

Annex I to the Appeal Brief against Pre-Trial Chamber Decision ICC-01/14-01/22-80

Public

Serial No. 21/2022

מספר סידורי 21/2022

טופס מס' 1

אימות חתימה

Form No. 1**AUTHENTICATION OF SIGNATURE**

I, the undersigned Eric Bukatman Notary holding license number 2053166 hereby certify that on 24 July, 2022 appeared before me at my offices located at 10 Ben Yehuda Street, Jerusalem, Israel Mr. Nicholas Kaufman whose identity has been proven to me by Israeli Passport number [REDACTED] issued on 4 November, 2014.

I am convinced that Mr. Kaufman fully understood the significance of the action and voluntarily signed the attached document marked with the letter "A".

In witness whereof, I hereby authenticate the signature of Mr. Kaufman by my own signature and seal this 24th day of July, 2022.

Notary fee 198 NIS including V.A.T.

Notary's s

אני החתום מטה אריק בוקטמן נוטריון בעל רישיון מספר 2053166 מאשר כי ביום 24 יולי, 2022 ניצב בפני במשרדי ברחוב בן יהודה 10, בירושלים מר ניקולס קאופמן אשר זהותו הוכחה לי על ידי דרכון ישראלי מספר [REDACTED] שהונפק בתאריך 4 בנובמבר, 2014.

שוכנעתי כי מר קאופמן הפגין הבנה מלאה את משמעות הפעולה וחתם מרצונו החופשי על המסמך המצורף והמסומן באות "א".

לראיה אני מאמת את חתימתו של מר קאופמן בחתימת ידי ובחותמי, היום 24 ביולי, 2022.

שכר נוטריון 198 ₪ כולל מע"מ.

חתימה

חותם הנוטריון



A - N

AFFIDAVIT

I, NICHOLAS KAUFMAN, Israel Passport [REDACTED] after being warned of the penalties prescribed under Israeli law and Articles 70 and 71 of the Rome Statute of the International Criminal Court for giving false testimony and misconduct, hereby solemnly declare and affirm as follows:

1. I give this affidavit in support of the additional documentation which will be submitted to Pre-Trial Chamber II of the International Criminal Court pursuant to the Judgment of the Appeals Chamber – ICC-01/14-01/22-70 and Pre-Trial Chamber Order ICC-01/14-01/22-73.
2. I have advised Maxime Mokom for a number of years prior to his arrest in Chad and subsequent transfer to the International Criminal Court.
3. Maxime Mokom is fully aware of my former representation of both P-1019 [REDACTED] and the person of interest ("PoI") (Nouredine Adam). I know that the Pre-Trial Chamber held an *ex parte* status conference on 4 April 2022 to explain the reasons for the revocation of my mandate. Having been denied standing, I was not present at this status conference and the salient part of the transcript, where the Pre-Trial Chamber clarified its reasoning, is redacted and has not been made available to me.¹ Accordingly, I am not sure what additional information I can supply in order to assure the Pre-Trial Chamber that no conflict of interest or impediment to representation exists or that the potential for a conflict may never materialize (given the differing crime bases and allegations).
4. In any event, Both P-1019 and the PoI (before the latter ceased contact with me) were also fully aware of my proposed representation of Maxime Mokom at the International Criminal Court prior to

¹ ICC-01/14-01/22-T-002-Red-Eng at page 6 line 23-25 and page 7 lines 1-5. "We were particularly concerned that Mr Kaufman had been the lawyer of some persons who are believed (Redacted). (Redacted). Allegedly. This has not been proved, but this is what the Prosecutor is accusing you of. So we were concerned that having him been the lawyer for people who allegedly (Redacted), this would amount to a conflict of interest".



Maxime Mokom's arrest. Since December 2018, and the arrest of Patrice-Edouard Ngaïssona in Paris, it was fairly clear to me that Maxime Mokom would be a person of interest to the International Criminal Court. My communications with him were thus conducted with this eventuality in mind.

5. P-1019, who is not a target for prosecution before the International Criminal Court, has never divulged to me any information concerning Maxime Mokom or the so-called *anti-balaka* which might be pertinent to Maxime Mokom's defence. Indeed, to the best of my recollection, P-1019 stated, in OTP interview, that he has next to no knowledge of the workings of the so-called *anti-balaka*. P-1019 has never disclosed any information to me which he asked me to withhold from Maxime Mokom or any peculiar knowledge, not in the public domain, which I might be able to use for the benefit of Maxime Mokom. To address Pre-Trial Chamber II's concerns, therefore, I hereby firmly state that I have acquired no information emanating from P-1019 under conditions of professional secrecy which may be used to the "*detriment [or] to the benefit of Mr Mokom*".²

6. I wish to add that since Pre-Trial Chamber II revoked my mandate, P-1019 has signed a waiver agreeing to the mutual transfer of information (of which I have none) and mutual representation even though my representation of him has, effectively, terminated.

