

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: **7 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 Request for a Summons for a Prosecution Witness

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

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TRIAL CHAMBER III of the International Criminal Court, in the case of *The Prosecutor v. Paul Gicheru*, having regard to Articles 64(6)(b) and 93(1)(b) of the Rome Statute, issues this ‘Decision on the Request for a Summons for a Prosecution Witness’.

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. [REDACTED] (the ‘Witness’) testified as a witness in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* (the ‘Main Case’).¹
2. On 15 November 2021, the Office of the Prosecutor (the ‘Prosecution’) filed, *inter alia*, its List of Witnesses in which it included the Witness.²
3. On 15 December 2021, the Chamber set a deadline to file any motion to secure the attendance of Prosecution witnesses by 17 January 2022.³
4. On 31 January 2022, the Prosecution requested by email a variation of this deadline in order to file a request for summons for the Witness,⁴ which was granted by the Chamber.⁵
5. On 3 February 2022, the Prosecution filed its request for Witness Summons (the ‘Request’).⁶
6. In its Request, the Prosecution explains that it interviewed the Witness in relation to Article 70 investigations in the Main Case in 2015.⁷ After the surrender of the Accused, the Prosecution conducted a further interview with the Witness in 2021.⁸

¹ See, [REDACTED].

² Annex B to the Prosecution Trial Brief, ICC-01/09-01/20-220-AnxB, 15 November 2021.

³ Email from the Chamber to the parties on 15 December 2021, at 12:14.

⁴ Email from the Prosecution to the Chamber and the Defence on 31 January 2022, at 16:53.

⁵ Decision on the Prosecution Request for Variation of Time Limit in order to Request a Summons of Witness, 3 February 2022, ICC-01/09-01/20-275-Conf. A public redacted version was filed on the same day, [ICC-01/09-01/20-275-Red](#).

⁶ Prosecutions Second Application for Witness Summons and Resulting Request for State Cooperation, ICC-01/09-01/20-277-Conf. A public redacted version was filed on 4 February 2022, ICC-01/09-01/20-277-Red.

⁷ Request, ICC-01/09-01/20-277-Red, para. 5.

⁸ Request, ICC-01/09-01/20-277-Red, para. 8.

7. The Prosecution further explains that the Witness [REDACTED].⁹ As a consequence, [REDACTED] (the ‘Country of Residence’).¹⁰

8. In [REDACTED], the Prosecution informed the Witness that it intended to call the Witness during its presentation of evidence. After [REDACTED], the Witness confirmed [REDACTED] readiness to testify.¹¹

9. On [REDACTED], the Prosecution had contact with the Witness for the last time.¹² On [REDACTED] informed the Prosecution that the Witness [REDACTED].¹³ Finally, [REDACTED] the Witness appears to have stopped communicating with the Court.¹⁴

10. Accordingly, the Prosecution requests that the Chamber orders: (i) the compulsory attendance of the Witness in person or via video-link at a location on the territory of [REDACTED] Country of Residence, on such dates, times and modalities as the Prosecution and/or the Registry will communicate to him,¹⁵ (ii) the assistance of the Government of the Country of Residence in ensuring the appearance of the Witness, using all means available under the applicable national law,¹⁶ and (iii) the assistance of the Registry to prepare and transmit, in consultation with [REDACTED] and Prosecution, the necessary summons to the Witness as well as the necessary cooperation request to the relevant authorities of the Country of Residence.¹⁷

11. On 7 February 2022, the Defence filed its response to the Request submitting that it leaves the matter to the Chamber ‘to dispense with it as it sees fit and fair.’¹⁸

II. ANALYSIS

12. The Chamber notes its previous decision on a request for summons and specifically that the possibility of such summons is established jurisprudence of the Court. It further recalls that the ensuing request for cooperation to the country where

⁹ Request, ICC-01/09-01/20-277-Conf, para. 6.

¹⁰ Request, ICC-01/09-01/20-277-Red, para. 1(i) Fn 4 and para. 26.

