

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 20 July 2011

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single 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 Document

**Order on the Resubmission of the "Defence Request for Leave to Appeal the
Redacted First Decision on the Prosecutor's Requests for Redactions and Other
Related Requests"**

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

The Office of the Prosecutor
Luis Moreno-Ocampo, Prosecutor
Fatou Bensouda, Deputy Prosecutor

Counsel for Francis Kirimi Muthaura
Karim A. Khan and Kennedy Ogetto

Counsel for Uhuru Muigai Kenyatta
Steven Kay and Gillian Higgins

Counsel for Mohammed Hussein Ali
Evans Monari and Gershom Otachi
Bw'omanwa

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar
Silvana Arbia, Registrar
Didier Preira, Deputy Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”),¹ hereby issues the “Order on the Resubmission of the ‘Defence Request for Leave to Appeal the Redacted First Decision on the Prosecutor’s Requests for Redactions and Other Related Requests’”.

1. On 8 March 2011, the Chamber, by majority, decided to summon Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali to appear before it.² Pursuant to this decision, the suspects voluntarily appeared before the Court at the initial appearance hearing held on 8 April 2011 during which, *inter alia*, the Chamber set the date for the commencement of the confirmation of charges hearing for 21 September 2011.³

2. On 8 July 2011, the Single Judge issued the “First Decision on the Prosecutor’s Requests for Redactions and Other Related Requests”.⁴ On 12 July 2011 a confidential redacted version thereof has been issued.⁵

3. On 19 July 2011, the Defence for Mr Kenyatta and Mr Ali jointly submitted the “Defence Request for Leave to Appeal the Redacted First Decision on the Prosecutor’s Requests for Redactions and Other Related Requests” (the “Defence Request”).⁶

4. The Single Judge notes regulation 37(1) of the Regulations of the Court (the “Regulations”), which provides that “[a] document filed with the Registry shall not exceed 20 pages, unless otherwise provided in the Statute, Rules [the] Regulations or ordered by the Chamber”. Paragraph 2 of the same regulation entrusts the Chamber

¹ Pre-Trial Chamber II, “Decision Designating a Single Judge”, ICC-01/09-02/11-9.

² Pre-Trial Chamber II, “Decision on the Prosecutor’s Application for Summonses to Appear for Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali”, ICC-01/09-02/11-01.

³ ICC-01/09-02/11-T-1-ENG.

⁴ Pre-Trial Chamber II, ICC-01/09-02/11-165-Conf-Exp.

⁵ Pre-trial Chamber II, “Redacted First Decision on the Prosecutor’s Requests for Redactions and Other Related Requests”, ICC-01/09-01/11-165-Conf-Red.

⁶ ICC-01/09-02/11-176-Conf.

with the authority to extend the page limit, upon request of a participant, in “exceptional circumstances”.

5. The Single Judge notes that the Defence Request is 23 pages in length, thus exceeding the page limit as provided for by regulation 37 of the Regulations. Furthermore, the Single Judge notes that no extension of the said page limit has been requested by the Defence in accordance with regulation 37(2) of the Regulations.

6. Therefore, the Single Judge is of the view that the Defence Request, as filed, shall be dismissed *in limine*. However, the Defence of Mr Kenyatta and Mr Ali shall be given a time limit of one day to resubmit its request in compliance with regulation 37(1) of the Regulations or, if necessary, to request an extension of page limit pursuant to regulation 37(2) of the Regulations justifying the existence of “exceptional circumstances” within the meaning of the said provision.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

(a) DISMISSES the “Defence Request for Leave to Appeal the Redacted First Decision on the Prosecutor’s Requests for Redactions and Other Related Requests”;

(b) ORDERS the Defence to resubmit its Request for Leave to Appeal in compliance with regulation 37(1) of the Regulations or to request an extension of page limit pursuant to regulation 37(2) of the Regulations, no later than **Thursday, 21 July 2011**.

Done in both English and French, the English version being authoritative.



Judge Ekaterina Trendafilova
Single Judge

Dated this Wednesday, 20 July 2011

At The Hague, The Netherlands