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Date: 5 October 2017

THE APPEALS CHAMBER

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Howard Morrison
Judge Geoffrey A. Henderson
Judge Piotr Hofmański

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**

Public document

Decision on requests to file corrected versions of appeal submissions

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

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor
Ms Helen Brady

Counsel for Jean-Pierre Bemba Gombo
Ms Melinda Taylor
Ms Mylène Dimitri

Counsel for Aimé Kilolo Musamba
Mr Michael G. Karnavas

Counsel for Jean-Jacques Mangenda Kabongo
Mr Christopher Gosnell
Mr Peter Robinson

Counsel for Fidèle Babala Wandu
Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido
Mr Charles Achaleke Taku
Ms Beth Lyons

REGISTRY

Registrar
Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu, and Mr Narcisse Arido against the decision of Trial Chamber VII entitled “Judgment pursuant to Article 74 of the Statute” of 19 October 2016 (ICC-01/05-01/13-1989-Red),

Having before it the “Prosecution’s request for leave to file a corrected version of its response brief” of 25 August 2017 (ICC-01/05-01/13-2207-Conf),

Having before it the “Prosecution’s request for leave to reply to Mangenda’s ‘Response to Prosecution’s request for leave to file a corrected version of its response brief’” of 4 September 2017 (ICC-01/05-01/13-2216-Conf),

Having before it the “Request for Leave to File a Corrected Version of Appeal Brief” of 14 September 2017 (ICC-01/05-01/13-2225-Conf),

Renders the following

DECISION

1. The “Prosecution’s request for leave to file a further corrected version of its response brief” is granted. The Prosecutor is directed to file, by Friday, 13 October 2017, a corrected version of the “Prosecution’s Consolidated Response to the Appellants’ Documents in Support of Appeal” and a corresponding public redacted version which includes an annex referring to the authorisation obtained in the present decision and indicating the changes made to paragraph 73 and footnote 211.
2. Mr Mangenda’s “Request for Leave to File a Corrected Version of Appeal Brief” is granted. Mr Mangenda is directed to file, by Friday, 13 October 2017, a corrected version of his “Appeal Brief” and a corresponding public redacted version which includes an annex referring to the authorisation obtained in the present decision and indicating the changes made to footnote 33.

3. The “Prosecution’s request for leave to reply to Mangenda’s ‘Response to Prosecution’s request for leave to file a corrected version of its response brief’” is denied.

REASONS

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 19 October 2016, Trial Chamber VII rendered the “Judgment pursuant to Article 74 of the Statute”¹ (“Conviction Decision”).
2. Mr Narcisse Arido (“Mr Arido”),² Mr Fidèle Babala Wandu (“Mr Babala”),³ Mr Jean-Jacques Mangenda Kabongo (“Mr Mangenda”),⁴ Mr Jean-Pierre Bemba Gombo (“Mr Bemba”),⁵ and Mr Aimé Kilolo Musamba (“Mr Kilolo”) ⁶ filed appeals against the Conviction Decision.

¹ ICC-01/05-01/13-1989-Conf; a public redacted version was registered on the same date ([ICC-01/05-01/13-1989-Red](#)).

² “Narcisse Arido’s Notice of Appeal against the Trial Chamber VII’s ‘Judgment pursuant to Article 74 of the Statute’ (ICC-01/05-01/13-1989-Conf)”, dated 31 October 2016 and registered on 1 November 2016, [ICC-01/05-01/13-1995 \(A\)](#); “Narcisse Arido’s Document in Support of Appeal Pursuant to Article 81, 24 April 2017, ICC-01/05-01/13-2145-Conf, with annexes. A corrected version was registered on 8 May 2017 (ICC-01/05-01/13-2145-Conf-Corr) and a public redacted version of the corrected version was registered on 31 May 2017 ([ICC-01/05-01/13-2145-Corr-Red](#)).

³ “Notification d’appel de la Défense de M. Fidèle Babala Wandu à l’encontre du jugement rendu en application de l’article 74 du Statut par la Chambre de première instance VII le 19 octobre 2016”, 2 November 2016, [ICC-01/05-01/13-1999 \(A2\)](#); “Mémoire d’appel de la Défense de M. Fidèle Babala Wandu sur le verdict de culpabilité”, 24 April 2017, ICC-01/05-01/13-2147-Conf, with annexes. A public redacted version was registered on 30 May 2017 ([ICC-01/05-01/13-2147-Corr-Red](#)) and the English version was registered on 10 July 2017 (ICC-01/05-01/13-2147-Conf-Corr-tENG).

