

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 7 November 2012

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

Decision on the defence request to change the place of the proceedings

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
Alagenda

Counsel for Uhuru Muigai Kenyatta
Mr Steven Kay
Ms Gillian Higgins

Legal Representatives of Victims
Mr Morris Anyah

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 (“Court”) in the case of *The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta*, pursuant to Articles 3 and 62 of the Rome Statute (“Statute”) and Rule 100 of the Rules of Procedure and Evidence (“Rules”), renders the following Decision on the defence request to change the place of the proceedings (“Decision”).

I. Background and Submissions

1. On 14 May 2012 the Chamber issued its Order scheduling a status conference,¹ in which it *inter alia* instructed the parties to file written submissions on the listed agenda items and on any other issues the parties might wish to add to the agenda.²
2. On 28 May 2012 the defence teams for Mr Muthaura and Mr Kenyatta (respectively “Muthaura defence” and “Kenyatta defence”, together “the defence”) filed their submissions on the agenda for the status conference.³ In its submissions the Kenyatta defence requested that the trial be held in the Republic of Kenya (“Kenya”), “for reasons of judicial economy and to ensure that the judicial process takes place within the territory affected.”⁴ The Muthaura defence requested the Chamber to consider the possibility of holding the trial in Kenya or, alternatively, in Arusha, Republic of Tanzania (“Tanzania”), at the premises of the International Criminal Tribunal for Rwanda.⁵ The Muthaura defence submitted that changing the place of the proceedings would reduce the disruption and strain that the trial would place on the accused⁶ and could additionally reduce costs relating to witness travel, reduce disruption to victims and ensure that the judicial process remains in, or in

¹ Order scheduling a status conference, 14 May 2012, ICC-01/09-02/11-422.

² ICC-01/09-02/11-422, paragraphs 3 – 4.

³ Defence Submissions on the status conference agenda items contained in the Trial Chamber’s “Order scheduling a status conference” of 14 May 2012, 28 May 2012, ICC-01/09-02/11-427; Defence for Uhuru Muigai Kenyatta Submissions on Status Conference Agenda In Response to Trial Chamber Order dated 14 May 2012 (ICC-01/09-02/11-422), 28 May 2012, ICC-01/09-02/11-429.

⁴ ICC-01/09-02/11-429, paragraph 24.

⁵ ICC-01/09-02/11-427, paragraph 40.

⁶ ICC-01/09-02/11-427, paragraph 40.

proximity to, the territory concerned.⁷ Accordingly, the Muthaura defence requested the Chamber to invite the competent authorities of Kenya and/or Tanzania to inform the Chamber on the feasibility and their willingness of hosting the trial proceedings on their territory.⁸ At the status conference of 12 June 2012 the Muthaura defence reiterated its request for the Chamber to invite submissions from Kenya as to the possibility of holding the trial in Kenya or alternatively in Arusha, Tanzania.⁹

II. Analysis and Conclusions

3. As noted by the defence,¹⁰ the Statute provides for the possibility of the Court sitting away from the seat in The Hague. Indeed, under Article 3(3) of the Statute “[t]he Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute.”

4. This provision is elaborated upon in Rule 100 of the Rules, which sets out the procedure to be followed in the event an alternative sitting place is considered. Rule 100 of the Rules provides:

1. In a particular case, where the Court considers that it would be in the interests of justice, it may decide to sit in a State other than the host State.

2. An application or recommendation changing the place where the Court sits may be filed at any time after the initiation of an investigation, either by the Prosecutor, the defence or by a majority of the judges of the Court. Such an application or recommendation shall be addressed to the Presidency. It shall be made in writing and specify in which State the Court would sit. The Presidency shall satisfy itself of the views of the relevant Chamber.

3. The Presidency shall consult the State where the Court intends to sit. If that State agrees that the Court can sit in that State, then the decision to sit in a State other than the host State shall be taken by the judges, in plenary session, by a two-thirds majority.

⁷ ICC-01/09-02/11-427, paragraph 41.

⁸ ICC-01/09-02/11-427, paragraph 41.

⁹ ICC-01/09-02/11-T-18 at page 82, lines 8 – 17.

¹⁰ ICC-01/09-02/11-427, paragraph 40; ICC-01/09-02/11-429, paragraph 24.

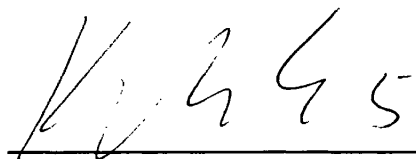
5. It follows from this provision that any party wishing to change the place of trial has to submit a formal application to the Presidency which must then seek the views of the relevant Chamber. It is also for the Presidency, upon receipt of a request to change the place of trial, to consult the State where the Court may sit.

FOR THE FOREGOING REASONS, THE CHAMBER:

REJECTS the request by the Kenyatta defence to change the place of the trial, without prejudice to the right of the defence, in accordance with Rule 100 of the Rules, to address its application to the Presidency, should it wish further to pursue the option of changing the place where the Court sits; and

REJECTS the request by the Muthaura defence to invite submissions from the authorities in Kenya and/or Tanzania as to the prospect of holding the trial in either country.

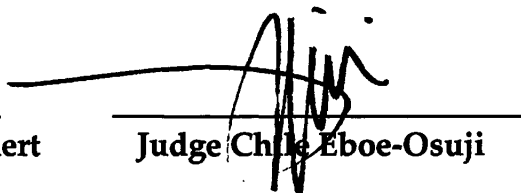
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding Judge



Judge Christine Van den Wyngaert



Judge Chiles Eboe-Osuji

Dated 7 November 2012

At The Hague, The Netherlands