

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-01/05-01/13
Date: 1 December 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*

Public

Decision on Mr Kilolo's "Notice of appeal against the decision of the Single Judge ICC-01/05-01/13-743-Conf-Exp" dated 10 November 2014 and on the urgent request for the partial lifting of the seizure on Mr Kilolo's assets dated 24 November 2014

Decision to be notified, in accordance with regulation 31 of the Regulations of the Court, to:

The Office of the Prosecutor
 Fatou Bensouda
 James Stewart
 Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo
 Nicholas Kaufman

Counsel for Aimé Kilolo Musamba
 Paul Djunga Mudimbi

Counsel for Jean-Jacques Mangenda Kabongo
 Jean Flamme

Counsel for Fidèle Babala Wandu
 Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido
 Göran Sluiter

Legal Representatives of Victims

Legal Representatives of Applicants

States Representatives

Others
 Appeals Chamber

REGISTRY

Registrar
 Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
 Reparations Section**

Others

I, Judge Cuno Tarfusser, having been designated as Single Judge of Pre-Trial Chamber II (“the Chamber”) of the International Criminal Court (“the Court”);

NOTING the confidential *ex parte* “Requête de la Défense de M. Aimé Kilolo Musamba visant une décision urgente relative à la mainlevée sur le gel de ses avoirs”, dated 28 August 2014 (“Mr Kilolo’s Request”),¹ whereby the Defence for Mr Kilolo requested the Single Judge to lift the seizure on Mr Kilolo’s assets;

NOTING the confidential *ex parte* “Decision on the ‘Requête de la Défense de M. Aimé Kilolo Musamba visant une décision urgente relative à la mainlevée sur le gel de ses avoirs’” dated 4 November 2014 (“4 November 2014 Decision”),² rejecting Mr Kilolo’s Request;

NOTING the confidential *ex parte* “Aimé Kilolo Musamba’s notice of appeal against the decision of the Single Judge ICC-01/05-01/13-743-Conf-Exp entitled ‘Decision on the “Requête de la Défense de M. Aimé Kilolo Musamba visant une décision urgente relative à la mainlevée sur le gel de ses avoirs”’, dated 10 November 2014 (“Mr Kilolo’s Application”)”³;

NOTING the confidential *ex parte* urgent request for the partial lifting of the seizure on Mr Kilolo’s assets dated 24 November 2014 (“24 November 2014 Request”)”⁴;

NOTING articles 57(3)(c) and 67 of the Statute, rules 15, 43, 81 and 121 of the Rules, regulation 23*bis* of the Regulations of the Court (“Regulations”) and regulation 25 of the Regulations of the Registry;

¹ ICC-01/05-01/13-653-Conf-Exp and confidential *ex parte* Annex A thereto.

² ICC-01/05-01/13-743-Conf-Exp.

³ ICC-01/05-01/13-747-Conf-Exp.

⁴ ICC-01/05-01/13-766-Conf-Exp and confidential *ex parte* Annexes A to G thereto.

CONSIDERING that no information of a confidential nature is contained either in Mr Kilolo's Application or in this decision, and that, accordingly, the paramount principle of the publicity of the proceedings requires that they both be classified as public;

CONSIDERING, as regards the 4 November 2014 Decision and the 24 November 2014 Request, that it is necessary that a redacted version of both be filed in the record, from which all information of a personal and confidential nature shall be redacted;

NOTING, as regards the requests that a decision on Mr Kilolo's Application be taken by the full Chamber, that a decision on an application under article 82(1)(d) is not listed by article 57(2)(a) of the Statute among those which "must be concurred in by a majority" of the Chamber's judges and that, accordingly, the Single Judge shall address Mr Kilolo's Application on behalf of the Chamber, according to the Chamber's practice;

NOTING articles 21(3) of the Statute, 57(3)(e) and 82(1)(d) of the Statute, rules 150 and 155 of the Rules of Procedure and Evidence ("Rules"), as well as the established jurisprudence of the Court on the requirements for granting leave to appeal;

