



Original: **English**

No.: ICC-01/09-02/11
Date: **2 September 2012**

TRIAL CHAMBER V

Before: Judge Kuniko Ozaki, Presiding Judge
Judge Christine Van den Wyngaert
Judge Chile Eboe-Osuji

SITUATION IN THE REPUBLIC OF KENYA

*IN THE CASE OF
THE PROSECUTOR V. FRANCIS KIRIMI MUTHAURA AND UHURU
MUIGAI KENYATTA*

URGENT
Public Document
**Joint Prosecution/ Defence Application Pursuant to Regulation 35 of the
Regulations of the Court**

Source: The Office of the Prosecutor
Defence for Uhuru Muigai Kenyatta
Defence for Francis Kirimi Muthaura

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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Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

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REGISTRY

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Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

I. INTRODUCTION

1. Pursuant to Regulation 35 of the Regulations of the Court, the Prosecution and the Defence for both Ambassador Francis Muthaura and Mr. Uhuru Kenyatta jointly seek a variation of time limit until 5 September 2012 for submitting to Trial Chamber V (“the Chamber”) the first joint submission on agreed facts (“Agreed Facts”). The extension is sought as a result of time pressure due to other filings in relation to the issue of witness proofing and the updated DCC, and the additional time that has been required for the parties to consult with one another regarding this submission. An extension of time will further allow for a meaningful and thorough consideration of matters that can be agreed upon between all the parties, and accordingly increase the efficiency of the proceedings.

II. PROCEDURAL HISTORY

2. On 8 June 2012, the Prosecution provided the Defence with its first proposal on agreements as to evidence pursuant to Rule 69 (“First Proposal”). Each Defence team received a proposal containing 30 proposed agreed facts, of which 21 were identical for both teams.¹
3. On 12 June 2012, the Muthaura Defence informed the Prosecution that it would only be able to consider the First Proposal once it received the updated DCC and the in-depth analysis chart.²
4. On 9 July 2012, the Chamber directed the Prosecution and the Defence “to liaise with a view to reaching agreement about non-contentious issues”, and file a first joint submission on agreed facts by 3 September 2012.³

¹ Together amounting to 39 proposed facts.

² The Chamber decided on 9 July 2012 that the Prosecution would not have to produce an in-depth analysis chart.

³ ICC-01/09-02/11-451, paras.

5. On 23 August 2012, the Prosecution sent to the Defence its second, updated proposal on agreements as to evidence ("Second Proposal"). The Second Proposal contained 110 proposed facts, 73 of which were entirely new. The remainder of the proposed facts were either the same as those in the First Proposal or slightly amended.⁴ The Prosecution chose not to re-submit several facts that were submitted in the First Proposal. In the Second Proposal, the Prosecution provided the source of each fact, and space for the Defence's comments. The Prosecution requested that the Defence provide its response by 29 August at the latest, in order to have adequate time to abide by the 3 September deadline.
6. On the same day, the Kenyatta Defence informed the Prosecution that it would be unable to send its response to the Prosecution before 3 September, 2012 citing the size of the document and the need to respond to other Prosecution filings, within the same time period. It reiterated this position on 28 August. The Muthaura Defence agreed with the Kenyatta Defence.
7. On 24 August 2012, the Prosecution filed the updated DCC.⁵
8. On 29 August 2012, the Prosecution again communicated with the Kenyatta Defence with the hope of reaching an agreement to obtain its response before the date of the filing. Again, the Kenyatta Defence stated that it would communicate the facts upon which it could reach an agreement on 3 September 2012.
9. Considering these circumstances, on 30 August 2012 the Prosecution suggested to the Defence a joint application to the Chamber for a brief

⁴ In several instances, the Prosecution slightly changed the wording of some facts. In several other instances, the Prosecution decided to split some facts into more facts in order to facilitate agreement.

⁵ ICC-01/09-02/11-468-AnxA-Conf.

extension of time in which to produce a joint submission on agreed facts. The Kenyatta Defence informed the Prosecution in the evening of the same day (through the Muthaura defence) that it would support an extension, and confirmed the same the following day. On 30 August 2012, the Muthaura Defence first informed the Prosecution that “a document would be forthcoming the next morning,” but later that day decided, considering the Kenyatta Defence’s agreement, that it would not oppose the filing of an application for an extension of time.

III. SUBMISSIONS

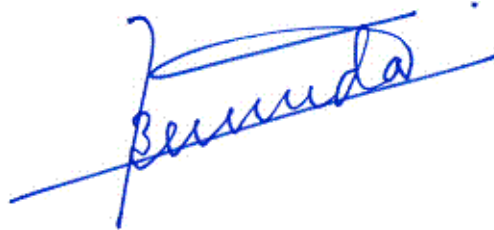
10. As explained above, the Defence proposed to provide a comprehensive response to the Prosecution on 3 September 2012. The Prosecution states that the Defence’s proposal leaves it with very little time in which to consider the response (or responses) properly, including any alternative proposals from the Defence, and to incorporate them into a submission to the Chamber.
11. Under these circumstances, the current 3 September 2012 deadline provides insufficient time for the Parties to produce a joint submission on proposed agreed facts. The Prosecution and the Defence submit that two additional days would enable the parties to produce a more comprehensive document which will be of greater assistance to the Chamber.
12. The Prosecution and the Defence request a brief extension of time until 5 September 2012 in order to attempt to reach an agreement on as many proposed facts as possible.
13. The requested extension would expedite the proceedings as it would increase the chances of the parties reaching an agreement on more issues,

thereby rendering the proceedings more efficient. Such agreements would also assist the Chamber in that it would signal more clearly the areas of disagreement between the Parties.

IV. CONCLUSION AND REQUESTED RELIEF

14. For the reasons set forth above, the Prosecution and the Defence request the variation of time limits to file the joint submissions on agreed facts until Wednesday, 5 September 2012.

Respectfully submitted,



Fatou Bensouda,
Prosecutor



Karim A.A. Khan QC
On Behalf of Ambassador Francis K. Muthaura



Steven Kay QC and Gillian Higgins
On Behalf of Uhuru Muigai Kenyatta

Dated this 2nd day of September, 2012
At The Hague, The Netherlands