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

Date: 16 July 2013

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

**Public redacted version of the 16 July 2013 Prosecution notification of
withdrawal of witnesses**

Source: The Office of the Prosecutor

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

The Office of the Prosecutor

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Steven Kay QC and Gillian Higgins

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Fergal Gaynor

Legal Representatives of Applicants

Unrepresented Victims

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Section**

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Other

Introduction

1. The Prosecution hereby notifies the Chamber of the withdrawal of three witnesses from its list of witnesses to be relied on at trial.¹ The Prosecution's updated witness list is attached as Annex A.

Confidentiality

2. This notification is designated "confidential, *ex parte*" because it contains security-related information about former Prosecution witnesses that, if disclosed to the parties or the public, may place the witnesses and/or their family members at risk. Redacted versions will be filed.
3. The Prosecution's updated witness list, attached as Annex A, is designated "confidential" to ensure the effectiveness of in-court protective measures if sought by the Prosecution and granted by the Chamber.

Submissions

I. [REDACTED] ("Witness 5")

4. Witness 5 has informed the Prosecution that he is no longer willing to testify at trial. Witness 5 told the Prosecution that [REDACTED]. This, in his view, has created insurmountable security risks for himself, [REDACTED].
5. Witness 5 has had security concerns about his cooperation with the Court for some time. In December 2011, he informed the Prosecution that he had learned [REDACTED]. In April 2012, Witness 5's [REDACTED]. [REDACTED]. [REDACTED]. The Prosecution understands that [REDACTED]. While no link has been established between [REDACTED] and Witness 5's cooperation with the Court, the incident appears to have weighed heavily on the witness [REDACTED]. Recently, in March 2013,

¹ ICC-01/09-02/11-596-Conf-AnxA.

[REDACTED]. Witness 5 believes this was linked to attempts to discover his location. Witness 5 believes that he [REDACTED].

6. In addition, there has been public speculation about Witness 5's co-operation with the Court, despite the fact that the Prosecution has designated his identity as confidential. In January 2013, [REDACTED].²
7. In sum, it appears that Witness 5's concerns for his security [REDACTED] have become too great for him to bear, and he has decided to withdraw as a consequence.

II. [REDACTED] ("Witness 426")

8. Witness 426 has informed the Prosecution that he is no longer willing to testify at trial. Witness 426 stated the reasons for his withdrawal as follows:

[REDACTED].

9. The Prosecution has held discussions with Witness 426 to determine whether any measures could be taken to mitigate his concerns and secure his attendance at trial. These talks were unsuccessful and Witness 426 maintained that he was not willing to testify.

III. [REDACTED] ("Witness 334")

10. Upon further review, the Prosecution has assessed that Witness 334's evidence is no longer necessary to prove its case and, in the interests of judicial economy, has decided to withdraw this witness.

Conclusion

11. The Prosecution informs the Chamber, the Defence and the Common Legal Representative for Victims of the changes to its list of witnesses to be relied on at trial. The Prosecution hereby gives notice that it may make

² [REDACTED].

applications pursuant to Regulation 35 of the Regulations of the Court in the future if suitable replacements for these witnesses are forthcoming.

A handwritten signature in blue ink, appearing to read 'Bensouda', is written over a horizontal line.

Fatou Bensouda,
Prosecutor

Dated this 16th day of July 2013
At The Hague, The Netherlands