



Case Information Sheet

Situation in the Republic of Kenya

The Prosecutor

v.

*Francis Kiriimi Muthaura, Uhuru
Muigai Kenyatta and Mohammed
Hussein Ali*

Case n° ICC-01/09-02/11



Francis Kiriimi Muthaura (Muthaura)



Date of birth	20 October 1946
Place of Birth	Mariene, Kenya
Nationality	Kenyan
Official position	Currently holding the positions of Head of the Public Service and Secretary to the Cabinet of the Republic of Kenya
Summons to appear	8 March 2011
Initial appearance hearing	8 April 2011

Confirmation of charges hearing Scheduled for 21 September 2011

Charges

Pre-Trial Chamber II found reasonable grounds to believe that Muthaura – together with Kenyatta – is criminally responsible as an indirect co-perpetrator pursuant to article 25(3)(a) of the Rome Statute for the crimes against humanity of:

- murder (article 7(l)(a));
- forcible transfer (article 7(l)(d));
- rape (article 7(l)(g));
- persecution (article 7(l)(h)); and
- other inhumane acts (article 7(l)(k)).

Uhuru Muigai Kenyatta (Kenyatta)



Date of birth	26 October 1961
Place of Birth	Nairobi, Kenya
Nationality	Kenyan
Official position	Currently holding the positions of Deputy Prime Minister and Minister for Finance of the Republic of Kenya
Summons to appear	8 March 2011
Initial appearance hearing	8 April 2011

Confirmation of charges hearing Scheduled for 21 September 2011

Charges

Pre-Trial Chamber II found reasonable grounds to believe that Kenyatta – together with Muthaura – is criminally responsible as an indirect co-perpetrator pursuant to article 25(3)(a) of the Rome Statute for the crimes against humanity of:

- murder (article 7(l)(a));
- forcible transfer (article 7(l)(d));
- rape (article 7(l)(g));
- persecution (articles 7(l)(h)); and
- other inhumane acts (article 7(l)(k)).

Mohammed Hussein Ali (Ali)



Date of birth	1956
Place of Birth	Eldoret, Kenya
Nationality	Kenyan
Official position	Currently holding the position of Chief Executive of the Postal Corporation of Kenya
Summons to appear	8 March 2011
Initial appearance hearing	8 April 2011

Confirmation of charges hearing Scheduled for 21 September 2011

Charges

Pre-Trial Chamber II found that there are not reasonable grounds to believe that Ali is an indirect co-perpetrator, because his contribution to the commission of the crimes was not essential. Instead, the Chamber was satisfied that there were reasonable grounds to believe that Ali otherwise contributed (within the meaning of article 25(3)(d) of the Rome Statute) to the commission of the following crimes against humanity:

- murder (articles 7(l)(a));
- forcible transfer (article 7(l)(d));
- rape (article 7(l)(g));
- persecution (article 7(l)(h)); and
- other inhumane acts (articles 7(l)(k)).

Alleged crimes (non-exhaustive list)

Pre-Trial Chamber II found that there are reasonable grounds to believe that:

- From on or about 24 January 2008 until 31 January 2008, the Mungiki criminal organisation allegedly carried out a widespread and systematic attack against the non-Kikuyu population perceived as supporting the Orange Democratic Movement (ODM) (mostly belonging to Luo, Luhya and Kalenjin ethnic groups) in Nakuru and Naivasha.
- The events in Nakuru allegedly resulted in at least 112 deaths, 39 reported cases of rape, at least five cases of forcible circumcision and the displacement of thousands of people. With respect to the events taking place in Naivasha, at least 40 deaths allegedly occurred as a result of the Mungiki attack, along with at least four cases of forcible circumcision of Luo men and the displacement of up to 10,000 residents. Rape as an act constituting a crime against humanity was also allegedly committed as part of the attack in Nakuru. Furthermore, the acts of persecution and forcible circumcision which qualify as “other inhumane acts” were committed as part of the attack against the civilian population in Nakuru and Naivasha.
- Between, at least, mid-November 2007 and January 2008, inter alia, Muthaura, Kenyatta and members of the Mungiki, allegedly created a common plan to commit the retaliatory attack in the Rift Valley. According to the alleged plan, it was envisaged at the meetings that the Mungiki would carry out the attack with the purpose of keeping the Party of National Unity (PNU) in power, in exchange for an end to government repression and protection of the Mungiki’s interests.
- **Uhuru Muigai Kenyatta** allegedly exercised over the Mungiki a control that amounted to the “control over the organisation” and his contribution to the implementation of the common plan was essential. More specifically, Kenyatta allegedly:
 - (i) organised and facilitated, on several occasions, meetings between powerful pro-PNU figures and representatives of the Mungiki, thus making possible the very conception of the common plan referred to above;
 - (ii) supervised the preparation and coordination of the Mungiki in advance of the attack;
 - (iii) contributed money towards the retaliatory attack perpetrated by the Mungiki in the Rift Valley.

