

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 21 December 2012

THE PRESIDENCY

Before: Judge Sang-Hyun Song, President
Judge Sanji Mmasenono Monageng, First Vice-President
Judge Cuno Tarfusser, Second Vice-President

SITUATION IN THE REPUBLIC OF KENYA

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

Public Document
**Decision on "Defence Application for a change of place where the Court shall sit
for Trial"**

Source: Presidency

Document 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 QC, Mr Essa Faal,
Mr Kennedy Ogetto, Ms Shyamala
Alagendra

Counsel for Uhuru Muigai Kenyatta

Mr Steven Kay QC, Ms Gillian Higgins

Legal Representatives of the Victims

Mr Fergal Gaynor

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

Ms Silvana Arbia

Deputy Registrar

Mr Didier Preira

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber V

NOTING the “Defence Application for a change of place where the Court shall sit for Trial” of 3 December 2012, by which the Defence requests the Presidency to change the place where the Court shall sit for trial to the Republic of Kenya or to the United Republic of Tanzania;¹

NOTING the “Defence for Uhuru Muigai Kenyatta Submissions on Status Conference Agenda In Response to Trial Chamber Order” dated 14 May 2012, whereby the Defence requested Trial Chamber V (“Chamber”) to hold the trial *in situ*;²

NOTING the Chamber’s “Decision on the defence request to change the place of the proceedings” of 7 November 2012, rejecting the request to change the place of the trial, without prejudice to the right of the Defence to make an application to the Presidency in accordance with rule 100 of the Rules of Procedure and Evidence (“Rules”);³

RECALLING the earlier application of rule 100 of the Rules in the instant case whereby, in the process of assessing the desirability and feasibility of conducting proceedings in Kenya, in its “Decision Requesting Observations on the Place of the Proceedings for the Purposes of the Confirmation of Charges Hearing” of 3 June 2011, Pre-Trial Chamber II requested observations by the Prosecutor, the Defence and victims concerning the change of the place of the proceedings;⁴

EMPHASING the importance of the Chamber establishing the views of the parties before deciding whether to recommend the Presidency to consult the relevant national authorities;

¹ ICC-01/09-02/11-551.

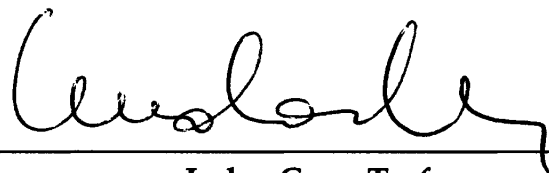
² ICC-01/09-02/11-422, para. 24.

³ ICC-01/09-02/11-522, p. 5.

⁴ ICC-01/09-02/11-102, p. 4.

HEREBY

REQUESTS the Chamber to seek the views of the parties on the application by the Defence for Mr. Muthaura, before deciding whether to recommend the Presidency to consult the relevant national authorities.



**Judge Cuno Tarfusser
Second Vice-President**

Dated this 21 December 2012

At The Hague; The Netherlands