

1 International Criminal Court
2 Trial Chamber VII
3 Situation: Central African Republic
4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba,
5 Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and
6 Narcisse Arido - ICC-01/05-01/13
7 Presiding Judge Bertram Schmitt, Judge Marc Perrin de Brichambaut and
8 Judge Raul Pangalangan
9 Delivery of Judgment - Courtroom 1
10 Wednesday, 19 October 2016
11 (The judgment starts in open session at 2.30 p.m.)
12 THE COURT USHER: [14:30:23] All rise.
13 The International Criminal Court is now in session.
14 PRESIDING JUDGE SCHMITT: (Microphone not activated)
15 THE COURT OFFICER: [14:31:31] Thank you, Mr President.
16 The situation in the Central African Republic in the case of The Prosecutor versus
17 Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo,
18 Fidèle Babala Wandu and Narcisse Arido, case reference ICC-01/05-01/13.
19 For the record, we are in open session.
20 PRESIDING JUDGE SCHMITT: Trial Chamber VII of the International Criminal
21 Court hereby delivers a summary of today's judgment as to whether
22 Mr Jean-Pierre Bemba Gombo, Mr Bemba, Mr Aimé Kilolo Musamba, Mr Kilolo,
23 Mr Jean-Jacques Mangenda Kabongo, Mr Mangenda, Mr Fidèle Babala Wandu,
24 Mr Babala, and Mr Narcisse Arido, Mr Arido, are guilty of having committed offences
25 against the administration of justice involving fourteen witnesses who had testified

1 on behalf of the Defence in the case of The Prosecutor versus Jean-Pierre Bemba
2 Gombo, the so-called 'Main Case'.

3 The Chamber underscores that only the written judgment in English is authoritative.

4 May I first please ask the parties to introduce themselves. Madam Prosecutor.

5 MS BENSOUA: Thank you, Mr President. Mr President, honourable Judges, the
6 Office of the Prosecutor is represented today by Mr Kweku Vanderpuye, senior trial
7 lawyer; Olivia Struyven, trial lawyer; Hesham Mourad, trial lawyer; Ruth Frolich,
8 trial lawyer; Nema Milaninia, trial lawyer; Ms Sylvie Wakchom, assistant trial lawyer;
9 Ms Ester Kosova, assistant legal officer; Ms Sylvie Vidinha, case manager; and
10 Ms Marie-Alvine Tchekanda, associate international cooperation advisor; and myself,
11 Fatou Bensouda, Prosecutor.

12 PRESIDING JUDGE SCHMITT: Thank you very much.

13 We turn now to the Defence. Perhaps we start with the Defence for Mr Kilolo.

14 MR DJUNGA: (Interpretation) Good afternoon, your Honour, your Honours.

15 Counsel Aimé Kilolo Musamba is assisted by Rosalie Mbengue, who's the case
16 manager; Grogga Lueka, advocate with the New York Bar and case manager;
17 Steven Powles, lawyer with the London Bar, associate counsel; and myself,
18 Paul Djunga, advocate at the Paris Bar and lead counsel.

19 PRESIDING JUDGE SCHMITT: The Defence for Mr Arido please.

20 MR TAKU: May it please, my name is Chief Charles Achaleke Taku, I'm counsel for
21 Mr Arido. I'm assisted today by Mr Tharcisse Gatarama and Mr Michael Rowse.
22 And my colleague Beth Lyons is not able to be here today, your Honours. Thank
23 you so much.

