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

Date: 29 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

**Application on Behalf of Uhuru Muigai Kenyatta to Join the Defence Request for
Disclosure of the Unredacted Article 58 Application and all Statements,
Declarations, Testimonies and Utterances of Uhuru Muigai Kenyatta in the
Possession of the Prosecution**

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

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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 15 December 2010, the Office of the Prosecutor (the “OTP”) submitted the “Prosecutor’s Application Pursuant to Article 58 as to Ambassador Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali” (the “Article 58 Application”).¹
2. On 8 March 2011, Pre-Trial Chamber II (the “PTC”), by majority issued three summonses to appear in the present case.²
3. On 6 April 2011, the Single Judge, Her Honour Judge Ekaterina Trendafilova issued the “Decision Setting the Regime for Evidence Disclosure and Other Related Matters” establishing, *inter alia*, the system of disclosure to be followed by the parties in this case.³
4. On 20 April 2011, the Single Judge issued the “Decision on the Prosecution’s application requesting disclosure after a final resolution of the Government of Kenya’s admissibility challenge and Establishing a Calendar for Disclosure Between the Parties”, whereby the Single Judge rejected the Prosecution’s request and established a calendar for disclosure of evidence between the parties.⁴
5. On 3 June 2011, the Prosecution communicated the first batch of disclosure to the Defence pursuant to Article 61(3)(b) and Rule 77.⁵

¹ Pre-Trial Chamber II, The Situation in the Republic of Kenya, Prosecutor’s Application Pursuant to Article 58 as to Ambassador Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, 15 December 2010, ICC-01/09-31-Conf-Exp and its annexes.

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-01/09-02/11-01.

³ Pre-Trial Chamber II, Prosecutor v Muthaura et al., Decision Setting the Regime for Evidence Disclosure and Other Related Matters, 6 April 2011, ICC-01/09-02/11-48.

⁴ Pre-Trial Chamber II, Prosecutor v Muthaura et al., Decision on the Prosecution’s application requesting disclosure after a final resolution of the Government of Kenya’s admissibility challenge and Establishing a Calendar for Disclosure Between the Parties 20 April 2011, ICC-01/09-02/11-64.

⁵ Pre-Trial Chamber II, Prosecution’s First Communication of the Disclosure of Incriminating Evidence and Rule 77 Materials to the Defence, 3 June 2011, ICC-01/09-02/11-100.

6. On 23 June 2011, counsel for Ambassador Muthaura filed “Defence Request for Disclosure of Unredacted Article 58 Application and All Statements, Declarations, Testimonies And Utterances Of Ambassador Francis K. Muthaura in the Possession of the Prosecution” (the “Request”).⁶

II. SUBMISSIONS

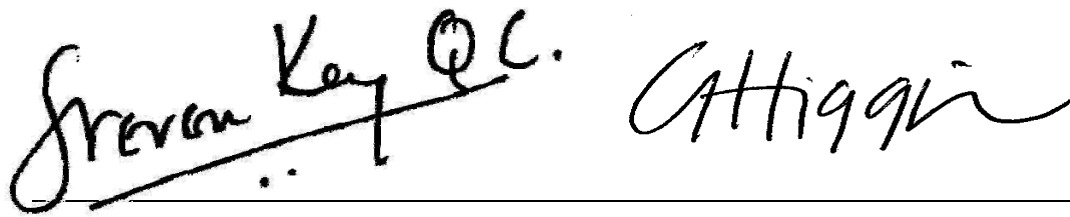
7. Defence counsel for Uhuru Muigai Kenyatta file this application to join paragraphs 10, 11, and 13 to 19 inclusive of the Request as applicable to Mr. Kenyatta.⁷

III. CONCLUSION

8. The Defence respectfully requests that the Single Judge order the Prosecution to disclose to the Defence its Article 58 Application in unredacted or lesser redacted form and all statements, declarations, testimonies and utterances of Mr. Uhuru Muigai Kenyatta in the possession and control of the Prosecution without delay.

⁶ Pre-Trial Chamber II, Prosecutor v Muthaura et al., Defence Request For Disclosure of Unredacted Article 58 Application and All Statements, Declarations, Testimonies and Utterances of Ambassador Francis K. Muthaura In The Possession of The Prosecution, 23 June 2011, ICC-01/09-02/11-132.

⁷ Pre-Trial Chamber II, Prosecutor v Muthaura et al., Defence Request For Disclosure of Unredacted Article 58 Application and All Statements, Declarations, Testimonies and Utterances of Ambassador Francis K. Muthaura In The Possession of The Prosecution, 23 June 2011, ICC-01/09-02/11-132, paras 10, 11 and 14 to 19



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, Wednesday 29 June 2011

At London UK