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No.: **ICC-01/14-01/18**
Date: **23 September 2021**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-*
EDOUARD NGAÏSSONA

Public

**Prosecution's Response to 'Defence response to the Notification of the appointment
of Mr Jean Pierre Madoukou as Legal Adviser to Witness P-0458'
(ICC-01/14-01/18-1115)**

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. Trial Chamber V (“Chamber”) should reject the NGAISSONA Defence’s request to bar Mr Jean Pierre Madoukou from representing P-0458 (“Request”).¹ The Request fails because (1) the purported conflict of interest² or impediment to representation³ is speculative; (2) there is a presumption that Mr Madoukou will respect his obligations pursuant to Articles 5, 8, and 22(3) of the Code of Professional Conduct for Counsel (“Code”)⁴; (3) an actual or latent conflict of interest or other impediment to representation does not *necessarily* arise on account of a prior relationship to another witness or suspect, particularly given the *limited* and *transactional* role of Legal Advisers appointed pursuant to rule 74(10) of the Rules of Procedure and Evidence (“Rules”).

2. Although P-0458's testimony is not presently scheduled, because the nature of the objection impacts Mr Madoukou’s appointment to represent another witness who is expected to testify, the Chamber should address the matter.

II. SUBMISSIONS

A. The purported conflict of interest or impediment to representation is wholly speculative

3. The Defence’s assertion that “Mr Jean Pierre Madoukou, by virtue of this dual mandate, is in a position of conflict of interest which bars him from exercising his mandate a Legal Adviser for Witness P-0458”⁵ is inapposite.

¹ ICC-01/14-01/18-1115.

² See Article 16(1) and (3) of the Code.

³ See Article 12 of the Code.

⁴ ICC-01/14-01/18-1109-Conf-AnxII.

⁵ ICC-01/14-01/18-1115.

4. *First*, the Defence’s assertions are conclusory. The Request does not concretely allege or establish the nature of the purported adverse interests between P-0306 and P-0458, and relies instead on conjecture.⁶ *Second*, the Request fails to substantiate how Mr Madoukou’s prior appointment as a Legal Adviser for P-0306 or other previous role in respect of any witness gives rise to an actual risk of a conflict of interest.⁷ As the Pre-Trial Chamber in *Bemba et al.* case observed, “[t]he inconveniences which replacement of counsel by its nature inevitably entails should not be brought about if not warranted, on the basis of pure speculation and in the absence of compelling circumstances”.⁸

5. Absent any convincing explanation as to why Mr Madoukou’s prior appointments with respect to P-0306 or conversely with respect to P-0458 would give rise to a conflict of interest, precluding his assignment to either pursuant to rule 74, the Request should be rejected.

B. There is a presumption that Mr Jean Pierre Madoukou will respect his obligations pursuant to Articles 5, 8, and 22(3) of the Code

6. *First*, the Registry has vetted and appointed Mr Madoukou as a qualified and non-conflicted lawyer⁹ to provide independent legal advice to both P-0306 and P-0458 in accordance with rule 74(10) and the “Initial Directions on the conduct of the proceedings”.¹⁰

⁶ See *e.g.* ICC-01/14-01/18-1115, para. 8, “where his two clients *might* have adverse interests”, and para. 10, “Mr Madoukou will also be exposed to confidential information during the examination and cross-examinations of Witness P-0306 that *could be of relevance* to the representation of Witness P-0458. Mr Madoukou *would in this case* be in a conflicting position”.

⁷ *Ibid.*

⁸ ICC-01/05-01/13-307, para. 4; see also ICC-01/14-01/18-916-Conf, para. 11.

⁹ ICC-01/14-01/18-805-Conf, para. 8 (noting that “[i]t is incumbent on the Registry to make the necessary arrangements to appoint a qualified and non-conflicted lawyer to provide independent legal advice to the 21 Witnesses regarding their potential self-incrimination during testimony”).

¹⁰ ICC-01/14-01/18-631, para. 38; see also ICC-01/14-01/18-857, para. 4.

7. *Second*, Madoukou has executed the solemn undertakings required by articles 5 and 22(3) of the Code,¹¹ which obliges counsel to respect the Court's rules on secrecy and confidentiality and not to reveal any confidential information, unless such disclosure is provided for under the Court's legal framework.¹² As such, Mr Madoukou will fulfil his professional obligations as per the requirements of the Code.

C. An actual or latent conflict of interest or other impediment to representation does not *necessarily* arise on account of a prior relationship to another witness or suspect, particularly given the *limited* and *transactional* role of rule 74 Legal Advisers

8. The Defence's assertion that "Mr Madoukou would in this case be in a conflicting position between his duty to respect the confidentiality of the information related to the examination of Witness P-0306 and the duty to provide proper, independent and qualified legal advice to Witness P-0458"¹³ is unavailing. The Defence fails to point to any authority allowing the Chamber to conclude that an actual or latent conflict of interest arises by virtue of a prior professional relationship alone. The Court's jurisprudence indeed suggests otherwise, and establishes that the role of rule 74 Legal Advisers is very limited and transactional in nature.

9. In the *Al Hassan* case, Trial Chamber X held that:

"[t]he role of a Rule 74 counsel is otherwise well defined, sufficiently limited in scope, and that they are to act in accordance with the core legal texts, particularly the Code of Professional Conduct for counsel. They are to advise the witnesses

¹¹ ICC-01/14-01/18-1109-Conf-AnxII.

¹² See Article 8 of the Code.

¹³ ICC-01/14-01/18-1115, para. 10.

on issues relating to self-incrimination alone and are not to otherwise discuss other aspects of the witness's testimony".¹⁴

10. In the *Bemba* case, Trial Chamber III held that:

"[t]he mandate of the duty counsel appointed by the Registry to provide notification of the provisions of Rule 74 of the Rules to Witness D04-49 and other witnesses is strictly limited to the issue of self-incrimination."¹⁵

11. Thus, the Request fails to identify any founded basis for the Chamber to find that Mr Madoukou's objective and limited role as a rule 74 Legal Adviser for either or both P-0306 and P-0458 involves any conflict of interest.

III. CONCLUSION

12. For the foregoing reasons, the Chamber should reject the Request.



Karim A. A. Khan QC, Prosecutor

Dated this 23rd day of September 2021
At The Hague, The Netherlands

¹⁴ ICC-01/12-01/18-666, para. 41.

¹⁵ ICC-01/05-01/08-2436, para. 6; *see also* ICC-01/05-01/13-307, para. 7.