



Original: English

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

Date: 05 July 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
a Compliance Order in regard to Decision (ICC-01/09-02/11-141)**

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 HISTORY

1. On 6 April 2011, the Single Judge issued her “Decision Setting the Regime for Evidence Disclosure and Other Related Matters”¹ in which the modalities for disclosure between the parties were established. The Single Judge adopted the approach as set out previously by Pre Trial Chamber III in its “Decision on the Evidence Disclosure System and Setting the Timetable for Disclosure between the Parties” of 31 July 2010, which required the provision of a detailed legal analysis of the evidence disclosed by the Prosecutor.²
2. On 2 May 2011, the Single Judge issued her “Decision on the “Prosecution’s Application for Leave to Appeal, the “Decision Setting the Regime for Evidence Disclosure and Other Related Matters (ICC-01/09-02/11-48)” wherein the Single Judge rejected the Prosecutor’s Application for Leave to Appeal of 13 April 2011³ in which the Prosecution had sought to appeal the modalities set forth in the decision referred to paragraph 1 above.
3. On 3 June 2011, the Prosecution filed the “Prosecutor’s First Communication of the Disclosure of Incriminating and Rule 77 Material to the Defence”.⁴
4. On 24 June 2011, the Prosecution filed the “Prosecutor’s First Communication of the Disclosure of Potentially Exculpatory Evidence and Second Communication of the Disclosure of Incriminating and Rule 77

¹ Pre-Trial Chamber II, The 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.

² Pre-Trial Chamber III, Prosecutor v Bemba, Decision on the Evidence Disclosure System and Setting the Timetable for Disclosure between the Parties, 31 July 2010 ICC-01/05-01/08-241.

³ Pre-Trial Chamber II, The Prosecutor v Muthaura et al., Decision on the “Prosecution’s Application for Leave to Appeal, the “Decision Setting the Regime for Evidence Disclosure and Other Related Matters (ICC-01/09-02/11-48), 2 May 2011, ICC-01/09-02/11-77.

⁴ Pre-Trial Chamber II, The Prosecutor v Muthaura et al., Prosecutor’s First Communication of the Disclosure of Incriminating and Rule 77 Material to the Defence, 3 June 2011, ICC-01/09-02/11-100.

Material to the Defence”.⁵

5. On 29 June 2011 the Defence Team of General Mohammed Hussein Ali filed its “Request for Compliance Order in Regard to Decision “ICC-01/09-02/11-48” (the “Request for Compliance”).⁶

II. SUBMISSIONS

6. The Defence for Uhuru Muigai Kenyatta files this application to join the Request for Compliance.
7. The Defence submits that the Prosecution disclosure fails to comply with the terms of the Decision of the PTC requiring explanation of the relevance and analysis of the disclosed materials.⁷ Further, the disclosed materials appear to lack relevance and fail to go to the issues in the proposed charges. For these reasons, the Defence seek to enforce compliance with the Pre Trial Chamber’s Decision so as to avoid any confusion upon this issue.

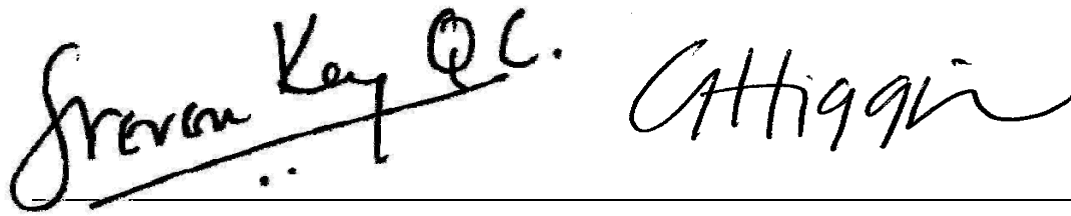
III. RELIEF SOUGHT

8. The Defence respectfully requests the Chamber to 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.
9. The Defence further requests that the Prosecutor be ordered to identify and set out clearly how and why each piece of evidence disclosed is relevant to each of the three individuals, Ambassador Muthaura, Mr. Kenyatta, and General Ali.

⁵ Pre-Trial Chamber II, The Prosecutor v Muthaura et al., Prosecutor’s First Communication of the Disclosure of Potentially Exculpatory Evidence and Second Communication of the Disclosure of Incriminating and Rule 77 Material to the Defence.

⁶ Pre-Trial Chamber II, The Prosecutor v Muthaura et al., Defence Request for Compliance Order in Regard to Decision, 29 June 2011, ICC-01/09-02/11-141.

⁷ Pre-Trial Chamber II, The Prosecutor v Muthaura et al., Decision on the “Prosecution’s Application for Leave to Appeal, the “Decision Setting the Regime for Evidence Disclosure and Other Related Matters (ICC-01/09-02/11-48), 2 May 2011, ICC-01/09-02/11-77.



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 4 July 2011

At, London UK