

The election of the next prosecutor is a highly competitive process and it is natural that everyone has their own favourite candidate. That said, it is important to bear in mind that all candidates are members of the Bar and officers of the court and should be united by our ethics and rules of deontology. It is also worth recalling the famous adage that: *"[e]veryone is entitled to their own opinion, but not his [or her] own facts."* An election process is not a licence to peddle innuendos to attack candidates unfairly. Four Kenyan NGO's attempt to create a spectre against me in this election process relating to the death of Mr. Meshack Yebei some years ago. Their very limited knowledge of the details and the lack of publicly available information on the subject has, perhaps, been fodder for their misinformed statements. I will repeat what is already known and attempt to provide some more clarity on this issue.

Mr. Meshack Yebei was a defence witness that I referred to the ICC-Victim and Witness Unit (ICC-VWU). My first communication with the ICC-VWU regarding Mr. Yebei was quite soon after my appointment as Lead Counsel, in Sept 2013. There is a record of continuous contact between my team and the ICC-VWU concerning Mr. Yebei from that point onwards, requesting the ICC-VWU to make the appropriate assessments and ensure Mr. Yebei's security. The ICC-VWU was in direct contact with Mr. Yebei and kept his situation under their constant review. I continued to keep the ICC-VWU updated on all information I received relevant to Mr. Yebei's referral. I persisted in my request that Mr. Yebei be formally taken into the ICC witness protection program and be relocated. A point came when the ICC-VWU accepted to formally receive Mr. Yebei into its protection program. From that point, they consistently monitored his safety.

I am not able to disclose the source of alleged threats against Mr. Yebei that grounded my request for his protection, save to say I did everything ethically within my power to ensure Mr. Yebei and his family were safe. The responsibility to physically protect, relocate or support witnesses does not fall upon an individual counsel under the Rome Statute regime. Rather, it falls on the independent ICC-VWU once a witness is referred or issues highlighted to them by counsel or other persons.

Mr. Yebei was tragically killed sometime after I referred him to the ICC-VWU, whilst under ICC witness protection. When I became aware of this event, I immediately requested the Kenyan authorities to conduct a thorough investigation and I reported the same to the ICC-VWU. I did not make any public statement about my actions or the report to CID that I made regarding the death of Mr. Yebei. As Counsel, it would have been improper of me to do so. My "Strictly Confidential" communication to the Kenyan Director of CID regarding Mr. Yebei's death made its way to the press. This is the alleged "public statement" the four Kenyan NGO's refer to.

When this leak of confidential information from Kenyan CID occurred, I sent a further communication to the Criminal investigations Department. In that communication I stated that I was "dismayed and exceptionally concerned" that a "strictly confidential report by me regarding such a serious matter was leaked to the press." I formally complained about the leak and requested for an inquiry into this matter. In that communication, I also reminded CID that the publication of information known to be confidential may fall within the ambit of an Article 70 of the Rome Statute which criminalises any action which may obstruct the proper administration of justice.

The ICC-VWU was in close contact with the relevant authorities within Kenya on all matters related to the death and disappearance of Mr. Yebei. The ICC-VWU kept me updated on the progress of the investigations both in Kenya and their own investigations. In these circumstances it was for the ICC-VWU and not Counsel, to follow up with the Government of Kenya. I then ceased direct contact with CID on the matter. We were provided updates by the ICC-VWU on the joint investigation that was being carried out and the VWU provided us with its final report. Whatever leads

and information I independently received relating to this matter were transmitted by myself or my team to the VWU to deal with appropriately. The ICC Witness Unit will be able to attest to all of this.

I was in contact with Mr. Yebei's immediate family members to express my condolence and my team remained in contact with them to sympathise and comfort them over their tragic loss. The remaining details of the investigations communicated to me by ICC-VWU or other sources must remain confidential, suffice to say, I have fulfilled my professional responsibilities in every respect.

Mr. Yebei's death is a great loss to his family and to all those who knew him. Their pain, their anguish and their privacy must be respected. I hope that any issue regarding this matter are now clear. A person's reputation is precious and has value. Responsibility needs to be exercised, especially when it is based overwhelmingly on incomplete information or speculation. Shakespeare's Othello restates a truth that remains valid today:

*Good name in man and woman, dear my lord,
Is the immediate jewel of their souls.
Who steals my purse steals trash. 'Tis something, nothing
'Twas mine, tis his, and has been slave to thousands.
But he that filches from me my good name
Robs me of that which not enriches him
Yet leaves me poor indeed*

It is worth recalling that in almost 30 years as a member of the Bar, my professional conduct and my ethics have never been questioned or criticised by any Judge, in any court, in any jurisdiction. Indeed, in several ICC cases, my conduct has been commended. For example, the President of the ICC, in this very same case commended my actions as "consistent with both the best traditions of an honourable profession and the obligations of an officer of the court."

I trust the information provided will be sufficient for any objective person interested in the truth.

Any Prosecutor of the ICC must have thick skin and will not routinely respond to the litany of criticism or ungrounded complaints that can be expected to come his or her way. I am fortunate to have that thick skin and that resilience. This is why I felt no need to respond to the inaccuracies or falsehoods that have been peddled on twitter and elsewhere. Given that a formal request has now been made by Journalists for Justice, and given my respect for them, I have now decided to give this response, which will be my final word on this matter.