24 PRESIDING JUDGE SCHMITT: Thank you very much.

25 The Defence for Mr Mangenda.

1 MR GOSNELL: Good afternoon, Mr President, and good afternoon, your Honours.

2 Christopher Gosnell and Nikki Sethi for Mr Mangenda. Thank you.

3 PRESIDING JUDGE SCHMITT: Thank you.

4 The Defence for Mr Babala.

5 MR KILENDA: (Interpretation) Good afternoon, your Honour. The Defence of

6 Mr Babala is composed of two case managers, Coralie Klipfel,

7 Adriana-Maria Manolescu, two legal assistants, Godefroid Bokolombe, and two

8 lawyers, Maître Azama Shalie Rodoma, lawyer at the Brussels Bar, associate counsel,

9 and myself, Jean-Pierre Kilenda Kakengi Basila, lawyer with the Brussels Bar, from

10 Kinshasa Gombe, lead counsel.

11 PRESIDING JUDGE SCHMITT: Thank you very much.

12 And finally, the Defence for Mr Bemba.

13 MS TAYLOR: Good afternoon, Mr President, your Honours.

14 Mr Jean-Pierre Bemba is represented today by Ms Ines Pierre de la Brière,

15 Ms Stephanie Schilder, Ms Yuqing Liu and myself, Melinda Taylor. Thank you.

16 PRESIDING JUDGE SCHMITT: Thank you very much.

17 Before I read out the summary of the main findings of the Chamber and finally the

18 verdict, please allow me some preliminary remarks.

19 This case was about offences against the administration of justice as Article 70 of the

20 Rome Statute puts it. This means it was about giving false testimony, presenting

21 false evidence and corruptly influencing witnesses. Although such offences are not

22 the core crimes this Court was established to try, it has become apparent in the short

23 time span of the Court's existence that preventing offences against the administration

24 of justice is of the utmost importance for the functioning of the International Criminal

25 Court.

1 Such offences have this significance because criminal interference with witnesses may
2 impede the discovery of the truth in cases involving genocide, crimes against
3 humanity and war crimes. They have this significance because they may impede
4 justice to victims of the most atrocious crimes. And ultimately they may impede the
5 Court's ability to fulfil its mandate.

6 Turning to the judgment, the Chamber is satisfied beyond reasonable doubt that the
7 accused committed offences against the administration of justice in this case.

8 Mr Bemba, Mr Kilolo and Mr Mangenda jointly agreed to illicitly interfere with
9 Defence witnesses in order to ensure that they would provide evidence in favour of
10 Mr Bemba. This common plan was made in the course of the Main Case between the
11 three accused and involved the corrupt influencing of, at least, fourteen Main Case
12 Defence witnesses, together with the false presentation of aspects of their evidence.

13 Mr Bemba, Mr Kilolo and Mr Mangenda adopted a series of measures with a view to
14 concealing their illicit activities, such as the abuse of the Registry's privileged
15 telephone line in the ICC Detention Centre, or money transfers to Defence witnesses
16 through third persons, or to persons close to the Defence witnesses so as to avoid
17 detection.

18 Mr Kilolo, assisted by Mr Mangenda, secretly distributed new telephones to Defence
19 witnesses without the knowledge of the Registry so that Mr Kilolo could stay in
20 contact with them. They also used coded language when speaking on the telephone,
21 making reference to persons by using acronyms, or using particular expressions, such
22 as the term "faire la couleur" or variants thereof, signifying the bribing or illicit
23 coaching of witnesses. As Mr Kilolo confirmed one day to Mr Mangenda,
24 complaining about the performance of one witness, quote: "Now you can see the
25 problem ... I've always told the client to 'redo the colour'. A day or two before the

1 person appears. Why? Because people forget ... you see? People don't remember
2 at all accurately." Unquote.

3 Mr Bemba, as the ultimate beneficiary of the common plan, planned, authorised and
4 approved the illicit coaching of the fourteen Main Case Defence witnesses and
5 provided precise instructions which were, in turn, implemented by Mr Kilolo.

6 Mr Bemba authorised the illicit payment of money to the witnesses prior to their
7 testimony. Mr Bemba also spoke with witnesses personally on the phone by abusing
8 the ICC Detention Centre privileged line. Mr Bemba took measures, as agreed with
9 Mr Kilolo and Mr Mangenda, to conceal the common plan, including the exploitation
10 of his privileged line at the ICC Detention Centre and remedial measures upon
11 learning of the Article 70 investigation against them.

