

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 12 January 2011

TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
v. JEAN-PIERRE BEMBA GOMBO**

Public

**PUBLIC REDACTED VERSION OF ICC-01/05-01/08-1099-Conf
Decision on the Defence Request for Mr Jean-Pierre Bemba to attend his
Stepmother's Funeral**

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

The Office of the Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor
Ms Petra Kneuer, Senior Trial Lawyer

Counsel for the Defence

Mr Nkwebe Liriss
Mr Aimé Kilolo-Musamba

Legal Representatives of the Victims

Ms Marie-Edith Douzima-Lawson
Mr Assingambi Zarambaud

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

Mr Anders Backman

**Victims Participation and Reparations
Section**

Other

Mr Marc Dubuisson

Trial Chamber III (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court” or “ICC”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* hereby delivers the following Decision on Mr Jean-Pierre Bemba Gombo’s (“Mr Bemba” or “defence”) Request to attend his stepmother’s funeral (“defence Request”), filed confidentially on 4 January 2011.

I. Background and Submissions

1. On 3 July 2008, Mr Bemba was surrendered to the seat of the Court by the authorities of the Kingdom of Belgium. He has since been detained at the ICC detention centre.
2. On 22 November 2010, the trial against Mr Bemba commenced, as had been scheduled at a status conference on 21 October 2010.¹
3. On 17 December, the Chamber issued its “Decision on the review of detention of Mr Jean-Pierre Bemba Gombo pursuant to the Appeals Judgement on 19 November 2010”,² in which it ordered that Mr Bemba be maintained in detention for the course of the proceedings in his case.
4. On 3 January 2011, the defence filed its “Requête aux fins d’obtenir une autorisation de sortie pour permettre à M. Jean-Pierre Bemba Gombo de prendre part aux cérémonies de funérailles de sa belle-mère décédée”,³ informing the Chamber of the death of Mr Bemba’s stepmother, Ms Efika Lola Saida Josette, who raised him from the age of 12, after the death of his biological mother.⁴ The defence requests permission for Mr Bemba to attend

¹ Transcript of hearing on 21 October 2010, ICC-01/05-01/08-T-30-ENG ET, page 4, lines 18 to 20.

² Decision on the review of detention of Mr Jean-Pierre Bemba Gombo pursuant to the Appeals Judgement on 19 November 2010, 17 December 2010, ICC-01/05-01/08-1088.

³ “Requête aux fins d’obtenir une autorisation de sortie pour permettre à M. Jean-Pierre Bemba Gombo de prendre part aux cérémonies de funérailles de sa belle-mère décédée”, 3 January 2011, ICC-01/05-01/08-1092-Conf+Conf-Anxs.

⁴ ICC-01/05-01/08-1092-Conf, paragraphs 1 and 6-7.

the funeral of his stepmother, to be held on the territory of the Kingdom of Belgium, and therefore requests that Mr Bemba is provisionally released from 6 to 10 January 2011.⁵ The defence argues that as the head of the family, in accordance with African traditions, Mr Bemba has the moral duty to be present at his stepmother's funeral.⁶ The defence indicates that Mr Bemba is willing comply with similar conditions to those that were imposed when Mr Bemba's father passed away in July 2009, and specifies that Mr Bemba agrees to reimburse the costs of the transfer incurred by the Dutch authorities.⁷

5. The Office of the Prosecutor ("prosecution") and the legal representatives for victims ("legal representatives") were ordered to file their responses to the defence Request by 5 January 2011 and the Registry was requested to file its observations thereto by 6 January 2011.⁸

6. The prosecution duly filed the "Prosecution's Response to Defence's Urgent *Requête aux fins d'obtenir une autorisation de sortie pour permettre à M. Jean-Pierre Bemba Gombo de prendre part aux cérémonies de funérailles de sa belle-mère décédée*" ("prosecution Response") as ordered.⁹ In its Response, the prosecution requests that the Chamber rejects the defence Request, arguing that since the trial has commenced, Mr Bemba can now directly identify prosecution witnesses.¹⁰ The prosecution further argues that the fact that the trial is under way increases the risk that the accused will abscond.¹¹ In addition, the prosecution alleges that there are no specific provisions in the Court's legal framework that foresee this type of modification to the regime of

⁵ ICC-01/05-01/08-1092-Conf, paragraphs 35-38.

