



Original: English

**No. ICC-01/05-01/08 A
Date: 7 February 2017**

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 document

**Decision on Mr Bemba's request regarding the Prosecutor's reply to victims'
observations**

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

The Office of the Prosecutor

Ms Fatou Bensouda

Ms Helen Brady

Counsel for the Defence

Mr Peter Haynes

Ms Kate Gibson

Legal Representative of Victims

Ms Marie-Edith Douzima-Lawson

REGISTRY

Registrar

Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III entitled “Judgment pursuant to Article 74 of the Statute” of 21 March 2016 (ICC-01/05-01/08-3343),

Having before it the “Appellant’s request to strike the ‘Prosecution’s reply to the Legal Representative of Victims’ observations on Bemba’s application to present additional evidence in the appeal” of 2 February 2017 (ICC-01/05-01/08-3494),

Renders the following

DECISION

1. The “Prosecution’s reply to the Legal Representative of Victims’ observations on Bemba’s application to present additional evidence in the appeal” is disregarded.
2. The Prosecutor is directed to refrain from unnecessary and repetitive submissions, and from indirectly responding to Mr Jean-Pierre Bemba Gombo’s submissions through any future replies to the victims’ observations in the present case.

REASONS

I. PROCEDURAL HISTORY

1. On 19 September 2016, Mr Jean-Pierre Bemba Gombo (“Mr Bemba”) filed the “Defence application to present additional evidence in the appeal against the Judgment pursuant to Article 74 of the Statute, ICC-01/05-01/08-3343”¹ (“Additional Evidence Application”).
2. On 17 October 2016, the Appeals Chamber issued the “Decision on Procedure for Mr Bemba’s Additional Evidence Request of 19 September 2016”² (“Decision on Procedure Regarding Additional Evidence”), in which it directed, *inter alia*, that the victims participating in the proceedings (“Victims”) may file observations presenting

¹ ICC-01/05-01/08-3435-Conf (A); a public redacted version was filed on 2 November 2016 (ICC-01/05-01/08-3435-Red (A)).

² ICC-01/05-01/08-3446 (A).

their views and concerns on the Additional Evidence Application and that Mr Bemba and the Prosecutor may each reply to these observations.³

3. On 9 December 2016, having been authorised to do so by the Appeals Chamber,⁴ Mr Bemba filed the “Appellant’s reply to ‘Prosecution’s response to Bemba’s application to present additional evidence in the appeal’”⁵ (“Mr Bemba’s Reply to Prosecutor’s Response”).

4. On 21 December 2016, the Victims filed the “Observations de la Représentante légale des victimes sur « *Defence application to present additional evidence in the appeal against the Judgment pursuant to Article 74 of the Statute* »”⁶ (“Victims’ Observations”).

5. On 26 January 2017, the Prosecutor filed the “Prosecution’s reply to the Legal Representative of Victims’ observations on Bemba’s application to present additional evidence in the appeal”⁷ (“Prosecutor’s Reply to Victims’ Observations”).

6. On 2 February 2017, Mr Bemba filed the “Appellant’s request to strike the ‘Prosecution’s reply to the Legal Representative of Victims’ observations on Bemba’s application to present additional evidence in the appeal’”⁸ (“Request to Strike the Prosecutor’s Reply to Victims’ Observations”), in which he requests the Appeals Chamber to strike the Prosecutor’s Reply to Victims’ Observations from the record of the case, and to disallow or restrict any further replies by the Prosecutor to victims’ observations in the present appeal and in the appeal against sentence.⁹

7. On 6 February 2017, the Prosecutor filed the “Prosecution’s response to Bemba’s request to strike the ‘Prosecution’s reply to the Legal Representative of Victims’ observations on Bemba’s application to present additional evidence in the

³ Decision on Procedure Regarding Additional Evidence, p. 3.

⁴ “Decision on Mr Bemba’s request for leave to reply to the Prosecutor’s response to the additional evidence request”, 2 December 2016, ICC-01/05-01/08-3479 (A).

⁵ ICC-01/05-01/08-3482-Conf (A).

⁶ ICC-01/05-01/08-3484-Conf (A).

⁷ ICC-01/05-01/08-3491-Conf (A).

⁸ ICC-01/05-01/08-3494 (A).

⁹ Request to Strike the Prosecutor’s Reply to Victims’ Observations, paras 1, 30.

appeal”¹⁰ (“Prosecutor’s Response to Request to Strike the Prosecutor’s Reply to Victims’ Observations”).