¹¹ Request, ICC-01/09-01/20-277-Conf, paras 21 and 22.

¹² Request, ICC-01/09-01/20-277-Conf, para. 13.

¹³ Request, ICC-01/09-01/20-277-Conf, para. 15.

¹⁴ Request, ICC-01/09-01/20-277-Conf, para. 15.

¹⁵ Request, ICC-01/09-01/20-277-Conf, paras 1 (i) and 36 (i).

¹⁶ Request, ICC-01/09-01/20-277-Conf, paras 1 (ii) and 36 (ii).

¹⁷ Request, ICC-01/09-01/20-277-Conf, paras 1 (iii) and 36 (iii).

¹⁸ Email from the Defence to the Chamber, 7 February 2022, at 10:22.

the summonsed witness resides must fulfil the standard criteria of relevance, specificity and necessity.¹⁹

13. Concerning the criterion of relevance, the Chamber notes that the Prosecution has interviewed the Witness twice in relation to the Article 70 investigations in these proceedings.²⁰ But most importantly, [REDACTED]. Accordingly, the expected testimony will, in any case, be relevant to the proceedings.

14. With regard to the specificity of the Request, the Chamber notes that [REDACTED]. However, this is due to [REDACTED]. Further, the Prosecution submitted that [REDACTED].²¹ Accordingly, the Chamber also finds that the cooperation request is sufficiently specific in stating the identity of the Witness the Prosecution requests to be summoned, as well as identifying the Country of Residence.

15. Lastly, in respect of the question of whether a cooperation request is necessary, the Chamber notes that the Prosecution has explained its limited means of communication [REDACTED] and that the Witness seems to have ceased all communication.²² Further, the Chamber also notes the Witness's previous interactions with the Court and that [REDACTED] was also summonsed to testify before the Chamber in the Main Case.²³ Considering these facts, the Chamber also finds that the Request is necessary in order to obtain the testimony of the Witness in the present proceedings. Accordingly, based on the foregoing, the Chamber grants the Request.

¹⁹ Decision on the Prosecution Request for a Summons for P-0743, 2 February 2022, [ICC-01/09-01/22-272-Red](#).

²⁰ Request, ICC-01/09-01/20-277-Red, paras 5 and 8.

²¹ Request, ICC-01/09-01/20-277-Conf, para. 29.

²² Request, ICC-01/09-01/20-277-Conf, paras 15 and 26.

²³ Request, ICC-01/09-01/20-277-Red, para. 5.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Request;

REQUIRES the appearance of the Witness for the purposes of testimony via video-link at the dates, time and place the Prosecution, and the Registry as the case may be, communicate to the Witness;

REQUESTS the assistance of the Country of Residence, where necessary in consultation with the Court according to Article 93(3) of the Statute, in ensuring the appearance of the Witness as indicated above, including by:

- (i) informing the Witness of the obligation to appear as indicated above and serving the summons upon the Witness;
- (ii) facilitating, by way of compulsory measure as necessary, the appearance of the Witness to give testimony before the Chamber by video-link on such dates and time and according to the modalities communicated to him by the Prosecution and/or the Registry; and
- (iii) to make appropriate arrangements for the security of the Witness, in consultation with the Victims and Witnesses Unit;

INSTRUCTS the Registry to transmit this Decision to the Country of Residence; and

INSTRUCTS the Registry to prepare and transmit forthwith, in consultation with the Prosecution, the necessary summons to the Witness (with or without the assistance of the Country of Residence), as well as the necessary cooperation request to the relevant authorities of the Country of Residence in accordance with Articles 70(2), 96 and 99(1) of the Statute and Rule 167 of the Rules of Procedure and Evidence, as specified in this Decision.

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

A handwritten signature in blue ink, appearing to read 'Miatta Maria Samba', is written over a horizontal line.

Judge Miatta Maria Samba

Dated 7 February 2022

At The Hague, The Netherlands