

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 10 September 2015

TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

*IN THE CASE OF
THE PROSECUTOR
v. JEAN-PIERRE BEMBA GOMBO*

Public Document

**Prosecution's Response to "Defence Request concerning the Prosecutor's
Statement in *Jeune Afrique*"**

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

Ms Fatou Bensouda

Mr James Stewart

Mr Jean-Jacques Badibanga

Counsel for the Defence of Jean-Pierre Bemba Gombo

Mr Peter Haynes

Ms Kate Gibson

Ms Melinda Taylor

Legal Representatives of Victims

Ms Marie-Edith Douzima-Lawson

Legal Representatives of Applicants

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

Mr Xavier-Jean Keita

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman Von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Other Section

I. Introduction

1. The Office of the Prosecutor (“Prosecution”) opposes the Defence Request for Trial Chamber III (“Chamber”) to order the Prosecutor of the International Criminal Court (“Prosecutor”) to retract her statement in the *Jeune Afrique* January 2015 publication.¹ The Defence claims that the Prosecutor’s statement, that “the Prosecution has been able to demonstrate that the Defence presented false evidence in the Bemba case, and witness tampering has occurred in these proceedings” misrepresents issues awaiting judicial resolution as final.² The Defence submits that the Prosecutor violated Jean-Pierre BEMBA GOMBO’s (the “Accused”) right to be presumed innocent because her public statement presents the Accused as guilty of offences that are yet to be proven.³

2. The Prosecutor’s statement, read as a whole and in context, does not misrepresent such issues.⁴ The Prosecutor fairly and correctly restated facts about the case against Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba et al. (ICC-01/05-01/13) that were in the public domain at the time.⁵ The Defence’s claims do not reasonably present the Prosecutor’s interview to *Jeune Afrique* as the Defence has distorted and misrepresented the Prosecutor’s statement by its piecemeal reading of

¹ ICC-01/05-01/08-3292, “Defence Request concerning the prosecutor’s statement in *Jeune Afrique*” Dated 7 September 2015, para.23.

² *Ibid.*, paras.1 and 19.

³ ICC-01/05-01/08-3292, para.20.

⁴ <http://www.jeuneafrique.com/33574/politique/fatou-bensouda-en-c-te-d-ivoire-personne-ne-sera-pargn/>.

⁵ ICC-01/05-01/13-1-Red2-tENG, “Warrant of arrest for Jean-Pierre BEMBA GOMBO, Aimé KILOLO MUSAMBA, Jean-Jacques MANGENDA KABONGO, Fidèle BABALA WANDU and Narcisse ARIDO”, 5 December 2013; ICC-01/05-01/13-749, Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute, 11 November 2014; see ICC Press Release: Bemba case: four suspects arrested for corruptly influencing witnesses; same charges served on Jean-Pierre Bemba, 24 November 2013. It stated: “On 20 November 2013, Judge Tarfusser issued a warrant of arrest for Jean-Pierre Bemba Gombo, his Lead Counsel Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo (a member of Mr Bemba’s defence team and case manager), Fidèle Babala Wandu (a member of the DRC Parliament and Deputy Secretary General of the Mouvement pour la Libération du Congo), and Narcisse Arido (a Defence witness). Judge Cuno Tarfusser found that there are reasonable grounds to believe that these persons are criminally responsible for the commission of offences against the administration of justice (article 70 of the Rome Statute) by corruptly influencing witnesses before the ICC and presenting evidence that they knew to be false or forged. The suspects, it is alleged, were part of a network for the purposes of presenting false or forged documents and bribing certain persons to give false testimony in the case against Mr Bemba.” See also <http://www.news24.com/Africa/News/DRC-ex-warlord-Bembas-aides-held-20131125>; http://www.iol.co.za/news/africa/bemba-s-former-aides-arrested-1.1611714#.VfBEVrcw_L8

different parts of the interview in isolation, rather than considering her statement in the context of the whole of the interview.

3. In any event, there is no justification for her to retract the statement as editorial and journalistic errors in the statement were promptly communicated to *Jeune Afrique* and corrections were implemented accordingly. The corrected version of the statement does not warrant a retraction.

4. The presumption of innocence does not necessarily require that the Prosecutor remain silent and not comment on pending cases. It simply imposes reasonable restrictions on what she may say. Given her responsibility to investigate and prosecute serious crimes, the Prosecutor plays an important role in informing victims and the public at large about ongoing investigations and prosecutions.⁶ Whether particular statements made by the Prosecutor could violate the Accused's right to presumption of innocence must be considered in light of all the relevant circumstances, as opposed to a selective and distorted reading of them.⁷ The Defence has failed to demonstrate that the Prosecutor acted improperly in this case in discharging her duties.

5. The Defence Request is yet another attempt to perpetuate the Defence's strategy.⁸ The Defence has consistently, and unjustifiably, sought to portray the Prosecution as having acted unfairly in its execution of its mandate to investigate and prosecute alleged article 70 offences in the *Bemba* case.

