



Original: English

No. ICC-02/05-01/20

Date: 9 July 2021

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala

SITUATION IN DARFUR, SUDAN

IN THE CASE OF

THE PROSECUTOR v. ALI MUHAMMAD ALI ABD-AL-RAHMAN ('ALI KUSHAYB')

Public redacted version of

'Decision on the Defence Request for a Transfer of Funds to meet Mr Abd Al-Rahman's Familial Obligations, 10 December 2020, ICC-02/05-01/20-227-Conf'

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

The Office of the Prosecutor

Mr Karim A. A. Khan
Mr Julian Nicholls

Counsel for Mr Abd-Al-Rahman

Mr Cyril Laucci

Legal Representatives of Victims

Ms Amal Clooney
Mr Nasser Mohamed Amin Abdalla

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

Ms Paolina Massidda

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Mr Harry Tjonk

**Victims Participation and Reparations
Section**

Other

JUDGE ROSARIO SALVATORE AITALA, acting as Single Judge on behalf of Pre-Trial Chamber II of the International Criminal Court,¹ in the case of *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')*, issues this Decision on the Defence Request for a Transfer of Funds to meet Mr Abd-Al-Rahman's Familial Obligations.

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. The Single Judge recalls the procedural history of the case as set out in previous decisions.²
2. On 20 August 2020, the Single Judge issued a decision determining, *inter alia*, that the funds in Mr Abd-Al-Rahman's possession at his time of surrender to the Court would be frozen by the Registry, with the provision that the suspect may request permission from the Registrar to release all or part of the funds for certain purposes, including to meet demonstrable familial obligations.³
3. On 13 October 2020, the Defence submitted a request, seeking that the Chamber order the Registry to transfer [REDACTED] euros to the family of Mr Abd-Al-Rahman without delay, or in the alternative, to order a monthly payment in the amount of the suspect's financial obligation to his family, to be calculated by the Registry on the basis of the information available, including a retroactive amount from the time of his surrender in June 2020.⁴ The Defence further submits, *inter alia*, that (i) it provided the Registry with all the information and documents in Mr Abd-Al-Rahman's possession in July 2020, in the context of the suspect's request for financial aid; (ii) Mr Abd-Al-Rahman is unable to secure further documentation since he is currently in detention; and (iii) the requested funds are needed on an urgent basis to secure [REDACTED].

¹ Decision on the designation of a Single Judge, 9 June 2020, [ICC-02/05-01/07-80](#).

² See, for example, Decision on the Defence Request to provide written reasoning for two oral decisions, 18 August 2020, [ICC-02/05-01/20-118](#), paras 1-4.

³ Decision on the Prosecution's request for evidence in the custody of the Registry (ICC-01/05-01/20-9-Red2) and the Registry's request for instructions (ICC-02/05-01/07-86-US-Exp), ICC-02/05-01/20-123-Conf, para. 25.

⁴ Requête aux fins d'exécution du paragraphe 25 de la Décision ICC-02/05-01/20-123-Conf, ICC-02/05-01/20-183-Conf.

4. On 23 October 2020, the Registry, pursuant to the instructions to the Chamber,⁵ submitted its observations on the Request,⁶ stating, *inter alia*, that (i) the suspect's familial obligations have not yet been properly demonstrated, and the Registry thus cannot establish familial obligations or release any funds; (ii) the suspect has not provided any evidence to support the claim relating to [REDACTED]; and (iii) a cautious approach is needed towards the information provided by Mr Abd-Al-Rahman in his legal aid forms, given the discrepancies in information provided.

II. ANALYSIS

5. The Single Judge recalls that a person seeking legal assistance before the Court is able to honour his or her obligations to dependants, provided that these obligations are substantiated. In this regard, the Single Judge notes the Registry's submissions that the Defence has not provided information and documentation to substantiate its claims in relation to Mr Abd-Al-Rahman's familial obligations. The Registry further indicates that there are discrepancies in the information that has been provided.

6. In particular, the Registry states that (i) no supporting documentation has been provided with Mr Abd-Al-Rahman's first application for legal assistance; (ii) no information has been provided regarding the suspect's financial obligations, salary or residence; (iii) the details provided in the two application forms of 25 June 2020 and 10 August 2020 are contradictory, particularly as regards the ages for 14 of 17 claimed dependants; (iv) the two documents received from the Prosecutor regarding the alleged children of Mr Abd-Al-Rahman do not show any link to the suspect; (v) the information in the 10 August 2020 application would indicate that Mr Abd-Al-Rahman's spouse gave birth to his son when she was 10 years old; and (vi) the Defence has not provided any of the specific information requested by the Registry regarding the claim for [REDACTED], or indicated whether the [REDACTED].

7. While the Defence submits that the suspect is unable to obtain further information while in detention, the Single Judge encourages Defence counsel to assist in this regard, and to liaise with the Registry to ensure clarity regarding the nature of the information

⁵ Email from the Chamber to the Registry sent 19 October 2020 at 15:48.

⁶ Registry's observations on the "Requête aux fins d'exécution du paragraphe 25 de la Décision ICC-02/05-01/20-123-Conf, ICC-02/05-01/20-183-Conf", (ICC-02/05-01/20-183-Conf), ICC-02/05-01/20-192-Conf, with confidential, *ex parte* to the Defence only Annexes I and II.

and documentation that is required and that can realistically be provided under the circumstances.

8. In terms of concrete steps that may be taken, the Single Judge considers that a useful first step would be for Mr Abd-Al-Rahman's family members to provide scans or photos of their respective identification documents via email or instant messaging. Taking into account that Mr Abd-Al-Rahman does not have access to a mobile phone or email in the Detention Centre, the Single Judge encourages the Registry to provide Mr Abd-Al-Rahman with a Registry email address and/or mobile phone number, which Mr Abd-Al-Rahman can communicate to his family members for them to submit the abovementioned scans or photos.

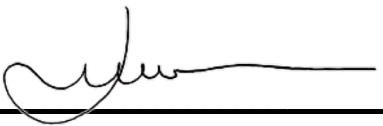
9. The Single Judge further notes that the Prosecutor may be in possession of information regarding Mr Abd-Al-Rahman's family composition, income, and living conditions that may assist the Registry in making its determination. Accordingly, the Single Judge suggests that the Defence authorise the Registry to liaise with the Prosecutor to obtain information that would assist in its assessment. All such information must be shared with the Defence, who may comment on it.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

ENCOURAGES the Defence and the Registry to liaise and find a workable solution, as set out at paragraph 7 of the present decision; and

AUTHORISES the Registry to assist Mr Abd-Al-Rahman in communicating with his family members to obtain the information and documentation required, as set out at paragraph 8 of the present decision.

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

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid black horizontal line.

Judge Rosario Salvatore Aitala
Single Judge

Dated this Friday, 9 July 2021

At The Hague, The Netherlands