

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 17 September 2009

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge

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

Public Document

Decision on the Requests for Withdrawal of Counsel

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

The Office of the Prosecutor
 Fatou Bensouda, Deputy Prosecutor
 Petra Kneuer, Senior Trial Lawyer

Counsel for the Defence
 Nkwebe Liriss
 Karim A.A.Khan
 Aimé Kilolo-Musamba
 Pierre Legros

Legal Representatives of the Victims
 Marie Edith Douzima-Lawson
 Paolina Massidda

Legal Representatives of the 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

Amicus Curiae

REGISTRY

Registrar
 Silvana Arbia

Defence Support Section
 Esteban Peralta

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
 Section**

Other

Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”),¹ is seized with the requests of Mr Karim A.A. Khan and Mr Pierre Legros for leave to withdraw as counsel in the Defence team of Jean-Pierre Bemba Gombo (“Mr Jean-Pierre Bemba”) in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*.

1. On 11 November 2008 Mr Jean-Pierre Bemba appointed Mr Karim A.A. Khan as “co-lead counsel” to represent him in proceedings before the Court until the end of the hearing on the confirmation of the charges.² Mr Karim A.A. Khan accepted his appointment on 13 November 2008³ and gave his solemn undertaking on 18 November 2008⁴.

2. On 3 December 2008 Mr Pierre Legros accepted his appointment by Mr Jean-Pierre Bemba to represent him as *pro bono* “associate counsel” in proceedings before the Court.⁵ On 12 December 2008 Mr Pierre Legros gave his solemn undertaking.⁶ Pre-Trial Chamber III⁷ was notified of the appointment of Mr Pierre Legros on 6 January 2009.⁸

3. On 21 July 2009 the Single Judge ordered the Defence to clarify and provide all information on the composition of Mr Jean-Pierre Bemba’s Defence team,⁹ following a request from the Defence for stay of proceedings,¹⁰ which was based on the ground that the Defence team was not paid thus impeding effective representation. In addition, the Single Judge reminded the Defence, in case of withdrawal of a counsel

¹ Pre-Trial Chamber II, Decision Designating Single Judges, ICC-01/05-01/08-393.

² ICC-01/05-01/08-261-Anx1.

³ ICC-01/05-01/08-261-Anx2.

⁴ ICC-01/05-01/08-261-Anx3.

⁵ ICC-01/05-01/08-344-Anx1.

⁶ ICC_01/05-01/08-344-Anx2.

⁷ Pre-Trial Chamber III was dissolved and the situation in the Central African Republic was assigned to Pre-Trial Chamber II by decision of the Presidency dated 19 March 2009, ICC-01/05-01/08-390.

⁸ ICC-01/05-01/08-344.

⁹ Pre-Trial Chamber II, “Order for clarification of Defence-Related Issues”, ICC-01/05-01/08-456.

¹⁰ ICC-01/05-01/08-452-Corr.

from the case, to respect the procedure under regulation 78 of the Regulations of the Court (the "Regulations") and the provisions under the Code of Professional Conduct for counsel (the "Code of Conduct") related to the termination of representation of a counsel.

4. On 23 July 2009 the Single Judge was notified of a letter from Mr Jean-Pierre Bemba addressed to the Deputy-Registrar clarifying that the mandate of Mr Karim A.A. Khan had indeed expired as of the end of the hearing on the confirmation of the charges.¹¹

5. On 28 July 2009 the Single Judge was notified of a letter by the Registrar addressed to Mr Jean-Pierre Bemba drawing his attention to the proper procedure for withdrawal of counsel set out in regulation 78 of the Regulations.¹²

6. On 31 August 2009 the Single Judge was notified of a letter from Mr Jean-Pierre Bemba addressed to the Deputy-Registrar informing him of the withdrawal of Mr Pierre Legros as counsel from his Defence team.¹³

7. On 10 September 2009 Mr Karim A.A. Khan notified the Single Judge that "until the financial situation is resolved" he felt "unable to continue as co-lead counsel" and requested leave of the Chamber to withdraw.¹⁴

8. On 14 September 2009 the Single Judge received a letter from Mr Pierre Legros dated 3 September 2009 in which he sought leave to withdraw from the case of *The Prosecutor v. Jean-Pierre Bemba*.¹⁵

¹¹ ICC-01/05-01/08-460-Anx2.

¹² ICC-01/05-01/08-463-Conf-Anx. The Single Judge, being aware of the confidential nature of this filing, does not consider the revelation of this particular information to be inconsistent with the confidential nature of this filing.

¹³ ICC-01/05-01/08-491-US-Exp-Anx2. The Single Judge, being aware of the under seal and *ex parte* nature of this document, does not consider the revelation of this information to be inconsistent with the under seal and *ex parte* nature of the filing as such.

