

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 28 May 2014

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul
Judge Cuno Tarfusser

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

**Decision on the “Defence request for the exercise of judicial functions by the
full Pre-Trial Chamber”
submitted by the Defence for Aimé Kilolo Musamba on 7 May 2014**

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

Goran Sluiter

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

States Representatives

Others

REGISTRY

Registrar

Herman von Hebel

Detention Section

Victims and Witnesses Unit

Others

PRE-TRIAL CHAMBER II (the “Chamber”) of the International Criminal Court, having been assigned the situation in the Central African Republic, renders this decision on the “Defence request for the exercise of judicial functions by the full Pre-Trial Chamber II” submitted by the Defence for Aimé Kilolo Musamba (“Mr Kilolo”) on 7 May 2014 (“Mr Kilolo’s Request” or the “Request”)¹, requesting that “the full Pre-Trial Chamber II be convened for the remainder of all proceedings in case ICC-01/05-01/13” and that the judicial functions in the case be exercised by the full Pre-Trial Chamber “as concerns Mr Kilolo”.

Relevant background and submissions of the parties

1. On 14 May 2014, the Chamber issued its “Decision requesting observations on the ‘Defence Request for the exercise of judicial functions by the full Pre-Trial Chamber II’”². Noting regulations 24(1), 31, 33 and 34(b) of the Regulations of the Court (the “Regulations”), the Chamber observed that a ruling on Mr Kilolo’s Request might affect the rights of the four additional suspects in the case. Accordingly, it deemed necessary that observations on the Request be received from all of them, as well as from the Prosecutor, and granted them until Friday 23 May 2014 to submit any such observations, if they so wished. By the same token, the Chamber decided that, prior to its ruling on Mr Kilolo’s Request, the judicial functions in the case would continue to be exercised by Judge Cuno Tarfusser.
2. Responses to Mr Kilolo’s Request were filed by the Defence for Jean-Jacques Mangenda Kabongo (“Mr Mangenda”) on 18 May 2014³ and by the

¹ ICC-01/05-01/13-381.

² ICC-01/05-01/13-398.

³ ICC-01/05-01/13-406.

Defence for Fidèle Babala Wandu (“Mr Babala”) on 23 May 2014⁴. The Defence for Mr Mangenda requested that suspension of the proceedings be ordered, pending the decision of the plenary of the judges on the requests for disqualification of Judge Cuno Tarfusser lodged by Mr Mangenda, Mr Kilolo and Mr Babala respectively on 29 April 2014⁵, 1 May 2014⁶ and 7 May 2014⁷ (collectively, “Requests for Disqualification”). Similarly, the Defence for Mr Babala requested that the judicial functions be exercised by the full Chamber, pending the decision on the aforementioned Requests for Disqualification. The Prosecutor responded on 20 May 2014⁸, submitting that Mr Kilolo’s Request (I) would be rendered moot once the plenary of the judges would decide on the Requests for Disqualifications and, in the alternative, (II) should be rejected since failing in its merits.

3. On 27 May 2014, the Presidency filed its “Third notification concerning the defence requests for the disqualification of a judge in case ICC-01/05-01/13”⁹, notifying the parties that, “following deliberations, the Applications were denied and that the reasoned decision of the plenary shall follow in due course”.

Determination by the Chamber

4. The Chamber notes article 39(2)(iii) of the Rome Statute (the “Statute”), rule 7 of the Rules of Procedure and Evidence (“Rules”) and regulations 47 of the Regulations.

5. Rule 7(3) of the Rules provides that “the Pre-Trial Chamber, on its own motion or, if appropriate, at the request of a party, may decide that the functions

⁴ ICC-01/05-01/13-422.

⁵ ICC-01/05-01/13-367 and confidential annex thereto.

⁶ ICC-01/05-01/13-372.

⁷ ICC-01/05-01/13-380.

⁸ ICC-01/05-01/13-412.

⁹ ICC-01/05-01/13-433.

of the single judge be exercised by the full Chamber". In his Request, the Defence for Mr Kilolo argues that a request brought under this heading "need not meet a specific standard or pass a certain threshold; rather, they are ipso facto valid" and that "[a]s such, Rule 7(3) is a right afforded to any party, in any circumstances, and exercisable at any point in the proceedings".

6. The Chamber observes that the rule does envisage a specific limitation to the party's request, namely by making such granting conditional upon the "appropriateness" of the request. As such, it cannot be said that it vests either party with an unqualified right to obtain that the Chamber acts in its full composition upon request. By the same token, the notion of appropriateness is sufficiently broad so as to possibly encompass considerations of different nature.

7. The Chamber notes that Mr Kilolo's Request is entirely premised on the purported lack of impartiality of Single Judge Cuno Tarfusser, which is also the subject matter of the three requests for his disqualification. The Defence for Mr Kilolo explicitly "contends that the rule of judicial disqualification under the Statute can be read in parallel to Rule 7(3) in the present matter".

8. The arguments raised in Mr Kilolo's Request as substantiating the "appropriateness" of having the Chamber exercise its functions in full in the case have now been addressed on their merits – and denied – by the plenary of the judges.

9. In addition, the Chamber recalls that regulation 47 of the Regulations makes the appointment of a single judge dependent upon the "criteria agreed upon by the Pre-Trial Chamber". Back in May 2013¹⁰, the Chamber decided that it was appropriate to designate Judge Cuno Tarfusser as Single Judge responsible for addressing and determining the issues arising in connection with the

¹⁰ ICC-01/05-45.

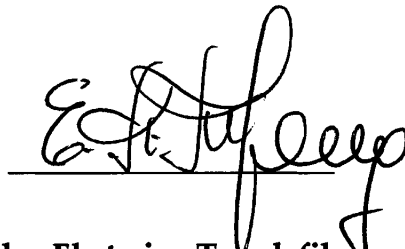
Prosecutor's request for investigative measures, the first step leading to the opening of case 01/05-01/13, including with a view to ensuring the efficiency and the expeditiousness of the proceedings.

10. The reasons warranting the appointment of the Single Judge – on which the Defence for Mr Kilolo, as well as the Defence for Mr Mangenda and the Defence for Mr Babala, are silent – still stand. Developments in this case have shown how critical it was, and still is, for the Chamber to function in such a way as to allow for the utmost expeditiousness and efficiency, both of which are first and foremost instrumental to the right of the defence to be tried without undue delay.

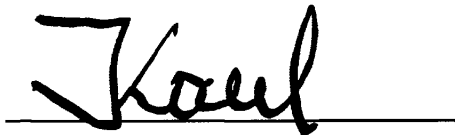
FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS Mr Kilolo's Request.

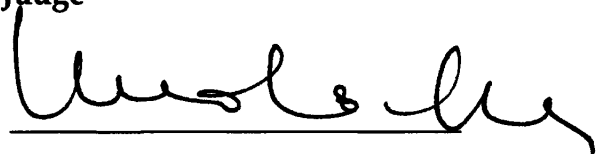
Done in both English and French, the English version being authoritative.



Judge Ekaterina Trendafilova
Presiding Judge



Judge Hans-Peter Kaul



Judge Cuno Tarfusser

Dated this Wednesday, 28 May 2014
The Hague, The Netherlands