



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

PUBLIC

**URGENT DEFENCE REQUEST FOR A RETROSPECTIVE EXTENSION OF TIME
TO FILE DISCLOSURE WITH THE REGISTRY**

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. PROCEDURAL BACKGROUND

1. On 7 April 2011, the Single Judge issued her “Decision Setting the Regime for Evidence Disclosure and Other Related Matters” (the “First Disclosure Decision”).¹
2. On 29 April 2011, the Single Judge issued her “Decision on the ‘Prosecutors application requesting disclosure after a final resolution of the Government’s Kenya’s admissibility challenge’ and Establishing a Calendar for Disclosure Between the Parties” (the “Second Disclosure Decision”).² In the Second Disclosure Decision the Single Judge ordered the Defence teams to disclose to the Prosecutor the evidence they intend to present at the confirmation hearing, if any, and to file the list of such evidence, no later than Monday 5 September 2011.³

II. SUBMISSIONS

3. The Defence for Mr. Uhuru Kenyatta respectfully requests a retrospective extension of time (one hour) under Regulation 35(2) of the Regulations of the Court (the “Regulations”), for it to provide the evidence it intends to rely upon at the confirmation hearing to the Registry.

¹ Pre-Trial Chamber II, Prosecutor v Muthaura et al., Decision Setting the Regime for Evidence Disclosure and Other Related Matters, 7 April 2011, ICC-01/09-02/11-48.

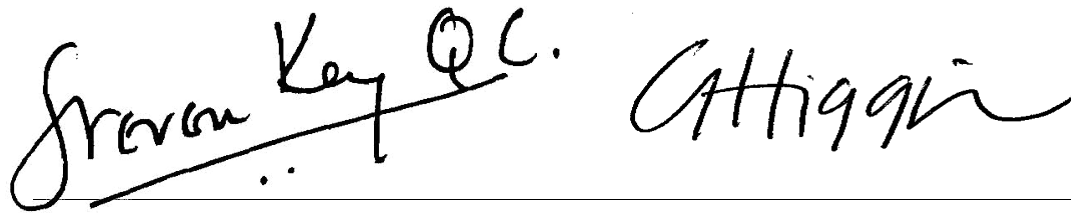
² Pre-Trial Chamber II, Prosecutor v Muthaura et al., Decision on the ‘Prosecutors application requesting disclosure after a final resolution of the Government’s Kenya’s admissibility challenge’ and Establishing a Calendar for Disclosure Between the Parties, 20 April 2011, ICC-01/09-02/11-64.

³ Pre-Trial Chamber II, Prosecutor v Muthaura et al., Decision on the ‘Prosecutors application requesting disclosure after a final resolution of the Government’s Kenya’s admissibility challenge’ and Establishing a Calendar for Disclosure Between the Parties, 20 April 2011, ICC-01/09-02/11-64 at p.13.

4. Due to circumstances beyond the Defence's control it was unable to meet the 16.00hr deadline for communication of evidence to the Registry on 5 September 2011. Those circumstances being:
 - a. A last minute decision from the Chamber that certain evidence not be disclosed to the Co-Defence teams
 - b. Problems in relation to the burning of the evidence onto DVDs
5. As the Defence was working to create the DVDs for the Registry and comply with the above decision it was not possible for it to file an extension of time before the limit expired.
6. The Defence also note that no prejudice has been suffered by the Prosecution as a result of the above as the extension of time is very minimal.

III. RELIEF REQUESTED

7. The Defence respectfully requests that the Pre-Trial Chamber grants a retrospective extension of time in relation to the Defence Disclosure of 5 September 2011.



The image shows two handwritten signatures in black ink. The first signature, on the left, is 'Steven Kay QC.' with a horizontal line drawn underneath it. 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, The Netherlands