

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 14 November 2008

PRE-TRIAL CHAMBER III

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul
Judge Mauro Politi

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

**Public Document
With Confidential Annex**

**Decision on the Second Defence's Application for Lifting the Seizure of Assets
and Request for Cooperation to the Competent Authorities of the Republic of
Portugal**

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 for

Nkwebe Liriss
Tjarda E. Van der Spoel
Aimé Kilolo-Musamba

Legal Representatives of the Victims

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

Competent authorities of the Republic of
Portugal

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia
Deputy Registrar

Defence Support Section

Esteban Peralta-Losilla, Chief

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. **Pre-Trial Chamber III** (the “Chamber”) of the International Criminal Court (the “Court”) received on 28 October 2008 an application entitled “Requête en main levée de saisie” requesting the partial lifting of the seizure or freezing of a specific amount of money in a Portuguese bank account of Mr Jean-Pierre Bemba Gombo (“Mr Jean-Pierre Bemba”).¹

2. The present decision is classified as public although it refers to the existence of documents and, as the case may be, to a limited extent to their content, which have been submitted and are currently treated as confidential, under seal and/or *ex parte*. However, the Chamber considers that references in the present decision to documents confidential, under seal and/or *ex parte* have been kept to a minimum and are not inconsistent with the nature of the documents referred thereto. Furthermore, the Chamber is of the view that the present classification is required by the principle of publicity as one of the underlying tenets of fairness of the Court’s proceedings.

3. The Chamber recalls that on 9 July 2008 Mr Jean-Pierre Bemba submitted to the Registry an application for legal assistance to be paid by the Court (the “Application for Legal Assistance”).²

4. On 25 August 2008 the Registrar issued a public decision provisionally rejecting, pending the completion of a financial investigation for the purposes of indigence, the Application for Legal Assistance of Mr Jean-Pierre Bemba to be paid by the Court (the “Registrar’s Provisional Decision”).³ The Registrar’s Provisional Decision finding that Mr Jean-Pierre Bemba was not indigent was based on the following elements:

¹ ICC-01/05-01/08-193-Conf.

² ICC-01/05-01/08-62-Conf-Exp, para 10.

³ Registrar, “Registrar’s Decision on the Application for Legal Assistance paid by the Court Filed by Mr Jean-Pierre Bemba Gombo”, ICC-01/05-01/08-76-tENG.

- (i) the fact that the Application for Legal Assistance “[did] not list all the property and assets directly or indirectly linked to Mr Jean-Pierre Bemba”;
- (ii) the fact that there were some discrepancies between the information provided in support of the Application for Legal Assistance⁴ and other financial information in possession of the Court;
- (iii) the information that “Mr Jean-Pierre Bemba owns and is directly or indirectly linked to the property and assets” described in a confidential Annex 4 to the Registrar’s Provisional Decision;
- (iv) an “investigation conducted by the Registry showing that Mr Jean-Pierre Bemba might have other property and assets whose details are unknown for the time being”; and
- (v) “the sums identified in the bank accounts and a minimalist appraisal of the moveable and immoveable property”.⁵

5. On 26 August 2008 counsels of Mr Jean-Pierre Bemba filed a first “Application for the Lifting of the Seizure” of his assets, particularly, a bank account in Portugal (the “First Application”).⁶ This First Application was notified to the Chamber on 29 August 2008.

6. On 19 September 2008 the Prosecutor submitted the “Prosecution’s Response to Defence Application for the Lifting of Seizure”.⁷ The Prosecutor concurred with the Registrar’s Provisional Decision by stating that “a risk of indigence [was] lacking” and suggested that alternative solutions, such as limited remittances for reasonable and essential expenses on a scheduled basis and based on a billing system, were available.

⁴ ICC-01/05-01/08-62-Conf-Exp. and its annexes.

⁵ ICC-01/05-01/08-76-tENG, pp. 4 to 6.

⁶ ICC-01/05-01/08-81-Conf-tENG.

⁷ ICC-01/05-01/08-110-Conf.

