

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/09-02/11 OA2

Date: 17 August 2011

THE APPEALS CHAMBER

Before:

Judge Anita Ušacka, Presiding Judge

Judge Sang-Hyun Song

Judge Akua Kuenyehia

Judge Erkki Kourula

Judge Daniel David Ntanda Nsereko

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

**Decision on the “Appeal against the Single Judge’s Decision on the ‘Request by
Ms. Moraa Gesicho to Appear as Amicus Curiae’”**

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

The Office of the Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor
Mr Fabricio Guariglia

Counsel for Francis Kirimi Muthaura

Mr Karim A. A. Khan
Mr Kennedy Ogeto

Appellant

Ms Moraa Gesicho

Counsel for Uhuru Muigai Kenyatta

Mr Steven Kay
Mr Gillian Higgins

Counsel for Mohammed Hussein Ali

Mr Evens Monari
Mr Gershom Otachi Bw'omanwa

REGISTRY

Registrar

Ms Silvana Arbia



The Appeals Chamber of the International Criminal Court,

In the appeal of Ms Moraa Gesicho against the decisions of Pre-Trial Chamber II entitled “Decision on the ‘Request by Ms. Moraa Gesicho to Appear as Amicus Curiae’” of 12 April 2011 May (ICC-01/09-02/11-54),

After deliberation,

Renders unanimously, the following

DECISION

The appeal is dismissed.

REASONS

I. PROCEDURAL HISTORY

1. On 5 April 2011, shortly before the initial appearance of Mr Francis Kirimi Muthaura, Mr Uhuru Muigai Kenyatta and Mr Mohammed Hussein Ali,¹ the Registrar transmitted to Pre-Trial Chamber II the “Request by Ms. Moraa Gesicho to Appear as Amicus Curiae”, in which Ms Gesicho requested (i) leave to submit *amicus curiae* observations; and (ii) a stay of “the decision summoning the 6 alleged perpetrators of post 2007 election violence pending the decision on this application”.²
2. On 12 April 2011, Judge Ekaterina Trendafilova, acting as Single Judge of Pre-Trial Chamber II, rejected the request to submit *amicus curiae* observations pursuant to rule 103 (1) of the Rules of Procedure and Evidence and dismissed *in limine* the request to stay the proceedings (hereinafter: “Impugned Decision”).³

¹ The initial appearance hearing in this case was scheduled for 8 April 2011; see “Decision Setting a New Date for the Initial appearance”, 18 March 2011, ICC-01/09-02/11-8.

² ICC-01/09-02/11-45-Anx, p. 14.

³ “Decision on the ‘Request by Ms. Moraa Gesicho to Appear as Amicus Curiae’”, ICC-01/09-02/11-54.

3. On 11 August 2011, the Registrar transmitted to the Appeals Chamber Ms Gesicho's "Appeal against the Single Judge's Decision on the 'Request by Ms. Moraa Gesicho to Appear as Amicus Curiae'"⁴ (hereinafter: "Appeal").

II. MERITS

4. The Appeals Chamber notes that Ms Gesicho filed her Appeal directly before it, invoking article 82 of the Statute as a legal basis.⁵ However, the Impugned Decision does not fall into any of the categories of decisions that can be appealed without leave of the Pre-Trial Chamber. The Impugned Decision is neither a decision "with respect to jurisdiction or admissibility" (article 82 (1) (a) of the Statute), nor a decision "granting or denying release of the person being investigated or prosecuted" (article 82 (1) (b) of the Statute), nor a decision of a "Pre-Trial Chamber to act on its own initiative under article 56, paragraph 3" (article 82 (1) (c) of the Statute). Nor is it an order under article 75 of the Statute that could be appealed pursuant to article 82 (4) of the Statute. In addition, the Appeals Chamber notes that even if the Impugned Decision fell under any of the categories provided for in article 82 (1) or (4) of the Statute, the Appeal would have been filed out of time (see rules 154 and 150 of the Rules of Procedure and Evidence).

5. Accordingly, the Appeals Chamber dismisses the appeal as inadmissible.

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



Judge Anita Ušacka
Presiding Judge

Dated this 17th day of August 2011

At The Hague, The Netherlands

⁴ "Transmission by the Registry of the "Appeal against the Single Judge's Decision on the Request by Ms. Moraa Gesicho to Appear as Amicus Curiae", ICC-01/09-02/11-230-Anx 1.

⁵ Appeal, p. 2.