



Original: **English**

No.: **ICC-01/04-01/10**

Date: **13/08/2011**

**THE APPEALS CHAMBER**

Before:

Judge Anita Ušacka, Presiding Judge

Judge Sang-Hyun Song

Judge Akua Kuenyehia

Judge Erkki Kourula

Judge Daniel David Ntanda Nsereko

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

**IN THE CASE OF  
THE PROSECUTOR  
*v. CALLIXTE MBARUSHIMANA***

**Public Document**

**Defence request to expedite the proceedings in the appeal  
against Pre-Trial Chamber I's decision: ICC-01/04-01/10-319**

**Source: Defence for Mr. Callixte Mbarushimana**

**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  
 Ms. Fatou Bensouda, Deputy Prosecutor  
 Mr. Fabricio Guariglia, Senior Trial Lawyer

**Counsel for the Defence**

Mr. Nicholas Kaufman  
 Ms. Yaël Vias Gvirsman

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
 (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**

**Deputy Registrar**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Other  
 Section**

1. On 29 July 2011, the Defence filed its appeal ("the Appeal")<sup>1</sup> against Pre-Trial Chamber I's *Decision on the Second Defence request for interim release* ("the Impugned Decision").<sup>2</sup>

2. In the Impugned Decision, the learned Single Judge – HHJ Cuno Tarfusser - ruled that he was vested with the discretionary power to review Mr. Mbarushimana's detention only once every 120 days and, in the circumstances, no grounds existed to exercise such discretion.<sup>3</sup>

3. Two weeks later, however, on 12 August 2011 and one working day before the filing of the Prosecution's response to the Appeal, the Pre-Trial Chamber rendered its urgent "*Decision requesting observations on interim release*" inviting the Defence to submit fresh observations on Mr. Mbarushimana's detention by 26 August 2011.<sup>4</sup>

4. In the aforementioned decision, the Pre-Trial Chamber reiterated the impugned finding which is the subject of the Appeal; namely, that the Defence's second request for interim release was nothing more than a "request for reconsideration".<sup>5</sup>

5. The Appeals Chamber is reminded that the Appeal was filed because the Defence believes, with respect, that the Single Judge erred by refusing to exercise his discretion to consider the inadmissibility of the case at the time of the arrest warrant application as a relevant factor in assessing the lawfulness of Mr. Mbarushimana's detention and his subsequent right to compensation under Article 85(1) of the Rome Statute.<sup>6</sup>

---

<sup>1</sup> ICC-01/04-01/10-321.

<sup>2</sup> ICC-01/04-01/10-319.

<sup>3</sup> *ibid* at page 5.

<sup>4</sup> ICC-01/04-01/10-360.

<sup>5</sup> *ibid* at page 2.

<sup>6</sup> ICC-01/04-01/10-337.

6. The learned Single Judge has now made it clear that the Pre-Trial Chamber will bar the Defence from arguing the prior inadmissibility of the case against Mr. Mbarushimana based on his interpretation of "the rule of finality".<sup>7</sup>

7. The Defence has argued that the rule of finality does not apply because the learned Pre-Trial Chamber has never entertained any substantive argument on the prior inadmissibility of the case.

8. Rule 156(4) of the Rules of Procedure and Evidence mandates the Appeals Chamber to hear an appeal "as expeditiously as possible".

9. The Defence respectfully submits that the incontrovertible inadmissibility of the case at the time the Pre-Trial Chamber issued the arrest warrant is an issue which deserves consideration in the interests of justice.

10. In the circumstances, the learned Appeals Chamber is respectfully requested to render its decision before 26 August 2011 so that the Defence may argue, should the Appeal be allowed, that the Pre-Trial Chamber is obliged to consider the prior inadmissibility of the case.



---

Nicholas Kaufman

Counsel for Callixte Mbarushimana

The Hague, the Netherlands

Saturday, August 13, 2011

---

<sup>7</sup> ICC-01/04-01/10-319 at page 6.