

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/14-01/22

Date: 13 April 2022

PRE-TRIAL CHAMBER II

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

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF PROSECUTOR v. MAXIME JEOFFROY ELI MOKOM
GAWAKA**

**Confidential, *EX PARTE*, available only to the Prosecution, Registry,
and Duty Counsel**

**Prosecution's Response to Request for Reconsideration of Order ICC-01/14-01/22-26-
Conf-Exp (ICC-01/14-01/22-36-Conf-Exp) and Request Seeking Leave to Appeal
Order ICC-01/14-01/22-26-Conf-Exp (ICC-01/14-01/22-37-Conf-Exp)**

Source: Office of the Prosecutor

Pursuant to Pre-Trial Chamber II instruction, dated 6 June 2024, this document is reclassified as "Public"

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

The Office of the Prosecutor

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Legal Representatives of Applicants

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**Unrepresented Applicants
(Participation/Reparation)**

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Other

Mr Gregory Townsend,
Duty Counsel for Maxime Mokom

I. INTRODUCTION

1. Pursuant to the direction of Pre-Trial Chamber II ("Chamber"),¹ the Office of the Prosecutor ("Prosecution") provides its response to the requests filed by Duty Counsel for Maxime MOKOM for reconsideration² of the Chamber's 25 March 2022 Order concerning the appointment of Nicholas Kaufman as Counsel,³ and alternative request seeking leave to appeal the same.⁴

2. The Prosecution considers the Reconsideration Request properly founded and, if granted, defers to the Chamber's discretion regarding the disposition of the issues underlying the 25 March 2022 Order. The Prosecution takes no position on the Request for Leave to Appeal, alternatively to the Chamber's reconsideration of the 25 March 2022 Order.

II. CONFIDENTIALITY

3. Pursuant to regulation 23bis(2) of the Regulations of the Court ("RoC"), the Prosecution files this request "*Confidential, Ex Parte available only to the Prosecution, Registry, and Duty Counsel*" as it concerns filings of the same designation.

III. SUBMISSIONS

4. The Prosecution considers that there are sufficient grounds for the Chamber to reconsider the 25 March 2022 Order. The scope of the request filed by Duty Counsel, adopting the position advanced by Counsel Kaufman, justifies reconsideration insofar

¹ See Email from Pre-Trial Chamber II of 11 April 2022, at 17:56.

² ICC-01/14-01/22-36-Conf-Exp ("Reconsideration Request").

³ See ICC-01/14-01/22-26-Conf-Exp ("25 March 2022 Order").

⁴ ICC-01/14-01/22-37-Conf-Exp ("Request for Leave to Appeal").

as it may, *inter alia*, avoid an injustice⁵ in potentially prejudicing the Suspect's statutory right to choice of Counsel.⁶

5. To the extent that the 25 March 2022 Order is reconsidered, the Prosecution defers to the Chamber's discretion concerning the underlying issues — specifically, whether and to what extent a conflict of interest or other impediment may exist regarding Counsel Kaufman's prospective representation of MOKOM; and any assessment regarding the applicability or sufficiency of any waiver provided in view of Article 16(3) of the Code of Professional Conduct and the submissions of Duty Counsel.⁷ Should the Chamber require Counsel Kaufman to provide waivers concerning the affected clients in relation to its reconsideration of its 25 March 2022 Order, the Prosecution would not object to the three week period requested to do so.⁸

6. *Second*, the Prosecution takes no position on the Request for Leave to Appeal as an alternative to reconsideration.⁹ The nature of the issue arising under article 67(1)(b) is fundamental. However, it is unclear whether the criteria set out in article 82(1)(d) are met;¹⁰ namely, that the 25 March 2022 Order involves an issue which would significantly affect the fair and expeditious conduct of the proceedings, and that the Appeals Chamber's immediate resolution may materially advance them.

7. In all other respects, the Prosecution defers to the Chamber's discretion regarding the Reconsideration Request and the Request for Leave to Appeal.

⁵ Reconsideration is appropriate in a number of circumstances under the Court's jurisprudence. *See* ICC-01/04-01/07-3833, para. 25; ICC-02/04-01/15-1547, para. 7; ICC-02/04-01/15-711, para. 4; ICC-02/04-01/15-468, para. 4 (when necessary to prevent an injustice); *see* ICC-01/04-01/06-2705, paras. 13-18; ICC-02/04-01/05-50, para. 18; ICC-01/04-01/06-772 OA4, paras. 36-39 (when the consequences of a decision are manifestly unsatisfactory); and *see* ICC-01/04-01/07-3833, para. 25; ICC-01/09-01/11-1813, para. 19; ICC-01/09-02/11-863, para. 11; ICC02/04-01/15-1210, para. 6; ICC-02/04-01/15-1259, para 12; and ICC-01/12-01/18-734, para. 11.

⁶ *See* article 67(1)(b) (providing for the right "[t]o have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence"); *see also* ICC-01/14-01/22-36-Conf-Exp, para. 12

⁷ *See* ICC-01/14-01/22-36-Conf-Exp, para. 12.

⁸ *See* ICC-01/14-01/22-36-Conf-Exp, para. 13.

⁹ *See* ICC-01/14-01/22-37-Conf-Exp, para. 6.

¹⁰ *See e.g.*, ICC-01/14-01/22-30-Conf-Exp, para. 8, 10.

IV. CONCLUSION

8. Upon the foregoing, the Prosecution considers that the Reconsideration Request is properly founded and, should it be granted, defers to the Chamber with respect to the disposition of the issues underlying the 25 March 2022 Order. The Prosecution takes no position on the Request for Leave to Appeal alternatively to the Chamber's reconsideration of the 25 March 2022 Order.



Karim A. A. Khan QC, Prosecutor

Dated this 13th day of April 2022
At The Hague, The Netherlands