



Original: English

No.: ICC-01/09-02/11
Date: 6 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

**Muthaura Defence Notice of Withdrawal of its Request for Adjournment of the
Confirmation Hearing**

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

1. On 3 September 2011, the Defence for Ambassador Muthaura ("Defence") filed its "Defence Application for Adjournment of the Confirmation Hearing or in the Alternative, Extension of Time to file an Amended List of Evidence,"¹ in which it requested the Single Judge to adjourn the confirmation hearing for a minimum of eight weeks and/or in the alternative to grant an extension of time within which to file an amended list of evidence. The Defence's application for adjournment was necessitated by the Prosecution's late disclosure of new allegations on 19 August 2011, which warranted fresh investigations by the Defence.
2. Since the submission of its Request for Adjournment, the Defence has been able to interview approximately 15 new witnesses.
3. On 5 September 2011, the Defence requested and was granted two separate extensions of time-limits in order to file its complete list of evidence ("LoE") and serve its underlying evidence on the Registry and the Prosecution.² The various extensions graciously granted by the Single Judge have made it possible for the Defence to interview 8 new witnesses within the last 24 hours preceding the expiration of the time-limit of 5 September 2011 and file a complete list of its evidence. On the same day, the other Defence teams also filed their lists of evidence.
4. Against this background, the Defence has assessed that the necessity for the requested adjournment which was to file a complete LoE has been largely addressed by the extensions granted by the Single Judge. Whilst the Defence had noted that its preparation was hampered by the Prosecution's late

¹ ICC-01/09-02/11-285.

² ICC-01/09-02/11-289 and ICC-01/09-02/11-299.

disclosure, the Defence feels that at this stage, it is ready and able to proceed with the confirmation hearing as scheduled for the 21st September 2011.

RELIEF SOUGHT

5. For the foregoing reasons, the Defence respectfully withdraws its earlier request for an adjournment of the confirmation hearing and requests further that the confirmation hearing proceed as scheduled for the 21st September 2011.

Respectfully submitted,



Karim A.A. Khan QC

Lead Counsel for Ambassador Francis K. Muthaura

Dated this 6th day of September 2011

At Nairobi, Kenya