

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Original Date: 14 December 2012

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's request for re-classification of six documents
relating to the [REDACTED] of Witness 4, 14 December 2012, ICC-01/09-02/11-
572-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

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 Regulation 23 *bis* of the Regulations, renders the following Decision on the prosecution’s request for reclassification of six documents relating to the [REDACTED] of Witness 4.

1. On 13 December 2012, the Office of the Prosecutor (“Prosecution”) filed the “Prosecution’s request for re-classification of two decisions of Pre-Trial Chamber II and their corresponding annexes, and Annex E-2 to the Prosecution’s application ICC-01/09-02/11-101-Conf-Exp” (“Request”).¹ The Prosecution requests the Chamber to order the reclassification of six documents relating to the [REDACTED] of Witness 4.
2. The documents in question are two decisions of the Pre-Trial Chamber granting the Prosecution’s application to withhold [REDACTED]², three annexes (or parts thereof)³ to those decisions, and an annex to the Prosecution’s application for non-disclosure (“Documents”).⁴
3. The Prosecution notes that since the filing of the Documents, [REDACTED] of Witness 4 has been disclosed to the defence for Mr Muthaura and Mr Kenyatta (“Defence”). Accordingly, the Prosecution submits that the basis for the designation of the Documents as confidential, *ex parte*, Prosecution only no longer exists and that the Documents can now be made available to the Defence. The Prosecution asserts, however, that it is necessary to maintain certain redactions to the two decisions of the Pre-Trial Chamber and three annexes (or parts thereof) to those decisions.⁵ The Prosecution annexed its proposed redacted versions of these documents to the

¹ ICC-01/09-02/11-570-Conf with confidential *ex parte* annexes A – F.

² ICC-01/09-02/11-165-Conf-Exp and ICC-01/09-02/11-254-Conf-Exp.

³ ICC-01/09-02/11-165-Conf-Exp-Anx1; selected pages of ICC-01/09-02/11-165-Conf-Exp-Anx2; selected pages of ICC-01/09-02/11-254-Conf-Exp-Anx.

⁴ ICC-01/09-02/11-101-Conf-Exp-AnxE2.

⁵ ICC-01/09-02/11-570-Conf, paras 10 – 11.

Request as confidential *ex parte*, Prosecution and Victims and Witnesses Unit (“VWU”) only, as annexes A – E of the Request. The Prosecution does not request any redactions to the annex to its initial application for non-disclosure and includes the unredacted version of this document as Annex F to the Request.⁶

4. The Prosecution asserts that if the Request is granted it will immediately file lesser redacted versions of its applications for non-disclosure, dated 3 June 2011 and 15 August 2011, together with their relevant annexes.
5. The Chamber accepts the Prosecution’s arguments that the basis for the current classification level of the Documents no longer exists and that the Documents can now be made available to the Defence. The Chamber further accepts the Prosecution’s proposed redactions to the two decisions of the Pre-Trial Chamber and three annexes (or parts thereof) to those decisions.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Request;

DIRECTS the Prosecution to file lesser redacted versions of its applications dated 3 June 2011 and 15 August 2011 together with their relevant annexes; and

ORDERS the registry to reclassify the following documents as confidential:

- ICC-01/09-02/11-570-Conf-Exp-AnxA;
- ICC-01/09-02/11-570-Conf-Exp-AnxB;
- ICC-01/09-02/11-570-Conf-Exp-AnxC;
- ICC-01/09-02/11-570-Conf-Exp-AnxD;

⁶ ICC-01/09-02/11-570-Conf, para. 12.

- ICC-01/09-02/11-570-Conf-Exp-AnxE; and
- ICC-01/09-02/11-570-Conf-Exp-AnxF.

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