

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/20
Date: 1 December 2021

TRIAL CHAMBER III

Before: Judge Miatta Maria Samba

SITUATION IN THE REPUBLIC OF KENYA

IN THE CASE OF

THE PROSECUTOR v. PAUL GICHERU

Confidential

Prosecution's notification concerning Witness P-0604

Source: 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

Mr James Stewart

Mr Anton Steynberg

Counsel for the Defence

Mr Michael G. Karnavas

Ms Suzana Tomanović

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 Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

1. Pursuant to Trial Chamber III's¹ Decision² on the "Prosecution's Requests pursuant to article 68 and regulation 35 for variation of time limits related to Prosecution Witness",³ the Prosecution hereby notifies the Chamber that it has decided not to rely upon P-0604 as a Prosecution witness in this case.
2. In the Extension Request, the Prosecution outlined the efforts it had made to meet with P-0604 to obtain documents corroborating the evidence he had provided concerning payments made to him by the Accused and his associates, and to obtain updated information regarding his current circumstances. The Prosecution explained that these efforts had been unsuccessful, but considered that a further effort to meet P-0604 was necessary. The Prosecution further advised the Chamber of the dates on which the witness had agreed to meet.
3. However, despite the Prosecution having made all the necessary arrangements for such meeting, P-0604 failed to arrive at the agreed location and has not responded to several Prosecution's attempts to contact him since. In the circumstances, the Prosecution has concluded that P-0604 is not genuinely willing to cooperate and has consequently decided not add him to its List of Witnesses.
4. The Prosecution has considered the possibility of requesting a summons for the witness but in light of his repeated failure to provide the documents relevant to corroborate his evidence, the fact that the latter is not central to the charges, and the lack of updated information concerning his current situation, the Prosecution has concluded that resorting to this option is not justified.⁴ Similarly, the Prosecution has concluded that requesting the introduction of the P-0604s's prior recorded testimony under rule 68 would be inappropriate in the circumstances.

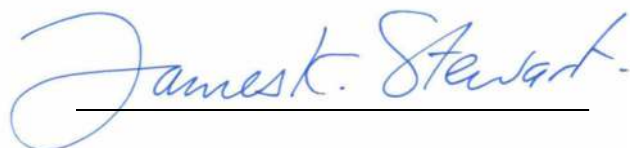
¹ "Chamber".

² ICC-01/09-01/20-224-Conf.

³ "Extension Request", ICC-01/09-01/20-217-Conf-Exp, -Conf-Red.

⁴ Without prejudice to the Chamber's discretion under article 64(6)(d) to order the testimony of the witness, should it consider this is necessary.

5. Under regulation 23*bis* (2) of the Regulations of the Court, this filing is submitted as “confidential”, since it is filed pursuant to a decision of the same classification. However, given the contents and changed circumstances, the Prosecution considers that it may be reclassified as “public”.



Mr James Stewart, Deputy Prosecutor

Dated this 1st day of December 2021

At The Hague, The Netherlands