7. On 10 October 2008 the Chamber issued the “Decision on the Defence’s Application for Lifting the Seizure of Assets and Request for Cooperation to the Competent Authorities of Portugal” (the “Decision of 10 October 2008”)⁸ which authorised, subject to review, the release of € 36,260 on a monthly basis from a Portuguese bank account of Mr Jean-Pierre Bemba in order to cover both his financial obligations towards his family as well as the fees for his counsels. The Chamber recalls that it determined the amount of € 36, 260 by applying official rates and modes of calculation used by the Registry to estimate the costs required to provide basic care to the dependants of Mr Jean-Pierre Bemba and the monthly costs for a legal team acting during the pre-trial stage of the proceedings.⁹

8. On 28 October 2008 the Defence filed an application entitled “Requête en main levée de saisie” (the “Second Application”)¹⁰ requesting the partial lifting of the seizure or freezing of a specific amount of money in a Portuguese bank account of Mr Jean-Pierre Bemba. Firstly, counsels of Mr Jean-Pierre Bemba requested the lifting of seizure or freezing of € 78,900 on a monthly basis starting on 1 October 2008 to cover both his financial obligations to his family as well as to his counsels. Secondly, the Defence estimated that it would need € 100,000 to cover its investigation activities. Thirdly, the Defence requested € 234,000 in order to cover Mr Jean-Pierre Bemba’s family expenses and his counsels’ fees from the date of his arrest in the Kingdom of Belgium until September 2008.

9. On 6 November 2008 the Registry filed observations on the Second Application (the “Observations of the Registry”),¹¹ in which it submitted that the Defence did not provide any relevant documentation to justify its request.

⁸ ICC-01/05-01/08-149-Conf.

⁹ ICC-01/05-01/08-149-Conf, para 8.

¹⁰ ICC-01/05-01/08-193-Conf

¹¹ Greffe, « Observations du Greffier sur la ‘Requête en main levée de saisie’ déposée le 28 octobre 2008 par maître Kilolo Musamba, conseil associé de M. Jean-Pierre Bemba Gombo », ICC-01/05-01/08-216-Conf.

10. On the same day the Prosecutor filed the “Prosecution’s Response to Defence ‘Requête en Main Levée de Saisie’ of 28 October 2008” where he requested that the Chamber dismiss the Second Application due to the lack of evidence in support of the Defence request.¹²

11. The Chamber notes articles 21, 57(3)(e), 67, 82(1)(d), 93(1)(k), 96 and 97 of the Rome Statute (the “Statute”), rules 99, 117(2) and 176(2) of the Rules of Procedure and Evidence (the “Rules”), articles 13(1) and 20 of the Code of Professional Conduct for counsel, regulation 23 *bis* of the Regulations of the Court (the “Regulations”) and regulation 14 of the Regulations of the Registry.

12. The Chamber recalls the Decision of 10 October 2008, in which it explicitly reserved the right to review its decision in the event that it receives additional information regarding Mr Jean-Pierre Bemba’s financial resources.¹³

13. At the outset, the Chamber notes that the Defence did not request leave to appeal the Decision of 10 October 2008 pursuant to article 82(1)(d) of the Statute. Thus, it did not raise any objections either with regard to the mode of calculation, which has been known to the Defence since 25 August 2008¹⁴ and is commonly applied to all suspects requesting legal assistance paid by the Court, or with regard to the monthly amount of € 36,260 authorised by the Chamber to be released from a particular Portuguese bank account of Mr Jean-Pierre Bemba.

14. The Chamber now turns to an analysis of the relevance of each specific request for releasing additional resources submitted by the Defence in its Second Application.

¹² ICC-01/05-01/08-220-Conf.

¹³ ICC-01/05-01/08-149-Conf, para. 18.

¹⁴ ICC-01/05-01/08-76-Conf-Exp-Anx6.

15. With regard to the amount of € 78,900 to be released on a monthly basis from Mr Jean-Pierre Bemba's bank account in Portugal, the Chamber, noting the Observations of the Registry¹⁵ and of the Prosecutor¹⁶, finds that the Defence did not submit any relevant documentation to justify its request. Moreover, the Chamber is of the view that the Defence failed to demonstrate any change in the financial situation of Mr Jean-Pierre Bemba since 10 October 2008.

16. In relation to the amount of € 100,000 requested for investigation purposes, the Chamber finds that the Defence did not provide any proof that a change of circumstances justifies the release of this amount. The Chamber considers therefore, that the expenses relating to investigation activities are already covered by the allocation of € 36,260 per month to the Defence.

