



Original: English

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

Date: 6 April 2011

PRE-TRIAL CHAMBER II

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

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

Prosecution's Request for Conditions of Enforcement

Source: Office of the Prosecutor

Document 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
Adesola Adeboyejo, Trial Lawyer

Counsel for the Defence

Counsel for Francis Kirimi Muthaura:
Karim Khan and Kennedy Ogetto
Counsel for Uhuru Muigai Kenyatta:
Steven Kay QC and Gillian Higgins
Counsel for Mohammed Hussein Ali:
Evans Monari and Gershom Otachi

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(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

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Summary

1. On 8 March 2011, Pre-Trial Chamber II issued its Decision issuing summonses to appear. It determined that the suspects' arrest was not necessary, so long as they complied with certain restrictions imposed on their conduct.
2. In particular the Chamber directed that the suspects shall have no contact directly or indirectly with any person who is or is believed to be a victim or a witness of the crimes and that they shall refrain from corruptly influencing a witness or tampering with or interfering with the Prosecutor's collection of evidence.
3. The Prosecution shares the Chamber's resolve that, if the suspects remain free pending confirmation, adequate conditions should be imposed to guarantee that they continue to appear voluntarily and that they not obstruct or endanger the investigation or the Court's proceedings.
4. Based on the authority set out below, the Prosecution asks that the Chamber add additional conditions to ensure that the suspects comply with the obligations set out in paragraph 3, above. Specifically, the Prosecution requests that the Chamber order the suspects as follows:
 - (i) To provide the Chamber with all residential and office addresses, email addresses, and telephone numbers.
 - (ii) To submit complete financial information.
 - (iii) To not make any public statements that contain or can be construed as containing an open or veiled threat to actual or prospective witnesses or victims.
 - (iv) To appear in person before the Chamber at least once every six months and certify before the Chamber, under oath, that they have complied in full with all the conditions.

Submissions

5. Pursuant to Rule 119 of the Rules of Procedure and Evidence, the Prosecution requests that the Chamber (a) renew its imposition of the conditions set out in the 8 March Decision and (b) add additional restrictions on the suspects' conditional release. Rule 119 specifically authorizes the Chamber to "set one or more conditions [...] including but not limited to" specific examples. The examples include, among others, that the suspects "must not contact directly or indirectly victims or witnesses" (Rule 119(1)(c)); that they "must reside at a particular [specified] address" (Rule 119(1)(e)); that they "must respond when summoned by an authority or qualified person designated by the Pre-Trial Chamber" (Rule 119(1)(f)); that they "must post bond or provide real or personal security or surety" in an amount determined by the Pre-Trial Chamber (Rule 119(1)(g)); and that they surrender their passports (Rule 119(1)(h)).
6. Rule 119(2) also allows the Chamber, at the request of the suspect, the Prosecutor, or on its own motion, to amend the conditions. According to Rule 119(4), if the Chamber "is convinced that the person concerned has failed to comply with one or more of the obligations imposed, it may [...] issue a warrant of arrest."

Request to adopt measures to enforce conditions of summons to appear

7. To enable the Chamber to enforce the conditions imposed in its Decision dated 8 March 2011, the Prosecution requests the following:
 - (i) That each suspect provide the Chamber with all residential and office addresses, email addresses, and telephone numbers. Each suspect shall verify in a signed statement, under oath, the accuracy of this information (to the Registry) on a monthly basis. He shall also

immediately report to the Registry any change in the information. Any misstatement in a report, or any failure to provide timely, accurate, and complete information shall result in the issuance of a warrant and revocation of the conditions of the suspect's release;

- (ii) That each suspect submits complete financial information, under oath, to enable the Chamber to determine the appropriate bond and to ensure its enforceability; and that he then post bond or provide real or personal security or surety in an amount sufficient to guarantee his future appearance at all required hearings of the Court.
- (iii) That each suspect forbears from making any public statements about the case, the charges, the investigation, or the evidence against them. Due to their senior positions of authority in Kenya, any statements that the suspects may make concerning the violence or their cooperation with the Court could, intentionally or unintentionally, be regarded by actual or potential witnesses as pressure to cease cooperation with the Court, or impact future witnesses' willingness or desire to cooperate.
- (iv) That each suspect appears in person before the Chamber at least once in every six months and certifies before the Chamber, under oath, that he has complied in full with all the conditions imposed by the Chamber. If the Chamber discovers that a suspect did not comply in full within a timeframe set by the Chamber and/or made a false statement of compliance either in person or in a written statement, the Chamber shall issue a warrant and revoke the conditions of his release.

Relief Sought

8. For the above reasons, the Prosecution requests the following relief:

- (i) An order requiring Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali to provide the following information to the Court to allow for the enforcement of the original conditions imposed by the Chamber:
 - i. To provide the Chamber with all residential and home addresses, email addresses, and telephone numbers, inside and outside Kenya. The suspects shall verify the accuracy of this information in signed statements made under oath and filed with the Registry the first day of every month. Any change in the information provided shall be reported to the Registry within 48 hours of the change.
 - ii. To provide the Chamber with official records for all telephone numbers from the date the summonses were issued until further order of the Chamber; and
 - iii. To provide the Chamber with their email account addresses that are directly or indirectly used;
- (ii) An order requiring Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali to provide complete information about their finances, including assets and liabilities and the identities of all to whom money or property is owed;
- (iii) An order requiring Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali to post bond in a sum to be determined by the Chamber, for the purpose of guaranteeing their appearances at the International Criminal Court;
- (iv) An order requiring Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali to appear in person at the seat of the Court at least once every six month period and certify before the

Chamber, under oath, that he has complied in full with all the conditions imposed by the Chamber; and

- (v) An order restraining Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali from making public statements or comments about the case, the charges, the investigation, or the evidence. .



Luis Moreno-Ocampo, Prosecutor

Dated this 6 April 2011

At The Hague, the Netherlands