

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 17 January 2013

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 requesting observations in relation to the “Defence Application for
change of place where the Court shall sit for Trial”**

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 QC , Mr Essa Faal,
Mr Kennedy Ogetto, Ms Shyamala
Alagendra

Counsel for Uhuru Muigai Kenyatta
Mr Steven Kay QC, Ms Gillian Higgins

Legal Representatives of Victims
Mr Fergal Gaynor

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
Mr Didier Preira

Victims and Witnesses Unit

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 3 and 62 of the Rome Statute (“Statute”) and Rule 100 of the Rules of Procedure and Evidence (“Rules”), issues this Order requesting observations.

1. On 14 May 2012, the Chamber issued its Order scheduling a status conference,¹ in which it, *inter alia*, instructed the parties to file written submissions on the listed agenda items and on any other issues the parties might wish to add to the agenda.²
2. On 28 May 2012, the defence teams for Mr Muthaura and Mr Kenyatta (respectively “Muthaura Defence” and “Kenyatta Defence”) requested that the trial be held in the Republic of Kenya (“Kenya”).³ Similarly, the Muthaura Defence requested the Chamber to consider the possibility of holding the trial in Kenya or, alternatively, in Arusha, Republic of Tanzania (“Tanzania”), at the premises of the International Criminal Tribunal for Rwanda.⁴ The Muthaura Defence requested the Chamber to invite the competent authorities of Kenya and Tanzania to inform the Chamber on the feasibility of hosting the trial proceedings on their territory and their willingness to do so.⁵
3. On 7 November 2012, the Chamber issued the “Decision on the defence request to change the place of the proceedings,”⁶ holding that, in accordance with Rule 100 of the Rules “any party wishing to change the place of trial has to submit a formal application to the Presidency which must then seek the views of the relevant

¹ ICC-01/09-02/11-422.

² ICC-01/09-02/11-422, paras 3-4.

³ Defence Submissions on the status conference agenda items contained in the Trial Chamber’s “Order scheduling a status conference” of 14 May 2012, ICC-01/09-02/11-427; Defence for Uhuru Muigai Kenyatta Submissions on Status Conference Agenda In Response to Trial Chamber Order dated 14 May 2012 (ICC-01/09-02/11-422), ICC-01/09-02/11-429.

⁴ ICC-01/09-02/11-427, para. 40.

⁵ ICC-01/09-02/11-427, para. 41.

⁶ ICC-01/09-02/11-522.

Chamber” and “consult where the Court may sit”.⁷ The Chamber thus rejected the Defence requests, but without prejudice to the right of the Defence to file an application with the Presidency pursuant to Rule 100 of the Rules.⁸

4. On 3 December 2012, the Muthaura Defence submitted its Application for a change of place where the Court shall sit for Trial (“Defence Application”) to the Presidency, requesting the Presidency to undertake consultations required by Rule 100(3) of the Rules with the governments of Kenya and Tanzania.⁹ The Muthaura Defence submits that: a trial process significantly disrupts the life of an accused person and can have a detrimental effect on the health of an accused;¹⁰ it is in the interests of justice, the witnesses, and the victims, to hold trials in the territory of the state where the alleged crimes occurred;¹¹ and that it will enhance the Court’s legal processes as the Trial Chamber will have the unique opportunity to obtain a sustained first-hand view of the *locus in quo*.¹²
5. On 21 December 2012, the Presidency issued the “Decision on Defence Application for a change of place where the Court shall sit for Trial” (“Presidency Decision”).¹³ The Presidency emphasized the importance of the Chamber establishing the views of the parties before deciding whether to recommend the Presidency to consult the relevant national authorities and requested the Chamber to seek the views of the parties.¹⁴
6. The Chamber notes Article 3 of the Statute and Rule 100 of the Rules. Accordingly, the Chamber deems it valuable, for a proper assessment of the interests of justice in

⁷ ICC-01/09-02/11-522, para. 5.

⁸ ICC-01/09-02/11-522, para. 5.

⁹ ICC-01/09-02/11-551.

¹⁰ ICC-01/09-02/11-551, para. 15.

¹¹ ICC-01/09-02/11-551, para. 16.

¹² ICC-01/09-02/11-551, para. 17.

¹³ ICC-01/09-02/11-581.

¹⁴ ICC-01/09-02/11-581.

the present case, to receive observations from the Prosecutor, the Kenyatta Defence, the Legal Representative of the Victims and the Registry, on the possibility of the trial being held in Kenya, or alternatively in Arusha, Tanzania, before deciding whether to recommend the Presidency to consult the relevant national authorities.

The Chamber hereby **requests** the Prosecutor, the Kenyatta Defence, the Legal Representative of the Victims and the Registry to submit observations on the subject matter referred to in paragraph 6 of the present order, including on questions of logistics and security, no later than 7 February 2013.

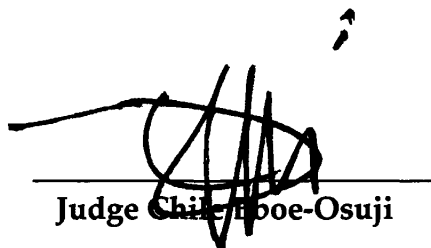
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding Judge



Judge Christine Van den Wyngaert



Judge Chileshe Osuji

Dated this 17 January 2013

At The Hague, The Netherlands