

1 International Criminal Court

2 Appeals Chamber - Courtroom 1

3 Presiding Judge Akua Kuenyehia

4 Situation: Central African Republic - ICC-01/05-01/08

5 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo

6 Decision

7 Friday, 19 November 2010

8 (The hearing starts in open session at 2.30 p.m.)

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

10 Please be seated.

11 JUDGE KUENYEHIA: Good afternoon, ladies and gentlemen. Court officer, could
12 you please call the case.

13 THE COURT OFFICER: Situation in the Central African Republic, the case of the
14 Prosecutor versus Jean-Pierre Bemba Gombo, ICC-01/05-01/08.

15 JUDGE KUENYEHIA: Thank you. May I please ask the participants to introduce
16 themselves for the record, beginning with the Office of the Prosecutor.

17 MR GUARIGLIA: Good afternoon, your Honour. It's Fabricio Guariglia, senior
18 appeals counsel in the Office of the Prosecutor. With me today are appeal counsels
19 Meritxell Regue and Reinhold Gallmetzer.

20 MR KILOLO: (Interpretation) Good afternoon, your Honour. The Defence is
21 represented by Mr Peter Haynes, associate counsel; Mr Nick Kaufman, legal
22 consultant; Kate Gibson, legal assistant; Jean-Jacques Mangenda, our case manager;
23 and I am also associate counsel. Mr Liriss, senior counsel, was unable to attend
24 court this afternoon. And of course our client, Mr Jean-Pierre Bemba Gombo, is in
25 attendance.

1 JUDGE KUENYEHIA: Thank you. And now the Representatives for Victims.

2 MS YAZJI: Good afternoon, your Honour. Maria Victoria Yazji on behalf of the
3 Office of Public Counsel for Victims.

4 JUDGE KUENYEHIA: Thank you. This afternoon I shall summarise the judgment
5 of the Appeals Chamber on the appeal of Mr Bemba against the decision of Trial
6 Chamber III of 28 July 2010 entitled "Decision on the review of the detention of
7 Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and
8 Evidence." I should emphasise that the actual judgment and not this summary,
9 which will be filed and notified to the parties and participants shortly, is the
10 authoritative version.

11 Before addressing the merits of the appeal, I shall briefly recount the relevant
12 procedural history that precedes the appeal.

13 On 28 July 2010, Trial Chamber III rendered its decision on the review of Mr Bemba's
14 detention. In this decision the Trial Chamber concluded that Mr Bemba's detention
15 should be maintained on the basis that there had been "neither a material change of
16 circumstances since the last review of detention nor inexcusable delay attributable to
17 the prosecution" and that it was satisfied that the requirements of article 58(1)(b)(i) of
18 the Statute applies.

19 On 29 July 2010, Mr Bemba filed his Notice of Appeal against the Trial Chamber's
20 decision, followed shortly thereafter by his Document in Support of the Appeal in
21 which Mr Bemba raises three grounds of appeal.

22 On 10 August 2010, the Prosecutor responded to Mr Bemba's Document in Support of
23 the Appeal and on 24 August 2010, with the leave of the Appeals Chamber, the
24 victims, represented by the Office of Public Counsel for Victims, filed their
25 observations on the merits of the appeal.

1 Turning now to the Appeals Chamber's consideration of the merits of the appeal.

2 Mr Bemba raises three grounds of appeal. I shall address each ground of appeal in
3 turn and then state the Appeals Chamber's determination of each ground.

4 The First Ground of Appeal:

5 Under the first ground of appeal, Mr Bemba alleges that the Trial Chamber failed to
6 conduct a thorough review of the information before it in order to be in a position to
7 rule on the issue of whether or not his detention was still justified.

