

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 1 July 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**

Public

**Order to the Prosecutor to Submit Observations on the Defences' Requests "for a
Compliance Order in regard to Decision 'ICC-01/09-02/11-48'"**

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

Counsel for Francis Kirimi Muthaura
Karim A. Khan and Kennedy Ogetto

Counsel for Mohammed Hussein Ali
Evans Monari and Gershom Otachi Bw'omanwa

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

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 Judge on behalf of Pre-Trial Chamber II (the "Chamber")¹ of the International Criminal Court (the "Court"), issues this order to the Prosecutor to submit observations on the Defences' requests "for a Compliance Order in regard to Decision 'ICC-01/09-02/11-48'".²

1. On 8 March 2011, the Chamber, by majority, decided to summon Francis Kirimi Muthaura ("Mr. Muthaura"), Uhuru Muigai Kenyatta, and Mohammed Hussein Ali ("Mr. Ali") to appear before the Court on 7 April 2011.³

2. On 18 March 2011, the Chamber issued a decision setting 8 April 2011 as the new date for the initial appearance hearing.⁴ The initial appearance took place on the new date.

3. On 29 June 2011, the Defence for Mr. Ali filed the "Defence Request for a Compliance Order in regard to Decision 'ICC-01/09-02/11-48'" ("Mr. Ali's Request"), in which it requested the Chamber to issue:

- a. An Order directing the Prosecutor to fully comply with decision ICC-01/09-02/11-48 by latest 15 July 2011;
- b. A warning of sanctions for misconduct directed at the Prosecutor in case of future non compliance with decision ICC-01/09-02/11-48.⁵

4. On 1 July 2011, the the Defence for Mr. Muthaura filed an application to "Join the Defence Request for a Compliance Order in regard to Decision 'ICC-01/09-02/11-48'" (Mr. Muthaura's Request"), in which it also requested the Chamber:

- 9. [T]o order the Prosecutor to fully comply with the Decision of the Single Judge of ICC-01/09-02/11-48 and to resubmit the concerned material forthwith to the Defence.
- 10. [...] [to order the Prosecutor] to identify and set out clearly how and why each piece of evidence disclosed is relevant to each of the three [suspects in the present case][...].⁶

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

² ICC-01/09-02/11-141; ICC-01/09-02/11-143.

³ 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.

⁴ Pre-Trial Chamber II, "Decision Setting a New Date for the Initial Appearance", ICC-01/09-02/11-8.

⁵ ICC-01/09-02/11-141, para. 18.

⁶ ICC-01/09-02/11-143, paras 9-10.

5. The Chamber notes Regulation 28 of the Regulations of the Court (the "Regulations").

6. In particular, according to regulation 28(1) of the Regulations, the Chamber "may order the participants to [...] provide additional details on any document within a time limit specified by [...]it".

7. The Chamber considers that in order to take a decision in a fair and effective manner, it must receive observations from the Prosecutor on Mr. Ali's and Mr. Muthaura's requests.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

- a) **orders** the Prosecutor to submit observations on Mr. Ali's Request, by no later than Wednesday 6 July at 1600 hrs.
- b) **orders** the Prosecutor to submit observations on Mr. Muthaura's Request, by no later than Wednesday 6 July at 1600 hrs.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Friday, 1 July 2011

At The Hague, The Netherlands