



Original: English

No.: ICC-01/09-02/11  
Date: 6 February 2013

**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*

**Public**  
**Prosecution observations on issues related to the commencement of trial**

**Source:** The Office of the Prosecutor

**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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**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

Maria Luisa Martinod-Jacome

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

1. In accordance with the Trial Chamber's direction,<sup>1</sup> the Prosecution hereby submits its observations on issues related to the commencement of trial.

I. Summons conditions.

2. The Prosecution considers that at this stage, the conditions in the summons issued by the Pre-Trial Chamber,<sup>2</sup> as subsequently modified,<sup>3</sup> and clarified,<sup>4</sup> by the Single Judge, are adequate for the purpose of trial. The Prosecution reserves the right to move the Chamber under Articles 58 and 64(6)(a) of the Statute and Rule 119(4) of the Rules of Procedure and Evidence for warrants of arrest should the Accused violate their summons conditions, including the requirement of attendance at trial.
3. With respect to summons condition (ii) – “refrain[ing] from corruptly influencing a witness, obstructing or interfering with the attendance of a witness, or tampering with or interfering with the Prosecution's collection of evidence”<sup>5</sup> – the Prosecution has notified the Chamber on several occasions of the systematic attempts by individuals holding themselves out as associates of the Accused to bribe and/or threaten witnesses not to testify at trial or to provide false exculpatory testimony. The relevance of these incidents extends beyond the issue of compliance with the summons conditions – they assist in understanding the unique pressures on Prosecution witnesses, which will in turn assist the Chamber in assessing their trial testimony. For these reasons, the Prosecution will continue to bring such incidents to the Chamber's attention, including actions taken under Article 70 of the Statute.

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<sup>1</sup> ICC-01/09-02/11-615.

<sup>2</sup> ICC-01/09-02/11-1, pages 23-24.

<sup>3</sup> ICC-01/09-02/11-38, paras 15-16 and page 10 (disposition).

<sup>4</sup> ICC-01/09-02/11-89, paras 17-24 and page 13 (disposition).

<sup>5</sup> ICC-01/09-02/11-1, page 24.

4. With respect to summons condition (iv) – “attend[ing] all required hearings at the International Criminal Court”<sup>6</sup> – the Prosecution suggests that it may be appropriate for the Chamber to invite the Accused to make a public statement at the upcoming status conference regarding their intention to appear for trial.

II. Practical, financial and/or legal matters regarding the modalities of the Accused’s stay in the Host State during trial.

5. As the modalities of the Accused’s stay on the territory of the Host State during trial are primarily a matter for the Registry, the Prosecution has no submissions to make on this topic.

III. Other issues.

6. The Prosecution appreciates the Chamber’s invitation to raise “any other urgent issue that requires the immediate attention of the Chamber”,<sup>7</sup> but has no such issues to raise at this time.



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Fatou Bensouda,  
Prosecutor

Dated this 6<sup>th</sup> of February 2013  
At The Hague, The Netherlands

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<sup>6</sup> ICC-01/09-02/11-1, page 24.

<sup>7</sup> ICC-01/09-02/11-615, para 3.