

# The Curious Case of Paul Gicheru

**Paul Gicheru**, a lawyer formerly based in Kenya, is suspected of **offences against the administration of justice** committed in or around **2013 in Kenya** consisting in corruptly **influencing witnesses of the ICC Prosecution**. Paul Gicheru **surrendered on 2 November 2020** to the authorities of The Netherlands pursuant to an **ICC arrest warrant** issued under seal on **10 March 2015 against him and Philip Kipkoech Bett**, and unsealed on 10 September 2015. On **3 November 2020, Paul Gicheru was transferred to the ICC custody** after the completion of the necessary Dutch national proceedings. **Philip Kipkoech Bett is not in the ICC’s custody.**

This case is interesting as initially, in response to the warrant of arrest issued by the ICC, on 16 November 2017, the High Court of Kenya (“High Court”) issued a ruling in which it dismissed the application for the surrender of Mr Paul Gicheru and Mr Philip Kipkoech Bett to the International Criminal Court, and lifted the warrant of arrest issued against them.<sup>1</sup> However, Judges of the ICC held that the Kenyan High Court’s decision was vitiated by an erroneous interpretation of the provisions of the Statute and the Rules of Procedure and Evidence (“Rules”) governing offences against the administration of justice before this Court as well as the attendant duties of States Parties to give effect to those provisions under their domestic laws.<sup>2</sup>

On 10 September 2015, the Court unsealed and made public the existence of the warrants of arrest. From a report of the Kenyan Director of Criminal Investigations dated 13 November 2015, transmitted to the Chamber on 27 January

2016, it transpires that the suspects had been arrested, released on bail by the High Court of Kenya, sometime on or before 30 July 2015, and that there had been no search and seizure in light of the “urgency in arresting the suspects after they were located within Nairobi and to comply with the Constitution of Kenya provision of presenting arrested suspects before a court of law within 24 hours”. According to the same report, the matter remained pending before the High Court of Kenya.<sup>3</sup>

Given the clear obfuscation and failure of the Kenyan government to comply with its obligations under the Rome Statute of the ICC in relation to the Gicheru case, it came as a great surprise, when, on 2 November 2020, Mr Gicheru surrendered to the authorities of the Kingdom of the Netherlands.

The initial appearance of Mr Gicheru took place on 6 November 2020 before Judge Reine Adélaïde Sophie Alapini-Gansou,

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1 [https://www.icc-cpi.int/CourtRecords/CR2020\\_06954.PDF](https://www.icc-cpi.int/CourtRecords/CR2020_06954.PDF)

2 [https://www.icc-cpi.int/CourtRecords/CR2020\\_06955.PDF](https://www.icc-cpi.int/CourtRecords/CR2020_06955.PDF)

3 [https://www.icc-cpi.int/CourtRecords/CR2020\\_07351.PDF](https://www.icc-cpi.int/CourtRecords/CR2020_07351.PDF)

for ICC Pre-Trial Chamber A. Due to the Covid-19 Pandemic, the suspect appeared by Video-link from the ICC Detention Centre in The Hague. Mr Gicheru represented himself at this hearing. The Single Judge verified the identity of the suspect, and ensured that he was clearly informed of the offences against the administration of justice he is alleged to have committed and of his rights under the Rome Statute of the ICC in a language he fully understands and speaks. The judge also set the calendar for the procedure.

As alleged by the Prosecutor, and according to the evidence, Philip Kipkoech Bett, together with another individual, approached Witness P-397, informed the witness of the scheme for corrupting witnesses, and took the witness to Paul Gicheru, who negotiated and agreed with the witness that five million Kenyan shillings (KES) would be paid in exchange of the witness's withdrawal as a witness of the Prosecutor. On 27 and 30 April 2013, Paul Gicheru paid Witness P-397 two cash instalments of 600,000 and 400,000 KES, respectively. On 9 May 2013, Witness P-397 signed in the office and in the presence of Paul Gicheru an affidavit, stating that the witness no longer intended to testify and wished to withdraw the testimony previously given. Witness P-397 remained in contact with Paul Gicheru until at least January 2014.<sup>4</sup>

Accordingly, the Single Judge in charge of the case was of the view that there are

reasonable grounds to believe that Paul Gicheru was responsible under article 70(1)(c) in conjunction with article 25(3) (a), or (b) of the Statute for the offence of corruptly influencing Witnesses P-397, P-516, P-613, P-800, P-495 and P-536, and that Philip Kipkoech Bett was responsible under article 70(1)(c) in conjunction with article 25(3)(a), (c) or (d) of the Statute for the offence of corruptly influencing Witnesses P-397, P-613, P-800 and P-495.