⁶ ICC-01/11-01/11-175, Appeals Chamber Decision on the Request for Disqualification of the Prosecutor, 12 June 2012, para.27.

⁷ *Ibid.*, para.28.

⁸ ICC-01/05-01/08-3011, Decision on "Defence Request for Withdrawal or Clarification of a Filing", 11 March 2014; ICC-01/05-01/08-3255, Decision on "Defence Request for Relief for Abuse of Process", 17 June 2015.

II. Background

6. On 6 February 2015, the Defence sent a letter to the Prosecutor highlighting two inaccuracies contained in the Prosecutor's statement published in the *Jeune Afrique* magazine of 25 – 31 January 2015.⁹

7. On 27 February 2015, the Prosecution informed the Defence that the two inaccuracies contained in the statement were purely of an editorial/journalistic oversight, and that the Prosecution had already contacted *Jeune Afrique* to make the necessary corrections.¹⁰

8. On 18 August 2015, the Defence informed the Prosecution that the inaccuracies in question remained on the public record, and requested that a correction or retraction be published.¹¹

9. On 18 August 2015, the Prosecution informed the Defence that *Jeune Afrique* had provided a link to the online version of the interview demonstrating that corrections to their editorial oversight were implemented.¹²

10. On 25 August 2015, the Prosecution communicated to the Defence the link from the official website of the *Jeune Afrique* magazine in which the relevant passages with journalistic errors in the interview had been further corrected by the magazine.¹³

11. On 2 September 2015, the Defence sent an email to the Prosecution essentially stating the arguments contained in the Defence Request.¹⁴

⁹ See Defence letter dated 6 February 2015.

¹⁰ Prosecution email to the Defence dated 27 February 2015 at 17:56.

¹¹ See Defence email dated 18 August 2015 at 04:15

¹² See Prosecution email dated 18 August 2015 at 12:18

¹³ See Prosecution email dated 25 August 2015 at 17:59

¹⁴ See Defence email dated 02 September 2015 at 16:16.

III. Submissions

i. Misrepresentation of sub-judice issues as final

12. The Defence's assertion that the Prosecutor's statement - "the Prosecution has been able to demonstrate that the Defence presented false evidence in the Bemba case, and witnesses tampering has occurred in these proceedings" - misrepresents issues awaiting resolution of the Court as final, is incorrect.¹⁵ The assertion is based on a selective reading of the Prosecutor's answer to the question posed by *Jeune Afrique*.

13. The Prosecutor's answer, read as a whole together with the question posed by *Jeune Afrique*, and in light of the context of the interview, clearly shows that the Prosecutor was not asserting that a final decision on the guilt of the Accused had been rendered. Instead, the Prosecutor's statement conveyed the message that she had demonstrated witness interference and presentation of false evidence, to the extent that arrest warrants had been issued. There is nothing in the statement suggesting that the Prosecutor had secured a conviction on charges of corruptly influencing witnesses and presenting false evidence in this case.

14. In fact, immediately after stating that the Prosecution had demonstrated that the Defence had presented false evidence and that witnesses had been tampered with, the Prosecutor then stated in her answer that in November 2013 arrest warrants had been issued against the suspects.¹⁶ The arrest warrants had been issued after the Prosecution had demonstrated to the Single Judge that there were reasonable grounds to believe that some members of the then current Bemba Defence team were involved in corruptly influencing Defence witnesses to give false

¹⁵ ICC-01/05-01/08-3292, paras.1 and 19.

¹⁶ <http://www.jeuneafrique.com/33574/politique/fatou-bensouda-en-c-te-d-ivoire-personne-ne-sera-pargn/>.

testimony in this case. Clearly by referring to the issuance of arrest warrants, the Prosecutor was indicating that proceedings had commenced, as opposed to having concluded. Accordingly, the Defence has deprived the Prosecutor's statement of its true meaning and clarity by analysing it in bits and pieces, rather than within the context of the same interview as a whole.

15. The Prosecutor's answer should also be read and interpreted in light of the question that was posed by the journalist from *Jeune Afrique*:

« En Centrafrique et en RD Congo, beaucoup attendent avec impatience le verdict dans le procès de Jean-Pierre Bemba, l'ancien vice-président congolais accusé d'avoir commandité de nombreux crimes à Bangui, en 2002. Selon sa défense, un certain nombre de témoins auraient été manipulés et leurs témoignages inventés... »

16. The question posed is an acknowledgement that the public is anxiously awaiting the verdict in the *Bemba* case and that, according to his Defence, a number of witnesses had been manipulated and had invented their stories. This is another reason why the Defence is wrong to claim that the Prosecutor had presented her statement on the issue as "final". At no point in the interview did the Prosecutor suggest or state that there had been a final verdict on the guilt or innocence of the Accused or on the issue of alleged false evidence or witness tampering in the case by members of the Defence team.

