

1 International Criminal Court

2 Appeals Chamber

3 Situation: Darfur, Sudan

4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al Rahman

5 (Ali Kushayb) - ICC-02/05-01/20

6 Presiding Judge Piotr Hofmański

7 Appeals Judgment - Courtroom 2/Interactio

8 Friday, 18 December 2020

9 (The hearing starts in open session at 3.02 p.m.)

10 THE COURT OFFICER : [15:02:56] The International Criminal Court is now
11 in session.

12 PRESIDING JUDGE HOFMAŃSKI: [15:03:13] Thank you, good afternoon
13 again.

14 Would the court officer please call the case.

15 THE COURT OFFICER: [15:03:22] Thank you, your Honour.

16 The situation in Darfur, Sudan, in the case of the Prosecutor versus Ali
17 Muhammad Ali Abd-Al-Rahman, case reference ICC-02/05-01/20.

18 And for the record, we are in open session.

19 PRESIDING JUDGE HOFMAŃSKI: [15:03:41] Thank you very much.

20 I will introduce myself again. I am Judge Hofmański, presiding in the appeal
21 arising from the case of the Prosecutor against Ali Muhammad Ali

22 Abd-Al-Rahman. And my fellow judges in this appeal are Judge Chile

23 Eboe-Osuji, Judge Howard Morrison, Judge Luz del Carmen Ibáñez Carranza
24 and Judge Solomy Balungi Bossa.

25 Again, due to the COVID-19 restrictions, this hearing is conducted on a virtual

1 basis with myself and all the parties and participants attending remotely via
2 the Interactio system.

3 For the record, may I ask the parties to introduce themselves again, starting
4 with the Defence please.

5 MR LAUCCI: [15:03:25](Interpretation) Good afternoon, again, your Honour.
6 For the Defence of Mr Abd-Al-Rahman this afternoon, Madam Vanessa Gree
7 who is the legal assistant; Mr Ahmad Issa who is the case manager; and
8 Madam Carrin, Marion, in charge of administering evidence and, myself, lead
9 counsel, Cyril Laucci. Thank you very much.

10 PRESIDING JUDGE HOFMAŃSKI: [15:05:11] Thank you.

11 The Defence, please. I (Overlapping speakers)

12 MR GALLMETZER: [15:05:22] Your Honour, I assume you called upon the
13 Office of the Prosecutor; so the office is represented this afternoon by
14 Meritxell Regue and myself, Reinhold Gallmetzer.

15 PRESIDING JUDGE HOFMAŃSKI: [15:05:40] Thank you very much and
16 excuse my mistake again.

17 For the record, I note that Mr Abd-Al-Rahman participates via Interactio from a
18 remote location.

19 Today, the Appeals Chamber will deliver its judgment in the appeal of
20 Mr Abd-Al-Rahman against two oral decisions of the Pre-Trial Chamber II of
21 15 June 2020 and the decision of 18 August 2020, entitled, "Decision on the
22 Defence request to provide reasoning for two oral decisions".

23 This is a non-authoritative summary of the Appeals Chamber's written
24 judgment in the appeal. The latter will be notified after this hearing.

25 I will now briefly explain the context of this appeal.

1 On 15 June 2020, Mr Abd-Al-Rahman made his first appearance before the
2 Single Judge of the Pre-Trial Chamber II. During the hearing, the Pre-Trial
3 Chamber adopted a number of procedural oral decisions.

4 One of the oral decisions was a decision to proceed with the reading of the
5 Prosecutor's allegations against Mr Abd-Al-Rahman, notwithstanding his
6 objection. I will refer to this as the first oral decision.

7 Another was a decision rejecting Mr Abd-Al-Rahman's request that a minute of
8 silence be observed in memory of the victims of the situation in Darfur. I will
9 refer to this as the second oral decision.

10 Following the initial appearance, Mr Abd-Al-Rahman submitted a written
11 request arguing that the first and second oral decisions did not provide any
12 indication of the underlying reasons. The Pre-Trial Chamber issued
13 a decision rejecting the request for reasons explaining that, as

14 Mr Abd-Al-Rahman did not proceed with a request under Article 82(1)(d) of
15 the Statute to appeal the oral decisions directly, that procedural avenue was
16 foreclosed and the first and second oral decisions were *res judicata*. On this
17 basis, the Pre-Trial Chamber dismissed Mr Abd-Al-Rahman's request *in limine*.

18 Mr Abd-Al-Rahman then submitted a request for leave to appeal three
19 decisions; the first and second oral decisions, and the written decision rejecting
20 his request for reasons. Those three decisions are the impugned decisions.

