

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Original Date: **5 March 2013**

Date of public version: **3 February 2017**

**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. FRANCIS KIRIMI MUTHAURA  
AND  
UHURU MUIGAI KENYATTA***

**Public redacted version of**

**Decision on the Prosecution application for reclassification of five documents  
related to Witnesses 11 and 12, 5 March 2013, ICC-01/09-02/11-674-Conf**

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 Francis Kirimi Muthaura**

Mr Karim Khan, Mr Essa Faal,  
Mr Kennedy Ogetto, Ms Shyamala  
Alagendra

**Counsel for Uhuru Muigai Kenyatta**

Mr Steven Kay  
Ms Gillian Higgins

**Legal Representatives of Victims**

**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**

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**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 in the case of *The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta*, pursuant to Articles 61(11) and 64(6)(a) of the Rome Statute (“Statute”) and Regulation 23 *bis* of the Regulations of the Court (“Regulations”), renders the following Decision on the Prosecution’s application for reclassification of five documents related to Witnesses 11 and 12.

1. On 19 February 2013, the Office of the Prosecutor (“Prosecution”) filed the “Prosecution Application for reclassification” (“Application”).<sup>1</sup> The Prosecution recalls that it had requested delayed disclosure of materials relating to [REDACTED] (“Information”)<sup>2</sup> and that the request was granted by the Chamber.<sup>3</sup> The Prosecution notes that the Information was disclosed to the defence on 11 February 2013 and, therefore, that there is no longer a basis for the confidential, *ex parte*, designation of the Chamber’s decision granting delayed disclosure and the Prosecution’s request.<sup>4</sup>
2. The Prosecution requests that the Chamber order that the Application and certain *ex parte* filings related to the Information, two of which were filed before Pre-Trial Chamber II, be reclassified as “confidential”.<sup>5</sup> The Prosecution requests that Annex A of the Application remain confidential, *ex parte* Prosecution only, because it contains a proposed confidential redacted version of its original submission on [REDACTED] that the Prosecution will seek to file if the relief sought in the Application is granted.<sup>6</sup>

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<sup>1</sup> ICC-01/09-02/11-649-Conf-Exp, with confidential *ex parte* Annex A.

<sup>2</sup> Application, ICC-01/09-02/11-649-Conf-Exp, para. 3 (in reference to ICC-01/09-02/11-592-Conf-Exp).

<sup>3</sup> Application, ICC-01/09-02/11-649-Conf-Exp, para. 4 (in reference to ICC-01/09-02/11-595-Conf-Exp).

<sup>4</sup> Application, ICC-01/09-02/11-649-Conf-Exp, para. 5.

<sup>5</sup> Application, ICC-01/09-02/11-649-Conf-Exp, paras 6-7. The filings are: Decision referring a preliminary issue to the Pre-Trial Chamber, 25 September 2012, ICC-01/09-02/11-493-Conf-Exp; Prosecution update pursuant to Decision ICC-01/09-02/11-493-Conf-Exp, 27 September 2012, ICC-01/09-02/11-494-Conf-Exp; Decision on the Referral of a Preliminary Issue to Pre-Trial Chamber II, 8 October 2012, ICC-01/09-02/11-501-Conf-Exp; Prosecution Application for relief pursuant to Decision 451, Rule 81 (2) and Regulation 35, 8 January 2013, ICC-01/09-02/11-592-Conf-Exp; Decision on the prosecution's application for relief pursuant to Decision 451, Rule 81 (2) and Regulation 35, 9 January 2013, ICC-01/09-02/11-595-Conf-Exp.

<sup>6</sup> Application, ICC-01/09-02/11-649-Conf-Exp-AnxA. *See also* Prosecution notification regarding intent to take investigative steps following apparent attempts to interfere with protected prosecution witnesses, 24 September 2012, ICC-01/09-02/11-492-Conf-Exp.

3. The Chamber accepts the Prosecution's arguments that the basis for the current classification level of the documents identified in the Application, with the exception of the Application's Annex A, no longer exists. The Chamber further accepts the Prosecution's proposed redactions in Annex A of the Application and will order that the redacted version of the filing attached as Annex A be filed in the record of the case. Pursuant to Articles 61(11) and 64(6)(a) of the Statute and Regulation 23 *bis* of the Regulations, the Prosecution's request is granted.

**THE CHAMBER HEREBY**

**GRANTS** the relief requested in the Application;

**DECIDES** to retain the "confidential, *ex parte*" classification of ICC-01/09-02/11-649-Conf-Exp-AnxA;

**ORDERS** the Prosecution to file a confidential redacted version of ICC-01/09-02/11-492-Conf-Exp; and

**ORDERS** the Registry to reclassify the following documents as confidential:

- ICC-01/09-02/11-493-Conf-Exp;
- ICC-01/09-02/11-494-Conf-Exp;
- ICC-01/09-02/11-501-Conf-Exp;
- ICC-01/09-02/11-592-Conf-Exp;
- ICC-01/09-02/11-595-Conf-Exp; and
- the Application itself (ICC-01/09-02/11-649-Conf-Exp).

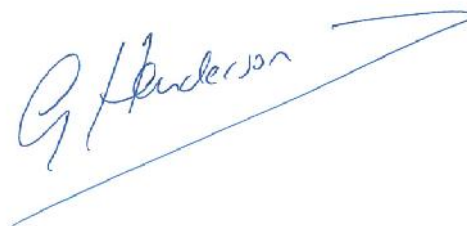
Done in both English and French, the English version being authoritative.



**Judge Kuniko Ozaki, Presiding Judge**



**Judge Robert Fremr**



**Judge Geoffrey Henderson**

Dated this 3 February 2017

At The Hague, The Netherlands