

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-01/09-02/11
Date: 15 November 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**

**Urgent - Confidential *Ex Parte*, Prosecution and Defence of Mr. Muthaura only
Prosecution's Request for Leave to provide Submissions further to the Appeals
Chamber Judgement on the "Appeal of the Prosecutor against the decision of Pre trial
Chamber II dated 20 July 2011 entitled "Decision with Respect to the Question of
Invalidating the Appointment of Counsel to the Defence"**

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

Mr Karim Khan
Mr Kennedy Ogetto

Legal Representatives of Victims

Legal Representatives of 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

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Ms. Silvana Arbia

Deputy Registrar

Mr. Didier Preira

Defence Support Section

Victims and Witnesses Unit

Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Prosecution respectfully seeks leave pursuant to Regulation 24(5) of the Regulations of the Court to file written submissions on whether to invalidate the appointment of Mr Faal and whether it is in the interest of justice that Mr Faal should be part of the Defence team for Mr Muthaura. The Prosecution's request is triggered by the Appeals Chamber judgement of 10 November 2011,¹ directing the Pre Trial Chamber i) "to decide anew on the question of whether to invalidate the appointment of Mr Faal in the light of the present judgement"² and ii) to clarify whether Mr Faal was privy to any confidential information and upon a finding in the affirmative, whether it would nevertheless be in the interest of justice that Mr Faal should still be part of the Defence.³
2. In the Prosecution's view, it would be appropriate and fitting for the Chamber to entertain submissions in light of the Appeals Chamber's clarification and its remand of the issue for new consideration, including on the issue whether the interests of justice would require Mr Faal's continuation in the case after having been privy to confidential prosecution information.



Luis Moreno-Ocampo

Prosecutor

Dated this 15th day of November 2011

At The Hague, The Netherlands

¹ ICC-01/09-02/11 OA 3

² *ibid*, para. 72

³ *ibid*, para. 72