⁴ “Notice of Appeal”, 4 November 2016, [ICC-01/05-01/13-2006 \(A3\)](#); “Appeal Brief”, 24 April 2017, ICC-01/05-01/13-2143-Conf with annexes; a public redacted version of the document in support of the appeal was registered on 15 May 2017 ([ICC-01/05-01/13-2143-Red](#)).

⁵ “Notice of Appeal”, 7 November 2016, [ICC-01/05-01/13-2012 \(A4\)](#); “Defence Document in Support of the Appeal”, 24 April 2017, ICC-01/05-01/13-2144-Conf with annexes; a public redacted version of the document in support of the appeal was registered on 4 May 2017 ([ICC-01/05-01/13-2144-Red](#)).

⁶ “Acte d’appel de la Défense de Maître Aimé Kilolo Musamba à l’encontre du «*Judgment pursuant to Article 74 of the Statute*» (ICC-01/05-01/13-1989-Conf) rendu par la Chambre de première instance VII le 19 octobre 2016.”, dated 7 November 2016 and registered on 8 November 2016, [ICC-01/05-01/13-2015 \(A5\)](#); “Aimé Kilolo Musamba’s Appeal Brief”, original version dated 24 April 2017 and registered on 25 April 2017, ICC-01/05-01/13-2148-Conf with annexes. A corrigendum was registered on 28 April 2017 (ICC-01/05-01/13-2148-Conf-Corr). A second corrigendum was registered on 19 May 2017 (ICC-01/05-01/13-2148-Conf-Corr2). A public redacted version was registered on 27 July 2017 ([ICC-01/05-01/13-2148-Corr2-Red2](#)) with annexes.

3. On 10 July 2017, the Prosecutor filed her consolidated response to the five appellants' documents in support of the appeal⁷ ("Consolidated Response").

4. On 25 August 2017, the Prosecutor filed the "Prosecution's request for leave to file a corrected version of its response brief"⁸ ("Prosecutor's Request"). The Prosecutor requests the Appeals Chamber's leave to correct mistakes in her Consolidated Response by deleting the word "subsequently" in paragraph 73 and making an addition to footnote 211 to reflect the metadata regarding four documents.⁹ The Prosecutor argues that the proposed corrections do not alter the overall substance of her submissions, but rather enhances their accuracy.¹⁰

5. On 29 August 2017, Mr Mangenda filed a response to the Prosecutor's Request¹¹ ("Mr Mangenda's Response"). Mr Mangenda opposes the addition of the Prosecutor's proposed corrections on the grounds that the Prosecutor does not explain why the correction is needed and the proposed corrections are "vague and obscure".¹² Mr Mangenda argues that the proposed corrections are material to important issues in the appeal and therefore not so trivial as to be included in a corrigendum.¹³ He therefore requests that the Appeals Chamber order the Prosecutor to file a new request that properly explains the need for the said corrections.¹⁴

6. On 4 September 2017, the Prosecutor requested leave to reply to Mr Mangenda's Response¹⁵ ("Prosecutor's Request for Leave to Reply"). The Prosecutor asserts that a reply is necessary to address: (i) Mr Mangenda's incorrect assertions "regarding the purpose, import, and context of the proposed correction"¹⁶;

⁷ "Prosecution's Consolidated Response to the Appellants' Documents in Support of Appeal", ICC-01/05-01/13-2170-Conf (A A2 A3 A4 A5). A corrected version was registered on 24 August 2017 (ICC-01/05-01/13-2170-Conf-Corr). A public redacted version of the corrected version was registered on 25 August 2017 ([ICC-01/05-01/13-2145-Corr-Red \(A A2 A3 A4 A5\)](#)).

⁸ ICC-01/05-01/13-2207-Conf.

⁹ Prosecutor's Request, paras 1-2.

¹⁰ Prosecutor's Request, para. 1.

¹¹ "Response to Prosecution's request for leave to file a corrected version of its response brief," ICC-01/05-01/13-2210-Conf (A A2 A3 A4 A5).

¹² Mr Mangenda's Response, paras 1, 16-18.

¹³ Mr Mangenda's Response, paras 2, 13-15.

¹⁴ Mr Mangenda's Response, paras 3, 19-30.

¹⁵ "Prosecution's request for leave to reply to Mangenda's 'Response to Prosecution's request for leave to file a corrected version of its response brief'", ICC-01/05-01/13-2216-Conf (A A2 A3 A4 A5).

