



Original: English

No.: ICC-01/09-02/11
Date: 5 September 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 “Request by Defence of Uhuru Kenyatta for the Pre-Trial Chamber to vary the status of Ex Parte Confidential Annexes 1 and 2 of the ‘Application by the Defence for Uhuru Kenyatta under Articles 61(3) and 67(1)(a) for Adjournment of the Confirmation Hearing Scheduled for 21 September 2011 and Request for Alteration to their Selected Viva Voce Witnesses’ to Confidential Inter Partes”

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 Khan, Essa Faal and Kennedy Ogetto

Counsel for Uhuru Muigai Kenyatta

Steven Kay and Gillian Higgins

Counsel for Mohamed Hussein Ali

Evans Monari, John Philpot and
Gershom Otachi Bw'omanwa

Legal Representatives of the Victims

Morris Azuma Anyah

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

Maria Luisa Martinod-Jacome

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 renders this decision on the “Request by Defence of Uhuru Kenyatta for the Pre-Trial Chamber to vary the status of Ex Parte Confidential Annexes 1 and 2 of the ‘Application by the Defence for Uhuru Kenyatta under Articles 61(3) and 67(1)(a) for Adjournment of the Confirmation Hearing Scheduled for 21 September 2011 and Request for Alteration to their Selected Viva Voce Witnesses’ to Confidential Inter Partes” (the “Request”).²

1. On 8 March 2011, the Chamber, by majority, decided to summon Francis Kirimi Muthaura (“Mr. Muthaura”), Uhuru Muigai Kenyatta (“Mr. Kenyatta”) and Mohammed Hussein Ali (“Mr. Ali”) (collectively, the “Suspects”) to appear before it.³ 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.

2. On 2 September 2011, the “Application by the Defence for Uhuru Kenyatta under Articles 61(3) and 67(1)(a) for an Adjournment of the Confirmation Hearing Scheduled for 21 September 2011 and Request for Alteration to their Selected Viva Voce Witnesses” was submitted, together with 6 annexes, filed “confidential *ex parte*” (the “Application for Adjournment”).⁴

3. On the same day, the Defence of Mr. Kenyatta filed the Request, seeking that the annexes be reclassified as “confidential”, “[g]iven the nature and scope of the

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

² ICC-01/09-02/11-283.

³ 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.

⁴ ICC-01/09-02/11-281 and confidential *ex parte* annexes 1, 1A, 1B, 1C, 1D, 2.

information contained therein and its direct relevance to all parties to the proceedings”.⁵

4. The Single Judge notes articles 54(3)(f), 57(3)(c) and 68(1) of the Rome Statute, and regulation 23*bis*(3) of the Regulations of the Court.

5. With respect to annexes 1, 1A, 1B, 1C and 1D to the Application for Adjournment, the Single Judge notes that the allegations of the Defence of Mr. Kenyatta and other information contained in the annexes relate to protective measures currently in place at the request of the Prosecutor. In these circumstances, the Single Judge considers that the said annexes should be made accessible to the Prosecutor, but that access should presently not be given to the Defence of Mr. Muthaura and the Defence of Mr. Ali.

6. With respect to the remaining annex 2 to the Application for Adjournment, the Single Judge considers that there is no risk associated with the reclassification of the annex as “confidential”.

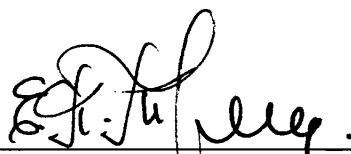
FOR THESE REASONS, THE SINGLE JUDGE HEREBY

a) orders the Registrar to reclassify documents ICC-01/09-02/11-281-Conf-Exp-Anx1, ICC-01/09-02/11-281-Conf-Exp-Anx1A, ICC-01/09-02/11-281-Conf-Exp-Anx1B, ICC-01/09-02/11-281-Conf-Exp-Anx1C and ICC-01/09-02/11-281-Conf-Exp-Anx1D as “confidential *ex parte*, Prosecutor and Defence of Uhuru Muigai Kenyatta”;

b) orders the Registrar to reclassify document ICC-01/09-02/11-281-Anx2 as “confidential”.

⁵ ICC-01/09-02/11-283, para. 9.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Monday, 5 September 2011

At The Hague, The Netherlands