



Original: **English**

No.: **ICC-RoC85-01/13**

Date: **21 October 2014**

THE PRESIDENCY

Before: Judge Sang-Hyun Song, President
Judge Sanji Mmasenono Monageng, First Vice-President
Judge Cuno Tarfusser, Second Vice-President

**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 & NARCISSE ARIDO**

Public Document

Request for reconsideration of decision ICC-RoC85-01/13-21

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

Counsel for Jean-Pierre Bemba Gombo
Nicholas Kaufman

Legal Representatives of the Victims **Legal Representatives of the Applicants**

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

Herman von Hebel

Counsel Support Section

Esteban Peralta-Losilla

Aziz Abdoul Mbaye

Juliet Adyel

Victims and Witnesses Unit

Detention Section

Counsel for Jean-Pierre Bemba Gombo ("the Suspect") hereby requests that, prior to the 13th session of the Assembly of State Parties, the Presidency reconsider its decision ICC-RoC85-01/13-21 thereby ordering the Registrar to forward herein undersigned Counsel ("Counsel") compensation for 5 months of unpaid legal fees and to continue to forward Counsel a loan in lieu of legal assistance for his ongoing representation of the Suspect in case ICC-01/05-01/13 effective from 20 September 2014.

1. On 20 November 2013, the Single Judge of Pre-Trial Chamber II issued the "*Warrant of arrest for Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*" in case ICC-01/05-01/13.¹

2. On 27 November 2013, the Suspect made his initial appearance in the case ICC-01/05-01/13 and was represented by duty counsel.

3. On 5 December 2013, the Suspect submitted the "*Questionnaire sur la situation financière du Demandeur*" to the Registrar requesting legal assistance in order to ensure his legal representation in the case ICC-01/05-01/13.

4. On 8 December 2013, the Suspect instructed Counsel on a *pro-bono* basis, "*en attendant une décision au sujet de l'aide judiciaire*".² The Court registered Counsel's acceptance of that instruction on 10 December 2013.

5. In accepting the *pro-bono* mandate, Counsel simultaneously informed the Suspect that, failing a positive decision regarding legal assistance from the Registrar, the Suspect would have to meet the costs of his own defence in case ICC-01/05-01/13.

6. On 20 December 2013, the Registrar issued the "*Décision du Greffier sur la demande d'aide judiciaire aux frais de la Cour déposée le 5 décembre 2013 par M. Jean-Pierre*

¹ ICC-01/05-01/13-l-US-Exp-tENG. Redacted to ICC-01/05-01/13-l-Red2, 28 November 2013.

² Enregistrement de la désignation de Maître Nicholas Kaufman par M. Jean-Pierre Bemba Gombo comme son conseil et de l'acceptation de la désignation, accompagnée de la prestation de serment du conseil, ICC-01/05-01/13-36-AnxI, 10 December 2013.

Bemba Gombo" in which he provisionally rejected the Suspect's application for legal assistance, stating that the Suspect "*n'est pas indigent et ne peut, en conséquence, en application de la norme 85-1 du Règlement de la Cour, bénéficier ni totalement, ni partiellement de l'aide judiciaire aux frais de la Cour*".³

7. On 30 December 2013, by letter delivered to him at the ICC detention facility, Counsel obliged the Suspect to pay his legal fees and expenses, at the rate currently considered appropriate under the Court's legal assistance scheme at the very least. Counsel indicated that "[s]hould [the Suspect] fail to meet this obligation ... [Counsel] will regrettably have to request [his] withdrawal from [the Suspect's] defence in case ICC-01/05-01/13".⁴

8. On 20 May 2014, after protracted litigation, the Presidency decided to advance the Suspect a repayable loan in case ICC-01/05-01/13 for the period of four months⁵ finding as follows:

"Whilst the Presidency accepts the submissions of the Registrar that it is for the Suspect to seek the release of funds from his frozen or seized assets with the assistance of the Registrar, it remains uncertain that the Four Listed Assets would indeed become available for the purpose of paying the costs of the Suspect's defence immediately or in the near future for the reasons outlined below.....

... The Presidency will therefore allow an advancement of legal fees on a repayable basis in order to bridge the gap until such funds are at the disposal of the Suspect, considering a four month time frame to be reasonable for that purpose".

