

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 27 May 2013

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

Public redacted version of ICC-02/05-03/09-473-Conf

Registry's observations on the "Public Redacted Version of "Defence Notification of the Death of Mr Saleh Mohammed Jerbo Jamus" submitted on 21 April 2013" (ICC-02/05-03/09-466-Red) dated 23 April 2013

Source: The Registrar

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr Adebowale Omofade

Counsel for the Defence

Mr Karim A.A. Khan

Mr Nicholas Koumjian

Legal Representatives of the Victims

Ms. Hélène Cissé

Mr. Jens Dieckmann

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

Mr. Herman von Hebel

Deputy Registrar

Mr. Didier Preira

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

The Registrar of the International Criminal Court (the “Court”);

NOTING the *“Second Decision on the Prosecutor’s Application under Article 58”* dated 27 August 2009;¹

NOTING the *“Summons to appear for Saleh Mohammed Jerbo Jamus”* dated 27 August 2009;²

NOTING the *“Submission of the Registrar pursuant to 24 bis of the Regulations of the Court concerning the possible date for the commencement of the Trial”* dated 20 December 2012;³

NOTING the *“Decision concerning the trial commencement date, the date for final prosecution disclosure, and summonses to appear for trial and further hearings”* issued by Trial Chamber IV (the “Chamber”) dated 6 March 2013;⁴

NOTING the *“Public Redacted Version of “Defence Notification of the Death of Mr Saleh Mohammed Jerbo Jamus” submitted on 21 April 2013”* (the “Defence Notification”) dated 23 April 2013;⁵

NOTING the electronic mail sent by the Chamber on 26 April 2013 instructing the Office of the Prosecutor, the Common Legal Representatives and the Registry to file observations on the Defence Notification, if any, by 6 May 2013;

NOTING articles 58(7), 63, 67, 68, 87 and 93 of the Rome Statute; rules 176 and 185 of the Rules of the Procedure and Evidence; regulations 40 and 83 to 85 of the

¹ ICC-02/05-03/09-1.

² ICC-02/05-03/09-2.

³ ICC-02/05-03/09-434-Conf-Exp.

⁴ ICC-02/05-03/09-455.

⁵ ICC-02/05-03/09-466-Red.

Regulations of the Court; and regulations 92, 96 and 130 to 139 of the Regulations of the Registry;

CONSIDERING that the Chamber, in its electronic mail dated 26 April 2013, instructed that the observations to be submitted by the Office of the Prosecutor, the Common Legal Representatives and the Registry, if any, may include submissions as to what the practicable and/or legal consequences should be with respect to the Defence Notification, particularly whether there is any objection to terminating trial proceedings relating to Mr Saleh Mohammed Jerbo Jamus ("Mr. Jerbo");

RESPECTFULLY SUBMITS AS FOLLOWS:

1. On 21 April 2013, the Defence notified the Chamber that it received the news on 20 April 2013 that Mr. Jerbo died in North Darfur, Sudan on the afternoon of 19 April 2013, and was buried the same day.⁶
2. In the same notification, the Defence invites the Prosecutor and the Registrar to utilise whatever resources may be at their disposal to verify the information pertaining to Mr. Jerbo.
3. Upon the receipt of the Defence Notification, the Registry immediately undertook a search in public domain in order to verify this information. A few articles were found reporting on the alleged death of Mr. Jerbo. One article dated 22 April 2013 stated that "*JEM-Bashar in a statement released on Sunday said "Jarbo" was killed in an ambush on the road between Darma, where is the movement's main base and Furawiyya on Wednesday 19 April by JEM rebels*".⁷ The Justice and Equality Movement (JEM) has not published the reported statement on its website.⁸ According to one of the articles in Arabic-language

⁶ *Ibid*, para. 1.

⁷ <http://www.sudantribune.com/spip.php?article46316>, last consulted on 6 May 2013.

⁸ <http://www.sudanjem.com/?s=jerbo>, last consulted on 6 May 2013.

published on the JEM website, it is said that the JEM “cannot confirm or deny his death.”⁹

4. The Registry may communicate a request to the Republic of the Sudan (Sudan) for official confirmation of the alleged death of Mr. Jerbo as well as for the issuance of a dead certificate. However, due to the lack of cooperation from Sudan, the Registry does not foresee that any official confirmation or a death certificate for the alleged death of Mr. Jerbo will be delivered by the Sudanese authorities in the near future.
5. Under the current circumstances where the death of Mr. Jerbo has not been officially confirmed either by the JEM or by the Sudanese authorities, the Registry does not recommend to terminate the trial proceedings in relation to Mr. Jerbo.
6. In the case of the *Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen*, Pre-Trial Chamber II, in its decision dated 11 July 2007 noting among others the following documentation, terminated the proceedings against Raska Lukwiya as well as removed his name from the case:¹⁰
 - “Notice Confirming the Death of Raska Lukwiya” dated 30 October 2006, in which the Government of Uganda states that the results of the DNA testing “Coupled with the identification of the body by Lukwiya’s family members former LRA members as well as the confirmation from the LRA command itself, certify that Raska Lukwiya was killed”;¹¹ and

⁹<http://www.sudanjem.com/2013/04/%d8%ac%d8%a8%d8%b1%d9%8a%d9%84-%d8%a8%d9%84%d8%a7%d9%84-%d9%84%d8%a7-%d9%86%d8%b3%d8%aa%d8%b7%d9%8a%d8%b9-%d8%aa%d8%a3%d9%83%d9%8a%d8%af-%d8%a3%d9%88-%d9%86%d9%81%d9%8a-%d9%85%d9%82%d8%aa%d9%84/>, last consulted on 6 May 2013.

