

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Original Date: 4 December 2012

Date of public version: 3 February 2017

TRIAL CHAMBER V

Before: Judge Kuniko Ozaki, Presiding Judge
Judge Christine Van den Wyngaert
Judge Chile Eboe-Osuji

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF
THE PROSECUTOR v. FRANCIS KIRIMI MUTHAURA
AND
*UHURU MUIGAI KENYATTA***

Public redacted version of

**Decision on the prosecution application for reclassification of six documents
related to Witness 4, 4 December 2012, ICC-01/09-02/11-553-Conf**

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

The Office of the Prosecutor

Ms Fatou Bensouda

Counsel for Francis Kirimi Muthaura

Mr Karim Khan, Mr Essa Faal,
Mr Kennedy Ogetto, Ms Shyamala
Alagendra

Counsel for Uhuru Muigai Kenyatta

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

Ms Silvana Arbia

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber V (“Chamber”) of the International Criminal Court in the case of *The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta*, pursuant to Regulation 23 *bis* of the Regulations, renders the following Decision on the prosecution’s application for reclassification of six documents related to Witness 4.

1. On 29 November 2012, the Office of the Prosecutor (“prosecution”) filed the “Prosecution Application for reclassification of six documents related to Witness 4” (“Application”).¹ The prosecution recalls that it had made three requests for delayed disclosure of materials relating to an [REDACTED] Witness 4 (“Information”),² all of which were granted by the Chamber.³ The prosecution notes that the Information was disclosed to the defence on 29 November 2012 and, therefore, that “there is no longer a basis for the *ex parte* designation of the Chamber’s decisions regarding the disclosure of the Information and the underlying Prosecution applications.”⁴
2. The prosecution requests that the Chamber order that the three delayed disclosure applications and corresponding decisions be reclassified as “confidential”.⁵ The prosecution also requests that annexes 1-3 of its initial delayed disclosure application retain their “confidential, *ex parte*” classification because they “contain unredacted versions of materials that have been disclosed with discrete redactions” and that “[r]eclassifying the annexes would defeat the purpose of those redactions”.⁶ The prosecution also submits that, if its requested relief is granted, the Application itself should also be reclassified as “confidential”.⁷

¹ ICC-01/09-02/11-547-Conf-Exp.

² Application, para. 3 (in reference to ICC-01/09-02/11-434-Conf-Exp; ICC-01/09-02/11-486-Conf-Exp and ICC-01/09-02/11-504-Conf-Exp).

³ Application, para. 3 (in reference to ICC-01/09-02/11-464-Conf-Exp; ICC-01/09-02/11-489-Conf-Exp; ICC-01/09-02/11-509-Conf-Exp).

⁴ Application, paras 4-5.

⁵ Application, para. 5.

⁶ Application, para. 6.

⁷ Application, para. 7.

3. The Chamber accepts the prosecution's arguments that the basis for the current classification level of the documents identified in the Application, with the exception of annexes 1 – 3 of the prosecution's initial delayed disclosure application, no longer exists. Pursuant to Regulation 23 *bis* of the Regulations, the prosecution's request is granted.

THE CHAMBER HEREBY

GRANTS the relief requested in the Application;

DECIDES to retain the "confidential, *ex parte*" classification of annexes 1-3 of ICC-01/09-02/11-434-Conf-Exp; and

ORDERS the registry to reclassify the following documents as confidential:

- ICC-01/09-02/11-434-Conf-Exp;
- ICC-01/09-02/11-464-Conf-Exp;
- ICC-01/09-02/11-486-Conf-Exp;
- ICC-01/09-02/11-489-Conf-Exp;
- ICC-01/09-02/11-504-Conf-Exp;
- ICC-01/09-02/11-509-Conf-Exp; and
- the Application itself (ICC-01/09-02/11-547-Conf-Exp).

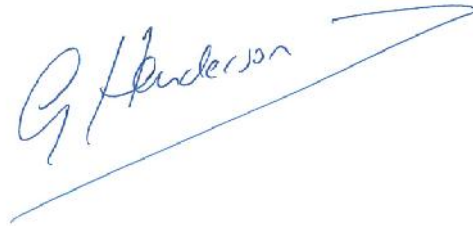
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding Judge



Judge Robert Fremr



Judge Geoffrey Henderson

Dated this 3 February 2017

At The Hague, The Netherlands