12 Mr Kilolo as counsel for Mr Bemba, leading the Defence investigation activities,
13 implemented Mr Bemba's instructions and illicitly coached the fourteen Main Case
14 Defence witnesses either over the telephone or in personal meetings in close
15 proximity to the date of the witnesses' testimony. He instructed the witnesses on (a)
16 key points bearing on the subject matter of the Main Case and (b) matters bearing on
17 the credibility of the witnesses, such as their behaviour when testifying, their prior
18 contacts with the Defence, acquaintance with certain individuals, and payments of
19 money or promises received from the Main Case Defence.

20 Mr Kilolo illicitly coached, scripted, dictated and corrected the fourteen Main Case
21 Defence witnesses' expected testimonies, also in light of the evidence given by other
22 Main Case Defence witnesses. He, for example, instructed one witness, quote, "Here
23 is what you will tell them," unquote, quote, "You answer as we agreed" and "here
24 you'll only repeat and you'll only say" et cetera.

25 Mr Kilolo dictated to another witness, quote, "Say that you don't know about that.

1 You don't have that exact information ... If you give that it's going to look suspicious.
2 You don't know anything about that." Unquote.

3 Mr Kilolo also told witnesses to lie during their testimony about payments and
4 material benefits, non-monetary promises, prior contacts with the Main Case Defence
5 and acquaintances with certain individuals. For example, he gave concrete
6 instructions to a witness late at night, quote, "No one called you ... no one from the
7 Defence called you during the night to prepare you, telling you to be careful
8 tomorrow, say this and say that, never, never, never." Unquote.

9 Mr Kilolo's intention to impress upon witnesses what to say in court is further
10 underlined by his tone and language, such as the abundant use and constant
11 repetition of the directives given to another witness, such as, quote, "don't forget",
12 "you must simply stress that", "you have to say", "you will say", "don't say" or "stick
13 to". Unquote.

14 He also gave concrete directions as to how to behave in the courtroom. In one case
15 he said to the witness, quote, "If they confront you with other things that you and I
16 haven't agreed on, you just find it confusing, you don't know what to answer, just tell
17 them you don't know or that you've forgotten as it was a long time ago." Unquote.

18 All of this sought to obscure the impression that the Judges of Trial Chamber III
19 formed of the witnesses' testimonies. It attempted to impact their ability to properly
20 assess the witnesses' credibility, and ultimately establish the truth. To put it
21 straightforwardly: The Judges of Trial Chamber III may not have followed the
22 testimony of these witnesses but may essentially have followed Mr Kilolo's
23 conception of certain aspects of their testimony. It may have been Mr Kilolo who
24 spoke through the witnesses in the end.

25 Mr Kilolo kept close contact with all fourteen Defence witnesses before and during

1 their testimonies, sometimes late at night or early in the morning, so as to make sure
2 that they complied with his instructions. He did so in deliberate disregard of the
3 contact prohibition imposed by Trial Chamber III after the Defence witnesses had
4 been entrusted into the care of the Victims and Witnesses Unit. Mr Kilolo rehearsed
5 with the witnesses the prospective questions of the victims' legal representatives,
6 which had been confidentially shared with the Main Case Defence; and did so in the
7 same order they would be put in court and provided the expected replies. Mr Kilolo
8 also made the calling of witnesses dependent on their willingness to follow his
9 narrative, or on the fact that he had extensively briefed them beforehand. He also
10 intentionally gave, transferred or facilitated the giving of money (amounts varying
11 between 6 and 800 Euros or 1,300 US dollars), material benefits (for example a laptop)
12 or non-monetary promises (for example Mr Bemba's good graces) to witnesses with a
13 view to securing their testimonies in favour of Mr Bemba in the Main Case.

