

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-RoR221-02/14

Date: 31 March 2014

THE PRESIDENCY

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

Public redacted

**Public redacted version of the
“Decision on the Application for Judicial Review of 18 February 2014”,
ICC-RoR221-02/14-2-Conf-Exp, 6 March 2014**

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

Counsel for Mr Floribert Ndjabu Ngabu
Mr Ghislain Mabanga

REGISTRY

Registrar

Herman von Hebel

Detention Section

Mr Harry Tjonk

The Presidency of the International Criminal Court (“Court”) has before it the application of Mr Floribert Ndjabu Ngabu of 18 February 2014 for judicial review of the decision of the Registrar of 11 February 2014 concerning the validation and registration of two telephone contacts on his telephone contact list.

The application is dismissed for the reasons set forth below.

I. PROCEDURAL HISTORY

1. On 15 December 2013, Mr Floribert Ndjabu Ngabu (“Applicant”) applied to the Registrar to register [REDACTED] on his telephone contact list.¹
2. On 20 December 2013, the Applicant applied to the Registrar to register [REDACTED] on his telephone contact list.²
3. On 23 December 2013, the Registry requested clarification from the Applicant with respect to [REDACTED].³
4. On 31 January 2014, the Applicant filed a complaint before the Chief Custody Officer against the failure of the Registry to return a decision on the registration of the two requested contacts in his telephone contact list within the applicable 14 day time frame.⁴
5. On 3 February 2014, the Chief Custody Officer rejected that complaint as inadmissible. With regards to [REDACTED] the complaint was rejected on the ground that the 14 day time frame to receive a decision from the Registrar had not elapsed on the date of the filing of the complaint – 31 January 2014 – and in this respect the complaint was premature. With respect to [REDACTED], the complaint was rejected on the ground that the Applicant had failed to respond to a request for clarification from the Registry regarding that person and, as such, could not thereafter rely on his own failing.⁵

¹ Impugned Decision, paragraph 4.

² Impugned Decision, paragraph 2 ; ICC-RoR221-02/14-1-Conf-Exp-Anx2, page 3.

³ Impugned Decision, paragraph 4.

⁴ ICC-RoR221-02/14-1-Conf-Exp-Anx2, page 2.

⁵ ICC-RoR221-02/14-1-Conf-Exp-Anx2, page 3.

6. Also on 3 February 2014, the Registrar informed the Applicant that the telephone number of [REDACTED] was unreachable and would therefore not be added to his telephone contact list.⁶
7. The same day, the Applicant requested the Registrar to review the decision of the Chief Custody Officer.⁷
8. On 11 February 2014, the Registrar confirmed the decision of the Chief Custody Officer ("Impugned Decision").⁸
9. On 18 February 2014, the Applicant applied to the Presidency for judicial review of that decision, pursuant to regulation 221(1) of the Regulations of the Registry ("Application").⁹

II. RELEVANT PARTS OF THE IMPUGNED DECISION

10. In relation to [REDACTED], the Registrar upheld the decision of the Chief Custody Officer that the complaint was premature on the ground that the 14 day time limit for returning the decision on the request for the registration of the telephone number in the telephone contact list of the Applicant had yet to elapse at the time of his complaint. Moreover, the Registrar noted that the registration of the telephone number of [REDACTED] had been rejected as it was unreachable.¹⁰
11. With respect to [REDACTED], the Registrar noted that, in accordance with the Decision of the Presidency of 17 September 2009,¹¹ it was within his prerogative to request additional information from a detained person in order to validate a number prior to authorising its registration on a person's telephone contact list. Such a request had been made to the Applicant on 23 December 2013 concerning [REDACTED]. The Registrar noted that no further information had been provided by the Applicant following that request and, as such, a decision had yet to be taken in respect of [REDACTED].¹²

⁶ Application, page 3, paragraph 3; Impugned Decision, paragraph 3.

⁷ ICC-RoR221-02/14-1-Conf-Exp-Anx3.

⁸ ICC-RoR221-02/14-1-Conf-Exp-Anx4.

⁹ ICC-RoR221-02/14-1-Conf-Exp-Anx1.

¹⁰ Impugned Decision, paragraphs 3 and 5.

¹¹ Impugned Decision, paragraph 4, citing ICC-RoR221-02/09-6-Corr.

¹² Impugned Decision, paragraphs 4 and 5.

12. As such, the Registrar upheld the decision of the Chief Custody Officer that the complaint was inadmissible.¹³

III. ARGUMENTS OF THE APPLICANT

13. The Applicant argues that the Registrar's decision on his application to register [REDACTED] in his telephone contact list relied on an irrelevant legal provision – regulation 173(4) of the Regulations of the Registry – which had no bearing on the facts of the present case.¹⁴ It is argued that the Registrar failed to ask for further information or clarification with respect to the telephone number of [REDACTED].¹⁵ Further, the Applicant contests the Registrar's finding that the telephone number is unreachable and argues that it was successfully used very recently by a member of his family to contact [REDACTED].¹⁶
14. With respect to [REDACTED], the Applicant argues that he originally provided all of the information requested of him by the Registry in the telephone contact form and in accordance with the Decision of the Presidency of 17 September 2009.¹⁷ Moreover, the Applicant argues that the Registrar failed to detail the nature of the supplementary information requested of him until the Impugned Decision, wherein the Registrar alluded to fact that he required information concerning the fraternal relationship between the Applicant and [REDACTED].¹⁸ Furthermore, the Applicant maintains that the Registry is hostile to, and dilatory in, responding to requests emanating from his person.¹⁹ It is argued that previous requests for additions to his telephone contact list were not subject to such stringent demands.²⁰
15. The Applicant requests the Presidency to order the Registrar to validate the telephone numbers of the two requested contacts and register them on his telephone contact list.²¹

¹³ Impugned Decision, paragraphs 4 and 5.

