

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **21 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 Application for Leave to Submit Discrete Additional Submissions on the
Viability of the Commencement Date of Trial**

Sources: 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

Ms. Fatou Bensouda
Ms. Adesola Adeboyejo

Counsel for Francis Kirimi Muthaura

Karim A. A. Khan QC, Essa M. Faal,
Kennedy Ogetto & Shyamala Alagendra

Counsel for Uhuru Muigai Kenyatta

Steven Kay QC & Gillian Higgins

Legal Representatives of the Victims

Fergal Gaynor

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 Other
Section**

I. Introduction

1. At the status conference held on 14 February 2013, the parties and participants made submissions on the viability of the commencement date for trial in this case.¹
2. The Defence for Francis Kirimi Muthaura (“Defence”) submitted that the present commencement date of trial, 11 April 2013, is not viable from the standpoint of adequate time and possibility for defence investigations and preparation due to, *inter alia*: the Prosecution’s delayed disclosure of a substantial amount of critical material; the significant redactions that remain to be lifted from disclosed materials; and the fundamentally altered theory of the case that the Prosecution has now put forward in its Pre-Trial Brief.²
3. The Defence did not seek the Trial Chamber’s leave to make additional written submissions on the topic of trial date viability. However, today, 21 February 2013, the Defence received a response from the Prosecution with respect to Defence correspondence sent on 17 February 2013, on the issue of outstanding translations and transcripts of audio recordings disclosed by the Prosecution on 11 February 2013.
4. The Defence respectfully submits that this information is relevant for the Chamber’s deliberation on the viability of the trial date in this case. Accordingly, the Defence hereby respectfully applies to the Trial Chamber for leave to submit additional submissions on the viability of the trial commencement date, limited to the above mentioned topic, by tomorrow, 22 February 2013.

¹ See, e.g., the Presiding Judge’s summation of matters at ICC-01/09-02/11-T-22-ENG ET, p. 7, lines 11-17.

² ICC-01/09-02/11-T-22-ENG ET, p. 11, line 20 to p. 18, line 23.

5. The Defence further submits that, given the discrete nature of these submissions, and the fact that the Prosecution is already aware of the Defence's concerns in this respect, should the Chamber grant the above requested leave, there is no reason to alter the 25 February 2013 deadline the Chamber has set for the filing of the Prosecution's written response to defence submissions on the viability of the trial commencement date.³

Respectfully Submitted,



Karim A. A. Khan QC

Dated this 21st Day of February 2013
At Nairobi, Kenya

³ *Ibid.*, p. 32, lines 14-15.