

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 04/11/2013

TRIAL CHAMBER III

Before:

**Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

**IN THE CASE OF
THE PROSECUTOR
*v. Jean-Pierre Bemba Gombo***

Confidential

Motion to replace a witness

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

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Unrepresented Victims

Unrepresented

(Participation/Reparation)

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States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Herman von Hebel

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Mr. Patrick Craig

Detention Section

Victims Participation and Reparations Other Section

A. BACKGROUND

1. Prior to 1 November 2013, there were three remaining witnesses to be called by the Defence in the present proceedings; Witnesses D04-14, D04-41 and D04-44. These witnesses are significant, given that each was part of the MLC contingent fighting on the ground in the Central African Republic during the relevant events.

2. The Defence case was due to conclude the presentation of its witnesses on 25 October 2013.¹ In its *Decision on the testimony of Witnesses D04-54, D04-14, D04-41 and D04-44*,² Trial Chamber III (“the Chamber”), detailed the obstacles to the presentation of the evidence of the three remaining Defence witnesses, and extended the deadline for the presentation of their evidence. In particular, the Chamber noted the difficulties experienced by both the Defence and the Registry in contacting Witness D04-41,³ and

ORDER[ED] the Registry to continue making the necessary arrangements to obtain the voluntary appearance of Witnesses D04-4, D04-41 and D04-44 as soon as practicable.⁴

3. On 1 November 2013, the Chamber rendered its *Decision on the time limit for the conclusion of the defence’s presentation of oral evidence at trial*, in which it:⁵

CONSIDERS that Witness D04-41 is not willing and available to appear as witness, and therefore, DECIDES that it no longer expects him to provide testimony in the present case and instructs the Registry to desist from taking any further measures to contact this witness; and

4. Prior to the issuance of this decision, however, and in order to conclude the presentation of its evidence in the most expeditious manner possible, the Defence

¹ ICC-01/05-01/08-2731, para. 38.

² ICC-01/05-01/08-2842.

³ ICC-01/05-01/08-2842, para. 6.

⁴ ICC-01/05-01/08-2842, para. 11.

⁵ ICC-01/05-01/08-2861

had been exploring other options and alternatives to the presentation of Witness D04-41's testimony.

5. Witness D04-13 has been on the Defence witness list since July 2012. A revised summary of his testimony was disclosed on 14 May 2013. The Defence understands that he has received the relevant authorisations to testify from his military hierarchy in the Democratic Republic of Congo ("DRC"), and has informed the Defence he is available to begin his testimony as soon as required.

6. Both Witness D04-41 and Witness D04-13 were part of the MLC contingent which crossed into the Central African Republic in 2002, and were present during the relevant events on the ground. Witness D04-13 was [REDACTED]

[REDACTED] Witness D04-41 was [REDACTED]
[REDACTED] The Defence has indicated that Witness D04-41 would testify about, *inter alia*, [REDACTED]

[REDACTED]⁶ While their relevant knowledge and scope of testimony is by no means identical, there is a significant overlap in the proposed content of their evidence.

7. On 26 June 2013, during a closed session status conference, the Defence sought leave from the Chamber to remove Witness D04-13 from its list of witnesses.

The Defence informed the Chamber of [REDACTED]
[REDACTED]

[REDACTED]⁷ As such, the Defence concluded:⁸

⁶ Revised Witness Summary, Witness D04-41.

⁷ ICC-01/05-01/08-T-331-CONF-ENG ET 27-06-2013 pp.24-25

⁸ ICC-01/05-01/08-T-331-CONF-ENG ET 27-06-2013, p.25.

[REDACTED]

8. Since [REDACTED] the Defence has been in regular contact with Witness D04-13 [REDACTED]

[REDACTED] The Defence now respectfully submits that this witness is now in a position to be able to testify before the Chamber.

B. SUBMISSIONS

9. Given the difficulties in contacting and securing the testimony of Witness D04-41 and the availability of Witness D04-13, and given the importance of hearing the testimony of witnesses who were on the ground as part of the MLC contingent during the relevant events, the Defence accordingly proposes replacing the testimony of Witness D04-41 with that of D04-13, to commence as soon the necessary arrangements can be put in place by The Registry.

D. REQUESTED RELIEF

10. On the basis of the above submissions, the Defence respectfully requests that the Chamber;

AUTHORISE the Defence to present the testimony of Witness D04-13, in lieu of that of Witness D04-41.

The whole respectfully submitted.



Aimé Kilolo Musamba
Lead Counsel



Peter Haynes
Co- Counsel

Done on the 4th of November 2013

At The Hague, The Netherlands