14 Mr Mangenda, whose role in the Defence team went beyond that solely of a case
15 manager, advised both Mr Kilolo and Mr Bemba on an equal footing and liaised
16 between the two. He also conveyed Mr Bemba's instructions, assisted and advised
17 Mr Kilolo on the illicit coaching activities. Mr Mangenda updated Mr Kilolo on the
18 testimony of witnesses whenever Mr Kilolo was not physically present in the
19 courtroom so that he could effectively and illicitly coach the witnesses in order to
20 streamline their evidence in favour of the Main Case Defence. For instance, when
21 Mr Kilolo asked Mr Mangenda whether co-counsel Peter Haynes had blamed him for
22 the bad performance of a witness, Mr Mangenda replied, quote: "So, what does he
23 want? There is a witness who's telling the truth. He should be happy." Unquote.

24 Mr Mangenda also advised on which witnesses performed badly or needed to be
25 instructed, and made proposals on how best to carry out the illicit witness coaching.

1 Mr Mangenda also provided Mr Kilolo with the questions of the victims' legal
2 representatives, knowing that Mr Kilolo would use them to illicitly coach witnesses.
3 He accompanied Mr Kilolo on field missions knowing that Mr Kilolo illicitly coached
4 the witnesses. He also participated in the distribution of cell phones to the Main
5 Case Defence witnesses, without the knowledge of the Registry, knowing that
6 Mr Kilolo would use them to remain in contact with the witnesses during their
7 testimony. Mr Mangenda also took steps, as agreed with Mr Bemba and Mr Kilolo,
8 to conceal the common plan, including remedial measures in light of his discovery of
9 the Article 70 investigation.

10 In achieving their goal, the three accused also relied on others, including the
11 co-accused Mr Babala and Mr Arido, who, though not part of the common plan, also
12 made efforts to further this goal. We will return to this.

13 On 11 October 2013, one month before the last Defence witness was called in the Main
14 Case, Mr Mangenda informed Mr Kilolo, quote, "top secret" that he had received
15 information that an investigation for alleged bribing of witnesses had been initiated
16 against them. Mr Mangenda explained to Mr Bemba the possible effect of such
17 investigations, quote: "That will now destroy all the witnesses we have." Unquote.

18 From the time the three accused gained knowledge of an Article 70 investigation
19 against them, a number of remedial measures were conceived and implemented with
20 a view to frustrating the Prosecution's investigation. Mr Bemba instructed Mr Kilolo
21 to contact all Defence witnesses in order to ascertain whether any one of them had
22 leaked information to the Prosecution. Mr Kilolo complied with this instruction.
23 Mr Bemba, Mr Kilolo, and Mr Mangenda agreed to offer Defence witnesses incentives
24 and money so that they might terminate their collaboration with the Prosecution, and
25 to obtain declarations from the Defence witnesses attesting that they had lied to the

1 Prosecution.

2 However, the Chamber was unable to establish that Mr Mangenda's involvement in
3 illicit activities with these witnesses relating to offences against the administration of
4 justice went beyond that just described.

5 Mr Babala was in regular telephone contact with Mr Bemba and was his financier,
6 transferring money at his behest. He intentionally effected a money transfer to the
7 wife of a witness and facilitated the money transfer to another witness's daughter.

8 In the context of those two payments, Mr Babala advised Mr Bemba, quote, "that it's
9 good to give people sugar," unquote, meaning to bribe witnesses. After Mr Bemba,

10 Mr Kilolo and Mr Mangenda became aware of the initiation of an Article 70

11 investigation against them, Mr Babala discussed possible remedial measures.

12 Mr Babala encouraged Mr Kilolo to ensure, quote, "le service après-vente" that is to
13 say paying witnesses after this testimonies before Trial Chamber III. However, the
14 Chamber was unable to establish that Mr Babala had any involvement with illicit
15 witness activities related to offences against the administration of justice other than
16 that already mentioned in respect of the two witnesses.

