

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 14 November 2012

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

Decision on the prosecution request for leave to reply

Decision 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 Francis Kirimi Muthaura

Mr Karim A. Khan, Mr Essa Faal, Mr
Kennedy Ogetto, Ms Shyamala
Alagenda

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

Ms Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber V (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta* (“Muthaura and Kenyatta case”), pursuant to Regulations 24(5) and 34 of the Regulations of the Court (“Regulations”), issues the following Decision on the prosecution request for leave to reply.

1. On 5 October 2012 the prosecution submitted the “Prosecution application for the authorisation of redactions pursuant to Articles 54(3)(f), 64(2) and 68(1) of the Statute, Rule 81 and Decision ICC-01/09-02/11-495” (“Application”) with annexes A, B and C.¹ The Application and the three annexes were classified as “confidential, *ex parte*”. A confidential redacted version of the application was filed on 9 October 2012.²
2. On 16 October 2012, pursuant to a request by the prosecution,³ the Chamber ordered the reclassification of annexes B and C from “confidential, *ex parte*” to “confidential”⁴ and thereafter confirmed that the 21-day time limit for any defence submissions began to run on the date of reclassification of the annexes.⁵
3. On 7 November 2012, the defence for Mr Muthaura and the defence for Mr Kenyatta (collectively, “the defence”) jointly filed their response to the Application (“Response”).⁶

¹ ICC-01/09-02/11-500-Conf-Exp, notified on 8 October 2012.

² ICC-01/09-02/11-500-Conf-Red.

³ Application for reclassification of annexes B and C to ICC-01/09-02/11-500-Conf-Exp, 9 October 2012, ICC-01/09-02/11-502-Conf, para. 1.

⁴ Decision reclassifying annexes B and C to ICC-01/09-02/11-500-Conf-Exp as “Confidential”, ICC-01/09-02/11-505-Conf.

⁵ Email communication from Trial Chamber V Communications to the parties on 22 October 2012 at 16:55.

⁶ Joint Defence Response to the Confidential redacted version of the Prosecution’s 5 September 2012 application for the authorisation of redactions pursuant to Articles 54(3)(f), 64(2) and 68(1) of the

4. On 9 November 2012, the prosecution filed its request for leave to reply to the joint defence Response (“Request”).⁷ The prosecution requests leave to reply to three discrete points raised by the defence in their joint Response.⁸
5. Pursuant to Regulation 24(5) of the Regulations, the parties may only reply to a response with the leave of the Chamber. In all the circumstances, the Chamber is of the view that it may benefit from receiving further observations from the prosecution concerning the three issues raised in paragraph 2 of the Request.

For the foregoing reasons, the Chamber hereby:

GRANTS the prosecution’s application for leave to file a reply to ICC-01/09-02/11-521-Conf in accordance with paragraph 5 of the present Decision;

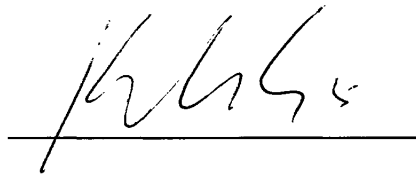
DIRECTS the prosecution to file its reply within seven days of notification of this Decision.

Statute, Rule 81 and Decision ICC-01/09-02/11-495, with confidential annexes B and C, 7 November 2012, ICC-01/09-02/11-521-Conf.

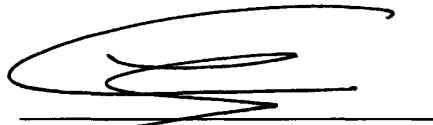
⁷ Prosecution request for leave to reply to ICC-01/09-02/11-521-Conf, 9 November 2012, ICC-01/09-02/11-525-Conf.

⁸ ICC-01/09-02/11-525-Conf, para. 2.

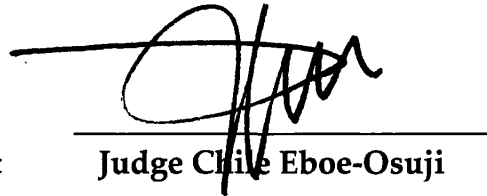
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding



Judge Christine Van den Wyngaert



Judge Chile Eboe-Osuji

Dated 14 November 2012

At The Hague, The Netherlands