

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 4 August 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 Prosecutor's Request for Leave to Reply

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 Francis Kirimi Muthaura
Karim A. Khan, Kennedy Ogetto and
Essa Faal

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 Judge on behalf of Pre-Trial Chamber II (the "Chamber")¹ of the International Criminal Court (the "Court"), issues this decision with respect to the "Prosecution's Request for leave to reply to the 'Defence Response to 'Prosecution's Application for Leave to Appeal the Decision with Respect to the Question of invalidating the Appointment of Counsel to the Defence'" (the "Request").²

1. On 20 July 2011, the Single Judge issued the "Decision with Respect to the Question of Invalidating the Appointment of Counsel to the Defence" (the "Decision") in which it was decided that Essa Faal may continue to represent Francis Kirimi Muthaura ("Mr. Muthaura") in the case against him.³

2. On 26 July 2011, the Prosecutor lodged the "Prosecution's Application for Leave to Appeal the 'Decision with Respect to the Question of Invalidating the Appointment of Counsel to the Defence' (ICC-01/09-02/11-185)" (the "Prosecutor's Application").⁴

3. On 1 August 2011, the Defence for Mr. Muthaura submitted the "Defence Response to the 'Prosecution's Application for Leave to Appeal the 'Decision with Respect to the Question of Invalidating the Appointment of Counsel to the Defence' (ICC-01/09-02/11-185)".⁵

4. On 3 August 2011, the Prosecutor submitted the Request arguing that his "Reply would address and attempt to clarify [his] position on two points upon which, as demonstrated by the Defence Response, there apparently is some confusion".⁶ The

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

² ICC-01/09-02/11-209.

³ Pre-Trial Chamber II, ICC-01/09-02/11-185.

⁴ ICC-01/09-02/11-195.

⁵ ICC-01/09-02/11-207.

⁶ ICC-01/09-02/11-209.

points to be clarified concern the nature of the test applied by the Chamber and its relationship to the tests applied by other chambers of the Court.⁷

10. The Single Judge notes article 82(1)(d) of the Rome Statute and regulation 24(5) of the Regulations of the Court.

11. The Single Judge, taking into consideration the abovementioned arguments of the Prosecutor, is not convinced that further submissions are necessary to decide on the question whether or not leave to appeal the Decision should be granted. The Single Judge considers that the Prosecutor's Application sufficiently sets out his points which need not be further clarified. Finally, the Single Judge considers it necessary to emphasize that the parties and participants may rest assured that the Chamber is in a position to make a proper interpretation of the law and evaluation of the facts, as submitted to the Chamber, without engaging into prolonged exchanges between the parties beforehand.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

a) rejects the Request.

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


 Judge Ekaterina Trendafilova
 Single Judge

Dated this Thursday, 4 August 2011

At The Hague, The Netherlands

⁷ ICC-01/09-02/11-209, para. 3.