

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 17 October 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

Decision on Prosecution request for reclassification

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

Mr Benjamin Gumpert

Counsel for Uhuru Muigai Kenyatta

Mr Steven Kay

Ms Gillian Higgins

Legal Representatives for Victims

Mr Fergal Gaynor

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Deputy Registrar

Victims and Witnesses Unit

Mr Patrick Craig

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber V(B) ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v Uhuru Muigai Kenyatta*, having regard to Regulation 23bis of the Regulations of the Court, issues the following Decision on the 'Prosecution request for reclassification'.

1. At an *ex parte* status conference on 6 September 2013 the defence team for Mr Kenyatta ('Defence') indicated, *inter alia*, an intention to file an abuse of process motion in this case.¹
2. On 10 October 2013, the Defence filed the 'Defence Application for a Permanent Stay of the Proceedings due to Abuse of Process' ('Stay Application').²
3. On 11 October 2013, the Office of the Prosecutor ('Prosecution') filed the 'Prosecution Request for Reclassification' in which it sought the reclassification as 'confidential', or in the alternative the disclosure of confidential redacted versions, of: (i) the transcript of the *ex parte* hearing held on 6 September 2013; and (ii) any *ex parte* filings relating to the Defence's Stay Application ('Request').³
4. On 14 October 2013, the Chamber identified certain documents as relevant to the Request ('Documents')⁴ and directed the Defence and the Victims and Witnesses Unit ('VWU') to provide their responses to the Request, including any redactions they may wish to propose, by 16:00 on 15 October 2013.⁵

¹ICC-01/09-02/11-T-25-Conf-EXP-ENG.

²ICC-01/09-02/11-822-Conf+Conf-Anxs.

³ICC-01/09-02/11-824-Conf.

⁴ICC-01/09-02/11-T-25-Conf-EXP-ENG; ICC-01/09-02/11-801-Conf-Exp-Corr; ICC-01/09-02/11-801-Conf-Exp-Corr-AnxA; ICC-01/09-02/11-808-Conf-Exp; ICC-01/09-02/11-811-Conf-Exp; ICC-01/09-02/11-825-Conf-Exp.

⁵Email communication from Legal Officer of the Chamber on 14 October 2013 at 12:24.

5. On 15 October 2013, the Defence⁶ and the VWU⁷ each informed the Chamber that they have no objection to the reclassification of any of the Documents in the manner requested by the Prosecution.
6. The Chamber notes that most of the information contained in the Documents has already been disclosed to the Prosecution and to the Legal Representative for Victims by way of the Stay Application. To the extent that the Documents contain additional information, relating, *inter alia*, to the security situation of certain potential Defence witnesses and the implementation of measures for their protection, the Chamber notes that neither the Defence nor VWU object to the reclassification of the Documents. Recalling also the statutory obligations of the Prosecution relating to victim and witness protection, the Chamber considers that the information in question may be disclosed to the Prosecution and the Legal Representative for Victims.

⁶ICC-01/09-02/11-826-Conf.

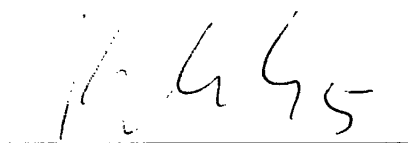
⁷E-mail communications from VWU to the Chamber on 15 October 2013 at 15:20 and on 16 October 2013 at 11:09.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

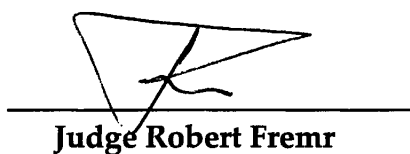
GRANTS the Request, and directs the Registry to reclassify the following documents as 'confidential', available to all parties and participants:

- ICC-01/09-02/11-T-25-Conf-EXP-ENG;
- ICC-01/09-02/11-801-Conf-Exp-Corr;
- ICC-01/09-02/11-801-Conf-Exp-Corr-AnxA;
- ICC-01/09-02/11-808-Conf-Exp;
- ICC-01/09-02/11-811-Conf-Exp; and
- ICC-01/09-02/11-825-Conf-Exp.

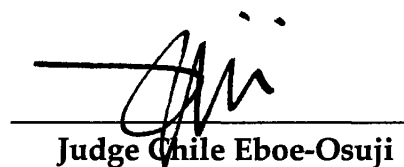
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding



Judge Robert Fremr



Judge Chile Eboe-Osuji

Dated 17 October 2013

At The Hague, The Netherlands