



Original: English

No. ICC-01/09-02/11 OA 5

Date: 13 May 2015

THE APPEALS CHAMBER

Before:

**Judge Silvia Fernández de Gurmendi
Judge Sanji Mmasenono Monageng
Judge Howard Morrison
Judge Piotr Hofmański
Judge Bertram Schmitt**

SITUATION IN THE REPUBLIC OF KENYA

IN THE CASE OF THE PROSECUTOR v. UHURU MUIGAI KENYATTA

Public document

Decision on the Government of Kenya's request for an extension of time

Decision to be notified in accordance with regulation 31 of the Regulations of the Court to:

The Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor

Ms Helen Brady

Counsel for the Defence

Mr Steven Kay

Ms Gillian Higgins

Legal Representative of Victims

Mr Fergal Gaynor

States Representatives

Mr Githu Muigai, SC, Attorney General
of the Republic of Kenya

REGISTRY

Registrar

Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeal of the Prosecutor against the decision of Trial Chamber V(B) entitled “Decision on Prosecution’s application for a finding of non-compliance under Article 87(7) of the Statute”, of 3 December 2014 (ICC-01/09-02/11-982),

Having before it “The Government of the Republic of Kenya’s Request for extension of time to file its Response to the ‘Corrected version of Victims’ submissions on the Prosecutor’s appeal against the “Decision on Prosecution’s application for a finding of non-compliance under Article 87(7)’, ICC-01/09-02/11-1019-Corr dated 5 May 2015” of 11 May 2015 (ICC-01/09-02/11-1021),

Renders the following

DECISION

The above-mentioned request is granted. The Government of the Republic of Kenya may file a response to the “Corrected version of Victims’ submissions on the Prosecutor’s appeal against the ‘Decision on Prosecution’s application for a finding of non-compliance under Article 87(7) of the Statute’” (ICC-01/09-02/11-1019-Corr) by 16h00 on Monday, 18 May 2015.

REASONS

I. PROCEDURAL HISTORY

1. On 24 April 2015, the Appeals Chamber issued the “Decision on the victims’ request to participate in the appeal proceedings”, in which it, *inter alia*, set the deadline for the filing of responses to the observations of the victims’ in the present appeal to Friday, 8 May 2015.¹

¹ [ICC-01/09-02/11-1015](#) (OA 5), para. 13, p. 3.

2. On 1 May 2015, the victims' filed their observations and, on 5 May 2015, filed a corrected version of said observations (hereinafter: "Victims' Observations" and "Corrected Victims' Observations", respectively).²

3. On 11 May 2015, the Government of the Republic of Kenya (hereinafter: "Kenya") filed a request pursuant to regulation 35 (2) of the Regulations of the Court, seeking an extension of the time limit to file its response (hereinafter: "Kenya's Request").³ Kenya submits that it was unable to respond by the deadline due to "circumstances beyond its control", namely that it was only notified of the Victims' Observations and Corrected Victims' Observations on 6 May 2015 at 16h57, which did not permit it enough time to file its response within the deadline.⁴

II. MERITS

4. The Appeals Chamber acknowledges that Kenya was not notified of the Victims' Observations in an appropriately timely manner by the Registrar, but was instead only notified of the Victims' Observations and the Corrected Victims' Observations together at the end of the working day on 6 May 2015. In this respect, the Appeals Chamber notes that Kenya submits that this late notification made it unable to file its response within the set deadline. The Appeals Chamber understands Kenya's submissions, while not stated explicitly, to also mean that it did not have sufficient time to request an extension of time within the deadline.

5. Regulation 35 (2) of the Regulations of the Court requires a demonstration that the requesting participant was unable to file an application seeking an extension of time before that deadline for reasons outside his or her control. Given that the late notification is wholly attributable to the Court and in light of the very short period of time between the notification and the relevant deadline, the Appeals Chamber considers that Kenya has demonstrated that it was unable to file an application within

² ["Corrected version of Victims' submissions on the Prosecutor's appeal against the 'Decision on Prosecution's application for a finding of non-compliance under Article 87\(7\) of the Statute'"](#), ICC-01/09-02/11-1019-Corr (OA 5) with an [explanatory annex](#) (ICC-01/09-02/11-1019-Corr-Anx (OA 5)).

³ ["The Government of the Republic of Kenya's Request for extension of time to file its Response to the 'Corrected version of Victims' submissions on the Prosecutor's appeal against the 'Decision on Prosecution's application for a finding of non-compliance under Article 87\(7\)'"](#), ICC-01/09-02/11-1019-Corr dated 5 May 2015", ICC-01/09-02/11-1021 (OA 5), para. 8.

⁴ [Kenya's Request](#), paras 3, 6-7.

the time limit for reasons outside its control. The Appeals Chamber therefore considers that the requirement of regulation 35 (2) of the Regulations of the Court is satisfied and, accordingly, grants Kenya's Request and extends the deadline for Kenya to file its response to the Corrected Victims' Observations to 16h00 on Monday, 18 May 2015.

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



Judge Silvia Fernández de Gurmendi

Presiding Judge

Dated this 13th day of May 2015

At The Hague, The Netherlands