¹⁴ Application, page 3, paragraph 4.

¹⁵ Application, page 3, paragraph 4.

¹⁶ Application, page 4, paragraph 2.

¹⁷ Application, page 4, paragraph 3, citing ICC-RoR221-02/09-6-Corr.

¹⁸ Application, page 5 paragraph 2.

¹⁹ Application, page 4, paragraph 2; pages 6 and 7.

²⁰ Application, page 5 paragraph 3.

²¹ Application, page 7, paragraph 2.

IV. DETERMINATION

16. It is recalled that the judicial review of decisions of the Registrar concerns the propriety of the procedure by which the latter reached a particular decision and the outcome of that decision. It involves a consideration of whether the Registrar has: acted without jurisdiction, committed an error of law, failed to act with procedural fairness, acted in a disproportionate manner, taken into account irrelevant factors, failed to take into account relevant factors, or reached a conclusion which no sensible person who has properly applied his or her mind to the issue could have reached.²²
17. As previously found in the Decision of the Presidency of 17 September 2009:

“[t]he Registrar has the authority to request detained persons to provide information about their contacts derived from her overall responsibility for the management of the detention centre, pursuant to regulation 90(1) of the Regulations of the Court. By virtue of that provision, the Registrar has the authority to make all decisions relating to the detention centre, including decisions relating to the security and good order of the detention centre. The Registrar and the Chief Custody Officer have the power to control the communications of detained persons, which must include the imposition of restrictions upon communication with specific individuals where justified, for example in order to prevent the detained persons from engaging in the activities outlined in regulation 175(1) of the Regulations of the Registry. This power cannot be properly exercised unless the Registrar and the Chief Custody Officer have access to information about the persons with whom the detained persons are in contact...the personal details requested in the telephone information form, including the name at birth, date and place of birth, and country and city/village of residence of potential contacts, are those that will enable the verification of the identities of contacts through a general background check prior to authorising their inclusion in a detained person's telephone contact list and in the event of any subsequent monitoring measures”.²³

18. Further, regulation 173(4) of the Regulations of the Registry provides that: “[a]ll telephone calls by a detained person shall require the prior authorisation of the Registrar, who shall have regard to information available and the information

²² The standard of judicial review was defined by the Presidency in its decision of 20 December 2005, ICC-Pres-RoC72-02-5, paragraph 16, and supplemented in its decision of 27 November 2006, ICC-01/04-01/06-731-Conf, paragraph 24.

²³ ICC-RoR221-02/09-6-Corr, paragraphs 46 and 56.

concerning the telephone contact provided by the detained person in a duly completed form.”

19. The Presidency sees no reason to overturn the decision of the Registrar in the instant case. With respect to [REDACTED], it is noted that the number was busy on the first occasion that the Registry attempted to call it. Thereafter, the Registry made a reasonable number of attempts over several days to call the telephone number which were unsuccessful.²⁴ As such, the Registrar did not act unreasonably in declining to authorise this particular contact on the ground that the number was unreachable. Whereas it is noted that the Applicant contests the unreachable nature of the number, this decision does not prevent the Applicant from verifying the number with his family and reapplying for its registration on his telephone contact list.
20. With respect to [REDACTED], it is noted that no final decision has been taken by the Registrar with respect to this contact, as such the Presidency will not proceed to examine the issue.
21. Finally, from his submissions concerning the reliance of the Registrar on regulation 173(4) of the Regulations of the Registry, it is noted that the Applicant is making reference to the previous version of the Regulations of the Registry. The Registrar is ordered, if this has not already been done, to provide forthwith all detained persons with the current version of the Regulations of the Registry,²⁵ in accordance with regulation 93(1) of the Regulations of the Court and regulation 186(2)(b)(iv) and (vi) of the Regulations of the Registry.

V. CLASSIFICATION

22. Noting that all documents in the instant Application were filed with a confidential and *ex parte* classification, the Presidency is of the view that this decision may be reclassified as public following the redaction of the names of the two requested contacts. The Applicant and the Registrar are requested to inform the Presidency, by 20 March 2014, of any other views on the classification of this decision.

The application is dismissed.

²⁴ ICC-RoR221-02/14-1-Conf-Exp-Anx5.

²⁵ ICC-BD/03-03-13; as amended on 4th December 2013, entering into force on 5th December 2013.

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


Judge Sang-Hyun Song
President

Dated this 31 March 2014

At The Hague, The Netherlands