

Pursuant to Pre-Trial Chamber II's instruction dated 02-05-2024, this document is reclassified as Public

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/14-01/22

Date: 7 April 2022

**PRE-TRIAL CHAMBER II**

**Before:** Judge Rosario Salvatore Aitala, Presiding  
Judge Antoine Kesia-Mbe Mindua  
Judge Tomoko Akane

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II**

***THE PROSECUTOR v. MAXIME JEOFFROY ELI MOKOM GAWAKA***

Confidential

*Ex parte* available only to the Prosecution, Registry, Duty Counsel and Mr Mokom

**Request for Reconsideration of Order ICC-01/14-01/22-26-Conf-Exp**

**Source:** Gregory Townsend, Duty Counsel for Mr. Mokom

Pursuant to Pre-Trial Chamber II's instruction dated 02-05-2024, this document is reclassified as Public

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

**The Office of the Prosecutor**

Karim A. A. Khan  
Mame Mandiaye Niang  
Kweku Vanderpuye

**Counsel for the Defence**

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

---

**Registrar**  
Mr Peter Lewis

**Counsel Support Section**  
Mr Pieter Vanaverbeke

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**  
Mr Gregory Townsend,  
Duty Counsel for Mr. Mokon

Pursuant to Pre-Trial Chamber II's instruction dated 02-05-2024, this document is reclassified as Public

## I. INTRODUCTION

1. On 1 April 2022, the Registry of the International Criminal Court (ICC or Court) appointed myself, Gregory Townsend, as Duty Counsel to Mr. Mokom. On 6 April 2022, the Registry extended this appointment.

2. I file this request seeking an order for purposes of enabling the Pre-Trial Chamber to subsequently reconsider its 'Order to the Registry concerning the appointment of Mr Nicholas Kaufman as counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka' (the '25 March 2022 Order').<sup>1</sup>

## II. CLASSIFICATION

3. Pursuant to regulation 23 *bis*(1) of the Regulations of the Court (RoC), I file this submission under the classification of 'confidential' to accord with the classification of the Order of 25 March 2022 (Order ICC-01/14-01/22-26-Conf-Exp) which instructed the Registry to revoke the mandate of Mr. Nick Kaufman as counsel for Mr. Mokom, and further to the oral instructions of the Pre-Trial Chamber on 4 April 2022.

## III. APPLICABLE LEGAL PROVISIONS

3. Article 16(3) of the ICC Code of Professional Conduct reads, in part (emphasis added):

3. Where a conflict of interest arises, counsel shall at once inform all potentially affected clients of the existence of the conflict and either: [...] (b) *Seek the full and informed consent in writing* of all potentially affected clients to continue representation.

## IV. SUBMISSIONS

4. Because Article 16(3) of the ICC Code of Professional Conduct expressly provides for a remedy to conflicts of interest, namely *seeking the full and informed consent in writing of the affected present and prior clients*, the Pre-Trial Chamber should issue an order granting Mr. Kaufman an opportunity to produce such waivers, and if he is able to produce such waivers, and after hearing from the Prosecution, the Pre-Trial Chamber will be in a position then to reconsider the 25 March 2022 Order.

---

<sup>1</sup> ICC-01/14-01/22-26-Conf-Exp.

Pursuant to Pre-Trial Chamber II's instruction dated 02-05-2024, this document is reclassified as Public

5. On 4 April 2022, at the confidential and *ex parte* status conference convened by the Pre-Trial Chamber, Mr. Mokom, then represented and having been duly advised by duty counsel, spoke directly to the Pre-Trial Chamber, indicated his strong desire to maintain his long-standing, well-established attorney-client relationship with Mr. Kaufman, stated that Mr. Kaufman was his counsel of choice, noted the transparency Mr. Kaufman's explanations about his prior representation of other clients, and that he 'adopted' the two documents authored by Mr. Kaufman with respect to the 25 March Order and filed on 28 March 2022 (a request for reconsideration)<sup>2</sup> and 30 March 2022 (a request for leave to appeal).

