

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 17 June 2014

TRIAL CHAMBER V(B)

Before: Judge Kuniko Ozaki, Presiding Judge
Judge Robert Fremr
Judge Geoffrey Henderson

SITUATION IN THE REPUBLIC OF KENYA

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

Public

Decision on the Application of Mr Nyekorach-Matsanga under Rule 103

Order to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Benjamin Gumpert

Counsel for Uhuru Muigai Kenyatta

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

Mr Herman von Hebel

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Mr David Nyekorach-Matsanga

Trial Chamber V(B) ('Chamber') of the International Criminal Court in the case of *The Prosecutor v. Uhuru Muigai Kenyatta*, having regard to Rule 103(1) of the Rules of Procedure and Evidence ('Rules'), renders the following 'Decision on the Application of Mr Nyekorach-Matsanga under Rule 103'.

I. Procedural history

1. On 28 April 2014, Mr David Nyekorach-Matsanga ('the Applicant') filed an application for leave to submit *amicus curiae* observations ('Application').¹
2. On 1 May 2014, the Registry transmitted the Application to the Chamber ('Transmission') on an *ex parte*, available to the Applicant and the Registry only basis, as a precautionary measure.² Further to a communication by the Chamber,³ the Registry reclassified the Transmission as public on 7 May 2014.
3. The Applicant submits that his observations would, *inter alia*, 'shed light on why [f]inancial statements ('records') are not germane to the case',⁴ assist the Chamber in coming to a 'fair and unencumbered conclusion of the cases', and provide information to 'help the Court on the [K]enyan cases so as to preserve the integrity of the [C]ourt'.⁵ The Applicant also claims to be 'the only available channel in which the pertinent issues [raised therein] may be addressed conclusively in the interests of [j]ustice'.⁶

¹ A motion of Amicus Curiae in the Trial Chamber 5 (Vb) ('the court') by Dr. David Nyekorach-Matsanga in Case No. ICC-01/09 OA2 ('the case') in the Situation of Kenya to aid and shed light to the [C]ourt on why [f]inancial statements ('records') are not germane to the case and thus may not be entertained or otherwise used to determine Mr Uhuru Muigai Kenyatta's case [...], 28 April 2014, and notified 1 May 2014, ICC-01/09-02/11-913-Anx1.

² Registry Transmission of a document received from Dr. David Nyekorach-Matsanga on 28 April 2014, 2 May 2014, ICC-01/09-02/11-913.

³ Email communication from the Chamber to the Registry, on 7 May 2014 at 09.18.

⁴ Application, ICC-01/09-02/11-913-Anx1, page 3.

⁵ Application, ICC-01/09-02/11-913-Anx1, pages 13-14.

⁶ Application, ICC-01/09-02/11-913-Anx1, page 14.

4. No responses to the Application were received from the parties or participants.

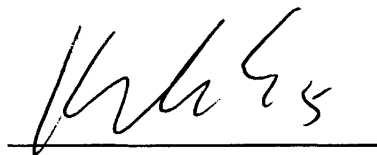
II. Analysis and conclusions of the Chamber

5. Rule 103(1) of the Rules provides a Chamber with discretion to grant leave to a State, organisation or person to submit written or oral observations on any issue the Chamber deems appropriate 'if [the Chamber] considers it desirable for the proper determination of the case'.
6. The Chamber considers that the requested intervention by the Applicant is neither necessary nor desirable for the proper determination of the case. The Applicant has not established that he has any expertise which would be of specific assistance to the Chamber. Moreover, his proposed submission would not provide any further information beyond that which may be raised and submitted by the parties and participants themselves at any stage of the proceedings.

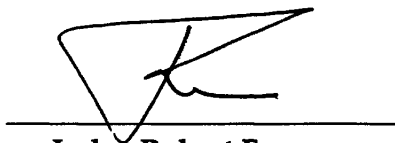
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Application.

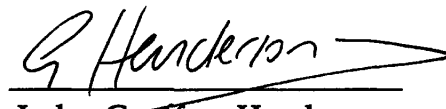
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding Judge



Judge Robert Fremr



Judge Geoffrey Henderson

Dated 17 June 2014

At The Hague, The Netherlands