

1 International Criminal Court

2 Trial Chamber I - Courtroom 2

3 Presiding Judge Adrian Fulford,

4 Judge Elizabeth Odio Benito and Judge René Blattmann

5 Situation in the Democratic Republic of the Congo -

6 ICC-01/04-01/06

7 In the case of The Prosecutor v. Thomas Lubanga Dyilo

8 Thursday, 8 July 2010

9 (The hearing starts at 3.33 p.m.)

10 (Open session)

11 THE COURT USHER: All rise. The International

12 Criminal Court is now in session. Please be seated.

13 PRESIDING JUDGE FULFORD: Good afternoon. May I first

14 offer our sincere apologies to everyone involved in this case

15 for sitting many hours later than we had intended to do so.

16 Depending on how quickly the Registry have operated, you may or

17 may not yet know the reasons; it seems as though you may.

18 We, about half-an-hour ago, issued a written decision

19 which has been filed with the Registry staying these proceedings

20 in their entirety as an abuse of the process of this Court. We

21 do not intend even to provide a summary of those reasons now

22 because they are available publicly, save for a few words, and

23 it would be a waste of everyone's time for us to repeat that

24 which is readily available.

25 What needs to be discussed very briefly this afternoon

1 are the consequences of that decision. As a result of the stay,
2 effectively only three things can occur: The first is that the
3 Chamber will consider, of course, any applications for leave to
4 appeal founded on our stay, as well as on any related issues
5 that are filed. Second, we will entertain submissions at 9.30
6 on 15 July in this Court as regards the accused's continued
7 detention.

8 There is one outstanding matter that I will turn to in
9 a moment. Otherwise, all proceedings in this case are stayed.
10 That means that the court officer currently in the DRC should
11 return. We do not propose to hear any further evidence.
12 Witness 38 should receive our apologies, if he has been
13 inconvenienced, as should the other witness whose evidence we
14 had intended to hear by way of the video link.

15 There are to be no filings, no submissions, no
16 applications on any issues other than those which I have just
17 indicated.

18 The final matter which falls for consideration - and
19 Ms Bensouda, we are grateful to you for your presence this
20 afternoon - is that for the reasons set out in our decision, we
21 consider that the events of yesterday morning and afternoon and,
22 indeed, evening constitute on the part of the Prosecution a
23 deliberate refusal to comply with our directions for the
24 purposes of Article 71 of the Statute.

25 Before the Chamber can consider any sanctions flowing

1 from that deliberate refusal to implement our orders by Rule 71,
2 the offending party or individual is to be provided with a
3 warning. We have requested your attendance this afternoon
4 simply to assist us as to the individual to whom that warning
5 ought to be directed.

6 It seemed to us on a prima facie basis that it would
7 be unfair, if not unkind, to direct that warning to either
8 Mr Sachdeva or Ms Samson who are, in all likelihood, not in
9 reality responsible for any of the overarching decisions which
10 were taken during the course of yesterday. It seems to us that
11 the two likely candidates for that warning are either yourself
12 as Deputy Prosecutor and lead counsel in this case or, equally,
13 the Prosecutor himself. I would be grateful for your
14 submissions as to which of the two should receive formal warning
15 from us for a deliberate refusal to implement our unequivocal
16 orders.

17 MS BENSOUDA: Thank you, Mr President. Mr President,
18 your Honours, I first of all would want to -- if I may be
19 allowed to say that the Prosecution has not made any deliberate
20 attempt to --

21 PRESIDING JUDGE FULFORD: Not the time, I'm afraid,
22 Ms Bensouda. If you wish to respond to the decision that we
23 have handed down, you will have full opportunity to do so should
24 you feel inclined to seek our leave for an appeal to the Appeals
25 Chamber.

1 Given that we have unburdened of ourselves of the
2 decision, descending now into the merits would be wholly
3 inappropriate. I'm afraid -- but thank you for the offer, I'm
4 afraid that the limit of the assistance that we require this
5 afternoon is for you to identify, please, who should receiving
6 the warning which is the inevitable consequence of the decision
7 that we have made.

8 MS BENSOUDA: Mr President, if I may consult, but I
9 would want to say that the warning, this stage that we are now
10 in, is premature. I want to submit that. We have not reached
11 at the stage where a warning should be given to either the
12 Prosecutor or to myself, but if --

13 PRESIDING JUDGE FULFORD: You haven't breached a
14 warning, and that is why we need to issue one. What you have
15 breached are two clear and unequivocal orders that were made
16 yesterday. Now, before sanctions can be considered for those
17 unequivocal breaches of our orders, we need to issue a warning.
18 I'm not going to ask again. Can you please identify for me the
19 individual to whom that warning should be directed.

20 MS BENSOUDA: If I may consult, Mr President.

21 PRESIDING JUDGE FULFORD: Most assuredly.

22 (Counsel confer)

23 MS BENSOUDA: Mr President, if the warning can be
24 addressed to both the Prosecutor and myself.

25 PRESIDING JUDGE FULFORD: Thank you very much, indeed,

1 Ms Bensouda.

2 Maître Mabilie, we're not going to calling on you at
3 this stage. I simply want to observe that the fact that you
4 have not been asked to respond to the two filings of the
5 Prosecution last night has not been the result of either a
6 deliberate or inadvertent decision, if there can be such a thing
7 as an inadvertent decision, to exclude you from the process.

8 It was, rather, that once we had arrived at the
9 decision which we considered to be the inevitable consequence of
10 what happened yesterday, it seemed to us inconceivable that the
11 Defence could request any other order or any better order as far
12 as the accused's concerned, than the one that we have handed
13 down. In those circumstances, it seemed to us that submissions
14 from the Defence would be otiose. So it was not bad manners on
15 our part; it was as we saw it the inevitable result of the order
16 that we intended to make.

17 Thank you all for your attendance. We will rise.

18 THE COURT USHER: All rise.

19 (The hearing concludes at 3.43 p.m.)