

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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**

Public document

**Decision on the “Joint Prosecution/ Kenyatta Defence Application Pursuant to
Regulation 35 of the Regulations of the Court”**

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

The Office of the Prosecutor
Ms Fatou Bensouda

Counsel for Francis Kirimi Muthaura
Mr Karim Khan, Mr Essa Faal,
Mr Kennedy Ogetto, Ms Shyamala
Alagendra

Counsel for Uhuru Muigai Kenyatta
Mr Steven Kay
Ms Gillian Higgins

Legal Representatives of Victims
Mr 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

Ms Silvana Arbia

Deputy Registrar

Victims and Witnesses Unit

Ms Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber V (“Chamber”) of the International Criminal Court in the case of *The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta* renders the following Decision on the “Joint Prosecution/ Kenyatta Defence Application Pursuant to Regulation 35 of the Regulations of the Court”.

1. On 5 July 2012, the Chamber ordered the Prosecutor (“prosecution”) first to provide the defence with a draft of an updated Document Containing the Charges (“DCC”) by 6 August and, following *inter partes* consultations on this draft, thereafter to submit the updated DCC to the Chamber by 21 August 2012.¹
2. On 21 August 2012, the prosecution and the Kenyatta defence team filed the “Joint Prosecution/ Kenyatta Defence Application Pursuant to Regulation 35 of the Regulations of the Court” (“Request”).² In the Request, the prosecution and the Kenyatta defence team: (i) inform the Chamber that, as a result of their *inter partes* consultations, the parties may be able to reach an agreement on a number of issues that the defence teams have raised in their observations on the draft of the updated DCC,³ (ii) allege that, 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 discussions⁴ and, (iii) accordingly, request that the Chamber extend the time limit for filing the updated DCC to 24 August 2012.⁵
3. 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

¹ ICC-01/09-02/11-450, paras 8, 11.

² ICC-01/09-02/11-466.

³ Request, para. 5.

⁴ Request, para. 5.

⁵ Request, para. 8.

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.”⁶

4. Pursuant to Regulation 35 of the Regulations of the Court and in light of the reasons submitted by the prosecution and the Kenyatta defence team, the Chamber is satisfied that good cause is shown for granting the requested extension of time.

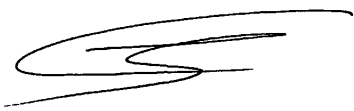
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the relief sought in the Request, thereby permitting that the updated DCC, along with any jointly submitted annex raising the parties’ points of disagreement with the updated DCC’s language, may be filed by 24 August 2012.

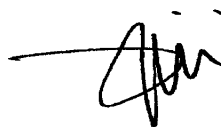
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding Judge



Judge Christine Van den Wyngaert



Judge Chile Eboe-Osuji

Dated this 21 August 2012

At The Hague, The Netherlands

⁶ Request, para. 7.