response, and adequately instruct counsel¹⁰ (“Mr Arido’s Request”).

6. On 30 August 2017, Mr Babala also filed a request to vary the time limit for a request for leave to reply to the Prosecutor’s Response¹¹ (“Mr Babala’s Request”). Mr Babala joins Mr Arido’s Request.¹² He argues that the availability of the Prosecutor’s Response in a language he and his defence team understand perfectly is necessary for him to instruct his defence team in full knowledge of the facts.¹³ He asserts that article 67 (1) (f) of the Statute applies to all procedural documents in the case file and the drafters of the Rome Statute did not intend to restrict translations to one category of documents.¹⁴ He further argues that the lack of a French translation of the Prosecutor’s Response prevents him from participating in his own defence, a right provided for under article 67 (1) (e) of the Statute.¹⁵

II. MERITS

7. The Appeals Chamber recalls that, pursuant to regulation 60 (1) of the Regulations, the Appeals Chamber may order an appellant to file a reply whenever it considers it necessary in the interests of justice. The Appeals Chamber recalls that

¹⁰ “Narcisse Arido’s Request to Extend the Deadline to File its Request for Leave to Reply to ‘Prosecution’s Consolidated Response to Mr Bemba’s, Mr Babala’s, and Mr Arido’s Appeals against the Sentencing Decision’ Starting from the Date of Notification of Complete French Translation of the Prosecution Response”, [ICC-01/05-01/13-2208](#) (A6 A7 A8), paras 1, 14.

¹¹ “Adjonction de la Défense de M. Babala à « Narcisse Arido’s Request to Extend the Deadline to File its Request for Leave to Reply to ‘Prosecution’s Consolidated Response to Mr Bemba’s, Mr Babala’s, and Mr Arido’s Appeals against the Sentencing Decision’ Starting from the Date of Notification of Complete French Translation of the Prosecution Response » (ICC-01/05-01/13-2208)”, [ICC-01/05-01/13-2211](#) (A6 A7 A8).

¹² [Mr Babala’s Request](#), paras 1, 9, 13, 17.

¹³ [Mr Babala’s Request](#), para. 14.

¹⁴ [Mr Babala’s Request](#), para. 15.

¹⁵ [Mr Babala’s Request](#), para. 16.

“[a]lthough not specifically mentioned in regulation 60 of the Regulations, an appellant may request, and accordingly, trigger the powers of the Appeals Chamber to order the filing of a reply under said regulation”.¹⁶ As noted in a recent order issued in this case, regulation 60 of the Regulations does not prescribe any time limit for the submission of requests for leave to reply and, accordingly, the Appeals Chamber has discretion to set a deadline for any such request.¹⁷

8. The Appeals Chamber notes that Mr Bemba and Mr Arido have already filed requests for leave to reply to the Prosecutor’s Response.¹⁸ The Appeals Chamber considers it in the interest of judicial efficiency to exercise its discretion, under regulation 60 of the Regulations, and set a time limit for any remaining requests for leave to reply to the responses to the appeal briefs in the present appeal, that is: (i) any request by Mr Babala for leave to reply to the Prosecutor’s Response; and (ii) any request by the Prosecutor for leave to reply to Mr Bemba’s, Mr Kilolo’s, or Mr Mangenda’s response to her appeal brief.

9. In setting this time limit, the Appeals Chamber notes that Mr Arido and Mr Babala filed requests seeking, pursuant to regulation 35 of the Regulations, a variation of time limits. The Appeals Chamber considers that Mr Arido’s filing of a request for leave to reply to the Prosecutor’s Response renders moot Mr Arido’s Request, and will accordingly only address the arguments made by Mr Babala.

10. While Mr Babala formulates his request as a request for the variation of time limits, the Appeals Chamber has already explained, in a decision recently issued in this case, that the governing provision for a reply to a response to an appeal brief is regulation 60 of the Regulations, which does not itself prescribe any time limit for the

¹⁶ *Prosecutor v. Thomas Lubanga Dyilo*, “Order on the filing of a reply under regulation 60 of the Regulations of the Court”, 21 February 2013, [ICC-01/04-01/06-2982 \(A5 A6\)](#), para. 6.

