

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 24 July 2013

TRIAL CHAMBER V(B)

Before: Judge Kuniko Ozaki, Presiding Judge
Judge Robert Fremr
Judge Chile Eboe-Osuji

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF
*THE PROSECUTOR v. UHURU MUIGAI KENYATTA***

Public

**Order for submissions regarding the Legal Representative's request for access
to confidential filings and evidence**

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Ms Adesola Adeboyejo

Counsel for Uhuru Muigai Kenyatta

Mr Steven Kay

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**

Ms Caroline Walter

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Others

Mr Karim Khan, Mr Essa Faal, Mr
Kennedy Ogetto, Ms Shyamala
Alagendra

Trial Chamber V(B) (“Chamber”)¹ of the International Criminal Court (“Court”), in the case of *The Prosecutor v Uhuru Muigai Kenyatta*, having regard to Regulations 23 *bis* and 34 of the Regulations of the Court, issues the following Order for submissions regarding the Legal Representative’s request for access to confidential filings and evidence.

1. On 23 May 2013, the Legal Representative filed the “Victims’ request for access to confidential filings and evidence” (“Request”).² The Legal Representative requests that the Chamber orders the immediate notification to both the Legal Representative and OPCV of the confidential versions of “all filings which are relevant to the personal interests of victims”, providing a non-exhaustive list of filings which the Legal Representative suspects are covered by the relief sought.³
2. On 14 June 2013, the Prosecution filed its response to the Request (“Response”).⁴ It indicates that it has no objection to the filings specifically mentioned in the Request being notified to the Legal Representative.⁵ In addition, the Prosecution submits that, as a result of the Request, it has reviewed its case file and determined that 32 other filings and annexes may be notified to the Legal Representative.⁶ The Prosecution also requests the Chamber to order the reclassification of three filings that were referred to in the Request so that both the Legal Representative and the Defence may access them: ICC-01/09-02/11-664-Conf-Exp, ICC-01/09-02/11-621-Conf-Exp and ICC-01/09-02/11-571-Conf-Exp.⁷
3. The Chamber notes that the former members of the defence team for Mr Muthaura (“Muthaura Defence”) were not notified of the Request and Response. As such, the

¹ Where “Chamber” is used in this decision it refers to both Trial Chamber V in its composition as until 21 May 2013 and to Trial Chamber V(B) as composed by the Presidency’s Decision constituting Trial Chamber V(a) and Trial Chamber V(b) and referring to them the cases of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang and The Prosecutor v. Uhuru Muigai Kenyatta*, 21 May 2013, ICC-01/09-01/11-745.

² ICC-01/09-02/11-742.

³ ICC-01/09-02/11-742, paras 12-13.

⁴ Prosecution response to the “Victims’ request for access to confidential filings and evidence”, ICC-01/09-02/11-761.

⁵ ICC-01/09-02/11-761, para. 3.

⁶ ICC-01/09-02/11-761, para. 4.

⁷ ICC-01/09-02/11-761, para. 6.

Muthaura Defence was not given an opportunity to object to the confidential information in its past filings, or responses to those filings, being notified to the Legal Representative and OPCV.⁸ In order to ensure that both defence teams have an opportunity to object to any possible reclassification, the Chamber seeks submissions from the Muthaura Defence as to reclassifying the filings referenced in the Request and Response.

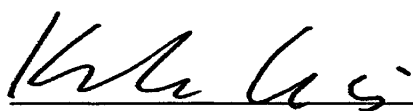
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

ORDERS the Registry to notify the Request (ICC-01/09-02/11-742) and Response (ICC-01/09-02/11-761) to the members of the former defence team of Mr Muthaura;

ORDERS the Registry to facilitate giving the members of the former defence team of Mr Muthaura sufficient access to the case record in order to be able to file the submissions set out in paragraph 3 of the present order; and

INVITES the members of the former defence team of Mr Muthaura to file any submissions on the contemplated reclassifications within 7 days of notification of the present order.

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



Judge Kuniko Ozaki, Presiding



Judge Robert Fremr



Judge Chile Eboe-Osuji

Dated 24 July 2013

At The Hague, The Netherlands

⁸ *Egs* ICC-01/09-02/11-468-Conf-AnxB; ICC-01/09-02/11-481-Conf-AnxA; ICC-01/09-02/11-481-Conf-AnxB; ICC-01/09-02/11-617-Conf-Exp; ICC-01/09-02/11-628-Conf.