

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13
Date: 19 December 2013

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

**IN THE CASE OF *THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO,
AIMÉ KILOLO MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE
BABALA WANDU and NARCISSE ARIDO***

Confidential

Decision on the “Requête d’autorisation d’appel de la décision ICC-01/05-01/13-41-Conf-Red”

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

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Kweku Vanderpuye

Florence Darques Lane

Counsel for Jean-Pierre Bemba Gombo

Nicholas Kaufman

Counsel for Aimé Kilolo Musamba

Jean-Pierre Kilenda Kakengi Basila

Counsel for Jean-Jacques Mangenda Kabongo

Jean Flamme

Counsel for Fidèle Babala Wandu

Prof Jean-Pierre Fofé Djofia Malewa

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

The Office of Public Counsel for the Defence

States Representatives

Others

REGISTRY

Registrar

Herman von Hebel

Detention Section

Victims and Witnesses Unit

Others

**Victims Participation and
Reparations Section**

I, Judge Cuno Tarfusser, having been designated as Single Judge of Pre-Trial Chamber II of the International Criminal Court;

NOTING the “Warrant of arrest for Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido” issued on 20 November 2013;

NOTING the “Decision appointing an Independent Counsel and taking additional measures for the purposes of the forensic acquisition of material seized in the proceedings” dated 13 December 2013 (“13 December 2013 Decision”);¹

NOTING the “Requête d’autorisation d’appel de la décision ICC-01/05-01/13-41-Conf-Red” submitted by the Defence of Jean-Jacques Mangenda Kabongo on 18 December 2013 (“Mr Mangenda’s Defence Application”);²

NOTING article 82(1)(d) of the Statute, as well as the established jurisprudence of the Court on the requirements for granting leave to appeal;

NOTING that, in paragraph 2.1 of its Application, Mr Mangenda’s Defence submits that “l’objet de la présente demande est la légalité de cette décision, dont l’objet n’est prévu par aucun texte”, whereas, in paragraph 2.2, it submits that “il va de soi que les questions citées (confidentialité de matériel de preuve possible et modes d’instruction) touchent à l’équité du procès et sont même déterminants à ce sujet”;

CONSIDERING that the submissions contained in Mr Mangenda’s Defence Application, although sparsely referring to developments in these proceedings with which Mr Mangenda’s Defence seems to be in disagreement (in particular,

¹ ICC-01/05-01/13-41-Conf-Red.

² ICC-01/05-01/13-53-Conf.

the appointment of an independent counsel and the terms of the mandate vested in the latter), fail to precisely identify any proper “issue” within the meaning and for the purposes of article 82(1)(d) of the Statute, as defined by the Appeals Chamber;

CONSIDERING further, as regards the cumulative requirements set forth in article 82(1)(d), that Mr Mangenda's Defence Application does not go beyond a series of cursory, declamatory assertions as to the purported impact of the 13 December 2013 Decision on the fairness and the expeditiousness of the proceedings;

CONSIDERING that the parties have to adequately support their requests and to detail their arguments in a clear and precise way, including by reference to the relevant legal basis and requirements, and that, accordingly, it is not for the Single Judge to “review” Mr Mangenda's Defence Application with a view to formulating a suitable “issue” for the purposes of article 82(1)(d) of the Statute;

CONSIDERING that, accordingly, that Mr Mangenda's Defence Application must be regarded as inadmissible and dismissed *in limine*;

CONSIDERING that, to the extent that the submissions made in Mr Mangenda's Defence Application are similar to or overlap with the issues previously raised by the Defence for Mr Kilolo³ and the Defence for Mr Bemba⁴ in requesting leave to appeal the 13 December 2013 Decision, the Single Judge has already determined that they are either premised on erroneous assumptions, or otherwise fail to significantly impact the fairness of the proceedings within the meaning of article 82(1)(d) of the Statute;

³ ICC-01/05-01/13-45-Conf.

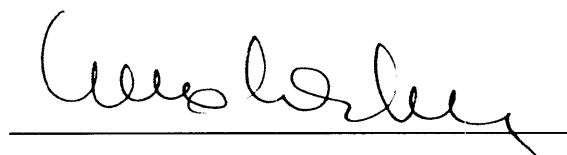
⁴ ICC-01/05-01/13-47-Conf.

CONSIDERING that the determinations made in the Single Judge's decisions respectively rejecting Mr Kilolo's⁵ and Mr Bemba's⁶ applications for leave to appeal the 13 December 2013 Decision are herein entirely recalled and reiterated;

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

DISMISSES Mr Mangenda's Defence Application *in limine*.

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



Judge Cuno Tarfusser
Single Judge

Dated this Thursday, 19 December 2013

The Hague, The Netherlands

⁵ ICC-01/05-01/13-50-Conf.

⁶ ICC-01/05-01/13-51-Conf.