

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13

Date: 06/05/2014

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 Document

**Defence request to cancel the forensic examination
of DVDs fixed for 8 May 2014 and to rule on ICC-01/05-01/13-371-Conf**

Source: Defence for 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

James Stewart

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Counsel for Aimé Kilolo Musamba

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Jean Flamme

Counsel for Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Goran Kimo Sluiter

Legal Representatives of the Victims	Legal Representatives of the Applicants
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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

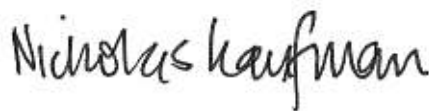
1. On 25 April 2014, the Single Judge ordered the Registry "to liaise with the Prosecutor and Defence teams, with a view to making it possible for them to be present upon the ... forensic acquisition of the DVD's [containing the Email accounts of Aime Kilolo and Jean-Jacques Mangenda]" if they so wish" [emphasis added] ("the forensic acquisition").¹
2. On 30 April 2014, the Registry informed the parties that the forensic acquisition had been fixed for 22 May 2014.
3. On 30 April 2014, the Defence for Jean-Pierre Bemba Gombo ("the Suspect") submitted its *Defence request to be present at the forensic acquisition of materials pursuant to decision ICC-01/05-01/13-366-Conf (ICC-01/05-01/13-371-Conf)*. In this request, the Suspect insisted that his Counsel on this case be present at the forensic acquisition and argued that it should be suspended until such time as the Suspect is awarded a loan *in lieu* of legal assistance. Lest it should be thought otherwise, Peter Haynes QC who represents the Suspect in case ICC-01/05-01/08 has neither specific mandate nor power of attorney to act on the latter's behalf in this case. Nor will he ever receive such a mandate. The Suspect will view an attempt to impose on him counsel instructed in another affair as a breach of his fundamental right to elect counsel of his "choosing"² in this case.
4. On 2 April 2014, the Registry informed the Suspect as follows: "A new date to conduct the unsealing and forensic copying of the material has been proposed by Independent counsel so as to promptly and expeditiously carry out the implementation of the decision. The new date is 8th May 2014 at 11h in The

¹ ICC-01/05-01/13-366-Conf.

² Article 67(1)(d).

Hague ICC Arc building – 2nd floor. Could you please let me know if Defence team members are available and wish to be present during this procedure? If that is the case please provide me the names of the people attending". It is not clear with what authority the "Independent" Counsel can dictate the speed at which investigative procedures are conducted.

5. After the intervening weekend, on 5 April 2014, Counsel informed the Registry by Email that he objected to the forensic acquisition in the absence of a ruling from the Single Judge on the Suspect's request ICC-01/05-01/13-371-Conf.
6. The "Independent" Counsel's unilateral decision to bring forward the date of the forensic acquisition by two weeks was taken without judicial authority. Had the "Independent" Counsel, indeed, rescheduled the forensic acquisition with the permission of the Single Judge, the latter would surely have informed him that there was a pending request from the Suspect which could affect the very performance of the forensic acquisition.
7. The Single Judge is requested to rule on ICC-01/05-01/13-371-Conf forthwith.



Nicholas Kaufman

Counsel for Jean-Pierre Bemba Gombo

Jerusalem, Israel
Tuesday, May 06, 2014