



Original: English

No.: ICC-01/05-01/08 A

Date: 07/11/2016

**THE APPEALS CHAMBER**

**Before:** Judge Christine Van den Wyngaert, Presiding Judge  
Judge Sanji Mmasenono Monageng  
Judge Howard Morrison  
Judge Chile Eboe-Osuji  
Judge Piotr Hofmański

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC  
IN THE CASE OF  
*THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO***

*Public*

**Defence's filing concerning the Appeals Chamber's order  
ICC-01/05-01/08-3435-Conf**

**Source:** Defence for Mr. Jean-Pierre Bemba Gombo

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

**The Office of the Prosecutor**

Fatou Bensouda  
James Stewart  
Helen Brady

**Counsel for the Defence of Mr Jean-Pierre Bemba Gombo**

Peter Haynes, QC  
Kate Gibson

**Legal Representatives of the Victims**

Marie-Edith Douzima-Lawson

**The Office of Public Counsel for the Victims**

Paolina Massidda

**The Office of Public Counsel for the Defence**

Xavier-Jean Keita

**REGISTRY**

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**Registrar**

Herman von Hebel

1. On 19 September 2016, Mr. Jean-Pierre Bemba Gombo (“the Appellant”) filed his document in support of appeal (“Appeal Brief”).<sup>1</sup> Simultaneously, he filed an application to present additional evidence in the appeal against the Judgment.<sup>2</sup>

2. On 3 October 2016, the Legal Representative of Victims (“LRV”) requested that the 23 documents listed in the Appellant’s application to present additional evidence (“23 Documents”) be disclosed to her.<sup>3</sup>

3. On 17 October 2016, the Appeals Chamber ordered the Appellant to file in the record of the Case ICC-01/05-01/08 (“Main Case”), the 23 Documents such that they are available to the Appeals Chamber and all parties and participants, subject to any authorisation that may be necessary from Trial Chamber VII.<sup>4</sup>

4. On 25 October 2016, the Appellant submitted a request for authorisation to file the 23 Documents, classified as ‘confidential’ in the case ICC-01/05-01/13 (“Article 70 Case”), as confidential documents in the record of the Main Case.<sup>5</sup>

5. On 2 November 2016, the Single Judge of the Article 70 Case granted the request.<sup>6</sup>

6. On 4 November 2016, the Defence wrote to the Appeals Chamber’s legal officer and all parties and participants informing them of its discussion with Court Management Services (“CMS”) about the possibility of modifying the access rights of the 23 Documents in eCourt, to provide the Appeals Chamber and the LRV with access. It asked for the Appeals Chamber’s authorisation in order for the documents

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<sup>1</sup> ICC-01/05-01/08-3434.

<sup>2</sup> ICC-01/05-01/08-3435-Conf.

<sup>3</sup> ICC-01/0501/08-3438-Conf.

<sup>4</sup> ICC-01/05-01/08-3445-Conf.

<sup>5</sup> ICC-01/05-01/13-1991.

<sup>6</sup> ICC-01/05-01/13-2000.

to be released into the case record of the present proceedings.<sup>7</sup> CMS responded that it was able to give access to filings (in TRIM) filed in “Bemba et al” case to different users from the “Bemba case”, but that the Appeals Chamber had ordered that the 23 Documents be filed in the record of the Main Case.<sup>8</sup>

7. Documents CAR-OTP-0080-1369 and CAR-OTP-0080-1370 are audio files. Their format prevents them from being “filed” in the normal sense, or appended as an annex to a filing. Documents CAR-OTP-0092-0024, CAR-OTP-0092-0029, CAR-OTP-0092-0030, CAR-OTP-0092-0031 and CAR-OTP-0092-0032 are excel tables which are too large in size to be converted into PDF form to allow their filing as an annex.

8. Moreover, a number of the 23 Documents were relied upon in the Appeal Brief to demonstrate the timing of their access by, and the manner of their transmission to, the Prosecution in the Main Case. It is accordingly the metadata of these documents, contained within their eCourt record, which is of significance.<sup>9</sup>

9. For these reasons, the Appellant respectfully requests that CMS be requested to modify the access rights to the 23 Documents to allow the LRV and Appeals Chamber to access these documents in eCourt. This would allow the parties and the Appeals Chamber to have access to both the content and the metadata of the 23 Documents. It would also circumvent the obstacle posed by the form and size of a number of the documents.

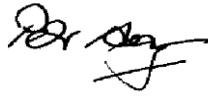
The whole respectfully submitted.

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<sup>7</sup> Email of 4 November 2016 at 12:36.

<sup>8</sup> Email of 4 November 2016 at 14:51.

<sup>9</sup> See, for example ICC-01/05-01/08-3434-Conf, paras. 98-99.



Peter Haynes QC

Lead Counsel for Mr. Jean-Pierre Bemba

Done at The Hague, The Netherlands, 7 November 2016

It is hereby certified that this document contains a total of 689 words and complies in all respects with the requirements of regulation 36 of the Regulations of the Court.