

1 International Criminal Court
2 Appeals Chamber
3 Situation: Central African Republic
4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques
5 Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido - ICC-01/05-01/13
6 Presiding Judge Howard Morrison
7 Appeals Judgment - Courtroom 1
8 Wednesday, 27 November 2019
9 (The hearing starts in open session at 1.59 p.m.)
10 THE COURT USHER: [13:59:55] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE MORRISON: [14:00:18] Good afternoon to everybody.
14 Would the court officer please call the case.
15 THE COURT OFFICER: [14:00:26] Thank you, Mr President.
16 The situation in the Central African Republic, in the case of The Prosecutor versus Jean-Pierre Bemba
17 Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and
18 Narcisse Arido, case reference ICC-01/05-01/13.
19 For the record, we are in open session.
20 PRESIDING JUDGE MORRISON: [14:00:50] Thank you.
21 My name is Howard Morrison, and I am the Presiding Judge in this appeal of Mr Jean-Pierre Bemba
22 Gombo against the decision of Trial Chamber VII of 17 September 2018 entitled "Decision
23 Re-sentencing Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba and Mr Jean-Jacques
24 Mangenda Kabongo". In today's summary I will refer to this decision as the Re-sentencing Decision.
25 Now may I ask the parties to introduce themselves for the record, beginning with the Defence.

1 MS TAYLOR: [14:01:33] Good afternoon, Mr President.

2 It's Melinda Taylor appearing on behalf of Mr Jean-Pierre Bemba and I am assisted by

3 Mr Mohamed Youssef. Thank you.

4 PRESIDING JUDGE MORRISON: [14:01:43] Thank you.

5 And for the Office of the Prosecutor.

6 MS REGUÉ: [14:01:45] Good afternoon, your Honour. The Prosecution is represented today by

7 Mr Kweku Vanderpuye, senior trial lawyer; Mrs Nivedha Thiru, assistant appeals counsel; and myself,

8 Meritxell Regué, appeals counsel. Ms Brady and Ms Narayanan were unable to attend and they send

9 their apologies.

10 PRESIDING JUDGE MORRISON: [14:02:08] Thank you.

11 Today the Appeals Chamber is delivering its judgment on the appeal of Mr Bemba. In a moment

12 I shall summarise the Appeals Chamber's judgment, which was taken unanimously. This summary is

13 not part of the written judgment, which is the only authoritative account of the Appeals Chamber's

14 ruling and reasons. The written judgment will be made available to the parties and participants at the

15 conclusion of this hearing.

16 By way of background, following appeals against an initial guilty verdict for offences against the

17 administration of justice pursuant to Article 70 of the Statute, the Appeals Chamber confirmed two of

18 Mr Jean-Pierre Bemba Gombo's convictions in 2018, namely, the convictions for having corruptly

19 influenced 14 Defence witnesses and for having solicited the giving of false evidence by these

20 witnesses under Article 70(1)(a) and (c) of the Statute respectively.

21 The Appeals Chamber overturned Mr Bemba's conviction for having presented evidence that a party

22 knows to be false or forged under Article 70(1)(b) of the Statute. Mr Bemba was sentenced to one

23 year's imprisonment and a fine of €300,000.

24 Upon the Prosecutor's successful appeal against the suspended sentences and other sentencing matters,

25 the Appeals Chamber found that the Trial Chamber committed errors with respect to the pronounced

1 sentences. Amongst those errors the Appeals Chamber found that the Trial Chamber erred, one, in its
2 assessment of the nature of the false testimony given by witnesses on non-merits issues; and two, in its
3 justification for distinguishing principal from accessorial liability in this case. Consequently, the
4 Appeals Chamber reversed Mr Bemba's sentence and remanded the matter to the Trial Chamber for
5 a new determination.

6 On 8 June 2018 in the case of The Prosecutor against Jean-Pierre Bemba Gombo concerning crimes
7 under Article 5 of the Statute referred to as the Main Case, the Appeals Chamber, by majority,
8 discontinued the proceedings with respect to some of the criminal acts charged and acquitted
9 Mr Bemba of the remaining charges. Following Mr Bemba's acquittal, the Trial Chamber ordered, on
10 12 June 2018, the conditional release of Mr Bemba.

11 On 17 September 2018, the Trial Chamber re-sentenced Mr Bemba to one year's imprisonment and
12 imposed a fine of €300,000 to be paid by Mr Bemba within three months of the Re-sentencing Decision.
13 Mr Bemba appeals the Re-sentencing Decision on three grounds.