The Chamber is thus of the view that there are reasonable grounds to believe that the contribution given by Kenyatta to the implementation of the common plan was essential.

- **Francis Kirimi Muthaura**, allegedly personally led and exercised a coordinating role within the organisation, a number of meetings between prominent PNU members and Mungiki members wherein the common plan and its implementation were agreed upon. Furthermore, on at least one occasion, he allegedly directly paid a significant sum of money to Mungiki representatives at the conclusion of one of the planning meetings held in November 2007. Muthaura, by virtue of his position of Head of the Public Service and Secretary to the Cabinet, as well as of Chairman of the National Security and Advisory Committee, exercised direct authority over the Kenyan Police Forces, which allegedly secured automatic compliance with his orders. Muthaura allegedly used his authority to ensure that the Kenyan Police Forces did not interfere with the commission of the crimes directly perpetrated by the Mungiki. Moreover, Muthaura allegedly had the power to frustrate the commission of the crimes in the way they were committed by not performing his tasks and that his contribution was thus essential.

- **Mohammed Hussein Ali**, before the commission of the crimes, was allegedly contacted by Muthaura who informed him in advance of the intention of the members of the common plan to commit the alleged crimes and instructed him to order the Kenyan Police Forces not to interfere with the perpetration of the crimes by the Mungiki. As demonstrated by the failure of the police to respond to the crimes being committed, Ali, exercising his authority as the Commissioner of the Kenyan Police Forces, allegedly directed the police not to obstruct the Mungiki from committing the crimes. Likewise, Ali's alleged contribution to the commission of the crimes was made with the awareness of the intention of the group to commit the said crimes.

Key judicial developments

Opening of the investigation

On 5 November 2009, the ICC Prosecutor notified the President of the Court of his intention to submit a request for the authorisation to start an investigation into the situation in Kenya pursuant to article 15(3) of the Rome Statute, about the 2007-2008 post-election violence in Kenya in which around 1300 people were allegedly killed.

On 6 November 2009, the Presidency of the Court assigned the situation to Pre-Trial Chamber II, composed of Judge Ekaterina Trendafilova (presiding judge), Judge Hans-Peter Kaul and Judge Cuno Tarfusser.

On 31 March 2010, Pre-Trial Chamber II granted, by majority, the Prosecution's request to open an investigation into alleged crimes against humanity in Kenya. The investigation covers crimes against humanity committed between 1 June 2002 (the date of the Rome Statute's entry into force for Kenya) and 26 November 2009 (the date the Prosecutor filed the request for authorisation to start an investigation).

Summonses to appear and initial appearance hearing

On 15 December 2010, the ICC Prosecutor requested Pre-Trial Chamber II of the ICC to issue summonses to appear for six Kenyans on the basis that there existed reasonable grounds to believe that they were criminally responsible for crimes against humanity.

On 8 March 2011, Pre-Trial Chamber II, by majority, issued the decisions on the applications submitted by the Prosecutor and summoned Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali to appear before the Court.

On 31 March 2011, the Government of Kenya filed an application challenging the admissibility of the case before the ICC.

At the initial appearance hearing, that took place on 8 April 2011, the Chamber scheduled the confirmation of charges hearing in this case on 21 September 2011.

Composition of Pre-Trial Chamber II

Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul
Judge Cuno Tarfusser

Representation of the Office of the Prosecutor

Luis Moreno-Ocampo, Prosecutor
Fatou Bensouda, Deputy Prosecutor

Defence Counsel for Francis Kirimi Muthaura

Karim Ahmad Khan
Kennedy Ogeto
Muriuki Mugambi

Defence Counsel for Uhuru Muigai Kenyatta

Steven Kay QC
Gillian Higgins
Benjamin Joyes

Defence Counsel for Mohammed Hussein Ali

Evans Monari
Gershom Otachi Bw'omanwa
Gregory Kehoe

