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

Date: 1 July 2011

PRE-TRIAL CHAMBER II

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

**Defence Request for Disclosure of the Unredacted Article 58 Application and all
Statements, Declarations, Testimonies and Utterances of Mohammed Hussein Ali
in the Possession of the Prosecution**

Source: Defence of General Mohammed Hussein Ali

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Mr. Luis Moreno-Ocampo, Prosecutor
Ms. Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

Counsel for Francis Kirimi Muthaura:

Karim A.A. Khan QC and Kennedy Ogeto

Counsel for Uhuru Muigai Kenyatta:

Steven Kay QC and Gillian Higgins

Counsel for Mohammed Hussein Ali:

Evans Monari and Gershom Otachi Bw'omanwa

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

REGISTRY

Registrar

Ms. Silvana Arbia, Registrar

Deputy Registrar

Mr. Didier Daniel Preira, Deputy Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations

Other

Introduction

1. The Defence of Mohammed Hussein Ali joins the Defence teams of Francis Kirimi Muthaura and Uhuru Muigai Kenyatta in requesting for disclosure of the Unredacted Article 58 Application and all Statements, Declarations, Testimonies and Utterances in the Possession of the Prosecution in so far as they apply to Mohammed Hussein Ali.

Procedural history

2. On 15 December 2010, the Office of the Prosecutor (the "OTP") submitted the "Prosecutor's Application Pursuant to Article 58 as to Ambassador Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali" (the "Article 58 Application").¹
3. On 8 March 2011, Pre-Trial Chamber II (the "PTC"), by majority issued three summonses to appear in the present case.²
4. On 6 April 2011, the Single Judge issued the "Decision Setting the Regime for Evidence Disclosure and Other Related Matters" establishing, *inter alia*, the system of disclosure to be followed by the parties in this case.³
5. On 23 June 2011, counsel for Ambassador Francis Kirimi Muthaura filed "Defence Request for Disclosure of Unredacted Article 58 Application and All Statements, Declarations, Testimonies And Utterances Of Ambassador Francis K. Muthaura in the Possession of the Prosecution" ("Muthaura's Request")⁴

¹ Pre-Trial Chamber II, The Situation in the Republic of Kenya, Prosecutor's Application Pursuant to Article 58 as to Ambassador Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, 15 December 2010, ICC-01/09-31-Conf-Exp and its annexes.

² Pre-Trial Chamber II, Prosecutor v Muthaura et al., Decision on the Prosecutor's Application for Summonses to Appear for Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, 8 March 2011, ICC-01/09-02/11-01.

³ Pre-Trial Chamber II, Prosecutor v Muthaura et al., Decision Setting the Regime for Evidence Disclosure and Other Related Matters, 6 April 2011, ICC-01/09-02/11-48.

⁴ ICC-01/09-02/11-132

6. On 29 June 2011, counsel for Uhuru Muigai Kenyatta filed “Application on Behalf of Uhuru Muigai Kenyatta to Join the Defence Request for Disclosure of the Unredacted Article 58 Application and all Statements, Declarations, Testimonies and Utterances of Uhuru Muigai Kenyatta in the Possession of the Prosecution” (“Kenyatta’s Request”)⁵

Submissions

7. The Defence for General Mohammed Hussein Ali files this application to join paragraphs 10, 11, and 13 to 19 inclusive of Muthaura’s Request as applicable to General Ali.

Conclusion

8. The Defence respectfully requests that the Single Judge order the Prosecution to disclose to the Defence its Article 58 Application in unredacted or lesser redacted form and all statements, declarations, testimonies and utterances of Mohammed Hussein Ali in the possession and control of the Prosecution without delay.

Respectfully submitted,



Evans Monari and Gershom Otachi Bw’omanwa
On behalf of Mohammed Hussein Ali

Dated this 1st day of July, 2011
At Nairobi, Kenya.

⁵ ICC-01/09-02/11-140