

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 21 July 2011

THE APPEALS CHAMBER

Before: Judge Daniel David Ntanda Nsereko, Presiding Judge
Judge Sang-Hyun Song
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Anita Ušacka

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

Order

**on the filing of observations in relation to the Application on behalf of the
Republic of Kenya for Leave to Reply to the "Prosecutions response to the
'Appeal of the Government of Kenya against the Decision on the Application by
the Government of Kenya Challenging the Admissibility of the Case Pursuant to
Article 19(2)(b) of the Statute'"**

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

The Office of the Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Fabricio Guariglia

Counsel for Francis Kirihi Muthaura
Mr Karim A. A. Khan
Mr Kennedy Ogeto

Counsel for Uhuru Muigai Kenyatta
Mr Steven Kay
Ms Gillian Higgins

Counsel for Mohammed Hussein Ali
Mr Gregory Kehoe
Mr Evans Monari

States Representatives
Mr Geoffrey Nice
Mr Rodney Dixon

REGISTRY

Registrar
Ms Silvana Arbia



The Appeals Chamber of the International Criminal Court,

In the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II entitled “Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute” of 30 May 2011 (ICC-01/09-02/11-96),

Having before it the “Application on behalf of the Government of Kenya for Leave to Reply to the ‘Prosecution’s response to the “Appeal of the Government of Kenya against the Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute’””, dated 19 July 2011 and registered on 20 July 2011 (ICC-01/09-02/11-180 OA, hereinafter: “Application to Reply”),

Pursuant to regulation 28 of the Regulations of the Court,

Unanimously,

Issues the following

ORDER

The Prosecutor, Mr Muthaura, Mr Kenyatta and Mr Ali shall file on Tuesday 26 July 2011, any observations as to whether the Appeals Chamber should grant or reject the Application to Reply.

REASONS

1. On 20 June 2011, the Republic of Kenya filed the “Document in Support of the ‘Appeal of the Government of Kenya against the decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19 (2) (b) of the Statute’”¹

2. On 12 July 2011, the Prosecutor filed the “Prosecution’s response to the ‘Appeal of the Government of Kenya against the Decision on the Application by the

¹ ICC-01/09-02/11-130. A Corrigendum thereto was filed on 21 June 2011, ICC-01/09-02/11-130-Corr.

Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute”² (hereinafter: “Response to the Document in Support of the Appeal”).

3. On 20 July 2011, the Republic of Kenya filed the Application to Reply requesting that leave to reply to the Response to the Document in Support of the Appeal be granted until 2 August 2011. In support of its Application to Reply the Republic of Kenya avers that the Response to the Document in Support of the Appeal raises many “fundamental legal, factual and procedural questions” which “cover new ground” and “which holds great importance to the Government of Kenya.”³ In addition, the Republic of Kenya submits that an opportunity to reply would enable it to respond to any matters raised by the Prosecutor in his response to the observations of the Victims which may serve to supplement the views already expressed⁴ and will allow the Republic of Kenya an opportunity “to provide the Appeals Chamber with the most up-to-date information on the investigation into the six Suspects before the Appeals Chamber renders its decision.”⁵

4. In the circumstances, the Appeals Chamber considers it desirable to elicit the views of the parties on this issue. The Appeals Chamber therefore requests the Prosecutor, Mr Muthaura, Mr Kenyatta and Mr Ali to file any observations they may have as to whether the Application to Reply should be granted or rejected

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



Judge Anita Ušacka
On behalf of the
Presiding Judge

Dated this 21st day of July 2011

At The Hague, The Netherlands

² ICC-01/09-02/11-168.

³ Application to Reply, para. 7. a.

⁴ Ibid., para. 7.b.

⁵ Ibid., para.7.c.