

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-01/05-01/08 A
Date: 8 June 2018**

THE APPEALS CHAMBER

Before: Judge Christine Van den Wyngaert, Presiding Judge
Judge Chile Eboe-Osuji
Judge Sanji Mmasenono Monageng
Judge Howard Morrison
Judge Piotr Hofmański

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

**IN THE CASE OF
THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO**

Public document

Judgment

**on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's
“Judgment pursuant to Article 74 of the Statute”**

50. In the view of the Appeals Chamber, in interpreting article 74 (5) of the Statute, it is appropriate to have regard to the jurisprudence of the ECtHR, which has underlined the importance of reasoning in allowing the accused person to usefully exercise available rights of appeal; it requires that courts “indicate with sufficient clarity the grounds on which they based their decision”.⁵² The provision of reasons also enables the Appeals Chamber to clearly understand the factual and legal basis upon which the decision was taken and thereby properly exercise its appellate functions.

51. The Appeals Chamber has previously outlined its considerations regarding the requirement of a reasoned decision in the following terms:

The extent of the reasoning will depend on the circumstances of the case, but it is essential that it indicates with sufficient clarity the basis of the decision. Such reasoning will not necessarily require reciting each and every factor that was before the [...] Chamber to be individually set out, but it must identify which facts it found to be relevant in coming to its conclusion.⁵³

52. The Appeals Chamber finds that these considerations also apply, in principle, to decisions on the guilt or innocence of the accused under article 74 of the Statute. It must be clear from the trial chamber’s decision which facts it found to have been established beyond reasonable doubt and how it assessed the evidence to reach these factual findings.

53. To fulfil its obligation to provide a reasoned opinion, a trial chamber is not required to address all the arguments raised by the parties, or every item of evidence relevant to a particular factual finding, provided that it indicates with sufficient clarity the basis for its decision.⁵⁴

54. The Appeals Chamber notes that a trial chamber thus has a degree of discretion as to what to address and what not to address in its reasoning. Not every actual or perceived shortcoming in the reasoning will amount to a breach of article 74 (5) of the Statute. It is also of note that, when determining whether there was a breach of article

⁵² *Lubanga OA5 Judgment*, para. 20, referring to *Hadjianastassiou v. Greece*, para. 32.

⁵³ *Lubanga OA5 Judgment*, para. 20.

⁵⁴ See, with respect to appeals filed under rules 154 and 155 of the Rules, *Lubanga OA5 Judgment*, para. 20; *Bemba et al. OA4 Judgment*, para. 116.