

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 6 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 on the "Defence Request for Authorisation for Four Defence Team
Members to Attend the Intital Appearance"**

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 Mohammed Hussein Ali
Evans Monari, John Philpot and
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

REGISTRY

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 Judge¹ on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”) renders this decision on the “Defence Request for Authorisation for Four Defence Team Members to Attend the Initial Appearance” (the “Defence Request”).²

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 7 April 2011.³

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.⁴

3. On 31 March 2011, the Registrar filed in the record of the case the “Information submitted to the Chamber by the Counsel Support Section”,⁵ wherein it is stated, *inter alia*, that all counsels have been informed that their participation at the upcoming initial appearance hearing will be limited to three persons per team, and that they may submit a request to the Chamber should they wish to have more persons present.

4. On 5 April 2011, the Defence for Mr. Ali filed the Defence Request. It submits that the Defence is currently composed of four lawyers (Evans Monari, Gershom Otachi Bwo’manwa, Gregory Kehoe and John Philpot), and that it is “not possible for the lawyers to provide any form of assistance to the defendant during the initial appearance if either of them is not permitted to attend the hearing”.⁶ According to the Defence Request, “the initial appearance is of particular importance to the defendant, and it is essential that the Defendant is assisted by the four key lawyers

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

² ICC-01/09-02/11-44.

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

⁵ ICC-01/09-02/11-24. This document was originally filed “under seal”, and has been reclassified as “public” pursuant to Pre-Trial Chamber II, “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”, ICC-01/09-02/11-28.

⁶ ICC-01/09-02/11-44, paras 4-5.

in his case at this critical juncture”.⁷ On this basis, the Defence requests that the Chamber approve the presence of its four members during the initial appearance hearing on 8 April 2011.⁸

5. The Single Judge notes articles 60(1) and 67 of the Rome Statute (the “Statute”) and rule 121(1) of the Rules of Procedure and Evidence (the “Rules”).

6. At the outset, the Single Judge recalls article 67(1)(d) of the Statute, pursuant to which the accused shall have the right to conduct his or her defence in person or through legal assistance of his or her choosing.

7. On the other hand, the Single Judge notes that pursuant to article 60(1) of the Statute, the purpose and scope of the initial appearance hearing is for the Chamber to satisfy itself that the person has been informed of the crimes which he or she is alleged to have committed, and of his or her rights under the Statute. In addition, rule 121(1) of the Rules posits that at the initial appearance hearing, the Chamber shall set the date on which it intends to hold a hearing on the confirmation of charges. As stated recently by this Chamber,⁹ the initial appearance hearing thus has this limited purpose and scope.

8. On the basis of the foregoing, the Single Judge considers that Mr. Ali’s rights will be safeguarded at the initial appearance hearing on 8 April 2011 through three members of his Defence team to be present in the courtroom. In the opinion of the Single Judge, the Defence Request should therefore be rejected.

9. Finally, the Single Judge wishes to clarify that it is exclusively for Mr. Ali to decide which three members of his Defence team he wishes to be present in the courtroom to assist him at the initial appearance hearing on 8 April 2011.

⁷ ICC-01/09-02/11-44, para. 6.

⁸ ICC-01/09-02/11-44, para. 9.

⁹ Pre-Trial Chamber II, “Decision on the Motion by Legal Representative of Victim Applicants to Participate in Initial Appearance Proceedings”, ICC-01/09-01/11-14, para. 6; Pre-Trial Chamber II, “Decision on the Conduct of the Proceedings Following the Application of the Government of Kenya Pursuant to Article 19 of the Rome Statute”, ICC-01/09-02/11-40, para. 11.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

rejects the Defence Request.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Wednesday, 6 April 2011

At The Hague, The Netherlands