In relation to the gravity of the crimes, the Single Judge noted that the offences for which proceedings against Paul Gicheru and Philip Kipkoech Bett are being brought by the Prosecutor carry a prison sentence of up to five years. Furthermore, the Single Judge considered the evidence presented by the Prosecutor, that the campaign to corrupt the witnesses of the Prosecutor was comprehensive and systematic, and therefore considered that the arrest of the persons was necessary to prevent the further exercise of corrupt influence on the witnesses of the Court. As such the Court found that the requirements of article 58(1) of the Statute were met for the issuance of warrants of arrest against Paul Gicheru and Philip Kipkoech Bett as requested by the Prosecutor.

29 January 2021, Judge Reine Adélaïde Sophie Alapini-Gansou of Pre-Trial Chamber A (article 70) of the ICC, granted Paul Gicheru's request for interim release with specific conditions restricting liberty.<sup>5</sup>

4 [https://www.icc-cpi.int/CourtRecords/CR2020\\_06946.PDF](https://www.icc-cpi.int/CourtRecords/CR2020_06946.PDF)

5 [https://www.icc-cpi.int/CourtRecords/CR2021\\_00842.PDF](https://www.icc-cpi.int/CourtRecords/CR2021_00842.PDF)

**Conditions:** The Chamber imposed the following conditions restricting Mr. Gicheru's liberty. Mr Gicheru:

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- shall provide financial security to the ICC Registrar in the form of cash or bank order to the value of KSH 1,000,000 (one million Kenyan shillings);
- shall comply fully with all orders issued in this case and surrender himself immediately to the relevant authorities if required by the Chamber;
- shall appear before the Chamber at the date, time, place, and in the manner ordered by the Chamber and shall remain in attendance until excused;
- shall not obstruct or endanger the investigation or the court proceedings and shall not engage in any activities, directly or indirectly, that are prohibited under Article 70 of the Statute;
- shall not contact, directly or indirectly, any of the Prosecutor's witnesses or victims in this case, except through counsel authorised to represent him before this Court and in accordance with the applicable protocols;
- shall not, directly or through any other person, make any public statements, social media post, or communicate with the media about the merits of the case;
- shall reside in Kenya at a specific address for the duration of the proceedings when not present in the Netherlands for the purposes of court proceedings, unless otherwise authorised in advance by the Chamber;
- shall provide the Registrar with copies of all passports, visas, identity documents, and any other travel documents issued to him; shall not travel internationally except to the extent permitted by the Chamber and shall inform the Registrar or his delegate, no later than seven days prior to any international travel;
- shall report once a week to the Registrar, his delegate, or other person(s) on the date and time and in the manner to be determined by the Registrar, which may include the use of video conferencing technology; and
- shall provide the Registrar with all mobile and other telephone numbers and shall ensure that at least one of his mobile telephone numbers remains active and with sufficient credit to be reachable at any time.

The Chamber found that, in the event that Mr Gicheru would fail to comply with any of the conditions restricting liberty specified in its decision, the Chamber may declare the financial security provided by Mr Gicheru forfeit to the Court, issue a warrant of arrest in respect of Mr Gicheru at the request of the Prosecutor or on its own initiative, and/or of Mr Gicheru at the request of the Prosecutor or on its own initiative, and/or issue any other order it deems relevant in relation to a failure to comply with these conditions.

### **Next Steps:**

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The confirmation of charges procedure in this case has been conducted in writing as opposed to by hearing. The Prosecutor filed their Document Containing the Charges and list of evidence on 8 April 2021 and the Defence filed its list of evidence on 8 April 2021. Both parties will have to file their written submissions, replacing the confirmation of charges hearing in this case, on 23 April 2021. The confirmation of charges proceeding is held to determine whether or not there is sufficient evidence to conduct the subsequent phase of the proceedings: the trial. The Chamber will make its decision in due course.