



**Original: English**

**No. ICC-01/14-01/22 OA4**

**Date: 13 February 2024**

**THE APPEALS CHAMBER**

**Before:**

**Judge Solomy Balungi Bossa, Presiding  
Judge Piotr Hofmański  
Judge Luz del Carmen Ibáñez Carranza  
Judge Marc Perrin de Brichambaut  
Judge Gocha Lordkipanidze**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II**

**IN THE CASE OF**

**THE PROSECUTOR v. MAXIME JEOFFROY ELI MOKOM GAWAKA**

**Public**

**Decision on the discontinuance of the appeal**

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

**The Office of the Prosecutor**

Mr Karim A. A. Khan, Prosecutor  
Ms Helen Brady

**Counsel for the Defence**

Mr Philippe Larochelle

**REGISTRY**

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**Registrar**

Mr Osvaldo Zavala Giler

**Other**

Pre-Trial Chamber II

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Maxime Jeoffroy Eli Mokom Gawaka against the decision of Pre-Trial Chamber II entitled “Decision pursuant to Rule 185 of the Rules of Procedure and Evidence” of 18 January 2024 (ICC-01/14-01/22-309-Red),

Having before it the “Notice of Appeal against ‘Decision pursuant to Rule 185 of the Rules of Procedure and Evidence’, ICC-01/14-01/22-309-Conf-Exp and Request for Suspensive Effect”, filed by Mr Maxime Jeoffroy Eli Mokom Gawaka on 24 January 2024 (ICC-01/14-01/22-312-Red), and

Having before it the “Appeal against ‘Decision pursuant to Rule 185 of the Rules of Procedure and Evidence’, ICC-01/14-01/22-309-Conf-Exp”, filed by Mr Maxime Jeoffroy Eli Mokom Gawaka on 7 February 2024 (ICC-01/14-01/22-318-Red),

Having before it the “Defence Submissions Further to ‘Appeal against ‘Decision pursuant to Rule 185 of the Rules of Procedure and Evidence’, ICC-01/14-01/22-309-Conf Exp’, ICC-01/14-01/22-318-Conf-Exp” (ICC-01/14-01/22-321-Conf),

*Renders* unanimously the following

## DECISION

The Appeals Chamber finds that the notice of discontinuance of the appeal is valid, and that the appellate proceedings, initiated by the Defence, are thus terminated.

## REASONS

### I. PROCEDURAL HISTORY

1. On 17 October 2023, Pre-Trial Chamber II (hereinafter: “Pre-Trial Chamber”) issued the “Order in relation to the Prosecution’s ‘Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka’”,<sup>1</sup> in which the Pre-Trial Chamber, *inter*

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<sup>1</sup> [ICC-01/14-01/22-276](#) (hereinafter: “Order of 17 October 2023”).

*alia*, noted the Prosecutor’s withdrawal of charges against Mr Mokom, and “terminate[d] the proceedings against him with immediate effect”.<sup>2</sup>

2. On 18 January 2024, the Pre-Trial Chamber issued the “Decision pursuant to Rule 185 of the Rules of Procedure and Evidence” (hereinafter: “Impugned Decision”).<sup>3</sup>

3. On 24 January 2024, the Defence filed its notice of appeal against the Impugned Decision (hereinafter: “Notice of Appeal”),<sup>4</sup> which included a request for suspensive effect of the Impugned Decision (hereinafter: “Request for Suspensive Effect”).<sup>5</sup>

4. On 7 February 2024, the Defence filed its appeal brief against the Impugned Decision.<sup>6</sup>

5. On the same day, the Registry filed the “Registry’s Report on Consultations with the States pursuant to Order ICC-01/14-01/22-309”.<sup>7</sup>

6. On 8 February 2024, the Appeals Chamber issued the “Decision on the request for suspensive effect and order concerning submissions on admissibility”.<sup>8</sup>

7. On 9 February 2024, the Defence filed further submissions to the Appeal Brief (hereinafter: “Notice of Discontinuance”) indicating, *inter alia*, that “[s]hould the Appeals Chamber consider that the jurisdiction of the Court nevertheless continues, the Defence withdraws the appeal”.<sup>9</sup>

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<sup>2</sup> [Order of 17 October 2023](#), para. 9.

