

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 5 September 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

**Decision on the "Defence Application for a limited Extension of Time to file its List
of Evidence"**

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 Khan, Kennedy Ogetto and Essa
Faal

Legal Representatives of the Victims
Morris Azuma Anyah

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”) of the International Criminal Court (the “Court”)¹ hereby issues this decision on the “Defence Application for a Limited Extension of Time to file its List of Evidence” (the Request for Extension of Time”).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 to appear before the Court.³ Pursuant to this decision, the Suspects voluntarily appeared before the Court at the initial appearance hearing held on 8 April 2011,⁴ during which, *inter alia*, the Chamber scheduled the commencement of the confirmation of charges hearing for Wednesday, 21 September 2011.⁵

2. On 6 April 2011, the Single Judge issued the “Decision Setting the Regime for Evidence Disclosure and Other Related Matters”.⁶

3. On 20 April 2011, the Single Judge issued the “Decision on the ‘Prosecution’s application requesting disclosure after a final resolution of the Government of Kenya’s admissibility challenge’ and Establishing a Calendar for Disclosure Between the Parties”(the “20 April 2011 Calendar Decision”), wherein the Prosecutor was ordered, *inter alia*, “to file in the record of the case as soon as possible and no later than Friday, 19 August 2011 the Document Containing the Charges and the List of Evidence as required by rule 121(3) of the Rules”. The Defence was also ordered to disclose to the

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

² ICC-01/09-02/11-287.

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 ICC-01/09-02/11-T-1-ENG.

⁵ ICC-01/09-02/11-T-1-ENG, page 14, lines 11 to 15.

⁶ Pre-Trial Chamber II, “Decision Setting the Regime for Evidence Disclosure and Other Related Matters”, ICC-01/09-02/11-48.

Prosecutor the evidence they intend to present at the confirmation hearing and the list of this evidence, no later than 5 September 2011.⁷

4. On 5 September 2011, the Chamber received the Request for Extension of Time, wherein the Defence of Mr. Muthaura requests “that the Chamber grants the [...] limited extension of 3 hours in order to allow it to file its list of evidence and serve the same on the Prosecution and the Registry by 7 p.m.”.⁸ The Defence of Mr. Muthaura alleges that, up to the morning of 5 September 2011, “it has acquired important new information which is essential to its case and which it considers prudent to put before the Chamber in order to assist it in its determination”.⁹ In addition, the Defence team of Mr. Muthaura claims to have “encountered technical difficulties in transmitting and uploading materials into the Court’s RINGTAIL system which has been interrupted by frequent power failure in Kenya”.¹⁰ In the view of the Defence, the abovementioned impediments constitute good cause within the meaning of regulation 35(2) of the Regulations of the Court (the “Regulations”).

5. The Single Judge notes articles 61(6)(c) and 67(1)(b) of the Rome Statute and regulation 35(2) of the Regulations.

6. According to regulation 35(2) of the Regulations “the Chamber may extend or reduce time limit if good cause is shown [...]”. The Single Judge, taking into consideration the material recently collected by the Defence of Mr. Muthaura for the purpose of the confirmation of charges hearing, is satisfied that the technical problems experienced by the Defence team of Mr. Muthaura – together with the right of the Defence to present the evidence they deem necessary to challenge the charges presented by the Prosecutor – constitute good cause within the meaning of regulation 35(2) of the Regulations. Accordingly, the Request for Extension of Time is granted

⁷ “Decision on the ‘Prosecution’s application requesting disclosure after a final resolution of the Government of Kenya’s admissibility challenge’ and Establishing a Calendar for Disclosure Between the Parties”, ICC-01/09-02/11-64, p. 13.

⁸ ICC-01/09-02/11-287, para. 9.

⁹ ICC-01/09-02/11-287, para. 6.

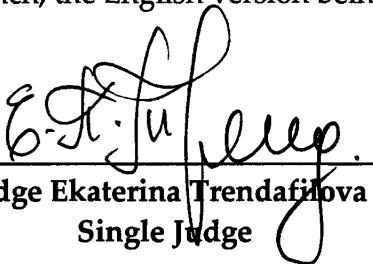
¹⁰ ICC-01/09-02/11-287, para. 7.

and the deadline for the Defence of Mr. Muthaura to file its list of evidence in compliance with the 20 April 2011 Calendar Decision is extended up until 19:00 hours on 5 September 2011.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

grants the Request for Extension of Time.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Monday, 5 September 2011

At The Hague, The Netherlands