



Case Information Sheet

Situation in the Republic of Kenya

The Prosecutor

v.

*Francis Kirihi Muthaura and Uhuru
Muigai Kenyatta*

Case n° ICC-01/09-02/11



Francis Kirihi Muthaura (Muthaura)



Date of birth	20 October 1946
Place of Birth	Mariene, Kenya
Nationality	Kenyan
Official position	Head of the Public Service and Secretary to the Cabinet of the Republic of Kenya
Summons to appear	8 March 2011
Initial appearance hearing	8 April 2011

Confirmation of charges hearing	21 September - 5 October 2011
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Decision on the confirmation of charges	23 January 2012
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Charges

Muthaura – together with Kenyatta – is accused of being criminally responsible as an indirect co-perpetrator pursuant to article 25(3)(a) of the Rome Statute for the crimes against humanity of:

- murder (article 7(l)(a));
- deportation or forcible transfer of population (article 7(l)(d));
- rape (article 7(l)(g));
- persecution (article 7(l)(h)); and
- other inhumane acts (article 7(l)(k)).

Uhuru Muigai Kenyatta (Kenyatta)



Date of birth	26 October 1961
Place of Birth	Nairobi, Kenya
Nationality	Kenyan
Official position	Deputy Prime Minister and Minister for Finance of the Republic of Kenya
Summons to appear	8 March 2011
Initial appearance hearing	8 April 2011

Confirmation of charges hearing	21 September - 5 October 2011
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Decision on the confirmation of charges	23 January 2012
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Charges

Kenyatta – together with Muthaura – is accused of being criminally responsible as an indirect co-perpetrator pursuant to article 25(3)(a) of the Rome Statute for the crimes against humanity of:

- murder (article 7(l)(a));
- deportation or forcible transfer of population (article 7(l)(d));
- rape (article 7(l)(g));
- persecution (articles 7(l)(h)); and
- other inhumane acts (article 7(l)(k)).

Mohammed Hussein Ali (Ali)



Date of birth	1956
Place of Birth	Eldoret, Kenya
Nationality	Kenyan
Official position	Currently holding the position of Chief Executive of the Postal Corporation of Kenya
Summons to appear	8 March 2011
Initial appearance hearing	8 April 2011
Confirmation of charges hearing	21 September to 5 October 2011
Decision on the confirmation of charges	23 January 2012

Charges

Pre-Trial Chamber II found that there are no reasonable grounds to believe that Ali is an indirect co-perpetrator, because his contribution to the commission of the crimes was not essential. Instead, Ali was suspected of having otherwise contributed (within the meaning of article 25(3)(d) of the Rome Statute) to the commission of the following crimes against humanity:

- murder (articles 7(l)(a));
- deportation or forcible transfer of population (article 7(l)(d));
- rape (article 7(l)(g));
- persecution (article 7(l)(h)); and
- other inhumane acts (articles 7(l)(k)).

Pre-Trial Chamber II declined to confirm the charges against Mr Ali.

Alleged crimes (non-exhaustive list)

Pre-Trial Chamber II found that there are substantial grounds to believe that:

