

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 22 September 2014

TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
V. JEAN-PIERRE BEMBA GOMBO**

Confidential Document

**Prosecution's Response to Narcisse Arido's Request for Leave to Appeal the
"Decision on 'Registry Transmission of a Submission received from the Defence
for Mr Narcisse Arido dated 18 August 2014'"**

Source: The Office of the Prosecutor

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

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I. Introduction

1. The Office of the Prosecutor ("Prosecution") opposes Narcisse Arido's application for leave to appeal¹ the "Decision on 'Registry Transmission of a Submission received from the Defence for Mr Narcisse Arido dated 18 August 2014'" ("Impugned Decision").²

2. *First*, Arido has no standing to appeal the Impugned Decision pursuant to Article 82(1)(d) of the Rome Statute ("Statute"). He is not a party to the proceedings before the Trial Chamber III ("Chamber").

3. *Second*, even if the Chamber were to determine that Arido has standing, the Application fails to explain how the Impugned Decision involves an issue that would significantly affect the fair and expeditious conduct of these proceedings or the outcome of this trial (as opposed to those of ICC-01/05-01/13 ("Article 70 case")), and for which an immediate resolution by the Appeals Chamber may materially advance the proceedings.

II. Confidentiality

4. This filing is classified as "Confidential" since it responds to a filing of the same designation.

III. Submissions

A. Arido has no standing to appeal the Impugned Decision

¹ ICC-01/05-01/08-3142-Conf ("Application").

² ICC-01/05-01/08-3134-Conf.

5. Arido's request for leave to appeal must fail, as he is not a party to these proceedings and has no standing to appeal a decision of this Chamber pursuant to Article 82(1)(d) of the Statute. The right to appeal under all prongs of Article 82 is expressly limited to "either party,"³ and the plain meaning of "either party" means only the parties involved in the proceedings *at issue*.⁴ Here, only the Prosecution and the Bemba Defence are "parties" to these proceedings with the right to seek leave to appeal the Impugned Decision pursuant to Article 82(1)(d) of the Statute.

6. The fact that this Chamber chose to entertain Arido's access request⁵ does not transform him into a "party" to these proceedings, such that he would have a right to appeal in this instance. The Chamber could also entertain a motion from the Registry, the victims, a State or an *amicus*. However, none of these actors would thereby become "parties" to the proceedings with the associated appeal rights.⁶ Indeed, the Chamber has no discretion to extend the right to appeal under Article 82(1)(d) beyond the strict limits provided for by that provision. It is well-established in the Court's appellate jurisprudence that the "Statute defines exhaustively the right to appeal against decisions of first instance courts"⁷ and that appeals brought outside the Appeals Chamber's "clearly-defined Statutory jurisdiction" must be rejected.⁸

³ Statute, Article 82(1).

⁴ See, e.g., ICC-01/04-01/07-675, (Dissenting Opinion.), p. 8 (interpreting the phrase "either party" as it appears in Article 82 of the Statute as referring to the Prosecution and the Defence and noting that the Registrar is "not a party to or a participant in the proceedings"); ICC-01/04-556, para. 55 (holding that participating victims are not "parties to the proceedings before a Chamber"); ICC-01/04-01/07-2288, para. 39 (stating that "participating victims are not parties to the proceedings").

⁵ ICC-01/05-01/08-3116-Conf-Anx.

⁶ See, e.g., ICC-01/04-556, para. 55 (noting that while participating victims are given an opportunity "to voice their views and concerns on matters affecting their personal interests," this does not equate them to "parties to the proceedings"); ICC-01/04-01/06-2823, para. 12 (recognising that while Regulation 24*bis*(1) of the Regulations of the Court may permit the Registrar to make submission in appeal proceedings "when necessary for the proper discharge of his or her functions," that Regulation "does not provide the Registrar with blanket authority to initiate what are effectively new proceedings before the Appeals Chamber").

⁷ ICC-01/04-168, para. 39; ICC-01/04-01/06-926, para. 9; ICC-01/04-01/06-2799, para. 7; ICC-01/04-01/07-3424, para. 28.

⁸ ICC-01/04-01/06-2823, para. 14 (rejecting the Registrar's request for the Appeals Chamber to reverse the Impugned Decision, noting that the Appeals Chamber has "consistently rejected any attempts to bring appeals" outside the scope of its jurisdiction as enumerated in Articles 81 and 82 of the Statute); see also ICC-01/04-01/06-2799, para. 8 (finding that the Trial Chamber's grant of leave to appeal a decision outside of the context of Articles 81 and 82 of the Statute was *ultra vires* and noting that "the fact that granting of appeal may, in the

B. Arido has not identified a certifiable “issue”

7. Even if the Chamber were to determine that Arido has standing to challenge the Impugned Decision—and there is no reason why it should—the Application fails to identify an issue that meets the Article 82(1)(d) standard.

8. Arido’s submissions erroneously focus on the alleged impact of the Impugned Decision on the Article 70 proceedings and trial.⁹ His submissions do not even attempt to argue how the Impugned Decision affects the fair and expeditious conduct of the proceedings before the Chamber. Thus, despite conflating the two proceedings, the Application transparently fails to meet the requisite legal threshold for leave to appeal to be granted in *this* case.

IV. Requested Relief

9. The Prosecution requests the Chamber to dismiss Arido’s application for leave to appeal.



Fatou Bensouda, Prosecutor

Dated this 22nd day of September 2014
At The Hague, The Netherlands

eyes of the Trial Chamber, be desirable or even necessary does not justify departure from the clearly enumerated grounds of appeal in the Statute”).

⁹ See, e.g., Application, paras. 13-24, esp. 16, 22-23.