

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 7 August 2014

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Cuno Tarfusser
Judge Christine Van den Wyngaert

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF
THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO

Public

**Prosecution's Response to the Babala Defence's Request for Leave to Appeal the
"Decision on Prosecution request for variation of time limit for confirmation
response"**

Source: The Office of the Prosecutor

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

The Office of the Prosecutor

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I. Introduction

1. The Prosecution opposes the Defence of Mr Babala's application for leave to appeal¹ the Single Judge's "Decision on Prosecution request for variation of time limit for confirmation response",² in which the Single Judge granted the Prosecution an additional two weeks to respond to five Defence submissions on the confirmation of charges which total 848 pages.³ The application fails on the facts and the law, and should be dismissed in its entirety. In addition, the addendum to the Application filed on 7 August 2014⁴ should be dismissed *limine* because it is not grounded on any legal basis.

II. Submission

2. The Application does not identify any appealable issue,⁵ but merely expresses the Defence's opposition to the Decision.⁶ In addition, the Defence makes incomplete arguments in relation to the criteria for leave to appeal under Article 82(1)(d). The Defence merely submits that the Decision violates the principle of fairness of the proceedings⁷ and the rights of the Defence,⁸ which amount to no more than conclusory statements and disagreements with the Decision.⁹ The Defence does not provide any argument on why an issue arising from the Decision would affect the expeditious conduct or the outcome of the proceedings and why immediate resolution by the Appeals Chamber would materially advance the proceedings. In fact, appellate intervention could not remedy any

¹ ICC-01/05-01/13-615 ("Application").

² ICC-01/05-01/13-610 ("Decision").

³ Decision, pp.3-4.

⁴ ICC-01/05-01/13-620 and ICC-01/05-01/13-620-Anx.

⁵ The Appeals Chamber has ruled that "only an issue may form the subject-matter of an appealable decision. [...] An issue is constituted by a subject the resolution of which is essential for the determination of matters arising in the judicial cause under examination." see ICC-01/04-168 OA3, para.9. See also ICC-02/04-01/05-367, para.22; ICC-02/05-02/09-267, p.6; ICC-01/04-01/06-2463, para. 8; ICC-01/09-02/11-27, para.7.

⁶ Application, para.7.

⁷ Decision, paras.9-13.

⁸ Decision, paras.14-22.

⁹ ICC-01/04-168 OA3, para. 9; ICC-01/05-01/08-532, para.17; ICC-02/05-02/09-267, para.22; ICC-01/04-01/06-1557, para.30; ICC-01/04-01/07-2035, para.25; ICC-02/05-03/09-179,para.27.

hypothetical violation of the rights of the Defence and it would not expedite or materially advance the proceedings. Realistically, by the time the parties could file their submissions in the potential appeal¹⁰ and the Appeals Chamber could rule on the merits of an appeal, the Prosecution will long have filed its submissions in response to the Defence arguments on the confirmation of charges.¹¹

3. The Prosecution further notes that the Application does not meet the expected standards for filings by parties before the Court. An applicant has the burden to act diligently and provide coherent legal and factual arguments in support of its request.¹² By failing to make arguments identifying an appealable issue or comprehensively addressing the criteria for leave to appeal under Article 82(1)(d), the Defence falls short of meeting this burden. The Application should be dismissed on that basis alone.¹³
4. The addendum to the Application filed on 7 August 2014¹⁴ should be dismissed *in limine*. There is no legal basis for filing such an addendum, especially since it adds legal and factual submissions that go beyond what would be allowed by way of filing a corrigendum to a previous submission.¹⁵ The Addendum constitutes an attempt by the Defence to circumvent the regulatory framework for filings before the Court. The Pre-Trial Chamber should strongly discourage such a practice.

¹⁰ Regulation 65(4) and (5).

¹¹ The Prosecution recalls that an appeal does not have automatic suspensive effect of the appealed decision: see ICC-01/04-02/12-12 OA, para. 20; ICC-01/04-01/07-3344 OA13, para.7; ICC-01/11-01/11-480 OA6, para.14.

¹² ICC-01/09-127-Red, para.12.

¹³ The Appeals Chamber has dismissed submissions based on a demonstrated lack of diligence and clarity: See ICC-01/09-127-Red, para.12.

¹⁴ ICC-01/05-01/13-620 and ICC-01/05-01/13-620-Anx.

¹⁵ ICC-01/05-01/08-631-Red OA2, para.38; ICC-01/04-01/07-3424 OA14, para.15.

III. Conclusion

5. For the foregoing reasons the Application and its addendum should be dismissed.



Fatou Bensouda, Prosecutor

Dated this 7th day of August 2014
At The Hague, The Netherlands