

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 22 January 2014

TRIAL CHAMBER V(B)

Before: Judge Kuniko Ozaki, Presiding Judge
Judge Robert Fremr
Judge Chile Eboe-Osuji

SITUATION IN THE REPUBLIC OF KENYA

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

Public

Decision on Prosecution request regarding disclosure of identity of Witness 66

Decision 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

Ms Caroline Walter

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Deputy Registrar

Victims and Witnesses Unit

Mr Patrick Craig

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Others

Trial Chamber V(B) ('Chamber') of the International Criminal Court in the case of *The Prosecutor v. Uhuru Muigai Kenyatta*, having regard to Articles 64, 67, and 68(1) of the Rome Statute ('Statute'), and Rules 76-77 and 81 of the Rules of Procedure and Evidence ('Rules'), issues the following 'Decision on Prosecution request in relation to disclosure of witness identity'.

1. On 6 December 2013, the Chamber issued a decision granting the application of the Office of the Prosecutor ('Prosecution') for delayed disclosure of the identity of Witness 66.¹ The Chamber directed the Prosecution to disclose the identity of Witness 66 to the defence team for Mr Kenyatta ('Defence') no later than 16 December 2013.²
2. On 16 December 2013, the Prosecution notified the Chamber that Witness 66 has ongoing objections to the disclosure of their identity on the basis of 'strong concerns' for their personal safety and that of their family.³ The Prosecution indicated that it is withdrawing Witness 66 from its list of witnesses,⁴ and requests accordingly to 'be relieved of the duty to disclose this individual's identity in accordance with the Chamber's 6 December 2013 order'.⁵ The Defence did not file a response to the Prosecution Request.
3. The Chamber considers it appropriate in the circumstances to grant the Prosecution Request, given that this person has been withdrawn from the witness list. In so doing, it is emphasised that the Prosecution remains subject to its ongoing disclosure obligations pursuant to Article 67(2) of the Statute and Rule 77 of the Rules.

¹ Decision on Prosecution application for delayed disclosure of witness identity, ICC-01/09-02/11-869-Conf.

² Decision on Prosecution application for delayed disclosure of witness identity, ICC-01/09-02/11-869-Conf, p.12.

³ Prosecution communication of withdrawal of Witness 66, ICC-01/09-02/11-874 ('Prosecution Request'), para. 1.

⁴ Prosecution Request, ICC-01/09-02/11-874, para. 2.

⁵ Prosecution Request, ICC-01/09-02/11-874, para. 3.

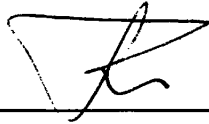
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Prosecution Request.

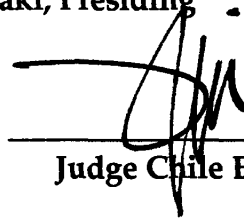
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding



Judge Robert Fremr



Judge Chile Eboe-Osuji

Dated 22 January 2014

At The Hague, The Netherlands