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

Date: 23 August 2013

TRIAL CHAMBER V(A)

Before: Judge Chile Eboe-Osuji, Presiding Judge
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

**Prosecution's observations on Defence Application to Vary Court Sitting Schedule
(ICC-01/09-01/11-863)**

Source: Office of the Prosecutor

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

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Introduction

1. The Prosecution hereby submits its observations on Mr RUTO's Defence Application to Vary the Court Sitting Schedule¹ "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 *"Prosecution's appeal against the 'Decision on Mr RUTO's Request for Excusal from Continuous Presence at Trial'"*"² (the "Application").

2. The Prosecution does not object in principle to Mr RUTO's Defence request, provided that the organization of the court schedule is sufficiently flexible so as to allow for witnesses to finish their testimonies prior to any scheduled break. However, the Prosecution considers that alternating three week periods of sessions and breaks, as suggested by Mr SANG's Defence during the status conference held on 19 August 2013,³ is a more practical proposition.

Observations

3. The Prosecution has no objection in principle to a fragmentation of the hearing schedule in blocks of sessions and breaks, provided that the proper conduct of the proceedings is not adversely affected and that witnesses are afforded the opportunity to provide their testimony continuously, without lengthy interruptions.

4. While the Prosecution has no objection to an alternation of periods of sessions and breaks, these breaks should not start before witnesses who are on the stand have

¹ ICC-01/09-01/11-863.

² ICC-01/09-01/11-863, para. 1.

³ ICC-01/09-01/11-T-24-CONF-ENG ET, page 52, lines 14 to 16.

had the opportunity to complete their testimony. This will effectively ensure that the “physical and psychological well-being”, of these witnesses is safeguarded.⁴ As a principle, the Prosecution submits that the Chamber should strive to avoid situations where witnesses are forced to remain in The Hague for a lengthy period of time, away from their family and their professional activities, until their testimony can be completed.

5. Moreover, the frequent interruption of the testimony of witnesses could potentially interfere with a clear and efficient presentation of the evidence. The Prosecution considers that it would not be appropriate that a party be cut in the middle of a witness’ examination and be obliged to wait several weeks before having the opportunity to finish. The fragmentation of testimonies could be also unfair to the witnesses, who would be questioned on portions of their testimonies delivered weeks earlier.

6. In regards to the duration of the proposed sessions, the Prosecution believes that three week sessions are a more appropriate solution as they will encourage efficiency and judicial economy.

7. Given that the Chamber will be unable to sit daily for more than two periods of two hours separated by a thirty minute break (or more than three periods of one and a half hours),⁵ and that the courtroom will be periodically unavailable for maintenance operations, the Prosecution estimates that the total testimony of an average Prosecution witness may last approximately one and a half weeks.⁶ If the

⁴ Article 68(1) of the Statute.

⁵ Regulation 64(1) of the Regulations of the Registry.

⁶ Using the *Bemba* average time for Examination in Chief of 5.7 hours, as referred to by the Chamber at the Status Conference of 19 August 2013. If the Chamber can only sit 4 to 4.5 hours a day due to the constraints imposed by Regulation 64(1) of the Regulation of the Registry, the Prosecution estimates that the testimony of a witness examined in chief for 5.7 hours could last between 6 and 7 days (5 - 6 hours of examination in chief, 10 - 12 hours of cross examination, 4 hours of examination by the Chamber and the Legal Representative, 2 hours of re-examination, 3 hours dedicated to procedural matters, objections and legal argumentation).

Chamber were to adopt the two week sessions suggested by the Ruto Defence, this would mean that either the following witness would have his or her evidence interrupted, or alternatively the Chamber would waste valuable court time. The Prosecution considers that three week sessions, extended if necessary, could allow for two witnesses to complete their testimonies.

Conclusion

8. In conclusion, with the reservations expressed above, the Prosecution has no objection in principle to the Application.



Fatou Bensouda, Prosecutor

Dated this 23rd August 2013

At The Hague, the Netherlands