



Original: English

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

Date: 5 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

Public

Extremely Urgent

**Defence Application for a Limited Further Extension of Time to file its List of
Evidence**

Source: Defence for Ambassador Francis Kirimi Muthaura

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, Essa. M. Faal,
Kennedy Ogeto 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

Introduction

1. Pursuant to Regulation 35(2) of the Regulations of the Court (“Regulations”), the Defence for Ambassador Muthaura hereby requests a limited further extension of 5 hours from 7 p.m. to mid-night in order to file its complete List of Evidence (“LoE”) and serve same on the Prosecution and the Registry. For the reasons set out below, the Defence submits that good cause exists to warrant the exercise of discretion in favour of the requested limited extension.

Background

2. At the status conference held on 8 April 2011, the Chamber scheduled the confirmation hearing in this case to commence on 21 September 2011.¹
3. Pursuant to Rule 121(6) of the Rules, where the person intends to present evidence, the Defence shall provide a list of that evidence to the Chamber no later than 15 days before the date of the hearing, in this case, by no later than 5 September, 2011 at 4 p.m.²
4. On 19 August 2011, the Prosecution filed its Document Containing the Charges (“DCC”) and List of Evidence (“LoE”) and disclosed to the Defence fresh witness statements which contained extensively new allegations for the first time. The newly disclosed allegations appear to change the substance and direction of the Prosecution’s case.³
5. Earlier today, the Defence filed its “Extremely Urgent Defence Application for a Limited Extension of Time to file its List of Evidence” in which the Defence

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

² See times for disclosure established by the Single Judge in ICC-01/09-02/11-48+Anxs and ICC-01/09-02/11-64.

³ ICC-01/09-02/11-257. *See also* ; ICC-01/09-02/11-259-Conf+ConfAnxs

sought limited extension of time from 4 p.m to 7 p.m to file its LoE and serve materials on the Prosecution and the Registry.⁴

6. Within an hour and a half of the Defence's Request, the Single Judge graciously granted the limited extension of 3 hours sought by the Defence.⁵

Good Cause Exists to justify the requested limited extension

7. The Defence is trying its utmost within the constraints of persistent technical difficulties to fulfil its professional obligations and to comply in good faith with the limited extension of time graciously granted by the Single Judge. As stated in its earlier request,⁶ the Defence is currently trying to upload its evidence in the Court's RINGTAIL system, whilst at the same trying to input all information required for the accompanying metadata fields.
8. The process is ongoing and the Defence anticipates that at this stage, it will not be in a position to complete the uploading of the materials and inputting of the meta data fields within the 3 hours granted by the Single Judge. The Kenya based team has transmitted all the materials from the field to the case manager in The Hague. Despite the best efforts of the case manager, he has indicated to the Team that he is physically unable to upload all the relevant materials into the Court's RINGTAIL system in time for disclosure by 7 p.m. The Kenya based team and the case manager has conducted an assessment of the time required for the uploading and filling in the relevant meta data fields and have collectively concluded that 5 hours would be sufficient to upload and prepare the CDs in time for disclosure. The Defence does not anticipate making any further request for extension in relation to this matter.
9. For all these reasons, and in the interest of allowing the Defence adequate time and facilities to prepare its case, the Defence Team respectfully requests that the

⁴ ICC-01/09-02/11-287

⁵ ICC-01/09-02/11-289

⁶ ICC-01/09-02/11-287

Chamber grants the requested limited further extension of 5 hours in order to allow it to file its complete list of evidence and serve the same on the Prosecution and the Registry by mid-night.

Respectfully submitted,



Mr. Karim A. A. Khan QC

Lead Counsel for Ambassador Francis K. Muthaura

Dated this 5th day of September 2011

At Nairobi, Kenya