17. Furthermore, the Chamber is of the opinion that the Defence team of Mr Jean-Pierre Bemba, composed of three counsels and a legal assistant¹⁷, could have reasonably foreseen the costs of its investigation activities and requested financial support at an earlier time, especially since two of the counsels were appointed when Mr Jean-Pierre Bemba was transferred to the Court on 3 July 2008.

18. The Chamber also recalls the statement of the Defence team of Mr Jean-Pierre Bemba during the status conference held on 22 October 2008 that it is properly prepared and available "at the first possible date" of the confirmation of charges hearing.¹⁸ Thus, the Chamber finds it inconsistent that the Defence argues, on the one hand, that it needs additional resources for investigation purposes and, on the other hand, that it is adequately prepared for the confirmation of charges hearing.

¹⁵ ICC-01/05-01/08-216-Conf., para. 18.

¹⁶ ICC-01/05-01/08-220-Conf., para. 11.

¹⁷ ICC-01/05-01/08-T-8-CONF-ENG-CT, p. 51, lines 2-4.

¹⁸ ICC-01/05-01/08-T-8-CONF-ENG-CT, p. 51, lines 1 and 2.

19. As to the amount of € 234,000, covering the expenses of Mr Jean-Pierre Bemba's family and the fees for his counsels for a period starting from his arrest in the Kingdom of Belgium until September 2008, the Chamber reiterates that the Defence did not request a leave to appeal the Decision of 10 October 2008, while knowing that the monthly amount authorised by the Chamber was to be paid as of 1 October 2008, as specified in letter (a) of the operative part of the said decision.¹⁹

20. With regard to the request concerning the payment of fees for counsels of Mr Jean-Pierre Bemba from the time of his arrest in the Kingdom of Belgium until September 2008, the Chamber considers that it is without merit for the following three reasons.

21. First, as the request to pay for the fees of counsels acting before the Belgian courts, the Chamber recalls rule 117(2) of the Rules pursuant to which "at any time after the arrest, the person may make a request to the Pre-Trial Chamber for the appointment of counsel to assist with *proceedings before the Court* and the Pre-Trial Chamber shall take a decision on such request" (emphasis added). The Chamber considers that the appointment of counsel prior to the surrender of the person to the Court and thus, the possible decision on the payment of the counsel's fees relates only to the proceedings before the Court and clearly excludes any determination by the Chamber with regard to fees of counsels acting before national courts.

22. Second, with regard to the payment of fees of Mr Van der Spoel and Mr Kilolo-Musamba, acting as associate counsels and assisting Mr Jean-Pierre Bemba for proceedings before the Court from the time of his transfer to the Court until September 2008, the Chamber observes that they were initially appointed by the Court as duty counsels chosen by Mr Jean-Pierre Bemba at a time when the latter declared himself not to be indigent.²⁰ In addition, the Chamber notes that the two

¹⁹ ICC-01/05-01/08-149-Conf.

²⁰ Mr Jean-Pierre Bemba's declaration is dated 3 July 2008, ICC-01/05-01/08-62-Conf-Exp, para. 8.

legal counsels, fully aware of the fact that Mr Jean-Pierre Bemba was not benefiting from legal assistance paid by the Court, consented to renew their representation agreement as associate counsels on 8 August 2008.²¹ The Chamber is thus of the view that the two associate counsels assisting Mr Jean-Pierre Bemba since his first appearance before the Chamber are well aware of the conditions under which they have signed their representation agreement.

23. Third, the Chamber also finds it contradictory that in the Second Application, the Defence requests payment of the fess for Mr Nkwebe Liriss, who has declared that he is *pro bono* counsel for Mr Jean-Pierre Bemba since 29 July 2008²². Since Mr Nkwebe Liriss accepted a representation agreement under the condition that he would assist Mr Jean-Pierre Bemba as *pro bono* principal counsel, the Chamber considers that it is the counsel's duty to inform his client of the meaning and consequences of such a *pro bono* arrangement.

