

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11

Date: 5 April 2011

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge

**SITUATION IN THE REPUBLIC OF KENYA
IN THE CASE OF THE PROSECUTOR V. FRANCIS KIRIMI MUTHAURA,
UHURU MUIGAI KENYATTA AND MOHAMMED HUSSEIN ALI**

Under Seal
Ex parte, Prosecutor only

**Decision Ordering the Registrar to Prepare and Transmit a Request for
Cooperation to the Republic of Kenya for the Purpose of Securing the
Identification, Tracing and Freezing or Seizure of Property and Assets of Francis
Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali**

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

The Office of the Prosecutor
Luis Moreno-Ocampo, Prosecutor
Fatou Bensouda, Deputy Prosecutor

The Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

Other

REGISTRY

Registrar & Deputy Registrar
Silvana Arbia, Registrar
Didier Preira, Deputy Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Ekaterina Trendafilova, acting as Single Judge¹ on behalf of Pre-Trial Chamber II (the "Chamber") of the International Criminal Court (the "Court") renders this decision requesting the Registrar to prepare and transmit a request for cooperation to the competent authorities of the Republic of Kenya for the purposes of identifying, tracing and freezing or seizing the property and assets belonging to or under the control of Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali.

1. On 8 March 2011, the Chamber, by majority, decided to summon Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali to appear before the Court on Thursday, 7 April 2011 at 14.30 hours.²

2. On 18 March 2011, the Chamber decided that the initial appearance hearing shall be convened on Friday, 8 April 2011 at 14.30 hours.³

3. On 21 March 2011, the Single Judge issued the "Decision Requesting Information and Observations from the Prosecutor" (the "21 March 2011 Decision"), in which she requested the Prosecutor to submit "observations and any information in his possession concerning the nature and whereabouts of the financial assets and properties belonging to or under the control of Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali".⁴

4. On 25 March 2011, the Prosecutor filed his response to the 21 March 2011 Decision, wherein he provided information about the assets and properties which can allegedly be linked to Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali.⁵

¹ Pre-Trial Chamber II, "Decision Designating a Single Judge", ICC-01/09-02/11-9.

² Pre-Trial Chamber II, "Decision on the Prosecutor's Application for Summonses to Appear for Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali", ICC-01/09-02/11-01, p. 23.

³ Pre-Trial Chamber II, "Decision Setting a New Date for the Initial Appearance", ICC-01/09-02/11-8.

⁴ Pre-Trial Chamber II, "Decision Requesting Information and Observations from the Prosecutor", ICC-01/09-02/11-11-US-Exp.

⁵ ICC-01/09-02/11-16-US-Exp.

5. The Single Judge notes articles 57(3)(e), 75, 87, 88, 93(1)(k), 96, 97 and 99 of the Rome Statute (the "Statute"), and rules 99 and 176(2) of the Rules of Procedure and Evidence (the "Rules").

6. The Single Judge recalls that, pursuant to article 57(3)(e) of the Statute, where a summons to appear has been issued, the Pre-Trial Chamber may, having due regard to the strength of the evidence and the rights of the parties concerned, seek the cooperation of States pursuant to article 93(1)(k) of the Statute, to take protective measures for the purpose of forfeiture, in particular for the ultimate benefit of victims.

7. In this regard, the Single Judge stresses that the identification, freezing and seizure of property and assets "[...] is necessary in the best interests of the victims" to guarantee that, in the event of a conviction, "the said victims may, pursuant to article 75 of the Statute, obtain reparations for the harm which may have been caused to them".⁶

8. The Single Judge recalls that all requests for cooperation must be executed pursuant to the provisions contained in Part IX of the Statute and in accordance with the procedures provided for in the national law of the requested State, without prejudice for the rights of *bona fide* third parties. In this respect, while the Court is responsible for the legality of the requests for cooperation sent to the State, it is the latter's responsibility to verify that any measure necessary to implement the Court's request is in line with the Statute and the national law.

9. In light of the foregoing, and considering that existing technology may make it possible to place property and assets beyond the Court's reach in a short period of time, the Single Judge considers it necessary to identify, trace and freeze or seize as soon as possible the property and assets belonging to or under the control of Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, in order to

⁶ Pre-Trial Chamber III, "Decision and Request to the Democratic Republic of Congo for the Purpose of Obtaining the Identification, Tracing, Freezing and Seizure of Property and Assets", ICC-01/05-01/08-9-US-Exp-tENG, para. 7.

ensure that, in the event that they are found guilty of the crimes they have allegedly committed, the reparation orders for victims may be promptly executed.

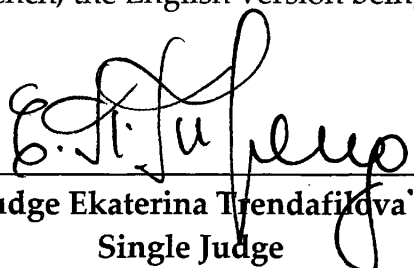
10. Finally, the Single Judge stresses that, pursuant to article 87(3) of the Statute, it is essential for the requested State to keep confidential the request for cooperation and any relevant supporting documents, except to the extent that their disclosure is necessary for executing these requests.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

orders the Registrar to prepare and transmit, in accordance with article 87(2) of the Statute and rule 176(2) of the Rules and in consultation with the Prosecutor, a request for cooperation to the competent authorities of the Republic of Kenya for purposes of identifying, tracing and freezing or seizing the property and assets belonging to or under the control of Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, without prejudice to the rights of *bona fide* third parties;

orders the Registrar to include in the request for cooperation a provision requesting that the competent authorities of the Republic of Kenya inform the Registry, at least every two months, of any seizure of property and freezing of assets carried out in execution of this decision, and that the Registrar report any such information to the Chamber as soon as possible.

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


Judge Ekaterina Trendafilova
Single Judge

Dated this Tuesday, 5 April 2011

At The Hague, The Netherlands