



Original: English

No. ICC-01/05-01/13 OA 3

Date: 15 April 2014

THE APPEALS CHAMBER

Before:

**Judge Sanji Mmasenono Monageng, Presiding Judge
Judge Sang-Hyun Song
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Anita Ušacka**

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**

Public document

Decision

**on Mr Fidèle Babala Wandu's request for leave to reply to the "Prosecution
opposition to the Babala Defence's appeal against his provisional detention"**

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

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor
Ms Helen Brady

Counsel for the Defence of Mr Fidèle Babala Wandu
Mr Jean Pierre Kilenda

REGISTRY

Registrar
Mr Herman von Hebel

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The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Fidèle Babala Wandu against the decision of Pre-Trial Chamber II entitled “Decision on the ‘Requête urgente de la Défense sollicitant la mise en liberté provisoire de monsieur Fidèle Babala Wandu’” of 14 March 2014 (ICC-01/05-01/13-258),

Having before it the “Demande de réplique à « Prosecution opposition to the Babala Defence’s appeal against his provisional detention » (ICC-01/05-01/13-289)” of 27 March 2014 (ICC-01/05-01/13-297) and the “Requête de la Défense tendant à connaître la suite qu’entend réserver la Chambre d’appel à sa « Demande de réplique à « Prosecution’s opposition to the Babala Defence’s appeal against his provisionnal [sic] detention » (ICC-01/05-01/13-289)” of 10 April 2014 (ICC-01/05-01/13-328),

Issues the following

DECISION

The “Demande de réplique à « Prosecution opposition to the Babala Defence’s appeal against his provisional detention » (ICC-01/05-01/13-289)” of 27 March 2014 is rejected.

REASONS

I. PROCEDURAL BACKGROUND

1. On 19 March 2014, Mr Fidèle Babala Wandu (hereinafter: “Mr Babala”) filed the “Recours contre la «Decision on the «Requête urgente de la Défense sollicitant la mise en liberté provisoire de monsieur Fidèle Babala Wandu.» (ICC-01/05-01/13-258)”.¹

¹ ICC-01/05-01/13-276 (OA 3).

2. On 24 March 2014, the Prosecutor filed the “Prosecution opposition to the Babala Defence’s appeal against his provisional detention”² (hereinafter: “Prosecutor’s Response”).

3. On 27 March 2014, Mr Babala filed the “Demande de réplique à « Prosecution opposition to the Babala Defence’s appeal against his provisional detention » (ICC-01/05-01/13-289)”³ (hereinafter: “Request to Reply”).

4. On 1 April 2014, the Appeals Chamber issued an order inviting the Prosecutor to respond to the Request to Reply by 16h00 on 3 April 2014.⁴ The Prosecutor did not file a response.

5. On 10 April 2014, Mr Babala filed the “Requête de la Défense tendant à connaître la suite qu’entend réserver la Chambre d’appel à sa « Demande de réplique à « Prosecution’s opposition to the Babala Defence’s appeal against his provisionnal [sic] detention » (ICC-01/05-01/13-289)”⁵, seeking clarification on whether or not the Appeals Chamber would grant his Request to Reply, pursuant to Regulation 24 (5) of the Regulations of the Court.

II. MERITS

6. The Appeals Chamber recalls that, for appeals under rules 154 and 155 of the Rules of Procedure and Evidence, the appellant may not seek leave to reply to a response to the document in support of the appeal.⁶ However, the Appeals Chamber may ask for further submissions on its own motion, acting under regulation 28 of the Regulations of the Court.⁷

7. The Appeals Chamber recalls that its power to request further submissions under regulation 28 of the Regulations of the Court is of a discretionary nature.

² ICC-01/05-01/13-289 (OA 3).

³ ICC-01/05-01/13-297 (OA 3).

⁴ See “Order on the filing of a response to Mr Fidèle Babala Wandu’s request for leave to reply to the ‘Prosecution opposition to the Babala Defence’s appeal against his provisional detention’”, ICC-01/05-01/13-308 (OA 3).

⁵ ICC-01/05-01/13-328 (OA 3).

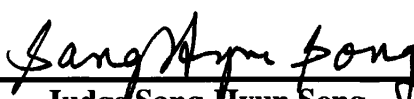
⁶ *Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, “Decision on the Prosecutor’s Application for Leave to Reply to ‘Conclusions de la défense en réponse au mémoire d’appel du Procureur’”, 12 September 2006, ICC-01/04-01/06-424 (OA 3), (hereinafter: “*Lubanga* OA 3 Decision of 12 September 2006”), para. 6.

⁷ *Lubanga* OA 3 Decision of 12 September 2006, para. 7.

Having considered the issues that Mr Babala seeks to raise in reply to the Prosecutor's Response, the Appeals Chamber does not find that it would be materially assisted by any further submissions. In addition, it is noted that Mr Babala appears to wish to raise additional arguments that fall outside the ambit of the matters referred to in the Prosecutor's Response.

8. For these reasons, the Appeals Chamber rejects the Request for Reply.

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



Judge Sang-Hyun Song
On behalf of the Presiding Judge

Dated this 15th day of April 2014

At The Hague, The Netherlands