¹⁰ ICC-02/04-01/05-248.

¹¹ *Ibid*, page 2.

- Death Certificate of Raska Lukwiya issued by the Registrar-General of Births and Deaths, transmitted by the Republic of Uganda on 19 June 2007.¹²
7. In the case of the *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Pre-Trial Chamber I, in its Decision dated 22 November 2011 noting among others the death certificate of Mr. Muammar Mohammed Abu Minyar Gaddafi transmitted by the Libyan government¹³, terminated the proceedings against him and removed his name from the case.¹⁴
 8. On 8 November 2007, the Office of the Prosecutor informed Pre-Trial Chamber II that Mr. Vincent Otti had been killed under orders of Joseph Kony on 8 October 2007.¹⁵ The Prosecution was, in consultation with the Registry, taking measures to verify this information. To date, neither a death certificate nor any official confirmation has been obtained to certify the death of Mr. Otti. Therefore, unlike the case against Mr. Raska Lukwiya, the trial proceedings have not been terminated in relation to Mr. Otti and his name remains in the case.
 9. In light of the abovementioned precedents, in order to ensure the consistency of the approaches adopted by the Court, the Registry does not recommend the termination of the trial proceedings against Mr. Jerbo until a death certificate or any other equivalent proof is available which can certify the death of Mr. Jerbo.
 10. However, taking into consideration the commencement of the trial on 5 May 2014 and the absence of any legal texts allowing the trial in *ab tensia* at the Court, in order to avoid any suspension of the trial, the Registry would like to recommend the severance of the case of *the Prosecutor v. Abdallah Banda*

¹² ICC-02/04-01 /05-247-Anx1.

¹³ ICC-01/11-01/11-22-Conf-Exp-Anx2-Red.

¹⁴ ICC-01/11-01/11-28.

¹⁵ ICC-02/04-01/05-258.

Abakaer Nourain and Saleh Mohammed Jerbo Jamus into two cases against Mr. Jerbo and Mr. Banda respectively. Pending the official confirmation of the death of Mr. Jerbo, the Chamber is recommended to suspend the case against Mr. Jerbo and in the meantime to continue the trial in the case against Mr. Banda.

I. Procedure recommended for the severance of the case

11. The Registry suggests that a new case bearing the reference number of ICC-02/05-01/13 be created for the alleged deceased, Mr. Jerbo and the current case ICC-02/05-03/09 be renamed as *"The Prosecutor v. Abdallah Banda Abakaer Nourain"*.

12. The following procedure adopted for the severance of the former case of *the Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* can be referenced:

- A new case against Mr Ngudjolo ,with the reference number ICC-01/04-02/12, was created in TRIM, Transcend, Electronic Court System (ECOS) and Ringtail;
- All transcripts were copied into the new case in Transcend and all evidence were copied into the new case in Ringtail;
- All accesses of the Defence team for Mr. Ngudjolo to the whole record of the case against Mr. Katanga (ICC-01/04-01/07);
- The Court records in the case against Mr. Katanga (ICC-01/04-01/07) were not re-stamped with the reference number of the new case against Mr. Ngodjolo (ICC-01/04-02/12). Instead, the Registry submitted a filing indicating that all filings notified up until the issuance of the *"Decision on the implementation of regulation 55 of the Regulations of the Court and severing the charges against the accused persons"*¹⁶ would not be

¹⁶ ICC-01/04-01/07-3319-tENG/FRA, issued by Trial Chamber II dated 21 November 2012.

re-stamped but had been transferred into the new case record (ICC-01/04-02/12) with their current stamp. In annex, the Registry provided the list of Court records concerned by this transfer;¹⁷

- The above-mentioned filing also confirmed the completion of the transfer of all transcripts and evidence into the new case against Mr. Ngudjolo ICC-01/04-02/12.

II. The impact of the severance of the case

A. Witnesses

13. With regards to the Defence witnesses, it should be noted that most of them will testify for both accused persons. In addition, the primary sources of the threat to the witnesses remain the same despite the alleged death of Mr. Jerbo. The Victims and Witnesses Unit does not find any change of level of risk in relation to the Prosecution witnesses either. Consequently, the alleged death of Mr. Jerbo does not have significant impact on the security of both Prosecution and Defence witnesses.

Victims' participation

14. All victims in the current case who have been granted to participate in the proceedings are related to the same attack to the Haskanita Military Group Site. Therefore, at this stage the Registry found no impact of the alleged death of Mr. Jerbo to the victims already granted to participate in the proceedings. However, should the Chamber decide the severance of the case as recommended above, the Registry stands ready to provide services should it be requested by the Chamber for the determination of the qualifications of the victims in each of the cases.

Interpretation

¹⁷ ICC-01/04-02/12-1.

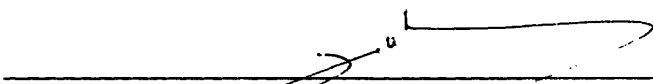
15. The Defence confirmed to the Registry that Zaghawa is the only language that Mr. Banda fully understands and speaks. Therefore, the Registry submits that Zaghawa interpretation will be provided when the trial commences on 5 May 2014 as decided by the Chamber.

Legal aid

16. Should the Chamber decide the severance of case and the suspension of the case against Mr. Jerbo, as there will be no activities in the case against Mr. Jerbo, the representation by the current Defence team for Mr. Jerbo will be terminated and thus no legal assistance paid by the Court in this regard will be incurred.

[Redacted].

RESPECTFULLY SUBMITTED



Marc Dubuisson, Director of the Division of Court Services
On behalf of Herman von Hebel, Registrar

Dated this 27 May 2013

At The Hague, the Netherlands