8 In support of this contention, Mr Bemba argues, inter alia, that the "newly constituted
9 Trial Chamber III" should have conducted a de novo examination and assessment of
10 the facts before ruling on his continued detention. In addition, Mr Bemba contends
11 that it was insufficient for the Trial Chamber to note that the three new matters relied
12 on by him do not constitute a material change in circumstances. Furthermore,
13 Mr Bemba argues that it was equally insufficient for the Trial Chamber to confine
14 itself to merely citing the requirements of article 58, sub-paragraph (1)(b) as being met
15 without a thorough factual analysis.

16 In response the Prosecutor argues, inter alia, the partial change in the composition of
17 the Chamber was irrelevant. While the Trial Chamber could have revisited the prior
18 findings, in this case, and in the absence of relevant new information, it was not
19 necessary that the Trial Chamber expressly re-evaluate and enter new findings with
20 respect to the previously proven facts.

21 The Victims under this ground of appeal largely agreed with the submissions of the
22 Prosecutor.

23 Mr Bemba's arguments under this ground of appeal require the Appeals Chamber to
24 address the scope of the periodic review of a ruling on detention pursuant to article
25 60, sub-paragraph 3 of the Statute. In particular, the question before the Appeals

1 Chamber is whether a Trial Chamber correctly carries out a periodic review when it
2 restricts its assessment to only the alleged new circumstances raised by the detained
3 person.

4 After a careful examination of the relevant provisions governing reviews of detention
5 as well as the role of the Chamber and the Prosecutor in such reviews of detention,
6 the Appeals Chamber finds that a Chamber carrying out a periodic review of a ruling
7 on detention under article 60, sub-paragraph 3 of the Statute, must satisfy itself that
8 the conditions under article 58, paragraph 1 of the Statute continue to be met. In
9 doing so, a Chamber must firstly revert to the ruling on detention, which is the initial
10 decision under article 60, sub-paragraph 2, as well as any potential subsequent
11 modification made to that decision under article 60, sub-paragraph 3 of the Statute.
12 Secondly, in reverting to the ruling on detention, the Chamber must determine
13 whether there has been a change in the circumstances underpinning the ruling and
14 whether there are any new circumstances that have a bearing on the conditions under
15 article 58, sub-paragraph 1 of the Statute. The Chamber must weigh the Prosecutor's
16 submissions against the submissions of the detained person and must also consider
17 any other information which has a bearing on the subject.

18 The Appeals Chamber would underline that the role of the Prosecutor in periodic
19 reviews of detention is significant in that the Prosecutor must provide information to
20 enable the Chamber to satisfy itself that continued detention is warranted. In this
21 regard the Appeals Chamber notes that while it is correct that the Prosecutor does not
22 have to re-establish circumstances that have already been established, he must show
23 that there has been no change in those circumstances.

24 Turning to the case at hand, the Appeals Chamber finds that in reviewing Mr Bemba's
25 detention, Trial Chamber III restricted its review to what it characterised as the

1 arguments put forward by Mr Bemba to support his request to be released, namely,
2 that there had been a material change in circumstances because of the postponement
3 of the trial and the purported lack of a valid document containing the charges, and
4 that there had been purportedly inexcusable delay by the Prosecutor. The Appeals
5 Chamber finds that this was insufficient. In carrying out a periodic review of
6 Mr Bemba's detention, the Trial Chamber failed to revert to the ruling on detention in
7 the manner outlined above and instead restricted itself to only assessing the alleged
8 circumstances which Mr Bemba presented.

9 Second Ground of Appeal:

10 Mr Bemba submits that the Trial Chamber erred in dismissing as irrelevant his
11 request for assistance from the Registry to obtain State guarantees of appearance on
12 the basis that there had been "no material change in circumstances since the last
13 review of his detention."

14 In support of his argument Mr Bemba submits that the Request for assistance from
15 the Registry was made in the alternative and aimed at securing a guarantee that he
16 would appear at trial on which he could rely for a future application for release.

17 The Prosecutor in response submits that the Trial Chamber correctly dismissed
18 Mr Bemba's Request for assistance from the Registry on the basis that Mr Bemba
19 failed to identify any such guarantee which could have impacted on the Trial
20 Chamber's decision.

