



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

Extraordinary Chambers in the Courts of Cambodia  
Chambres extraordinaires au sein des tribunaux cambodgiens

**ព្រះរាជាណាចក្រកម្ពុជា**  
**ជាតិ សាសនា ព្រះមហាក្សត្រ**  
Kingdom of Cambodia  
Nation Religion King  
Royaume du Cambodge  
Nation Religion Roi

**អង្គបុរេជំនុំជម្រះ**  
Pre-Trial Chamber  
Chambre Préliminaire

D229/3/1/4

*In the name of the Cambodian people and the United Nations and pursuant to the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea*

Case File N° 004/07-09-2009-ECCC/OCIJ (PTC22)

**Before:** Judge PRAK Kimsan, President  
Judge Olivier BEAUVALLET  
Judge NEY Thol  
Judge Kang Jin BAIK  
Judge HUOT Vuthy

**Date:** 2 June 2016

<b>ឯកសារដើម</b>	
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**PUBLIC**

**DECISION ON YIM TITH'S NOTICE OF WITHDRAWAL OF APPEAL AGAINST THE INTERNATIONAL CO-INVESTIGATING JUDGE'S DECISION ON URGENT REQUESTS TO RECONSIDER THE DISCLOSURE OF CASE 004 WITNESS STATEMENTS IN CASE 002/02**

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Barnabe NEKUI  
Lyma NGUYEN  
Beini YE



**THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (the “ECCC”) is seised of the “YIM Tith’s Notice of Appeal Against the International Co-Investigating Judge’s Decision on YIM Tith’s Urgent Request for the International Co-Investigating Judge to Reconsider the Disclosure of Case 004 Witness Statements in Case 002/02”, filed on 17 August 2015 and registered by the Greffier of the Co-Investigating Judges on 18 August 2015 (the “Notice of Appeal”).<sup>1</sup>

1. On 17 August 2015, the Co-Lawyers for YIM Tith filed the Notice of Appeal against a decision issued by International Co-Investigating Judge HARMON (the “Impugned Decision”)<sup>2</sup> denying two requests to reconsider the disclosure of Case 004 witness statements in Case 002/02.<sup>3</sup>
2. On 4 September 2015, the Legal Officer of the Office of the Co-Investigating Judges informed the Co-Lawyers that International Co-Investigating Judge BOHLANDER considers the Impugned Decision void and that he would re-issue a decision shortly.<sup>4</sup>
3. On the same date, the Co-Lawyers filed with the Greffier of the Pre-Trial Chamber a request for guidance regarding the filing of the submissions on appeal.<sup>5</sup>
4. On 9 September 2015, the Legal Officer of the Pre-Trial Chamber informed the Co-Lawyers that the Pre-Trial Chamber had granted an extension of time limit to 30 days from re-issuance of a decision by International Co-Investigating Judge BOHLANDER.<sup>6</sup>
5. On 30 March 2016, the International Co-Investigating Judge BOHLANDER re-issued the Impugned Decision.<sup>7</sup>

<sup>1</sup> D229/3/1.

<sup>2</sup> Decision on YIM Tith’s Urgent Request for the International Co-Investigating Judge to Reconsider the Disclosure of Case 004 Witness Statements in Case 002/02, 12 August 2015, D229/3.

<sup>3</sup> YIM Tith’s Urgent Request for the International Co-Investigating Judge to Reconsider the Disclosure of Case 004 Witness Statements in Case 002/02, 17 November 2014, D229; YIM Tith’s Second Urgent Request for the International Co-Investigating Judge to Reconsider the Disclosure of Case 004 Witness Statements in Case 002/02, 23 February 2015, D229/2.

<sup>4</sup> See Email from the Legal Officer of the Office of the Co-Investigating Judges to the Co-Lawyers for YIM Tith dated 4 September 2015, D229/3/1/1.1.2.

<sup>5</sup> YIM Tith’s Request for Guidance in View of Email Received from OCIJ Legal Officer, filed on 4 September 2015 and notified on 7 September 2015, D229/3/1/1.

<sup>6</sup> See Email from the Legal Officer of the Pre-Trial Chamber to the Co-Lawyers for YIM Tith dated 9 September 2015, D229/3/1/2.1.2.

<sup>7</sup> Re-Issued Decision on YIM Tith’s Urgent Requests for the International Co-Investigating Judge to Reconsider the Disclosure of Case 004 Witness Statements in Case 002/02, filed on 29 March 2016 and notified on 30 March 2016, D229/5.



6. The Co-Lawyers did not file any submissions on appeal within the time limit prescribed by the Pre-Trial Chamber, which expired on 29 April 2016.
7. On 26 May 2016, the Pre-Trial Chamber instructed the Co-Lawyers to file a notice of intent within five days.<sup>8</sup>
8. On 27 May 2016, the Co-Lawyers filed a notice to withdraw the Appeal<sup>9</sup>.
9. The Pre-Trial Chamber recalls that, on the basis of Cambodian and international practice, “a party has the right to withdraw an appeal without seeking leave until the conclusion of the debate between the parties”.<sup>10</sup> In the present case, the Co-Lawyers have filed their Notice of Withdrawal before a decision was made under Rule 77(3)(b) of the Internal Rules, hence before the conclusion of the debates on appeal. The Co-Lawyers are therefore allowed to withdraw the Appeal without seeking leave.

### DISPOSITION


**FOR THESE REASONS, THE PRE-TRIAL CHAMBER UNANIMOUSLY HEREBY:**


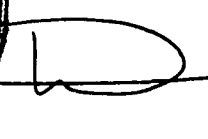

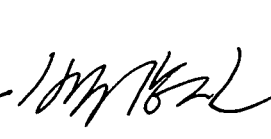
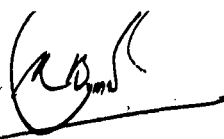
NOTES the withdrawal of the Appeal.

Phnom Penh, 2 June 2016

President

Pre-Trial Chamber



**PRAK Kimsan    Olivier BEAUVALLET    NEY Thol    Kang Jin BAIK    HUOT Vuthy**

<sup>8</sup> Email from the Pre-Trial Chamber addressed to the parties, NOTIFICATION: Pre-Trial Chamber's Instructions to the parties in Case File N° 004/07-09-2009-ECCC/OCIJ (PTC22), 26 May 2016.

<sup>9</sup> YIM Tith's Notice to Withdraw the Appeal of D229/5, filed on 27 May 2016 and notified on 30 May 2016, D229/3/1/3.

<sup>10</sup> Decision on Notice of Withdrawal of Appeal Against the Constructive Dismissal of TA An's Request for Access to the Case File, 12 April 2013, D121/2/3, para. 2 referring to Case 002/19-09-2007-ECCC/OCIJ (PTC04), Decision Relating to Notice of Withdrawal of Appeal, 15 October 2008, C26/1/31, para. 11.