21 He sought leave to appeal the impugned decisions in respect of the following
22 issues.

23 First, does the requirement to provide reasons pursuant to Article 74(5) of the
24 Statute apply to all decisions rendered by a pre-trial chamber and trial
25 chambers or only to certain decisions? If the latter is the case, does the

1 requirement apply, in particular, to decisions for which a party has expressly
2 requested reasons?

3 Second, does the period for interlocutory appeal of a decision for which the
4 communication of reasons is pending begin to run before the communication
5 of reasons or its refusal?

6 The Pre-Trial Chamber granted leave to appeal the impugned decisions
7 without modifying the issues as framed in Mr Abd-Al-Rahman's request for
8 leave to appeal.

9 In his appeal brief, Mr Abd-Al-Rahman raises three grounds of appeal.

10 First, he argues that the Pre-Trial Chamber contravened Article 74(5) of the
11 Statute in refusing to give further reasons for the oral decisions.

12 Second, he argues that the issue of whether the time for interlocutory appeal of
13 the oral decisions had lapsed is independent of the issue of whether the
14 Pre-Trial Chamber had an obligation to provide further reasons for the oral
15 decisions.

16 And third, he argues that the five-day time period for interlocutory appeal of
17 the oral decisions did not begin to run until the decision on the request for
18 reasons was issued.

19 In today's judgment, the Appeals Chamber addresses the appeal against the
20 written decision on the request for reasons first, as that decision is directly
21 related to the central issue on appeal: whether sufficient reasons were given
22 for the oral decisions.

23 I shall now turn to the Appeals Chamber's ruling on Mr Abd-Al-Rahman's
24 appeals.

25 The Appeals Chamber is called upon to decide, in the context of the very early

1 stage of the proceedings against Mr Abd-Al-Rahman, from which this appeal
2 arises, whether there is a right to a reasoned decision and the scope of that
3 right.

4 The Appeals Chamber finds that the chambers of the Court must indicate with
5 sufficient clarity the grounds on which they based their decisions. This duty
6 is an element of the broader right to a fair trial, which applies as early as
7 a person's initial appearance before the Court.

8 However, whether the reasons given are sufficient will depend invariably on
9 the circumstances. There is no prescribed formula for what is or is not
10 sufficient, and the extent to which the duty to provide reasons applies may
11 vary according to the nature of the decision.

12 Turning to the present case, the Appeals Chamber emphasises that this appeal
13 arises from two relatively minor procedural decisions taken by the Single
14 Judge during Mr Abd-Al-Rahman's first appearance.

15 The Appeals Chamber acknowledges that the reasons given for the oral
16 decisions were not comprehensive. However, given the purpose of the initial
17 appearance in the context in which the decisions were made, the reasons given
18 did not have to be comprehensive to comply with the duty to give reasons.

19 The Appeals Chamber finds that the reasons given for the first and second oral
20 decisions were relevant in relation to the importance of the questions decided
21 by the Single Judge.

22 Therefore, Mr Abd-Al-Rahman's first ground of appeal, which challenges the
23 sufficiency of those reasons, is dismissed.

24 As the Appeals Chamber has found that the oral decisions were sufficiently
25 reasoned, any superseding question as to the basis for the Pre-Trial Chamber's

1 rejection of the request for reasons is moot. There was no obligation of the
2 Pre-Trial Chamber to provide further reasons in a separate decision.

3 Therefore, Mr Abd-Al-Rahman's second ground of appeal, which challenges
4 the basis for the decision on his request for reasons, is dismissed.

5 Finally, the finding that the oral decisions were sufficiently reasoned also
6 answers Mr Abd-Al-Rahman's third ground of appeal. The issue as to
7 whether a request for reasons acts to automatically suspend the time permitted
8 for interlocutory appeal is moot because in this case, there was no period
9 during which the communication of reasons was pending. The reasons were
10 given fully and appropriately at the time of the first and second oral decisions.

11 Therefore, Mr Abd-Al-Rahman's third ground of appeal is dismissed.

12 For these reasons – and, the reasons more fully explained in today's judgment –
13 the Appeals Chamber finds it appropriate to confirm the Pre-Trial Chamber's
14 written decision on the request for reasons.

15 Given that the Appeals Chamber will not interfere with the written decision or
16 the reasons given for the first and second oral decisions, those oral decisions
17 are final and the appeals against them are both dismissed.

18 This brings us to the end of the summary of the Appeals Chamber's judgment.

19 I would like, again, to thank the court reporters, interpreters and other Registry
20 staff for their valuable assistance today in holding both hearings.

21 The hearing is now adjourned.

22 Thank you very much.

23 (The hearing ends in open session at 3.16 p.m.)