

1 International Criminal Court
2 Appeals Chamber - Courtroom 1
3 Presiding Judge Akua Kuenyehia
4 Situation in The Central African Republic - ICC-01/05-01/08
5 In the case of The Prosecutor v Jean-Pierre Bemba Gombo
6 Wednesday, 2 December 2009
7 (The hearing starts at 9.00 a.m.)
8 (Open session)

9 THE COURT USHER: All rise. The International Criminal Court is now in session.
10 Please be seated.

11 THE PRESIDING JUDGE: Good morning. Before beginning with the delivery of the
12 Appeals Chamber judgment this morning, I have been requested to allow a press photographer
13 to take pictures in the courtroom. Court officer, will you please invite the photographer
14 to enter. Thank you.

15 We give you approximately one to two minutes to finish this. Thank you.
16 (Pause in proceedings)

17 Thank you. Court officer, could you please call the case now.

18 THE COURT OFFICER: Situation in the Central African Republic. Case, The
19 Prosecutor v. Jean-Pierre Bemba Gombo. ICC-01/05-01/08.

20 THE PRESIDING JUDGE: Thank you very much. May I now call the participants to
21 please introduce themselves for the record, beginning with the Office of the Prosecutor.

22 MR GUARIGLIA: Good morning, your Honour. I'm Fabrizio Guariglia, Senior Appeals
23 Counsel in the Office of the Prosecutor. And appearing with me today are Ms. Petra Kneuer,
24 Senior Trial Lawyer in the Bemba case, and our case manager is Carmen Garcia Ramos. Thank
25 you.

1 THE PRESIDING JUDGE: Thank you. May I ask now the Defence to introduce
2 themselves.

3 MR LIRISS: (Interpretation) Thank you, your Honour. I am lead counsel for
4 Mr Bemba, Mr Nkwebe. I am assisted by my learned colleague Mr Aimé Kilolo, Mr Jean Mangenda
5 Kabongo, our case manager. And that's our team for the moment.

6 THE PRESIDING JUDGE: Now the representative of victims.

7 MS MASSIDDA: Thank you, your Honour. Good morning. (Interpretation) The
8 victims are represented by two counsel. Ms Marie-Édith Douzima Lawson could not attend
9 this morning. I am representing her as well. I, myself, Paolina Massidda, lead counsel
10 of the OPCV. I am assisted by Ms Caroline Walter, assistant counsel. Thank you.

11 THE PRESIDING JUDGE: This morning I shall summarise the judgment of the Appeals
12 Chamber on the Appeal of the Prosecutor against the decision of the Pre-Trial Chamber
13 II of 14 August, which *inter alia* granted the conditional release of Mr Bemba. I should
14 emphasise that the written judgment which will be filed confidentially and in a public
15 redacted form after this hearing shall be the authentic version and not the summary.

16 The Appeal of the Prosecutor is founded on two grounds:

17 Namely, (i), that the Pre-Trial Chamber erred in finding that a substantial
18 change in circumstances necessitated the conditional release of Mr Bemba.

19 And (ii), that the Pre-Trial Chamber erred in determining that Mr Bemba be granted
20 conditional release without specifying the appropriate conditions to be imposed or
21 identifying the State to which Mr Bemba would be released or whether that State would
22 be able to enforce the conditions imposed.

23 The Appeals Chamber after careful deliberation unanimously decides that the
24 decision of Pre-Trial Chamber II of 14 August 2009 entitled "Decision on the Interim
25 Release of Jean-Pierre Bemba Gombo and convening hearings with the Kingdom of Belgium,

1 the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the
2 Italian Republic and the Republic of South Africa is reversed."

3 I shall now summarise the reasons for the Appeals Chamber's judgment. On the
4 first ground, in relation to the first ground of appeal the arguments of the Appellant
5 pertain to the factual basis for the decision to release Mr Bemba. Thus, in order to
6 justify the intervention of the Appeals Chamber, it would have to be demonstrated that
7 the Pre-Trial Chamber committed an error of fact when it misappreciated facts, disregarded
8 relevant facts or took into account facts extraneous to the sub judice issues in concluding
9 that the conditions of Article 58(1) of the Statute are no longer met on account of a
10 change of circumstances.

11 In this analysis, under Article 58(1)(b)(i) of the Statute, the Pre-Trial Chamber
12 considers several factors that in its view reflected a substantial change of circumstances
13 since the issuance of its previous ruling on Mr Bemba's detention.

14 The Appeals Chamber in reviewing the Pre-Trial Chamber's findings in this regard
15 discerns clear errors of fact with respect to each factor. These errors are found to
16 vitiate the Impugned Decision and in such circumstances the decision must be reversed.

17 For the purposes of this summary which has been delivered in open court, I will
18 proceed to highlight only a few of these factors so as not to compromise the confidential
19 nature of some of the factual findings.

