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No.: ICC-01/05-01/13
Date: 17 November 2015

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Single Judge

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***

Public Redacted

**Decision on the 'Requête de la défense aux fins de levée du gel des avoirs de
Monsieur Aimé Kilolo Musamba'**

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

Mr 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

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber VII ('Single Judge' and 'Chamber', respectively) of the International Criminal Court ('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 Articles 21(3), 57(3)(e), 61(11), 77(2)(b) and 93(1)(k) of the Rome Statute ('Statute') and Rules 21(5) and 166 of the Rules of Procedure and Evidence ('Rules') and Regulations 23 *bis* and 83 of the Regulations of the Court ('Regulations'), renders this 'Decision on the "Requête de la défense aux fins de levée du gel des avoirs de Monsieur Aimé Kilolo Musamba"'.

I. Procedural History

1. On 20 November 2013, the Single Judge, acting on behalf of Pre-Trial Chamber II ('PTC II Single Judge'), issued a warrant of arrest against Jean-Pierre Bemba Gombo ('Mr Bemba'), Aimé Kilolo Musamba ('Mr. Kilolo'), Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido. He also ordered the Registrar to prepare requests for cooperation, requesting the 'States which will arrest the persons concerned, and any other relevant State which may be identified, to locate and freeze their assets'.¹
2. Following this order, the authorities of Belgium seized, amongst others, an [REDACTED] bank account under the name of Mr Kilolo [REDACTED] which, at the time of seizure, contained the sum of [REDACTED].²
3. On 4 February 2014, subsequent to the Registry's transmission of a report from the Belgian authorities, the PTC II Single Judge was informed that said bank

¹ Pre-Trial Chamber I, Warrant of arrest for Jean-Pierre BEMBA GOMBO, Aimé KILOLO MUSAMBA, Jean-Jacques MANGENDA KABONGO, Fidèle BABALA WANDU, and Narcisse, ARIDO, 20 November 2013, ICC-01/05-01/13-1-US-Exp, p. 16. A confidential redacted version (ICC-01/05-01/13-1-Red-Conf) and public redacted version is also available (ICC-01/05-01/13-1-Red2-tENG). [REDACTED].

² See annex 3 to Registry's transmission of a report from the Kingdom of Belgium concerning the freezing of assets belonging to Mr. Aimé Kilolo Musamba, 4 February 2014, ICC-01/05-01/13-152-Conf-Exp.

account had been seized by the Belgian authorities but that, according to the *Police Judiciaire Fédérale – Arrondissement Bruxelles*, this account had been released from seizure, according to article 46 *quater* §2 and articles 37 §2 *et seq* of the Belgian *Code d’instruction criminelle* (‘4 February 2014 Information’).³

4. On 20 May 2014, in light of the 4 February 2014 Information, the PTC II Single Judge dismissed as moot a request of Mr Kilolo⁴ to lift the seizure of the bank account concerned and to authorise withdrawal therefrom.⁵
5. On 12 June 2014, the PTC II Single Judge, in light of a new request of Mr Kilolo seeking anew the lifting of seizure of the bank account,⁶ requested that the Belgian authorities provide clarifications as to the situation regarding Mr Kilolo’s assets, amongst other the bank account concerned.⁷
6. On 7 July 2014, the Registry transmitted a report of the Belgian authorities in which it was confirmed that the [REDACTED] bank account concerned remained seized.⁸ At the time of reporting, the account contained the amount of [REDACTED].⁹
7. On 4 November 2014, the PTC II Single Judge rendered the ‘Decision on “Requête de la Défense de M. Aimé Kilolo Musamba visant une décision

³ Registry’s transmission of a report from the Kingdom of Belgium concerning the freezing of assets belonging to Mr. Aimé Kilolo Musamba, 4 February 2014, ICC-01/05-01/13-152-Conf-Exp (with three confidential *ex parte* annexes), p. Annex 3, p. 4 (“Nous précisons que nous sommes donc dans ce cas de figure et que les comptes ont donc été débloqués après cinq jours ouvrables.”)

