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No.: ICC-01/04-01/07

Date: **12 December 2016**

TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Péter Kovács

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. GERMAIN KATANGA***

Public Document

**Decision on the Application for Resumption of Action Submitted by a Relative of
Deceased Victim a/0265/09 and the Appointment of a New Representative for
Victim A/0071/08**

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

Office of the Prosecutor

Counsel for Germain Katanga

Mr David Hooper

Ms Caroline Buisman

Legal Representatives of Victims

Mr Fidel Nsita Luvengika

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

States' Representatives

**Office of Public Counsel for the
Defence**

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

Ms Isabelle Guibal

TRIAL CHAMBER II of the International Criminal Court (“Chamber” and “Court”, respectively), acting pursuant to articles 68 and 75 of the Rome Statute, rules 85 and 89 of the Rules of Procedure and Evidence (“Rules”) and regulation 86 of the Regulations of the Court, decides the following.

I. Procedural background

1. On 27 October 2016, the Legal Representative of Victims (“Legal Representative”) filed an application to resume the action introduced by Victim a/0265/09, and for leave to appoint a new representative for Victim a/0071/08¹ (“Application”).

2. The Legal Representative submitted that Victim a/0265/09, who had been authorized to participate in the trial proceedings in the case against Germain Katanga (“trial proceedings” and “Mr Katanga” respectively) by a previous decision of the Chamber, had since died. The Legal Representative argued that the designated successor was a close relative of the victim and had been authorized by the victim’s family council to continue the action initiated before the Court² (“Request concerning Victim a/0265/09”).

3. The Legal Representative also sought leave of the Chamber in respect of Victim a/0071/08, who, by a previous decision of the Chamber, had also been authorized to participate in the trial proceedings as a legal entity, to be represented in reparations proceedings by a new representative designated by the competent authority³ (“Request concerning Victim a/0071/08”).

¹ “Demande relative à la reprise de l’action introduite par la victime a/0265/09 ainsi qu’à la désignation d’un nouveau mandataire pour représenter la victime personne morale a/0071/08”, with two confidential *ex parte* annexes (“Annex 1 to the Application” and “Annex 2 to the Application”), and two confidential redacted annexes, dated 27 October 2016, ICC-01/04-01/07-3718-Conf. A public redacted version of the Application was filed on the same day.

² Application, paras. 1, 6-13; Annex 1 to the Application.

³ Application, paras. 2, 14-18; Annex 2 to the Application.

4. The Legal Representative further requested the Chamber, in the event of resumption of the action, to apply the previously ordered protective measures to the designated successor and the new representative.⁴ He submitted that the identities of the successors could be disclosed to the Defence team for Mr Katanga⁵ (“Defence”).

5. On 18 November 2016, the Defence filed a response,⁶ taking no position on the Request concerning Victim a/0265/09 but objecting to the Request concerning Victim a/0071/08.

II. Analysis

a. Request concerning Victim a/0265/09

6. The Chamber notes that, by a decision of 5 August 2009,⁷ Victim a/0265/09 was authorized to participate in the trial proceedings. The Chamber notes that a consolidated redacted version of the victim’s file was transmitted to the Chamber and the Defence on 17 and 19 February 2016, respectively, for the purpose of participation in reparations.⁸

7. The Chamber recalls that close relatives of a victim who was authorized to participate in trial proceedings but who has died in the course of the trial may continue the action which the latter initiated before the Court. The action may, however, only continue on behalf of the deceased victim and within the limits of the views and concerns expressed by the deceased victim in his or her initial application. To this end, the person concerned must provide evidence of the victim’s death, proof

⁴ Application, paras. 5 and 19-23.

⁵ *Ibid.*, para. 22.

⁶ “Defence Response to the ‘*Demande relative à la reprise de l’action introduite par la victime a/0265/09 ainsi qu’à la désignation d’un nouveau mandataire pour représenter la victime personne morale a/0071/08*’” 18 November 2016, ICC-01/04-01/07-3719-Conf (“Response”).

⁷ “Corrigendum of Operative part of the Decision on the 345 applications for participation as victims in the proceedings”, dated 5 August 2009 and filed on 6 August 2009, ICC-01/04-01/07-1347-Corr-tENG, p. 6.

⁸ ICC-01/04-01/07-3656-Conf-Exp-Anxl0 and ICC-01/04-01/07-3656-Conf-Anxl0-Red.

of kinship with the victim, and his or her designation as the successor by their family members.⁹

8. The Chamber notes that, through the Legal Representative, the successor submitted a document entitled “*procès-verbal de conseil de famille*” certifying the death of Victim a/0265/09 and signed by members of the victim’s family, authorizing the successor to act on behalf of the deceased victim and indicating kinship with the deceased victim, along with copies of the documents establishing the identities of each member of the family council.¹⁰

9. The Chamber finds that the information contained in the Application is sufficient to establish (i) the kinship between the deceased victim and the successor, and (ii) that the successor has indeed been authorized by the family to continue the action initiated before the Court by their deceased relative.