20 With regard to the gravity of the charges confirmed against Mr Bemba and the
21 overall length of sentence he may face if convicted, the Pre-Trial Chamber in the Impugned
22 Decision acknowledged that the charges confirmed against Mr Bemba in the decision of
23 15 June 2009 may still result in a conviction leading to an overall lengthy sentence.
24 However, the Chamber concluded that although this factor, and I quote, "could constitute
25 an incentive" to abscond, it could not on its own justify long periods of pre-trial detention.

1 The Appeals Chamber finds that the Pre-Trial Chamber misappreciated the weight
2 to be attached to this factor to which it had previously attached much importance. The
3 confirmation of charges against Mr Bemba meant that there were no substantial grounds
4 to believe that he committed the crimes charged which increased the likelihood that he
5 would abscond.

6 In addition, the Appeals Chamber finds that the potential length of the sentence
7 that Mr Bemba is likely to serve if convicted is a further incentive for him to abscond.
8 While the confirmation of charges is in itself a changed circumstance, in the view of
9 the Appeals Chamber the impact of this circumstance heightened the risk of Mr Bemba
10 absconding.

11 With regard to Mr Bemba's financial situation and resources, prior decisions
12 of the Pre-Trial Chamber held that he had access to significant financial resources with
13 would enable him to abscond.

14 In the Impugned Decision, the Appeals Chamber notes that the Pre-Trial Chamber
15 refrained from entering a finding on the financial situation of Mr Bemba or on his ability
16 to use his resources to abscond. The Appeals Chamber considers the financial status of
17 Mr Bemba to be a relevant factor in determining whether he would have the means to abscond
18 or even to interfere with the investigations or the safety of the witnesses. In omitting
19 to make a finding on Mr Bemba's financial situation, the Pre-Trial Chamber disregarded
20 a relevant factor that it previously considered important and thus the Chamber erred.

21 Similarly, other factors cited as changed circumstances were all found to have
22 been misappreciated by the Pre-Trial Chamber on account of a lack of explanation as to
23 why these factors which were previously assessed in favour of continued detention now
24 constituted changed circumstances granting Mr Bemba's release. These factors included
25 Mr Bemba's political and professional position; international contacts and ties; his

1 offer to surrender at some point prior to his arrest -- I must apologise to the interpreters.
2 I will slow down. Let me start the paragraph again.

3 Similarly, other factors cited as changed circumstances were all found to have
4 been misappreciated by the Pre-Trial Chamber on account of a lack of explanation as to
5 why these factors which were previously assessed in favour of continued detention now
6 constituted changed circumstances warranting Mr Bemba's release. These factors included
7 Mr Bemba's political and professional position; international contacts and ties; his
8 offer to surrender at some point prior to his arrest; his professed willingness to cooperate
9 and appear voluntarily and his unwillingness to set aside his, and I quote, "years of
10 sacrifice by becoming a fugitive."

11 In relation to the new factors cited by the Pre-Trial Chamber as constituting
12 changed circumstances - namely, Mr Bemba's conduct whilst in detention and his conduct
13 during his authorised attendance of his father's funeral - the Appeals Chamber finds
14 that the Pre-Trial Chamber erred in its assessment as it disregarded relevant factors
15 in relation to such conduct.

16 Therefore, in analysing each of the factors considered by the Pre-Trial Chamber,
17 the Appeals Chamber determines that the Pre-Trial Chamber misappreciated and disregarded
18 relevant facts in relation to its conclusion that the entirety of factors before it reflected
19 a substantial change of circumstances.

20 The second ground of appeal. In relation to the second ground of the Appeal,
21 the Appeals Chamber determines that the Pre-Trial Chamber erred in finding that Mr Bemba
22 should be released with conditions without also specifying the appropriate conditions
23 or identifying a State willing to accept Mr Bemba and enforce the conditions imposed.

24 The Appeals Chamber has held that a decision on interim release is not discretionary.
25 If the Pre-Trial Chamber is satisfied that the conditions under Article 58(1) of the

1 Statute are met, it shall release the person with or without conditions. However, if
2 the release will lead to any of the risk specified under Article 58(1)(b) of the Statute,
3 the Chamber may impose appropriate conditions to mitigate the risk pursuant to Rule 119
4 of the Rules of Procedure and Evidence. The result of this two-tiered examination is
5 a single and severable decision that grants conditional release on the basis of specific
6 and enforceable conditions.

7 Furthermore, in order to grant conditional release, a State willing to accept
8 the person concerned and enforce the conditions must be identified prior to the decision.
9 This is because the International Criminal Court exercises its powers and functions on
10 the territories of State Parties and, as such, is dependent on State cooperation in relation
11 to accepting a person who has been conditionally released as well as ensuring that the
12 conditions imposed by the Court are enforced. Without such cooperation, the decision
13 to grant conditional release would be ineffective.

14 For these reasons the Appeals Chamber considers it appropriate to uphold both
15 grounds of appeal and to reverse the Impugned Decision.

16 This concludes the summary of the judgment. Thank you.

17 The hearing is concluded. Thank you very much. Thank you for our interpreters,
18 thank you to all the participants and our people in the public gallery. This is the end
19 of it. Thank you very much.

20 THE COURT USHER: All rise.

21 (The hearing ends at 9.16 a.m.)