

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 17 June 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, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO

Public Redacted Document

Public redacted version of "Prosecution's Response to the Bemba Defence's Request for Leave to Reply to the 'Prosecution's Confidential Redacted Version of Prosecution's Response to the Bemba Defence's Request for Admission of Documents through a Bar Table Motion'", 29 April 2016, ICC-01/05-01/13-1853-Conf

Source: The Office of the Prosecutor

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

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**Victims Participation and Reparations Others
Section**

1. Trial Chamber VII (“Chamber”) should dismiss *in limine* the Bemba Defence’s “Request for Leave to Reply to the Prosecution’s Confidential Redacted Version of ‘Prosecution’s Response to the Bemba Defence’s Request for Admission of Documents through a Bar Table Motion’” (ICC-01/05-01/13-1794-Conf), dated 25 April 2016” (“Request”).¹ The Request advances substantive arguments in reply to the pending Prosecution response without first obtaining the Chamber’s authorisation in violation of regulation 24(5) of the Regulations of the Court,² and the Appeals Chamber’s guidance.³

2. Moreover, the Bemba Defence inappropriately attempts to recast its arguments on the term “[REDACTED]”⁴ by mischaracterising the Prosecution’s previous submissions on the meaning of the relevant Detention Unit (“DU”) conversation. The Prosecution’s bar table motion contends that the relevant DU call demonstrates “Babala’s knowledge of the proceedings and witnesses in the Main Case”, which necessarily included “[REDACTED]”.⁵ Bemba’s Bar Table Motion shows that the Defence fully understood this submission, in arguing that the documents it seeks to admit are “relevant to the identity of “[REDACTED]”.⁶ Accordingly, there is no need for further clarification by way of the reply now sought, since the Prosecution’s

¹ ICC-01/05-01/13-1844-Conf. The Prosecution will use the terms “Response” and “Bar Table Motion” to refer to the relevant submissions in the title.

² Regulation 24(5) states “[p]articipants may only reply to a response with the leave of the Chamber, unless otherwise provided in these Regulations.”

³ ICC-01/04-01/06-824 OA7, para. 68 (“[t]he Appeals Chamber disapproves of a practice of the filing of a substantive reply prior to leave being granted by the Appeals Chamber, which in and of itself may also give rise to the rejection of an application for leave.”). See also ICC-01/05-01/08-602 OA2, para. 9 (in the context of rule 103 of the Rules of Procedure and Evidence, “[t]he submissions of substantive observations is only permissible after a Chamber has decided to invite or grant leave to do so.”).

⁴ See ICC-01/05-01/13-1794-Conf-AnxA, pp. 5-6: “[REDACTED]”

⁵ See ICC-01/05-01/13-1113-Conf-AnxA, p. 61, row 74 (arguing in submitting this conversation from the bar table, “[t]his conversation between Babala and Bemba reflects Babala’s knowledge of the proceedings and witnesses in the Main Case. In it, Babala informs Bemba that Kilolo asked one of the Defence witnesses who already testified (*«Il n’y a pas longtemps il était chez le COLLÈGUE D’EN HAUT, dans la Maison blanche»*), to go visit other witnesses (T.0926, lns.140-145).”).

⁶ See above fn. 4.

Response does not advance a “new” position or one that the Bemba Defence could not have anticipated.⁷

3. Alternatively, the Request fails to justify the relief requested. A reading of the entire DU conversation shows that, even if Bemba did not immediately apprehend Babala’s reference concerning the identity of “[REDACTED]”, the two clearly understood one another, with Bemba saying: «oui, oui, maintenant je comprends [...] j’ai compris, j’ai compris. Bon, très bien j’ai compris».⁸

4. Assuming, *arguendo*, that Bemba misapprehended who Babala was talking about—which is not borne out by the DU recording—the conversation nevertheless demonstrates Babala’s awareness of the identity of Defence witnesses in the Main Case.⁹

5. Finally, the Defence’s contention that Bemba’s alleged confusion in the conversation “illustrate[s] the difficulty of ascertaining shared *men rea* from intercepts”¹⁰ is no more than an opinion. The Chamber is well disposed to evaluate the evidence, freely assessing it on a case-by-case basis. Surely, a reply is neither necessary nor justified simply to suggest to the Chamber a given inference which may arise from the evidence before it.

⁷ The Bemba Defence also could have argued these issues in its response to the Prosecution’s Second Bar Table Motion, which it did not. See, ICC-01/05-01/13-1199-Conf-AnxA, p. 61.

⁸ See CAR-OTP-0074-0096 (Audio), CAR-OTP-0086-0921 at 0927, lns. 163-168 («[REDACTED]»).

⁹ See ICC-01/05-01/13-1110-Conf, para. 263 (iv).

¹⁰ Request, para. 6.

Confidentiality

6. This response is filed as “*Confidential*” because it responds to a filing of the same designation. A “*Public Redacted*” version will be filed.



Fatou Bensouda, Prosecutor

Dated this 17th Day of June 2016
At The Hague, The Netherlands