

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 24 September 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

Decision on the "Defence Request for Redactions in Prosecution Filing ICC-01/09-02/11-468-AnxD" and on the reclassification of two documents

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

1. 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 "Defence Request for Redactions in Prosecution Filing ICC-01/09-02/11-450-Anx D" and on the reclassification of two documents.
2. On 24 August 2012 the Office of the Prosecutor ("prosecution") filed the "Prosecution's Submission of the Updated Document Containing the Charges pursuant to Order ICC-01/09-02/11-450".¹ Annex D to the prosecution's filing contained a chart identifying the issues in dispute between the parties in relation to the prosecution's proposed updated document containing the charges ("Updated DCC").² It included the parties' submissions on each of these issues. Annex D was initially filed as a public redacted document, with the redaction masking the names of individuals identified in the Updated DCC whose names were redacted in the Pre-Trial Chamber's Confirmation Decision.
3. On 27 August 2012 in response to an urgent email request by the defence for Uhuru Muigai Kenyatta ("defence"), the Chamber ordered the Registry to temporarily remove Annex D from the Court's website and disable public access to it pending a decision by the Chamber on its reclassification.³
4. On 30 August 2012 the defence filed a confidential request for the Chamber to permanently reclassify Annex D as a confidential document ("Reclassification Request").⁴ On 5 September 2012 the prosecution filed a confidential response to the Reclassification Request, in which it did not oppose reclassification of Annex D but

¹ ICC-01/09-02/11-468.

² ICC-01/09-02/11-468-AnxD.

³ Email from Trial Chamber V Communications to Case Manager for Mr Kenyatta, 27 August 2012 at 10:26.

⁴ Request for Reclassification in Respect of the 'Prosecution's Submission of the Updated Document Containing the Charges pursuant to Order ICC-01/09-02/11-450, Annex D', ICC-01/09-02/11-471-Conf.

disagreed with the defence's assertion that it acted "inappropriately" by initially filing that document publicly.⁵

5. On 12 September 2012 the Chamber issued its Decision on the Reclassification Request.⁶ The Chamber rejected the request to reclassify Annex D as confidential but granted the defence seven days to file a reasoned request for any further redaction to be made to the document. The Chamber further decided that the Reclassification Request itself and prosecution's response thereto should be reclassified as public documents, subject to any limited redaction the parties may request. The Chamber ordered the parties to file any such requests for redaction within seven days.
6. On 14 September 2012 the defence submitted the "Defence Request for Redactions in Prosecution Filing ICC-01/09-02/11-450-Anx D" ("Redaction Request"), in which it (a) notifies the Chamber that it does not request any redaction to the Reclassification Request and (b) requests that the names of, and other identifying information relating to, three individuals be redacted from Annex D.⁸ The defence notes that this information was redacted in the Confirmation Decision and that, to date, there has been no order from the Pre-Trial Chamber or this Chamber lifting this redaction. It further notes that this redaction would be consistent with the approach initially applied by the prosecution to the redaction of Annex D.⁹
7. The prosecution did not submit any request for redaction to the Reclassification Request or its response thereto within the seven day deadline set out in the

⁵ Response to Defence Request for Reclassification in Respect of the "Prosecution's Submission of the Updated Document Containing the Charges pursuant to Order ICC-01/09-02/11-450, Annex D", ICC-01/09-02/11-477-Conf.

⁶ Decision on the "Request for Reclassification in Respect of the 'Prosecution's Submission of the Updated Document Containing the Charges pursuant to Order ICC-01/09-02/11-450, Annex D'", ICC-01/09-02/11-482

⁷ ICC-01/09-02/11-485-Conf (notified 17 September 2012). A public redacted version of the Redaction Request was filed on the same day as ICC-01/09-02/11-485-Red.

⁸ ICC-01/09-02/11-485-Conf, paragraph 7 (referring to information appearing on pages 108, 109, 120 and 121 of Annex D).

⁹ ICC-01/09-02/11-485-Conf, paragraphs 7-8.

Chamber's Decision of 12 September 2012. The prosecution has not, to date, filed a response to the Redaction Request.

8. With respect to the classification of the Reclassification Request and the prosecution's response thereto, the Chamber notes that no requests for redaction have been received. Accordingly, the Chamber determines, pursuant to Regulation 23 *bis*(3) of the Regulations of the Court, that these two documents shall be reclassified as public without any redaction being made.
9. With respect to the Redaction Request, as a preliminary point, the Chamber notes that given the limited nature of the redaction to Annex D that is sought, and given the prosecution's previous position of not objecting to the reclassification of Annex D, the Chamber can decide this matter immediately without receiving a response from the prosecution. As to the substance of the Redaction Request, having regard to Rule 81(4) of the Rules of Procedure and Evidence the Chamber considers that the defence has shown sufficient basis for the redaction requested. In particular, the Chamber notes that the information in question was redacted in the Confirmation Decision and considers that it is appropriate for this redaction to remain in place unless and until the reasoning justifying its application changes, due to a change in circumstances.

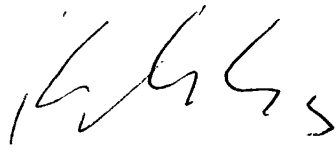
FOR THE FOREGOING REASONS, THE CHAMBER

GRANTS the Redaction Request, with respect to the information specified at paragraph 7 therein;

DIRECTS the prosecution to file an updated public redacted version of Annex D which implements the redaction specified at paragraph 7 of the Redaction Request; and

DIRECTS the Registry to reclassify documents ICC-01/09-02/11-471-Conf and ICC-01/09-02/11-477-Conf as public documents.

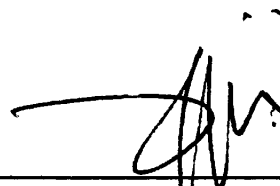
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki



Judge Christine Van den Wyngaert



Judge Chile Eboe-Osuji

Dated this 24 September 2012