



Original: English

No.: ICC-01/09-02/11
Date: 15 August 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 with CONFIDENTIAL *EX PARTE* ANNEX only available to the Defence
of Mohammed Hussein Ali**

Defence Submission of an Amended List of *Viva Voce* Witnesses

Source: Defence of General Mohammed Hussein Ali

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, Kennedy Ogeto,
Essa M. Faal and Shyamala Alagendra

Counsel for Uhuru Muigai Kenyatta:

Steven Kay QC and Gillian Higgins

Counsel for Mohammed Hussein Ali:

Evans Monari, Gregory Kehoe, John
Philpot and Gershom O. 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

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

Other

1. On 10 August 2011, the Single Judge issued her “Order to Reduce the Number of Witnesses to be called to Testify at the Confirmation of Charges Hearing and to Submit an Amended List of *Viva Voce* Witnesses”¹ wherein the Single Judge ordered the Defence “to reduce the number of the witnesses they intend to call to testify at the confirmation of charges hearing to a maximum of two witnesses for each suspect...”
2. The Defence now submits, in the Annex, its list of two *viva voce* witnesses as directed by the Single Judge without prejudice to the preferred request for leave to appeal.
3. This filing is without prejudice to the “Defence Request for Leave to Appeal “Order to Reduce the Number of Witnesses to be called to Testify at the Confirmation of Charges Hearing and to Submit an Amended List of *Viva Voce* Witnesses.”²
4. The Defence requests that the Annex be classified as Confidential *ex parte* (only available to the Defence of Mohammed Hussein Ali) which classification is justified on the need to protect the information therein prior to Defence disclosure as per the timelines set by the Single Judge.

Respectfully submitted,




Evans Monari and Gershom Otachi Bw'omanwa
On behalf of Mohammed Hussein Ali

Dated this 15th day of August 2011

At Nairobi, Kenya

¹ Pre-Trial Chamber II, The Prosecutor v Muthaura et al., “Order to Reduce the Number of Witnesses to be called to Testify at the Confirmation of Charges Hearing and to Submit an Amended List of *Viva Voce* Witnesses”, 10 August 2011, ICC-01/09-02/11.

² ICC-01/09-02/11-239 filed on 15 August 2011.