

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 27 August 2015

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul Pangalangan

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***

Confidential

Decision Varying a Condition of the Interim Release Decision

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for Jean Pierre Bemba Gombo

Ms Melinda Taylor

Counsel for Aimé Kilolo Musamba

Mr Paul Djunga Mudimbi

Counsel for Jean-Jacques Mangenda Kabongo

Mr Christopher Gosnell

Counsel for Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Mr Charles Achaleke Taku

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Others

Trial Chamber VII ('Chamber') of the International Criminal Court in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, having regard to Article 68(1) of the Rome Statute ('Statute') and Rule 119(2) of the Rules of Procedure and Evidence, issues the following 'Decision Varying a Condition of the Interim Release Decision'.

1. On 17 August 2015, the Chamber rendered its 'Decision Regarding Interim Release' ('Interim Release Decision').¹ In that decision, the Chamber decided on the continued release of four of the accused in this case, albeit subject to some conditions. Among those conditions, the Chamber ordered that the accused shall not 'contact any Prosecution witness in this case or [the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*], either directly or indirectly, except through counsel authorised to represent them before this Court' ('No-contact Condition').²
2. On 19 August 2015, the defence for Mr Babala ('Babala Defence') filed a request for an interpretation of the Decision ('Request').³ In its Request, the Babala Defence sought clarification from the Chamber in relation to the No-contact Condition, particularly as regards Prosecution witness P-272, who has been Mr Babala's chauffeur for ten years.⁴ The Babala Defence stated that in light of the Interim Release Decision, Mr Babala may be liable to pay his chauffeur for abusive termination of his work contract.⁵ It also submitted that Mr Babala has never obstructed the on-going criminal procedures and that, in spite their work relationship, P-272 has cooperated with the Prosecution.⁶ The Babala Defence therefore request that the Interim Release Decision be

¹ ICC-01/05-01/13-1151.

² Interim Release Decision, ICC-01/05-01/13-1151, para. 28 (iv).

³ ADDENDUM à la Requête URGENTE de la Défense de M. Fidèle Babala en interprétation de la « Decision Regarding Interim Release » (ICC-01-05-01/13-1151), ICC-01/05-01/13-1160-Conf+Conf-Anx; Requête URGENTE de la Défense de M. Fidèle Babala en interprétation de la « Decision Regarding Interim Release » (ICC-01-05-01/13-1151), 19 August 2015, ICC-01/05-01/13-1159-Conf.

⁴ Request, ICC-01/05-01/13-1160-Conf, paras 7 and 10.

⁵ Request, ICC-01/05-01/13-1160-Conf, para. 15.

⁶ Request, ICC-01/05-01/13-1160-Conf, para. 16.

interpreted in the sense to allow a professional relationship between Mr Babala and P-272.⁷

3. Pursuant to Regulation 35 of the Regulations of the Court, the Chamber reduced the deadline for responses to the Request to 12.00 on 21 August 2015.⁸
4. On 21 August 2015, after not receiving any responses by this deadline, the Chamber held that the No-contact Condition was clear and rejected the relief sought in the Request.⁹
5. After this decision had been issued, the Prosecution belatedly responded to the Request.¹⁰ After responding that the No-contact Condition's language did not require revisiting, the Prosecution then submitted as follows:

Nevertheless, to the extent the Request is confined to Babala's and P-0272's professional relationship and substantiates the potentially detrimental impact on the livelihood of the latter as a consequence of the No-contact [Condition], the Prosecution considers that the Request may reasonably be characterised as an application for an exception to the condition.

Considered as such, the Prosecution defers to the Chamber, noting that Babala has in any case been in contact with the witness either directly or indirectly during the pendency of the case, at least through the issuance of the [Interim Release] Decision.¹¹

6. It is meaningful that the Prosecution, given its statutory obligations to protect witnesses,¹² did not oppose making an exception to the No-contact Condition for Mr Babala and P-272. The Prosecution is better placed to understand the consequences of these two persons interacting and, despite the fact that the No-contact Condition is indeed clear, the Prosecution's non-opposition

⁷ Request, ICC-01/05-01/13-1160-Conf, page 8.

⁸ See E-mail from Trial Chamber VII Communications to counsel on 20 August 2015 at 11:33.

⁹ Decision on Babala Defence Request for an Interpretation of the 'Decision Regarding Interim Release', ICC-01/05-01/13-1167-Conf.

¹⁰ Prosecution's Response to the Babala Defence's Urgent Request on the Interpretation of the Decision Regarding Interim Release, and Addendum (ICC-01/05-01/13-1159-Conf and ICC-01/05-01/13-1160-Conf), 21 August 2015, ICC-01/05-01/13-1169-Conf, transmitted to the Registry at 15:13.

¹¹ ICC-01/05-01/13-1169-Conf, paras 8-9.

¹² Article 68(1) of the Statute.

changes the Chamber's assessment of whether an exception can be made without compromising the proceedings.

7. Under the circumstances, the Chamber considers it appropriate to authorise a variance to the No-contact Condition with respect to Mr Babala and P-272. Mr Babala may continue to have contacts with this person, so long as Mr Babala's discussions with him do not concern any aspect of this case or the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*.

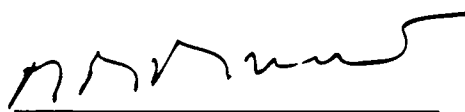
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

VARIES the condition in paragraph 28(iv) of the Interim Release Decision to allow Mr Babala to maintain contacts with P-272, as set out in paragraph 7 above.

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



Judge Bertram Schmitt, Presiding Judge



Judge Marc Perrin de Brichambaut



Judge Raul Pangalangan

Dated 27 August 2015

At The Hague, The Netherlands