17 Mr Arido recruited four out of fourteen Main Case Defence witnesses and promised
18 them payment of 10 million Central African francs and relocation to Europe. These

19 promises were given by Mr Arido as an inducement to procure the testimony of the
20 four Main Case Defence witnesses in favour of Mr Bemba. Indeed, as the witness

21 confirmed the promised money was their, quote, "motivation" to testify in the Main

22 Case. Mr Arido acted as a go-between, as one witness has formulated it, and relayed
23 the witnesses' concerns and demands for money and relocation to Mr Kilolo. Prior

24 to Mr Kilolo interviewing the four witnesses, Mr Arido briefed them (or facilitated

25 their briefing by others) to present themselves as soldiers whilst believing that they

1 did not have such background. He assigned the witnesses their alleged military
2 ranks and handed out military insignia. He also provided details to the witnesses
3 regarding their purported military background, experience and training. However,
4 the Chamber was unable to establish that Mr Arido had any further involvement in
5 illicit activities with these witnesses related to offences against the administration of
6 justice.

7 In light of this, the Chamber is convinced beyond reasonable doubt that the accused
8 have committed the following offences against the administration of justice:

9 The accused Mr Bemba, Mr Kilolo and Mr Mangenda established a common plan to
10 deceive Trial Chamber III in the Main Case. The evidence clearly shows that they
11 worked together in close coordination to present false evidence to the Chamber.

12 The evidence shows that they systematically circumvented every measure
13 implemented by the Court to ensure the integrity of the proceedings, such as the
14 handover of the personal telephones of witnesses to the Victims and Witnesses Unit,
15 the witness familiarisation protocol, and the VWU cut-off dates for contacts between
16 the witnesses and the calling party.

17 They executed this plan by presenting fourteen Defence witnesses who were either
18 bribed, or made undue promises, such as relocation, or were illicitly coached or told
19 to give false evidence.

20 Mr Babala helped to put into effect the common plan by intentionally effecting or
21 facilitating money transfers in relation to two witnesses.

22 Mr Arido recruited four out of fourteen witnesses and promised them money and
23 relocation as a reward for testifying in favour of Mr Bemba.

24 The Chamber will now enter its verdict, directing each accused to stand up in turn.

25 First please, Mr Bemba, rise.

1 Mr Jean-Pierre Bemba Gombo, the Chamber finds you guilty under Article 70(1)(b)
2 and (c), in conjunction with Article 25(3)(a) of the Statute, of having corruptly
3 influenced Witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54,
4 D-55, D-57 and D-64 and having presented their false evidence as co-perpetrator; and
5 guilty, under Article 70(1)(a), in conjunction with Article 25(3)(b) of the Statute, of
6 having solicited the giving of false testimony by Witnesses D-2, D-3, D-4, D-6, D-13,
7 D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64.

8 Mr Bemba, you may be seated.

9 Mr Kilolo, please rise.

10 Mr Aimé Kilolo Musamba, the Chamber finds you guilty under Article 70(1)(b) and
11 (c), in conjunction with Article 25(3)(a) of the Statute, of having corruptly influenced
12 Witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and
13 D-64 and having presented their false evidence as co-perpetrator; and guilty under
14 Article 70(1)(a), in conjunction with Article 25(3)(b) of the Statute, of having induced
15 the giving of false testimony by Witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25,
16 D-26, D-29, D-54, D-55, D-57 and D-64.

17 Mr Kilolo, you may be seated.

18 Mr Mangenda, please rise.

19 Mr Jean-Jacques Mangenda Kabongo, the Chamber finds you guilty under Article
20 70(1)(b) and (c), in conjunction with Article 25(3)(a) of the Statute of having corruptly
21 influenced Witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54,
22 D-55, D-57 and D-64 and having presented their false evidence as co-perpetrator; and
23 guilty, under Article 70(1)(a), in conjunction with Article 25(3)(c) of the Statute, of
24 having aided in the giving of false testimony by Witnesses D-15 and D-54, and
25 abetted in the giving of false testimony by Witnesses D-2, D-3, D-4, D-6, D-13, D-25

1 and D-29; and not guilty, under Article 70(1)(a), in conjunction with Article 25(3)(c) of
2 the Statute, of having aided, abetted or otherwise assisted in the giving of false
3 testimony by Witnesses D-23, D-26, D-55, D-57 or D-64; and acquits you of the charge
4 in respect to those factual allegations.