24. The Chamber concludes that by requesting additional resources the Defence *de facto* seeks the amendment of the Decision of the 10 October 2008, in particular of the initial date as of which the amount of € 36, 260 has to be released on a monthly basis. However, the Chamber reiterates that the Defence did not: (i) request leave to appeal the Decision of 10 October 2008 pursuant to article 82(1)(d) of the Statute; (ii) demonstrate any change of circumstances in the financial situation of Mr Jean-Pierre Bemba since 10 October 2008 and (iii) support its Second Application with any documentation such as official invoices.

25. Mindful of the rights of the Defence and of the forthcoming date of the confirmation of charges hearing, the Chamber stresses the importance of its Decision of 10 October 2008 and deems it necessary to request once more that the competent

²¹ ICC-01/05-01/08-67 and its annexes.

²² ICC-01/05-01/08-54 and its annex.

authorities of the Republic of Portugal implement the said decision, if this has not been done yet.

26. With regard to the implementation of the Decision of 10 October 2008, the Chamber is also of the view that the Registry should be in charge of the monitoring process in order to ensure the proper use of the funds released. The Registry, after consultation with the Portuguese authorities, has to receive the monthly amount released and ensure its distribution in conformity with the Decision of 10 October 2008 as follows: € 30,150 to cover the fees for his counsels and € 6,110 to cover the expenses of Mr Jean-Pierre Bemba's family.

27. Finally, the Chamber recalls the principle of publicity of proceedings and regulation 23 *bis* (1) of the Regulations which provides that any document filed by a participant and marked "confidential" "*shall state the factual and legal basis for the chosen classification* and, unless otherwise ordered by the Chamber, shall be treated according to that classification throughout the proceedings" (emphasis added).

28. The Chamber further notes that the Defence has neither requested nor provided reasons for filing the First and the Second Application as confidential. Therefore, for the purpose of respecting the publicity of proceedings, the Chamber deems it necessary to re-classify the First and Second Application, the responses emanating either from the Registry or the Prosecutor and the Decision of 10 October 2008.

29. However, the Chamber, concerned with Mr Jean-Pierre Bemba's right to privacy, deems it appropriate to order the parties and the Registry to prepare a public redacted version of the said documents in order to keep confidential any personal data relating to the details of his bank accounts as stated in the confidential Annex to the present decision. The respective public redacted versions of these documents, both in English and French, where applicable, will then be filed in the record of the case.

FOR THESE REASONS, THE CHAMBER

- a) rejects** the Second Application of Mr Jean-Pierre Bemba Gombo in its entirety;
- b) decides** to re-classify as public decision ICC-01/05-01/08-8-US-Exp and to re-classify make public in redacted form the following decision and documents:
- (i) ICC-01/05-01/08-81-Conf;
 - (ii) ICC-01/05-01/08-110-Conf;
 - (iii) ICC-01/05-01/08-149-Conf;
 - (iv) ICC-01/05-01/08-193-Conf;
 - (v) ICC-01/05-01/08-216-Conf;
 - (vi) ICC-01/05-01/08-220-Conf and ICC-01/05-01/08-220-Conf-AnxA;
- c) orders** the Defence, the Prosecutor and the Registry to file in the record of the case a public redacted version of their respective documents as mentioned above, in accordance with the confidential Annex to the present decision;
- d) orders** the Registry to transmit the present decision to the competent authorities of the Republic of Portugal;
- e) requests** the competent authorities of the Republic of Portugal to urgently implement the Decision of 10 October 2008, if they have not done so yet;
- f) orders** the Registry to report to the Chamber no later than 24 November 2008 on the status of implementation of the Decision of 10 October 2008 and especially, on any difficulties the competent authorities of the Republic of Portugal may encounter in the said implementation;

g) orders the Registry to monitor, in consultation with the competent authorities of the Republic of Portugal, the distribution of € 36,260 on a monthly basis to ensure that Jean-Pierre Bemba Gombo meets his financial obligations to his family and his counsels.

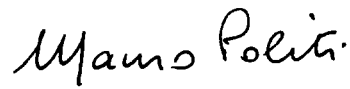
Done in both English and French, the English version being authoritative.



Judge Ekaterina Trendafilova
Presiding Judge



Judge Hans-Peter Kaul



Judge Mauro Politi

Dated this Friday, 14 November 2008

At The Hague, The Netherlands