

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/05-01/08**

Date: **30 November 2010**

TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
V. JEAN-PIERRE BEMBA GOMBO**

Public Document

**Prosecution's Request to Invalidate the Appointment of Associate Counsel to the
Defence Team**

Source: The Office of the Prosecutor

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

The Office of the Prosecutor

Counsel for the Defence of Jean-Pierre Bemba

Mr Nkwebe Liriss

Mr Aimé Kilolo Musamba

Legal Representatives of Victims

Ms Marie-Edith Douzima-Lawson

Mr Assingambi Zarambaud

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Ms Maria Luisa Martinod Jacome

Detention Section

Victims Participation and Reparations Other Section

Ms Fiona McKay

1. Mr. Nicholas Stuart Kaufman (“Mr. Kaufman”) was first appointed to the Defence team as Legal Consultant. The Prosecution opposed his appointment on the grounds of Mr. Kaufman’s prior access to confidential information in the present case while an attorney in the Office of the Prosecutor (“Prosecution”).
2. The originally constituted Trial Chamber III noted these objections and Mr. Kaufman’s response that in fact he had no access to confidential information in the Bemba proceedings. It accepted, however, that Mr. Kaufman’s first appointment as Legal Consultant – meaning that he would not represent the accused in court or make oral submissions before the Chamber on his behalf, unless expressly authorized to do so – meant that he was not subject to the Code of Professional Conduct for counsel.
3. This Chamber reiterated the limitations on Mr. Kaufman’s right of appearance when it stated, on 25 November 2010, that Mr. Kaufman could not make in-court objections on the Accused’s behalf.
4. On 29 November 2010, the Prosecution was informed in court by the Chamber that Mr. Kaufman was appointed to the Defence team as associate counsel, upon application by the Defence. No prior notice was given by the Defence to the Prosecution, neither did the Chamber give the prosecution an opportunity to make submissions prior to making a decision. The Chamber however allowed the Prosecution to make objections in writing.
5. Though acknowledging that the previously-constituted Chamber has ruled on the issue, the Prosecution reiterates and incorporates its earlier factual arguments. In addition to the facts asserted previously – most significantly, an email by Mr. Kaufman expressing his pleasure at sharing an office with an attorney on the Bemba trial team because it would enable him to learn what was going on in that case – the Prosecution subsequently located internal memos that reflect “ExCom”

(Executive Committee) meetings with all senior lawyers. The memos identify the topics that were discussed, and in particular the discussions on witness protection, disclosure, and modes of liability, all inherent matters in the formulation of prosecutorial strategy. One memo states that a meeting was convened on 10 September 2008 for the attending staff, including specifically Mr. Kaufman, to discuss modes of liability “with the view to providing their recommendations to the CAR [Bemba] Joint Team”. While it is impossible to identify specifically what internal information was disclosed, or to state with certainty that Mr. Kaufman actively participated, his repeated presence, as a senior lawyer in the office, at general strategy discussions while the case against Bemba was one of the three active cases in the office is additional justification to disallow his active participation on behalf of Bemba.

6. The Prosecution further notes that the Chamber originally took into account the need of the trial team for Mr. Kaufman’s particular expertise, noting that without Mr. Kaufman the team lacked an attorney familiar with common law practice. The team having subsequently retained Peter Haynes to represent the Accused, that consideration is no longer a factor.
7. For the foregoing reasons, the Prosecution respectfully requests that the Chamber invalidate the contested appointment.



Luis Moreno-Ocampo, Prosecutor

Dated this 30th Day of November 2010

At The Hague, The Netherlands