

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/06 OA8

Date: 27 April 2007

THE APPEALS CHAMBER

Before: Judge Georghios M. Pikis (Presiding Judge)
Judge Philippe Kirsch
Judge Navanethem Pillay
Judge Sang-Hyun Song
Judge Erkki Kourula

Registrar: Mr Bruno Cathala

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

Public Document

Decision of the Appeals Chamber upon the Registrar's Requests of 5 April 2007

The Office of the Prosecutor
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Ms Fatou Bensouda
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Mr. Thomas Lubanga Dyilo

Legal Assistant
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**Legal representative of victims a/0001/06,
a/0002/06 and a/0003/06**
Mr Luc Walley
Mr Franck Mulenda

Legal representative of victim a/0105/06
Ms Carine Bapita Buyangandu

The Appeals Chamber of the International Criminal Court (hereinafter the "Court"),

In the appeal of Mr. Thomas Lubanga Dyilo (the "Appellant") of 30 January 2007 entitled "Defence Appeal Against the Pre-Trial Chamber's 'Décision sur la confirmation des charges' of 29 January 2007" (ICC-01/04-01/06-797),

In the requests of the Registrar contained within the document entitled "Observations du Greffier en application de la règle 20-1-d du Règlement de procédure et de preuve relatives au document intitulé « Clarification » déposée à la Chambre d'appel de la Cour le 3 avril 2007 par M. Thomas Lubanga Dyilo" dated 5 April 2007 (ICC-01/04-01/06-865 and ICC-01/04-01/06-865-Corr)

Renders unanimously the following

Decision

The requests of the Registrar are dismissed.

REASONS

1. The withdrawal of Appellant's counsel led to the extension of time for the submission of relevant documents in the appellate process pending the appointment of new counsel.¹ The process of appointment proved more laborious than anticipated. Mr. Lubanga Dyilo chose counsel to represent him some time ago (20 March 2007)² but the process was not completed by the acceptance of the brief by counsel. The fixing of the remuneration of counsel and her assistants has so far proven to be the stumbling block to the finalization of the process of appointment of counsel.

¹ See *Prosecutor v. Thomas Lubanga Dyilo* "Decision of the Appeals Chamber on the Defence application 'Demande de suspension de toute action ou procédure afin de permettre la désignation d'un nouveau Conseil de la Défense' filed on 20 February 2007" 23 February 2007 (ICC-01/04-01/06-838), "Appeals Chamber's Decision to Extend Time Limits for Defence Documents" 3 April 2007 (ICC-01/04-01/06-857).

² *Prosecutor v. Thomas Lubanga Dyilo* "Désignation de Maître Catherine Mabilille comme conseil de la défense de M. Thomas Lubanga Dyilo" 20 March 2007 (ICC-01/04-01/06-845).



2. In accordance with rule 21 (1), provision for assignment of legal assistance and the criteria relevant to the determination of the level of assistance were, subject to the provisions of article 55 (2) (c) and article 67 (1) (d) of the Statute, left to be established by the Regulations of the Court, a mandate that was fulfilled by the enactment of Chapter 4 of the Regulations of the Court. Under regulation 83 (3) power for the adjustment of the payment of legal assistance and matters incidental thereto is trusted to the Registrar.

3. The Appellant was declared³ *ab initio* to be an indigent person and as such eligible for legal aid (legal assistance paid by the Court⁴). The decision to provide legal aid to the Appellant remains intact, notwithstanding the withdrawal of his former counsel. As repeatedly explained in previous decisions⁵ of the Appeals Chamber, the process of appointment of new counsel must be completed within a reasonable time. The Appellant requested by a written motion⁶ of 3 April 2007 the Appeals Chamber to stay proceedings pending the appointment of new counsel, a request made superfluous, as subsequently acknowledged⁷ by the Appellant in light of the decision of the Appeals Chamber of 3 April 2007.

4. What is said hereinabove sketches the background to the communication⁸ of the Registrar of 5 April 2007. Invoking rule 20 (1) (d) of the Rules of Procedure and Evidence, the Registrar advised the Appeals Chamber, the Trial Chamber and the Presidency of developments respecting the appointment of new counsel to represent the

³ *Prosecutor v Thomas Lubanga Dyilo* "Décision du Greffier sur la demande de l'aide judiciaire aux frais de la Cour déposée par M. Thomas Lubanga Dyilo" 31 March 2006 (ICC-01/04-01/06-63).

⁴ The terminology used by section 4 of chapter 4 of the Regulations of the Court.

⁵ *Prosecutor v Thomas Lubanga Dyilo* "Reasons for 'Decision of the Appeals Chamber on the Defence application 'Demande de suspension de toute action ou procédure afin de permettre la désignation d'un nouveau Conseil de la Défense' filed on 20 February 2007' issued on 23 February 2007" 9 March 2007 (ICC-01/04-01/06-844), paragraph 15; "Reasons for the Appeals Chamber's Decision to Extend Time Limits for Defence Documents issued on 3 April 2007" 20 April 2007 (ICC-01/04-01/06-871), paragraph 4.

⁶ *Prosecutor v Thomas Lubanga Dyilo* "Clarification" 3 April 2007 (ICC-01/04-01/06-861).

⁷ *Prosecutor v Thomas Lubanga Dyilo* "Réponse aux 'Observations du Greffier en application de la règle 20-1-d du Règlement de procédure et de preuve relatives au document intitulé Clarification déposé à la Chambre d'Appel de la Cour le 3 avril 2007 par M. Thomas Lubanga Dyilo' du 5 avril 2007" 17 April 2007 (ICC-01/04-01/06-867 and ICC-01/04-01/06-867-Corr).