9. On 25 August 2014, the "*Proposed Programme Budget for 2015 of the International Criminal Court*" ("*Proposed Budget*") was published.⁶ Paragraph 271 of this document states as follows:

³ ICC-RoC85-01/13-4-Conf-AnxA.

⁴ ICC-RoC85-01/13-4-Conf-AnxB.

⁵ ICC-RoC85-01/13-21.

⁶ http://www.icc-cpi.int/iccdocs/asp_docs/ASP13/ICC-ASP-13-10-ENG.pdf.

"In May 2014, the Court received €2,067,982.25 from a State Party which had implemented a seizure order against a bank account held by Mr Jean-Pierre Bemba Gombo. In accordance with the orders of Trial Chamber III and the Presidency, this money is to be used to reimburse the funds advanced to Mr Bemba for his defence. The Registrar requests that, instead of returning these funds to the States Parties as surplus funds, the Assembly establish a special account in the amount of €2,067,982.25, exceptionally funded out of the income generated as a result of the payment of Mr Bemba's debt, and that the Assembly authorize the Court to use the funds in the special account to finance the continued advance of legal aid funds for Mr Bemba's defence in both cases as of 1 January 2015. All funds advanced from the special account remain subject to reimbursement by Mr Bemba and to this end the Court will continue to seek the cooperation of States Parties to identify, seize and transfer Mr Bemba's assets. Should the Assembly not agree with this proposal, an additional €573.8 thousand will be required in the 2015 budget. More information is provided in Annexes I and VIII".

10. Annex I of the Proposed Budget supplies a draft resolution which is to be put to the vote of the Assembly of State Parties:

Special account for the advance of defence costs relating to Mr. Bemba

The Assembly of States Parties, Taking note that the Court requests that the Assembly of States Parties establish a special account in the amount of €2,067,982, exceptionally funded out of the income generated as a result of the payment of Mr. Bemba's debt to the Court for its advance of his legal fees upon a State Party having implemented a seizure order, and that the Assembly authorize the Court to use the funds in the special account to finance the continued advance of funds to Mr. Bemba in cases ICC-01/05-01/08 (main case for Mr. Bemba) and ICC-01/05- 01/13 (article 70 case for Mr. Bemba) pending before the Court, as of 1 January 2015,

Decides to establish the special account as per the aforementioned proposal of the Court,

Authorizes the Registrar to make advances from this special account to finance the defence costs of Mr. Bemba as per the aforementioned request of the Court. Such advances will constitute appropriations financed through the special account,

Notes that all funds advanced from the special account remain subject to reimbursement by Mr. Bemba and to this end urges States Parties to continue to cooperate with the Court in identifying, seizing and transferring Mr. Bemba's assets to the Court.

11. Annex VIII of the Proposed Budget states as follows:

Proposal regarding the modalities of reimbursement of legal fees advanced to Mr. Jean-Piere Bemba Gombo

Mr. Jean-Piere Bemba Gombo is a defendant in cases ICC-01/05-01/08 and ICC- 01/05-01/13 pending before the Court. He was found to be ineligible for legal aid, on the basis of his considerable wealth. However, since he was apparently facing temporary difficulties in accessing funds to pay his legal fees in case ICC-01/05-01/08, Trial Chamber III ordered the Registrar to advance the required funds, subject to reimbursement by Mr. Bemba. Mr. Bemba signed a document agreeing to reimburse his debt to the Court. Accordingly, the Court has been advancing the funds for the payment of Mr. Bemba's legal fees since March 2009 from the Court's legal aid budget. In 2014, the Presidency issued a similar order regarding the advance of legal fees in case ICC-01/05-01/13. By December 2014 the Court will have advanced a total of €2,799,380.94.

Meanwhile, having previously recovered a smaller amount of €164,120.74 that was credited towards Mr. Bemba's legal fees, the Court received, in May 2014, €2,067,982.25 from a State Party having implemented a seizure order against a bank account held by Mr. Bemba. In accordance with the orders of Trial Chamber II and the Presidency, this money is to be used to reimburse the funds advanced to Mr. Bemba. The Registrar requests that, instead of returning these funds to the States Parties as surplus funds, the Assembly of States Parties establish a special account in the amount of €2,067,982 exceptionally funded out of the income generated as a result of the payment of Mr. Bemba's debt, and that the Assembly authorize the Court to use the funds in the special account to finance the continued advance of funds to Mr. Bemba in both cases as of 1 January 2015.