14 As a preliminary matter, I note that Mr Bemba filed a request for the admission on appeal of additional
15 evidence. For the reasons set out in the judgment, the Appeals Chamber rejects Mr Bemba's request.

16 I now turn to the appeal.

17 Under his first ground of appeal, Mr Bemba argues that, in its assessment of the gravity of the offence
18 and the degree of his participation, the Trial Chamber did not comply with the directions on the
19 determination of the new sentence.

20 The Appeals Chamber Mr Bemba's arguments for the following reasons:

21 In its initial sentencing decision, the Trial Chamber distinguished false testimony which witnesses had
22 given on the merits of the Main Case, from false testimony on non-merits matters.

23 The Trial Chamber noted that the issues which concerned witnesses testifying falsely did not pertain to
24 the merits and this informed the Trial Chamber's assessment of the gravity of the offences.

25 The Appeals Chamber recalls that in the Bemba et al sentencing appeal judgment it rejected the

1 Trial Chamber's abstract distinction between these two types of false testimony.

2 Given that the weight afforded to this distinction in the Trial Chamber's sentencing decision of
3 March 2017 had arguably led to a slight reduction in the sentence initially imposed, excluding this
4 distinction in the Re-sentencing Decision naturally led to a slight increase in the sentence.

5 In addition, the Appeals Chamber recalls that, quote, "false testimony on issues which go to the
6 credibility of a witness prevents the Court from obtaining correct information which may be necessary
7 for an accurate assessment of the reliability of his or her evidence." End quote.

8 The Trial Chamber took this into account when assessing the gravity of the offences for which
9 Mr Bemba was convicted and the extent of the damage caused by them.

10 Moreover, contrary to Mr Bemba's averment, the Trial Chamber followed directions issued by the
11 Appeals Chamber. The increase of the sentence for the Article 70(1)(a) offence was a direct
12 consequence of those directions.

13 When assessing Mr Bemba's culpable conduct, the Trial Chamber recalled that in the sentencing
14 decision of March 2017 it had considered Mr Bemba's degree of participation, including his varying
15 degree of participation in the execution of the offences and referred to the relevant paragraphs of that
16 decision in which the Trial Chamber set out a detailed factual assessment of Mr Bemba's degree of
17 participation. It was precisely on the basis of this factual assessment that the Appeals Chamber, when
18 reviewing that decision, found that the relevant factual findings underpinning the convictions entered
19 for Article 70(1)(a) and (c) offences were essentially the same. The Trial Chamber correctly relied on
20 this finding of the Appeals Chamber.

21 Finally, regarding Mr Bemba's argument based upon an abstract comparison between various modes
22 of liability, the Appeals Chamber notes that the sentences imposed on the persons convicted in this
23 case were fact-specific and based upon their individual circumstances. Therefore, such an abstract
24 comparison does not warrant consideration.

25 Under his second ground of appeal, Mr Bemba argues that the Trial Chamber abused its discretion and

1 erred in law and procedure by failing to remedy the cumulative effect of egregious violations of his
2 rights. He first submits that the Trial Chamber erred in finding that his detention was lawful.

3 The Appeals Chamber rejects Mr Bemba's contentions for the following reasons:

4 The Appeals Chamber notes that throughout the entire period of his detention in relation to the present
5 case, Mr Bemba was also detained in relation to the Main Case.

6 The unavailability or potential ineffectiveness of remedies with respect to his allegedly unlawful or
7 excessively long detention in the present case was a result of his detention in the Main Case.

8 If seized with an application for interim release in the present case, the Trial Chamber would not be
9 able to release Mr Bemba, whether or not the release was warranted. All that the Trial Chamber was
10 able to do in this case was to credit the time Mr Bemba spent in detention when determining his
11 sentence, which it did.

12 The Appeals Chamber also rejects Mr Bemba contention that his right to be tried without undue delay
13 had been violated, as this argument is raised on appeal for the first time and, in any event, there
14 appears to have been no unreasonable period of inactivity on the part of Pre-Trial Chamber II or the
15 Trial Chamber.

16 As Mr Bemba has not demonstrated a violation of his rights, the question of whether a stay of the
17 proceedings would have been an appropriate remedy in the present case and the related question of
18 whether Mr Bemba sought such a remedy before the Trial Chamber do not arise.

