

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 29 July 2013

TRIAL CHAMBER V(B)

Before: Judge Kuniko Ozaki, Presiding Judge
Judge Robert Fremr
Judge Chile Eboe-Osuji

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF
*THE PROSECUTOR v. UHURU MUIGAI KENYATTA***

Public

Order for further observations on where the Court shall sit for trial

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**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar
Mr Herman von Hebel

Deputy Registrar
Mr Didier Preira

Victims and Witnesses Unit
Mr Patrick Craig

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber V(B) (the ‘Chamber’¹) of the International Criminal Court (the ‘Court’) in the case of *The Prosecutor v. Uhuru Muigai Kenyatta*, pursuant to Article 3 of the Rome Statute and Rule 100 of the Rules of Procedure and Evidence (the ‘Rules’), issues this Order for further observations on where the Court shall sit for trial.

1. On 3 December 2012, the defence team for Mr Muthaura (the ‘Muthaura Defence’), who was at the time an accused person in the present case, submitted its Defence Application for a change of place where the Court shall sit for Trial (the ‘Application’) to the Presidency, requesting the Presidency to undertake consultations contemplated by Rule 100(3) of the Rules with the governments of Kenya and Tanzania.²
2. On 21 December 2012, the Presidency issued the Decision on Defence Application for a change of place where the Court shall sit for Trial (the ‘Presidency Decision’), requesting the Chamber to seek the views of the parties.³
3. On 17 January 2013, the Chamber issued an Order requesting observations in relation to the Defence Application for change of place where the Court shall sit for trial (the ‘Order’).⁴ The Order requested observations from the Office of the Prosecutor (‘Prosecution’), the defence team for Mr Kenyatta (the ‘Kenyatta Defence’), the Registry, and the Common Legal Representative for Victims on the possibility of the trial being held in Kenya, or alternatively in Arusha, Tanzania.

¹ The word ‘Chamber’ in this order refers to both Trial Chamber V in its composition until 21 May 2013 and to Trial Chamber V(B) as composed by the Presidency’s decision of 21 May 2013 (see Decision constituting Trial Chamber V(a) and Trial Chamber V(b) and referring to them the cases of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* and *The Prosecutor v. Uhuru Muigai Kenyatta*, ICC-01/09-02/11-739).

² ICC-01/09-02/11-551.

³ ICC-01/09-02/11-581.

⁴ ICC-01/09-02/11-602.

4. On 6 and 7 February 2013, the Kenyatta Defence,⁵ the Common Legal Representative for Victims⁶, the Prosecution⁷ and the Registry⁸ filed their observations pursuant to the Order.
5. On 11 March 2013, the Chamber held a status conference at which the Prosecution announced that it was withdrawing the charges against Mr Muthaura.⁹ The withdrawal of charges was also notified in a written submission on the same day.¹⁰
6. On 18 March 2013, the Chamber issued its 'Decision on the withdrawal of charges against Mr Muthaura', granting the Prosecution permission to withdraw the charges and terminating the proceedings against Mr Muthaura.¹¹ In its decision the Chamber held that all pending requests or applications by the Muthaura Defence before this Chamber or any other chamber of the Court were moot.¹²
7. The Chamber recalls that the only application for a change of the place where the Court shall sit for trial was made by the Muthaura Defence and that in view of the withdrawal of the charges, applications previously made by the Muthaura Defence are moot. This also applies to the Application. As a consequence, the procedure initiated by the Application should, in principle, no longer continue. The Chamber therefore seeks the parties' and participants' observations on the question whether the Chamber may consider the matter on its own and issue a recommendation to

⁵ Defence Response on behalf of Uhuru Kenyatta to the 'Order requesting observations in relation to the "Defence Application for change of place where the Court shall sit for Trial"', ICC-01/09-02/11-625.

⁶ Victims' Observations in relation to the 'Defence Application for change of place where the Court shall sit for Trial', ICC-01/09-02/11-629.

⁷ Prosecution Observations on the possibility of the trial being held in Kenya, or, alternatively, in Arusha, Tanzania, ICC-01/09-02/11-631.

⁸ Registry Observations in relation to the 'Defence Application for change of place where the Court shall sit for Trial', ICC-01/09-02/11-632.

⁹ ICC-01/09-02/11-T-23-ENG, pp. 3–5.

¹⁰ Prosecution notification of the withdrawal of the charges against Francis Kirimi Muthaura, ICC-01/09-02/11-687.

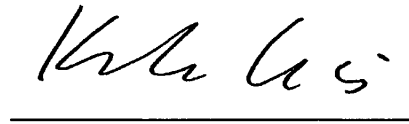
¹¹ ICC-01/09-02/11-696.

¹² *Ibid.*, para. 13.

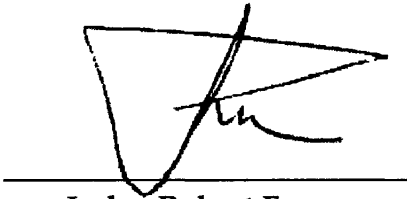
the Presidency irrespective of the discontinuance of the procedure initiated by the Application.

8. The Chamber further notes that in March 2013, after the submission of the observations by the parties, the Common Legal Representative for Victims and the Registry, a general election took place in the Republic of Kenya, including a presidential election. This fact is of relevance to the Chamber's consideration of the matter, should it decide to make a recommendation to the Presidency. The Chamber therefore finds it necessary to seek updated observations regarding the place where the Court shall sit for trial. The new observations shall not repeat what was already presented in the previous observations.
9. For the foregoing reasons, **the Chamber directs** the Prosecution, the Kenyatta Defence, the Common Legal Representative for Victims and the Registry to file, no later than 13 August 2013, observations on (1) the propriety of the Chamber considering the matter of the place for trial on its own, as set out in paragraph 7 above, and (2) the issue whether the opening of trial and/or another appropriate portion of trial shall be held in Kenya or Tanzania.

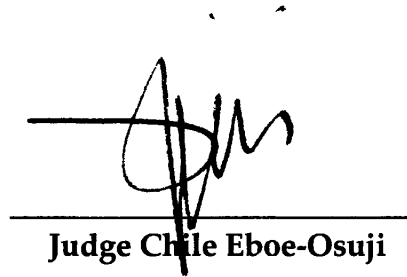
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding Judge



Judge Robert Fremr



Judge Chile Eboe-Osuji

Dated this 29 July 2013

At The Hague, The Netherlands