

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 23 January 2014

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 vacating trial date of 5 February 2014, convening a status conference, and
addressing other procedural matters**

Order 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 of 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**

Ms Fiona McKay

Others

Trial Chamber V(B) ('Chamber') of the International Criminal Court in the case of *The Prosecutor v. Uhuru Muigai Kenyatta*, pursuant to Article 64(2) and (6) of the Rome Statute ('Statute'), Rules 132(1) and (2) of the Rules of Procedure and Evidence ('Rules') and Regulations 23 *bis*, 24(1) and 34 of the Regulations of the Court ('Regulations'), issues the following 'Order vacating trial date of 5 February 2014, convening a status conference, and addressing other procedural matters'.

1. On 31 October 2013, the Chamber issued a decision provisionally setting 5 February 2014 as the date for the commencement of the trial.¹
2. On 19 December 2013, the Office of the Prosecutor ('Prosecution') filed a request ('Prosecution Request')² seeking, *inter alia*, an adjournment of the provisional trial date for three months in order to 'undertake additional investigative steps' in relation to its case against Mr Kenyatta.³ The Prosecution also requested that a status conference be convened to address the issues raised by the Prosecution Request and in order for the Chamber to receive an update from the Prosecution on the additional investigative steps being taken.⁴
3. On 13 January 2014, the defence team for Mr Kenyatta ('Defence') filed a confidential response ('Defence Response')⁵, requesting that the Chamber dismiss the Prosecution request for adjournment and terminate the proceedings under Article 64(2) of the Statute on the grounds of insufficiency of evidence.⁶

¹ Decision adjourning the commencement of trial, ICC-01/09-02/11-847, page 5.

² Notification of the removal of a witness from the Prosecution's witness list and application for an adjournment of the provisional trial date, ICC-01/09-02/11-875.

³ Prosecution Request, ICC-01/09-02/11-875, para. 3.

⁴ Prosecution Request, ICC-01/09-02/11-875, paras 4, 23 and 25.

⁵ Defence Response to the Prosecution's "Notification of the removal of a witness from the Prosecution's witness list and application for an adjournment of the provisional trial date", ICC-01/09-02/11-878-Conf.

⁶ Defence Response, ICC-01/09-02/11-878-Conf, paras 5, 38 and 39.

4. On the same day, the Common Legal Representative of Victims ('LRV') filed a response ('Victims' Response'),⁷ *inter alia*, supporting the Prosecution Request and seeking the Chamber's leave to be present at any status conference convened in relation to it.⁸
5. On 15 January 2014, the Prosecution sought leave to reply to the Defence response ('Prosecution Request to Reply')⁹ on the basis, *inter alia*, of the nature of the issues raised therein and the relief sought.¹⁰
6. In order to give thorough consideration to the requests pending before it, and having due regard to the constituent requirements of Article 64(2) of the Statute, the Chamber considers it appropriate to vacate the trial commencement date of 5 February 2014, without prejudice to the position of the Chamber on the aforementioned pending requests.
7. Further, to facilitate the fair and expeditious conduct of proceedings, the Chamber considers it appropriate to convene a status conference, pursuant to Rule 132(2) of the Rules, to discuss the issues raised by the parties in relation to the Prosecution Request and the Defence Response, to be held on Wednesday, 5 February 2014. Given the significance of these issues and their potential impact on the interests of the victims, the Chamber grants the request of the LRV contained in the Victims' Response to be present at the status conference.
8. Additionally, given the new and distinct issues of law raised by the Defence Response and the nature of the relief requested therein, the Chamber finds that it is appropriate to treat it as a new request to which the Prosecution is entitled to fully

⁷ Victims' response to Prosecution's application for an adjournment of the provisional trial date, ICC-01/09-02/11-879-Conf. A redacted version was filed concurrently (ICC-01/09-02/11-879-Red).

⁸ Victims' Response, ICC-01/09-02/11-879-Red, paras 1, 57 and 65.

⁹ Prosecution request for leave to reply to the Defence's 13 January 2014 response to the Prosecution's adjournment request, ICC-01/09-02/11-881-Conf.

¹⁰ Prosecution Request to Reply, ICC-01/09-02/11-881-Conf, para. 3.

respond. Pursuant to Regulations 24 (1) and 34 of the Regulations, the Chamber sets a deadline for the Prosecution response of Friday, 31 January 2014.

9. As a final matter, the Chamber notes that the Defence Response was filed confidentially, containing an undertaking therein to file a public redacted version in due course.¹¹ The Chamber notes that this has yet to occur, and orders the Defence to file a public redacted version of its response no later than Tuesday, 28 January 2014.
10. In this connection, the Chamber notes that the Prosecution indicated that the Prosecution Request to Reply was filed confidentially because it addresses matters raised in a filing so designated.¹² Accordingly, the Chamber orders further that, pursuant to Regulation 23 *bis* of the Regulations, the Registry reclassify as public the Prosecution Request to Reply as soon as a public redacted version of the Defence Response has been filed.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY:

VACATES the trial commencement date of Wednesday, 5 February 2014;

SCHEDULES a status conference for Wednesday, 5 February 2014;

GRANTS the request of the LRV to be present at the status conference;

ORDERS the Prosecution to file a response in relation to the new matters raised in the Defence Response no later than Friday, 31 January 2014;

ORDERS the Defence to file a public redacted version of the Defence Response no later than Tuesday, 28 January 2014; and

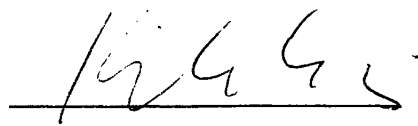
¹¹ Defence Response, ICC-01/09-02/11-878-Conf, para. 2.

¹² Prosecution Request to Reply, ICC-01/09-02/11-881-Conf, para. 5.

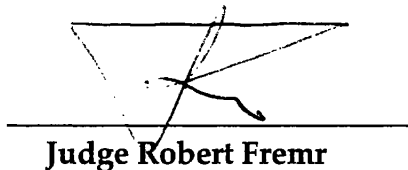
ORDERS the Registry to reclassify as public the Prosecution Request to Reply (ICC-01/09-02/11-881-Conf) as soon as a public redacted version of the Defence Response (ICC-01/09-02/11-878-Conf) has been filed.

Judge Eboe-Osuji appends a concurring separate opinion.

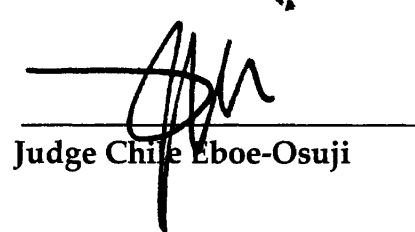
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding Judge



Judge Robert Fremr



Judge Chile Eboe-Osuji

Dated 23 January 2014

At The Hague, The Netherlands