5 Mr Mangenda, you may be seated.

6 Mr Babala, please rise.

7 Mr Fidèle Babala Wandu, the Chamber finds you guilty under Article 70(1)(c), in
8 conjunction with Article 25(3)(c) of the Statute, of having aided in the commission by
9 Mr Bemba, Mr Kilolo and Mr Mangenda of the offence of corruptly influencing
10 Witnesses D-57 and D-64; not guilty under Article 70(1)(a) and (b), in conjunction
11 with Article 25(3)(c) of the Statute, of having aided, abetted or otherwise assisted in
12 the commission by Mr Bemba, Mr Kilolo and Mr Mangenda of the offences of giving
13 false testimony by Witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29,
14 D-54, D-55, D-57 and D-64 and presenting their false evidence; and acquits you of
15 those charges; and not guilty under Article 70(1)(c) in conjunction with Article 25(3)(c)
16 of the Statute, of having aided, abetted or otherwise assisted in the commission by
17 Mr Bemba, Mr Kilolo and Mr Mangenda, of the offences of corruptly influencing
18 Witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54 and D-55; and
19 acquits you of the charge in respect of those factual allegations.

20 You may be seated, Mr Babala.

21 Mr Arido, please rise.

22 Mr Narcisse Arido, the Chamber finds you guilty under Article 70(1)(c) in conjunction
23 with Article 25(3)(a) of the Statute, of having corruptly influenced Witnesses D-2, D-3,
24 D-4 and D-6; and not guilty under Article 70(1)(a) and (b) in conjunction with
25 Article 25(3)(c) of the Statute, of having aided, abetted or otherwise assisted the

1 commission by Mr Bemba, Mr Kilolo and Mr Mangenda of the offence of presenting
2 false evidence of Witnesses D-2, D-3, D-4 and D-6 and of having aided, abetted or
3 otherwise assisted in the commission of D-2, D-3, D-4 and D-6 of the offence of giving
4 false testimony and acquits you of those charges.

5 Mr Arido, you may be seated.

6 Please allow me some closing remarks.

7 This case was evidently not about judging the Defence before the Court in general.

8 It was evidently not about criminalising legitimate Defence strategies. This case was
9 also not about a grey area in law pertaining to Defence behaviour. And it was not
10 about special difficulties that the Defence in international criminal cases faces.

11 Rather, it was about clear and downright criminal behaviour of the five
12 accused - Mr Bemba in the position of accused before Trial Chamber III, Mr Kilolo
13 and Mr Mangenda as members of his Defence team.

14 It was about criminal behaviour that resulted in serious offences against the
15 administration of justice.

16 It was about an abuse by a few members of a Defence team, as a party to the
17 proceedings of their position. It was done in favour of, and with, the participation of
18 their client and also with the help of others.

19 No legal system in the world can accept the bribing of witnesses, the inducement of
20 witnesses to lie or the illicit coaching of witnesses.

21 Nor can the International Criminal Court.

22 Today's judgment sends the clear message that the Court is not willing to allow its
23 proceedings to be hampered or destroyed.

24 It sends the message that those who try to distort and interfere with the
25 administration of justice of this Court do not go unpunished.

1 Mr Prosecutor, we were given to understand, Mr Vanderpuye, exactly following your
2 communication from this week that you may have an application to make. Just a yes
3 or no answer for the moment, please.

4 MS BENSOUDA: Yes, Mr President.

5 PRESIDING JUDGE SCHMITT: In view of this answer, the Chamber will take a
6 short break and then reconvene to hear submissions on this new request. Please stay
7 in the courtroom or close by so that we can reconvene quickly.

8 THE COURT USHER: [15:02:23] All rise.

9 (The judgment ends in open session at 3.02 p.m.)