



Original: **English**

No.: ICC-01/04-01/07

Date: 19 May 2011

TRIAL CHAMBER II

Before: Judge Bruno Cotte , Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Christine Van den Wyngaert

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

Public

Urgent Defence Application to Vary its Witness Order

Source: Defence for Mr Germain Katanga

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

The Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor
Mr Eric Macdonald, Senior Trial Lawyer

Counsel for the Defence for Germain Katanga

Mr David Hooper Q.C.
Mr Andreas O'Shea

Counsel for the Defence for Mathieu Ngudjolo Chui

Mr Jean-Pierre Kilenda Kakengi Basila
Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of Victims

Mr Jean-Louis Gilissen
Mr Fidel Nsita Luvengika

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

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 Section

Other

Application

1. This is an application for leave to vary the order of the witnesses in one respect. The Defence for Mr. Katanga (hereinafter “the Defence”) requests leave to move the testimony of its person of resource, Mr. Jean Logo Dhengachu (DRC-D02-P-0258), in the event that Mr. Katanga gives evidence, from its current position, to immediately before the testimony of Mr. Katanga.
2. The reason for this request arises out of the consequences of the rule that there must be no contact between a party and a witness once that witness arrives in The Hague.¹ The generality of this rule creates obvious and particular difficulties in the case of a defence investigator whose efforts are required in DRC throughout the Katanga defence case, and in the course of subsequent evidence.
3. The only alternative is to allow the Defence to have access to Mr. Logo in the event that he is in The Hague during the time that Defence witnesses are giving evidence. In any event, whenever he gives evidence, the Defence will need to be in contact with Mr. Logo after he gives his testimony for the purpose of further investigations and inquiries. The Defence submits that the rules in respect of contact with witnesses did not envisage that they would so operate that a defence team could not be in contact with its investigator.
4. According to the current witness order, the three witnesses preceding Mr. Logo are DRC-D02-P-0047, DRC-D02-P-0196, and DRC-D02-P-0259. Mr. Logo is the Defence’s only resource person. His assistance is, depending on developments, continually required during the course of the testimony of the defence witnesses. There are frequently issues that require the attention of, or information from, Mr. Logo.

¹ ICC-01/04-01/07-1788, *Décision relative aux modalités de participation des victimes au stade des débats sur le fond*, 22 October 2010. See also ICC-01/04-01/07-842-Conf-Anx, *Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial*, As of 16 January 2009, 21 January 2009, paras 37-41.

5. The proposed solution carries no prejudice to other parties. Mr. Logo's testimony is not envisaged to be long. His sequence within the defence witnesses would remain the same. The only difference is that there would be a longer interval until such time as Mr. Logo appears.

Relief Requested

6. Accordingly, it is requested that the testimony of Mr. Jean Logo Dhengachu (DRC-D02-P-0258) be moved from its current position on the witness order to immediately before the evidence of Mr. Katanga, in the event that Mr. Katanga gives evidence, and immediately after the evidence of the witnesses testifying for Mr. Ngudjolo.

Respectfully submitted,



David HOOPER Q.C.

Dated this 19th day of May 2011

At The Hague