

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: ICC-01/09-02/11
Date: 11 December 2012

TRIAL CHAMBER V

Before: Judge Kuniko Ozaki, Presiding
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

**Joint Defence Response to the Fourth Prosecution application for the authorisation
of non-standard redactions pursuant to Decision ICC-01/09-02/11-495**

Sources: Counsel for Francis Kirimi Muthaura
Counsel for Uhuru Muigai Kenyatta

Document 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 Kirihi Muthaura

Karim A. A. Khan QC, Essa M. Faal,
Kennedy Ogetto & Shyamala Alagendra

Counsel for Uhuru Muigai Kenyatta

Steven Kay QC & Gillian Higgins

Legal Representatives of the Victims

Fergal Gaynor

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(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

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Defence for Francis Kirimi Muthaura and the Defence for Uhuru Muigai Kenyatta (collectively “Defence”) hereby submit their response to the “Fourth Prosecution application for the authorisation of non-standard redactions pursuant to Decision ICC-01/09-02/11-495” (“Fourth Redaction Application”).¹

II. PROCEDURAL HISTORY

2. On 27 September 2012, the Trial Chamber (“Chamber”) issued the “Decision on the protocol establishing a redaction regime” (“Decision on the Redactions Protocol”),² instructing the parties to apply the annexed “Protocol establishing a redaction regime” (“Redactions Protocol”).³
3. On 16 November 2012, the Prosecution disclosed 46 documents to the Defence,⁴ which include the documents that form the subject of the Fourth Redaction Application.⁵
4. On 19 November 2012, the Prosecution filed its “Communication of the Disclosure of Evidence”.⁶ On the same day, the Prosecution submitted its Fourth Redaction Application, registered in the record of the case and notified to the Defence on 20 November 2012. In accordance with the Redaction Protocol, in the Fourth Redaction Application, the Prosecution requested that

¹ ICC-01/09-02/11-535.

² ICC-01/09-02/11-495.

³ ICC-01/09-02/11-495-AnxA-Corr.

⁴ This disclosure was comprised of Incriminating Package 20, Potentially Exculpatory Package 17 and Rule 77 Package 18.

⁵ These documents are listed at ICC-01/09-02/11-535-AnxA.

⁶ ICC-01/09-02/11-533, with confidential annex ICC-01/09-02/11-533-Conf-Anx1.

the Chamber authorise A.4 redactions in respect of the names of Prosecution investigators operating in the field.⁷

5. The Defence hereby file their response to the Fourth Redaction Application.

III. SUBMISSIONS

6. In the Fourth Redactions Application, the Prosecution applied for redactions to the identifying information of certain Prosecution investigators, “rel[ying] upon the arguments contained in paragraphs 20-27 of its 8 October 2012 ‘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’ ”.⁸
7. For the reasons set out at paragraphs 36 to 47 of the “Joint Defence Response to the 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”,⁹ the Defence request that the Chamber order the disclosure of the identities of the Prosecution’s investigators, or that suitable pseudonyms are assigned to the Prosecution’s investigators during the interim period leading up to the deadline for final disclosure.

⁷ Fourth Redaction Application, para. 2.

⁸ *Ibid.*, para. 3.

⁹ ICC-01/09-02/11-521-Conf.

IV. RELIEF REQUESTED

8. Based on the above submissions, the Defence respectfully reiterate their request that the Chamber order the disclosure of either the identities of the Prosecution's investigators, or suitable pseudonyms which can be used by the Defence in the interim period leading up to the deadline for final disclosure.

Respectfully Submitted,



Karim A. A. Khan QC
On behalf of Francis K. Muthaura
At The Hague, the Netherlands




Steven Kay QC and Gillian Higgins
On behalf of Uhuru Muigai Kenyatta
At London, England

Dated this 11th Day of December 2012