



Original: English

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

Date: 05 September 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

**URGENT
PUBLIC**

**URGENT DEFENCE REQUEST OF ON BEHALF OF UHURU KENYATTA FOR
DIRECTIONS CONCERNING DISCLOSURE TO THE CO-DEFENCE TEAMS
OF MATERIALS TO BE RELIED UPON AT THE CONFIRMATION HEARING
WHICH ARE THE SUBJECT OF A COURT ORDER TO THE REGISTRY NOT
TO DISCLOSE TO MR. MUTHAURA AND MR. ALI, AND REQUEST FOR
ADDITIONAL TIME TO AMEND THE RELEVANT METADATA**

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**

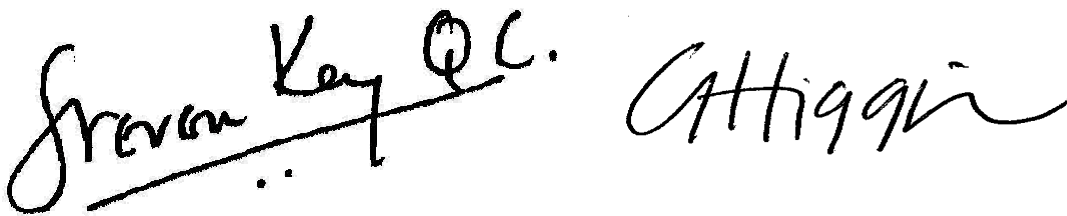
Other

I. SUBMISSIONS

1. The Defence received the “Decision on the “Request for by Defence of Uhuru Kenyatta for the Pre-Trial Chamber to vary the status of the Ex Parte Confidential Annexes 1 and 3 of the ‘Application by the Defence for Uhuru Kenyatta under Article 61(3) and 67(1)(a) for Adjournment of the Confirmation Hearing Scheduled for 21 September 2011 and Request for Alteration to their Selected Viva Voce Witnesses’ to Confidential Inter Parties” (Reclassification Decision) at 1.30pm in the UK.
2. This decision states that Annexes 1, 1A, 1B, 1C and 1D to the Defence Adjournment motion filed on 2 September 2011 should be made accessible to the Prosecutor as confidential documents, but that access should presently not be given to the Defence of Mr Muthaura and the Defence of Mr Ali.
3. The Reclassification Decision impacts upon the disclosure to be made by 4pm today as these Annexes also contain information which the Defence for Uhuru Kenyatta seeks to rely upon at the confirmation hearing.
4. Given the Reclassification Decision and the limited time until the expiration of the disclosure deadline to the Prosecution, the Defence has ensured that the Prosecution will receive all relevant contents of Annexes 1, 1A, 1B, 1C and 1D by 4pm today.
5. In order to ensure compliance with the reasoning of the Reclassification Decision, the Defence has requested the Registry not to disclosure these materials and other connected materials to the Co-Defence by 4pm today. The meta-data for all Defence disclosure has already been processed at this time. However, although the meta-data for the relevant materials currently states “Prosecution and Co-Defence”, the Defence will ensure in liaison with the Registry that the materials identified by the Defence will not be served on the Co-Defence. A request has already been sent to the Registry from the OPCD asking for assistance in this regard. The case-manager for the Uhuru Kenyatta’s defence team will identify those documents not to be disclosed to the Co-Defence at this stage and provide the same to the Registry.

II. RELIEF REQUESTED

6. The Defence requests additional time beyond the 4pm deadline in which to amend the meta-data in relation to the items identified above.
7. Furthermore, the Defence seeks direction as to when it may be permitted to serve the documents contained in Annex 1 on the Co-Defence teams in addition to several other witness statements that pertain to the same issue.

The image shows two handwritten signatures in black ink. The first signature, on the left, is 'Steven Kay QC.' and is underlined. The second signature, on the right, is 'G Higgins'.

Steven Kay QC and Gillian Higgins
On behalf of Uhuru Muigai Kenyatta

Dated this, Monday 5 September 2011

At The Hague, Netherlands