⁸ *Prosecutor v Thomas Lubanga Dyilo* "Observations du Greffier en application de la règle 20-1-d du Règlement de procédure et de preuve relatives au document intitulé « Clarification » déposée à la Chambre d'appel de la Cour le 3 avril 2007 par M. Thomas Lubanga Dyilo" 5 April 2007 (ICC-01/04-01/06-865 and ICC-01/04-01/06-865-Corr)



Appellant. The Appeals Chamber is informed, inter alia, that a deadline was set to counsel to signify her acceptance or refusal of the brief to represent the Appellant.⁹ The deadline passed without any response from counsel.

5. In addition to informing the Appeals Chamber of matters associated with the appointment of new counsel, the Registrar requests (petitions) the granting of two remedies specified at the end of the document submitted. By communication of 17 April 2007 the Appellant informs the Appeals Chamber that he will invoke the provisions of regulation 83 (3) of the Regulations of the Court for the award of the payment of new counsel.¹⁰ He requests the Appeals Chamber to disregard the observations of the Registrar and to take no action in relation to them. And there the matter stands.

6. As earlier indicated, in addition to informing the two Chambers of the Court and the Presidency about the payment of legal assistance and the appointment of counsel, matters falling within his domain, the Registrar requests the Chamber to make the two orders recited below:

I- State that the requests for additional means cannot be examined at this stage in the proceedings when the appointed counsel has not yet accepted the appointment.

II- Invite the counsel appointed by Mr. Thomas Lubanga Dyilo to comply with the procedure which applies before the Court and to make a decision without delay regarding her appointment.”¹¹

No reference is made to the legal premise founding the requests. For a start, the remedies sought are not provided for in the Court's Statute, Rules of Procedure and Evidence or Regulations. Such remedies as the Appeals Chamber is authorized to grant are listed in article 83 of the Statute and rules 153 and 158 of the Rules of Procedure and Evidence. Secondly, the remedies sought entail the exercise of original jurisdiction by the Appeals

⁹ *Ibid.*, paragraph 27.

¹⁰ See *Prosecutor v Thomas Lubanga Dyilo* “Réponse aux ‘Observations du Greffier en application de la règle 20-1-d du Règlement de procédure et de preuve relatives au document intitulé Clarification déposé à la Chambre d’Appel de la Cour le 3 avril 2007 par M. Thomas Lubanga Dyilo’ du 5 avril 2007” 17 April 2007 (ICC-01/04-01/06-867 and ICC-01/04-01/06-867-Corr).

¹¹ *Prosecutor v Thomas Lubanga Dyilo* “Registrar’s observations in accordance with rule 20(1)(d) of the Rules of Procedure and Evidence on the document entitled ‘Clarification’, submitted to the Appeals Chamber of the Court on 3 April 2007 by Mr Thomas Lubanga Dyilo” 5 April 2007 (ICC-01/04-01/06-865-tEN and ICC-01/04-01/06-865-Corr-tEN), page 13.



Chamber in a matter affecting the discharge of the duties of the Registrar. The Appeals Chamber is not invested with original jurisdiction as it clearly emerges from articles 81, 82 and 84 of the Statute save in two cases specified in the Statute, namely those identified by articles 110 and 42 (8). Thirdly, the Appeals Chamber is not cast as an advisory body with regard to the exercise of the functions and duties of the Registrar. Under the Statute, the “Registrar shall exercise his or her functions under the authority of the President of the Court”, as laid down in article 43 (2) of the Statute. The Registrar may therefore have recourse to the President of the Court for necessary advice and guidance. Whether the Presidency, the authority having responsibility for the proper administration of the Court with the exception of the Office of the Prosecutor (article 38 (3) of the Statute), may have any say in the transaction of the affairs of the Registry, need not be explored by the Appeals Chamber in this case.

7. The authority of the Registrar is confined to the non-judicial aspects of the administration and servicing of the Court, without prejudice to the functions and powers of the Prosecutor, as provided in article 43 (1) of the Statute. No jurisdiction is vested in the Appeals Chamber to review decisions pertaining to the administration and servicing of the Court except where specific authority to do so is conferred by the Statute, Rules of Procedure and Evidence or the Regulations of the Court. In connection with legal aid, only decisions of the Registrar on the scope of the payment of legal assistance are subject to review by the relevant Chamber, i.e. the Chamber dealing with the case, on the application of a legally aided person (regulation 83 (4) of the Regulations of the Court). Moreover, residual power is acknowledged to a Chamber dealing with a case to make an order against the litigant for contribution to the costs of the defence, where it appears that the person had the means to meet the expenses for his or her legal representative (rule 21 (5) of the Rules of Procedure and Evidence).

8. Another species of decisions of the Registrar liable to review by another body, the Presidency, are decisions of the Registrar refusing the assignment of counsel (see rule 21 (3) of the Rules of Procedure and Evidence). The decision may be reviewed at the instance of the aggrieved party, while the decision of the Presidency on any such matter



is final. The same applies with regard to decisions of the Registrar to refuse legal aid (see regulation 85 (3) of the Regulations of the Court).

9. In conclusion, the request of the Registrar to the Appeals Chamber to award the remedies specified therein is groundless, a fact that makes the requests untenable and as such liable to dismissal.

Done in both English and French, the English version being authoritative.



Judge Georghios M. Pikis
Presiding Judge

Dated this 27th day of April 2007

At The Hague, The Netherlands