

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : **English**

No.: **ICC-01/04-01/06**

Date: **21 July 2006**

THE APPEALS CHAMBER

Before: Judge Sang-Hyun Song, Presiding
Judge Philippe Kirsch
Judge Erkki Kourula
Judge Navanethem Pillay
Judge Georgios M. Pikis

Registrar: Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
v. THOMAS LUBANGA DYILO**

Public Document

**Application for Leave to Reply to “Conclusions de la défense
en réponse au mémoire d’appel du Procureur”**

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Mrs Fatou Bensouda, Deputy Prosecutor
Mr Fabricio Guariglia, Senior Appeals Counsel
Mr Ekkehard Withopf, Senior Trial Lawyer

Counsel for the Defence

Mr Jean Flamme

Procedural Background

1. On 19 May 2006, the Single Judge issued a “Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Rules”.¹
2. On 24 May 2006, the Prosecution filed its “Motion for Reconsideration and, in the Alternative, Leave to Appeal”.²
3. On 23 June 2006, the Single Judge issued the “Decision on the Prosecution Motion for Reconsideration and, in the Alternative, Leave to Appeal”,³ in which the Single Judge stated that the Impugned Decision “establishes enforceable legal standards”,⁴ denied the application for reconsideration, but granted leave to appeal on three issues.
4. Accordingly, on 5 July 2006 the Prosecution filed the “Prosecution’s Document in Support of the Appeal”.⁵
5. Pursuant to an extension of time granted by the Appeals Chamber on 11 July 2006, the Respondent filed his “Conclusions de la défense en réponse au mémoire d’appel du Procureur du 5 juillet 2006” on 20 July 2006.⁶
6. The Prosecution hereby seeks leave to file a reply to the Response pursuant to Regulation 24(5).

Discussion

7. In his Response, the Respondent has raised specific procedural arguments for dismissing the appeal, namely that the Prosecution has failed to demonstrate that any error materially affected the decision or caused prejudice to the

¹ ICC-01/04-01/06-108 (the Impugned Decision).

² ICC-01/04-01/06-125.

³ ICC-01/04-01/06-166.

⁴ *Ibid*, para. 7.

⁵ ICC-01/04-01/06-183.

⁶ ICC-01/04-01/06-199 (the Response).

Prosecution,⁷ and that the Prosecution has effectively waived its right to appeal two of the three issues for which leave was granted.⁸ The Respondent did not raise these arguments before the Pre-Trial Chamber in the context of the Prosecution's application for leave to appeal, and the Appellant has not addressed these arguments in its document in support of appeal.

8. The Prosecution seeks an opportunity to reply to the Response in order to address these new arguments. The Prosecution does not intend to reply to the substantive arguments raised in the Response. However the Prosecution submits that it must have an opportunity to reply to procedural arguments that have been raised for the first time in the Response and based on which the Respondent asks the Appeals Chamber to dismiss the appeal. The Prosecution submits that the proper disposition of the present litigation requires that the Appeals Chamber have the benefit of considering all relevant arguments, from both parties, prior to ruling on these issues.

The timing of any reply

9. The Regulations of the Court do not make specific provision for replies in the case of appeals under Rule 155.⁹ The Prosecution therefore submits that the general provisions relating to replies, namely Regulations 24(5) and 34(c), apply in this case.¹⁰
10. Pursuant to Regulation 34(c), any reply must be filed within 10 days of notification of the response, and is therefore due on Monday 31 July 2006. The Prosecution notes that this date is during the Court recess, and that it is

⁷ Response, paras. 5-6.

⁸ Response, paras. 7 and 13-14.

⁹ Nor do the Regulations make specific provision for replies in the context of appeals under Rule 154. In contrast, Regulation 60 provides a separate procedure for a reply in an appeal under Rule 150.

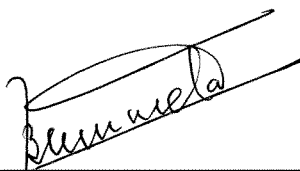
¹⁰ The Prosecution notes that the short timeline for the submission of a reply, calculated from the date of the response rather than the date of any grant of leave, is not inconsistent with the objective of expeditious resolution of interlocutory appeals in the Statute and the Rules of Procedure and Evidence. Appellate proceedings should not be subject to a lesser standard of argument than other proceedings before the Court, where replies are permitted in appropriate circumstance. The Prosecution submits that the Appeals Chamber should have available to it the possibility of the fullest exploration and argument of the issues in order to assist it reaching a considered decision and fulfilling its role as the ultimate arbiter of the law of the Court, especially when the issues are of general application as is the case here.

therefore possible that the Appeals Chamber may not be in a position to deliver a decision granting or denying leave to reply before 31 July 2006.

11. If the Appeals Chamber has not delivered a decision granting or denying leave to reply before 31 July 2006, then the Prosecution will file its reply in order to preserve its procedural rights. The Prosecution acknowledges that in these circumstances the Appeals Chamber may properly disregard the reply if it subsequently decides that leave to reply should have been denied.

Order sought

12. For the foregoing reasons, the Prosecution respectfully requests that the Appeals Chamber grant the Prosecution leave to reply to the Response.



Fatou Bensouda
Deputy Prosecutor

Dated this 21st day of July 2006

At The Hague, The Netherlands