21 The Victims also submit that Mr Bemba's Request for assistance from the Registry did
22 not indicate a changed circumstance that ought to have been considered by the Trial
23 Chamber.

24 The Appeals Chamber recalls that in raising grounds of appeal, an appellant is
25 obliged to not only set out the alleged error but also to indicate, with sufficient

1 precision, how this error would have materially affected the impugned decision.

2 The Appeals Chamber agrees with the submissions of the Prosecutor that under this
3 ground of appeal, Mr Bemba has failed to identify how the alleged error of the Trial
4 Chamber in addressing the request for assistance from the Registry could have
5 impacted the Trial Chamber's decision to maintain Mr Bemba's detention.

6 Mr Bemba does not claim that the request in itself constituted a change in
7 circumstances that should have led to his release. Instead, he merely claims that the
8 Trial Chamber erred in the way it responded to the request for assistance from the
9 Registry.

10 Furthermore, the question of whether the Trial Chamber correctly dealt with the
11 request for assistance from the Registry for the purposes of future applications for
12 release is not properly before the Appeals Chamber. Such an issue could, if at all,
13 come before the Appeals Chamber only if leave to appeal had been sought and
14 granted pursuant to article 82, sub-paragraph (1) (d) of the Statute. Accordingly, the
15 Appeals Chamber finds that Mr Bemba has failed to meet the minimum requirements
16 for a consideration of the merits of this ground of appeal and therefore the second
17 ground of appeal is dismissed.

18 Third Ground of Appeal:

19 Under the third ground of appeal, Mr Bemba submits that the Trial Chamber erred in
20 law by applying articles 58, sub-paragraph 1(b) and 60, sub-paragraph 3, of the
21 Statute to his request for a modification of his detention regime to enable his
22 short-term release every weekend, subject to conditions.

23 At the outset the Appeals Chamber notes that Mr Bemba's formulation of his request
24 before the Trial Chamber was ambiguous. In particular, it was unclear whether he
25 was requesting to be placed under house arrest or simply to be released every

1 weekend on to the territory of The Netherlands subject to conditions. It is only on
2 appeal that Mr Bemba states unambiguously that with his request he was not seeking
3 release from custody, as in his view he would still be deprived of his liberty.

4 Thus under this ground of appeal the issue to be determined is whether the Trial
5 Chamber erred in its determination of Mr Bemba's request in the light of Mr Bemba's
6 submissions before it.

7 The Appeals Chamber finds that the Trial Chamber correctly construed Mr Bemba's
8 Request as a request for conditional weekend release. The Appeal Chamber finds
9 that this approach of the Trial Chamber was reasonable, given Mr Bemba's

10 ambiguous submission before it, and in particular in the light of his prayer for relief,
11 which sought "short-term release every weekend." Thus the Appeals Chamber is not
12 persuaded by Mr Bemba's argument that the Trial Chamber applied the wrong legal
13 regime to his request. A request for conditional weekend release necessarily

14 involves an application of articles 60, sub-paragraph 3 and 58, sub-paragraph 1.

15 Thus, the third ground of appeal is dismissed.

16 In conclusion, the Appeals Chamber, after careful deliberation, unanimously decides
17 in the light of its findings under the first ground of appeal that:

18 The "Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo
19 pursuant to Rule 118(2) of the Rules of Procedure and Evidence" is reversed.

20 Trial Chamber III is directed to carry out a new review under article 60(3) of the
21 Statute as to whether Mr Bemba should remain in detention or whether he should be
22 released, with or without conditions. Until, and subject to that review, Mr Bemba
23 shall remain in detention.

24 This concludes this afternoon's hearing.

25 I would like to thank the court officers, interpreters, court reporters, security officers,

- 1 those in the public gallery, counsel on both sides, for your attendance this afternoon.
- 2 Thank you.
- 3 This ends the hearing.
- 4 (The hearing ends at 2.49 p.m.)
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