

Pursuant to the instruction of the Presidency dated 27 September 2023, this document is reclassified as Public.

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/09-01/20**
Date: **24 September 2021**

THE PRESIDENCY

Before: Judge Piotr Hofmański, President
Judge Luz del Carmen Ibáñez Carranza, First Vice-President
Judge Antoine Kesia-Mbe Mindua, Second Vice-President

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF
*THE PROSECUTOR v. PAUL GICHERU***

Confidential

**Order concerning the ‘Urgent Request for an Immediate Investigation into the Leak of the Defence Requests for the Disqualification of Judge Miatta Maria Samba and Temporary Stay of the Proceedings’
dated 21 September 2021 (ICC-01/09-01/20-177-Conf)**

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Order 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

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants

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

Mr Esteban Peralta Losilla

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber III

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The Presidency of the International Criminal Court (the ‘Court’)

In the case of *The Prosecutor v. Paul Gicheru*,

NOTING the ‘Urgent Request for an Immediate Investigation into the Leak of the Defence Requests for the Disqualification of Judge Miatta Maria Samba and Temporary Stay of the Proceedings’ dated 21 September 2021 (the ‘Urgent Request’),¹ in which the Defence for Mr Gicheru submits that urgent investigation is warranted of whether his confidential Request for the disqualification of Judge Samba (the ‘Request for Disqualification’)² or his confidential Request for a temporary stay of proceedings (the ‘Stay of Proceedings Request’)³ were leaked to Kenyan media;

NOTING regulation 23bis(1) of the Regulations of the Court (the ‘Regulations’), which states, *inter alia*, that any document shall be treated according to its classification throughout the proceedings;

NOTING regulation 29(1) of the Regulations, which determines that in case of non-compliance by a participant with, *inter alia*, the provisions of any regulation, the Chamber may issue any order that is deemed necessary in the interests of justice and **CONSIDERING** that the latter provision must necessarily apply *mutatis mutandis* to the Presidency;

CONSIDERING that the Presidency is responsible for safeguarding the security of the Request for Disqualification, which was filed before it, with any potential issues pertaining to documents filed before the Trial Chamber needing to be addressed to such Chamber;

¹ Defence for Mr Paul Gicheru, *The Prosecutor v. Paul Gicheru*, Urgent Request for an Immediate Investigation into the Leak of the Defence Requests for the Disqualification of Judge Miatta Maria Samba and Temporary Stay of the Proceedings, 21 September 2021, ICC-01/09-01/20-177-Conf.

² Defence for Mr Paul Gicheru, *The Prosecutor v. Paul Gicheru*, Request for the Disqualification of Judge Miatta Maria Samba, 17 September 2021, ICC-01/09-01/20-173-Conf, a public redacted version of the Request for Disqualification was filed on 22 September 2021: Defence for Mr Paul Gicheru, *The Prosecutor v. Paul Gicheru*, Public Redacted Version of “Request for the Disqualification of Judge Miatta Maria Samba,” 17 September 2021, ICC-01/09-01/20-173-Conf, 22 September 2021, ICC-01/09-01/20-173-Red.

³ Defence for Mr Paul Gicheru, *The Prosecutor v. Paul Gicheru*, Urgent Request for Trial Chamber III to Temporarily Stay the Proceedings Due to Mr. Gicheru’s Request for the Disqualification of Judge Miatta Maria Samba, 17 September 2019, ICC-01/09-01/20-174-Conf, the reclassification of this Stay of Proceedings Request to public was requested by the Defence on 22 September 2021: Defence for Mr Paul Gicheru, *The Prosecutor v. Paul Gicheru*, Request to Reclassify as Public Filing ICC-01/09-01/20-174-Conf, 22 September 2021, ICC-01/09-01/20-179.

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HEREBY ORDERS the Registry to investigate and report back to the Presidency on whether there has been any leak of the confidential Request for Disqualification or the information contained therein;

ORDERS the Registry to provide the Independent Oversight Mechanism any information obtained in the course of its investigations that may fall within the scope of the jurisdiction of the latter;

ORDERS all parties to fully co-operate with the investigation; and

INSTRUCTS the Defence that any concerns regarding any potential leak of the Stay of Proceedings Request or the information contained therein may be addressed to Trial Chamber III.

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



Judge Piotr Hofmański
President



Judge Luz del Carmen Ibáñez Carranza
First Vice-President



Judge Antoine Kesia-Mbe Mindua
Second Vice-President

Dated this 24 September 2021

At The Hague, The Netherlands