⁶ ICC-01/05-01/08-1092-Conf, paragraphs 12-13 and 17.

⁷ ICC-01/05-01/08-1092-Conf, paragraphs 22-23.

⁸ Email to the prosecution, legal representatives and the Registry from a legal officer to the Chamber on 4 January 2011, 17h53.

⁹ Prosecution's Response to Defence's Urgent *Requête aux fins d'obtenir une autorisation de sortie pour permettre à M. Jean-Pierre Bemba Gombo de prendre part aux cérémonies de funérailles de sa belle-mère décédée*, 5 January 2011, ICC-01/05-01/08-1093-Conf.

¹⁰ ICC-01/05-01/08-1093-Conf, paragraph 4.

¹¹ ICC-01/05-01/08-1093-Conf, paragraph 4.

detention.¹² Alternatively, the prosecution submits that if the Chamber is inclined to grant the defence Request, a number of conditions should be adopted to ensure that Mr Bemba will appear at trial, that he will not interfere with witnesses and victims, and that the overall integrity of the proceedings is preserved.¹³ Among other conditions, the prosecution alleges that Mr Bemba should not be allowed to remain in the Kingdom of Belgium for more than 24 hours.¹⁴

7. The legal representatives for victims did not file any response to the defence Request.
8. On 6 January 2011, the defence filed its confidential “Communication d’un document et informations additionnelles relatives à la requête de la Défense aux fins d’obtenir une autorisation de sortie pour permettre à M. Jean-Pierre Bemba Gombo de prendre part aux cérémonies de funérailles de sa belle-mère décédée”,¹⁵ (“Supplement to the defence Request”) together with Annex A. The defence provided the Chamber with the birth certificate [REDACTED], as requested by the Chamber,¹⁶ and additional information relating to the schedule for the upcoming funeral.
9. On 6 January 2011, the Registry filed its “Report of the Registrar concerning the practical implications of the “Requête aux fins d’obtenir une autorisation de sortie pour permettre à M. Jean-Pierre Bemba Gombo de prendre part aux cérémonies de funérailles de sa belle-mère décédée” submitted on 4 January

¹² ICC-01/05-01/08-1093-Conf, paragraphs 4 and 6.

¹³ ICC-01/05-01/08-1093-Conf, paragraphs 9-10.

¹⁴ ICC-01/05-01/08-1093-Conf, paragraph 10 (ix).

¹⁵ Communication d’un document et informations additionnelles relatives à la requête de la Défense aux fins d’obtenir une autorisation de sortie pour permettre à M. Jean-Pierre Bemba Gombo de prendre part aux cérémonies de funérailles de sa belle-mère décédée, 6 January 2011, ICC-01/05-01/08-1094-Conf.

¹⁶ Email communication from the Legal Advisor to the Trial Division to the defence sent on 5 January 2010 at 13h36.

2011”,¹⁷ (“Report”) in which the Registry reports that the authorities of the Kingdom of Belgium do not oppose Mr Bemba’s transfer to Belgian territory, from the morning of 10 January 2011, until the end of the requiem mass due to be held on the same day, provided that the same conditions imposed on 8 July 2009, following the death of Mr Bemba’s father, are respected.¹⁸ The Report further states that the Registry still awaits a response from the authorities of the Kingdom of the Netherlands.¹⁹ The Registry finally informs the Chamber that it is able to assist in the transfer of Mr Bemba and confirms that a representative of the Court’s Registry will accompany Mr Bemba during his stay in the Kingdom of Belgium.²⁰

