

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-01/09-02/11
Date: 16 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 with Confidential Annex A

**Defence Submission in Accordance with the Single Judge's Order in Decision
ICC-01/09-02/11-331**

Source: Defence for 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 05 September 2011, the Defence Team for General Mohammed Hussein Ali (the "Defence") disclosed its list of evidence which it intends to present at the Confirmation of Charges Hearing (the "Hearing"). Within that list, the Defence listed two *viva voce* witnesses, including Witness KEN-D14-P-002.¹
2. On 14 September 2011, the Defence requested the Pre-Trial Chamber to allow it to withdraw Witness KEN-D14-P-002 from its list of *viva voce* witnesses appearing at the Hearing and substitute the witness with a new witness.²
3. On 15 September 2011, the Single Judge issued a decision allowing the witness substitution in so far that "the Defence of Mr. Ali [] submit[s] in a confidential filing information detailing the subject mater and the scope of the proposed testimony of each *viva voce* witness".³

Defence Submissions

4. In compliance with the Single Judge's order, the Defence hereby submits Confidential Annex A appended to this filing. This annex details the subject matter and the scope of the proposed testimony of each *viva voce* witness. Because of the information provided within this annex, the Defence asks that Annex A be classified as Confidential.

¹ ICC-01/09-02/11-293 and its Confidential Annexes.

² ICC-01/09-02/11-327 and its Confidential Annexes. A corrigendum was filed the following morning correcting a typographical error in Confidential Annex A as ICC-01/09-02/11-327-Conf-AnxA-Corr.

³ ICC-01/09-02/11-331 at paragraph 11.

Respectfully Submitted,

Two handwritten signatures in black ink. The first signature on the left is 'Evans Monari' and the second signature on the right is 'Gershom Otachi'.

Evans Monari and Gershom Otachi
On behalf of Mohammed Hussein Ali

Dated this, 16th of September 2011

At Nairobi, Kenya