



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

**ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ**

Kingdom of Cambodia
Nation Religion King

Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះតុលាការកំពូល

Supreme Court Chamber

Chambre de la Cour suprême

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 27-Dec-2021, 13:55
CMS/CFO: Sann Rada

សំណុំរឿងលេខ: ០០៣/០៨-តុលា-២០២១-អ.វ.ត.ក/អ.ជ.ត.ក

Case File/Dossier N°. 003/08-10-2021-ECCC/SC(05)

Before: Judge KONG Srim, President
Judge Chandra Nihal JAYASINGHE
Judge SOM Sereyvuth
Judge Florence Ndepele MWACHANDE-MUMBA
Judge MONG Monichariya
Judge Maureen Harding CLARK
Judge YA Narin

Date: 27 December 2021
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DECISION ON MEAS MUTH’S REQUEST TO TERMINATE CASE 003

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1. **THE SUPREME COURT CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea between 17 April 1975 and 6 January 1979 (“Supreme Court Chamber” or “Chamber”, and “ECCC”, respectively);
2. **BEING SEISED OF** “MEAS Muth’s Request to Terminate Case 003” in which the Defence requests the Chamber, to terminate Case 003 and order the Co-Investigating Judges to archive the case on the basis that there is no valid indictment in Case 003, that MEAS Muth has a right to equal treatment before the law and that no cogent reasons exist to depart from the Supreme Court Chamber’s findings in Case 004/02, which similarly terminated the proceedings as a result of two illegally issued Closing Orders and no Pre-Trial Chamber supermajority upholding or reversing either Closing Order (“Request to Terminate”);¹
3. **NOTING** the International Co-Prosecutor’s response that MEAS Muth’s Request to Terminate should be dismissed as devoid of merit, arguing that the “principle of equal treatment cannot and should not be used as a basis to perpetuate past legal errors” and that “these legal errors provide cogent reasons for deviating from the Chamber’s decision in Case 004/2”.²
4. **NOTING** MEAS Muth’s reply that the International Co-Prosecutor’s arguments should be summarily dismissed as she *inter alia* “regurgitates arguments that were unsuccessful before the Pre-Trial Chamber and Supreme Court Chamber” and fails to present “cogent reasons to depart from the SCC’s decision in Case 004/2, error in reasoning or change in circumstance that would justify the SCC to decide Case 003 differently”.³
5. **RECALLING** this Chamber’s Decision on the International Co-Prosecutor’s Appeal of the Pre-Trial Chamber’s failure to send Case 003 to trial as required by the ECCC Legal Framework issued on 17 December 2021 in which it concluded that “in the absence of a definitive and enforceable indictment, Case 003 is terminated”.⁴

¹ MEAS Muth’s Request to Terminate Case 003, Doc. No. 4, dated 4 October 2021 notified on 13 October 2021, (“Request to Terminate”), paras 52-56, 61, 65, 72.

² International Co-Prosecutor’s Response to MEAS Muth’s Request to Terminate Case 003, Doc. No. 4/1, 25 October 2021, para. 55.

³ MEAS Muth’s Reply to the International Co-Prosecutor’s Response to MEAS Muth’s Request to terminate Case 003, Doc. No. 4/1/1, 1 November 2021, paras 1, 3.

⁴ Case 003 Decision, Doc. No. 3/1/1/1, para. 44.

6. **NOTING** the Dissenting Opinion of Judge Maureen Harding Clark that as futility dictates that there is little point in returning the faulty decision to be reconsidered by the Pre-Trial Chamber that justice indictates that Case 003 should be terminated.⁵
7. **CONSIDERING** accordingly that the Request to Terminate does not require further adjudication on the merits.

HEREBY:

FINDS MEAS Muth's Request to Terminate Case 003 moot.

Phnom Penh, 27 December 2021

President of the Supreme Court Chamber



KONG Srim

⁵ Case 003 Decision, Dissenting Opinion of Judge Maureen Harding CLARK, Doc. No. 3/1/1/1, paras 91-92.