

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-01/09-02/11
Date: 28 February 2014

TRIAL-CHAMBER V(B)

Before: Judge Kuniko Ozaki, Presiding Judge
Judge Robert Fremr
Judge Geoffrey Henderson

SITUATION IN THE REPUBLIC OF KENYA

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

Under Seal

Ex parte only available to the Registry and the Prosecutor

With under seal annexes *ex parte* only available to the Registry and the Prosecutor

**Fourth report on the execution of the request for the purpose of securing the
identification, tracing and freezing or seizure of property and assets of Uhuru
Muigai Kenyatta**

Source: The Registry

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

The Office of the Prosecutor

Ms Fatou Bensouda

Ms Adesola Adeboyejo

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(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

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

The Registry of the International Criminal Court (“the Court”):

NOTING the *“Decision of the Chamber ordering the Registrar to Prepare and Transmit a Request for Cooperation to the Republic of Kenya for the Purpose of Securing the Identification, Tracing and Freezing or Seizure of Property and Assets of Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali”* (the Court’s Request) dated 5 April 2011;¹

NOTING the *“Report on the notification of the Request for the Purpose of Securing the Identification, Tracing and Freezing or Seizure of Property and Assets of Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali”* dated 14 April 2011;²

NOTING the *“Report on the execution of the Request for the purpose of Securing the Identification, Tracing and Freezing or Seizure of Property and Assets of Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali”* dated 7 June 2011;³

NOTING the *“Second report on the execution of the Request for the Purpose of Securing the Identification, Tracing and Freezing or Seizure of Property and Assets of Francis Muthaura and Uhuru Muigai Kenyatta”* dated 25 April 2012;⁴

NOTING the *“Third report on the execution of the Request for the Purpose of Securing the Identification, Tracing and Freezing or Seizure of Property and Assets of Francis Muthaura and Uhuru Muigai Kenyatta”* dated 20 February 2013;⁵

NOTING articles 87(1)(a) and 93(1)(k) of the Rome Statute and rule 176(2) of the Rules of Procedure and Evidence and regulation 23 *bis* of the Regulations of the Court;

¹ ICC-01/09-02/11-42-US-Exp.

² ICC-01/09-02/11-58-US-Exp.

³ ICC-01/09-02/11-107-US-Exp.

⁴ ICC-01/09-02/11-419-US-Exp.

⁵ ICC-01/09-02/11-654-US-Exp.

SUBMITS the following information:

1. In order to follow up the development of the execution of the Court's Request, the Registry sent a note verbale on 19 December 2013⁶ asking for an update on the pending request for cooperation concerning Mr Kenyatta. More precisely, the Registry requested the Kenyan authorities to reply to the questions listed in its note verbale dated 28 May 2012⁷ and provide an update on the efforts undertaken in the year of 2013 to execute the Court's Request for cooperation⁸.
2. On 29 January 2014, in light of the absence of any reply, the Registry sent another note verbale⁹, referring to the note verbale dated 28 May 2012, to the Attorney General of the Republic of Kenya intending to:
 - Send a reminder regarding the previous requests presented in the note verbale dated 19 December 2013;
 - Request also a confirmation that the items listed on the "List of alleged property and assets – Uhuru Muigai Kenyatta" transmitted in notes verbale¹⁰ sent on 8 April 2011 and on 28 December 2012 belong to Mr Kenyatta and enquire whether any of the items on the list had been frozen or seized by the Kenyan authorities.
3. On 24 February 2014, the Attorney General of the Republic of Kenya sent a reply¹¹ expressing the view of the Kenyan Government on the interpretation of article 93 (1) (k) of the Rome Statute referred to in the request of the Registry. According to the Government of the Republic of Kenya, this article can only be properly interpreted to mean, first, that criminal offences under the jurisdiction of the Court have been proved as against the accused persons,

⁶ Annex 1 attached hereto.

⁷ ICC-01/09-02/11-654-US-Exp-Anx1.

⁸ ICC-01/09-01/11-42-US-Exp.

⁹ Annex 2 attached hereto.

¹⁰ ICC-01/09-02/11-58-US-Exp-Anx1 and ICC-01/09-02/11-654-US-Exp-Anx3.

¹¹ Annex 3 attached hereto.

after full trial. Secondly, that the Court has also found that upon the execution of the crime the accused persons came into possession or ownership of identified property and assets; and/or that in committing the crime the accused persons employed the property and assets identified. Given that these conditions precedent have not been met, the Republic of Kenya declined execution of the request of the Registry.

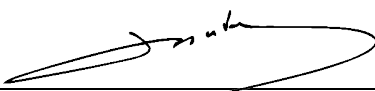
REQUESTS respectfully the guidance of Trial Chamber V(B), in view of the aforementioned reply from the Republic of Kenya, on the pursuit of the execution of the Court's Request;

SUBMITS the present report and its annexes classified as under seal *ex parte* only available to the Registry and the Office of the Prosecutor to be in line with the level of confidentiality of the Court's Request;

TRANSMITS in annexes:

- Annex 1: The note verbale of the Registry dated 19 December 2013;
- Annex 2: The note verbale of the Registry dated 29 January 2014;
- Annex 3: The note verbale of the Kenyan authorities on 24 February 2014;

RESPECTFULLY SUBMITTED.



Marc Dubuisson, Director, Division of Court Services
on behalf of Herman von Hebel, Registrar

Dated this 28 February 2014

At The Hague, The Netherlands