

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-03/09

Date: 13 July 2012

TRIAL CHAMBER IV

Before: Judge Joyce Aluoch, Presiding Judge
Judge Silvia Fernández de Gurmendi
Judge Chile Eboe-Osuji

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF
*THE PROSECUTOR v. ABDALLAH BANDA ABAKAER NOURAIN
AND SALEH MOHAMMED JERBO JAMUS***

Public Document

Decision on the application for leave to appeal the “Decision on common legal representation”

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

The Office of the Prosecutor

Ms Fatou Bensouda

Counsel for the Defence

Mr Karim A.A. Khan

Mr Nicholas Koumjian

Legal Representatives of Victims

Ms Hélène Cissé

Mr Jens Dieckmann

Legal Representatives of Applicants

**Unrepresented Applicants for
Participation/Reparation**

Unrepresented Victims

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Mr Geoffrey Nice

Mr Rodney Dixon

1. Trial Chamber IV (“Chamber”) of the International Criminal Court (“Court”) in the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, acting pursuant to Article 82(1)(d) of the Rome Statute (“Statute”) and Article 15 of the Code of Professional Conduct for Counsel (“Code of Conduct”), renders the following decision.

Procedural background and submissions

2. On 25 August 2011, pursuant to the Chamber’s instructions and following consultations with victims, the Registry submitted its “Proposal for the common legal representation of victims”.¹ On 14 September 2011, the Registrar appointed Ms Hélène Cissé and Mr Jens Dieckmann as common legal representatives of all victims in the present case.² Mr Geoffrey Nice and Mr Rodney Dixon (“Former Legal Representatives”), who formerly represented victims a/1646/10 and a/1647/10, sought the Chamber’s review of the Registrar’s decisions.
3. On 25 May 2012, the Chamber issued the “Decision on common legal representation” (“Decision”),³ in which it, *inter alia*, confirmed the Registrar’s choice to appoint Ms Hélène Cissé and Mr Jens Dieckmann as common legal representatives.
4. On 30 May 2012, the Former Legal Representatives filed the “Application for Leave to Appeal the ‘Decision on common legal representation’ pursuant to Article 82(1)(d)” (“Application”),⁴ in which they seek leave to appeal the Decision in relation to four issues. They submit that: (1) the Chamber did not take into account that the common legal representatives had challenged the credibility of victims

¹ ICC-02/05-03/09-203 with annexes and an addendum (ICC-02/05-03/09-204-Conf-Exp).

² Notification of appointment of common legal representatives of victims, ICC-02/05-03/09-215, with annexes.

³ ICC-02/05-03/09-337.

⁴ ICC-02/05-03/09-339.

a/1646/10 and a/1647/10, whom they represent pursuant to the Decision;⁵ (2) the Chamber did not base its decision on the best interests of the victims concerned;⁶ (3) the Chamber found that the agreement reached between the lawyers for the different victims was not binding on the Registry;⁷ and (4) the Chamber overlooked that the Registry had placed no reliance on the submissions of the Former Legal Representatives.⁸ The Former Legal Representatives indicate that they also represent victims a/6000/11, a/6001/11 and a/6002/11, whose applications for participation are pending, and who would also be affected by the import of the Decision.⁹

5. On 4 June 2012, the Office of the Prosecutor ("prosecution") filed the "Prosecution's Response to the Legal Representatives for Victims' 'Application for Leave to Appeal the 'Decision on common legal representation' pursuant to Article 82(1)(d)'"¹⁰ in which it requests the Chamber to deny the Application. The prosecution submits that the Former Legal Representatives are not a party to the proceedings and therefore have no standing to seek leave to appeal the Decision.¹¹ The prosecution also contends that, leaving alone the issue of standing, the Application does not even attempt to make a showing required under Article 82(1)(d) of the Statute.¹²
6. On 4 June 2012, the common legal representatives of victims filed "*Observations en Réponse à la Requête aux [fins] d'être autorisés à interjeter appel*"¹³ in which they submit that the Application has no legal basis. In particular, they observe that: (1) Regulation 79 of the Regulations of the Court, on which the procedure of

⁵ *Ibid.*, paragraphs 4 to 6.

⁶ *Ibid.*, paragraphs 7 to 10.

⁷ *Ibid.*, paragraphs 11 to 12.

⁸ *Ibid.*, paragraph 13.

⁹ *Ibid.*, paragraph 1.

¹⁰ ICC-02/05-03/09-340.

¹¹ *Ibid.*, paragraphs 4 to 6.

¹² *Ibid.*, paragraph 7.

¹³ ICC-02/05-03/09-342.

appointing a common legal representative is based, does not envisage an appeal against the decision of the Chamber;¹⁴ (2) the Former Legal Representatives are not a party to the proceedings;¹⁵ and (3) the Application does not demonstrate that the conditions for granting leave to appeal are met.¹⁶ The common legal representatives also submit that the Former Legal Representatives have not provided the files of the two victims they formerly represented in accordance with Article 15(2) of the Code of Conduct.¹⁷

Analysis

7. The Chamber takes note of the prosecution's and common legal representatives' concordant submission that the Former Legal Representatives have no standing to seek leave to appeal the Decision as they are not parties within the meaning of Article 82(1) of the Statute. While not deciding that question, it is the view of the Chamber that their Application in any event does not meet the criteria of Article 82(1)(d) of the Statute. In accordance with that provision, the Former Legal Representatives would have to show that the issues with respect to which they seek leave to appeal the Decision would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which an immediate resolution by the Appeals Chamber may materially advance the proceedings.
8. The Chamber notes that the Former Legal Representatives, while acknowledging that they are required to demonstrate that the above-mentioned criteria are met, do not even attempt to do so. Their Application is limited to a description of what they believe are errors or oversights in the Decision.

¹⁴ *Ibid.*, paragraphs 6 to 10.

¹⁵ *Ibid.*, paragraphs 11 to 19.

¹⁶ *Ibid.*, paragraphs 20 to 22.

¹⁷ *Ibid.*, paragraphs 23 to 34.

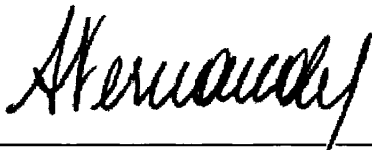
9. For the foregoing reasons, **the Chamber hereby**

- a. **rejects** the Application, and
- b. **orders** the Registry to revert back to the Chamber, no later than 7 August 2012, as to whether the files of the two victims formerly represented by the Former Legal Representatives have been transmitted to the common legal representatives.

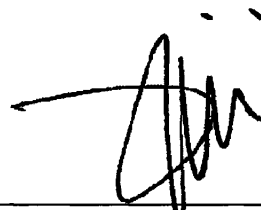
Done in both English and French, the English version being authoritative.



Judge Joyce Aluoch
Presiding Judge



Judge Silvia Fernández de Gurmendi



Judge Chile Eboe-Osuji

Dated this 13 July 2012

At The Hague, The Netherlands