¹⁴ ICC-01/05-01/08-510.

9. The Single Judge notes article 67 of the Rome Statute (the "Statute"), rules 8 and 22(3) of the Rules of Procedure and Evidence (the "Rules"), regulation 78 of the Regulations and articles 8, 15(2), 17(2) and 18 of the Code of Conduct.

10. At the outset, the Single Judge reiterates the Chamber's previous finding that no other term than "counsel" exists in the Statute, the Rules, the Regulations or the Code of Conduct.¹⁶

11. The Single Judge observes that despite the time-limited mandate of Mr Karim A.A. Khan, he has represented Mr Jean-Pierre Bemba past the end of the hearing on the confirmation of charges. Several filings of the Defence¹⁷ have been signed by Mr Karim A.A. Khan in his capacity as counsel representing Mr Jean-Pierre Bemba. In addition, Mr Karim A.A. Khan represented Mr Jean-Pierre Bemba at a hearing held before the Single Judge on 29 June 2009.¹⁸

12. Against this background, the Single Judge was of the assumption that the initial agreement between Mr Karim A.A. Khan and the accused has been superseded by further agreement, renewing his mandate. With the request for withdrawal the Single Judge holds that Mr Karim A.A. Khan has properly requested to withdraw from the case.

13. With regard to the appointment of Mr Pierre Legros, the Single Judge was formally informed of his withdrawal by the Registrar's filing of 14 September 2009.¹⁹

¹⁵ ICC-01/05-01/08-517-Conf-Anx.

¹⁶ Pre-Trial Chamber III, "Decision on the Request for Withdrawal of a Counsel", ICC-01/05-01/08-274, para. 9.

¹⁷ These filings concern ICC-01/05-01/08-379, ICC-01/05-01/08-411, ICC-01/05-01/08-413, ICC-01/05-01/08-430-Conf, ICC-01/05-01/08-432-tENG, ICC-01/05-01/08-433.

¹⁸ Pre-Trial Chamber II, ICC-01/05-01/08-T-13-ENG ET.

¹⁹ Reference is made to article 23(b) of the Code of Conduct.

14. In principle, the Single Judge is of the view that any leave to withdraw by counsel from a case must be considered in light of the fact that effective representation of the suspect or accused is still ensured and withdrawal is not prejudicial to the ongoing proceedings.

15. In this respect the Single Judge notes that, despite withdrawal, Mr Jean-Pierre Bemba is still represented by two counsels, namely Mr Nkwebe Liriss²⁰ and Mr Aimé Kilolo-Musamba²¹. Under these circumstances, the Single Judge considers that the withdrawal of two counsels does not have an impact on the course of the ongoing proceedings which may otherwise be delayed. The Single Judge thus consents to it.

16. However, the Single Judge notes that Mr Karim A.A. Khan and Mr Pierre Legros, acting as counsel for the Defence as defined in rule 22(3) of the Rules, are, in performance of their duties, subject to the Statute, the Rules, the Regulations and the Code of Conduct. The Single Judge emphasizes that this applies also after their withdrawal with regard to their obligations of professional secrecy and confidentiality pursuant to articles 8, 17(2) and 18(2) of the Code of Conduct.

17. The Single Judge also underlines the importance of Mr Karim A.A. Khan's and Mr Pierre Legros' duty to promptly convey, in accordance with articles 15(2) and 18(5) of the Code of Conduct, to the two counsels remaining in the Defence team of Mr Jean-Pierre Bemba, any communication they have received relating to the representation of Mr Jean-Pierre Bemba as well as the entire file, including any material or document relating to it. The handover of all documents concerned is without prejudice to Mr Karim A.A. Khan's and Mr Pierre Legros' duties which subsist after the end of their mandate.

²⁰ ICC-01/05-01/08-54. Mr Nkwebe Liriss was appointed by Mr Jean-Pierre Bemba as *pro bono* counsel, ICC-01/05-01/08-54-Anx1.

²¹ ICC-01/05-01/08-67.

FOR THESE REASONS, THE SINGLE JUDGE

- a) **grants** leave to Mr Karim A.A. Khan and Mr Pierre Legros to withdraw from the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*;
- b) **orders** Mr Karim A.A. Khan and Mr Pierre Legros to promptly convey to the counsels remaining in the Defence team of Jean-Pierre Bemba Gombo any communication that they have received relating to the representation of the accused as well as the entire case file, including any material or document relating thereto;
- c) **orders** Mr Karim A.A. Khan and Mr Pierre Legros to comply after this withdrawal with any provisions of the Statute, the Rules as well as the Code of Conduct relating to confidentiality.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Thursday, 17 September 2009

At The Hague, The Netherlands