

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/04-02/12 A

Date: 12 April 2013

THE APPEALS CHAMBER

Before:

Judge Sanji Mmasenono Monageng, Presiding Judge

Judge Sang-Hyun Song

Judge Cuno Tarfusser

Judge Erkki Kourula

Judge Ekaterina Trendafilova

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF THE PROSECUTOR v. MATHIEU NGUDJOLO CHUI

Public document

**Order on Mr Katanga's request to be provided with the Prosecution's appeal
brief**

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

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor
Mr Fabricio Guariglia

Counsel for the Defence for Mathieu Ngudjolo Chui
Mr Jean Pierre Kilenda
Mr Jean-Pierre Fofé Djofia Malewa

Counsel for the Defence for Germain Katanga
Mr David Hooper
Mr Andreas O'Shea

Legal Representatives of Victims
Mr Jean-Louis Gilissen
Mr Fidel Nsita Luvengika

REGISTRY

Registrar
Ms Silvana Arbia



The Appeals Chamber of the International Criminal Court,

In the appeal of the Prosecutor against the decision of Trial Chamber II entitled “Jugement rendu en application de l’article 74 du Statut” of 18 December 2012 (ICC-01/04-02/12-3),

Having before it Mr Katanga’s “Defence Request to Be Provided with the Prosecution Appeal Brief” of 22 March 2013 (ICC-01/04-02/12-47),

Issues the following

ORDER

The Registrar shall notify the “Prosecution’s Document in Support of Appeal against the ‘Jugement rendu en application de l’article 74 du Statut’” (ICC-01/04-02/12-39-Conf-Red) to Mr Katanga.

REASONS

1. On 18 December 2012, Trial Chamber II delivered the “Jugement rendu en application de l’article 74 du Statut”¹ (hereinafter: “Decision on Acquittal”) in which Mr Mathieu Ngudjolo Chui (hereinafter: “Mr Ngudjolo”) was acquitted of all charges against him.
2. On 20 December 2012, the Prosecutor filed her appeal against the Decision on Acquittal.²
3. On 19 March 2013, the Prosecutor filed the “Prosecution’s Document in Support of Appeal against the “Jugement rendu en application de l’article 74 du Statut”³ (hereinafter: “Document in Support of the Appeal”) on a confidential, *ex parte* basis, available only to the Prosecutor and Mr Ngudjolo. On 22 March 2013, the Prosecutor filed a confidential, redacted version of the Document in Support of the Appeal (hereinafter: “Confidential Redacted Document in Support of the Appeal), in

¹ ICC-01/04-02/12-3.

² “Prosecution’s Appeal against Trial Chamber II’s ‘Jugement rendu en application de l’article 74 du Statut’”, ICC-01/04-02/12-10.

³ ICC-01/04-02/12-39-Conf-Exp.

which the entire third ground of the appeal is redacted due to the *ex parte* classification of the information therein (hereinafter: “Document in Support of the Appeal”).⁴ On 3 April 2013, the Prosecutor also filed a public redacted version.⁵

4. On 25 March 2013, Mr Katanga filed the “Defence Request to Be Provided with the Prosecution Appeal Brief”⁶ (hereinafter: “Mr Katanga’s Request”). Mr Katanga requests access to the Confidential Redacted Document in Support of the Appeal given that his case and the case against Mr Ngudjolo were closely linked up until severance and that the factual and legal grounds being raised on appeal against the Decision on Acquittal may have a direct impact on Mr Katanga’s case and could be raised later by the parties or participants in his case.⁷

5. Following an order of the Appeals Chamber,⁸ the Prosecutor⁹ and Mr Ngudjolo¹⁰ responded to Mr Katanga’s Request.

6. The Appeals Chamber notes that if the Prosecutor had not filed her document in support of the appeal confidentially, Mr Katanga would have had access to it, due to the principle of publicity of the proceedings before the Court. In addition, the Prosecutor and Mr Ngudjolo expressed no objection to Mr Katanga receiving access to the Confidential Redacted Document in Support of the Appeal.¹¹ Accordingly, the Appeals Chamber directs the Registry to notify the Confidential Redacted Document in Support of the Appeal to Mr Katanga.

⁴ “Prosecution’s Document in Support of Appeal against the ‘Jugement rendu en application de l’article 74 du Statut’”, ICC-01/04-02/12-39-Conf-Red.

⁵ “Prosecution’s Document in Support of Appeal against the ‘Jugement rendu en application de l’article 74 du Statut’”, ICC-01/04-02/12-39-Red2.

⁶ ICC-01/04-02/12-47.

⁷ Mr Katanga’s Request, para. 15.

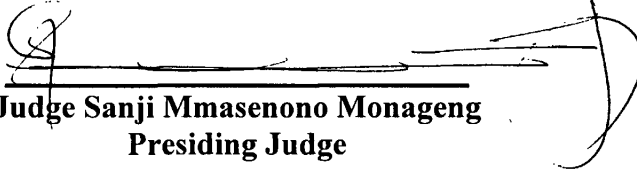
⁸ “Order on the filing of submissions on Mr Katanga’s request of 25 March 2013 for access to Prosecution’s Appeal Brief”, 28 March 2013, ICC-01/04-02/12-54.

⁹ “Prosecution Response to Mr Katanga’s request to be provided access to the Prosecution’s Appeal Brief in the Ngudjolo case” (hereinafter: “Prosecutor’s Response”) 4 April 2013, ICC-01/04-02/12-57.

¹⁰ “Réponse de la Défense de Mathieu Ngudjolo Chui à la « Defence Request to Be Provided with the Prosecution Appeal Brief » (ICC-01/04-02/12-47)” (hereinafter: “Mr Ngudjolo’s Response”), 10 April 2013, ICC-01/04-02/12-59.

¹¹ Prosecutor’s Response, para. 4 and Mr Ngudjolo’s Response, paras 11-12.

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



Judge Sanji Mmasenono Monageng
Presiding Judge

Dated this 12th day of April 2013

At The Hague, The Netherlands