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No.: ICC-01/09-02/11
Date: 31 January 2012

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul
Judge Cuno Tarfusser

SITUATION IN THE REPUBLIC OF KENYA

***IN THE CASE OF THE PROSECUTOR V. FRANCIS KIRIMI MUTHAURA,
UHURU MUIGAI KENYATTA AND MOHAMMED HUSSEIN ALI***

Public Document

**Prosecution's Request that the Pre-Trial Chamber Disregard the "Corrigendum to
'Defence Application for Leave to Appeal the 'Decision on the Confirmation of
Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute' "
(ICC-01/09-02/11-385-Corr + Corr-Anx)**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

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Detention Section

Victims Participation and Reparations Section

Other

1. On 23 January 2012, the Pre-Trial Chamber issued its “Decision on the Confirmation of Charges Pursuant to Article 61 (7) (a) and (b) of the Rome Statute.”¹
2. On 30 January 2012, the Defence of Mr Muthaura filed its “Defence Application for leave to Appeal the ‘Decision on the Confirmation of Charges Pursuant to Article 61 (7) (a) and (b) of the Rome Statute’ “(Application for Leave to Appeal).”²
3. On 31 January 2012, the Defence filed a corrigendum to its Application for Leave to Appeal.³ In an explanatory annex, the Defence argues that due to an error an entire paragraph and its accompanying footnote were omitted in the original Application. They are both included in the corrected version of the Application which the Defence seeks to have accepted by the Chamber.
4. The Prosecution notes that the proposed new paragraph includes substantive submissions and even new jurisprudence in its attached footnote.⁴ Thus, the Defence is effectively seeking to file before the Chamber additional submissions and authorities (outside the statutory time-limit for the filing of the application for leave to appeal) using a corrigendum as a vehicle for these purposes.
5. The Appeals Chamber has stated in conclusive terms that the purpose of corrigenda is to correct typographical errors. In particular, a corrigendum may not be used to add or alter the substance of the submissions made in a document.⁵ The Appeals Chamber has expressly rejected a corrigendum where participants before the Court had added a sentence and a footnote to their original filing, thereby “effectively

¹ ICC-01/09-02/11-382-Conf and ICC-01/09-02/11-382-Red

² ICC-01/09-02/11-385

³ ICC-01/09-02/11-385-Corr and ICC-01/09-02/11-385-Corr-Anx

⁴ ICC-01/09-02/11-385-Corr-Anx, para. 3, ft. 31

⁵ ICC-01/05-01/08-631-Red: Judgment on the appeal of the Prosecutor against Pre-Trial Chamber II's "Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa", para 38. Confirming the principle that corrigenda may not be used to substantively amend or supplement a document, see Prosecutor v Mejkic et al., IT-02-65AR1 1 bis, Decision on Joint Defense Motion for Enlargement of Time to File Appellant's Brief, 30 August 2005

supplementing their submissions without leave of the Appeals Chamber instead of merely correcting typographical errors in their filing”.⁶

6. The Prosecution accordingly submits that since the document filed by the Defence clearly falls outside the proper scope of a corrigendum as defined by the Appeals Chamber, it should not be received by the Pre-Trial Chamber. Accordingly, the only document that should be considered by the Chamber as being validly filed is the original version of Mr. Muthaura’s Application for Leave to Appeal, as originally filed on 30 January 2012.



Luis Moreno-Ocampo,
Prosecutor

Dated this 31st day of January 2012

At The Hague, The Netherlands

⁶ ICC-01/05-01/08-631-Red, para. 39.