10. The Chamber notes that the Legal Representative disclosed to the Defence the identity of the successor, with the latter’s prior consent.¹¹ The Chamber recalls, in this connection, that the protective measures granted to victims also apply to their successors.¹²

b. Request concerning Victim a/0071/08

⁹ “Decision on the applications for resumption of action submitted by the family members of deceased victims a/0170/08 and a/0294/09”, 11 May 2015, ICC-01/04-01/07-3547-tENG (“Decision of 11 May 2015”), para. 6; “Decision on the applications for resumption of action lodged by the family members of deceased victims a/0015/09, a/0032/08, a/0057/08, a/0166/09, a/0192/08, a/0225/09, a/0281/08, a/0282/09, a/0286/09, a/0298/09, a/0354/09, a/0361/09, a/0391/09, a/2743/10 and a/30490/15”, 20 May 2016, ICC-01/04-01/07-3691-tENG (“Decision of 20 May 2016”), Para.7. See also “Decision on the application to resume action, submitted by a family member of deceased Victim a/0253/09”, 10 June 2013, ICC-01/04-01/07-3383-tENG; Corrigendum of the decision on the applications to resume action submitted by the family members of deceased Victims a/0025/08 and a/0311/09”, 24 October 2011, ICC-01/04-01/07-3185-Corr-tENG; “Decision on the applications to resume action submitted by the family members of deceased Victims a/0025/08, a/0051/08, a/0197/08 and a/0311/09”, 14 June 2011, ICC-01/04-01/07-3018-tENG, para. 20; “*Motifs de la troisième décision relative à 8 demandes de participation de victimes à la procédure*”, 17 March 2010, ICC-01/04-01/07-1967; “*Motifs de la deuxième décision relative aux demandes de participation de victimes à la procédure*”, 22 December 2009, ICC-01/04-01/07-1737, paras. 30-32.

¹⁰ Annex 1 to the Application.

¹¹ Application, para. 22, and redacted version of Annex 1 to the Application.

¹² See, for example, Decision of 11 May 2015, para. 11; Decision of 20 May 2016, para. 11.

11. The Chamber notes that, by a decision of 26 February 2009, Victim a/0071/08 was admitted to participate in the trial proceedings as a victim within the meaning of rule 85(b) of the Rules.¹³ The Chamber further notes that a consolidated and redacted version of the file of the victim mentioned above was transmitted to the Chamber and to the Defence on 13 and 25 November 2015, respectively, for the purpose of participation in reparations.¹⁴

12. The Chamber points out that any individual submitting an application on behalf of an organization or institution must prove his or her authority to act on behalf of that organization or institution.¹⁵

13. In the Application, the Legal Representative informed the Chamber that the authority which runs the institution in question had advised him that, for personal reasons, it was now authorizing another person to represent the victim in the reparations phase, thereby terminating the authority of the previous representative.¹⁶

14. The Chamber notes that, in support of the Application, the Legal Representative produced a letter from the authority which runs the institution in question¹⁷ and a copy of the identification document of the person concerned.¹⁸

15. The Chamber notes that, whereas, as submitted by the Defence,¹⁹ the letter attached to the Application does not state the relationship between the designated

¹³ "Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case", 10 June 2008, ICC-01/04-01/07-578-Conf, ("Decision of 10 June 2008"), paras. 133-135; "Decision on the treatment of applications for participation", 26 February 2009, ICC-01/04-01/07-933-tENG, p. 23.

¹⁴ ICC-01/04-01/07-3614-Conf-Exp-Anx30 and ICC-01/04-01/07-3614-Conf-Exp-Anx30-Red.

¹⁵ Decision of 10 June 2008, para. 133; "Grounds for the Decision on the 345 Applications for Participation in the Proceedings Submitted by Victims", 23 September 2009, ICC-01/04-01/07-1491-Red-tENG, paras. 93-96. See also *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Trial Chamber VIII, "Public redacted version of 'Decision on Victim Participation at Trial and on Common Legal Representation of Victims'" 8 June 2016, ICC-01/12-01/15-97-Red, paras. 23 and 25; *The Prosecutor v. Jean-Pierre Bemba Gombo*, Pre-Trial Chamber III, "Fourth Decision on Victims' Participation", 12 December 2008, para. 53.

¹⁶ Application, para. 18.

¹⁷ Annex 2 to the Application, p. 2.

¹⁸ Annex 2 to the Application, p. 3.

person and the institution in question, it is nonetheless signed by the legal representative of the authority which runs the institution and vests the new person with powers to “[TRANSLATION] represent [the said institution] before the [Court]”.²⁰

16. The Chamber considers that, on the basis of the information contained in the Application and the supporting documents, the person designated as the new representative has clearly established his or her capacity to act on behalf of Victim a/0071/08 in the instant proceedings. Furthermore, the protective measures granted to victims apply also to the new representative.

¹⁹ Response, paras. 3-9.

²⁰ Annex 2 to the Application, p. 2.

FOR THESE REASONS, the Chamber,

GRANTS the Application;

AUTHORIZES the person designated by the family of deceased Victim a/0265/09, to continue, on behalf of the victim, the action initiated before the Court;

AUTHORIZES the new representative to act on behalf of Victim a/0071/08;

RECALLS that the identities of the persons authorized above shall not be disclosed to the public; and

INSTRUCTS the Defence to file a public redacted version of the Response within two weeks of the date of filing of this Decision.

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

[signed]

Judge Marc Perrin de Brichambaut
Presiding Judge

[signed]

Judge Olga Herrera Carbuccion

[signed]

Judge Péter Kovács

Dated this 12 December 2016

At The Hague, Netherlands