



Original: English

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

Date: 05 April 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 Authorisation for Four Defence Team Members to Attend the
Initial Appearance**

Source: Defence

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 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

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
Section**

Other

1. The Defence of General Ali hereby respectfully requests the authorisation of the Honourable Pre-Trial Chamber that four defence team members be permitted to attend the initial appearance on 8 April 2011.
2. On 30 March 2011, the Registry filed on an *ex parte* basis, 'Information Submitted to the Chamber by the Counsel Support Section', in which the Counsel Support Section (CSS) informed the Pre-Trial Chamber on an *ex parte* basis that the participation of each defence team "at the upcoming initial appearance hearing will be limited to three persons per team, and that they may submit a request to the Chamber should they wish to have more persons present".
3. Pursuant to the Pre-Trial Chamber's request, this filing was reclassified as public on 5 April 2011.¹
4. The Defence is currently composed of four lawyers: Evans Monari, Gershom Otachi Bw'omanwa, Gregory Kehoe and John Philpot.
5. Mr. Kehoe and Mr. Philpot are flying from the United States of America and Canada respectively, in order to assist during the initial appearance. It is not possible for the lawyers to provide any form of assistance to the defendant during the initial appearance if either of them is not permitted to attend the hearing.
6. Mr. Kehoe has not yet been admitted to the list counsel, but will endeavour to finalise this matter before the initial appearance. In any case, even if Mr. Kehoe is not accorded a right of audience, his presence inside the courtroom will ensure that he can provide immediate advice to the team and the Defendant on any issues which arise during the hearing.
7. Given the geographic diversity of the defence team, the Defence does not envisage that all four lawyers will attend each pre-confirmation hearing. Nonetheless, the initial appearance is of particular importance to the defendant, and it is essential that the Defendant be assisted by the four key lawyers in his case at this critical juncture.

¹ ICC-01/09-02/11-24

8. The Defence of General Ali also understands that the Defence teams of Mr. Muthaura and Mr. Kenyatta will not be requesting to exceed the allotment of three persons. Finally, the Defence notes that there does not appear to be any restriction imposed upon the Prosecution (or the Registry) in terms of the numbers of persons which they are authorised to have inside the courtroom.

Relief Requested:

9. For the reasons set out above, the Defence of General Ali respectfully requests the Honourable Pre-Trial Chamber to approve the presence of the following four defence team members in the courtroom during the initial appearance on 8 April 2011 :

Evans Monari

Gershom Otachi Bw'omanwa

Gregory Kehoe

John Philpot



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

Dated this Tuesday, 5 April 2011

At The Hague, The Netherlands