



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

អង្គជំនុំជម្រះតុលាការកំពូល

Supreme Court Chamber
Chambre de la Cour suprême

សំណុំរឿងលេខ: ០០៤/២/០៧-០៩-២០០៩-អ.វ.ត.ក/អ.ជ.ស.ដ/អ.ជ.ត.ក

Case File/Dossier N°. 004/2/07-09-2009-ECCC/TC/SC

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 17-Jun-2020, 12:10
CMS/CFO: Sann Rada

Before: Judge KONG Srim, President
Judge Chandra Nihal JAYASINGHE
Judge SOM Sereyvuth
Judge Florence Ndepele MWACHANDE-MUMBA
Judge MONG Monichariya
Judge Maureen Harding CLARK
Judge YA Narin

Date: 17 June 2020
Language(s): Khmer/English
Classification: PUBLIC

DECISION ON YIM TITH’S REQUEST FOR LEAVE TO INTERVENE IN CASE 004/2 ON THE JURISDICTION OF THE SUPREME COURT CHAMBER

Co-Lawyers for YIM Tith

SO Mosseny
Suzana TOMANOVIC

Co-Prosecutors

CHEA Leang
Brenda J. HOLLIS

Accused

YIM Tith

Co-Lawyers for AO An

MOM Luch
Richard ROGERS
Goran SLUITER

Civil Parties in Case 004/2

THE SUPREME COURT CHAMBER of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea between 17 April 1975 and 6 January 1979 (“Supreme Court Chamber” or “ECCC”, respectively);

BEING SEISED of “YIM Tith’s request for leave to intervene in Case 004/2 on the jurisdiction of the Supreme Court Chamber” (“Request for Leave to Intervene”)¹ and “YIM Tith’s request for authorisation to file a request for leave to intervene in Case 004/02 in one language” (“Request to File in One Language”);²

RECALLING the “International Co-Prosecutor’s Immediate Appeal of the Trial Chamber’s effective termination of Case 004/2” (“Immediate Appeal”);³

NOTING that the International Co-Prosecutor contends that the Trial Chamber’s failure to act to commence the trial of AO An effectively terminated Case 004/2 against him, consequently triggering her Immediate Appeal pursuant to Rule 104(4)(a);

ACCORDINGLY that Immediate Appeal has prompted the present request by YIM Tith for Leave to Intervene by filing submissions to the Supreme Court Chamber’s jurisdiction on the grounds that YIM Tith has a legitimate interest in the current motion to ensure equity and avoid prejudice to his case;⁴

CONSIDERING that filings in conjunction with the Immediate Appeal as envisaged by the Practice Direction and the procedural framework of the ECCC have been completed,⁵ and that because of the anticipatory nature of YIM Tith’s Request for Leave to Intervene, it is in the interests of expediency and judicial economy to issue the present decision without awaiting the filing deadlines for eventual responses to expire;

¹ YIM TITH’s Request for leave to intervene in Case 004/2 on the jurisdiction of the Supreme Court Chamber, E004/2/3, 3 June 2020.

² YIM Tith’s request for authorization to file a request for leave to intervene in Case 004/2 in one language, E004/2/4, 3 June 2020.

³ International Co-Prosecutor’s Immediate Appeal of the Trial Chamber’s effective termination of Case 004/2, 19 May 2020, E004/2/1.

⁴ Request for Leave to Intervene, paras 1, 7.

⁵ Immediate Appeal notified on 19 May 2020; AO An’s response to International Co-Prosecutor’s Immediate Appeal of the Trial Chamber’s effective termination of Case 004/2, transmitted on 14 May 2020 and notified on 26 May 2020, E004/2/1/1; International Co-Prosecutor’s Reply to AO An’s letter regarding her immediate appeal of the Trial Chamber’s effective termination of Case 004/2, E004/2/1/1/1, 26 May 2020.

HAVING FULLY CONSIDERED YIM Tith's Request for Leave to Intervene;

COGNISANT that presently YIM Tith's case is pending before the Pre-Trial Chamber and that the current request has the potential to pre-judge the outcome of that case;⁶

CONSIDERING that under the ECCC legal framework and jurisprudence, the Pre-Trial Chamber's appellate jurisdiction shall not be circumvented by *any* party seeking to advance matters under its jurisdiction by concurrently invoking the appellate jurisdiction of the Supreme Court Chamber on the premise that the party has a legitimate interest;⁷

CONCLUDES that YIM Tith's Request for Leave to Intervene may interfere with the jurisdiction of the Pre-Trial Chamber and pre-empt the outcome of his case before that Chamber;⁸

HEREBY:

REJECTS YIM Tith's Request for Leave to Intervene;

DECLARES YIM Tith's Request to File in One Language moot.

Phnom Penh, 17 June 2020

President of the Supreme Court Chamber



KONG Srim

⁶ YIM Tith submits that “it is therefore foreseeable that the ICP would, in such circumstances, similarly seek to push for the prolongation of the proceedings in Case 004. [...] that any decision on the Immediate Appeal, may contribute to ensuring that the ICP does not repeat this absurd practice in Case 004”, para 7, YIM Tith's Leave to Intervene.

⁷ Rule 76(7) states that “[s]ubject to any appeal, the Closing Order shall cure any defects in the judicial investigations”. The PTC's power is important and determinative that “[n]o issues concerning such procedural defects may be raised before the Trial Chamber or the Supreme Court Chamber”. As a consequence, the PTC is responsible for ensuring, at the investigative stage, that the fundamental principles underlying the criminal procedure applicable before the ECCC are respected, *PTC Considerations*, 19 December 2019, D359/24 & D360/33, para. 52.

⁸ YIM Tith contends that “it is highly likely, in view of the principle of equal treatment, that the PTC will maintain its unanimous position regarding the unlawfulness of the issuance of two Closing Orders. [...] the ICP is causing a procedural quagmire in Case 004/02 by constantly filing manifestly inadmissible submissions to the Trial Chamber, and now to the SCC, trying to push the case forward in contravention of the ECCC's procedural rules. [...]”, para. 7, YIM Tith's Leave to Intervene ; *See also para. 13* YIM Tith reiterates that its “foreseeable that, in the event Case 004 arrives at the same procedural junction, the ICP will seek to seize the SCC with similar arguments.”