

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/05-01/08 OA 8

Date: 16 September 2011

THE APPEALS CHAMBER

Before:

**Judge Sang-Hyun Song, Presiding Judge
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Anita Ušacka
Judge Daniel David Ntanda Nsereko**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO

Public document

Order

in relation to the filing of confidential documents



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

The Office of the Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor
Mr Fabricio Guariglia

Counsel for the Defence

Mr Nkwebe Liriss
Mr Aimé Kilolo Musamba

Legal Representatives of Victims

Mr Assingambi Zarambaud

REGISTRY

Registrar

Ms Silvana Arbia

shs

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Jean-Pierre Bemba Gombo against the “Summary of the Decision on the ‘Demande de mise en liberté provisoire de M. Jean-Pierre Bemba Gombo afin d’accomplir ses devoirs civiques en République Démocratique du Congo’” of Trial Chamber III of 30 August 2011 (ICC-01/05-01/08-1672),

Unanimously,

Issues the following

ORDER

By 16h00 on 20 September 2011,

- a. Mr Bemba shall state the reasons for filing as confidential and shall provide reasons, if any, why the following documents, or any information contained therein, should not be reclassified as public:
 1. ICC-01/05-01/08-1702-Conf,
 2. ICC-01/05-01/08-1702-Conf-Anx1,
 3. ICC-01/05-01/08-1717-Conf.
- b. The Prosecutor shall state the reasons for filing as confidential and shall provide reasons, if any, why the following documents, or any information contained therein, should not be reclassified as public:
 1. ICC-01/05-01/08-1715-Conf,
 2. ICC-01/05-01/08-1718-Conf.
- c. The legal representative of victims, Mr Assingambi Zarambaud, shall state the reasons for filing as confidential and shall provide reasons, if any, why the following documents, or any information contained therein, should not be reclassified as public:
 1. ICC-01/05-01/08-1704-Conf,
 2. ICC-01/05-01/08-1704-Conf-Anx1,
 3. ICC-01/05-01/08-1714-Conf.

REASONS

1. On 30 August 2011, Trial Chamber III (hereinafter: “the Trial Chamber”) issued the “Summary of the Decision on the ‘Demande de mise en liberté provisoire de M. Jean-Pierre Bemba Gombo afin d’accomplir ses devoirs civiques en République Démocratique du Congo”¹ (hereinafter: “Summary of the Impugned Decision”) wherein the Trial Chamber rejected a request by Mr Jean-Pierre Bemba Gombo (hereinafter: “Mr Bemba”) for provisional release. The Trial Chamber found that “[w]hile [Mr Bemba’s] Request for Provisional Release was filed confidentially, the defence has not demonstrated a sufficient basis for confidential treatment”.² The Trial Chamber therefore issued the Summary of the Impugned Decision publicly and instructed Mr Bemba to file a public redacted version of his request for provisional release and “[t]he parties and participants [...] to do the same in relation to their observations [on the request for provisional release]”.³

2. On 2 September 2011, the Trial Chamber issued the “Decision on the ‘Demande de mise en liberté provisoire de M. Jean-Pierre Bemba Gombo afin d’accomplir ses devoirs civiques en République Démocratique du Congo”⁴ (hereinafter: “Impugned Decision”) wherein it set out the reasons behind the Summary of the Impugned Decision. The Trial Chamber filed the Impugned Decision confidentially as that decision and some of the filings related to Mr Bemba’s request for provisional release referred to the Appeals Chamber’s judgment of 19 August 2011⁵ (hereinafter: “*Bemba* OA 7 Judgment”) which was at that time confidential. The Trial Chamber noted that it would review the classification of the Impugned Decision “promptly upon the Appeals Chamber’s filing of a public redacted version of its [*Bemba* OA 7] [J]udgment”.⁶ The Trial Chamber filed a public redacted version of the Impugned Decision on 6 September 2011.⁷

3. On 1 September 2011, Mr Bemba filed publicly the “Acte d’Appel de la Défense contre la décision de la Chambre de Première Instance III du 30 Août 2011

¹ ICC-01/05-01/08-1672.

² Summary of the Impugned Decision, para. 5.

³ Summary of the Impugned Decision, para. 5.

⁴ ICC-01/05-01/08-1691-Conf.

⁵ “Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 27 June 2011 entitled ‘Decision on Applications for Provisional Release’”, ICC-01/05-01/08-1626-Conf (OA 7).

⁶ Impugned Decision, para. 29.