¹⁶ Prosecutor's Request to Reply, paras 1-3, 7-8, 10.

and (ii) submissions that go beyond the scope of its request and which constitute a veiled attempt to reply to the Prosecutor's Consolidated Response.¹⁷

7. On 8 September 2017, Mr Mangenda filed a response to the Prosecutor's Request for Leave to Reply in which he does not oppose a reply from the Prosecutor that would be limited to the "purpose, import and context of the proposed correction" as argued in paragraph 8 of the Prosecutor's Request for Leave to Reply.¹⁸

8. On 14 September 2017, Mr Mangenda requested leave to file a corrected version of his appeal brief¹⁹ ("Mr Mangenda's Request"). He asserts that, after the filing of the Prosecutor's Request, he noticed that footnote 33 of his appeal brief, with respect to the description of four Excel spreadsheets, mistakenly refers to Ringtail metadata rather than the metadata associated with the spreadsheets themselves.²⁰ Mr Mangenda asserts that the proposed correction in footnote 33, specifically the replacement of the words "given to the OTP on 4 November 2014" with the words "created before 5 November 2012" is in the interests of justice and clarity as it enhances the accuracy of his submissions.²¹

II. MERITS

9. At the outset, the Appeals Chamber considers that, as the amendments proposed by the Prosecutor and by Mr Mangenda go beyond the mere correction of typographical errors,²² it was correct for them to seek leave from the Appeals Chamber to file a corrected version of their respective appeal submissions rather than attempting to file them as a corrigendum.

¹⁷ Prosecutor's Request to Reply, paras 2-3, 9.

¹⁸ "Response to 'Prosecution's request for leave to reply to Mangenda's 'Response to Prosecution's request for leave to file a corrected version of its response brief'", ICC-01/05-01/13-2220-Conf (A A2 A3 A4 A5).

¹⁹ "Request for Leave to File a Corrected Version of Appeal Brief," ICC-01/05-01/13-2225-Conf (A3), para. 1.

²⁰ Mr Mangenda's Request, paras 1-3.

²¹ Mr Mangenda's Request, paras 1, 4-5.

²² See Appeals Chamber, *Prosecutor v. Jean-Pierre Bemba Gombo*, "Judgement on the appeal of the Prosecutor against Pre-Trial Chamber II's 'Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa'", 2 December 2009, [ICC-01/05-01/08-631-Red \(OA2\)](#), paras 38-39.

10. At the same time, the Appeals Chamber observes that the changes proposed by the Prosecutor and Mr Mangenda, while going to the substance of their submissions, are limited in scope and nature. Indeed, the Prosecutor's proposed changes relate to the correction of a mistake in her submissions concerning the metadata of an item of evidence referred to in footnote 211, and a resulting amendment of a sentence at paragraph 73, of the Consolidated Response. Similarly, the change proposed by Mr Mangenda relates to the correction of a mistake concerning the metadata of four Excel spreadsheets referred to in footnote 33 of his appeal brief. In these circumstances, the Appeals Chamber is satisfied that the parties suffer no prejudice from the filing of a revised version, with the proposed corrections, of the Consolidated Response or Mr Mangenda's appeal brief.

11. Considering that it is in the interests of all parties to have submissions on the record of the case that are factually accurate, and given that the Prosecutor and Mr Mangenda, having noticed mistakes in their respective submissions, properly brought the matter to the attention of the Appeals Chamber, the Appeals Chamber is of the view that their requests can be granted. The Prosecutor and Mr Mangenda are therefore authorised to file a corrected version of the Consolidated Response and a corrected version of Mr Mangenda's appeal brief, respectively. Such corrected versions shall include an accompanying annex that sets forth what changes have been made and refers to the authorisation obtained in the present decision for such changes. The corrected versions of the Consolidated Response and of Mr Mangenda's appeal brief – including their corresponding public redacted version – shall be filed by Friday, 13 October 2017.

12. As a final point, the Appeals Chamber clarifies that the present decision addresses only the discrete issue of whether it is appropriate to authorise the Prosecutor and Mr Mangenda to file corrected versions, with the proposed changes, of their appeal submissions. In particular, considering the limited scope and nature of the proposed changes as well as the absence of any prejudice to the parties' procedural rights, this decision does not concern the implications of the Prosecutor's or Mr Mangenda's submissions – as corrected – on the merits of the pending appeals. In this context, the Appeals Chamber observes that the submissions made in Mr Mangenda's Response largely go to the merits of the Prosecutor's submissions in

her Consolidated Response, and beyond those concerned by the limited corrections proposed by the Prosecutor and addressed in the present decision.²³ These submissions by Mr Mangenda are, however, inapposite to the discrete issue presently before the Appeals Chamber and therefore will not be considered further. As a consequence, the Prosecutor's Request for Leave to Reply, which seeks authorisation to address these submissions in Mr Mangenda's Response, is denied.

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



Judge Silvia Fernández de Gurmendi
Presiding Judge

Dated this 5th day of October 2017

At The Hague, The Netherlands

²³ See Mr Mangenda's Response, paras 19-29.