



Original: **French**

No.: **ICC-01/04-02/12**

Date: **5 June 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

**Observations of the Defence team for Mathieu Ngudjolo in response to the Legal Representative's application concerning the resumption of action initiated by deceased Victim a/0253/09
(regulation 34 of the Regulations of the Court)**

Source: Defence team for Mathieu Ngudjolo

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

Office of the Prosecutor

Ms Fatou Bensouda
Mr Fabricio Guariglia

Defence Counsel for Mr Ngudjolo

Mr Jean-Pierre Kilenda Kakengi
Basila
Ms Andrea Valdivia
Godefroid Bokolombe, *Chef de travaux*
[Lecturer]

Legal Representatives of Victims

Mr Jean-Louis Gilissen
Mr Fidel Nsita Luvengika

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

**Office of Public Counsel for the
Defence**

States' Representatives

Amicus curiae

REGISTRY

Registrar and Deputy Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Mr Patrick Craig

Detention Section

**Victims Participation and Reparations Other
Section**

Ms Fiona McKay

PROCEDURAL BACKGROUND

1. On 18 December 2012, Trial Chamber II of the International Criminal Court (“Trial Chamber II”) handed down a judgment acquitting Mr Mathieu Ngudjolo Chui (“Acquitted Person”).¹
2. On 20 December 2012, the Prosecution filed a notice of appeal.²
3. On 6 March 2013, the Appeals Chamber issued its *Decision on the participation of victims in the appeal against Trial Chamber II’s “Jugement rendu en application de l’article 74 du Statut”* (“Decision”)³ whereby it, *inter alia*, ordered the Registry to file a list of those victims authorised to participate at trial and whose victim status had not been revoked.
4. On 12 April 2013, the common legal representative of the main group of victims (“Legal Representative of the group of victims”) filed observations concerning this list and informed the Chamber of Victim a/0253/09’s death.⁴
5. On 15 May 2013, the Legal Representative of the group of victims filed the “*Demande de reprise de l’action introduite par la victime décédée a/0253/09*” (“Application”).⁵
6. On 22 May 2013, the Legal Representative of the group of victims filed a notification.⁶

¹ *Prosecutor v. Mathieu Ngudjolo Chui, Judgment pursuant to article 74 of the Statute*, ICC-01/04-02/12-3-tENG, 18 December 2012.

² *Prosecutor v. Mathieu Ngudjolo Chui, “Prosecution’s Appeal against Trial Chamber II’s ‘Jugement rendu en application de l’article 74 du Statut’”*, ICC-01/04-02/12-10, 20 December 2012.

³ *Prosecutor v. Mathieu Ngudjolo Chui, Decision on the participation of victims in the appeal against Trial Chamber II’s “Jugement rendu en application de l’article 74 du Statut”*, ICC-01/04-02/12-30, 6 March 2013.

⁴ *Prosecutor v. Mathieu Ngudjolo Chui, “Observations of the legal representative concerning the list of victims participating in the appeal proceedings transmitted by the Registry and application for re-classification of document ICC-01/04-02/12-55-Conf-Exp-Anx3-Corr”*, ICC-01/04-02/12-62-tENG, 12 May 2013.

⁵ *Prosecutor v. Mathieu Ngudjolo Chui, “Demande de reprise de l’action introduite par la victime décédée a/0253/09”*, ICC-01/04-02/12/70, 16 April 2013 and ICC-01/04-02/12-70-Conf-Anx3.

7. The Defence hereby submits its observations in response to the application of the Legal Representative of the group of victims.

DEFENCE OBSERVATIONS

8. The Defence takes no objection to the resumption of action on behalf of deceased Victim a/0253/09 by the victim's family member.

9. The Defence would, however, like to know the exact identity of the successor of the action were the Chamber to authorise the successor to resume the proceedings on behalf of the *de cujus*.⁷

10. The Defence wishes to emphasise that Trial Chamber II directed the Legal Representative to disclose the date of the victim's death.⁸

11. The Defence would like the Appeals Chamber to so rule.

⁶ *Prosecutor v. Mathieu Ngudjolo Chui*, "Notification of the submission of a less-redacted annex relating to the application for resumption of the action brought by deceased Victim a/0253/09 before Trial Chamber II", ICC-01/04-02/12-72-tENG, 22 May 2013 ("Notification").

⁷ The Defence will set out its views in its reply pursuant to the Appeals Chamber's order of 27 May 2013, *Order on the filing of further submissions on the Registrar's List of participating victims*, ICC-01/04-02/12-73.

⁸ See Annex 1 to the Notification, *supra*, footnote 6.

FOR THESE REASONS, MAY IT PLEASE THE APPEALS CHAMBER:

TO TAKE NOTE of this response and **ORDER** the Legal Representative of the main group of victims to disclose the date of deceased Victim a/0253/09's death and the identity of the successor of the action.

RESPECTFULLY SUBMITTED.

[signed]

Mr Jean-Pierre Kilenda Kakengi Basila
Lead Counsel for Mr Mathieu Ngudjolo Chui

Dated this 5 June 2013, at Brussels