

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/05-01/13 OA 8

Date: 7 October 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

**Order
on the reclassification of documents**

Order 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
Mr Paul Djunga Mudimbi

REGISTRY

Registrar
Mr Herman von Hebel

A handwritten signature, possibly of the Registrar, Mr. Herman von Hebel, located in the bottom right corner of the page.

The Appeals Chamber of the International Criminal Court,

Mr Aimé Kilolo Musamba against the decision of Pre-Trial Chamber II entitled “Decision on the first review of Aimé Kilolo Musamba’s detention pursuant to article 60(3) of the Statute” of 5 August 2014 (ICC-01/05-01/13-611),

Unanimously,

Pursuant to regulation 23*bis* (3) of the Regulations of the Court,

Issues the following

ORDER

The Registrar shall reclassify as public documents ICC-01/05-01/13-605-Conf-Exp-AnxIII, ICC-01/05-01/13-629-Conf-Exp, ICC-01/05-01/13-629-Conf-Exp-AnxI, and ICC-01/05-01/13-639-Conf-Exp.

REASONS

1. On 14 March 2014, Pre-Trial Chamber II (hereinafter: “Pre-Trial Chamber”) rendered its “Decision on the ‘Demande de mise en liberté provisoire de Maître Aimé Kilolo Musamba’”,¹ rejecting the interim release application filed by Mr Kilolo Musamba (hereinafter: “Mr Kilolo”) on 16 December 2013.² On 11 July 2014, the Appeals Chamber confirmed this decision by majority.³

2. On 4 July 2014, with a view to complete the first periodic review under article 60 (3) of the Statute, the Pre-Trial Chamber issued the “Decision requesting the Kingdom of Belgium to provide its views for the purposes of the review of Aimé Kilolo Musamba’s and Jean-Jacques Mangenda’s detention pursuant to article 60(3) of the Statute”,⁴ (hereinafter: “Decision of 4 July 2014”). The Pre-Trial Chamber

¹ ICC-01/05-01/13-259.

² “Demande de mise en liberté provisoire de Maître Aimé Kilolo Musamba”, ICC-01/05-01/13-42.

³ “Judgment on the appeal of Mr Aimé Kilolo Musamba against the decision of Pre-Trial Chamber II of 14 March 2014 entitled ‘Decision on the “Demande de mise en liberté provisoire de Maître Aimé Kilolo Musamba”’, ICC-01/05-01/13-558, with a Dissenting Opinion by Judge Erkki Kourula (ICC-01/05-01/13-558-AnxI), and by Judge Anita Ušacka (ICC-01/05-01/13-558-Anx2).

⁴ ICC-01/05-01/13-540.

ordered (i) the Belgian authorities to file, no later than 25 July 2014, their views in that respect; and (ii) the Registrar to file, as soon as possible, into the record of the case, on a confidential *ex parte* Registrar basis, the “agreement between the Court and the Government of the Kingdom of Belgium on the interim release of detainees on the Belgian territory pursuant to decisions of the Chambers of the Court”,⁵ which entered into force on 10 April 2014 (hereinafter: “Framework Agreement”).

3. Accordingly, on 18 July 2014, the Registry filed the Framework Agreement, as confidential *ex parte* Registry only.⁶

4. On 1 August 2014, the Registry filed the “Transmission of the observations submitted by the Belgium [*sic*] authorities on the ‘Decision requesting the Kingdom of Belgium to provide its views for the purposes of the review of Aimé Kilolo Musamba’s and Jean-Jacques Mangenda’s detention pursuant to article 60(3) of the Statute’”⁷ (hereinafter: “Transmission of Belgian Observations”), with a confidential and *ex parte* annex⁸ (hereinafter: “Belgian Observations”).

5. On 5 August 2014, the Pre-Trial Chamber rendered the “Decision on the first review of Aimé Kilolo Musamba’s detention pursuant to article 60(3) of the Statute”⁹ (hereinafter: “Impugned Decision”), deciding *inter alia* that he shall remain in detention.¹⁰

⁵ Decision of 4 July 2014, p. 4. See also “Belgium and ICC sign agreement on interim release of detainees”, 10 April 2014, ICC-CPI-20140410-PR993, accessed at http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/pages/pr993.aspx. Reference to the Framework Agreement was first made in the present case by Mr Kilolo himself, who submitted that the existence of the said cooperation agreement was a new fact which constitutes a changed circumstance within the meaning of article 60 (3) of the Statute. . “Defence Observations on the Continued Detention of Aimé Kilolo Musamba Pursuant to ICC-01/05-01/13-495, *Order requesting observations for the purposes of the periodic review of the state of detention of Aimé Kilolo Musamba, Jean Jacques Mangenda Kabongo and Fidèle Babala Wandu pursuant to rule 118(2) of the Rules of Procedure and Evidence*, dated 30 June 2014 and registered on 2 July 2014, ICC-01/05-01/13-528-Conf-Exp, para. 10.

⁶ “Registry transmission to the Single Judge of the exchange of letters between the ICC and the Kingdom of Belgium”, ICC-01/05-01/13-582-Conf-Exp, with two confidential *ex parte* Registry only annexes, ICC-01/05-01/13-582-Conf-Exp-Anx1, and ICC-01/05-01/13-582-Conf-Exp-Anx2.