6. Having conferred with Mr. Mokom before and after that status conference, I join here, and incorporate by reference, the content of the filing of 28 March 2022, which, for purposes of avoiding duplication, is a 'related' file, so that the Pre-Trial Chamber may consider those submissions and prayers as being those of duty counsel made on behalf of Mr. Mokom, and enabling the Pre-Trial Chamber to rule on it.

7. With the Pre-Trial Chamber now properly seized of a request for reconsideration, as requested by duty counsel for Mr. Mokom and on his behalf, I make the following further submissions to facilitate such reconsideration.

8. Determining whether a conflict of interest arises and if it *can or cannot be remedied* is a *fact-intensive* inquiry.

9. Here, the Pre-Trial Chamber, prior to deciding on reconsideration, should: (1) allow for a more complete record of the facts to be made<sup>3</sup> and (2) make a proper determination if the former clients in question 'consent' to the conflict of interest pursuant to Article 16(3) of the ICC Code of Professional Conduct.

10. Here, the scope of the information gained by Mr. Kaufman from previous clients remains unclear, as does whether or not such information is still in fact *confidential* or not, and moreover if that information may serve to benefit another client.

---

<sup>2</sup> ICC-01/14-01/22-27-Conf-Exp-AnxI 28-03-2022

<sup>3</sup> This is also true before considering whether this issue is ripe for granting leave to appeal, so as to avoid the matter being remanded by the Appeals Chamber to settle the facts.

Pursuant to Pre-Trial Chamber II's instruction dated 02-05-2024, this document is reclassified as Public

11. Here, it also remains unclear if there is a realistic chance (as opposed to a speculative and theoretical possibility) that Mr. Kaufman will actually be placed in a situation at the pre-trial stage of the case of Mr. Mokom where his previous, however fleeting, representation will give rise to a concrete conflict of interest. The response of the Prosecution as to whom it will rely on to give evidence at the confirmation will be telling for the Pre-Trial Chamber in this respect.

12. The Pre-Trial Chamber, therefore, should issue an order granting Mr. Kaufman an opportunity to produce waivers, under Article 16(3) of the ICC Code of Professional Conduct, showing *the full and informed consent in writing of the affected clients*. I understand that Mr. Mokom wishes to submit such a waiver. If Mr. Kaufman is able to produce such waivers as to his other previous clients and provide satisfactory information, and after hearing from the Prosecution, the Pre-Trial Chamber then will be in a position to properly reconsider the 25 March 2022 Order.

12. Upon having such waivers or in the absence of any, the Pre-Trial Chamber will also be in a better position to consider, for purposes of the legal test for reconsideration, if the 'conditions upon which the decision was grounded have changed.' In the eyes of Mr. Mokom, having his counsel of choice—Mr. Kaufman—would prevent an injustice, as to the other prong of the legal test for reconsideration.

13. In conclusion, on behalf of Mr. Mokom, I request that the Pre-Trial Chamber:

- (a) **ISSUE** an order granting Mr. Kaufman a period of three weeks (from notification via email) to produce any waivers, under Article 16(3) of the ICC Code of Professional Conduct, showing the full and informed consent in writing of the affected clients and provide any further, relevant information with respect to any conflict of interest between Mr. Mokom and Mr. Kaufman's former clients;
- (b) **RECONSIDER**, thereafter, the 25 March 2022 Order, and;
- (c) **GRANT** the relief requested in the filing of 28 March 2022 (the request for reconsideration, incorporated by reference above).

Pursuant to Pre-Trial Chamber II's instruction dated 02-05-2024, this document is reclassified as Public

Respectfully submitted,

A handwritten signature in blue ink that reads "Gregory Townsend". The signature is written in a cursive style with a large initial 'G'.

---

Gregory Townsend,  
Duty Counsel for Mr. Mokom

Date: 7 April 2022

At The Hague, Netherlands.