

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/14-01/21

Date: 6 March 2024

TRIAL CHAMBER VI

Before: Judge Miatta Maria Samba
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godínez

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public

Public Redacted Version of "Prosecution Response to the Defence "Application for leave to appeal the 'Decision on Mr Said's Fitness to Stand Trial, ICC-01/14-01/21-667-Conf'", ICC-01/14-01/21-670-Conf, dated 15 January 2024

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Mr Karim A.A. Khan KC

Mr Mame Mandiaye Niang

Ms Holo Makwaia

Counsel for Defence

Ms Jennifer Naouri

Mr Dov Jacobs

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

**The Office of Public Counsel
for Victims**

Ms Sarah Pellet

Tars Van Litsenborgh

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Oswaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation
and Reparations Section**

Other

I. INTRODUCTION

1. The Defence application ("Defence Application")¹ for leave to appeal Trial Chamber VI's ("Chamber") "Decision on Mr Said's Fitness to Stand Trial" ("Decision")² should be denied because it fails to identify any appealable issue and is founded on an erroneous understanding of the Decision.
2. Contrary to the Defence's understanding, the Chamber did not order Mr Said's trial to resume on a full-time ("a plein temps")³ basis without adjustments being made to the sitting schedule. Instead, the Chamber expressly deferred its consideration of adjustments until it received a report from the Medical Officer and Registry ("Registry Report"). The Chamber ordered the Registry Report to be filed by 12 January 2024.⁴
3. The Prosecution also submits that following the filing of the Registry Report on 12 January 2024, and the Chamber's email on the same day indicating that it intended to adopt adjustments to the sitting schedule, the Defence Application is now moot.

II. CONFIDENTIALITY

4. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this submission is classified as confidential since it responds to a filing with the same classification and because it makes references to Mr Said's health.

¹ ICC-01/14-01/21-668-Conf.

² ICC-01/14-01/21-667-Conf.

³ ICC-01/14-01/21-668-Conf, para. 24.

⁴ ICC-01/14-01/21-667-Conf, para. 45.

III. SUBMISSIONS

The Defence Application fails to identify any appealable issue

5. The Defence Application does not contend that Mr Said is unfit to stand trial or that proceedings should not recommence on 29 January 2024. Instead, all three proposed grounds of appeal relate to a mistaken understanding that Mr Said's trial will resume on a "full time basis" without there being any adjustments in place to the sitting schedule.
6. The Defence's first proposed ground of appeal ostensibly contends that the Chamber "reversed the burden of proof."⁵ However, the Defence fails to provide any support of this assertion. Instead, the Defence repeats arguments concerning the Panel's expertise, qualifications and methodology which the Chamber considered and expressly rejected.⁶ The first proposed ground of appeal, therefore, merely expresses disagreement with the Chamber's finding that the Panel's expertise was sufficient for the Chamber to rely on.
7. The Defence's second proposed ground of appeal similarly disagrees with Chamber's evaluation and reliance on the Panel of Experts' Report. It is also premised on the mistaken understanding that the Chamber ordered Mr Said's trial to resume "full time."⁷ The Defence further inaccurately presupposes that no adjustments would be made to facilitate Mr Said's participation at trial following his treatment for health-related issues.⁸ In this regard, paragraph 45 of the Decision provides:

⁵ ICC-01/14-01/21-668-Conf, para. 29.

⁶ ICC-01/14-01/21-667-Conf, para. 45.

⁷ ICC-01/14-01/21-668-Conf, para. 24.

⁸ ICC-01/14-01/21-668-Conf, para. 24.

[REDACTED]”⁹ (emphasis added).

8. The Prosecution submits that the Chamber’s express language provides that it reserved its judgment in relation to the making of adjustments to proceedings until it considered the Registry Report. The Prosecution’s reading of the Decision is supported by the Chamber’s email dated 12 January 2024 which provides: “[REDACTED].”

9. The Defence’s third proposed ground of appeal arguing that the Decision lacks reasoning is similarly unfounded. The Chamber did not passively accept the Panel’s determination. Rather, the Chamber correctly articulated the law:

“... even where a medical examination is ordered pursuant to rule 135 of the Rules, the appointed experts are not required themselves to make a determination of an accused’s fitness to stand trial. Rather, such a determination remains within the exclusive responsibility of the Chamber, in view of its obligations under article 64(2) of the Statute.”¹⁰

10. The Chamber further explained the extent and basis upon which it relied on the Panel of Experts’ Report. This includes identifying parts in Panel of Experts’ Report that it adopted and parts it did not. The Decision further expressly took account of “the Defence’s submissions regarding ... Mr Said’s” health and explained that it was for this reason that it was deferring the issue of adjustments until receipt of the Registry Report.¹¹

Issues sought to be resolved in the Defence Application are now moot and an appeal will not significantly affect the fair and expeditious conduct of the proceedings.

11. The Prosecution submits that in reserving judgment on the issue of adjustments to be adopted in the case of Mr Said, the Decision effectively granted the relief sought

⁹ ICC-01/14-01/21-667-Conf, para. 45.

¹⁰ ICC-01/14-01/21-667-Conf, para. 35.

¹¹ ICC-01/14-01/21-667-Conf, para. 45.

in the Defence Application. This is because it expressly left open the possibility of adjusting the sitting schedule and adopting measures to support Mr Said following his treatment for health-related matters. The Chamber's email of 12 January 2024, and indication that it intends to adopt the following recommendations "regarding Mr Said's presence in Court"¹² further has the effect of rendering the Defence Application moot.

12. Specifically, the recommendations that the Chamber intends to adopt are as follows:
 - a. Maximum four days a week in Court, preferably Monday, Tuesday, Thursday and Friday with the Wednesday as a day of rest and restoration.
 - b. Only half days in Court, preferably in the morning.
 - c. Maximum two Court sessions of maximum 90 minutes with 30-minute break in which Mr. Said is able to lie down.
 - d. Evaluation after two weeks of Court and if necessary, adjustments to the advised modalities.¹³
13. Adopting these recommendations means that Mr Said's trial will not proceed on a "full-time basis" and that the Chamber has granted the primary relief sought to be obtained in the Defence Application.
14. This conclusion also follows because, the Prosecution has already stipulated, in an email dated 12 January 2024, that it will not make submissions in relation to the Registry Report and "shall abide by the Chambers decision to adopt the Medical Officer's recommendations and adjust the sitting schedule."
15. In sum, the Defence Application fails to identify any appealable issues, and does not present any matters that significantly affect the fair and expeditious conduct

¹² ICC-01/14-01/21-669-Conf, para. 9.

¹³ ICC-01/14-01/21-669-Conf, para. 9.

of the proceedings or the trial's outcome. The Defence Application is also now moot and does not require an immediate resolution by the Appeals Chamber.

IV. RELIEF REQUESTED

16. For the reasons set out above, the Defence Application should be denied.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A. A. Khan KC, Prosecutor

Dated this 6th day of March 2024
At The Hague, The Netherlands