⁴ Requête aux fins de levée du gel des avoirs de M. Aimé Kilolo Musamba, 24 April 2014, ICC-01/05-01/13-359-Conf-Exp (with one confidential *ex parte* annex).

⁵ Pre-Trial Chamber II, Decision on the ‘Requête aux fins de levée du gel des avoirs de M. Aimé Kilolo Musamba’, 20 May 2014, ICC-01/05-01/13-411-Conf-Exp.

⁶ Requête en vue de notifier à l’Etat Belge la mainlevée du gel sur les avoirs de M. Aimé Kilolo Musamba, 10 June 2014, ICC-01/05-01/13-476-Conf-Exp (with two confidential *ex parte* annexes).

⁷ Pre-Trial Chamber II, Decision on the “Requête en vue de notifier à l’Etat Belge la mainlevée du gel sur les avoirs de M. Aimé Kilolo Musamba”, 12 June 2014, ICC-01/05-01/13-489-Conf-Exp.

⁸ Transmission of the observations submitted by the Belgium authorities on the “Requête en vue de notifier à l’Etat Belge la mainlevée du gel sur les avoirs de M. Aimé Kilolo Musamba”, 7 July 2014, ICC-01/05-01/13-544-Conf-Exp.

⁹ ICC-01/05-01/13-544-Conf-Exp-Anx2, p. 5.

urgente relative à la mainlevée sur le gel de ses avoirs” (‘4 November 2014 Decision’) and rejected a further request of Mr Kilolo¹⁰ to lift the seizure of the bank account concerned.¹¹

8. On 1 December 2014, the PTC II Single Judge rejected a request of Mr Kilolo¹² for partial lifting of the seizure order ([REDACTED]).¹³
9. On 30 January 2015, the Presidency constituted this Chamber and referred to it the present case.¹⁴
10. On 16 June 2015, the defence for Mr Aimé Kilolo Musamba (‘Kilolo Defence’ or ‘Defence’) submitted the ‘Requête de la défense aux fins de levée du gel des avoirs de Monsieur Aimé Kilolo Musamba’ (‘Request’)¹⁵ requesting the Chamber to:
 1. **D’ORDONNER** la levée du gel universel des avoirs de M. Aimé Kilolo.
 2. **D’ORDONNER** à défaut la levée du gel de la somme de [REDACTED] versée sur le compte bancaire [REDACTED] au titre de sa rémunération en tant que Conseil principal de M. Jean Pierre Bemba.

¹⁰ Requête de la Défense de M. Aimé Kilolo Musamba visant une décision urgente relative à la mainlevée sur le gel de ses avoirs, 28 August 2014, ICC-01/05-01/13-653-Conf-Exp (with one confidential *ex parte* annex).

¹¹ Pre-Trial Chamber II, Decision on “Requête de la Défense de M. Aimé Kilolo Musamba visant une décision urgente relative à la mainlevée sur le gel de ses avoirs”, 4 November 2014, ICC-01/05-01/13-743-Conf-Exp; a public redacted version is also available (ICC-01/05-01/13-743-Red). The PTC II Single Judge rejected leave to appeal this decision in ‘Decision on Mr Kilolo’s “Notice of appeal against the decision of the Single Judge ICC-01/05-01/13-743-Conf-Exp” dated 10 November 2014 and on the urgent request for partial lifting of the seizure on Mr Kilolo’s assets dated 24 November 2014’, 1 December 2014, ICC-01/05-01/13-773.

¹² Requête URGENTE aux fins de la levée partielle du gel des avoirs de Maître Aimé Kilolo Musamba en vue de lui permettre de couvrir ses obligations alimentaires envers sa famille et pour lui-même, 24 November 2014, ICC-01/05-01/13-766-Conf-Exp (with 7 confidential *ex parte* annexes). A public redacted version of the filing was notified on 5 December 2014 (ICC-01/05-01/13-766-Red).

¹³ Pre-Trial Chamber II, Decision on Mr Kilolo’s ‘Notice of appeal against the decision of the Single Judge ICC-01/05-01/13-743-Conf-Exp’ dated 10 November 2014 and on the urgent request for partial lifting of the seizure on Mr Kilolo’s assets dated 24 November 2014, 1 December 2014, ICC-01/05-01/13-773 (‘1 December 2015 Decision’).

