



Original: **English**

No.: ICC-01/09-02/11

Date: **21 August 2012**

TRIAL CHAMBER V

Before: Judge Kuniko Ozaki, Presiding Judge
Judge Christine Van den Wyngaert
Judge Chile Eboe-Osuji

SITUATION IN THE REPUBLIC OF KENYA

*IN THE CASE OF
THE PROSECUTOR V. FRANCIS KIRIMI MUTHAURA AND UHURU
MUIGAI KENYATTA*

URGENT

Public Document

**Joint Prosecution/ Kenyatta Defence Application Pursuant to Regulation 35 of
the Regulations of the Court**

Source: The Office of the Prosecutor, Defence for Uhuru Muigai
Kenyatta

Document to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Fatou Bensouda
Adesola Adeboyejo

Counsel for Francis Kirimi Muthaura

Karim A. Khan QC, Essa Faal, Kennedy Ogetto and Shyamala Alagendra

Counsel for Uhuru Muigai Kenyatta

Steven Kay QC and Gillian Higgins

Legal Representatives of Victims

Morris Anyah

Legal Representatives of 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

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Maria Luisa Martinod-Jacome

Detention Section

Victims Participation and Reparations Section

Other

Introduction

1. Pursuant to Regulation 35 of the Regulations of the Court, the Prosecution and the Kenyatta Defence jointly seek a variation of time limit until 24 August 2012 for submitting to Trial Chamber V (“the Chamber”) the updated Document Containing the Charges (“DCC”). The extension will allow for a meaningful and thorough discussion between all the parties, which will increase the possibility of reaching an agreement on a number of matters in dispute and accordingly increase the efficiency of the proceedings. It is noted that the Muthaura Defence has informed the Prosecution and the Kenyatta Defence that it does not oppose this joint application.

Procedural history

2. On 5 July 2012, the Chamber ordered the Prosecution first to provide the Defence with a draft updated DCC by 6 August and thereafter to submit the updated DCC to the Chamber by 21 August 2012. In the event that the parties were unable to reach an agreement, the Chamber ruled that “[a]ny points of disagreement that could not be resolved during *inter partes* consultations are to be raised in the form of a jointly submitted prosecution-defence annex to the updated DCC.”¹
3. On 6 August 2012, the Prosecution sent to the Defence its proposed updated DCC.
4. On 17 August 2012, the Defence provided the Prosecution with their consolidated observations on the proposed updated DCC, containing numerous objections regarding the proposed changes.

¹ ICC-01/09-02/11-450, paras. 8, 11.

Submissions

5. At this stage, it appears that the parties may be able to reach an agreement on a number of issues that the Defence teams have raised in their observations. However, due to the volume, nature and complexity of the disputed issues, the current 21 August 2012 deadline provides insufficient time for the Parties to conclude their discussions. For this reason, the Prosecution and the Kenyatta Defence request a brief extension of time so that they may explore all the avenues for reaching a solution. In the event that a compromise is not reached, the Prosecution requires additional time to fully articulate its response to the arguments raised in the Defence's observations.
6. The Prosecution and the Kenyatta Defence estimate that the time needed for this task is an additional three working days, and respectfully request an extension of the deadline for submission of the updated DCC until 24 August 2012. At this time, the Prosecution will also submit the joint observations on areas still in disagreement at the time of the filing.
7. The Prosecution and the Kenyatta Defence submit that the requested extension is in the interests of justice and would expedite the proceedings because it would a) increase the chances of the parties reaching agreement on the disputed issues, thereby reducing the need for the intervention of the Chamber and rendering the proceedings more efficient, and b) allow all the parties to fully elaborate their respective positions on the legal and factual issues at stake, thereby assisting the Chamber in reaching its decision on any areas that remain in dispute.

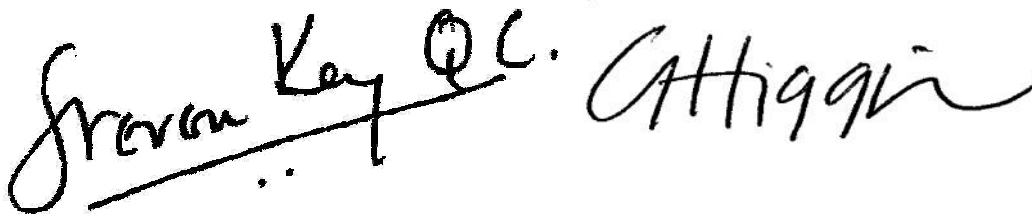
Conclusion and relief requested

8. For the reasons set forth above, the Prosecution and the Kenyatta Defence request the variation of time limits to file the updated DCC until Friday, 24 August 2012.

Respectfully submitted,



Fatou Bensouda, Prosecutor



Steven Kay, QC and Gillian Higgins,
Counsel for Uhuru Muigai Kenyatta

Dated this 21st day of August, 2012
At The Hague, The Netherlands