

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13

Date: 17 April 2014

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF *THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO, AIMÉ KILOLO MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE BABALA WANDU and NARCISSE ARIDO*

Public

Joint decision on applications for leave to appeal the “Decision on the reclassification of documents in the record of the situation and of the case” (ICC-01/05-01/13-147) submitted by the Defence for Mr Kilolo and the Defence for Mr Babala

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

The Office of the Prosecutor

Fatou Bensouda
James Stewart
Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo

Nicholas Kaufman

Counsel for Aimé Kilolo Musamba

Ghislain Mabanga

Counsel for Jean-Jacques Mangenda Kabongo

Jean Flamme

Counsel for Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Göran Sluiter

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

The Office of Public Counsel for the Defence

States Representatives

Others

REGISTRY

Registrar

Herman von Hebel

Detention Section

Victims and Witnesses Unit

Others

I, Judge Cuno Tarfusser, having been designated as Single Judge of Pre-Trial Chamber II of the International Criminal Court;

NOTING the “Decision on the reclassification of documents in the record of the situation and of the case” dated 3 February 2014 (“Reclassification Decision”)¹, reclassifying a number of filings both in the record of the case and in the relevant section of the record of the situation;

NOTING the “Requête aux fins d'autorisation d'appel de la ‘Decision on the reclassification of documents in the record of the situation and of the case’ (ICC-01/05-01/13-147)” dated 10 February 2014 (“Mr Kilolo’s Defence Application”)², whereby the Defence for Aimé Kilolo Musamba requests leave to appeal the Reclassification Decision pursuant to article 82(1)(d) of the Statute on the following issue

“l’anonymat d’un enquêteur, en l’espèce le Conseil indépendant, est-il de nature à garantir l’équité de la procédure à quelques semaines de l’audience de confirmation des charges”?

NOTING the “Demande d’autorisation d’interjeter appel contre la ‘Decision on the reclassification of documents in the record of the situation and of the case’ (ICC-01/05-01/13-147-Conf-Red)” dated 10 February 2014 (“Mr Babala’s defence Application”)³, whereby the Defence for Fidèle Babala Wandu requests leave to appeal the Reclassification Decision pursuant to article 82(1)(d) of the Statute on the following issue:

¹ ICC-01/05-01/13-147.

² ICC-01/05-01/13-164-Conf.

³ ICC-01/05-01/13-166.

the “*maintien de l’anonymat du Conseil indépendant*”, which “*fait obstacle au respect du principe de la contradiction des débats*” and “*tend à affecter le principe de la présomption d’innocence*”;

NOTING the “Prosecution’s consolidated Response to the Kilolo and Babala Defences requests for leave to appeal decision ICC-01/05-147-Conf-Red” dated 14 February 2014⁴, opposing Mr Kilolo’s and Mr Babala’s Applications;

CONSIDERING that the issues raised by Mr Kilolo’s and Mr Babala’s Applications are similar in nature and that it is therefore appropriate to address and determine them jointly;

NOTING article 82(1)(d) of the Statute, rule 155(1) of the Rules of Procedure and Evidence and regulation 35 of the Regulations of the Court;

NOTING that, on 17 April 2014, the Single Judge lifted the anonymity of Independent Counsel *vis-à-vis* the parties in the proceedings;

CONSIDERING that, in the present circumstances, the issue arising out of the Reclassification Decision must be understood as whether the Defence should have been disclosed the identity of Independent Counsel already on 3 February 2014 rather than on 17 April 2014;

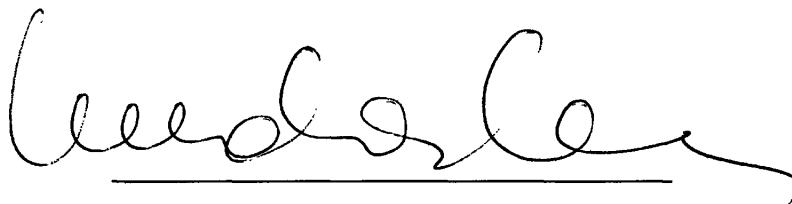
CONSIDERING that this issue cannot be said to significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial within the meaning of article 82(1)(d) of the Statute, also in light of the fact that in the meantime the confirmation of charges proceedings have been postponed by more than two months;

⁴ ICC-01/05-01/13-196-Conf.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

REJECTS Mr Kilolo's and Mr Babala's Defence Applications.

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

A handwritten signature in black ink, appearing to read 'Cuno Tarfusser', is written over a horizontal line.

Judge Cuno Tarfusser

Single Judge

Dated this Thursday, 17 April 2014

The Hague, The Netherlands