17. Nor can any good faith reading lead to the conclusion that the Prosecutor misrepresented *sub-judice* issues as final. The Defence Request is rather a deliberate attempt to pick and choose sentences to present them out of context and mount a claim of improper conduct by the Prosecutor.

ii. Presumption of innocence

18. The submissions above also demonstrate that the Accused's right to the presumption of innocence was not violated in any way. Nowhere in her statement to *Jeune Afrique* magazine does the Prosecutor state that the Accused had been convicted of the offences with which he is charged.¹⁷ To the contrary, by stating that arrest warrants had been issued in November 2013 against the suspects, the Prosecutor clearly indicated that the case was at an early stage and had not been concluded.

19. According to the Appeals Chamber's jurisprudence, whether a statement by the Prosecutor violates or not the Accused's right to the presumption of innocence should be considered in light of all relevant circumstances.¹⁸ The Appeals Chamber has also noted that "a reasonable observer, properly informed, is aware of the functions of the Prosecutor. Such observer would have understood that the Prosecutor's statements were based on the evidence available to him and that the judges would ultimately take the relevant decisions on the evidence."¹⁹

20. At the time the Prosecutor was interviewed by *Jeune Afrique*, both the arrest warrants and the confirmation decision in the Article 70 case had been made public. They were highly publicised in the media and contained further details about the individuals charged and the allegations of bribery and corruption against them in the *Bemba* case.²⁰ Therefore, there was already sufficient information in the public

¹⁷ ICC-01/05-01/08-3292, para.20

¹⁸ ICC-01/11-01/11-175, para.28.

¹⁹ *Ibid.*, para.34.

²⁰ ICC-01/05-01/13-1-Red2-tENG, "Warrant of arrest for Jean-Pierre BEMBA GOMBO, Aimé KILOLO MUSAMBA, Jean-Jacques MANGENDA KABONGO, Fidèle BABALA WANDU and Narcisse ARIDO", 5 December 2013; ICC-01/05-01/13-749, Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute, 11 November 2014; See ICC Press Release: Bemba case: four suspects arrested for corruptly influencing witnesses; same charges served on Jean-Pierre Bemba, 24 November 2013. It stated: "On 20 November 2013, Judge Tarfusser issued a warrant of arrest for Jean-Pierre Bemba Gombo, his Lead Counsel Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo (a member of Mr Bemba's defence team and case manager), Fidèle Babala

domain showing that these issues were pending. From these reports, the public would have been aware that there had not yet been a final verdict in respect of the charges against the suspects. This is also shown by the *Jeune Afrique* journalist's question stating that the public are anxiously awaiting judgment. The Defence has failed to demonstrate how in this case a reasonable observer would have thought that the Prosecutor was making a reference to a conviction or final adjudication of the case. As a result, the Defence has failed to demonstrate that the Accused's right to presumption of innocence has been violated by the Prosecutor's statement.

iii. *The Prosecutor acted properly and in good faith.*

21. During the interview with *Jeune Afrique*, the Prosecutor provided fair and accurate answers to the questions posed to her. She exercised appropriate caution in the manner in which the interview was conducted and in the content of her answers. She neither discussed the case in depth, nor did she discuss specific evidence against the Accused. She referred to information already in the public domain in a succinct manner. Given the high profile of cases before the Court in general and of the case against Mr Bemba in particular, it is important for the Prosecutor to inform the public about the Court's ongoing activities.²¹

22. Finally, the Prosecution acted fairly and in good faith in relation to genuine concerns raised by the Defence. When the Defence pointed out certain journalistic and editorial errors in the interview, the Prosecution promptly informed the magazine to ensure that the necessary corrections were made, and informed the

Wandu (a member of the DRC Parliament and Deputy Secretary General of the Mouvement pour la Libération du Congo), and Narcisse Arido (a Defence witness). Judge Cuno Tarfusser found that there are reasonable grounds to believe that these persons are criminally responsible for the commission of offences against the administration of justice (article 70 of the Rome Statute) by corruptly influencing witnesses before the ICC and presenting evidence that they knew to be false or forged. The suspects, it is alleged, were part of a network for the purposes of presenting false or forged documents and bribing certain persons to give false testimony in the case against Mr Bemba." See also <http://www.news24.com/Africa/News/DRC-ex-warlord-Bembas-aides-held-20131125>; http://www.iol.co.za/news/africa/bemba-s-former-aides-arrested-1.1611714#.VfBEVrcw_L8

²¹ ICC-01/11-01/11-175, paras.30-32.

Defence accordingly. Nothing about the Prosecutor's conduct in relation to the interview or the subsequent corrections made can be said to have been unfair.

IV. Relief Sought

23. In light of the above, the Prosecution requests that the Chamber dismiss the Defence Request.



Fatou Bensouda, Prosecutor

Dated this 10th Day of September 2015
At The Hague, The Netherlands