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No.: ICC-01/09-02/11
Date: 29 September 2014

TRIAL CHAMBER V(B)

Before: Judge Kuniko Ozaki, Presiding Judge
Judge Robert Fremr
Judge Geoffrey Henderson

SITUATION IN THE REPUBLIC OF KENYA

***IN THE CASE OF
THE PROSECUTOR V. UHURU MUIGAI KENYATTA***

Public document

**Prosecution response to the Defence application for excusal from, or the
rescheduling of, the 8 October 2014 status conference**

Source: The Office of the Prosecutor

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

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1. The Prosecution hereby submits its observations on the Defence's 25 September 2014 request for excusal from, or the rescheduling of, the 8 October 2014 status conference.¹

A. Request for excusal on 8 October.

2. The Defence's reliance on Rules 134*bis* and 134*quater* is misplaced because those provisions apply only once the trial has begun.² As the Chamber has previously held, the trial begins at the "true opening of the trial when the opening statements, if any, are made prior to the calling of witnesses".³ This case has not reached that stage, so Rules 134*bis* and *quater* are inapposite.
3. That said, the Chamber has previously excused Mr Kenyatta from attending status conferences⁴ or has permitted him to attend by video link,⁵ and the Prosecution does not dispute that the Chamber has the authority to grant such relief. The question of whether the Chamber should do so here is a matter for the Chamber's discretion and will turn on the specific matters it intends to address during the status conference.
4. The Prosecution is not in a position to offer detailed submissions on whether the Chamber should exercise its discretion because it does not know which matters related to its 5 September 2014 notice the Chamber intends to address during the status conference.

¹ ICC-01/09-02/11-957.

² See Rule 134*bis*(1) ("An accused subject to a summons to appear may submit a written request to the Trial Chamber to be allowed to be present through the use of video technology *during part or parts of his or her trial.*") (emphasis added); Rule 134*quater* ("Excusal from presence *at trial* due to extraordinary public duties") (emphasis added).

³ ICC-01/09-02/11-696, n.16 (quoting ICC-01/04-01/06-1084, para. 39).

⁴ See, e.g., ICC-01/09-02/11-893, para. 3 (setting an agenda for a status conference and ruling that the "presence of Mr Kenyatta is not required"); ICC-01/09-02/11-929, para. 6 (same).

⁵ See ICC-01/09-02/11-620, para. 1 ("... the Chamber considers this to be a hearing requiring the accused's attendance and the accused are ordered to attend the status conference, either in person or via video link."); ICC-01/09-02/11-T-22-ENG ET, pages 1 and 6 (Presiding Judge acknowledging Mr Kenyatta's presence by video link).

B. Request for rescheduling.

5. If the Chamber decides that Mr Kenyatta's attendance is required, the Prosecution does not object to the status conference being rescheduled, provided that the rescheduled hearing is in the near future.

C. Request to attend a rescheduled status conference by video link.

6. As stated above, Rule 134*bis* is inapplicable at this stage and the question of whether to permit Mr Kenyatta to attend by video link is a matter for the Chamber's discretion, depending on what will be addressed at the status conference. The Prosecution observes only that no clear reasons for attendance by video link, rather than in person, are advanced by the Defence, other than the Accused's status and the distance he would have to travel. The Chamber may consider that these alone do not represent reasons to excuse him from the attendance which would be required of any other accused person.



Fatou Bensouda,
Prosecutor

Dated this 29th day of September, 2014
At The Hague, The Netherlands