

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/05-01/13

Date: 3 March 2015

TRIAL CHAMBER VII

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

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's Request for Reclassification of ICC-01/05-01/13-670-Conf-Exp and Confidential *ex parte* Annexes thereto", 27 February 2015, ICC-01/05-01/13-828-Conf

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”) requests Trial Chamber VII (“Chamber”) to reclassify as “Confidential” ICC-01/05-01/13-670-Conf-Exp and its confidential *ex parte* Annexes. The current classification level is no longer justified and the lack of access to the relevant evidence identified by the Independent Counsel therein affects the Prosecution’s investigative activities and trial preparation.

II. Confidentiality

2. This Request is classified as “Confidential” because it refers to filings of the same designation.

III. Background

3. On 21 March 2014, the [REDACTED] transmitted to the Prosecution two DVDs containing the content of the email accounts of Accused, Aimé Kilolo Musamba, Fidèle Babala Wandu, Narcisse Arido and Jean-Jacques Mangenda Kabongo. Given Kilolo’s and Mangenda’s respective roles as Lead Counsel and Case Manager in the case *The Prosecutor v. Jean-Pierre Bemba Gombo* (“Main Case”), the Prosecution refrained from unsealing the DVDs, and requested the Single Judge that an Independent Counsel be appointed to vet the received material to protect the integrity of any legitimately privileged communications concerning the Main Case.¹

4. On 25 April 2014, the Single Judge of Pre-Trial Chamber II appointed an Independent Counsel to review the content of the email accounts extracted from two DVDs, in order to screen out privileged items or items otherwise obviously irrelevant

¹ ICC-01/05-01/13-310-Conf.

to the confirmation proceedings.² The Independent Counsel was directed to submit a report to the Single Judge on the results of this review.

5. On 30 May 2014, the Single Judge reiterated his 25 April direction and required the Independent Counsel promptly to liaise with the Registry such that the unsealing, forensic acquisition and review of the extracted contents of the email accounts be “carried out and completed as expeditiously as feasible”,³ given the established calendar for the confirmation of the charges proceedings.

6. [REDACTED],⁴ [REDACTED].⁵

7. On 24 November 2014 — after the Confirmation Decision was issued⁶ — the Single Judge informed the parties of the status of the Independent Counsel’s report concerning the contents of the second DVD, which had been completed on 11 September 2014.⁷ The report concerns 16 emails from Kilolo’s account (“Kilolo Emails”).⁸ The Single Judge ordered the report reclassified as “Confidential *ex parte* only Independent Counsel and the Kilolo Defence” and instructed the Kilolo Defence to submit its observations, if any, on the redactions proposed by the Independent Counsel by 1 December 2014.⁹

8. On 23 January 2015, the Single Judge transferred the record of the proceedings to the Presidency.¹⁰ The Prosecution has received no indication that the matter concerning the Kilolo Emails was ever disposed of prior to the transfer.

² ICC-01/05-01/13-366-Conf.

³ ICC-01/05-01/13-446.

⁴ [REDACTED].

⁵ [REDACTED].

⁶ ICC-01/05-01/13-749.

⁷ ICC-01/05-01/13-765, p.4.

⁸ *Ibid.*

⁹ ICC-01/05-01/13-765, p.8.

¹⁰ ICC-01/05-01/13-801.

IV. Submissions

9. Nearly one year has elapsed since the Prosecution received the DVDs and submitted them still under their original seal for vetting, in view of potential privilege issues. Six months have passed since the Independent Counsel completed his review of the DVD containing the Kilolo Emails, including four months since Pre-Trial Chamber II committed the Accused to trial,¹¹ although this review was clearly intended to benefit the confirmation process in the first place.¹² Further, the Single Judge accorded the Kilolo Defence a reasonable opportunity to provide observations on the redactions to be applied, if any, to the sixteen emails included in the Independent Counsel's report.¹³ However, no such observations have been forthcoming in the three months since the expiration of the deadline.

10. At this stage, it is reasonably inferable that the Kilolo Defence has no intention to submit observations on the redactions proposed by the Independent Counsel. The case has moved to the trial phase during the pendency of the Independent Counsel's report, and the substantial delay in gaining access to the Kilolo Emails affects the Prosecution's continuing investigations and trial preparation.

11. Maintaining the current level of confidentiality of the Independent Counsel's report and its Annexes is, therefore, no longer justified, let alone counterproductive to the efficiency and expeditiousness of the proceedings going forward.

¹¹ ICC-01/05-01/13-749.

¹² See ICC-01/05-01/13-366-Conf; ICC-01/05-01/13-446.

¹³ ICC-01/05-01/13-765, pp.6, 8.

V. Requested Relief

12. For the foregoing reasons, the Prosecution requests the Chamber to reclassify the Independent Counsel's report and its Annexes as "Confidential".



Fatou Bensouda, Prosecutor

Dated this 3rd Day of March 2015
At The Hague, The Netherlands