It is currently expected that through this special account, the Court will cover all advances of fees to Mr. Bemba from 2015 onwards. Thus, the legal fees would not be advanced from the legal aid budget. All funds advanced from the special account remain subject to reimbursement by Mr. Bemba and to this end the Court will continue to seek the

cooperation of States Parties to identify, seize and transfer Mr. Bemba's assets.

12. On 9 September 2014, as soon as he became aware of the Proposed Budget, Counsel wrote to the Registrar stating, inter alia, as follows:

"In light of the litigation which was conducted by me before the Presidency throughout the month of May 2014, I would be grateful if you would inform me, as a matter of urgency, on what date exactly you became aware of the implementation of the seizure order. In the meantime, please register my objection that these funds be subject to a decision of the ASP and note that I will be claiming for 5 months of unpaid fees dating from the decision on the refusal of legal assistance in the Article 70 proceedings".

13. To date, Counsel has received no response from the Registrar.

Submission

14. The Registrar has failed to acknowledge Counsel's E-mail of 9 September 2014 and has, thereby, declined to indicate whether he was aware that €2,067,982.25 had been seized from the Suspect's bank account at the very same time that his representative was vigorously disputing the Suspect's claim that he was unable to access his assets.

15. The monies in question belong to the Suspect and to no one else. It is for the Suspect, furthermore, to decide how his own money should be deployed in order to cover the debt incurred in both of the cases which are currently being conducted before the Court.

16. The defence team in case ICC-01/05-01/08 continues to receive monthly funding whereas Counsel is owed 5 months of unpaid fees (30 December 2013-20 May 2014) and remains unpaid since 20 September 2014 after the exhaustion of the legal assistance awarded by the Presidency. There is absolutely no justification whatsoever for the inequitable fashion in which monies are currently being advanced

in the two cases. The Suspect does not believe that any one of his lawyers should work for free.

17. Counsel suggests that had the Presidency known of the monies which had been seized by an anonymous State Party in May 2014, it would not have limited the loan that it advanced in ICC-01/05-01/13 to four months.

18. The transfer of monies by an anonymous State Party to the Court is new information which is liable to and should indeed change the Presidency's former decision ICC-RoC85-01/13-21.

19. In the Kenyatta Case, Trial Chamber V(B) found as follows:

Reconsideration should only be done in exceptional circumstances. The Chamber finds support, as was also done by Trial Chamber I, in the relevant jurisprudence of the International Criminal Tribunals for the former Yugoslavia ('ICTY') and Rwanda ('ICTR') whose statutory provisions are equally silent as to the power of reconsideration, that those circumstances can include 'new facts or new arguments'.⁷

20. On a final note, it should be noted that the Proposed Budget does not clarify pursuant to what Court decision monies belonging to the Suspect were seized and, thereafter, transferred to the Court. Counsel reminds the Presidency that he does not have access to the confidential decisions in case ICC-01/05-01/08. Counsel notes, nevertheless, that the Court decisions formerly circulated among State Parties requesting the freezing of the Suspect's assets were calculated to guarantee potential victim reparation and nothing else. These decisions, furthermore, did not provide for the transfer of monies to the Court but, rather, for the appointment of a domestic authority which would administer the assets pending a decision on the Suspect's guilt or innocence.⁸ In any event, it is not clear with what legal authority the Assembly of State Parties is entitled to take a decision on the deployment of monies which currently belong to the Suspect. For this reason, Counsel informed the

⁷ ICC-01/09-02/11-863 at para.11.

⁸ See, for example, ICC-01/05-01/08-8 at p.5 at para. (c).

Registrar of his objection to the matter being subject to a decision of the Assembly of State Parties.

Relief Sought

21. In light of all the aforementioned, the Presidency is respectfully requested to

- 1) Order the Registrar to state when he first became aware that €2,067,982.25 had been seized from a bank account in the name of the Suspect, and;
- 2) To reconsider its previous decision ICC-RoC85-01/13-21 thereby ordering that the Registrar advance the Suspect a loan⁹ out of the aforementioned seized monies to cover the debt owed to Counsel for 5 months unpaid legal services and for his ongoing representation in case ICC-01/05-01/13.



Nicholas Kaufman

Counsel for Jean-Pierre Bemba Gombo

Jerusalem, Israel
Tuesday, October 21, 2014

⁹ At the monthly rate considered appropriate under the legal aid scheme of the Court.