

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/20
Date: **29 November 2022**

THE PRESIDENCY

Before: Judge Piotr Hofmański, President
Judge Luz del Carmen Ibáñez Carranza, First Vice-President
Judge Antoine Kesia-Mbe Mindua, Second Vice-President

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF
*THE PROSECUTOR v. PAUL GICHERU***

Public

Public redacted version of “Urgent Request for an Immediate Investigation into the Leak of the Defence Requests for the Disqualification of Judge Miatta Maria Samba and Temporary Stay of the Proceedings,” 21 September 2021, ICC-01/09-01/20-177-Conf

Source: Counsel for Paul Gicheru

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

The Office of the Prosecutor
 Ms. Nazhat Shameen Khan
 Mr. Anton Steynberg

Counsel for the Defence
 Mr. Michael G. Karnavas
 Ms. Suzana Tomanović

Legal Representatives of the Victims**Legal Representatives of the Applicants****Unrepresented Victims****Unrepresented Applicants
(Participation/Reparation)****The Office of Public Counsel for Victims****The Office of Public Counsel for the
Defence****States' Representatives****Other****REGISTRY**

Registrar
 Mr. Peter Lewis

Counsel Support Section
 Mr. Esteban Peralta Losilla

Victims and Witnesses Unit**Detention Section****Victims Participation and Reparations
Section****Other**

Mr. Paul Gicheru, through his Counsel (“the Defence”), urgently requests the Presidency to order an immediate investigation into the leak of the Defence’s Request for the Disqualification of Judge Miatta Maria Samba and Urgent Request for Trial Chamber III to Temporarily Stay the Proceedings Due to Mr. Gicheru’s Request for the Disqualification of Judge Miatta Maria Samba, notified, respectively, at 15:00 and 15.11 on 17 September 2021.¹ On Saturday 18 September 2021, the Kenyan media reported that Mr. Gicheru filed requests to disqualify Judge Samba and stay the proceedings, with KTN News reporting substantial portions of the requests.² Immediately after becoming aware of this, the Defence alerted Trial Chamber III, the Presidency, the Office of the Prosecutor (“OTP”), and the Counsel Support Section, lest there be any speculation that any members of the Defence leaked the requests.³ The request for disqualification makes reference to arguments and evidence that the Defence previously requested to receive “secret” classification – notified only to the OTP *Gicheru* team – since they implicate [REDACTED] of witness interference, placing his security under threat.⁴ Considering that [REDACTED] could have access to the Defence’s arguments implicating them in witness interference – despite the OTP’s assurances that secret classification is “unnecessary”⁵ – and that Mr. Gicheru recently experienced and reported a security-related incident to the Registry,⁶ to safeguard and ensure Mr. Gicheru’s security, the Presidency should order an immediate investigation into the leak of the Defence requests. This request is filed with the Presidency since the Defence has requested that Judge Samba not make any rulings in this case until the Plenary decides on her disqualification, and confidentially, pursuant to Regulation 23bis(1) of the Regulations of the Court, since it contains confidential material.

Respectfully submitted, 29 November 2022,

In The Hague, the Netherlands.



Michael G. Karnavas
Counsel for Mr. Paul Gicheru

¹ [ICC-01/09-01/20-173-Conf](#); [ICC-01/09-01/20-174-Conf](#).

² *Why lawyer Paul Gicheru wants ICC judge Samba disqualified from the case*, [THE STANDARD](#), 19 September 2021; *Gicheru ICC Case: Lawyer Gicheru wants Maria Samba withdrawn*, [KTN NEWS](#), 18 September 2021.

³ Email to Trial Chamber III from Defence entitled “Media Leak of Gicheru Request for Disqualification,” 20 September 2021 at 15:17; Email to Presidency from Defence entitled “Media leak of Mr. Gicheru Request for Disqualification,” 20 September 2021 at 17:39; Email to CSS from Defence entitled “Media leak of Gicheru Request for Disqualification,” 20 September 2021 at 15:21.

⁴ [ICC-01/09-01/20-142-Conf](#).

⁵ [ICC-01/09-01/20-144-Conf](#), paras. 2, 5, 9.

⁶ Email from CSS to Defence entitled “Mr Gicheru,” 17 August 2021 at 11:35; Email from CSS to Defence entitled “Incident Mr Gicheru - Way forward,” 9 September 2021 at 16:04.