

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-RoC85-01/14-1

Date: 13 January 2014

THE PRESIDENCY

Before: Judge Sang-Hyun Song, President
Judge Sanji Mmasenono Monageng, First Vice-President
Judge Cuno Tarfusser, Second Vice-President

**SITUATION IN THE CENTRALAFRICAN REPUBLIC
IN THE CASE OF**

***The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jaques
Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido***

Public

**Public redacted version of “Decision on the application for judicial review of the
decision of the Registrar on the scope of legal assistance paid by the Court”
of 13 January 2014, ICC-RoC85-01/14-2-Conf-Exp**

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

Counsel for the Defence
Mr Jean-Pierre Fofé Djofia Malewa

REGISTRY

Registrar
Mr Herman von Hebel

Counsel Support Section
Mr Esteban Peralta Losilla

Other
Pre-Trial Chamber II

The Presidency of the International Criminal Court (“Court”) has before it the application of Mr Fidèle Babala Wandu (“Applicant”) pursuant to regulation 85(3) of the Regulations of the Court (‘Regulations’) for judicial review of the decision of the Registrar on the scope of legal assistance paid by the Court.

The Application is inadmissible.

I. PROCEDURAL HISTORY

1. On 23 November 2013 the Applicant was arrested in Kinshasa, Democratic Republic of Congo, pursuant to a warrant of arrest previously issued by Pre-Trial Chamber II.¹ He was surrendered to the custody of the Court on 26 November 2013.
2. On 25 November 2013 the Applicant submitted to the Registrar his request for legal assistance paid by the Court. In response, on 20 December 2013 the Registrar issued his provisional decision to grant payment of legal assistance pursuant to regulation 85(1) of the Regulations.²
3. By letter of the same day the Chief of the Counsel Support Section of the Registry informed the Applicant of the amount of legal aid funds disbursed following the Registrar’s Decision. [REDACTED]
4. On 6 January 2014, the Applicant filed his ‘*Recours adressé à la Présidence de la Cour pénale internationale pour solliciter la normalisation de l’aide judiciaire accordée à Monsieur Fidèle Babala Wandu*’ (‘Application’).³

II. RELIEF SOUGHT

5. The Applicant requests the Presidency to rectify the Registrar’s quantitative assessment of disbursed legal aid funds for the Applicant’s legal assistance to the effect that legal aid funds be increased to cater for the remuneration of one lead counsel, one legal assistant and one case manager at full-time, respectively, as well as a sufficient amount of travel funds for lead counsel to liaise with his client.⁴

¹ Warrant of arrest for Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido, ICC-01/05-01/13-1-Red2 of 20 November 2013, unsealed on 5 December 2013.

² *Décision du Greffier sur la demande d’aide judiciaire aux frais de la Cour déposée le 25 novembre 2013 par M. Fidèle Babala Wandu.*

³ ICC-RoC85-01/14-1-Conf-Exp, previously registered as ICC-01/05-01/13-69-Conf-Exp.

⁴ Application, paras 10, 47 (“[...] le Conseil prie la Présidence de la Cour de bien vouloir normaliser l’étendue de l’aide judiciaire accordé à monsieur Fidèle Babala Wandu [...]).

III. SUBMISSIONS OF THE APPLICANT

6. The Applicant submits that the amount of legal aid disbursed cannot be reduced with the argument that proceedings pursuant to Article 70 of the Rome Statute ('Statute') are of a lesser scope.⁵ In support, he states that he is accused of a number of separate infractions of Article 70 against which he intends to defend himself. He also cites to the amount of documentation which has already been disclosed and evidence that will be disclosed on 31 January 2014, as well as the fact that all submissions of all co-accused have to be analysed in order to protect the Applicant's interests.⁶ Further, he avers that since these proceedings are instituted for the first time before the Court the Defence will have to extend its work to comparative research of contempt proceedings at other institutions.⁷
7. The Applicant submits that the present case has to be disposed of before the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* can be concluded as findings in the present case will have a bearing on the latter. According to the Applicant, this will likely engender the necessity of comprehensive studies of both case files, adding to the case-related workload.⁸ Further, the Pre-Trial Chamber's indication of its intention to dispose of the matter expeditiously will increase the workload and requires a speedy composition of a defence team of three full-time members.⁹
8. The Applicant argues that the applicable regulatory framework of the Court does not foresee a less favourable regime of legal assistance in case of proceedings pursuant to Article 70 of the Statute. He avers that in fact regulation 83(1) of the Regulations explicitly provides for the remuneration of counsel, an assistant and a case manager.¹⁰ The Applicant concludes that the deviation from these provisions through a "drastic reduction of the scope of legal aid" by the Registrar has no legal basis.¹¹
9. Finally, the Applicant adduces that the monthly allotment of travel expenses as allotted by the Registrar is grossly insufficient.¹²

⁵ Application, paras 12, 13.

