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Date: 5 November 2008

TRIAL CHAMBER II

Before: Judge Bruno Cotte , Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Fumiko Saiga

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO
IN THE CASE OF
THE PROSECUTOR
*v. GERMAIN KATANGA and MATHIEU NGUDJOLO CHUI***

Public Document

**with Confidential and *Ex Parte* Annex A only available to the Defence for Mr
Katanga**

**Observations by David Hooper, counsel for Germain Katanga, in respect of the
report submitted by the Registrar to the Trial Chamber dated 3 November 2008**

Source: Defence for Mr Germain Katanga

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Detention Section

Victims Participation and Reparations Section

Other

1. Firstly, I acknowledge and thank Mr Dubuisson, and his team, for the efforts made over the past year to arrange the proposed family visit to Mr Katanga.

The visit has been very delayed, as the Registrar will no doubt acknowledge. A substantial contribution to the delay we learned was the lack of passport paper in the DRC. Another reason has been the time taken by the Dutch authorities to agree a visa. Another reason was that relevant photos were lost by the field office. All in all it has been an unhappy history and one that has caused concern for all the parties, and particularly Mr Katanga.

From the Registrar's report we learn that the visit now looks likely to take place in the very near future, which will be a welcome event to Mr Katanga as he has not seen his wife and daughter for almost four years and has never laid eyes on his son. The absence of visits from family or friends during his time in the Hague, and the uncertainties of the current situation, have been a burden to him and undoubtedly affected his capacity to prepare his case.

2. I therefore read with concern the observations made by the Registrar, Mme Arbia, where she states that the request made by the defence to the pre-trial chamber to request an update on the family visit situation constitutes a 'frivolous motion, characteristic of a reckless and vexatious procedure'. She further opines that the defence requests were an interference to the smooth management of the issue, and the report an unnecessary expense.
3. I attach at Annex A what I believe to be a complete record of the history of communication between myself and the Registry over the relevant period. I believe that the document speaks for itself. It is hard to see how the Registrar can possibly sustain the allegation she makes in the light of that history. I can only conclude that she was unaware of the history of correspondence when she agreed to the submission of the report.
4. Throughout the history of this matter I cannot recall one occasion when the Registry provided me with information about the progress of the family visit without the court, or myself, first having to ask for it. Two months ago, at a meeting requested by the defence, the Registry indicated that, if all went well, Mr Katanga could expect a visit at the end of October. At that time the Dutch authorities had possession of the

passports and their visa process was expected to take about two weeks. After three weeks, and having received no news at all in the interim period, I attempted to contact the relevant parties dealing with the matter so that I could keep Mr Katanga informed about the position. There was some anxiety at this time as to whether the Dutch authorities would provide visas for all three of the family or not. As the table at Annex A demonstrates, I received no reply to my emails. We received no reply to telephone calls made in the same period. Why it was decided not to respond to these reasonable inquiries is not known, and the court may wish to inquire, but it appears to have been a deliberate decision and one consistent with the attitude reflected in the report made to the chamber. It is an attitude based on the premise that Mr Katanga has no need to know or to be kept abreast of events. I disagree and submit that it is a matter of good, open management and a simple courtesy to keep Mr Katanga apprised of the situation, particularly given that the Registry was, and is, acutely aware of his anxieties about the delays.

5. The pre-trial chamber has shown an appropriate concern over the past year for this problem and has, by making regular requests of the Registry for information, attempted to ensure that the visit take place sooner, rather than later. As I was unable, despite reasonable requests, to obtain any information or response from the Registry from the 19th September to the 14th October, the defence, on Mr Katanga's behalf, requested the pre-trial chamber to seek an update. Counsel for Mr Ngudjolo had been moved to make a similar request a month or so earlier. Even so, further modest requests for information were ignored. It was not until October 24th that I was able to obtain an update. On that occasion we were told that the Dutch authorities were likely to grant the visas in the coming week, some five weeks after first receiving the passports.

The defence only discovered that the visas had been granted from the Registrar's report to the chamber dated 3rd November.

6. For my part, I cannot understand why it was not possible to keep Mr Katanga informed of the progress, or lack of progress, of the situation. It takes very little to pick up a phone, or send an email, or to reply to one. It should not be necessary for counsel to have to chase up the Registry for information. They certainly should not resent the fact that a counsel makes moderate and reasonable requests that he be kept abreast of a matter of such concern to his client. The pre-trial chamber responded to

the request by calling for an update. The Registrar's response has provided helpful information to all parties. It is unfortunate, in all the circumstances, that the Registrar now describe the request as vexatious. I can only hope that the Registry reflects on its attitude in respect of responding to the reasonable requests of the defence.

Respectfully submitted,



David HOOPER

Counsel for Germain Katanga

Dated this 5th November 2008

At London