

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-01/09-02/11
Date: 15 January 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

**Prosecution request for leave to reply to the Defence's 13 January 2014
response to the Prosecution's adjournment request**

Source: The Office of the Prosecutor

Document to be notified in accordance with Regulation 31 of the Regulations of the Court to:

The Office of the Prosecutor

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Other

1. The Prosecution requests leave, under Regulations 24(5) of the Regulations of the Court, to reply to the following two issues raised in the Defence's 13 January 2014 response to the Prosecution's 19 December 2013 adjournment request ("Response"):¹

- The scope of the Trial Chamber's "power to order the termination of the proceedings",² and the relevance of that remedy to this case at this stage. Specifically, the Prosecution intends to submit that it would be premature and inappropriate to terminate the proceedings at this stage.
- The assertion that a ruling of a majority of the Trial Chamber in its previous composition on the scope of post-confirmation investigations prevents the grant of an adjournment.³ Specifically, the Prosecution intends to submit that the ruling in question is inapposite to the adjournment request. The issue for the Chamber to resolve does not turn on the propriety of post-confirmation investigations but rather a balancing of the interests of the parties and participants, and the victims in particular.

2. The Prosecution submits that good cause exists for a brief reply on these issues.⁴

3. *First*, they are "new and distinct issues" of law that go beyond those addressed in the Prosecution's adjournment request.⁵ Given the relief sought by the Defence, it is appropriate for the Prosecution to be heard on these issues before the Chamber rules.

¹ ICC-01/09-02/11-878-Conf.

² ICC-01/09-02/11-878-Conf, para 13.

³ ICC-01/09-02/11-878-Conf, paras 15-17.

⁴ See, e.g., ICC-01/05-01/08-294, para. 3.

⁵ ICC-01/04-01/10-61, p. 3.

4. *Second*, “the Chamber may benefit from receiving further observations” on the two issues,⁶ since they concern matters of unsettled law, the resolution of which may have an impact not only on this case, but on future cases before this Court.
5. This document is filed confidentially because it refers to matters raised in a filing so designated.⁷ The Prosecution has no objection to this document being reclassified as “public” once a public redacted version of the Response is filed.

Relief requested

6. The Prosecution respectfully requests the Chamber to grant leave to reply to the Response on the two issues raised above in paragraph 1.



Fatou Bensouda,
Prosecutor

Dated this 15th day of January, 2013
At The Hague, The Netherlands

⁶ ICC-01/09-02/11-679, para. 9.

⁷ Regulation 23bis(2) of the Regulations of the Court.