¹⁷ “Order on reclassification of documents and Reasons for the ‘Decision on requests for variation of time limits for a request for leave to reply’”, 14 August 2017, [ICC-01/05-01/13-2196 \(A A2 A3 A4 A5\) \(“Decision of 14 August 2017”\)](#), para. 9.

¹⁸ “Defence Request for Leave to Reply to ‘Prosecution’s Consolidated Response to Mr Bemba’s, Mr Babala’s, and Mr Arido’s Appeals against the Sentencing Decision’”, 4 September 2017, ICC-01/05-01/13-2215-Conf; a public redacted version was filed the same day ([ICC-01/05-01/13-2215-Red \(A6 A7 A8\)](#)). “Narcisse Arido’s Request for Leave to Reply to the ‘Prosecution’s Consolidated Response to Mr Bemba’s, Mr Babala’s, and Mr Arido’s Appeals against the Sentencing Decision’ (ICC-01/05-01/13-2203-Conf) Pursuant to Regulation 60(1) of the Regulations of the Court”, 6 September 2017, ICC-01/05-01/13-2218-Conf (A6 A7 A8).

submission of requests for leave to reply and thereby leaves the setting of such time limits in the discretion of the Appeals Chamber.¹⁹ In this context, the Appeals Chamber understands Mr Babala's submission as requesting that, in the event the Appeals Chamber sets a time limit, such time limit for his prospective request for leave to reply to the Prosecutor's Response should take into account the need for its translation into French.

11. The Appeals Chamber notes that Mr Babala's submissions are very similar to the submissions he made recently with respect to another request for the extension of time to request a reply,²⁰ which the Appeals Chamber has denied.²¹ The Appeals Chamber recalls that article 67 (1) (f) of the Statute guarantees the right of the accused to have, free of any cost, such translations are "necessary to meet the requirements of fairness". The document at issue is a response by the Prosecutor to Mr Babala's appeal brief – an appeal brief presumably created with his direct participation in the identification of the issues that he wanted to bring to the attention of the Appeals Chamber. The Appeals Chamber is satisfied that, with respect to a request for leave to reply, even without a translation of the Prosecutor's Response, Mr Babala, duly assisted by his counsel, will be able to consider whether the Prosecutor's Response raises issues that necessitate a reply, and accordingly determine whether to request leave of the Appeals Chamber to file a reply. The Appeals Chamber does not consider that Mr Babala suffers any prejudice from not receiving the requested translation for the requested purpose and it, therefore, considers that fairness does not necessitate that Mr Babala receive a French translation of the Prosecutor's Response in order to prepare a request for leave to reply.

12. Mr Babala also refers to article 67 (1) (e) of the Statute. This provision provides that an accused has the right to examine the witnesses against him, obtain witnesses to testify on his own behalf, raise defences, and present other evidence. These

¹⁹ See [Decision of 14 August 2017](#), paras 8-9.

²⁰ See "Requête de la Défense de M. Babala demandant la suspension de l'échéance applicable à une requête visant à solliciter l'autorisation pour soumettre une réplique à la «*Prosecution's Consolidated Response to the Appellants' [sic] Documents in Support of Appeals*» (ICC-01/05-01/13-2170-Conf)", 11 July 2017, ICC-01/05-01/13-2171 (A2).

²¹ [Decision of 14 August 2017](#), paras 8-12.

procedural rights are not at issue in the present circumstances and are therefore inapposite to the question of whether translations are necessary to meet the requirements of fairness. With respect to the right to present or participate in one's own defence, as noted above, even without a translation of the Prosecutor's Response, Mr Babala, duly assisted by his counsel, will be able to consider whether a reply is necessary.

13. The Appeals Chamber therefore considers that a translation of the Prosecutor's Response is not necessary for Mr Babala to make any request for leave to reply to the Prosecutor's Response.

14. Taking into account the relevant circumstances, the Appeals Chamber finds it appropriate to order that any outstanding request for leave to reply to the responses to the appeal briefs in the present appeal be filed by Friday, 22 September 2017.

Done in both English and French, the English version being authoritative.


Judge Silvia Fernández de Gurmendi
Presiding Judge

Dated this 15th day of September 2017

At The Hague, The Netherlands