- From 24 until 28 January 2008, the Mungiki criminal organisation allegedly carried out a widespread and systematic attack against the non-Kikuyu population perceived as supporting the Orange Democratic Movement (ODM) (mostly belonging to Luo, Luhya and Kalenjin ethnic groups) in Nakuru and Naivasha.
- The attacks in or around Nakuru and Naivasha resulted in a large number of killings, displacement of thousands of people, rape, severe physical injuries, mental suffering and destruction of property.
- Between, at least, November 2007 and January 2008, *inter alia*, Muthaura, Kenyatta and members of the Mungiki, allegedly created a common plan to commit these attacks. According to the alleged plan, it was envisaged at the meetings that the Mungiki would carry out the attack with the purpose of keeping the Party of National Unity (PNU) in power, in exchange for an end to government repression and protection of the Mungiki's interests.
- The contribution of **Uhuru Muigai Kenyatta** to the implementation of the common plan was allegedly essential. More specifically, Mr Kenyatta's contribution allegedly consisted of providing institutional support, on behalf of the PNU Coalition, to secure: (i) the agreement with the Mungiki for the purpose of the commission of the crimes; and (ii) the execution on the ground of the common plan by the Mungiki in Nakuru and Naivasha.
- The contribution of **Francis Kirimi Muthaura**, to the implementation of the common plan was essential. More specifically, Mr Muthaura's contribution consisted of: (i) establishing links, through intermediaries, between the PNU Coalition and the Mungiki for the purposes of the commission of the crimes; (ii) contributing funds to local politicians and Mungiki leaders towards the organisation of the crimes on the ground; (iii) mobilising, through mid-level perpetrators, Mungiki members to carry out the attack in Nakuru and Naivasha; and (iv) placing the Mungiki members under the operational command of local politicians for the time and for the purposes of the commission of the crimes.

Key judicial developments

Opening of the investigation

On 5 November 2009, the ICC Prosecutor notified the President of the Court of his intention to submit a request for the authorisation to start an investigation into the situation in Kenya pursuant to article 15(3) of the Rome Statute, about the 2007-2008 post-election violence in Kenya in which around 1,300 people were allegedly killed.

On 6 November 2009, the Presidency of the Court assigned the situation to Pre-Trial Chamber II, composed of Judge Ekaterina Trendafilova (presiding judge), Judge Hans-Peter Kaul and Judge Cuno Tarfusser.

On 31 March 2010, Pre-Trial Chamber II granted, by majority, the Prosecution's request to open an investigation into alleged crimes against humanity in Kenya. The investigation covers crimes against humanity committed between 1 June 2002 (the date of the Rome Statute's entry into force for Kenya) and 26 November 2009 (the date the Prosecutor filed the request for authorisation to start an investigation).



Summonses to appear

On 15 December 2010, the ICC Prosecutor requested Pre-Trial Chamber II of the ICC to issue summonses to appear for six Kenyans on the basis that there existed reasonable grounds to believe that they were criminally responsible for crimes against humanity.

On 8 March 2011, Pre-Trial Chamber II, by majority, issued the decisions on the applications submitted by the Prosecutor and summoned Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali to appear before the Court.

On 31 March 2011, the Government of Kenya filed an application challenging the admissibility of the case before the ICC. On 30 May 2011, Pre-Trial Chamber II rejected this application. Pre-Trial Chamber II's decision was confirmed, on 30 August 2011, by the Appeals Chamber.

At the initial appearance hearing, which took place on 8 April 2011, the Chamber scheduled the confirmation of charges hearing in this case for 21 September 2011.

Confirmation of charges and committal to trial

The confirmation of charges hearing was held from 21 September to 5 October 2011. On 23 January 2011, the Judges declined to confirm the charges against Mr Ali. Pre-Trial Chamber II confirmed the charges against Mr Muthaura and Mr Kenyatta and committed them to trial before an ICC Trial Chamber. On 29 March 2012, the ICC Presidency constituted Trial Chamber V and referred the case *The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta* to it for the conduct of the subsequent phase of the proceedings: the trial. The defendants are not in the custody of the Court.

Participation of victims

Pre-Trial Chamber II granted 233 persons the status of victims authorised to participate in the proceeding.

Composition of Trial Chamber V

Judge Kuniko Ozaki (Presiding)

Judge Christine Van den Wyngaert

Judge Chile Eboe-Osuji

The Office of the Prosecutor

Luis Moreno-Ocampo, Prosecutor

Fatou Bensouda, Deputy Prosecutor

Defence Counsel for Francis Kirimi Muthaura

Karim Ahmad Khan

Kennedy Ogeto

Essa Faal

Defence Counsel for Uhuru Muigai Kenyatta

Steven Kay QC

Gillian Higgins

Legal Representative of the Victims

Morris Azuma Anyah