<sup>3</sup> [ICC-01/14-01/22-309-Red](#).

<sup>4</sup> [Notice of Appeal against “Decision pursuant to Rule 185 of the Rules of Procedure and Evidence”, ICC-01/14-01/22-309-Conf-Exp and Request for Suspensive Effect, 24 January 2024](#), ICC-01/14-01/22-312-Conf-Exp (public redacted version filed on 26 January 2024, ICC-01/14-01/22-312-Red).

<sup>5</sup> [Notice of Appeal](#), paras 35-37.

<sup>6</sup> [Appeal against “Decision pursuant to Rule 185 of the Rules of Procedure and Evidence”, ICC-01/14-01/22-309-Conf-Exp](#), ICC-01/14-01/22-318-Conf-Exp (public redacted version filed on 8 February 2024, ICC-01/14-01/22-318-Red).

<sup>7</sup> ICC-01/14-01/22-319-Conf-Exp.

<sup>8</sup> ICC-01/14-01/22-320-Conf.

<sup>9</sup> Notice of Discontinuance, para. 3.

## II. MERITS

8. Pursuant to rule 157 of the Rules of Procedure and Evidence:

Any party who has filed an appeal under rule 154 or who has obtained the leave of a Chamber to appeal a decision under rule 155 may discontinue the appeal at any time before judgment has been delivered. In such case, the party shall file with the Registrar a written notice of discontinuance of appeal. The Registrar shall inform the other parties that such a notice has been filed.

9. The Appeals Chamber recalls that

while the initiation of appellate proceedings under article 82 of the Statute is party-driven, when a party files an appeal, it triggers the jurisdiction of the Appeals Chamber. Once the Appeals Chamber is seised of an appeal, *it is for the Appeals Chamber to decide whether the proceedings may be considered to be terminated as a result of the appellant's notice of discontinuance of his or her appeal*. Accordingly, the Appeals Chamber, while taking note of the appellant's intention to withdraw his or her appeal, shall verify the validity of the notice of discontinuance.<sup>10</sup>

10. In the present case, the Appeals Chamber notes the Defence's use of rather ambiguous language in expressing its intention to discontinue the appeal (“[s]hould the Appeals Chamber consider that the jurisdiction of the Court nevertheless continues, the Defence withdraws the appeal”).<sup>11</sup> Whilst the Defence could have been clearer, the Appeals Chamber, nevertheless, considers that the Defence's intention to discontinue the appeal is discernible. Therefore, the Appeals Chamber finds that the Notice of Discontinuance is valid and that the appellate proceedings, initiated by the Defence, are thus terminated. Accordingly, the “Decision on the request for suspensive effect and order concerning submissions on admissibility” is moot.<sup>12</sup>

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<sup>10</sup> *Situation in the Islamic Republic of Afghanistan*, [Decision on Prosecutor's notice of discontinuance of the appeal](#), 16 March 2023, ICC-02/17-216 (OA5), para. 34 (footnote omitted, emphasis added). *See also Prosecutor v. Thomas Lubanga Dyilo*, [Decision on Thomas Lubanga Dyilo's Brief relative to Discontinuance of Appeal](#), 3 July 2006, ICC-01/04-01/06-176, paras 8-9.

<sup>11</sup> Notice of Discontinuance, para. 3.

<sup>12</sup> ICC-01/14-01/22-320-Conf.

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

A handwritten signature in black ink, appearing to read 'S. Balungi Bossa', written in a cursive style.

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**Judge Solomy Balungi Bossa**  
**Presiding**

Dated this 13<sup>th</sup> day of February 2024

At The Hague, The Netherlands