

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 10 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
Urgent**

**Decision on the "Urgent Defence Motion for Extension of Time to File
Observations on Applications to Participate in the Proceedings"**

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

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

Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”)¹ renders this decision on the “Urgent Defence Motion for Extension of Time to File Observations on Applications to Participate in the Proceedings” (the “Request”).²

1. On 8 March 2011, the Chamber, by majority, decided to summon Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali (collectively the “Suspects”) to appear before the Court.³ Pursuant to this decision, the Suspects voluntarily appeared before the Court at the initial appearance hearing held on 8 April 2011,⁴ during which, *inter alia*, the Chamber scheduled the commencement of the confirmation of charges hearing for Wednesday, 21 September 2011.⁵

2. On 30 March 2011, the Single Judge issued the “First Decision on Victims’ Participation in the Case” (the “30 March 2011 Decision”),⁶ in which she ordered, *inter alia*, that the parties shall provide, if they so wish, their observations to the redacted versions of victims’ applications they received within a time limit of two weeks upon notification of the redacted victims’ applications.⁷

3. On 31 May 2011, the Registrar submitted to the Chamber 4 victims’ applications, together with a report prepared pursuant to regulation 86(5) of the Regulations of the Court (the “Regulations”) and transmitted those applications, in a redacted form, to the parties (the “First Transmission”).⁸

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

² ICC-01/09-02/11-224.

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 ICC-01/09-02/11-T-1-ENG.

⁵ ICC-01/09-02/11-T-1-ENG, page 14, lines 11 to 15.

⁶ Pre-Trial Chamber II, “First Decision on Victims’ Participation in the Case”, ICC-01/09-02/11-23.

⁷ Pre-Trial Chamber II, “First Decision on Victims’ Participation in the Case”, ICC-01/09-02/11-23, p. 13.

⁸ ICC-01/09-02/11-97 – “First transmission to the Pre-Trial Chamber of applications to participate in the proceedings” and “confidential *ex parte*” annexes attached thereto; ICC-01/09-02/11-98 – “First Transmission to the parties and legal representatives of redacted applications to participate in the proceedings” and “confidential *ex parte*” annexes attached thereto; and ICC-01/09-02/11-99-Conf-Exp – “First report on applications to participate in the proceedings” and annexes attached thereto.

4. On 13 June 2011, in compliance with the deadline set up in the 30 March 2011 Decision, the Defence for all the three Suspects submitted their observations on the victims' applications of the First Transmission.⁹

5. On 28 July 2011, the Registrar transmitted to the Chamber and to the parties additional 245 victims' applications for participation in the present proceedings (the "Second Transmission").¹⁰ According to the 30 March 2011 Decision, the deadline for the parties to submit observations on this batch of victims' applications is 11 August 2011.

6. On 10 August 2011, the Defence team for Mr. Ali filed the Request, wherein they seek an extension of 5 days to file their observations on the victims' applications belonging to the Second Transmission.¹¹

7. The Single Judge notes regulation 35(2) of the Regulations.

8. The Defence team for Mr. Ali assert that good cause under regulation 35(2) of the Regulations is demonstrated by: (i) "the high number of applications and disclosures submitted and the need to properly review each individual application and to provide appropriate observations [...]"; and (ii) the constraints that the defence team for Mr. Ali is facing in terms of personnel.¹²

9. The Single Judge recalls that pursuant to regulation 35(2) of the Regulations "[t]he Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard".

⁹ ICC-01/09-02/11-115-Conf, and ICC-01/09-02/11-117, with confidential annex.

¹⁰ ICC-01/09-01/11-141 – "Second transmission to the Pre-Trial Chamber of applications to participate in the proceedings" and "confidential *ex parte*" annexes attached thereto; ICC-01/09-01/11-142 – "Second Transmission to the parties and legal representatives of redacted applications to participate in the proceedings" and "confidential *ex parte*" annexes attached thereto; and ICC-01/09-01/11-143-Conf-Exp – "Second report on applications to participate in the proceedings" and annexes attached thereto.

¹¹ ICC-01/09-02/11-224, para. 7.

¹² ICC-01/09-02/11-224, paras 4-5.

10. At the outset, the Single Judge underlines that it is of importance that the parties, and in particular the Defence, submit meaningful observations under rule 89(1) of the Rules of Procedure and Evidence on the applications for victims' participation which are transmitted to them.

11. Taking into account the arguments submitted by the Defence team for Mr. Ali, the Single Judge is satisfied that good cause is shown, in that the extensive number of victims' applications transmitted and the staff constraints faced by the Defence team for Mr. Ali makes it difficult to meet the established deadline to submit observations on the victims' applications of the Second Transmission. The Request is therefore granted and the deadline is extended to Tuesday, 16 August 2011.

12. The Single Judge wishes to clarify that such extension of time limit shall not preclude the Defence team for Mr. Ali, should they be able to do so, to file their observations on the victims' applications of the Second Transmission before the extended time limit expires.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

grants the Request;

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Wednesday, 10 August 2011

At The Hague, The Netherlands