



Original: English

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

Date: 30/11/2010

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

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

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

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Unrepresented Victims

**Unrepresented Applicants
 (Participation/Reparation)**

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REGISTRY

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Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
 Section**

Other

1. On 7 May 2010, Trial Chamber III in its former composition rendered its Decision on the "*Prosecution's Request to Invalidate the Appointment of Legal Consultant to the Defence Team*".¹
2. On 29 November 2010, after the Legal Consultant – Mr. Kaufman was promoted to Associate Counsel, the Prosecution resuscitated its original objection² to the appointment by way of oral submission.

“We have, since the decision, been able to find additional information that we would submit to the Chamber regarding Mr Kaufman’s appearance in this case. That is why, Madam President, we are submitting that if Mr Kaufman should already start appearing, any written submissions that we will make in future will be of no consequence because he’s already started appearing anyway. And the whole purpose of making the written submissions will be defeated. This is why we’re asking that his appearance, for now at least, be suspended until the Chamber considers the additional written information that the Prosecution will submit and the Chamber will decide”.³

3. Despite the Deputy-Prosecutor’s above cited comments to the contrary, there is nothing **new** in the freshly submitted request to invalidate Mr. Kaufman’s appointment. In making its original determination on Mr. Kaufman’s appointment, Trial Chamber III, in its former composition, specifically reviewed the same assertions which are now presented by the Prosecution as forming “additional” grounds for objecting to Mr. Kaufman’s membership of the Defence team. These assertions included Mr. Kaufman’s alleged presence at various meetings where “Bemba” related strategy was discussed *and* the Email cited in paragraph 5 of the "*Prosecution's Request to Invalidate the Appointment of Associate Counsel to the Defence Team*" dated 30 November 2010.⁴

¹ ICC-01/05-01/08-769.

² ICC-01/05-01/08-670.

³ ICC-01/05-01/08-T-37-CONF-ENG ET 29-11-2010 at pages 41 & 42.

⁴ The Defence considers it inappropriate that the Prosecution has cited the contents of a confidential annex in a public document. The Email cited at paragraph 5 of the “Prosecution’s Request to Invalidate the Appointment of Associate Counsel to the Defence Team” was filed as confidential annex L to the original request to invalidate Mr. Kaufman’s appointment and, is now, re-characterised by the Prosecution as evidence of Mr. Kaufman’s apparent glee at gaining access to the *Bemba* file – something which is far from the truth.

4. After considering both the Email and the fact that he may have attended alleged strategy meetings, the learned Trial Chamber found that there were no grounds to justify Mr. Kaufman's invalidation holding as follows:

“... the combination of lack of any proof that Mr Kaufman is in possession of material that creates a conflict of interest and his unequivocal assertions that he is unaware of any relevant confidential information together resolve this application. Absent any reasons for doubting Mr Kaufman's integrity, the Chamber is entitled to rely on his clear undertakings, particularly given his position as one of the lawyers on the list of counsel.”⁵

5. The Trial Chamber further stated:

“...even if the Chamber had decided that the appointment of Mr Kaufman is directly covered by the Code of Conduct (e.g. because his name is on the Registrar's list of counsel), considering Article 12(1)(b) of the Code of Conduct, it would have concluded that there are no persuasive indications that he was involved in or privy to confidential information as a staff member of the Court relating to this case, for the reasons set out above”.⁶

6. The Defence wishes to add that the Prosecution has no standing presently to request the disqualification of counsel or to re-litigate an issue which was not appealed. The onus is on counsel, himself, to acquaint the Court with any potential for an impediment to representation and, thereafter, to seek the lifting thereof by way of Article 12(1)(b) of the Code of Professional Conduct if necessary. Should the Prosecution possess genuine evidence that counsel is in breach of any ethical obligation – then its recourse is not to the Court but to the relevant ICC disciplinary committee charged with overseeing the ethical conduct of counsel.
7. Furthermore, the fact that additional counsel has been added the Defence team does not, thereby, entitle the Prosecution to dictate, as it does, who exactly Mr. Jean-Pierre Bemba is entitled to instruct in the pursuit of his best defence.

⁵ ICC-01/05-01/08-769 at para. 45

⁶ ICC-01/05-01/08-769 at para. 46.

8. Finally, as a result of the attack on Mr. Kaufman's professional integrity, the Defence feels it appropriate to mention the questionable timing of the Prosecution request which, it is submitted, was motivated by tactical considerations. If Mr. Kaufman was, indeed, in possession of confidential information which could pose a threat to the fairness of the proceedings, it should be asked why the issue was not raised at the earliest possible opportunity as opposed to when Mr. Kaufman sought to exercise his rights of audience.
9. In light of all the aforementioned, the learned Trial Chamber is asked to reject the Prosecution's request to invalidate Mr. Kaufman's appointment as Associate Counsel.



Aimé Kilolo Musamba
Associate Counsel



Nkwebe Liriss
Principal Counsel

Done at The Hague, the Netherlands

30 November 2010