

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/09-01/20**
Date: **3 February 2022**

TRIAL CHAMBER III

Before: Judge Miatta Maria Samba

SITUATION IN THE REPUBLIC OF KENYA

IN THE CASE OF

THE PROSECUTOR v. PAUL GICHERU

Public-redacted

**Decision on the Prosecution Request for Variation of Time Limit in order to
Request a Summons of Witness**

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

The Office of the Prosecutor

Mr James Stewart
Mr Anton Steynberg

Counsel for the Defence

Mr Michael G. Karnavas
Ms Suzana Tomanović

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
for Participation/Reparations**

**The Office of Public Counsel
for Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Other

TRIAL CHAMBER III of the International Criminal Court, in the case of *The Prosecutor v. Paul Gicheru*, having regard to Regulation 35 of the Regulations of the Court (the ‘Regulations’), issues this ‘Decision on the Prosecution Request for Variation of Time Limit in order to Request a Summons of Witness’.

1. On 15 December 2021, the Chamber sent an email to the parties setting the deadline to file any requests in order to secure the attendance of witnesses for 17 January 2022 (the ‘17 January Deadline’).¹
2. On 31 January 2022, the Office of the Prosecutor (the ‘Prosecution’) informed the Chamber and the Defence via email that it wishes to request a summons for [REDACTED] (the ‘Request’ and ‘Witness’ accordingly).²
3. The Prosecution explains that the Witness broke off contact [REDACTED] on 25 January 2022. Further attempts in the following days were without success and on 28 January 2022, [REDACTED] the Witness is unresponsive.
4. The Prosecution states that the Witness had still confirmed his willingness to testify on 18 January 2022, [REDACTED]. It further submits that it has no ability to contact or locate the Witness [REDACTED].
5. According to the Prosecution, good cause exists to allow it to file a summons request after the 17 January Deadline since the Witness has only now become uncooperative and an order to summons is the only manner of ensuring the attendance of the Witness at the trial, which is imminent.
6. On 2 February 2022, the Defence responded to the Request.³ It submits that while it is unable to verify the submissions made by the Prosecution it ‘takes the Prosecution at its word’. Further, the Defence expresses reservations as to the Prosecution’s claim that the cessation of communications was unforeseeable but leaves the decision on the matter to the Chamber’s discretion.
7. The Chamber notes that, since the request to file a motion to summon the Witness is being made after the 17 January Deadline, the second sentence of Regulation 35(2) of the Regulations is applicable. Accordingly, the applicant does not need to show

¹ Email from the Chamber to the parties on 15 December 2021, at 12:14.

² Email from the Prosecution to the Chamber and the Defence on 31 January 2022, at 16:53.

³ Email to the Chamber on 2 February 2022, at 15:45.

‘good cause’ but instead, demonstrate that he or she was unable to file the application before the lapse of the deadline for reasons outside of his or her control.

8. Upon the facts presented by the Prosecution, the Chamber finds that the reasons for which the Prosecution seeks to file a request to summon the Witness only at this point in time are clearly outside of its control. It was not foreseeable to the Prosecution that the Witness would break off any contact with the Court after the 17 January Deadline. Indeed, as long as the Witness was still in communication with the Court and expressing his willingness to cooperate voluntarily, there was no need for the Prosecution to contemplate summoning him.

9. In light of the above, the Chamber grants the Request. It expects the request for summons be filed forthwith.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Request.

Done in both English and French, the English version being authoritative.



Judge Miatta Maria Samba

Dated 3 February 2022

At The Hague, The Netherlands