19 Turning to Mr Bemba's contention regarding the Prosecutor's statements and submissions in relation to
20 his acquittal in the Main Case, which allegedly impacted adversely on the appearance of the
21 Trial Chamber's impartiality, the Appeals Chamber notes that Mr Bemba alleges that the Prosecutor's
22 statement and submissions had an impact upon the Trial Chamber's finding and sentence. Therefore,
23 the Appeals Chamber will focus on their effect on the Re-sentencing Decision.

24 The Appeals Chamber finds no error in the Trial Chamber's finding that the absence of prior
25 convictions was not a relevant mitigating circumstance for Mr Bemba as it reached the same conclusion

1 for each of the other four convicted persons.

2 Furthermore, the Appeals Chamber finds that Mr Bemba has not shown that the Trial Chamber's
3 finding that he was a beneficiary of the common plan required any adjustment in view of his acquittal
4 in the Main Case. Assuming it was in fact relied upon in the Re-sentencing Decision, the
5 Appeals Chamber notes that the finding in question refers to Mr Bemba's situation as an accused in the
6 Main Case. The relevant situation was one at the time when the crimes were committed and/or his
7 contribution was made. At the time, Mr Bemba was an accused person in the Main Case. Mr Bemba
8 fails to explain why his acquittal in the main case should have affected the finding in question.

9 Finally, the Appeals Chamber finds that Mr Bemba has not shown that the findings of the
10 Trial Chamber and the sentence imposed were affected by the Prosecutor's statement and submissions
11 regarding the acquittal in the Main Case, nor that they were otherwise reflective of an arbitrary
12 approach.

13 Under his third ground of appeal, Mr Bemba argues that the Trial Chamber abused its discretion by
14 imposing a disproportionate sentence and fine and failed to consider relevant considerations and erred
15 in law by imposing a sentence which exceeds the level of his culpability.

16 The Appeals Chamber rejects Mr Bemba's arguments for the following reasons:

17 The Appeals Chamber considers that by imposing a joint custodial sentence of one year imprisonment,
18 the Trial Chamber explicitly held that when weighing and balancing all relevant factors and revising
19 its previous assessments, it was mindful of the time already spend in detention.

20 In addition, when assessing the proportionality of the sentence, the Trial Chamber placed special
21 emphasis on the fact that Mr Bemba, along with Mr Kilolo and Mr Mangenda, had been imprisoned for
22 signature periods of time in the present case and that the case had significant effects on their
23 professional reputations, financial circumstances and family circumstances. Therefore, contrary to
24 Mr Bemba's contention, the Trial Chamber took the length of his detention into account.

25 With respect to the fine, the Appeals Chamber finds no error in the Trial Chamber's approach.

1 The Trial Chamber's determination of the fine was not confined to the solvency status of Mr Bemba.
2 The Trial Chamber's main consideration in determining an appropriate fine was Mr Bemba's
3 culpability. In particular, when addressing Mr Bemba's culpable conduct, the Trial Chamber referred
4 to its findings made in the sentencing decision on Mr Bemba's degree of participation in the offences.
5 Moreover, solvency is a relevant consideration in numerous jurisdictions and its underlying rationale
6 is the need to ensure a deterrent effect. As far as individual deterrence is concerned, it was reasonable
7 for the Trial Chamber to impose a higher fine on Mr Bemba than on Mr Kilolo to achieve the aim of
8 individual deterrence. The sentences imposed on the persons convicted in this case were fact-specific
9 and based upon their individual circumstances. It is therefore inapposite to compare the sentences
10 imposed on different convicted persons.

11 Regarding the statutory protection against *ne bis in idem*, the Appeals Chamber notes that the ruling of
12 the Constitutional Court of the Democratic Republic of the Congo, as summarised by Mr Bemba, does
13 not amount to a criminal proceeding for corruption or for an offence against the administration of
14 justice in the Democratic Republic of the Congo. The scope of that decision is to the eligibility
15 assessment of presidential candidates and the decision does not contain any determinations as to
16 Mr Bemba's guilt. Therefore, the issue of *ne bis in idem* does not arise in the present situation and
17 consequently, the Trial Chamber did not err.

18 In conclusion, the Appeals Chamber rejects all three grounds of appeal advanced by Mr Bemba and
19 reconfirms the Re-sentencing Decision.

20 That concludes my summary of the judgment. I thank all participants, the interpreters and court
21 reporters. And this session is now closed.

22 THE COURT USHER: [14:15:50] All rise.

23 (The hearing ends in open session at 2.15 p.m.)