

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13
Date: 10 February 2015

TRIAL CHAMBER VII

Before: Judge Olga Herrera Carbuccion
Judge Robert Fremr
Judge Chile Eboe-Osuji

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 Redacted Document

**Public redacted version of “Prosecution Omnibus Response to the Bemba Defence Submissions on Attending the Unsealing and Forensic Acquisition of the DVDs”,
6 May 2014, ICC-01/05-01/13-379-Conf**

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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Legal Representatives of Victims

Legal Representatives of Applicants

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

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section Others

I. Introduction

1. The Office of the Prosecutor (“Prosecution”) responds to the Bemba Defence’s 30 April 2014 request to be present at the unsealing and forensic acquisition of the DVDs¹ and its 6 May 2014 request to cancel the date set for this operation.²

2. The Prosecution does not oppose Counsel attending the unsealing and forensic acquisition of the DVDs but opposes any delay to accommodate his wish to attend. Further, the Prosecution notes with concern Counsel's allusion to his inability to represent adequately his client.

II. Confidentiality

3. This filing is classified as “confidential” as it refers to a filing so designated.

III. Submissions

A. The Prosecution does not oppose Counsel attending the unsealing and forensic acquisition of the DVDs, but opposes any delay to accommodate his wish to attend.

4. The Prosecution does not object to Counsel attending the unsealing and forensic acquisition of the DVDs if he “wish[es]”.³ However, delaying the operation in order to accommodate his appearance is unconscionable. The current state of affairs – a delay “until further notice”⁴ – unduly hampers the Prosecution’s investigation.

¹ ICC-01/05-01/13-371-Red.

² ICC-01/05-01/13-378-Conf.

³ ICC-01/05-01/13-366-Red, p. 11.

⁴ Email from [REDACTED] to Kweku Vanderpuye on 6 May 2014 at 12:39.

5. The Defence's assertion that the Single Judge confirmed Counsel's "right" to attend ⁵ is incorrect. On the contrary, the Single Judge found that it was "appropriate . . . that they be allowed to be present".⁶ These are distinct concepts, the latter clearly allowing for logistical, practical, or other considerations to be weighed against Counsel's wish to attend. To this end, the Single Judge ordered that the "acquisition of the DVDs be carried out expeditiously" and found that this "is necessary to ensure that no additional delays will affect the timely closure of the pre-trial phase of the proceedings".⁷

6. The Single Judge's intention is clear: *if* Counsel can attend the unsealing and forensic acquisition of the DVDs he *may* do so; if he cannot – for logistical, practical, or other reasons – then the operation will proceed in his absence.

7. The suspect Bemba's rights are not adversely affected if his Counsel cannot attend. The purpose of the operation is routine: to extract and copy the contents of Kilolo's, Babala's, Mangenda's, and Arido's email accounts. Two of the email accounts that do not attract legal professional privilege – Arido's and Babala's – will then be transmitted to the Prosecution.⁸

8. There will be no substantive review of the materials during the unsealing and forensic acquisition; therefore Counsel's presence is not necessary to protect his client's legal professional privilege. The Prosecution's legitimate need to continue its investigation and review the contents of Arido's and Babala's email accounts ahead of the 30 May date set for the filing of its document containing the charges cannot be delayed at the 11th hour by Counsel's motion.

⁵ ICC-01/05-01/13-371-Red, p. 3.

⁶ ICC-01/05-01/13-366-Red, p. 8.

⁷ ICC-01/05-01/13-366-Red, p. 9.

⁸ See ICC-01/05-01/13-366-Red, p. 3.

- B. The Prosecution notes with concern Counsel's allusion to his inability to represent adequately his client.

9. The Prosecution notes with concern Counsel's allusion to his inability adequately to protect his client's interests, including that he "has had no ability to conduct any form of defence investigation".⁹ This is not the first time Counsel has made this claim.

10. The Prosecution defers to the judgement of the Pre-Trial Chamber and the Registry on the question of Counsel's remuneration, and confirms its previous statements on this issue.¹⁰ However, if Counsel is unable to represent adequately Mr Bemba's interests it is incumbent upon him to withdraw immediately from further representation to preserve the integrity of the proceedings. To this extent, the Registry has recently confirmed the availability and appropriateness of Mr Bemba's representation by the Office of Public Counsel for the Defence.¹¹

IV. Requested Relief

11. The Prosecution requests the Chamber to reject the Defence's submissions on the unsealing and forensic acquisition of the DVDs and schedule the earliest possible date for the operation.



Fatou Bensouda, Prosecutor

Dated this 10th day of February 2015
At The Hague, The Netherlands

⁹ ICC-01/05-01/13-371-Red, p. 3.

¹⁰ ICC-01/05-01/13-121-Conf.

¹¹ ICC-RoC85-01/13-20-Conf, para. 25.