10. The Registry filed an “Addendum” to its Report on 6 January 2011, which informs the Chamber that the authorities of the Kingdom of the Netherlands agree to facilitate the transfer of Mr Bemba to the territory of the Kingdom of Belgium, should authorisation be granted for him to attend his stepmother’s funeral.²¹

11. On 7 January 2011, the defence filed its “Communication du programme actualisé des obsèques et information sur les rites funéraires dans les coutumes congolaises à la suite de la requête de la défense intitulée « Requête aux fins d’obtenir une autorisation de sortie pour permettre à M. Jean-Pierre Bemba Gombo de prendre part aux cérémonies de funérailles de sa belle-mère décédée” (“Updated Schedule”), informing the Chamber of an updated schedule for the funeral of Mr Bemba’s stepmother, and in particular stressing

¹⁷ Report of the Registrar concerning the practical implications of the “Requête aux fins d’obtenir une autorisation de sortie pour permettre à M. Jean-Pierre Bemba Gombo de prendre part aux cérémonies de funérailles de sa belle-mère décédée” submitted on 4 January 2011, 6 January 2011, ICC-01/05-01/08-1095-Conf, with 4 confidential *ex parte* « only available to the Registry » annexes 1-4.

¹⁸ ICC-01/05-01/08-1095-Conf, paragraph 3.

¹⁹ ICC-01/05-01/08-1095-Conf, paragraph 4.

²⁰ ICC-01/05-01/08-1095-Conf, paragraph 5.

²¹ Addendum to the « Report of the Registrar concerning the practical implications of the “Requête aux fins d’obtenir une autorisation de sortie pour permettre à M. Jean-Pierre Bemba Gombo de prendre part aux cérémonies de funérailles de sa belle-mère décédée” submitted on 4 January 2011 », 6 January 2011, ICC-01/05-01/08-1096-Conf, with 1 confidential *ex parte* « only available to the Registry » annex.

the fact that the body of the deceased would only be available for viewing until the evening of Sunday 9 January 2011.²²

12. In accordance with Article 21(1) of the Rome Statute ("Statute"), the Trial Chamber has considered the following provisions: Article 64, Article 68(1), Article 86, Article 87(1)(a), (2), (3) and (4) of the Statute, Rule 176 of the Rules of Procedure and Evidence ("Rules"), Regulation 200 of the Regulations of the Registry and Article 8 of the Code of Professional Conduct for counsel ("Code of conduct").

II. Analysis

13. The Chamber considers that the information provided in the defence Request and in its Supplement sufficiently demonstrates the family link between Mr Bemba and Ms Efika Lola Saida Josette.²³ As a consequence, the Chamber considers that the death of Mr Bemba's stepmother is an exceptional circumstance that justifies the Chamber exercising its inherent power for humanitarian reasons, pursuant to Article 64 of the Statute.
14. Whilst the Chamber acknowledges the defence submissions in its Updated Schedule concerning the times available for viewing the deceased's body, due to the security arrangements that both the Kingdom of the Netherlands and the Kingdom of Belgium have agreed to organise in order for the Chamber's decision to be implemented, it is only possible for Mr Bemba to be transferred to the Kingdom of Belgium on the morning of Monday 10 January 2011 and not before. The Chamber therefore authorises the transfer of Mr Bemba from the Court's detention centre to the Kingdom of Belgium, on the morning of

²² Communication du programme actualisé des obsèques et information sur les rites funéraires dans les coutumes congolaises à la suite de la requête de la défense intitulée « Requête aux fins d'obtenir une autorisation de sortie pour permettre à M. Jean-Pierre Bemba Gombo de prendre part aux cérémonies de funérailles de sa belle-mère décédée, 7 January 2011, ICC-01/05-01/08-1098-Conf.

²³ See ICC-01/05-01/08-1094-Conf, Annexe A.

