

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

N°: ICC-01/09-02/11
Date: 07 October 2014

TRIAL CHAMBER V(b)

Before: Judge Kuniko Ozaki, Presiding Judge
Judge Robert Fremr
Judge Geoffrey Henderson

SITUATION IN THE REPUBLIC OF KENYA

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

Confidential

Order to redact the transcript and audio visual broadcast of a public hearing

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor

Counsel for Uhuru Muigai Kenyatta
Mr Steven Kay
Ms Gillian Higgins

Legal Representatives of the Victims
Mr Fergal Gaynor

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants
(Participation/Reparation)

The Office of Public Counsel for
Victims
Ms Paolina Massidda

The Office of Public Counsel for the
Defence

States' Representatives

Amicus Curiae

REGISTRY

Registrar
Mr Herman von Hebel

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations
Section

Other

I, Judge Kuniko Ozaki, judge at the International Criminal Court (the "Court");

CONSIDERING that during the public hearing held on 07 October 2014 (the "Hearing") confidential information has inadvertently been mentioned;

NOTING Article 68 of the Rome Statute, Rules 87 and 88 of the Rules of Procedure and Evidence, Regulation 21 of the Regulations of the Court and Regulation 43 of the Regulations of the Registry;

ORDERS the Registry that the following highlighted text be omitted from the transcript of this hearing and that the following extracted portion be removed from the public audiovisual recording/ broadcast of this hearing:

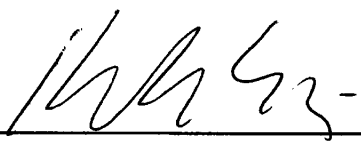
10:58:05 the Kenyan register of land is such that it can't be consulted
10:58:11 for the purposes that we have asked for it to be consulted, that
10:58:17 seems, to me, to be an unhappy state of affairs, but I can't say
10:58:26 that I'm either satisfied or dissatisfied. I have no means of
10:58:30 challenging the explanations offered. There are alternative
10:58:36 methods. Your Honour hasn't asked me this but you touched on
10:58:42 alternative methods. It is certainly time for the Kenyan
10:58:45 government, for it -- indeed for it to consider, it is time for
10:58:52 the Kenyan government to move to those alternative methods; for
10:58:56 example, to consult the Registry of interests which must, I
10:59:02 imagine, be kept in respect of public office holders in Kenya,
10:59:07 as it is in other States, which would be likely to reveal
10:59:14 significant information which would enable these kind of checks
10:59:20 in order to go forward.
10:59:26 PRESIDING JUDGE OZAKI: Thank you very much.
10:59:29 As for those alternative means for obtaining the material,
10:59:39 Mr Attorney General, what's your comment? Has the Government of

10:59:54 Kenya already pursued any kind of alternative means suggested by
10:59:59 the Prosecution?
11:00:01 MR MUIGAI: First, Madam President, allow me to remind the
11:00:08 Chamber that this issue of financial records started off as an
11:00:16 application to freeze assets in kind. That's an application
11:00:22 that was long abandoned.
11:00:25 PRESIDING JUDGE OZAKI: Mr Attorney General, that issue has
11:00:26 nothing to do with this co-operation request from the
11:00:29 prosecution.
11:00:31 MR MUIGAI: Well, in our view it does, but maybe if you have
11:00:34 ruled on that we have no problem. Let me go to the second
11:00:37 answer.
11:00:40 The second answer is this: A request was made, we came before
11:00:48 you, we AURBGed at great length, you gave a ruling as to
11:00:57 (argued) relevance, materiality, specificity. You directed that
11:01:05 the Prosecutor should again redefine and resubmit to us. We
11:01:12 responded to the redefined and resubmitted request.
11:01:17 Now, if you're asking me whether we can respond to something
11:01:30 else, my answer would be we have no something else that has been
11:01:34 put to us, we have only what was the revised request and to the
11:01:40 revised request we have responded in great detail in each
11:01:49 situation demonstrating why it is impractical, impossible,
11:01:54 irregular and procedural to do -- to use the method. And,
11:02:02 again, allow me to say this, Madam President, the Prosecutor
11:02:05 makes a case suggesting that we have said, "We will not do at

11:02:11 all costs." No, we have said there is no method, no procedure
11:02:18 that allows us to by pass the regulatory framework. We need --
11:02:24 PRESIDING JUDGE OZAKI: Mr Attorney General, that's why
11:02:26 prosecution and this chamber as well mentioned alternative
11:02:29 measures. And in this connection, the Chamber would like to
11:02:36 remind you that the Chamber in its July 29 decision noted that

Page 30 lines 3-6 of the English Real Time transcript;


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



Judge Kuniko Ozaki
Presiding Judge

Dated this 07 October 2014

At The Hague, The Netherlands

INTERNAL REGISTRY	
Name of technician: <i>Claire Hynes</i>	
Redacted: <i>YN</i>	
Time: From <i>10:58:03</i> To <i>11:02:41</i>	