⁶ Application, paras 33-37, 39, 40. The Applicant also avers that the assistance of OPCD is by its mandate and capacity very limited. Application, paras 42, 43.

⁷ Application, paras 14-17.

⁸ Application, paras 18-20.

⁹ Application, paras 21, 22.

¹⁰ Application, paras 24-28.

¹¹ Application, para. 30.

¹² Application, paras 45, 46.

IV. DETERMINATION BY THE PRESIDENCY

10. It is recalled that prior to any judicial review regarding the propriety of the procedure by which the Registrar reached a particular decision as well as the outcome of that decision, the Presidency must be satisfied that it has jurisdiction to decide upon the matter before it.
11. As the Presidency has previously noted, legal assistance paid by the Court is governed, *inter alia*, by regulations 83, 84 and 85 of the Regulations.¹³ Pursuant to these regulations, the Presidency and Chambers are each empowered to review distinct elements of the Registrar's administration of the legal assistance scheme.
12. Regulation 83 of the Regulations governs the general scope of legal assistance paid by the Court. Regulation 83(1) provides that "[I]legal assistance paid by the Court shall cover all costs reasonably necessary as determined by the Registrar for an effective and efficient defence, including the remuneration of counsel, his or her assistants as referred to in regulation 68 and staff, expenditure in relation to the gathering of evidence, administrative costs, translation and interpretation costs, travel costs and daily subsistence allowances".
13. As regards the Presidency's jurisdiction, regulations 84 and 85 stipulate that the Presidency may hear challenges to the assessment of the Registrar on the payment of legal assistance, including interim, final and revised determinations on means and on provisional, final or revised determinations on the full or partial payment of legal assistance. However, regulation 83(4) of the Regulations provides that "[d]ecisions by the Registrar on the scope of legal assistance paid by the Court as defined in this regulation may be reviewed by the relevant Chamber on application by the person receiving legal assistance."
14. The Presidency observes that in the present Application, the relief sought by the Applicant is an adjustment of the amount of legal aid accorded to his defence by the Registrar.¹⁴ The Presidency notes in particular that the Applicant uses the term "étendue" (scope) both in the title as well as the conclusion of the Application. Such determination falls squarely within the remit of the *scope* of legal assistance paid by the Court, as regulated by regulation 83(4).

¹³ ICC-RoC85-01/09-7-Conf-Exp, para. 13; ICC-RoC85-01/11, para. 11.

¹⁴ See Section III, Submissions of the Applicant, *supra*, paras 7-10.

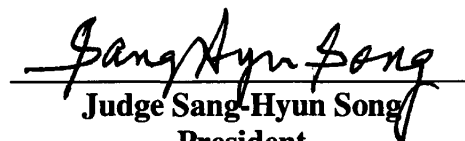
15. The Presidency therefore considers that it does not have jurisdiction to decide upon the Application. Its review is within the purview of the relevant Chamber pursuant to regulation 83(4) of the Regulations.

V. CONFIDENTIALITY

16. The Presidency notes that the instant Application as well as its annexes has been filed confidentially and *ex parte*. However, the Application does not contain any specific details about the Applicant's financial situation which could merit confidentiality. Moreover, the issue raised in the in the Application and determined in this decision may be of broader interest, both to other defence counsel in this and other cases before the Court and to the public.
17. Considering, therefore, that there appears to be no *prima facie* reason to justify maintaining the confidential status of this decision and the confidential *ex parte* status of the Application, the Applicant is ordered to indicate and provide reasons for what information, if any, in this decision, the Application and its annexes should remain confidential, by 4pm on 20 January 2014. The Registrar is ordered to indicate and provide reasons for what information, if any, in the first and second Annex to the Application, should remain confidential by the same time and date. The Presidency will thereafter rule on whether the classification should be maintained and, if necessary, the need for any redactions.

The Application is dismissed as inadmissible.

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


 Judge Sang-Hyun Song
 President

Dated this 13 January 2014

At The Hague, The Netherlands