¹⁴ Presidency, Decision constituting Trial Chamber VII and referring to it the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aime Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidele Babala Wandu and Narcisse Arido*, 30 January 2015, ICC-01/05-01/13-805.

¹⁵ ICC-01/05-01/13-1014-Conf-Exp, together (with one confidential *ex parte* annex A).

3. **D'ORDONNER** à titre infiniment subsidiaire qu'il lui soit autorisé de prélever tous les mois sur son compte bancaire [REDACTED] la somme de [REDACTED] pour lui permettre de faire face à ses obligations alimentaires vis-à-vis de ses enfants et de manière générale à ses obligations de contribution aux charges du ménage.
4. **D'ORDONNER** au Greffe de solliciter la coopération des autorités belges dans le but de lever le gel sur les avoirs de M. Kilolo.¹⁶

11. On 28 July 2015, the Kilolo Defence presented the 'Addendum à la "Requête de la défense aux fins de levée du gel des avoirs de Monsieur Aimé Kilolo Musamba" (ICC-01/05-01/13-1014-Conf-Exp)' ('Addendum').¹⁷

12. On 2 October 2015, the Kilolo Defence submitted the "Requête urgente de la Défense relative à la demande en mainlevée sur le gel des avoirs de monsieur Aimé Kilolo Musamba".¹⁸

II. Submissions of the Kilolo Defence

13. The Defence maintains that the seizure of the assets of Mr Kilolo is contrary to the Statute.¹⁹ With reference to Article 93(1)(k) of the Statute, it contends that seizure is limited to the property and assets linked to the alleged crimes and solely for the purpose of forfeiture.²⁰ The Defence further argues that seizure under Article 93(1)(k) of the Statute does not concern property which derives from lawful activities of the accused with the aim to secure or facilitate reimbursement of legal aid or a possible fine.²¹ In this regard, the Defence emphasises that the Registry transferred the sum of [REDACTED] to said bank account as remuneration of Mr Kilolo's licit activities as counsel for Mr Bemba.²² The Defence requests that the Chamber pronounce at least a partial lifting of seizure of those properties linked to his activities as counsel

¹⁶ ICC-01/05-01/13-1014-Conf-Exp, p. 14.

¹⁷ ICC-01/05-01/13-1108-Conf-Exp, together with one confidential ex parte annex A.

¹⁸ ICC-01/05-01/13-1334-Conf-Exp.

¹⁹ ICC-01/05-01/13-1014-Conf-Exp, paras 15 and 17.

²⁰ ICC-01/05-01/13-1014-Conf-Exp, para. 16.

²¹ ICC-01/05-01/13-1014-Conf-Exp, para. 16.

²² ICC-01/05-01/13-1014-Conf-Exp, para. 17.

before the Court. It also stresses the financial obligations of Mr Kilolo towards his family, which includes his young children and his wife [REDACTED].²³ As regards Mr Kilolo's revenues, the Defence claims that during his incarceration Mr Kilolo received [REDACTED] from the Court; after his release from detention, he resumed his profession as lawyer in Brussels.²⁴

14. The Defence also avers that the universal seizure of Mr Kilolo's assets is unjustified.²⁵ In relation to the PTC II Single Judge's reliance on Rule 21(5) of the Rules in the 4 November 2014 Decision, the Kilolo Defence alleges that the PTC II Single Judge erroneously interpreted the law.²⁶ In addition, the Defence submits that in case the Court pronounced a fine, Rule 146(3) of the Rules would apply allowing the convicted person to pay the fine within a reasonable time.²⁷
15. Finally, the Defence also contends that this measure infringes his right to family life.²⁸ It alleges that the seizure is disproportionate to its aim, namely enabling the Court to recover the costs for legal aid,²⁹ and proposes that a partial lifting of seizure ([REDACTED]) could be effectuated under the supervision of the Registry³⁰.
16. In the Addendum, the Defence provides this Chamber with a letter and bank statement confirming the purported transfer of [REDACTED] to the bank account concerned on 31 March 2014, as remuneration for Mr Kilolo's services as counsel for Mr Bemba.

