

**Cour
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**International
Criminal
Court**

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Date: **4 September 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, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO

Confidential Document

**Prosecution's Motion to Strike or, in the alternative, Request to Seek Leave to
Reply to Mangenda's Response to "Prosecution's Second Request for the
Admission of Evidence from the Bar Table" (ICC-01/05-01/13-1200-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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I. Introduction

1. The Chamber should disregard paragraphs 1 and 8 to 16 of Mangenda's response to the Prosecution's second bar table motion.¹ Mangenda's use of his Response to supplement his pending motion concerning the admissibility of telephone intercepts violates regulation 23(1)(d) of the Regulations of the Court ("RoC").² This is compounded by Mangenda's attempt at additionally and improperly advancing substantive arguments on the merits of that motion in a purported "request" for leave to reply.³ The Defence's increasing reliance on such tactics in these proceedings⁴ should be discouraged.

2. In the alternative, the Prosecution should be granted leave to reply to those supplemental arguments.

II. Confidentiality

3. This filing is classified as "Confidential" as it responds to filings of the same designation. The Prosecution does not object to its reclassification as "Public".

III. Submissions

4. The Response circumvents regulation 23(1)(d). The vast majority of the Response is dedicated to explaining why the Motion on Intercepts should be granted;⁵ not on why the Prosecution's second bar table motion should be denied.⁶

¹ ICC-01/05-01/13-1200-Conf ("Response").

² ICC-01/05-01/13-1136-Conf-Corr ("Motion on Intercepts"). See also ICC-01/05-01/13-1206-Conf ("Prosecution Response to Leave to Reply"), para.4.

³ See Prosecution Response to Leave to Reply, para.3.

⁴ See ICC-01/05-01/13-1202 ("Decision on Joint Request to Strike"), para.4; ICC-01/05-01/13-1210-Conf, paras.4-5; Prosecution Response to Leave to Reply, para.4.

⁵ See Response, paras.8-16.

⁶ See Response, paras.17-21.

This is highlighted by the contradictory nature of the relief requested in the Response: requesting that the Prosecution motion be “rejected in its entirety”, while also requesting that items 109 and 110 of the documents tendered by the Prosecution be taken into account for assessing the Motion on Intercepts.⁷

5. The Defence also inappropriately identifies, for the first time, documents it believes substantiates the proposition in its Motion on Intercepts that the Prosecution’s contention that Mangenda paid Defence witnesses was “knowingly false, or was made recklessly.”⁸ Given the seriousness of that allegation – claiming that the Prosecution lied to or deliberately misled the Single Judge – it was incumbent on the Defence to fully substantiate its position in its Motion on Intercepts, including by referencing any documents it considered supported such allegation. The Defence failed to do so, notwithstanding the availability of the referenced documents to them for the better part of almost two years.⁹

6. Mangenda cannot be permitted to flout the reply process or – as he seeks to do now – use a response to a separate motion to supplement his previous filing (now *subjudice*) to identify purported support for it that he omitted to include the first time around.¹⁰

⁷ Response, para.22.

⁸ Motion on Intercepts, para.11. *See also* ICC-01/05-01/13-1179-Conf, para.21 (accusing the Prosecution of “deliberate[ly]” misleading the Dutch authorities).

⁹ *See e.g.* ICC-01/05-01/13-409, p.3 (ordering the Registry to grant “the Defence teams of all the suspects in this case access to the TRIM folder containing the ICC Detention Centre call records”). Indeed, the Defence has previously raised challenges concerning the issues in its Motion on Intercepts as early as January 2014. ICC-01/05-01/13-71-tENG, para.15 (“The Prosecutor thereby misled the Single Judge, who manifestly was not informed of the purpose of the money”); ICC-01/05-01/13-198, p.3 (volunteering information concerning payments to the Detention Centre account under Bemba’s name to “refute the Prosecutor’s unfounded and [...] uninvestigated allegation that [Mangenda] received Western Union transfers from third parties and monies from the Suspect in order to finance a so-called ‘bribery’ scheme”).

¹⁰ *See* Prosecution Response to Leave to Reply, paras.3-4.

7. Such conduct contravenes regulation 23(1)(d), which demands that documents filed with the Court “shall, as far as practicable, state [...] [a]ll relevant legal and factual issues [...] relied upon”. The Defence’s “attempt[] to supplement their submission with additional legal and factual arguments which were available when the request was first filed”¹¹ breaches the rule. In these circumstances, the appropriate remedy is that the additional submissions be disregarded.¹²

8. Alternatively, and for the reasons identified above, the Prosecution should be granted leave to reply. The arguments raised by the Defence are new and warrant a full response by the Prosecution.

IV. Relief Requested

9. For the foregoing reasons, the Chamber should disregard paragraphs 1 and 8 to 16 of the Response. In the alternative, the Prosecution should be granted leave to reply to the Response.



Fatou Bensouda, Prosecutor

Dated this 4th day of September 2015
At The Hague, The Netherlands

¹¹ Decision on Joint Request to Strike, para.4.

¹² Decision on Joint Request to Strike, para.4.