

1 International Criminal Court
2 Appeals Chamber
3 Situation Democratic Republic of Congo
4 Case number ICC-01/04 -
5 Thursday, 13 July 2006 - open session.

12:24:25 6 THE USHER: The International Criminal Court is now in
12:24:27 7 session. Please be seated.
12:24:27 8 [12:24 p.m.]

12:24:47 9 JUDGE PIKIS: Can we first have appearances for the parties?

12:24:55 10 MS BENSOUA: Mr President, your Honours, the Office of the
12:24:57 11 Prosecutor is represented by Senior Appeals Counsel,
12:25:03 12 Fabricio Guariglia; Senior Trial Lawyer Ekkehard Withopf;
12:25:07 13 Senior Trial Lawyer Christine Chung; Associate Appeals
12:25:13 14 Counsel Ben Batros; and I am Fatou Bensouda, Deputy
12:25:19 15 Prosecutor.

12:25:20 16 MS TAYLOR: Good morning, Mr President, your Honours. My
12:25:21 17 name is Melinda Taylor, Associate Counsel of the Office
12:25:25 18 of Public Counsel of the Defence. I'm appearing today at
12:25:29 19 the request of Me Joseph Tshimanga, ad hoc counsel for
12:25:32 20 the Defence, who is unable to travel from Kinshasa for
12:25:36 21 the hearing. Thank you.

12:25:46 22 JUDGE PIKIS: The Court is delivering today its judgment in
12:25:48 23 the Prosecutor's application for extraordinary review of
12:25:53 24 Pre-Trial Chamber I dated 31 March 2006. It is directed
12:26:01 25 against the decision of the Pre-Trial Chamber denying

12:26:10 1 leave to appeal. The judgment of the court is ready and
12:26:12 2 available and shall be handed down.

12:26:14 3 I shall explain briefly what it is about, and what the
12:26:20 4 outcome is. By this application the Prosecutor seeks the
12:26:31 5 review of a decision of the Pre-Trial Court denying leave
12:26:37 6 to appeal. He acknowledges that no such power vests in
12:26:45 7 terms in the court, but suggests that such power in a way
12:26:58 8 inheres in the court in the sense that the absence of
12:27:02 9 such power is nothing other than a lacuna in the law -- a
12:27:08 10 lacuna that should be filled or bridged by reference to
12:27:12 11 the provisions of Article 21(1)(c) of the Statute;
12:27:16 12 namely, that general principles of the law are finding
12:27:23 13 application in the jurisdiction of national courts.

12:27:28 14 In the process of examining the application we adverted
12:27:35 15 to the interpretation of Article 82(1)(d), the Article
12:27:43 16 that defines the jurisdiction of the court relevant to
12:27:48 17 appeals against decisions of an interlocutory character.
12:27:55 18 We note the principles that should guide the court in the
12:28:00 19 interpretation of the Statutes, and concludes -- I shall
12:28:05 20 not go into detail -- that the Court -- the procedure is
12:28:15 21 designed to enable the Court or to afford an opportunity
12:28:18 22 to the Pre-Trial Chamber to pre-empt mistakes that might
12:28:24 23 occur in the process and might consequentially affect
12:28:30 24 either the fairness of the proceedings or mar the outcome
12:28:36 25 of the trial.

12:28:37 1 The Prosecutor, in aid of his submissions, referred us to
12:28:41 2 the jurisdiction -- or, rather, the legislation of a
12:28:47 3 number of countries belonging to the Romano-Germanic
12:28:53 4 system of law -- 14 in number -- and the number of
12:28:57 5 countries adhering to the common law system of justice,
12:29:01 6 and also to some countries practising Islamic law.
12:29:12 7 Nothing in the nature of a firm or generally recognised
12:29:17 8 principle is acknowledged, or no inherent power is
12:29:25 9 anywhere bestowed generally whereby -- entitling the
12:29:31 10 Appeals Court to review decisions of first instance court
12:29:36 11 on its own motion, or in exercise of inherent
12:29:40 12 jurisdiction.
12:29:46 13 The Statute itself, as acknowledged by the Prosecutor,
12:29:50 14 does not confer a right of appeal or any other means of
12:29:53 15 reviewing the judgment of the Pre-Trial Court denying
12:29:59 16 leave to appeal.
12:30:00 17 The Statute -- the Rome Statute refers in detail to
12:30:08 18 decisions that are liable to appeal, and in relation to
12:30:12 19 the specific provision of the Statute, namely,
12:30:16 20 Article 82(1)(d), the travaux préparatoires confirm that
12:30:31 21 they reflect precisely what was intended by the makers of
12:30:33 22 the Statute, namely, to confine the right to cases where
12:30:37 23 the Pre-Trial Court itself certifies or that there is an
12:30:43 24 appealable issue that should receive the attention of the
12:30:45 25 Appeals Court without any delay.

12:30:51 1 Given this conclusion, the application must necessarily

12:30:56 2 be dismissed as ill-founded, and so we order.

12:31:08 3 MS BENSOUDA: If the court pleases.

12:31:10 4 THE USHER: All rise.

12:31:10 5 MS BENSOUDA: If the Court pleases.

12:31:10 6 [12:31 p.m.]

12:31:16 7 [The Chamber adjourned accordingly]

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