

Annex 23

Public

From: Trial Chamber III Communications
Sent: 02 February 2022 19:21
To: Karnavas, Michael; D32 Gicheru Defence team; OTP KEN art70 PD team
Cc: Associate Legal Officer-Court Officer; Trial Chamber III Communications
Subject: RE: Urgent request for variation of time limits for summons request: [REDACTED]

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Parties,

The Chamber hereby informs the parties that a formal decision granting the Prosecution Request for variation of time limit in order to file a request for summons to appear for [REDACTED] will be notified tomorrow morning.

Since the subject matter is of some urgency, the Chamber hereby:

- Instructs the Prosecution to file its formal request for summons by tomorrow, 3 February 2022; and
- Instructs the Defence to respond to the request, by email if it wishes, by Monday, 7 February 2022, noon.

Kind regards,
 Trial Chamber III

From: Karnavas, Michael [REDACTED]
Sent: 02 February 2022 15:45
To: Trial Chamber III Communications <TrialChamberIIICommunications[REDACTED]>; D32 Gicheru Defence team <D32GicheruDefenceteam[REDACTED]>; OTP KEN art70 PD team [REDACTED]
Cc: Associate Legal Officer-Court Officer <AssociateLegalOfficer-CourtOfficer[REDACTED]>
Subject: Re: Urgent request for variation of time limits for summons request: [REDACTED]

Dear Honorable Single Judge of Trial Chamber III,

Since the Prosecution has not disclosed its communications with [REDACTED] to the Defence, it cannot ascertain whether the Prosecution's representations are true, accurate, and complete. However, mindful of the Prosecution's awareness of its ethical obligations to be candid with the Chamber and legal obligations to disclose all material prescribed to the Defence in a timely fashion, the Defence takes the Prosecution at its word.

While the Defence is unpersuaded by the Prosecution's claims of diligence in failing to foresee the possibility of [REDACTED] ceasing communications in light of his security concerns, the Defence leaves the matter to the Trial Chamber's wise and fair discretion.

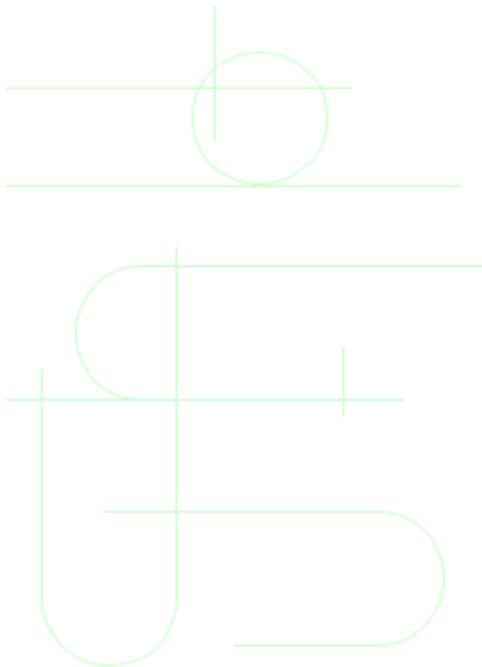
Sincerely yours,

Michael G. Karnavas

From: Trial Chamber III Communications <[TrialChamberIIICommunications](#)[REDACTED]>
Sent: 31 January 2022 16:12
To: D32 Gicheru Defence team <[D32GicheruDefenceteam](#)[REDACTED]> OTP KEN art70 PD team <[REDACTED]>
Cc: Trial Chamber III Communications <[TrialChamberIIICommunications](#)[REDACTED]> Associate Legal Officer-Court

Officer <[AssociateLegalOfficer-CourtOfficer](#)>

Subject: RE: Urgent request for variation of time limits for summons request:



Dear parties,

Today, the Prosecution submitted via email that it wishes to file a request to summons .
(see, email below)

In order to do that, the deadline imposed by the Chamber to file all requests to secure the attendance of witnesses at trial by 17 January 2022 has to be extended.

Pursuant to Regulation 34 of the Regulations of the Court, the Defence is hereby ordered to file any response to the request for an extension of deadline (=authorization to file a request for summons of) by Wednesday, 2 February 2022.

The response can be in form of an email.

Kind Regards,
Trial Chamber III

From: Steynberg, Anton
Sent: 31 January 2022 16:53
To: Trial Chamber III Communications <[TrialChamberIIICommunications](#)>
Cc: Trial Chamber III Legal Officers <[TrialChamberIIILegalOfficers](#)>; D32 Gicheru Defence team <[D32GicheruDefenceteam](#)> OTP KEN art70 PD team <>
Subject: Urgent request for variation of time limits for summons request:
Importance: High

Dear Trial Chamber III,
Your Honour,

Under regulation 35 of the Regulations of the Court, the Prosecution urgently requests the Chamber to:

- (i) Extend the 17 January 2022 time limit originally set for the Prosecution to file requests to secure the attendance of witnesses at trial (as per e-mail of Trial Chamber III to the parties dated 15 December 2021 at 12:14); and
- (ii) Allow the Prosecution to file such a request for Witness [REDACTED]. Should the Chamber grant the variation of the time limit, the Prosecution will file an application for the summons of the witness as soon as possible and no later than one day after the granting of the variation.

The Prosecution submits that there is good cause in this variation request as [REDACTED] witness scheduled to appear for the Prosecution at trial, who has recently and suddenly broken off all communications with the Court, [REDACTED]. The Prosecution has no ability to locate or contact [REDACTED].

This drastic turn of events could not have been anticipated prior to the 17 January 2022 deadline. In fact, while in some of his most recent [REDACTED] communications with the OTP the witness [REDACTED] confirmed that he was prepared to testify voluntarily. He confirmed this to the OTP as recently as 18 January 2022.

However, on 25 January 2022, [REDACTED] had failed to [REDACTED] and had since been unreachable. It was agreed that further attempts would be made [REDACTED] to contact the witness in the following days, but on 28 January 2022 [REDACTED] the witness remained unresponsive. The Prosecution requested that further attempts be made to locate him over the weekend, but these too were fruitless.

In light of the above and mindful of the need to ensure a smooth presentation of its evidence, the Prosecution's only recourse is to secure [REDACTED] attendance *via* a summons application to the Chamber. However, since these events transpired only after the time limit to file such application expired on 17 January 2022, the Prosecution submits that good cause exist which justify a variation of the time limit on the ground that (i) [REDACTED] has only now become firmly uncooperative towards the Court; and that (ii) his voluntary attendance at trial can no longer be secured in a timely manner other than *via* a summons. As set out above, this situation has crystallized only after the time limit in question expired, so the Prosecution was unable to seek a variation before the expiry of the time limit for reasons outside of its control.

Due to the impending commencement of the trial, the Prosecution makes this request on an urgent basis and by email, and requests that the time limit for the Defence to respond to it be also shortened accordingly. However, the Prosecution stands ready to file a formal variation request in the record of the case if the Chamber so orders.

Yours sincerely,
Anton Steynberg

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