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N° : ICC-01/04-01/07
Date : 20 December 2007

THE APPEALS CHAMBER

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

Registrar : Mr Bruno Cathala

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

Public

Defence Application for Extension of Time to File Document in Support of Appeal

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
Ms Caroline Buisman

1. On 19 December 2007, the Single Judge of Pre-Trial Chamber I granted the Defence for Mr. Germain Katanga (the Defence) leave to appeal the Pre-Trial Chamber's "First Decision on the Prosecution Request for Authorisation to Redact Witness Statements"¹ (First Decision on Redactions) in relation to the second issue raised in the Public Defence Motion for Leave to Appeal the First Decision on the Prosecution Request for Authorisation to Redact Witness Statement, filed on 13 December 2007.² This issue is "whether the Single Judge enlarged the scope of application of rule 81(2) of the Rules by considering as Prosecution sources those individuals - whose identity and identifying information could be redacted pursuant to the said rule - who, despite not being Prosecution witnesses for the purpose of the confirmation hearing, have been or are about to be interviewed by the Prosecution."³
2. The Prosecution also sought leave to appeal the First Decision on Redactions.⁴ On 14 December 2007, the single Judge of Pre-Trial Chamber I granted the Prosecution leave to appeal this Decision on two issues of appeal, namely:⁵
 - (a) whether "Article 54(3)(f) authorises the Prosecution to seek, and Rule 81(4) read in conjunction with that article empower the Chamber to authorise, redactions for the protection of 'innocent third parties', i.e. persons who are not victims, current or prospective Prosecution witnesses or sources, or members of their families"; and
 - (b) whether the Single Judge erred in the application of the test prescribed by the Appeals Chamber in its 14 December 2006 Decisions by refusing to authorise the redaction of the location of interviews of witnesses, and the identifying information of current and former staff members of the OTP and the VWU at this particular stage of the proceedings.
3. On 17 December 2007, the Prosecution requested an extension of time for the submission of the document in support of appeal on the grounds that the judicial recess would hamper the Prosecution in adequately addressing the important issues arising from the First Decision on Redactions within the ordinary time limit, and that it would be in the interests of judicial economy for all issues arising out of the

¹ ICC-01/04-01/07-90. The Public Redaction Version of this Decision was filed on 7 December 2007.

² ICC-01/04-01/07-99 13-12-2007 2/12 JT PT.

³ Decision on the Defence Motion for Leave to Appeal the First Decision on Redactions, ICC-01/04-01/07-116 19-12-2007 7/7 SL PT, 19 December 2007, page 7.

⁴ Urgent Confidential Prosecution's Application for Leave to Appeal and Urgent Application for Confined Variation of the First Decision on Redaction of Witness Statements, ICC-01/04/07-92-Conf 10-12-2007 2/20 EO PT, 10 December 2007.

⁵ Urgent Public Decision on the Prosecution Request for Leave to Appeal the First Decision on Redactions, ICC-01/04-01/07-108 14-12-2007 7/7 EO PT, 14 December 2007, pages 6-7.

Decision to be dealt with together.⁶ The Defence had no objection and agreed explicitly with the latter argument.⁷

4. The Appeals Chamber accepted that the forthcoming week “is unusual in that, over and above the fact that it falls during the three week Court recess, it comprises two public holidays and special days of leave.”⁸ On that basis, the Appeals Chamber granted the Prosecution an extension of the prescribed time limits until 2 January 2008, but not later than that.⁹
5. The Defence hereby requests an extension of time for the submission of the document in support of its own appeal until 2 January 2008. The issue of appeal is of significant importance and requires careful consideration and analysis. Given that the prescribed time limit includes Christmas and New Year’s, the work schedule of members of the Defence team is limited in the forthcoming week. Given that the Appeals Chamber took this factor into consideration when granting the Prosecution an extension of the prescribed time limit and to provide both parties a fair and equal treatment, the Defence requests that the Appeals Chamber also takes this factor into consideration in respect of the Defence’s appeal of the same Decision.
6. Further, the Defence requests an extension of the prescribed time because the issue of appeal is interwoven with the Prosecution’s issues of appeal. They each concern the scope of the Prosecution’s disclosure obligations pursuant to Rule 81 of the Rules of Procedure and Evidence. Because the issues are so linked, it would not be fair for the Prosecution to be in a position to review the Defence’s arguments in support of its appeal whilst the Defence would not be in such a position. Reviewing the Defence’s arguments on the same issue would enable the Prosecution to incorporate similar arguments in its own appeal and to phrase counter-arguments. This would create an appearance of (if not an actual) unfairness because the highly esteemed principle of equality of arms would be undermined.¹⁰ This can easily be avoided by allowing both

⁶ Prosecution’s Urgent Application for Extension of Time to File Document in Support of Appeal, ICC-01/04-01/07-109 17-12-2007 2/5 EO PT OA, 17 December 2007, paras 8-9.

⁷ Public Defence Response to the “Prosecution’s Urgent Application for Extension of Time to File Document in Support of Appeal”, ICC-01/04-01/07-113 18-12-2007 2/2 EO PT OA, 18 December 2007.

⁸ Decision on the “Prosecution’s Urgent Application for Extension of Time to File Document in Support of Appeal”, ICC-01/04-01/07-115 18-12-2007 4/6 SL PT OA, 18 December 2007, para. 6.

⁹ *Ibid*, para. 9.

¹⁰ See *inter alia*, the ICTY case of Tadic where the Appeals Chamber found that the principle of equality of arms obligates a judicial body to ensure that neither party is at a disadvantage when presenting its case (*Prosecutor v. Tadic*, IT-94-1, ICTY, Appeals Judgement, July 15, 1999, para. 48).

parties to file their document in support of appeal on the same day, that is, 2 January 2008.

Therefore, the Defence requests that the Appeals Chamber grant an extension of the prescribed deadline to file its document in support of the above appeal until 2 January 2008.

Respectfully submitted,



Mr David Hooper, Defence Counsel

The 20th December 2007

At Den Haag, The Netherlands