

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **06 February 2013**

TRIAL CHAMBER V

Before: Judge Kuniko Ozaki, Presiding
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***

Public

**Defence Response on behalf of Uhuru Kenyatta to the “Order requesting
observations in relation to the “Defence Application for change of place where the
Court shall sit for Trial”**

Sources: Defence for Uhuru Muigai Kenyatta

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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Ms. Adesola Adeboyejo

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Steven Kay QC & Gillian Higgins

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

Amicus Curiae

REGISTRY

Registrar

Ms. Silvana Arbia

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

**Other
Section**

I. INTRODUCTION

1. The Defence for Mr Uhuru Kenyatta (“Defence”) files its observations on the issue of trial venue.

II. PROCEDURAL HISTORY

2. On 14 May 2012, Trial Chamber V (“Chamber”) instructed the parties to file written submissions in advance of the status conference scheduled for 12 June 2012.¹
3. In their submissions on 28 May 2012, the defence teams for Ambassador Muthaura (“Muthaura Defence”) and Mr Kenyatta requested that the trial be held in the Republic of Kenya.² The Muthaura Defence also proposed the possibility of holding the trial in Arusha, Tanzania, at the premises of the International Criminal Tribunal for Rwanda (“ICTR”).³
4. On 7 November 2012, the Chamber rejected the defence teams’ request in accordance with Rule 100 of the Rules and stated that “any party wishing to change the place of trial has to submit a formal application to the Presidency which must then seek the views of the relevant Chamber” and “consult where the Court may sit.”⁴ The Chamber’s ruling was issued without prejudice to the right of the Defence to file an application with the Presidency pursuant to Rule 100 of the Rules.⁵

¹ ICC-01/09-02/11-422, paras 3-4.

² ICC-01/09-02/11-427; and ICC-01/09-02/11- 429.

³ ICC-01/09-02/11-427, para. 40.

⁴ ICC-01/09-02/11-522, para. 5.

⁵ ICC-01/09-02/11-602, para. 3.

5. On 3 December 2012, the Muthaura Defence applied to the Presidency requesting it to consult the governments of Kenya and Tanzania as required by Rule 100(3) of the Rules.⁶
6. In its Decision of 21 December 2012, the Presidency emphasized the importance of the Chamber canvassing the views of the parties before deciding whether to recommend the Presidency to consult the relevant national authorities. The Presidency requested the Chamber to seek the views of the parties.⁷
7. On 17 January 2013, the Chamber invited observations from the Prosecutor, the Defence the Legal Representative of the Victims and the Registry, on the possibility of the trial being held in Kenya, or alternatively in Arusha, Tanzania, including observations on questions of logistics and security.⁸

III. THE LAW

8. Article 3(1) of the Rome Statute ("Statute") provides that the seat of the Court "shall be established at The Hague in the Netherlands ('the host State')." Article 3(3) provides however that the Court "may sit elsewhere, whenever it considers it desirable, as provided in this Statute." Pursuant to Article 62 of the Statute, the place of the trial shall be the seat of the Court, unless otherwise decided. Rule 100(1) of the Rules of Procedure and Evidence confirms that "where the Court considers that it would be in the interests of justice, it may decide to sit in a State other than the host State."

⁶ ICC-01/09-02/11-551.

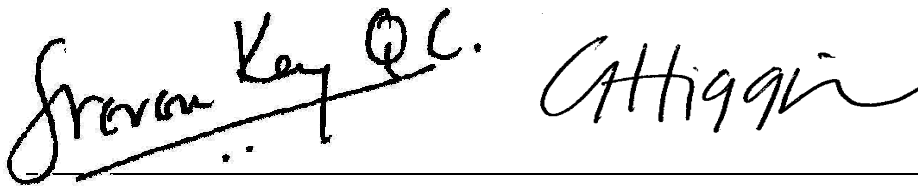
⁷ ICC-01/09-02/11-581, page 4.

⁸ ICC-01/09-02/11-602, paras 6-7.

IV. OBSERVATIONS

9. The Defence submits that Mr Kenyatta will respect and comply fully with any order the Chamber may make concerning the venue of trial and any other order in relation to the current proceedings. The Defence has no other observations to make in respect of trial venue.

Respectfully Submitted,

The image shows two handwritten signatures in black ink. The first signature, on the left, is 'Steven Kay QC.' and the second, on the right, is 'G Higgins'. Both signatures are written in a cursive, flowing style. Below the signatures is a solid horizontal line.

Steven Kay QC and Gillian Higgins
On behalf of Uhuru Muigai Kenyatta
At London, England

Dated this 6th Day of February 2013