

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 15 November 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
Confidential**

**Corrigendum of "Order regarding the defence application for evidence of a
witness to be taken in advance of trial, ICC-01/09-02/11-531-Conf"**

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 Adeboyejo

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 ("Chamber") of the International Criminal Court ("Court") in the case of *The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta*, pursuant to Articles 56, 57(3)(b), 64(6), 68(1) of the Rome Statute ("Statute"); Rules 114 and 116 of the Rules of Procedure and Evidence ("Rules"); and Regulations 23 *bis* and 34 of the Regulations of the Court ("Regulations"); renders this Order regarding the defence application for evidence of a witness to be taken in advance of trial ("Order").

I. Background

1. On 5 November 2012, the Muthaura defence filed a confidential *ex parte*, defence and VWU only, application requesting the Chamber to order that the evidence of a defence witness ("Witness") be taken and preserved in accordance with the procedures set out in Article 56(2)(e) of the Statute ("Application").¹ The defence asserted that this measure is necessary to ensure the integrity of the proceedings and, in particular, to protect the rights of the defence as, due to serious security and health concerns, the Witness may not be available to testify at trial. The Application noted that the concerns of the Witness had been referred to the VWU. A confidential redacted version of the Application was filed on 13 November 2012² in accordance with an order of the Chamber.³
2. On 12 November 2012, the Kenyatta defence filed its "Request to Join Muthuara Application Pursuant to Article 56 and 57(3)(b)" in which it supported and adopted the Application.⁴

¹ Muthaura Defence (1) Application pursuant to Articles 56 and 57(3)(b) of the Statute of the Court and (2) Application for an extension of the page limit pursuant to Regulation 37(2) of the Regulations of the Court, dated 3 November 2012 (filed 5 November 2012), ICC-01/09-02/11-516-Conf-Exp and Conf-Exp-Annexes A – T.

² ICC-01/09-02/11-516-Conf-Red

³ Order regarding the Muthaura defence application for evidence of a witness to be taken in advance of trial, 9 November 2012, ICC-01/09-02/11-523-Conf-Exp.

⁴ ICC-01/09-02/11-527-Conf and ICC-01/09-02/11-527-Conf-Anx-Red.

3. On 13 November 2012, in accordance with an order of the Chamber,⁵ the Registrar notified the Chamber of her decision and the VWU's assessment and recommendations in relation to the concerns of the Witness (VWU Report).⁶ The VWU Report was filed on a confidential *ex parte*, Muthaura defence only, basis and included a confidential, *ex parte* Registry only, Annex.⁷
4. The VWU Report addresses issues that are of central relevance to the Application and the justification for the relief requested therein. Accordingly, the Chamber requires further information from the Muthaura and Kenyatta defence teams as to the impact of the VWU report on the Application.

FOR THE FOREGOING REASONS, THE CHAMBER:

DIRECTS the Muthuara and Kenyatta defence teams to file submissions, as soon as possible and in any event no later than 7 days from notification of this Order,

- (i) informing the Chamber whether they seek to pursue the relief requested in the Application; and
- (ii) if so, addressing the necessity of the relief requested in light of the VWU Report;

DIRECTS the Registry to reclassify ICC-01/09-02/11-529-Conf-Exp as confidential *ex parte* Muthaura and Kenyatta defence only; and

INFORMS the prosecution that, pending further order of the Chamber, no submissions in response to the Application are required from it in the meantime

⁵ ICC-01/09-02/11-523-Conf-Exp.

⁶ Victims and Witnesses Unit Report Following the "Order regarding the Muthaura defence application for evidence of a witness to be taken in advance of trial, 9 November 2012, ICC-01/09-02/11-523-Conf-Exp", ICC-01/09-02/11-529-Conf-Exp.

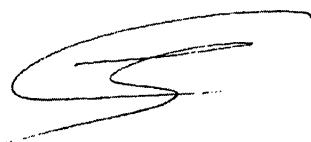
⁷ ICC-01/09-02/11-529-Conf-Exp-Anx1.

and that the time limit for responses set out in Regulation 34 of the Regulations is suspended.

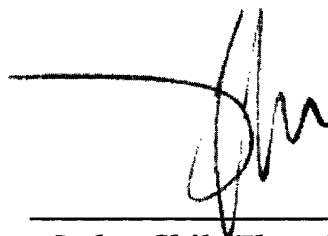
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding Judge



Judge Christine Van den Wyngaert



Judge Chile Eboe-Osuji

Dated 15 November 2012

At The Hague, The Netherlands