

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 07 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 Request to Append Two Missing Pages in from the Rule 78 Disclosure
Package**

Source: Defence for Major General Mohammed Hussein Ali

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

Victims and Witnesses Unit

Counsel Support Section

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. On 20 April 2011, the Single Judge set the regime for disclosure in the case of *The Prosecutor v. Muthaura et al.* In accordance with rule 121(6) of the Rules of Evidence and Procedure, the Single Judge ordered that the Defence disclose any evidence in which it intends to rely upon for the purposes of the Confirmation of Charges hearing (the "Hearing") no later than fifteen days before the Hearing.
2. On 05 September 2011, the Defence for Major General Mohammed Hussein Ali (the "Defence") requested and received a short extension to include materials arriving to The Hague later than expected.
3. At 15:55 and 16:05 that day, the Defence disclosed its materials to the Prosecution and the Registry. Following that, the Defence and an Officer of the Registry agreed upon a time to give the Registry the original copies of its evidence to store in the vault as required by regulation 16(2) of the Regulations of the Registry. A time was set for the following afternoon. Because of technical reasons, the date was moved to the afternoon of 07 September 2011.

ISSUE

4. On 07 September 2011, the Registry Officer and the Defence performed a page-by-page analysis of the documents submitted as evidence for the Defence.
5. During this analysis, the Officer and the Defence discovered that documents KEN-D14-0005-0054 and KEN-D14-0005-0106 were missing one page each. In document KEN-D14-0005-0054, a handwritten page is missing between pages 57 and 58. In document KEN-D14-0005-0106, a handwritten page is missing after page 112.

Relief Sought

6. The Defence respectfully asks the Single Judge to allow the late addition of these two pages to for the purposes of the hearing. The Defence is able to disclosure the additional pages at the earliest convenience to the Registry and Prosecution.



Evans Monari and Gershom Otachi
On behalf of Mohammed Hussein Ali

Dated this, 7th day of September, 2011

At Nairobi, Kenya