

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

N° : ICC-01/04-01/07
Date : 11 December 2007

PRE-TRIAL CHAMBER I

Before : Judge Sylvia Steiner, Single Judge

Registrar : Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO
IN THE CASE OF
*THE PROSECUTOR v. GERMAIN KATANGA***

Confidential

Motion to re-schedule Status Conference of 12 December 2007

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Eric MacDonald, Trial Lawyer
Mrs. Florence Darques-Lane, Legal Adviser

Defence Counsel

Mr David Hooper

1. Counsel was sworn in on Thursday 6th December 2007. There had been no prior discussion or notice of a Status Conference other than a casual reference by Court Management, at an informal introduction on 6th December, to the possibility of a Status Conference in the forthcoming week, to which counsel expressed the hope that another day be chosen because of pre-arranged commitments. Counsel said that he was available the next day, or any time in the subsequent week. He was unaware of the court arrangements for the Christmas/ New Year recess. Without further discussion or notice Counsel was surprised to receive notice of the listing of the Status Conference for Wednesday 11th December by email received at 22.00 on the night of the 6th.
2. Counsel anxiously liaised with Court Management throughout Friday 7th December. It is to be noted that there does not appear to be any channel of communication between the Chamber and counsel for liaising, other than, it would appear, by Motion. On 7th December 2007, Counsel submitted a Confidential Defence notice concerning scheduling of Status Conference, in which he respectfully tendered his apologies, explained his difficulty and provided alternative possible dates, including Friday 14th December at 2 p.m. At 19.01 on Friday night Counsel received by email the Decision convening a Status Conference on Friday, 14th December at 2 p.m, and, given the urgent discussions that had taken place that day, understood that to be a vacating of the Status Conference from 11th December to 14th December. Counsel had not understood that the Chamber may have wished to hold two Status Conferences in the same week. Today, having been alerted to the Wednesday Status Conference still being in place, Counsel has referred to the two decisions and recognises for the first time that the second decision, though accommodating his suggested date, does not refer to the same items of agenda. Counsel regrets this oversight.
3. Had Counsel understood that the date of 11th December was maintained he would have felt compelled in the circumstances to be present, albeit at considerable inconvenience, to himself and others, as will subsequently appear plain. However, having understood, not unreasonably in the circumstances, that the decision of 7th December moved the Status Conference to 14th December, Counsel is now no longer able to attend for the reasons following.

4. Counsel had a long standing arrangement to be in Arusha, the seat of the International Criminal Tribunal for Rwanda (ICTR), in the week of 10th December 2007. He was not in a position to alter this arrangement on 7th December 2007 when first given notice of the proposed Status Conference. Had he been given reasonable notice he would have attempted to do so. He is Co-Counsel in a case before the ICTR. He arranged to meet with the accused, lead counsel and legal assistant to take instructions in respect of Prosecution witnesses who are due to give evidence in the last session of Prosecution evidence listed to commence on 14th January 2008 and expected to last no more than three weeks. Counsel has the role, as an experienced trial lawyer, of cross examining the prosecution witnesses and has so far done all the cross examination of Prosecution witnesses and is anticipated to do so for the remainder. After that his primary function in the case will have been discharged. Having previously completed a case at the ICTR counsel is well aware of the demands made on him in such circumstances. He has also kept Mr Katanga fully aware of this current obligation and Mr Katanga for his part has raised no objection to his carrying out the remainder of his obligations, indeed is grateful to have counsel with such experience.
5. Counsel left the Hague for Tanzania on Saturday morning and took the opportunity at Schipol to alter his return ticket to Friday night – allowing him to be present in the Hague in good time for the hearing on Friday afternoon. He was taken aback to discover today that his attendance at the Status Conference is still expected. Had counsel appreciated last week that the Status Conference for Wednesday 11th December had not been vacated in favour of a hearing on Friday 14th December, then he would have returned to the Hague tonight, on the Tuesday night -flight, arriving in the Hague on the Wednesday morning. That is, however, no longer possible. He was in the United Nations Detention Centre from 09.30 (07 30 Dutch time) until 14 00 and did not learn of the present difficulty until Ms Buisman, the legal assistant appointed on 7th December informed him thereof this morning, and the earliest counsel can be in the Hague is Friday morning.
6. Counsel greatly regrets the misunderstanding and any inconvenience to the Chamber. He hopes that by the efforts to liaise constructively with the court and his efforts to ensure his attendance this Friday he has sufficiently demonstrated his sense of obligation to the Court. He respectfully submits that the court, if unable to hold the Status Conference in his absence, may consider listing it at the same time or shortly

before the hearing of the Status Conference this coming Friday. Counsel would still welcome a 14.00 hour commencement time for reasons now apparent to the Chamber.

7. Given the fact that this motion concerns Counsel's personal itinerary, it has been filed on a confidential basis.



Mr David Hooper, Defence Counsel

The 11th day of December 2007

At Arusha, Tanzania