

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No: ICC-01/05-01/13

Date: 13 May 2016

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

**Response on Behalf of Mr Kilolo to 'Prosecution's Motion for Reconsideration of
the Decision on Outstanding Evidentiary Applications' (ICC-01/05-01/13-1883-
Conf)'.**

Source: Defence for Aimé Kilolo Musamba

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for the Victims

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Detention Section

**Victims Participation and Reparations Other
Section**

I. PROCEDURAL HISTORY

1. On 29 April 2016 the Trial Chamber issued 'Decision on Outstanding Evidentiary Applications' [the 'Decision'].¹
2. The Trial Chamber rejected the Prosecution's request to recognize as formally submitted Annex D² on the basis that the item was not on the Prosecution's list of evidence and nor had the Prosecution made any effort to seek leave to add the item.³
3. Moreover, and importantly, the Trial Chamber recalled that:

[I]t has previously declared annexes to Independent Counsel reports inadmissible on grounds that the Prosecution did not include them on its list of evidence. This is because this failure created an unacceptable risk that the accused were not prepared to respond to these items, a risk elevated in the present case by the fact that the Prosecution waited until the 8 April deadline to submit this item.⁴

4. Thus, in order to 'protect the accused', the Chamber decided not to recognize Annex D as having been formally submitted.⁵
5. The Prosecution disputes the Trial Chamber's decision. On 9 May 2016 the Prosecution filed 'Prosecution's Motion for Reconsideration of the Decision on Outstanding Evidentiary Applications (ICC-01/05-01/13-1858)'.⁶

¹ ICC-01/05-01/13-1858.

² ICC-01/05-01/13-845-Conf-AnxD-Red.

³ ICC-01/05-01/13-1858 para. 38.

⁴ ICC-01/05-01/13-1858 para. 38.

⁵ ICC-01/05-01/13-1858 para. 39.

⁶ ICC-01/05-01/13-1883-Conf.

6. The Prosecution argues that the Chamber's Decision results in a 'manifestly unsound' consequence and that reconsideration is necessary to 'prevent an injustice'.⁷ The Prosecution argues that the evidence is 'highly relevant and probative'.⁸

II. SUBMISSIONS

7. It is respectfully submitted that the Decision was correct for the reasons set out by the Trial Chamber and that there is no proper basis now for reconsideration.
8. First, if the material in question is as 'relevant and probative' as the Prosecution contends, that is all the more reason why the Prosecution should have ensured that the item was promptly included on its list of evidence.
9. Second, rather than 'prevent injustice', as the Prosecution contends, admission of the evidence now will *cause* injustice. Thus, the Trial Chamber correctly decided not to admit the evidence so as to 'protect the accused'.⁹
10. It is noteworthy that the Prosecution asserts that had Annex D been provided to them sooner it 'would have been used with the witnesses that the Prosecution adduced at trial'.¹⁰ In this regard, without any footnote reference, the Prosecution states: "Some of these witnesses, when examined by the Prosecution, denied their knowledge of telephone numbers clearly attributed to them in Annex D".¹¹
11. In the absence of any specific reference by the Prosecution it is impossible to properly explore this point. On the face of it, however, it appears that it is

⁷ ICC-01/05-01/13-1883-Conf para. 2.

⁸ ICC-01/05-01/13-1883-Conf para. 2.

⁹ ICC-01/05-01/13-1858 para. 39.

¹⁰ ICC-01/05-01/13-1883-Conf para. 23.

¹¹ ICC-01/05-01/13-1883-Conf para. 23.

more the Defence than the Prosecution which has suffered as a result of the tardy disclosure in that the Prosecution appears to be asserting that Annex D could have been used to demonstrate that Prosecution witnesses have given dishonest evidence.

12. All this serves to underline the correctness of the Trial Chamber's initial Decision and demonstrate why admission of Annex D at this stage of the proceedings causes injustice. There is therefore no proper basis for reconsideration.

III. Relief requested

13. The Defence respectfully requests the Trial Chamber to dismiss The Prosecution's motion.

RESPECTFULLY SUBMITTED.



Maître Paul Djunga Mudimbi
Lead Counsel of Mr. Aimé Kilolo Musamba



Mr. Steven Powles
Associate Counsel of Mr. Aimé Kilolo Musamba

Dated this 13 May 2016,
At The Hague, The Netherlands.