⁷ ICC-01/05-01/08-1691-Red.

intitulée ‘*Summary of the Decision on the “Demande de mise en liberté provisoire de M. Jean-Pierre Bemba Gombo afin d’accomplir ses devoirs civiques en République Démocratique du Congo”*’⁸ (hereinafter: “Notice of Appeal”). In the course of the appeal, Mr Bemba,⁹ the Prosecutor¹⁰ and the victims represented by Mr Assingambi Zarambaud¹¹ filed several confidential documents before the Appeals Chamber. Neither Mr Bemba, nor the Prosecutor nor Mr Zarambaud stated the factual and legal basis for filing these documents confidentially.

4. On 9 September 2011, the Appeals Chamber issued its judgment in the present appeal.¹² This judgment was issued confidentially as it referred to the confidential filings submitted in the present appeal and to the then-confidential *Bemba* OA 7 Judgment.

5. On 12 September 2011, the Appeals Chamber issued a public redacted version of the *Bemba* OA 7 Judgment.¹³

6. The Appeals Chamber observes that the confidential documents submitted in the present appeal by Mr Bemba, the Prosecutor and the participating victims do not comply with regulation 23 *bis* (1) of the Regulations of the Court which requires a party to state the factual and legal basis for filing any document as “*ex parte*”, “under seal” or “confidential”. The Appeals Chamber recalls that “[t]he purpose of [regulation 23 *bis* of the Regulations of the Court] is to clearly inform the relevant Chamber of the reason why the filing as non-public is necessary”¹⁴. As the Appeals Chamber has previously explained, compliance with this provision is essential not only to “allow the Appeals Chamber to assess whether or not there is indeed a need to

⁸ ICC-01/05-01/08-1690-tENG.

⁹ ICC-01/05-01/08-1702-Conf; ICC-01/05-01/08-1702-Conf-Anx1; ICC-01/05-01/08-1717-Conf.

¹⁰ ICC-01/05-01/08-1715-Conf; ICC-01/05-01/08-1718-Conf.

¹¹ ICC-01/05-01/08-1704-Conf; ICC-01/05-01/08-1704-Conf-Anx1; ICC-01/05-01/08-1704-Conf-Anx2; ICC-01/05-01/08-1714-Conf. The classification of document ICC-01/05-01/08-1704-Conf-Anx2 has already been addressed in a separate order of the Appeals Chamber and is therefore not subject to this order.

¹² “Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 2 September 2011 entitled ‘Decision on the “Demande de mise en liberté de M. Jean-Pierre Bemba Gombo afin d’accomplir ses devoirs civiques en République Démocratique du Congo”’, ICC-01/05-01/08-1722-Conf (OA 8).

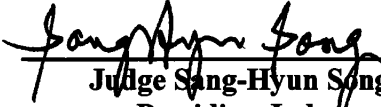
¹³ ICC-01/05-01/08-1626-Red.

¹⁴ *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, “Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 20 November 2009 Entitled ‘Decision on the Motion of the Defence for Germain Katanga for a Declaration on Unlawful Detention and Stay of Proceedings’”, 12 July 2010, ICC-01/04-01/07-2259 (OA 10), para. 15.

retain the existing classification [of such documents]”¹⁵ but also “in order for the Appeals Chamber to determine what information, if any, in [the documents] should be kept confidential”.¹⁶

7. Regulation 29 (1) of the Regulations of the Court provides that “[i]n the event of non-compliance by a participant with the provisions of any regulation, or with an order of a Chamber made thereunder, the Chamber may issue any order that is deemed necessary in the interests of justice”. In order to determine to what extent the confidential filings listed above and the judgment in the present appeal may be made public, the Appeals Chamber considers it necessary to request Mr Bemba, the Prosecutor and the participating victims to inform the Appeals Chamber of the factual and legal basis for the filing of their documents on a confidential basis, as they were required to do by regulation 23 *bis* (1) of the Regulations of the Court.

Done in both English and French, the English version being authoritative.


 Judge Sang-Hyun Song
 Presiding Judge

Dated this 16th day of September 2011

At The Hague, The Netherlands

¹⁵ *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, “Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case”, 25 September 2009, ICC-01/04-01/07-1497 (OA 8), para. 25.

¹⁶ *Prosecutor v. Germain Katanga*, “Order in relation to the ‘Prosecution’s Document in Support of Appeal against the First Decision on Redaction of Witness Statements’”, 19 February 2008, ICC-01/04-01/07-208 (OA), para. 3.