CONSIDERING, preliminarily, that Mr Kilolo's Application fails to specifically address the requirements set forth under article 82(1)(d) of the Statute, focussing instead on the merits of and on the errors purportedly affecting the 4 November 2014 Decision and that, as such, should be rejected *in limine*;

CONSIDERING that, by its very provisional and precautionary nature, a decision relating to the seizure of assets cannot be found as raising an issue "for

which an immediate decision by the Appeals Chamber may materially advance the proceedings”, thereby *per se* falling outside the scope of article 82(1)(d) of the Statute in light of the cumulative nature of the requirements set forth for an application under article 82(1)(d) to be successful;

CONSIDERING, by the same token, that the right to property is listed as a fundamental human right in several international instruments, including article 1 of Protocol 1 to the European Convention on Human Rights, article 21 of the American Convention on Human Rights, article 14 of the African Charter on Human and Peoples' Rights;

CONSIDERING that, in light of both its provisional nature and the fact that it relates to one of the fundamental rights of an accused, a decision on the seizure of assets can be considered as similar to a decision on the interim release of the accused, which decision can be appealed without the leave of the relevant Chamber pursuant to article 82(1)(b) of the Statute;

CONSIDERING that a direct right to appeal is also enshrined in article 82(4) and rule 150(1) of the Rules against orders for reparations issued under article 75, which orders may also similarly affect the right to property;

CONSIDERING that the interpretive difficulties as regards the regime applicable to the appeal of a decision relating to the seizure of assets seem to emerge also from the wording of Mr Kilolo’s Application, filed under the title “Notice of Appeal”;

CONSIDERING that the absence of a specific provision vesting an accused with the right to appeal a Pre-trial Chamber decision relating to the seizure of assets, coupled with the interpretive obstacles to the inclusion of such a decision among

those suitable to meet the requirements for leave to appeal, results in *de facto* depriving an accused of any remedy against this type of decisions;

CONSIDERING that this result might be hard to reconcile with the need that the Statute be construed consistently with internationally recognized human rights pursuant to article 21(3) of the Statute;

CONSIDERING accordingly that, whilst rejecting Mr Kilolo's Application, the Chamber takes the view that it is desirable that the issue be brought before the Appeals Chamber and, accordingly, sees no obstacle for Mr Kilolo to directly submit his "Notice of Appeal" to the Appeals Chamber, thereby prompting its determination of the matter;

CONSIDERING, with regard to the 24 November 2014 Request, that Mr Kilolo's assets were seized as a provisional measure pursuant to article 57(3)(e) of the Statute, with a view to enabling the Court to recover any amount which might be due to it by Mr Kilolo at the outcome of these proceedings, whether as a fine or as a reimbursement of the costs of his legal assistance, should he be subsequently found not to be eligible for it;

CONSIDERING that a partial lifting of a seizure of assets can only be ordered where the circumstances are such that the Chamber is satisfied that the interests underlying the provisional measure are and remain nevertheless adequately protected;

CONSIDERING that the 24 November 2014 Request is entirely focussed on the nature and the amount of the financial obligations currently faced by Mr Kilolo and fails to indicate any circumstance which would adequately meet the need

that the Court's interests underlying the seizure order would still be protected in the event that the seizure were to be partially lifted;

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

REJECTS Mr. Kilolo's Application;

REJECTS the 24 November 2014 Request;

ORDERS the Defence for Mr Kilolo to file in the record a public redacted version of ICC-01/05-01/13-766-Conf-Exp, from which all information of a personal and confidential nature shall be redacted;

DECIDES that filing ICC-01/05-01/13-747-Conf-Exp shall be reclassified as "public";

DECIDES that a public redacted version of the 4 November 2014 Decision shall be filed in due course.

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



Judge Cuno Tarfusser

Single Judge

Dated this Monday, 1 December 2014

The Hague, The Netherlands