⁷ ICC-01/05-01/13-605.

⁸ ICC-01/05-01/13-605-Conf-Exp-AnxIII. It is noted that the Belgian Observations were subsequently re-filed as an annex to “Document in Support of Appeal against the decision of the Single Judge ICC-01/05-01/13-611 entitled ‘Decision on the first review of Aimé Kilolo Musamba’s detention pursuant to article 60(3) of the Statute’”, ICC-01/05-01/13-629-Conf-Exp-AnxI-tENG (OA 8), 12 August 2014. Any reference to the Belgian Observations in the present order relates to this latest version.

⁹ ICC-01/05-01/13-611.

¹⁰ Impugned Decision, p. 13.

6. On 8 August 2014, Mr Kilolo filed his “Notice of Appeal against the decision of the Single Judge ICC-01/05-01/13-611 entitled ‘Decision on the first review of Aimé Kilolo Musamba’s detention pursuant to article 60(3) of the Statute’”.¹¹

7. On 12 August 2014, Mr Kilolo filed confidentially, *ex parte* Registry, Prosecution and Mr Kilolo’s Defence only, the “Document in Support of Appeal against the decision of the Single Judge ICC-01/05-01/13-611 entitled ‘Decision on the first review of Aimé Kilolo Musamba’s detention pursuant to article 60(3) of the Statute’”,¹² (hereinafter: “Document in Support of the Appeal”), requesting the Appeals Chamber to reverse the Impugned Decision and to grant his request for interim release or, in the alternative, to remand the case to the Pre-Trial Chamber on points of law determined by the Appeals Chamber.¹³

8. On 18 August 2014, the Prosecutor filed confidentially, *ex parte* Registry, Prosecution and Mr Kilolo’s Defence only, the “Prosecution’s Response to the Kilolo Defence’s Appeal against the Single Judge’s ‘Decision on the first review of Aimé Kilolo Musamba’s detention pursuant to article 60(3) of the Statute’”¹⁴ (hereinafter: “Response to the Document in Support of the Appeal”), requesting the Appeals Chamber to dismiss Mr Kilolo’s appeal against the Impugned Decision.¹⁵

9. Pursuant to regulation 23*bis* (3) of the Regulations of the Court, a Chamber may reclassify a document when the basis for the original classification no longer exists.

10. The Appeals Chamber notes that in the present appeal, both the Document in Support of the Appeal and the Response to the Document in Support of the Appeal were filed confidential *ex parte* Registry, Prosecution and Mr Kilolo’s Defence only, because they refer to confidential *ex parte* documents, namely the Framework Agreement and the Belgian Observations.¹⁶ The Framework Agreement is classified confidential *ex parte* Registry only, meaning that none of the parties were able to

¹¹ ICC-01/05-01/13-623 (OA 8).

¹² ICC-01/05-01/13-629-Conf-Exp (OA 8). Mr Kilolo annexed confidential *ex parte* Registry and Defence Kilolo only, the Belgian Observations to his Document in Support of the Appeal, ICC-01/05-01/13-629-Conf-Exp-AnxI-tENG (OA 8).

¹³ Document in Support of the Appeal, p. 20.

¹⁴ ICC-01/05-01/13-639-Conf-Exp (OA 8).

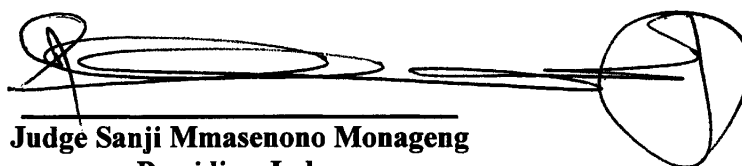
¹⁵ Response to the Document in Support of the Appeal, para. 32.

¹⁶ Document in Support of the Appeal, para. 2; and Response to the Document in Support of the Appeal, para. 2.

make any reference to its content. Furthermore, the Belgian Observations expressly state that the Belgian authorities “agree to these observations being made public, should the Court so wish”.¹⁷ The Appeals Chamber considers that the reference to the Framework Agreement contained in the Belgian Observations¹⁸ does not reveal any confidential *ex parte* information. The Appeals Chamber further notes that the Registrar, when transmitting the Belgian Observations to the Pre-Trial Chamber, expressly mentioned that the Belgian authorities indicated their readiness that they be made public.¹⁹

11. In light of the above, the Appeals Chamber finds no reason to keep the Belgian Observations (ICC-01/05-01/13-605-Conf-Exp-AnxIII), the Document in Support of the Appeal (ICC-01/05-01/13-629-Conf-Exp), the Annex thereto (ICC-01/05-01/13-629-Conf-Exp-AnxI), or the Response to the Document in Support of the Appeal (ICC-01/05-01/13-639-Conf-Exp) confidential *ex parte*, and accordingly instructs the Registrar to reclassify them as public.

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



Judge Sanji Mmasenono Monageng
Presiding Judge

Dated this 7th day of October 2014

At The Hague, The Netherlands

¹⁷ Belgian Observations, p. 8.

¹⁸ Belgian Observations, p. 3.

¹⁹ Transmission of Belgian Observations, ICC-01/05-01/13-605, para. 6.