

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 22 March 2013

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. UHURU MUIGAI KENYATTA***

Public

**Decision on prosecution application for a variation of the time limit to submit
agreed facts**

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 the Defence

Mr Steven Kay

Ms Gillian Higgins

Legal Representatives of Victims

Mr Fergal Gaynor

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**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 (“Court”), in the case of *The Prosecutor v. Uhuru Muigai Kenyatta*, pursuant to Regulation 35 of the Regulations of the Court (“Regulations”), issues this Decision on prosecution application for a variation of the time limit to submit agreed facts.

1. On 9 July 2012, the Chamber directed the parties to submit their “Second joint prosecution/defence filing on agreed facts pursuant to Rule 69 and evidence” (“Second Agreed Facts Submission”) by 8 March 2013.¹ This deadline was set in contemplation of starting the trial on 11 April 2013.²
2. On 5 March 2013, the defence team for Mr Kenyatta (“Defence”) filed the “Notification on Behalf of Uhuru Kenyatta Regarding the 8 March 2013 Deadline for the Second Joint Prosecution-Defence Submission on Agreed Facts”.³ The Defence submits that the Office of the Prosecutor (“Prosecution”) only provided it with an updated proposal on agreed facts on 28 February 2013 and that the Defence did not have an adequate amount of time to review it.⁴ The Defence does not request relief from the Chamber, but rather “invites the Prosecution to take appropriate action to provide the Defence with adequate time to review, respond to and liaise with the Prosecution” on the updated proposal.⁵
3. On 7 March 2013, the Chamber vacated the trial start date of 11 April 2013 and provisionally set a new start date of 9 July 2013.⁶

¹ Decision on the schedule leading up to trial, 9 July 2012, ICC-01/09-02/11-451, para. 23.

² ICC-01/09-02/11-451, para. 25.

³ ICC-01/09-02/11-675.

⁴ ICC-01/09-02/11-675, paras 3, 6.

⁵ ICC-01/09-02/11-675, para. 8.

⁶ Order concerning the start date of trial, 7 March 2013, ICC-01/09-02/11-677.

4. On 8 March 2013, the Prosecution filed the “Prosecution’s application pursuant to Regulation 35 for a variation of the time limit to submit agreed facts” (“Application”).⁷ In the Application, the Prosecution notes correspondence from the Defence which indicates that the updated agreed facts proposal could be reviewed by 22 March 2013.⁸ The Prosecution submits that good cause exists for filing the Second Agreed Facts Submission on 25 March 2013 because: (i) providing additional time to consult may allow agreements as to facts or the authenticity of documents which, if successful, will be in the interest of the parties and the Chamber, (ii) the trial date was moved from 11 April to 9 July 2013, creating additional time to reach an agreement and (iii) the Prosecution has genuinely sought common ground with the Defence and believes that more time would be useful.⁹
5. The Chamber accepts the Prosecution’s arguments and considers that there is good cause to extend the time limit for filing the Second Agreed Facts Submission pursuant to Regulation 35(2) of the Regulations. Further, given the value of identifying as many agreed facts as possible and the fact that the start of the trial is now provisionally set for 9 July 2013, the Chamber sees no reason why the parties may not be given additional time if further negotiations towards reaching agreed facts would be fruitful. Accordingly, the parties are urged to keep the matter under review.

⁷ ICC-01/09-02/11-685.

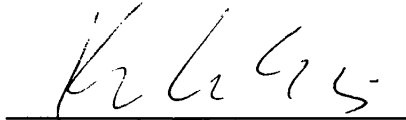
⁸ Application, ICC-01/09-02/11-685, para. 7.

⁹ See Application, ICC-01/09-02/11-685, paras 8-12.

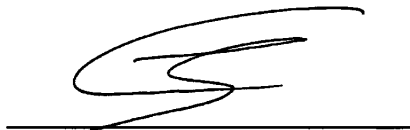
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the relief sought in the Application and extends the deadline for the Second Agreed Facts Submission until 25 March 2013.

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 this 22 March 2013

At The Hague, The Netherlands