



Original: **English**

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

Date: **13 June 2011**

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul, Judge
Judge Cuno Tarfusser, Judge

SITUATION IN THE REPUBLIC OF KENYA

IN THE CASE OF
THE PROSECUTOR v. FRANCIS KIRIMI MUTHAURA, UHURU MUIGAI
KENYATTA AND MOHAMMED HUSSEIN ALI

Public Document

**Defence Observations on the Place of Proceedings for the Purposes of the
Confirmation of Charges Hearing**

Source: Defence

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

The Office of the Prosecutor

Mr. Luis Moreno-Ocampo, Prosecutor
Ms. Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

Counsel for Francis Kirimi Muthaura:
Karim A.A. Khan QC and Kennedy
Ogetto
Counsel for Uhuru Muigai Kenyatta:
Steven Kay QC and Gillian Higgins
Counsel for Mohammed Hussein Ali:
Evans Monari and Gershom Otachi

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms. Silvana Arbia, Registrar

Deputy Registrar

Mr. Didier Daniel Preira, Deputy
Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Procedural Background

1. On 31 March 2010, the Chamber, by majority, issued its decision authorising the Prosecutor to commence an investigation into the situation in the Republic of Kenya (the "Investigation Decision").¹
2. 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 7 April 2011 (the "Summons Decision").²
3. On 18 March 2011, the Chamber issued a decision setting a new date for the initial appearance hearing as Friday, 8 April 2011.³
4. On 8 April 2011, during the initial appearance hearing, the Chamber set 21 September 2011, as the date for the commencement of the confirmation of charges hearing.⁴
5. On 3 June 2011, the Chamber issued its "Decision Requesting Observations on the Place of the Proceedings for the Purposes of the Confirmation of Charges Hearing" (the "Request for Observations").⁵
6. In the Request for Observations, the Chamber stated, "it is in the process of assessing the desirability and feasibility of conducting the confirmation of

¹ Pre-Trial Chamber II, Prosecutor v Muthaura et al., "Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya", 31 March 2010, ICC-01/09-19-Corr.

² Pre-Trial Chamber II, Prosecutor v Muthaura et al., "Decision on the Prosecutor's Application for Summonses to Appear for Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali", 8 March 2011, ICC-01/09-02/11-1.

³ Pre-Trial Chamber II, Prosecutor v Muthaura et al., "Decision Setting a New Date for the Initial Appearance", 18 March 2011, ICC-01/09-02/11-8.

⁴ Pre-Trial Chamber II, Prosecutor v Muthaura et al., Transcript of the Initial Appearance, 8 April 2011, ICC-01/09-02/11-T-1-ENG ET WT, at page 14 line 12.

⁵ Pre-Trial Chamber II, Prosecutor v Muthaura et al., "Decision Requesting Observations on the Place of the Proceedings for the Purposes of the Confirmation of Charges Hearing", 3 June 2011, ICC-01/09-02/11-102.

charges hearing on the territory of the Republic of Kenya”.⁶ As such the Chamber requested that the Defence submit their observations in relation to this, by no later than Monday, 13 June 2011, at 1600 hours.⁷

II. Submissions

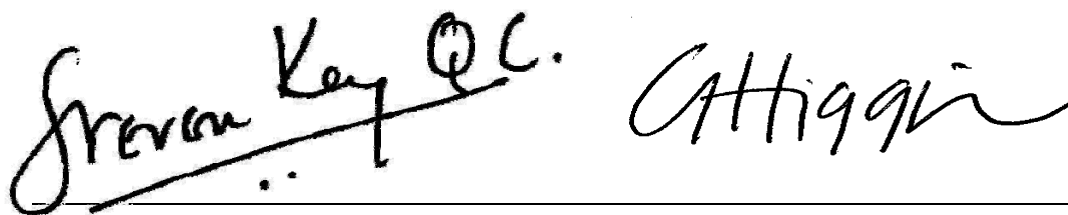
7. The Defence notes Articles 3(1), 3(3), 4(2), 61(1) and 67(1)(c) of the Rome Statute (the “Statute”) and Rule 100 of the Rules of Procedure and Evidence (the “Rules”).
8. The Defence submits that the main issue to be taken into consideration is that the confirmation of charges hearing takes place on 21 September 2011 as previously scheduled by the Pre-Trial Chamber.⁸
9. In support of these submissions the Defence rely on the right of the suspect to have the confirmation of charges hearing held within a reasonable time after the person’s voluntary surrender or appearance before the Court.⁹
10. The venue for the proceedings is determinant on the scheduled date of the confirmation hearing being effective and in such circumstances a change of venue which delays those proceedings would be unacceptable and breach the right of the suspect to have the proceedings heard within a reasonable time.

⁶ Pre-Trial Chamber II, Prosecutor v Muthaura et al., “Decision Requesting Observations on the Place of the Proceedings for the Purposes of the Confirmation of Charges Hearing”, 3 June 2011, ICC-01/09-02/11-102, at para. 7.

⁷ Pre-Trial Chamber II, Prosecutor v Muthaura et al., “Decision Requesting Observations on the Place of the Proceedings for the Purposes of the Confirmation of Charges Hearing”, 3 June 2011, ICC-01/09-02/11-102, at page 4.

⁸ Pre-Trial Chamber II, Prosecutor v Muthaura et al., Transcript of the Initial Appearance, 8 April 2011, ICC-01/09-02/11-T-1-ENG ET WT, at page 14 line 12.

⁹ Article 61(1) of the Rome Statute; The Defendants appeared voluntarily before the Court at the initial appearance hearing on 8 April 2011.



Handwritten signatures of Steven Kay QC and Gillian Higgins. The signature of Steven Kay QC is on the left, and the signature of Gillian Higgins is on the right. A horizontal line is drawn below the signatures.

Steven Kay QC and Gillian Higgins
On behalf of Uhuru Muigai Kenyatta

Dated this, Monday, 13 June 2011

At London, UK