

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: French

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

Date: 2 May 2016

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul Pangalangan

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

Submission by the Defence for Mr Fidèle Babala Wandu informing the Chamber of the Accused's desire to make an oral statement pursuant to article 67(1)(h) of the Rome Statute

Source: Defence for Mr Fidèle Babala Wandu

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

Office of the Prosecutor

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Mr James Stewart
Mr Kweku Vanderpuye

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Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

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REGISTRY

Registrar

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Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

I. BRIEF PROCEDURAL BACKGROUND AND PURPOSE OF THE SUBMISSION

1. Trial Chamber VII (“the Chamber”) ordered the Defence teams, by an e-mail of 18 April 2016,¹ to file in the record of the case formal notice of closure of presentation of their evidence, which coincides with the conclusion of their cases.
2. The Defence for Mr Babala (“the Defence”) complied with the Chamber’s order on 21 April 2016.²
3. On 29 April 2016, the Chamber declared the presentation of evidence to be closed, and scheduled 31 May 2016 as the date on which the hearing of closing statements would commence.³
4. Mr Fidèle Babala Wandu hereby wishes to inform the Chamber of his desire to address the last word to the Bench, through an oral statement, once all the parties have made their closing statements.

II. APPLICABLE LAW

5. According to article 64(2) of the Rome Statute:

Article 64

Functions and powers of the Trial Chamber

(...)

2. The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused (...).

6. Article 67(1)(h) of the Rome Statute establishes the accused’s right “[t]o make an unsworn oral or written statement in his or her defence.”

¹ E-mail sent by Trial Chamber VII Communications at 12:21 on 18 April 2016, Subject: Notice of closing of defence evidence presentation.

² ICC-01/05-01/13-1824.

³ ICC-01/05-01/13-1859.

III. SUBMISSIONS

7. In compliance with Pre-Trial Chamber II's Decision confirming the charges,⁴ Mr Babala was brought before this Chamber. At no point since his arrest in compliance with the warrant of arrest issued by the Pre-Trial Chamber has he given his own account, in a hearing, in respect of the charges against him.
8. Mr Babala was present at his trial before the Chamber and was acquainted with the evidence exchanged by the Parties or submitted to that distinguished Chamber. As he was not formally implicated, there was no reason for him to testify in his own case.
9. However, in deference to the Court, and with a view to contributing to the establishment of the truth, and hence sound evaluation by the Chamber, Mr Babala wishes to address the Chamber pursuant to article 67(1)(h) of the Statute, at the end of the trial, for about one hour. He therefore respectfully requests the Chamber to grant this request.
10. The Chambers of the International Criminal Court have always granted this right to accused persons wishing to exercise it: for example, in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, at the Trial Chamber hearing,⁵ when the Accused opted to make an unsworn statement to the Chamber "*in accordance with Article 67(1)(h) of the Statute*".⁶ Furthermore, at the appeal hearing, Thomas Lubanga Dyilo was allowed to exercise his right to address the Appeals Chamber for 30 minutes.⁷ Likewise in *The Prosecutor v. Germain Katanga*, during presentation of closing

⁴ ICC-01/05-01/13-749.

⁵ *Lubanga*, Situation in the DRC (ICC-01/04-01/06), ICC-01/04-01/06-T-357-ENG, p. 48, line 16, to p. 49, line 19.

⁶ *Lubanga*, Situation in the DRC (ICC-01/04-01/06), ICC-01/04-01/06-2842, "Judgment pursuant to Article 74 of the Statute", 31 August 2012, p. 60, para. 118.

⁷ ICC-01/04-01/06-T-363 20-05-2014, p. 65, line 15, to p. 72, line 8: "At this time I would like to invite Mr Lubanga to address the Appeals Chamber. Mr Lubanga, you have 30 minutes. Would you be so kind as to start."

statements by the parties, Germain Katanga was authorised⁸ to make a statement in accordance with article 67(1)(h) after the closing statements of the Defence.⁹ In *The Prosecutor v. Mathieu Ngudjolo*, Trial Chamber II allowed the Accused to make such an oral statement¹⁰ at the closing hearings;¹¹ and Mr Ngudjolo was given an opportunity to address the Appeals Chamber in the same way following a decision allowing him to do so.¹² Lastly, in *The Prosecutor v. Jean-Pierre Bemba Gombo*, Trial Chamber III also granted a request by his Defence team, authorising Mr Bemba to make an unsworn statement pursuant to article 67(1)(h).¹³

FOR THESE REASONS

MAY IT PLEASE TRIAL CHAMBER VII, to:

AUTHORISE Mr Fidèle Babala Wandu to address the Chamber, for one hour, after the closing statements of the parties, under the terms of article 67(1)(h) of the Statute.

RESPECTFULLY SUBMITTED

[signed]

Mr Jean-Pierre Kilenda Kakengi Basila
Lead Counsel for Mr Fidèle Babala Wandu

Dated this 2 May 2016

At Denderleeuw, East Flanders, Belgium

⁸ *Katanga*, Situation in the DRC (ICC-01/04), ICC-01/04-01/07-T-340-FRA, p. 52, line 3, to p. 59, line 2; pp. 54-59.

⁹ *Katanga*, Situation in the DRC (ICC-01/04), ICC-01/04-01/07-3436-tENG, "Judgment pursuant to article 74 of the Statute", 7 March 2014, p. 22, para. 23; T. 340, pp. 54-59; *Katanga*, Situation in the DRC (ICC-01/04), ICC-01/04-01/07-3484-tENG-Corr, "Decision on Sentence pursuant to article 76 of the Statute", 23 May 2014, p. 9, para. 13, p. 13, para. 24.

¹⁰ *Ngudjolo*, Situation in the DRC (ICC-01/04), ICC-01/04-02/12-3-tENG, "Judgment pursuant to article 74 of the Statute", 18 December 2012, p. 14, para. 25, p. 26, para. 67.

¹¹ *Ngudjolo*, situation in the DRC (ICC-01/04), ICC-01/04-02/12-T-340-FRA, pp. 59-67.

¹² *Ngudjolo*, "Order in relation to the conduct of the hearing before the Appeals Chamber", ICC-01/04-02/12-210, 8 October 2014.

¹³ *Bemba*, "Decision on unsworn statement by the accused pursuant to Article 67(1)(h) of the Rome Statute", ICC-01/05-01/08-2860, 1 November 2013.