

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 8 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

**CONFIDENTIAL EX PARTE PROSECUTION AND DEFENCE OF UHURU
MUIGAI KENYATTA**

Urgent Request to Resubmit 24 TIF Images to Rule 78 Disclosure Package

Source: Defence for Uhuru Muigai Kenyatta

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 Uhuru Muigai Kenyatta
Steven Kay QC and Gillian Higgins

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 Pereira, Deputy
Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. PROCEDURAL HISTORY

1. On 20 April 2011, the Single Judge set the regime for disclosure, ordering that, in accordance with rule 121 of the Rules of Evidence and Procedure, the Defence disclose any evidence upon which it intends to rely for the purposes of the Confirmation of Charges Hearing no later than 5 September 2011.¹
2. On 5 September 2011, the Single Judge issued the "Decision on the 'Request by Defence of Uhuru Kenyatta for the Pre-Trial Chamber to vary the status of Ex Parte Confidential Annexes 1 and 2 of the Application by the Defence for Uhuru Kenyatta under Articles 61(3) and 67(l)(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 Partes'" (the "Decision on Reclassification"),« wherein the Registrar was ordered to reclassify annexes 1, 1A, 1B, 1C and 1D to the Application for Adjournment as "confidential ex parte. Prosecutor and Defence of Uhuru Muigai Kenyatta."²
3. On 5 September 2011, the Defence for Mr Uhuru Kenyatta disclosed its evidence to the Office of the Prosecutor (the "OTP") and the Registry.
4. On 5 September 2011, the Defence received an email from the Registry explaining that the disclosed material had been uploaded into Ringtail. The email also attached an error report detailing that 24 of the disclosed TIF images had experienced copy errors.
5. On 6 September 2011, the Defence received an email from the OTP's Senior Evidence Assistant, Gabriela Ramallo Quiroga, stating that "some of the image file entries are wrong (i.e. they start with '._') and that makes the images inaccessible in Ringtail...We will work our way around this problem to allow

¹ ICC-01/09-02/11-64, p. 13.

² ICC-01/09-02/11-298.

our colleagues in the OTP to actually see the documents but please be aware that this would also affect other parties or participants receiving the same database.”

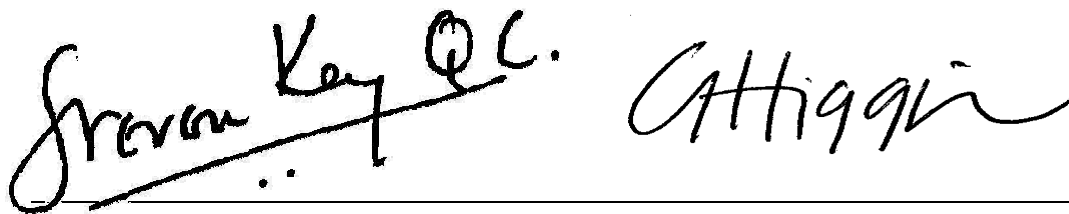
6. Between 6 – 7 September 2011, the issues in the documents were addressed, namely that file names had, unknown to the Defence, become corrupted as a result of being transferred between an external hard disk and the agent server at some point on 5 September 2011.
7. On 8 September 2011, the Defence contacted its Court Officer, Chukwuka Ehighibe, via email to inform him that the problem had been resolved and that the 24 TIF images were suitably formatted and ready to be uploaded. Mr Ehighibe stated that the Registry could not “make any change(s) on what is currently uploaded in Ringtail within the deadline provided by the Chamber, unless it is directed otherwise.”

II. CONFIDENTIALITY CLASSIFICATION

8. The 24 TIF images contain information covering the same topic as the annexes that formed the subject matter of the Decision on Reclassification. The Defence therefore makes this application as confidential ex parte OTP and Defence of Uhuru Muigai Kenyatta.

III. RELIEF SOUGHT

9. The Defence respectfully requests that the Single Judge allow it to provide the following TIF images to the Registry and the OTP: KEN-D13-0005-0816.tif to KEN-D13-0005-0839.tif inclusive
10. The Defence is in a position to provide the Registry and the OTP with the above TIF images at their earliest convenience.

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

Steven Kay QC and Gillian Higgins

On behalf of Uhuru Kenyatta

Dated this Thursday, 08 September 2011

At London, England