II. MERITS

8. Mr Bemba submits that the Prosecutor’s Reply to Victims’ Observations “offers no submission contradictory or even at variance” to the victims’ observations and, rather, advances arguments to counter those of Mr Bemba.¹¹ Mr Bemba contends that the Prosecutor circumvents the Appeals Chamber’s order in an attempt to present additional arguments against the Additional Evidence Application.¹² Mr Bemba argues that this circumvention of the Appeals Chamber’s order gives rise to prejudice and warrants the striking of the Prosecutor’s Reply from the record of the appeal.¹³

9. He further submits that, in the present case, the Prosecutor’s and Victims’ positions are generally aligned and that the Appeals Chamber’s orders regarding the briefing for the present appeal and the appeals against sentence should be varied “by deleting the right of the Prosecution to reply”.¹⁴ Alternatively, Mr Bemba requests that the scope of any reply to the Victims’ observations “be precisely delineated”.¹⁵

10. The Prosecutor responds that Mr Bemba’s “argument wrongly assumes that a party can reply to [victims’] submissions only if it disagrees with their content”, and that, if this were correct, the party whose position the victims accord with could never exercise its right to reply.¹⁶ She claims that this is an illogical interpretation, which “would contravene the Court’s legal framework”.¹⁷ The Prosecutor also disputes that her reply went beyond the scope of the Victims’ Observations.¹⁸ She argues that Mr Bemba “advances several substantive arguments for the first time in his Reply”, which were addressed in the Victims’ Observations, and, in turn, the Prosecutor addressed the content of the Victims’ Observations.¹⁹

¹⁰ ICC-01/05-01/08-3496 (A).

¹¹ Request to Strike the Prosecutor’s Reply to Victims’ Observations, paras 14-15.

¹² Request to Strike the Prosecutor’s Reply to Victims’ Observations, para. 18.

¹³ Request to Strike the Prosecutor’s Reply to Victims’ Observations, para. 23.

¹⁴ Request to Strike the Prosecutor’s Reply to Victims’ Observations, para. 28.

¹⁵ Request to Strike the Prosecutor’s Reply to Victims’ Observations, para. 29.

¹⁶ Prosecutor’s Response to Request to Strike the Prosecutor’s Reply to Victims’ Observations, para. 3.

¹⁷ Prosecutor’s Response to Request to Strike the Prosecutor’s Reply to Victims’ Observations, para. 3.

¹⁸ Prosecutor’s Response to Request to Strike the Prosecutor’s Reply to Victims’ Observations, para. 3.

¹⁹ Prosecutor’s Response to Request to Strike the Prosecutor’s Reply to Victims’ Observations, para. 7.

11. The Appeals Chamber notes that the Prosecutor and the Victims adopt a similar position regarding the Additional Evidence Application, and that the Prosecutor's Reply to Victims' Observations in large part repeats the Victims' Observations.²⁰ Although, in principle, parties and participants may file submissions that reiterate those already on the record, the Appeals Chamber discourages this practice and underlines that such submissions do not assist it in reaching its determinations. In circumstances such as the present, an indication that the Prosecutor agreed with the Victims' Observations would have been sufficient.

12. The Appeals Chamber notes that, in the remainder of the Prosecutor's Reply to Victims' Observations, the Prosecutor uses her agreement with the submissions of the victims as a pretext to indirectly respond to Mr Bemba's Reply to Prosecutor's Response.²¹ For instance, at paragraph 4, the Prosecutor submits that Mr Bemba's proposed legal test, which was put forward in his reply, is inappropriate and, at paragraph 8, she challenges Mr Bemba's "incorrect submission" in the reply. At paragraph 10, she argues that Mr Bemba's Reply to Prosecutor's Response was "inadequate", without any reference to the Victims' Observations. The Appeals Chamber considers this unauthorised response to Mr Bemba's Reply to Prosecutor's Response to be inappropriate.

13. In view of the foregoing, the Appeals Chamber shall not consider the Prosecutor's Reply to Victims' Observations in determining the Additional Evidence Application.

14. Regarding Mr Bemba's request that the Prosecutor be denied the right to reply to the Victims' observations in the appeal more generally, the Appeals Chamber considers that it would be speculative and premature to determine that any reply from the Prosecutor would be inappropriate in the abstract. However, it directs the Prosecutor to refrain from unnecessary and repetitive submissions, and from indirectly responding to Mr Bemba's submissions through any future replies to the Victims' observations in the present case.

²⁰ Prosecutor's Reply to Victims' Observations, paras 2, 4-8, 12.

²¹ Prosecutor's Reply to Victims' Observations, paras 4, 8-11, 13.

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



Judge Christine Van den Wyngaert
Presiding Judge

Dated this 7th day of February 2017

At The Hague, The Netherlands