

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 4 August 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**

**Decision on the Prosecutor's Request for Leave to Reply**

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, Kennedy Ogetto and  
Essa Faal

**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**

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**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")<sup>1</sup> of the International Criminal Court (the "Court"), issues this decision with respect to the "Prosecution's Request for leave to reply to the 'Defence Response to 'Prosecution's Application for Leave to Appeal the Decision with Respect to the Question of invalidating the Appointment of Counsel to the Defence'" (the "Request").<sup>2</sup>

1. On 20 July 2011, the Single Judge issued the "Decision with Respect to the Question of Invalidating the Appointment of Counsel to the Defence" (the "Decision") in which it was decided that Essa Faal may continue to represent Francis Kirimi Muthaura ("Mr. Muthaura") in the case against him.<sup>3</sup>

2. On 26 July 2011, the Prosecutor lodged the "Prosecution's Application for Leave to Appeal the 'Decision with Respect to the Question of Invalidating the Appointment of Counsel to the Defence' (ICC-01/09-02/11-185)" (the "Prosecutor's Application").<sup>4</sup>

3. On 1 August 2011, the Defence for Mr. Muthaura submitted the "Defence Response to the 'Prosecution's Application for Leave to Appeal the 'Decision with Respect to the Question of Invalidating the Appointment of Counsel to the Defence' (ICC-01/09-02/11-185)".<sup>5</sup>

4. On 3 August 2011, the Prosecutor submitted the Request arguing that his "Reply would address and attempt to clarify [his] position on two points upon which, as demonstrated by the Defence Response, there apparently is some confusion".<sup>6</sup> The

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<sup>1</sup> Pre-Trial Chamber II, "Decision Designating a Single Judge", ICC-01/09-02/11-9.

<sup>2</sup> ICC-01/09-02/11-209.

<sup>3</sup> Pre-Trial Chamber II, ICC-01/09-02/11-185.

<sup>4</sup> ICC-01/09-02/11-195.

<sup>5</sup> ICC-01/09-02/11-207.

<sup>6</sup> ICC-01/09-02/11-209.

points to be clarified concern the nature of the test applied by the Chamber and its relationship to the tests applied by other chambers of the Court.<sup>7</sup>

10. The Single Judge notes article 82(1)(d) of the Rome Statute and regulation 24(5) of the Regulations of the Court.

11. The Single Judge, taking into consideration the abovementioned arguments of the Prosecutor, is not convinced that further submissions are necessary to decide on the question whether or not leave to appeal the Decision should be granted. The Single Judge considers that the Prosecutor's Application sufficiently sets out his points which need not be further clarified. Finally, the Single Judge considers it necessary to emphasize that the parties and participants may rest assured that the Chamber is in a position to make a proper interpretation of the law and evaluation of the facts, as submitted to the Chamber, without engaging into prolonged exchanges between the parties beforehand.

**FOR THESE REASONS, THE SINGLE JUDGE HEREBY**

**a) rejects** the Request.

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

  
 Judge Ekaterina Trendafilova  
 Single Judge

Dated this Thursday, 4 August 2011

At The Hague, The Netherlands

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<sup>7</sup> ICC-01/09-02/11-209, para. 3.