

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-02/04-01/05
Date: 17 November 2023

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Presiding Judge
Judge Tomoko Akane
Judge Sergio Gerardo Ugalde Godínez

SITUATION IN UGANDA

**IN THE CASE OF
*THE PROSECUTOR v. JOSEPH KONY AND VINCENT OTTI***

Public

Decision terminating the proceedings against Vincent Otti

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

Office of the Prosecutor

Karim A. A. Khan
Mame Mandiaye Niang
Colin Black

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

Paolina Massidda

Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Philipp Ambach

Other

PRE-TRIAL CHAMBER II of the International Criminal Court (‘Chamber’) hereby issues this decision on the Prosecution’s ‘Third Request to Terminate Proceedings against Vincent Otti’¹ (‘Third Request’).

1. On 8 July 2005, the Chamber, in a previous composition, issued a warrant of arrest for Vincent Otti (‘Mr Otti’).²

2. On two previous occasions, the Prosecution provided certain information pointing towards Mr Otti having been killed on or around 2 October 2007 in the Democratic Republic of the Congo, and made requests for the case against him to be terminated.³

3. On 1 December 2022, the Chamber rejected the last of the aforementioned requests.⁴ However, mindful of the ongoing efforts of the Prosecution to collect further information on the basis of which Mr Otti’s death could be established, the Chamber indicated its willingness to consider a new request based on additional evidence.⁵

4. On 15 November 2023, having collected further evidence, the Prosecution filed the Third Request. It explains that although the Ugandan authorities have informed the Prosecution that no death certificate exists, ‘all available evidence indicates that Mr Otti was killed in a remote area of the DRC in October 2007.’⁶ In addition to the information previously submitted before the Chamber, the Prosecution appends two witness statements and explains that the only eye witness to Mr Otti’s killing must also be assumed dead.⁷ It indicates that further investigative steps are unlikely to result in any additional proof of Mr Otti’s death and that, in these circumstances, terminating the case against him would ‘bring some degree of closure to the victims and communities affected by Mr Otti’s crimes’.⁸

5. The Chamber considers that with the further information, it now has a significant amount of evidence before it supporting the Prosecution’s claim. Based on the totality of the

¹ Third Request to Terminate Proceedings against Vincent Otti, ICC-02/04-01/05-464.

² ICC-02/04-01/05-4-US-Exp (a public redacted version was notified on the same day; ICC-02/04-01/05-54).

³ Prosecutor’s Request that the Warrant of Arrest for Vincent OTTI Be Withdrawn and Rendered without Effect because of His Death, 7 October 2008, ICC-02/04-01/05-315-US-Exp, with under seal *ex parte* annexes A-H; and Renewed Request to Terminate Proceedings against Vincent Otti on Account of His Death, 28 March 2022, ICC-02/04-01/05-443-US-Exp.

⁴ Decision on the Prosecution’s ‘Renewed Request to Terminate Proceedings against Vincent Otti on Account of His Death’, ICC-02/04-01/05-448 (‘1 December 2022 Decision’).

⁵ 1 December 2022 Decision, para. 6.

⁶ Third Request, para. 12.

⁷ Third Request, paras 8-9, and 11; ICC-02/04-01/05-463-Conf-Exp-AnxI and ICC-02/04-01/05-463-Conf-Exp-AnxII.

⁸ Third Request, para. 12.

information before it, the Chamber finds the only reasonable conclusion to be that Mr Otti is no longer alive.

6. The Chamber recalls that the purpose of criminal proceedings is to determine individual criminal responsibility, and that the Court cannot exercise jurisdiction over a deceased person. The death of a suspect or accused therefore requires that proceedings against that person be terminated, further to which all relevant documents, including any warrants of arrest, are rendered without effect.⁹

⁹ 1 December 2022 Decision, para. 4.

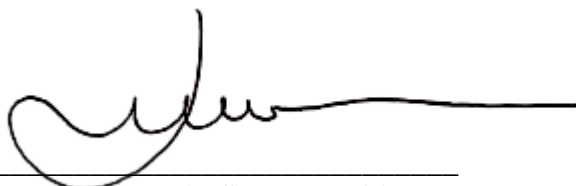
FOR THESE REASONS, THE CHAMBER HEREBY

TERMINATES the proceedings against Mr Vincent Otti;

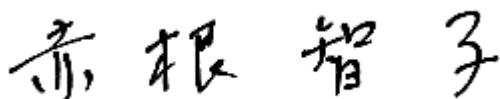
INSTRUCTS the Registrar to inform all States which were notified of the Warrant of Arrest that it is no longer in effect and to withdraw the requests for arrest and surrender;

DECIDES that the present case shall from now on be referred to as *The Prosecutor v. Joseph Kony*, and **INSTRUCTS** the Registry to implement the required changes in the case record.

Done in English. A French translation will follow. The English version remains authoritative



Judge Rosario Salvatore Aitala
Presiding Judge



Judge Tomoko Akane



Judge Sergio Gerardo Ugalde Godínez

Dated this Friday, 17 November 2023

At The Hague, The Netherlands