²³ ICC-01/05-01/13-1014-Conf-Exp, paras 21-23 and 33. The Defence also annexes a number of documents reflecting current expenses and financial obligations, ICC-01/05-01/13-1014-Conf-Exp-AnxA. *See also* ICC-01/05-01/13-1334-Conf-Exp, para. 4.

²⁴ ICC-01/05-01/13-1014-Conf-Exp, para. 24.

²⁵ ICC-01/05-01/13-1014-Conf-Exp, para. 15.

²⁶ ICC-01/05-01/13-1014-Conf-Exp, para. 26.

²⁷ ICC-01/05-01/13-1014-Conf-Exp, para. 27.

²⁸ ICC-01/05-01/13-1014-Conf-Exp, paras 15 and 28.

²⁹ ICC-01/05-01/13-1014-Conf-Exp, para. 29.

³⁰ ICC-01/05-01/13-1014-Conf-Exp, para. 30.

III. Applicable Law and Analysis

17. The seizure of the assets of Mr Kilolo contained in the Belgian bank account [REDACTED] was ordered in accordance with Articles 57(3)(e) and 93(1)(k) of the Statute. The protective measure, available under Article 57(3)(e) of the Statute, is, pursuant to Article 93(1)(k) of the Statute, the 'identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties'. Contrary to the Defence's contention, Article 93(1)(k) of the Statute does not establish the requirement that 'assets' be derived from or otherwise be linked to alleged crimes or offences within the jurisdiction of the Court. The words 'of crimes' in Article 93(1)(k) of the Statute refers to 'instrumentalities' and not to 'property and assets'. As a result, it is irrelevant that the sum of [REDACTED] was paid as remuneration of Mr Kilolo's licit activities as counsel for Mr Bemba.
18. A nexus between the assets concerned and the crime(s) for which the accused is charged is also not implied by the reference to 'forfeiture' in Article 57(3)(e) of the Statute, read in conjunction with Article 77(2)(b) of the Statute.³¹ Indeed, Article 57(3)(e) of the Statute does not only refer to the penalty of forfeiture under Article 77(2)(b) of the Statute, but incorporates other types of forfeiture envisaged by the Statute and the Rules, as discussed in the following.³²
19. Article 70(3) of the Statute and Rule 166(2) of the Rules foresee the imposition of a fine, provided the accused has been convicted. In this case, the fine may be paid by the convicted person within a reasonable period of time or by way of

³¹ Rule 166(2) of the Rules.

³² Similarly, for example, Pre-Trial Chamber I, *Prosecutor v Thomas Lubanga Dyilo*, Decision concerning Pre-Trial Chamber I's Decision of 10 February 2006 and the Incorporation of Documents into the Record of the Case against Mr Thomas Lubanga Dyilo, 24 February 2006, ICC-01/04-01/06-8-Corr, para. 135; Pre-Trial Chamber III, *Prosecutor v Jean-Pierre Bemba Gombo*, Décision et demande en vue d'obtenir l'identification, la localisation, le gel et la saisie des biens et avoirs adressées à la République Portugaise, 27 May 2008, ICC-01/05-01/08-8, para. 6; Trial Chamber V(B), *The Prosecutor v Uhuru Muigai Kenyatta*, Decision on the implementation of the request to freeze assets, 8 July 2014, ICC-01/09-02/11-931, paras 12-13.

instalments during that period, as stipulated by Rule 166(4) of the Rules. In case the convicted person does not pay the fine imposed in accordance with the conditions set forth in Rule 166(4) of the Rules, the Court may take ‘appropriate measures’ for the enforcement of fines pursuant to, *inter alia*, Rules 217-222 of the Rules. Hence, the Statute provides for an enforcement mechanism with respect to orders for fines, involving the cooperation of States Parties, *after* conviction. In the view of the Single Judge, it is appropriate to ensure that available assets be secured provisionally through protective measures *prior* to conviction in order to meet potential fine orders of the Court later. This is without prejudice to Mr Kilolo’s right, should he be convicted, to meet his obligations to pay a possible fine ‘within a reasonable period’, as set out in Rule 166(4) of the Rules.³³

