

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 1 April 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 Reclassifying Documents and Requesting Information from the Registry
with regard to the First Appearance of Francis Kirimi Muthaura, Uhuru Muigai
Kenyatta and Mohammed Hussein Ali**

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 the Defence

Karim A. A. Khan
Kennedy Ogetto
Steven Kay
Gillian Higgins
Evans Monari
John Philpot
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

Other

REGISTRY

Registrar & Deputy Registrar
Silvana Arbia, Registrar
Didier Preira, Deputy Registrar
Victims and Witnesses Unit

Defence Support Section
Esteban Peralta Losilla

Detention Section

**Victims Participation and Reparations
Section**

Other
Marc Dubuisson

Judge Ekaterina Trendafilova, acting as Single Judge¹ on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”) renders this decision reclassifying two documents and requesting information from the Registry concerning the composition of the defence teams assisting Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, respectively, during their first appearance before the Chamber.

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 the Court on Thursday, 7 April 2011 at 14.30 hours.²

2. On 18 March 2011, the Chamber decided that the initial appearance hearing shall be convened on Friday, 8 April 2011 at 14.30 hours.³

3. On 30 March 2011, the Registry filed two documents, marked *ex parte* and under seal, containing information submitted by the Counsel Support Section about the composition of the defence teams and the measures taken to accommodate them within the premises of the Court in view of the first appearance of Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali.⁴

4. The Single Judge notes article 60(1) of the Rome Statute, rule 121(1) of the Rules of Procedure and Evidence and regulation 23 *bis* of the Regulations of the Court (the “Regulations”).

5. The Single Judge observes that the documents filed by the Registry are marked as “under seal” and “*ex parte*”, without providing any reason for such classification. The Single Judge reminds that, under regulation 23 *bis* of the Regulations, any document filed by the Registrar “shall state the factual and legal basis for the chosen

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, p. 23.

³ Pre-Trial Chamber II, “Decision Setting a New Date for the Initial Appearance”, ICC-01/09-02/11-8.

⁴ ICC-01/09-02/11-24-US-Exp and ICC-01/09-02/11-25-US-Exp.

classification". Considering that the documents filed by the Registry do not contain any sensitive information and cognizant of the principle of publicity of the proceedings, in the absence of any reason submitted by the Registry for the chosen classification, the Single Judge considers it appropriate to reclassify the document as "public".

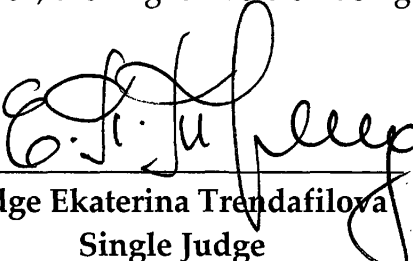
6. Furthermore, the Single Judge notes that the documents submitted by the Registry do not indicate the exact composition of the respective defence teams for the first appearance scheduled for 8 April 2011. The Single Judge is of the view that, in order to ensure the proper management and efficiency of the first appearance hearing, it is essential for the Chamber to receive from the Registry, at the latest by Tuesday 5 April at 12.00 hours, the exact composition of the defence teams assisting Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, respectively, during their first appearance before the Chamber.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

orders the Registry to inform the Chamber at the latest by **Tuesday 5 April at 12.00 hours** of the exact composition of the defence teams assisting Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, respectively, during their first appearance before the Chamber;

decides to reclassify as "public" documents ICC-01/09-02/11-24-US-Exp and ICC-01/09-02/11-25-US-Exp.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Friday, 1 April 2011

At The Hague, The Netherlands