

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/09-01/15**

Date: **15 January 2018**

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Chang-ho Chung

SITUATION IN THE REPUBLIC OF KENYA

***IN THE CASE OF
THE PROSECUTOR v. PAUL GICHERU AND PHILIP KIPKOECH BETT***

Confidential

***EX PARTE* only available to the Prosecution and the Registry
With Three Annexes Confidential *EX PARTE* only available to the Prosecution
and the Registry**

**Transmission of Communications with the Kenyan Authorities regarding Updates
on the Status of the Procedure before the High Court of Kenya**

Source: Registry

Document 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

Counsel for the Defence

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

Republic of Kenya

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. Transmission

1. Noting the “Decision on the “Prosecution’s Application under Article 58(1) of the Rome Statute”” (“Decision”)¹ and rules 13(1) and 176(2) of the Rules of Procedure and Evidence, and as a follow-up to the “Transmission of a reply from the Kenyan authorities regarding the Registry’s request for clarification on the arrest of Paul Gicheru and Philip Kipkoech Bett and procedure followed before the High Court of Kenya” (“Registry Transmission”),² the Registry hereby transmits the note verbale which it sent to the Republic of Kenya on 27 February 2017 requesting an update on the judicial developments before the High Court of Kenya³ as well as the responses received from the Kenyan authorities.⁴

II. Classification

2. In accordance with regulation 23 *bis*(2) of the Regulations of the Court, the present document and its three annexes are filed confidential *ex parte* only available to the Prosecution and the Registry to be in line with the classification of the Decision and the Registry Transmission.

III. Submission

3. On 16 November 2017, the High Court of Kenya (“High Court”) issued a ruling in which it dismissed the application for the surrender of Mr Paul

¹ Pre-Trial Chamber II, “Decision on the “Prosecution’s Application under Article 58(1) of the Rome Statute””, 10 March 2015, ICC-01/09-01/15-1-Conf-Exp.

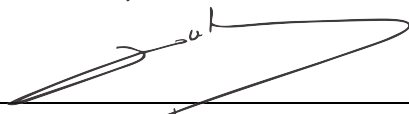
² Registry, “Transmission of a reply from the Kenyan authorities regarding the Registry’s request for clarification on the arrest of Paul Gicheru and Philip Kipkoech Bett and procedure followed before the High Court of Kenya”, 26 January 2016, ICC-01/09-01/15-13-Conf-Exp and ICC-01/09-01/15-13-Conf-Exp -Anx1.

³ Annex I.

⁴ Annexes II and III - The documents in both annexes were received, in hard copy, by the Registry on 5 January 2018.

Gicheru and Mr Philip Kipkoech Bett to the International Criminal Court, and lifted the warrant of arrest issued against them.⁵

4. On the same date, the Office of the Director of Public Prosecutions filed a notice of Appeal against the High Court decision.⁶



Marc Dubuisson, Director, Division of Judicial Services
per delegation of
Herman von Hebel, Registrar

Dated this 15 January 2018

At The Hague, the Netherlands

⁵ Annex III, pages 3 and 37.

⁶ Annex III, pages 3 and 39.