20. The Single Judge also recalls that Mr Kilolo has been granted legal assistance for the purpose of these proceedings pursuant to Regulation 83 of the Regulations, assuming that he lacks sufficient means to pay for his or her legal assistance.³⁴ Rule 21(5) of the Rules provides that ‘[w]here a person claims to have insufficient means to pay for legal assistance and this is subsequently found not to be so, the Chamber [...] may make an order of contribution to recover the cost of providing counsel’. The Single Judge holds that the freezing of the assets of Mr Kilolo is necessary to ensure that available assets are secured provisionally through protective measures to enable the Court to recover the costs of Mr Kilolo’s legal assistance, should Mr Kilolo’s financial situation be determined to have changed.³⁵

21. As a provisional measure under Article 57(3)(e) of the Statute, the freezing of assets (and its maintenance) must be applied in a manner consistent with

³³ *Similary*, 4 November 2014 Decision, ICC-01/05-01/13-743-Conf-Exp, p. 4; 1 December 2015 Decision, ICC-01/05-01/13-773, p. 6.

³⁴ Article 67(1)(d) of the Statute.

³⁵ *Similary*, 4 November 2014 Decision, ICC-01/05-01/13-743-Conf-Exp, pp. 4-5; 1 December 2015 Decision, ICC-01/05-01/13-773, p. 6.

Article 21(3) of the Statute. The Single Judge is attentive to Mr Kilolo's argument that the (maintenance of) seizure of said bank account would infringe his right to family life³⁶ insofar as he purportedly cannot meet his financial obligations towards his family, including his young children. However, for the reasons set out below, the Single Judge is unconvinced that this provisional measure infringes upon Mr Kilolo's right to family life.

22. The Single Judge recalls that the measure was justified as it was taken in accordance with the law and for a legitimate aim,³⁷ as explained above. The Single Judge also finds that the measure is proportionate *vis-à-vis* the legitimate aim pursued. Mr Kilolo was released from detention in October 2014 and joined his family in Belgium. He also confirms that he resumed his profession as a lawyer in Brussels. Mr Kilolo is not subjected to any condition which unreasonably impedes the exercise of his profession and, thus, provide for his family. No further specific arguments are provided which demonstrate that Mr Kilolo lacks the means to support his family financially. As a result, the Single Judge finds that Mr Kilolo's right to family life is not unduly interfered with.

23. Moreover, the Single Judge finds that, in this particular case, a partial lifting of the seizure is also not appropriate. As explained above, Mr Kilolo's personal circumstances allow him to provide for his family. Considering the amount seized, a monthly release of [REDACTED] would significantly reduce the sum contained in said bank account, thus rendering the provisional measure meaningless. No other measures appear available which would adequately ensure that the Court's interests underlying the seizure order would still be protected in the event that the seizure were to be partially lifted.

³⁶ See, Article 17 of the International Convention of Civil and Political Rights; Article 8(1) of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms; Article 11 of the Inter-American Convention on Human Rights; Article 21(1) of the Arab Charter on Human Rights.

³⁷ See also, Decision on Kilolo Defence Motion for Inadmissibility of Material, 16 September 2015, ICC-01/05-01/13-1257, para. 16 (with further reference to human rights case law in related footnotes).

24. In light of the foregoing, the Single Judge finds that the assets contained in the Belgian bank account must remain seized.

FOR THE FOREGOING REASONS THE SINGLE JUDGE HEREBY

REJECTS the Request in its entirety;

ORDERS the Kilolo Defence to file public redacted versions of submissions ICC-01/05-01/13-1014-Conf-Exp, ICC-01/05-01/13-1108-Conf-Exp and ICC-01/05-01/13-1334-Conf-Exp, from which all information of a personal and confidential nature shall be redacted, within 10 days of notification of the present decision.

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

A handwritten signature in black ink, consisting of stylized, cursive letters, positioned above a horizontal line.

Judge Bertram Schmitt
Single Judge

Dated 17 November 2015

At The Hague, The Netherlands