

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 26 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**

Public

Order regarding redactions

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

Legal Representatives of Victims

Counsel for Uhuru Muigai Kenyatta
Mr Steven Kay
Ms Gillian Higgins
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

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*, pursuant to Articles 64, 67(2) and 68(1) of the Rome Statute, Rules 76, 77, 81, 84, and 87 of the Rules of Procedure and Evidence and Regulations 24, 34 and 35 of the Regulations of the Court (“Regulations”), issues this Order regarding applications for non-standard redactions.

I. BACKGROUND

1. On 27 September 2012, the Chamber issued its Decision on the protocol establishing a redaction regime, which annexed a protocol setting out a streamlined procedure for the application of redactions to materials subject to disclosure (“Redaction Protocol”).¹ The Redaction Protocol directed that any application for delayed disclosure of witness identities, that is beyond the final 9 January 2013 disclosure deadline, should be filed with the Chamber by 5 November 2012.² It further set out a procedure for other redactions falling outside a pre-approved category (“non-standard redactions”).³ According to this procedure, the party wishing to apply non-standard redactions to material subject to disclosure has to file an application with the Chamber justifying the proposed redactions. The disclosing party must simultaneously disclose the materials, with the proposed redactions in place, to the receiving party and provide a redacted version of its application to the receiving party to enable that party to submit its observations on the application within 21 days. The Redaction Protocol directed that any applications for non-standard redactions should be filed no later than 27 November 2012.⁴

¹ ICC-01/09-02/11-495 and its Annex ICC-01/09-021/11-495-AnxA-Corr.

² ICC-01/09-021/11-495-AnxA-Corr, para. 51.

³ ICC-01/09-021/11-495-AnxA-Corr, paras 7-8.

⁴ ICC-01/09-021/11-495-AnxA-Corr, para. 3.

2. On 5 November 2012, the Office of the Prosecutor ("Prosecution") filed an application for the delayed disclosure of the identities of six witnesses and authorisation for redactions to corresponding witness statements or transcripts ("Delayed Disclosure Application").⁵ The witness statements and transcripts ("Witness Materials") containing the proposed redactions were included as annexes to the Delayed Disclosure Application.⁶ The proposed redactions to the Witness Materials include a variety of pre-approved and non-standard redactions in addition to redactions to witness identifying information.
3. On 7 November 2012, the Prosecution's public redacted version of the Delayed Disclosure Application, without annexes, was notified.⁷ Pursuant to Regulations 24 and 34(b) of the Regulations, the defence response to the Delayed Disclosure Application would fall due on 29 November 2012.
4. On 23 November 2012, the Prosecution requested, by email, a one day extension of the 27 November 2012 time limit for submission of applications for non-standard redactions ("Request for Extension").⁸ Due to the urgency of the matter, the Request for Extension was exceptionally accepted by the Chamber without a formal filing being made. In support of the Request for Extension, the Prosecution noted that the regular offices of the Court would be exceptionally closed on 24 November 2012 and that the Prosecution had not been able to secure alternative office space.
5. In this Order the Chamber rules on the Request for Extension and addresses, *proprio motu*, the disclosure of the Witness Materials.

⁵ Prosecution's application for delayed disclosure of witness identities, 5 November 2012, ICC-01/09-02/11-519-Conf-Exp with confidential *ex parte*, Prosecution and VWU only, Annexes A-G.

⁶ Annexes B-G to ICC-01/09-02/11-519-Conf-Exp.

⁷ Public Redacted Version of the 5 November 2012 'Prosecution application for delayed disclosure of witness identities' ICC-01/09-02/11-519-Conf-Exp, 7 November 2012, ICC-01/09-02/11-519-Red.

⁸ Email from prosecution to Trial Chamber V Communications, 23 November 2012 at 3.44 pm. As the initial request did not copy members of the defence teams, on 26 November 2012 the Chamber requested the Prosecution to resend the email copying relevant members of the defence teams.

II. ANALYSIS AND CONCLUSIONS

6. With respect to the Request for Extension, the Chamber notes that it is limited in nature and considers that the Prosecution has shown good cause within the meaning of Regulation 35 of the Regulations. The Chamber accordingly extends the time limit for submission of applications for non-standard redactions to 28 November 2012.
7. With respect to the Witness Materials, the Chamber notes that, as at the date of this Order, they do not appear to have been disclosed, in redacted form, to the defence. As the Witness Materials contain both pre-approved and other non-standard redactions, in addition to redactions to witness identifying information, the Chamber considers that they should be disclosed to the defence forthwith, pending the Chamber's ruling on the Delayed Disclosure Application. Such disclosure accords with the procedure set out in the Redaction Protocol for pre-approved and other non-standard redactions and will enable the defence to submit more meaningful observations on the Delayed Disclosure Application and the scope of the proposed redactions.

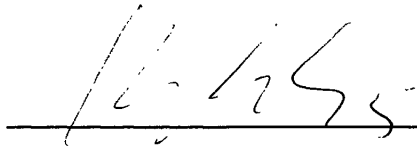
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Request for Extension;

DIRECTS the Prosecution to disclose the Witness Materials, in redacted form, to the defence by no later than 30 November 2012; and

EXTENDS the deadline for the defence to respond to the Delayed Disclosure Application until 7 December 2012.

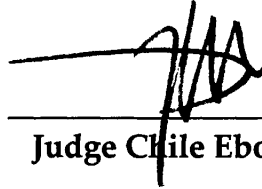
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding



Judge Christine Van den Wyngaert



Judge Chile Eboe-Osuji

Dated 26 November 2012

At The Hague, The Netherlands