7. I was introduced to the PoI by P-1019. We spoke in English and exchanged greetings in Arabic. At some stage between 2020 and 2021, the PoI informed me that [REDACTED] and offered to reconnect the two of us when, at one point, I had temporarily lost contact with Maxime Mokom. This offer was made in the context of the PoI's full knowledge and approval of my proposed representation of Maxime Mokom at the International Criminal Court. Apart from my clarifying the meaning of a conflict of interest and or impediment, and us both agreeing that there existed no grounds for such a concern, the PoI and I had no other conversation whatsoever which

² ICC-01/14-01/22-26-Red at para.12 and fn.16.



concerned Maxime Mokom. I hereby firmly state that I received no information from the PoI under conditions of professional secrecy which may be used to the "*detriment [or] to the benefit of Mr Mokom*".

8. At some stage in the last two years, the PoI informed me that he had been seriously ill and hospitalized [REDACTED]. After his discharge from hospital, I had my last conversation with him when he informed me that he was in weak state of health. Shortly thereafter, the telephone number which I used to communicate with him was transferred to a person who identified herself as the PoI's [REDACTED]. A month or so after that, the telephone number was disconnected. Since Maxime Mokom's arrest, I have tried all means to reconnect with the PoI in order to obtain a waiver, to address the concerns of the Pre-Trial Chamber and to allow dual representation, but without any success. In light of this and my inability to receive proper instructions, I submitted a notice terminating any future representation of the PoI – should he even come before the Court - leaving it with his close advisers who had also temporarily lost contact with him.

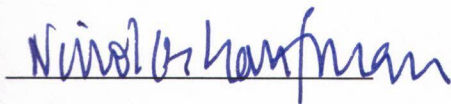
9. To summarize, I was not aware of any actual conflict of interest or impediment which could have impacted on my proposed representation of Maxime Mokom. Moreover, I have now supplied a waiver as stipulated by the OTP in its Email of 18 March 2022 at 09:41 and a termination notice as expected by the Pre-Trial Chamber in its revocation order.³ Finally, I have taken careful note of the comments of both the learned Pre-Trial Chamber and the Appeals Chamber regarding Pre-Trial Chamber II's intimate knowledge of the *Central African Republic II Situation* and the comments of both these panels as to the importance of making prompt disclosure to the Pre-Trial Chamber of a potential for a conflict of interest or impediment to representation. Accordingly, I undertake to exercise appropriate caution in the future with respect to other individuals who have sought my assistance before the International Criminal Court in other situations.

³ ICC-01/14-01/22-26-Red at para. 15.



10. I have been a lawyer for 31 years and am without previous disciplinary blemish before any Bar Association. Throughout the whole of my professional career, I have served either as prosecuting or defence counsel- including at the International Criminal Court. I have also advised several Governments - both State Parties and non-State Parties to the Rome Statute on matters pertaining to the International Criminal Court. Finally, I am and have been for the last number of years, a Prosecutor before the Disciplinary Committee of the Jerusalem Branch of the Israel Bar Association. I respectfully believe that the presumption of ethical regularity should apply to me and that the matter should be resolved by allowing me to continue to act as Maxime Mokom's counsel of choice.

I hereby declare and affirm, that the information contained in this declaration is true, correct and complete to the best of my knowledge and that any deliberately false information contained herein will render me liable to prosecution before the Israeli Courts or the International Criminal Court.




NICHOLAS KAUFMAN

WITNESS

On this, the 24th day of July 2022, before me Eric Bukatman, Israel lawyer, Registration Number 12917 Notary Public and member of the Bar of New York, having my offices at Ben Yehuda 10, Jerusalem, Israel appeared NICHOLAS KAUFMAN, Israel Passport [REDACTED] personally and as proven to be the person whose name is subscribed within this instrument, and acknowledged that he executed the same for the purposes therein contained.

I warned NICHOLAS KAUFMAN as to the penalties fixed under Israeli Law and Articles 70 and 71 of the Rome Statute of the International Criminal Court for giving false testimony and other forms of misconduct and he signed this instrument in front of me.

In witness hereof, I hereunto set my hand and official seal.



ERIC BUKATMAN