

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 24 September 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**

Confidential *ex parte*, Defence only

Order extending page limit for defence abuse of process application

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

The Office of the Prosecutor

Counsel for the Defence

Mr Steven Kay

Ms Gillian Higgins

Legal Representatives of Victims

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

Mr Herman von Hebel

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber V(B) (the 'Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Uhuru Muigai Kenyatta*, pursuant to Regulation 37(2) of Regulations of the Court (the 'Regulations'), issues this 'Order extending page limit for defence abuse of process application'.

1. On 19 September 2013, the defence team for Mr Kenyatta ('Defence') filed a confidential *ex parte*, Defence and VWU only, request for an extension to the page limit for its forthcoming abuse of process application ('Request').¹
2. The Defence had previously notified the Chamber of its intention to file an abuse of process application during an urgent *ex-parte* hearing on 6 September 2013.² According to the Chamber's direction of 13 September 2013, the application is due to be filed "no later than one day after [the Defence] has been notified by the VWU that protection measures have been implemented for its witnesses."³
3. In the Request, the Defence seeks authorisation to extend the page limit for the application from 20 pages, being the standard limit, to 75 pages. The Defence submits that the page extension is necessary "in order to demonstrate effectively the precise nature and grounds of the abuse of process on these proceedings."⁴ The Defence notes that its application will rely on evidence from several sources which, it states, demonstrates interference with the administration of justice by key witnesses and an intermediary for the Office of the Prosecution.⁵ It further notes that similar abuse of process applications in other cases before the Court were considerably in excess of the page limit.⁶

¹ Defence Request for Extension of the Page Limit for the Defence Application for a Permanent Stay of the Proceedings due to Abuse of Process, 19 September 2013, ICC-01/09-02/11-808-Conf-Exp.

² Transcript of hearing, 6 September 2013, ICC-01/09-02/11-T-25-Conf-Exp-Eng-ET.

³ Email from Trial Chamber V(B) Communications, 13 September 2013 at 12:34.

⁴ ICC-01/09-02/11-808-Conf-Exp, para. 3.

⁵ ICC-01/09-02/11-808-Conf-Exp, para. 3.

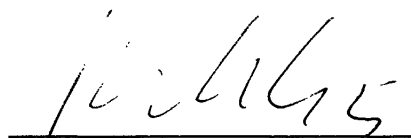
⁶ ICC-01/09-02/11-808-Conf-Exp, para. 4.

4. Under Regulation 37(2) of the Regulations, the Chamber may grant an extension of the standard page limit in "exceptional circumstances". In the present case, the Chamber is of the view that this test is satisfied given the seriousness and complex nature of the allegations and evidence to be relied upon. The Chamber considers, however, that an extension to 75 pages would be excessive and that the Defence should be able to comprehensively put forward its arguments in 50 pages.

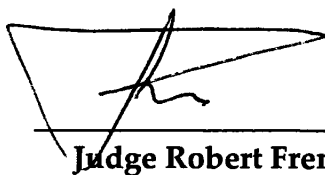
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Request in part and extends the page limit for the Defence's forthcoming abuse of process application to 50 pages.

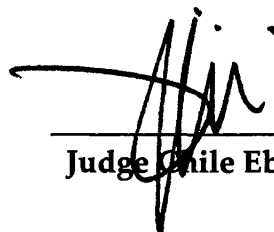
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding



Judge Robert Fremr



Judge Chile Eboe-Osuji

Dated 24 September 2013

At The Hague, The Netherlands