

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 16 October 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**

Confidential

**Decision reclassifying annexes B and C to ICC-01/09-02/11-500-Conf-Exp as
"Confidential"**

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

The Office of the Prosecutor

Ms Fatou Bensouda

Ms Adesola Abedoyejo

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

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 ("Trial Chamber" or "Chamber") of the International Criminal Court ("Court"), in the case of *The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta* ("Muthaura and Kenyatta case"), pursuant to Regulation 23 *bis*(1) of the Regulations of the Court ("Regulations"), issues the following Decision reclassifying annexes B and C to ICC-01/09-02/11-500-Conf-Exp as "Confidential".

1. On 5 October 2012 the prosecution submitted the "Prosecution application for the authorisation of redactions pursuant to Articles 54(3)(f), 64(2) and 68(1) of the Statute, Rule 81 and Decision ICC-01/09-02/11-495" ("Application") with annexes A, B and C.¹ The Application and the three annexes were classified as "confidential, *ex parte*". On 9 October 2012, in accordance with paragraph 8 of the Protocol establishing a redaction regime,² the prosecution filed a confidential redacted version of the Application.³ Attached to the confidential redacted version of the Application were annexes B and C which were also designated by the prosecution as "confidential" in order for them to be disclosed to the defence.⁴ The Registry informed the prosecution that annexes B and C could not be filed *inter partes* without the approval of the Chamber given that they had previously been classified as "confidential, *ex parte*".⁵

¹ ICC-01/09-02/11-500-Conf-Exp.

² ICC-01/09-02/11-495-AnxA-Corr.

³ Confidential redacted version of the Prosecution's 5 September 2012 application for the authorisation of redactions pursuant to Articles 54(3)(f), 64(2) and 68(1) of the Statute, Rule 81 and Decision ICC-01/09-02/11-495, with confidential annexes B and C.

⁴ Application for reclassification of annexes B and C to ICC-01/09-02/11-500-Conf-Exp, 9 October 2012, ICC-01/09-02/11-502-Conf, para. 3.

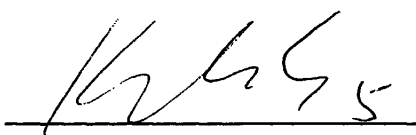
⁵ ICC-01/09-02/11-502-Conf, para. 4.

2. On 9 October 2012 the prosecution filed the present application, requesting the Chamber to reclassify annexes B and C to the Application as "confidential", pursuant to Regulation 23 *bis*(1) of the Regulations.⁶
3. Considering the nature of the information contained in annexes B and C to the Application and in order to ensure a timely disclosure process in keeping with the Decision on the protocol establishing a redaction regime,⁷ the Chamber grants the prosecution's application for reclassification of annexes B and C from "confidential, *ex parte*" to "confidential".

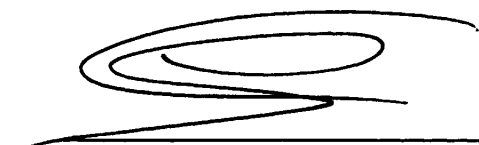
For the foregoing reasons, the Chamber hereby:

DIRECTS the Registry to reclassify annexes B and C to ICC-01/09-02/11-500-Conf-Exp as "confidential".

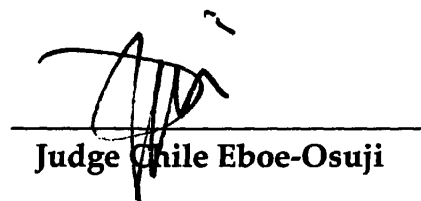
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding



Judge Christine Van den Wyngaert



Judge Chile Eboe-Osuji

Dated 16 October 2012

At The Hague, The Netherlands

⁶ Application for reclassification of annexes B and C to ICC-01/09-02/11-500-Conf-Exp, 9 October 2012, ICC-01/09-02/11-502-Conf, para. 1.

⁷ 27 September 2012, ICC-01/09-02/11-495, para. 12.