

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/05-01/08**
Date: **13 November 2018**

PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF *THE PROSECUTOR V. JEAN-PIERRE BEMBA GOMBO*

Confidential

Decision on "Mr. Bemba's request for a variation of the time and page limits in relation to a claim under Article 85 of the Statute"

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor
James Stewart, Deputy Prosecutor

Counsel for the Defence

Peter Haynes
Kate Gibson

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

THE JUDGES OF PRE-TRIAL CHAMBER II (the “Chamber”) of the International Criminal Court (the “Court”) hereby render the decision on “Mr. Bemba’s request for a variation of the time and page limits in relation to a claim under Article 85 of the Statute” (the “Application”).¹

1. On 8 June 2018, the Appeals Chamber decided, by majority, to acquit Jean-Pierre Bemba Gombo (“Mr Bemba”) of the charges of crimes against humanity and war crimes.²

2. On 22 October 2018, the Defence of Mr Bemba informed the Presidency of its intention to file a request under article 85 of the Rome Statute (the “Statute”) and requested a variation of the (i) time limit applicable under rule 173(2) of the Rules of Procedure and Evidence (the “Rules”) by giving Mr Bemba an additional three months to bring the request; and (ii) page limit under regulation 38(2)(f) of the Regulations of the Court (the “Regulations”) by allowing a request of 100 pages.

3. On 30 October 2018, the Presidency designated this Chamber to consider the Application, “as well as any eventual request for compensation under article 85 of the Statute”;³ on 6 November 2018, the Chamber received the Application.

4. As regards the variation of the time limit, the Defence indicates that it intends to seek the assistance of a number of experts in order to properly prepare the article 85 request.⁴ The Defence claims that, to this end, it must “identify what property has in fact been frozen, assemble the supporting documentation, create inventories, and obtain valuations of property across multiple jurisdictions”.⁵ It also alleges that a variation of time is warranted due to the complexities of the arguments it intends to make.⁶

5. As regards the variation of the page limit, the Defence refers to the complexity of the case, the duration of the proceedings regarding Mr Bemba’s property and assets which span a decade, and the novelty of the litigation.⁷

¹ Application, ICC-01/05-01/08-3661-Conf-Exp.

² Appeals Chamber, *Prosecutor v Jean-Pierre Bemba Gombo*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III’s “Judgment pursuant to Article 74 of the Statute”, ICC-01/05-01/08-3636-Red.

³ Presidency, Decision referring a request arising under article 85 to Pre-Trial Chamber II, ICC-01/05-01/08-3662-Conf-Exp, p. 3.

⁴ Application, ICC-01/05-01/08-3661-Conf-Exp, para. 22.

⁵ *Ibid.*

⁶ Application, ICC-01/05-01/08-3661-Conf-Exp, para. 26.

⁷ Application, ICC-01/05-01/08-3661-Conf-Exp, paras 28-30.

6. The Chamber notes rule 173(2) of the Rules which provides that a request under article 85 of the Statute shall be submitted not later than six months from the date the person making the request was notified of the decision of the Court concerning either the unlawfulness of the arrest or detention, the reversal of the conviction or the existence of a grave and manifest miscarriage of justice. This time limit is established in the Rules and therefore, contrary to what the Defence seems to suggest,⁸ cannot be changed in accordance with regulation 35(2) of the Regulations which is only applicable to time limits prescribed in the Regulations or ordered by the Chamber. This is furthermore supported by the hierarchy of the legal texts applicable before this Court, which is established in article 21 of the Statute and reaffirmed in regulation 1 of the Regulations which states that the “Regulations [...] shall be read subject to the Statute and the Rules”. However, the Rules are, in accordance with article 51(4) and (5) of the Statute, subordinate to the Statute and, therefore, the Chamber is of the view that a time limit established in the Rules may be amended in the light of higher interests set forth in the Statute. Regardless of the arguments of the Defence, and without any prejudice to the merits of the case, the Chamber considers it appropriate to guarantee the rights of Mr Bemba to the highest possible extent and, therefore, grants an extension of three additional months.

7. With respect to the Defence request for an extension of the page limit, the Chamber observes that the Defence bases its request on an old version of regulation 38(2) of the Regulations⁹ that has been amended in December 2016.¹⁰ The Chamber notes regulation 38(3)(f) of the Regulations, which provides that “[u]nless otherwise ordered by the Chamber, the page limit shall not exceed 30 pages for [...] [a] request under rule 173 for compensation”. The Chamber further observes that, pursuant to regulation 37(2) of the Regulations, it “may, at the request of a participant, extend the page limit in exceptional circumstances”. Regardless of the arguments of the Defence, and without any prejudice to the merits of the case, the Chamber considers that “exceptional circumstances” exist to grant an extension of the page limit by doubling the number of pages prescribed by the Regulations, namely to 60 pages in total.

⁸ Application, para. 26.

⁹ The old version of regulation 38(2)(f) of the Regulations reads: “Unless otherwise ordered by the Chamber, the page limit shall not exceed 50 pages for the following documents and responses thereto, if any: [...] [a] request under rule 173 for compensation”.

¹⁰ Regulation 38 of the Regulations has been amended on 6 December 2016 whereby sub-regulation 1 and 2 were amended and renumbered and new sub-regulations added. The changes entered into force on 6 December 2016, see https://www.icc-cpi.int/resource-library/Documents/RegulationsCourt_2017Eng.pdf.

8. Finally, the Chamber is of the view that the classification of the Application as “confidential” may be maintained, pursuant to regulation 23*bis* (2) of the Regulations, due to the reasons given by the Defence.¹¹ However, it orders the Defence to file a confidential, version of its Application with redactions, as the case may be, for the Prosecutor to be aware of the present proceedings initiated by the Defence.

FOR THESE REASONS, THE CHAMBER

GRANTS the requested variation of the time limit of an additional three months for Mr Bemba to bring a claim under article 85 of the Statute;

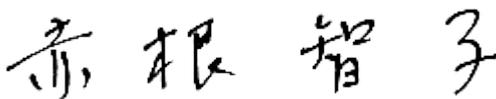
PARTLY GRANTS the requested variation of the page limit and allows Mr Bemba to submit a request under article 85 of the Statute of not more than 60 pages; and

ORDERS the Defence to file a confidential version of the Application with redactions, as the case may be, within seven days of notification of the present decision.

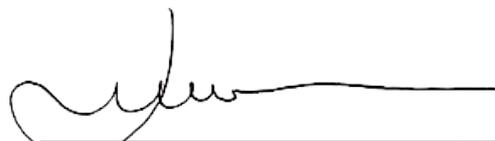
Done in both English and French, the English version being authoritative.



Judge Antoine Kesia-Mbe Mindua
Presiding Judge



Judge Tomoko Akane



Judge Rosario Salvatore Aitala

Dated this Tuesday, 13 November 2018

At The Hague, The Netherlands

¹¹ Application, para. 4.