



Original: English

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

Date: 15 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

**Defence Request for a Retrospective Extension of Time to File the Subject Matter
and Scope of the Amended List of Viva Voce Witnesses**

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 Pereira, Deputy
Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. PROCEDURAL BACKGROUND

1. On 12 September 2011, the Single Judge issued her “Decision on the Defence Request for Amendment of the List of *Viva Voce* Witnesses”,¹ in which she granted the Defence’s request in part, by allowing the replacement of one of the previously selected *viva voce* witnesses. The Single Judge required the Defence to “submit in a confidential filing information detailing the subject matter and the scope of the proposed testimony of each *viva voce* witness.”² The Single Judge ordered the Defence to submit this information by Wednesday, 14 September 2011.³

II. SUBMISSIONS

2. The Defence for Mr. Uhuru Kenyatta respectfully requests a retrospective extension of time (until 10:30hrs 15 September 2011) under Regulation 35(2) of the Regulations of the Court (the “Regulations”), for it to file with the Chamber the subject matter and scope of the proposed testimony of each *viva voce* witness.
3. Due to circumstances beyond the Defence’s control, it was unable to meet the 14 September deadline for this communication as there were technical issues relating to the sending of the communication to the Court Management. The size of the filing which includes a ‘PDF’ attachment was too excessive for the ICC court management mailbox which is restricted to 5 megabytes. This issue only came to the attention of the Defence at 9:00hours on 15 September 2011 after an attempt had been made to send the filing on 14 September 2011.

¹ Pre-Trial Chamber II, The Prosecutor v Muthaura et al., Decision on the Defence Request for Amendment of the List of *Viva Voce* Witnesses, 12 September 2011, ICC-01/09-02/11-316.

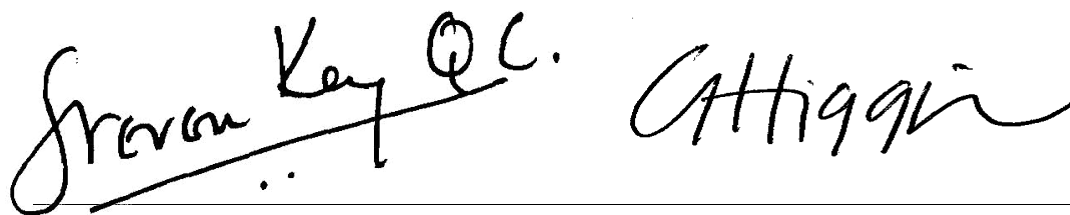
² Pre-Trial Chamber II, The Prosecutor v Muthaura et al., Decision on the Defence Request for Amendment of the List of *Viva Voce* Witnesses, 12 September 2011, ICC-01/09-02/11-316, at para 11

³ Pre-Trial Chamber II, The Prosecutor v Muthaura et al., Decision on the Defence Request for Amendment of the List of *Viva Voce* Witnesses, 12 September 2011, ICC-01/09-02/11-316, at p. 6.

4. The Defence submits that no prejudice has been suffered by the Prosecution as a result of the above, as the extension of time requested is minimal.

III. RELIEF REQUESTED

5. The Defence respectfully requests the Pre-Trial Chamber to grant a retrospective extension of time in relation to the Defence submission of information dealing with the subject matter and scope of the proposed testimony of each viva voce witness.



Handwritten signatures of Steven Kay QC and Gillian Higgins. The signature of Steven Kay QC is on the left, and the signature of Gillian Higgins is on the right. A horizontal line is drawn below the signatures.

Steven Kay QC and Gillian Higgins
On behalf of Uhuru Muigai Kenyatta

Dated this, Thursday 15 September 2011

At London , UK