10 January 2011, until the end of the requiem mass due to be held on the same day.

15. As requested by the Dutch and Belgian authorities, and in order to ensure that Mr Bemba will return to the Court's detention centre at the end of his stepmother's funeral, the transfer of Mr Bemba to the Kingdom of Belgium and his interim release on the territory of the Kingdom of Belgium will be subject to strict conditions which are listed below.

III. Conclusion

16. In view of the foregoing, the Chamber partly grants the defence Request and authorises the transfer of Mr Bemba from the Court's detention centre to the Kingdom of Belgium on the morning of 10 January 2011. Mr Bemba shall be allowed to remain on the territory of the Kingdom of Belgium until the end of the requiem mass which will be held on the same day for Ms Efika Lola Saida Josette at Saint-Paul de Waterloo Church, Drève des Chasseurs 14, 1410 Waterloo, Belgium.

17. The Chamber decides that Mr Bemba's transfer and interim release will be subjected to the following conditions:

- (i) the Dutch police shall transport Mr Bemba from the detention centre in The Hague to the Belgian border on the morning of 10 January 2011 and shall transport him back from the Belgian border to the detention centre on the same day;
- (ii) the Belgian police shall escort Mr Bemba and protect the venues he will visit at all times whilst he remains on Belgian territory, from the moment he is transferred from the Dutch police at the Belgian border until he is

transferred back to the Dutch police at the Dutch border for his return after the requiem mass;

- (iii) Mr Bemba shall further be accompanied by a representative of the Court's Registry at all times;
- (iv) Mr Bemba shall only be allowed to visit his wife's residence [REDACTED] and, if his stepmother's remains are not there, the location where they are kept, as well as to attend the requiem mass which will be held at Saint-Paul de Waterloo Church (Drève des Chasseurs 14, 1410 Waterloo, Belgium);
- (v) Mr Bemba and all members of his defence team are not permitted to contact the public or speak to the press to reveal any information relating to Mr Bemba's presence on Belgian territory, prior to and during the entirety of his stay in the Kingdom of Belgium;
- (vi) Mr Bemba shall not be allowed to discuss the case against him except with current members of his defence team;
- (vii) Mr Bemba shall not be authorised to communicate with anyone, except for the members of his close family or persons assigned for his protection;
- (viii) Mr Bemba shall be responsible for covering the costs of the entire process and accordingly, shall reimburse any of the expenses incurred for his transfer either by the Kingdom of the Netherlands or the Kingdom of Belgium. The reimbursement should be made by the accused through the Registry.

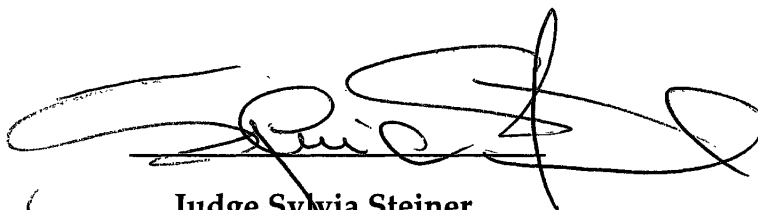
18. The Chamber requests the Registrar to make all the necessary arrangements for the implementation of this Decision, in particular,

- a) To designate a representative of the Court's Registry to accompany Mr Bemba at all times from when Mr Bemba is transferred from the Court's detention centre until his return thereto; and,
- b) To coordinate with the competent authorities of the Kingdom of the Netherlands and of the Kingdom of Belgium, prepare and transmit the


necessary requests for cooperation in accordance with Rule 176(2) of the Rules.

19. The Chamber reminds all parties and participants of the importance of respecting the confidentiality of this Decision.
20. The Chamber orders the Registry to file a follow-up report on the transfer and its implementation by 16.00 on 12 January 2011, and to inform the Chamber of the effective reimbursement of costs by the accused in due course.

Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 12 January 2011

At The Hague, The Netherlands