

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/07
Date: 14 January 2008

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 THE CONGO
IN THE CASE OF
*THE PROSECUTOR vs. GERMAIN KATANGA***

Public Document

**Prosecution's Request for Leave to Reply to Defence Response to Confidential
Prosecution's Document in support of Appeal against the First Decision on the
Prosecution Request for Authorisation to Redact Witness Statements**

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Fabricio Guariglia, Senior Appeals Counsel
Mr Eric Macdonald, Trial Lawyer
Ms Florence Darques-Lane, Legal Adviser

Counsel for the Defence

Mr David Hooper
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Introduction

1. On 3 December 2007, the Single Judge issued the “First Decision on the Prosecution Request for Authorisation to Redact Witness Statements”.¹
2. On 10 December 2007, the Prosecution sought leave to appeal the Decision in respect of two issues (“Prosecution’s Application for Leave to Appeal”).² On 14 December 2007, the Single Judge granted leave to appeal for both issues.³
3. On 2 January 2008, the Prosecution filed the “Prosecution’s Document in Support of Appeal against the First Decision on Redaction of Witness Statements” (“Prosecution’s Appeal”),⁴ in which it raised three grounds of appeal, including a ground that “the Single Judge denied the Prosecution any meaningful opportunity to present submissions on the alternatives on which the Decision was founded”.⁵
4. On 14 January 2008, the counsel for Germaine KATANGA (“the ‘Respondent’”) filed the “Defence Response to Confidential Prosecution’s Document in support of Appeal against the First Decision on the Prosecution Request for Authorisation to Redact Witness Statements” (“Defence Response”).⁶ Among other things, the Respondent requests that the Prosecution’s ‘complaint’ that it had no meaningful opportunity to be heard on the issue of alternative measures is not reflected in the motion for leave to appeal. The Respondent states that “the Prosecution failed to request leave to appeal on this issue or even mention it as an alleged sub-ground undermining this part of the Decision. The Prosecution cannot now, for the first time, introduce this alleged procedural error as an independent ground of appeal”.⁷

¹ ICC-01/04-01/07-84-US-Exp. A confidential redacted version was issued on 6 December 2007 (ICC-01/04-01/07-88-Conf-Exp), which is the version referred to in citations in this filing (“the Decision”). A public redacted version was also issued on 7 December 2007 (ICC-01/04-01/07-90).

² ICC-01/04-01/07-92-Conf. The two issues for which leave to appeal the Decision was sought are: (a) whether Article 54(3)(f) authorises the Prosecution to seek, and whether 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 (“the First Issue”); and (b) whether the Single Judge erred 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 (“the Second Issue”). The Prosecution also filed a public redacted version of this Application on 14 December 2007 (ICC-01/04-01/07-107). The Prosecution also sought a variation of the disclosure order, which was granted on 11 December 2007 (ICC-01/04-01/07-94).

³ ICC-01/04-01/07-108.

⁴ ICC-01/04-01/07-131-Conf OA.

⁵ *Ibid*, paras. 43-47.

⁶ ICC-01/04-01/07-140 OA.

⁷ *Ibid*, paras. 59-60.

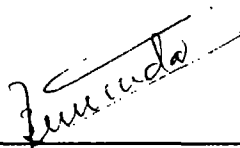
5. Pursuant to Regulation 24(5) of the Regulations of the Court, the Prosecution hereby requests the Appeal Chamber to be granted leave to file a reply, but limited to the above referred portion of the Defence Response.

Discussion

6. The Prosecution submits that while contending at paras. 59-61 of the Defence Response that the Prosecution failed to raise the matter timely before the Single Judge while seeking leave to appeal, the Respondent misstates the submissions made in the Prosecution's Application for Leave to Appeal.
7. In order to assist the Appeals Chamber in its adjudication of the Prosecution's Appeal, the Prosecution would like to direct the Appeal Chamber to the relevant parts in the Prosecution's Application for Leave to Appeal. In so doing, the Prosecution will establish that the third ground of appeal is properly based on an issue that has been identified in the Prosecution's Application for Leave to Appeal and for which the Single Judge granted leave to appeal.
8. For the purposes of the Appeal Chamber's consideration of this request, the Prosecution notes that, if leave to reply will be granted, pursuant to Regulation 34(c), the reply brief must be filed within ten days of notification of the response. Accordingly, the last day for the filing of any reply, unless the applicable time-limit is varied, would be 25 January 2008.⁸

Conclusion

For the above reasons, the Prosecution requests the Appeal Chamber to grant the Prosecution leave to reply to the Defence Response pursuant to Regulation 25(5).



Luis Moreno-Ocampo
Prosecutor

Dated this 14th day of January 2008
 At The Hague, The Netherlands

⁸ The Prosecution is calculating the time-limit using the amended version of Regulation 33 (1) (d).