

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 10 August 2011

THE APPEALS CHAMBER

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

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

**Transmission by the Registry of the "Appeal against the Single Judge's Decision
on the Request by Ms. Moraa Gesicho to Appear as Amicus Curiae"**

Source: The Registrar

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

Mr Karim Ahmad Khan

Mr Kennedy Ogetto

Counsel for Uhuru Muigai Kenyatta

Mr Steven Kay

Mr Gillian Higgins

Counsel for Mohammed Hussein Ali

Mr Evans Monari

Mr John Philpot

Mr Gershom Otachi Bw'omanwa

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

Ms Moraa Gesicho

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Mr Didier Preira

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

The Registrar of the International Criminal Court (the "Court");

NOTING the *"Prosecutor's Application pursuant to Article 58 as Francis Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali"*¹, submitted by the Office of the Prosecutor on 15 December 2010;

NOTING the *"Decision on the Prosecutor's Application for Summons to Appear for Francis Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali"*², issued by the Pre-Trial Chamber II on 8 March 2011 ;

NOTING the *"Dissenting opinion by Judge Hans-Peter Kaul to Pre-Trial Chamber II's "Decision on the Prosecutor's Application for Summons to Appear for Francis Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali ""*³, issued by the Pre-Trial Chamber II on 15 March 2011;

NOTING the *"Transmission by the Registry of the "Request by Ms. Moraa Gesicho to appear as Amicus Curiae"*⁴, submitted by the Registry on 5 April 2011;

NOTING the *"Decision on the "Request by Ms. Moraa Gesicho to Appear as Amicus Curiae"*⁵, issued by the Pre-Trial Chamber II's Single Judge, Judge Ekaterina Trendafilova, on 12 April 2011;

¹ ICC-01/09-31-Conf-Exp.

² ICC-01/09-02/11-1.

³ ICC-01/09-02/11-3.

⁴ ICC-01/09-02/11-45 and ICC-01/09-02/11-45-Anx. The *"Transmission by the Registry of the "Request by Ms. Moraa Gesicho to appear as Amicus Curiae"* was also registered in the Situation file as documents ICC-01/09-55 and ICC-01/09-55-Anx.

⁵ ICC-01/09-02/11-54.

NOTING rule 13(1) and 103 of the Rules of Procedure and Evidence ("RPE"), regulation 23*bis* of the Regulations of the Court ("RoC"), and regulation 21(2) of the Regulations of the Registry ("RoR");

CONSIDERING that the Registry received the documents to be transmitted as a result of an email exchange between the Registry and Ms. Moraa Gesicho (hereinafter, the Applicant);

CONSIDERING that on 29 July 2011, between 17.14 hours and 18.36 hours the Applicant communicated electronically to the Registry, four documents titled as follows to be directly transmitted to the Appeals Chamber:

- an "Appeal against the Single Judge's on the "Request by Ms. Moraa Gesicho to Appear as Amicus Curiae";
- a "Report of the Kenya National Commission on Human Rights"(Exhibit 1);
- a "request to appear as Amicus Curiae"(Exhibit 2);
- a "PEV Report"(Exhibit 3);

CONSIDERING that the request to Appeal communicated by the Applicant was neither submitted in the right format nor bearing the Applicant's signature, the Registry requested Ms. Moraa Gesicho on 1 August 2011 at 13.39 hours to resubmit a correct version of the document;

CONSIDERING that on 1 August 2011 at 18.40 hours the Applicant resubmitted electronically to the Registry:

- a signed version of the "Appeal against the Single Judge's Decision on the "Request by Ms. Moraa Gesicho to Appear as Amicus Curiae"; together with
- a signed version of the "Request by Ms. Moraa Gesicho to Appear as Amicus Curiae"

CONSIDERING that the document titled "Report of the Kenya National Commission on Human Rights", and named Exhibit 1 was corrupted, and therefore could not be transmitted to the Appeals Chamber, the Registry requested the Applicant on 2 August 2011 at 16.10 hours to resubmit a correct version of the said document;

CONSIDERING that on 4 August 2011 at 15.08 hours, in response to the request of the Registry, the Applicant submitted a document which did not match the description of the report cited above, but was rather a duplicate of a document already in the possession of the Registry;

CONSIDERING that on 4 August 2011 at 17.55 hours, the Registry informed the Applicant of the discrepancy in the submission of the exhibits to her applications;

CONSIDERING that on 5 August 2011 at 17.36 hours, the Applicant resent an accurate version of the missing document;

CONSIDERING that in the same communication as above, the Applicant drew the attention of the Registry to a number of pages which are missing from the document titled "the report of the Commission of Inquiry into Post Election Violence" (CIPEV)(hereinafter, "the report"), namely:

- the title page and;
- the page bearing the transmittal letter to the Appointing Authority from the Commission signed by the chairman and two commissioners;

CONSIDERING that within the same communication mentioned, the Applicant raised a concern about an eventual question of authenticity of the document above-mentioned which may affect her appeal and is indicated her intention to submit the hardcopy of the report;

CONSIDERING that as at 8 August 2011 the Applicant had not transmitted the hardcopy of the report, the Registry requested clarifications from the Applicant on whether her application should be transmitted to the Appeals Chamber without the hardcopy of the report;

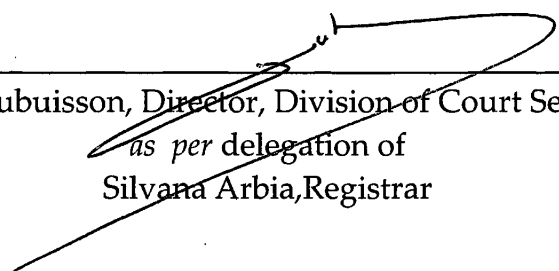
CONSIDERING that in her response to the Registry, the Applicant had remained unclear on whether the Registry should transmit the electronic version of her application to the Appeals Chamber while emphasising on her intention to transmit the hardcopy of the report;

CONSIDERING that following a few email exchanges between the Registry and the Applicant, the Applicant has clearly requested the Registry to transmit the electronic version of her application without further delay on 10 August 2011 at 14.26 hours;

CONSIDERING that the Registry is not in a position to make any observations as regards the admissibility of the present appeal to the Appeals Chamber;

RESPECTFULLY TRANSMITS therefore, to the Appeals Chamber the following documents appended to the present report:

- the "Appeal against the Single Judge's Decision on the "Request by Ms. Moraa Gesicho to Appear as Amicus Curiae", as Annex 1;
- the "Report of the Commission of inquiry into Post Election Violence (CIPEV)" as Annex 2;
- the "Request to appear as amicus curiae", as Annex 3;
- the "Report of the Kenya National Commission on Human Rights", as Annex 4.



Marc Dubuisson, Director, Division of Court Services
as per delegation of
Silvana Arbia, Registrar

Dated this 10 August 2011

At The Hague in The Netherlands