



Original: **English**

No.: ICC-01/05-01/08

Date: 31/01/2014

TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

**IN THE CASE OF
THE PROSECUTOR
v. Jean-Pierre Bemba Gombo**

Public With Public Annexes A and B

Defence Request for Withdrawal or Clarification of a Filing

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

The Office of the Prosecutor

Fatou Bensouda

Jean-Jacques Badibanga

Counsel for the Defence

Peter Haynes QC

Kate Gibson

Legal Representatives of the Victims

Marie-Edith Douzima-Lawson

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

(Participation/Reparation)

Applicants

The Office of Public Counsel for the Victims

Paolina Massida

The Office of Public Counsel for the Defence

Xavier-Jean Keita

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

A. BACKGROUND

1. On 20 January 2014, the Prosecution filed its 'Request for leave to reply to Defence' Response to the Prosecution's Application to Submit Additional Evidence''' (the Request).¹ This Request was filed publicly. Page 4 of the Request contains the following:

Whether the Accused is prejudiced by the disclosure of additional evidence of witness bribery and coaching when he and other members of his Defence team consciously and knowingly based their case on false evidence.

2. On 22 January, this same paragraph was reproduced at paragraph 3 of the Trial Chamber's 'Decision on "Prosecution's Request for leave to reply to Defence 'Response to the Prosecution's Application to Submit Additional Evidence'''.² This decision was also filed publicly.

3. On 24 January, Lead Counsel for Mr. Bemba wrote to Ms. Fatou Bensouda, Prosecutor of the International Criminal Court.³ The Defence explained in its view this public assertion was not only inconsistent with Article 66 of the Statute and the Prosecutor's duty of impartiality and obligation to respect the rights of the accused pursuant to Article 54(1), but may also be viewed as an attempt to influence *sub judice* proceedings, and to undermine the ability of the Trial Chamber to view the Defence case in an impartial manner.

4. The Defence raised a second concern, arising from the use of the phrase "other members of his Defence team", namely that:

Given the largely confidential nature of the Article 70 proceedings, the public is not in a position to differentiate

¹ ICC-01/05-01/08-2940.

² ICC-01/05-01/08-2942.

³ See Annex A.

between the current and the former composition of the Defence team, nor to ascertain whether any members of the current team are the subject of the Article 70 proceedings. We are therefore of the view that the Request as framed is inconsistent with Sections 5 and 6 of Chapter 4 of the Code of Conduct, and at risk of defaming the members of the current Defence team.

5. The Prosecution was invited to clarify the position in a further public filing, or to withdraw the Request in question, and to substitute it with a redacted version. The Prosecution was asked to respond within 24 hours.

6. On 28 January 2014, a Senior Prosecution Trial Attorney responded on behalf of the Prosecutor, stating that:⁴

We regret any confusion our filing may have caused. However, the allegations in our filing were confined to a context that was well known publicly following the arrests of five persons, including two defence members. The Prosecution also made clear statement during a Status conference indicating that there was no evidence of your and Kate Gibson's being involvement (*sic*) in the alleged bribery scheme. These elements should prevent anyone from misinterpreting our filing.

B. SUBMISSIONS

7. Being aware of the Chamber's stated preference for such matters to be resolved *inter partes*, the Defence regrets having to seize the Chamber with this issue. However, these assertions remaining as part of the public record of the present case is inconsistent primarily with the right of Mr. Bemba to benefit from the presumption of innocence, and puts the current members of the Defence in a difficult professional position.

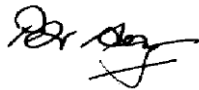
8. The Defence repeats and relies on the arguments set out in its annexed Letter of 20 January 2014, and requests that the Chamber:

⁴ Email of Mr. Jean-Jacques Badibanga to Mr. Peter Haynes QC of 28 January 2014 (Annex B).

ORDER the Prosecution to withdraw or clarify its Request; and

REDACT or **DELETE** the same phrase from Decision 2942.

The whole respectfully submitted.



Peter Haynes QC
Lead Counsel of Mr. Jean-Pierre Bemba

The Hague, The Netherlands

31 January 2014