



Original: **English**

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

Date: **20 August 2013**

TRIAL CHAMBER V(A)

Before: Judge Chile Eboe-Osuji, Presiding
Judge Olga Herrera Carbuccion
Judge Robert Fremr

SITUATION IN THE REPUBLIC OF KENYA

IN THE CASE OF

***THE PROSECUTOR v.
WILLIAM SAMOEI RUTO AND JOSHUA ARAP SANG***

Public

Defence Application to Vary Court Sitting Schedule

Source: Defence for Mr. William Samoei Ruto

Document to be notified in accordance with regulation 31 of the *Regulations of the****Court to:*****The Office of the Prosecutor**

Ms. Fatou Bensouda, Prosecutor
 Mr. James Stewart, Deputy Prosecutor
 Mr. Anton Steynberg, Senior Trial
 Lawyer

Counsel for William Ruto

Mr. Karim A.A. Khan QC
 Mr. David Hooper QC
 Mr. Essa Faal
 Ms. Shyamala Alagendra

Counsel for Joshua Sang

Mr. Joseph Kipchumba Kigen-Katwa
 Mr. Silas Chekera

Legal Representatives of the Victims

Mr. Wilfred Nderitu

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**

Mr. Herman von Hebel

Counsel Support Section**Deputy Registrar****Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations
Section****Other**

I. Introduction

1. The defence for Mr. William Samoei Ruto (“Defence”) respectfully requests that the Trial Chamber, pursuant to its powers contained in Articles 64(2) and 64(6)(f) of the Rome Statute (“Statute”), vary the Court sitting schedule in order that this case sit 2 weeks on, 2 weeks off from the start of trial until further notice and, in any event, until the Appeals Chamber renders its decision on the *Prosecution’s appeal against the “Decision on Mr Ruto’s Request for Excusal from Continuous Presence at Trial”* (“Appeal”).¹

II. Procedural Background

2. On 17 April 2013, the Defence filed an application in respect of Article 63(1) of the Statute, seeking permission from the Trial Chamber for Mr. Ruto to be excused from continuous presence during the trial (“Excusal Request”).²
3. On 18 June 2013, this Trial Chamber, by Majority, granted the Excusal Request (“Decision”).³
4. On 18 July 2013, this Trial Chamber, by Majority, granted the Prosecution leave to appeal the Decision.⁴ On 29 July 2013, the Prosecution filed its Appeal which included a request for the suspensive effect of the Decision.
5. On 19 August 2013, a status conference was held in this case at which it was indicated that the proposed Court sitting schedule, from 10 September 2013 until 4 October 2013, will be 09.30 to 16.00 on a daily basis, Monday to Friday.⁵
6. On 20 August 2013, the Appeals Chamber granted the Prosecution’s request for suspensive effect.⁶

¹ ICC-01/09-01/11-831.

² ICC-01/09-01/11-685.

³ ICC-01/09-01/11-777.

⁴ ICC-01/09-01/11-817.

⁵ ICC-01/09-01/11-T-24-CONF-ENG, p. 53, lines 9 to 20. The Defence submits that, while this information is contained in a confidential transcript, the information itself is not confidential.

⁶ ICC-01/09-01/11-862.

III. Submissions

7. In light of the Appeals Chamber's decision issued today, granting the Prosecution's request for suspensive effect of the Decision, the Defence submits this application. The Defence recalls that Mr. William Ruto has at all times cooperated with the ICC. He did so before a summons was issued and at all times since. He seeks to continue that cooperation and record of compliance out of respect for the ICC, his belief in the rule of law and out of a desire to clear his name in respect of allegations he rejects as completely false. At the same time, as detailed in the Defence Excusal Request, Mr. Ruto wishes to navigate a way where he can do this whilst discharging his constitutional responsibilities as the democratically elected Deputy President of the Republic of Kenya. The Defence submits that the present request balances these considerations in a reasonable and fair way.
8. The Defence submits that, in all the circumstances, it is in the interests of justice that the present Request be granted, *inter alia*, for the following reasons.
9. *First*, the request to sit two weeks on and two weeks off meets all the concerns of the Prosecution and the Victims as detailed in their respective responses to the Excusal Request filed by the Defence. Mr. Ruto would remain subject to the Court's jurisdiction and be present in Court during all hearings under the revised schedule. No legitimate interest of the Prosecution or the victims would be imperilled or placed in jeopardy were the present Request granted.
10. *Second*, as the Trial Chamber is well aware, this Court only has two courtrooms. The application to have the trial heard in Kenya or Tanzania has been rejected.⁷ Accordingly, the extra court capacity (in terms of physical court room space) that that option would have brought is not available. In the coming months, trial proceedings will be on-going in the *Bemba* case, the *Kenyatta* case and, of course,

⁷ See press release on ICC website : http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200109/related%20cases/icc01090111/Pages/ruto-sang.aspx.

this case. In addition, the confirmation hearing will begin in the *Ntaganda* case on 10 February 2014. Moreover, in May 2014, trial is scheduled to start in the *Banda and Jerbo* case. Therefore, the physical constraints of courtroom space means that some flexibility in case scheduling will be required in any event. The Court does not have the physical capacity in terms of court space to have consecutive sittings in all its cases between now and the end of the trial in this case.

11. Accordingly, the Defence submits that granting this application will not prejudice any party or participant to these proceedings but, rather, will free up court space for other cases (that will be required in any event) in a manner that additionally meets the legitimate and fair trial rights of Mr. William Ruto in a manner that is respectful towards the Constitution of the Republic of Kenya and the democratic mandate entrusted to him. The Defence respectfully submits that the present Request will enable the Chamber to strike the correct balance between all competing considerations. The rights of the Defence, the concerns of the Prosecution and the victims as detailed in their responses to the Excusal Decision and appeal briefs will all be met fairly.

IV. Relief Requested

12. For the reasons set out above, the Defence respectfully requests that the Trial Chamber vary the Court sitting schedule in order that this case sit two weeks on, two weeks off from the start of trial until further notice and, in any event, until the Appeals Chamber renders its decision on the Appeal.

Respectfully submitted,



Karim A.A. Khan QC
Lead Counsel for Mr. William Samoei Ruto

Dated this 20th Day of August 2013
At The Hague, the Netherlands