

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11

Date: 5 March 2013

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

**Notification on Behalf of Uhuru Kenyatta Regarding the 8 March 2013 Deadline
for the Second Joint Prosecution-Defence Submission on Agreed Facts**

Source: Defence 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

Fatou Bensouda, Prosecutor

Adesola Adeboyejo, Trial Attorney

Counsel for the Defence

Counsel for Francis Kirmi Muthaura

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

Counsel for Uhuru Muigai Kenyatta

Steven Kay QC and Gillian Higgins

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for the Victims

The Office of Public Counsel for the Defence

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia, Registrar

Deputy Registrar

Didier Daniel Preira, Deputy
Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Defence for Uhuru Muigai Kenyatta (“Defence”) notifies the Trial Chamber (“Chamber”) that the 8 March 2013 deadline set by the Chamber in the “Decision on the schedule leading up to trial” (“Trial Schedule Decision”)¹ for a “second joint submission on agreed facts (including agreements as to evidence)”² cannot reasonably be complied with due to the dilatory actions of the Prosecution.
2. The Trial Schedule Decision states that “the prosecution and the defence teams for both accused are to liaise with a view to reaching agreement on facts as well as the authenticity of evidence. Any party which is unable to agree to a proposed stipulation shall reflect the reasons and indicate the factual basis for this disagreement in an annex to the joint filing. The second joint submission on agreed facts (including agreements as to evidence) is to be filed by 8 March 2013.”³

II. PROCEDURAL HISTORY

3. On Thursday 28 February 2013 at 12:54pm, the Prosecution emailed to the Defence an “updated proposal for agreements as to evidence pursuant to Rule 69” (“Updated Rule 69 Proposal”). The email explains that the Updated Rule 69 Proposal “contains new facts from the updated DCC and Charges section, and the pre-trial brief”, and states that the Prosecution “would be grateful if a response to this new proposal could be received by Monday, 4 March 2013, in order to meet the 8 March deadline.” The Updated Rule 69 Proposal contains

¹ 9 July 2012, ICC-01/09-02/11-451.

² 9 July 2012, ICC-01/09-02/11-451, para. 24.

³ 9 July 2012, ICC-01/09-02/11-451, para. 24.

112 proposed facts and 95 footnotes, which reference approximately 400 items of Prosecution evidence.

4. On Monday 4 March 2013 at 15.40 GMT the Defence emailed the Prosecution stating that it was still “considering the proposal” and would provide “further information shortly as to how [it intends] to proceed.”
5. On Monday 4 March, the Defence for Ambassador Muthaura submitted its “Notification with respect to the 8 March 2013 Deadline for the Second Joint Prosecution-Defence Submission on Agreed Facts” (“Muthaura Notification”).⁴

III. SUBMISSIONS

6. The Defence submits that the Prosecution has provided it with insufficient time in which to conduct a meaningful analysis of the Updated Rule 69 Proposal. It is submitted that it is wholly unreasonable and unrealistic to require the Defence to review such an extensive and important document within the two working-day timeframe proposed by the Prosecution. In particular, with reference to the Trial Schedule Decision, the dilatory actions of the Prosecution prevent the Defence from:
 - a. Conducting a thorough review of the authenticity of the evidence relied upon in support of the proposed facts;
 - b. Identifying areas of disagreement regarding proposed facts;
 - c. Specifying with sufficient clarity which areas of disagreement exist; and
 - d. Taking full instructions from Mr Kenyatta following the Defence analysis.

⁴ ICC-01/09-02/11-672.

7. In support of its submissions, the Defence adopts in their entirety the arguments at paragraphs 4-8 of the Muthaura Notification, which apply equally with respect to Mr Kenyatta.

V. RELIEF

8. With respect to the 8 March 2012 deadline set out in the Trial Schedule Decision, the Defence respectfully informs the Chamber of the situation which has arisen as a direct result of the unjustifiably dilatory actions of the Prosecution. The Defence invites the Prosecution to take appropriate action to provide the Defence with adequate time to review, respond to and liaise with the Prosecution on the Updated Rule 69 Proposal, and thereafter to jointly submit the results of this process to the Chamber in the manner required by the Trial Schedule Decision.

Respectfully submitted,




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Steven Kay QC and Gillian Higgins

On behalf of Uhuru Muigai Kenyatta

Dated this 5th of March 2013

At London, England