

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11
Date: 29 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

Decision on the Ruto Defence Application to Vary Court Sitting Schedule

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr Anton Steynberg

Counsel for William Samoei Ruto

Mr Karim Khan

Mr David Hooper

Mr Essa Faal

Ms Shyamala Alagendra

Counsel for Joshua Arap Sang

Mr Joseph Kipchumba Kigen-Katwa

Mr Silas Chekera

Legal Representatives of Victims

Mr Wilfred Nderitu

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Deputy Registrar

Victims and Witnesses Unit

Mr Patrick Craig

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber V(A) (the 'Chamber') of the International Criminal Court (the 'Court'), in the case of *The Prosecutor v William Samoei Ruto and Joshua Arap Sang*, in consideration of Article 64(2) of the Rome Statute (the 'Statute'), renders the following Decision on the Ruto Defence Application to Vary Court Sitting Schedule.

1. On 19 August 2013, the Defence team for Mr Sang requested that the Chamber hear the present case in blocks of 4-6 weeks, in alternation with the *Kenyatta* case, when the latter trial commences.¹
2. On 20 August 2013, the Appeals Chamber granted suspensive effect with respect to the Chamber's decision excusing Mr Ruto from continuous presence at trial.²
3. On the same day, the defence team for Mr Ruto (the 'Ruto Defence') filed the 'Defence Application to Vary Court Sitting Schedule' (the 'Application'),³ in which it requests that the Chamber vary the sitting schedule, in the effect of sitting two weeks on and two weeks off, beginning 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 Chamber's decision on the presence of Mr Ruto at trial.⁴ The Ruto Defence argues that the schedule proposed in the Application would allow Mr Ruto to continue cooperation with the Court whilst discharging his constitutional responsibilities as Deputy President of the Republic of Kenya.⁵ It submits that no legitimate interests of the Office of the Prosecutor ('Prosecution') or the victims, would be imperilled or placed in jeopardy if the Application were granted.⁶ The Ruto Defence observes that at

¹ Email communication from the defence team for Mr Sang sent to Trial Chamber V(A) Communications on 19 August 2013 at 12:12; ICC-01/09-01/11-T-24-CONF-ENG, p. 52, lines 2-8, 14-16.

² Decision on the request for suspensive effect, ICC-01/09-01/11-862, 20 August 2013.

³ ICC-01/09-01/11-863.

⁴ Decision on Mr Ruto's Request for Excusal from Continuous Presence at Trial, ICC-01/09-01/11-777, 18 June 2013.

⁵ ICC-01/09-01/11-863, para. 7.

⁶ *Ibid.*, para. 9.

present, the Court does not have the physical capacity necessary for the consecutive sittings of all its cases.⁷

4. On 26 August 2013, the Prosecution filed the 'Prosecution's observations on Defence Application to Vary Court Sitting Schedule (ICC-01/09-01/11-863)',⁸ in which the Prosecution informs the Chamber that it does not object 'in principle' to the Application. However, the Prosecution stresses that the schedule should be sufficiently flexible so as to allow witnesses to finish their testimonies prior to any scheduled break. It submits that alternating three week periods of sessions and breaks would be a more practical proposition because it would allow two witnesses to complete their testimony before a break.⁹
5. On 27 August 2013, the Common Legal Representative for Victims (the 'Legal Representative') filed the 'Response of the Common Legal Representative for Victims to the "Defence Application to Vary Court Sitting Schedule"',¹⁰ in which he submits that he does not object to the Application, although he requests that the Court be in session for periods of three to four weeks before breaking for a period of a similar length. The Legal Representative submits that the schedule proposed in the Application would be disruptive of his work.¹¹
6. On the same day, the Registry filed the 'Registry's observations on Defence Application to Vary Court Sitting Schedule (ICC-01/09-01/11-863)',¹² in which the Registry submits that there are no technical obstacles to the schedule proposed in the Application and recommends that the witnesses should be allowed to complete their

⁷ *Ibid.*, para. 10.

⁸ ICC-01/09-01/11-873.

⁹ *Ibid.*, paras 2, 7.

¹⁰ ICC-01/09-01/11-882.

¹¹ *Ibid.*, paras 6-8.

¹² ICC-01/09-01/11-883-Conf.

testimony and that only two witnesses be heard in each period of court sitting before a break.

7. The Chamber recognises that Mr Ruto has constitutional responsibilities. But, it is the imperatives of speedy trial, pursuant to the dictates of Article 64(2) of the Statute, that command the dominant consideration in the matter of the Chamber's sitting schedule. While appreciating the parties' and the Legal Representative's preference for a schedule based on two to four weeks' breaks, the Chamber is not persuaded that this is an efficient way to conduct the proceedings in the present case. The Chamber agrees with the Ruto Defence that there may be a need to modify the sitting schedule in the present case once the trial in the *Kenyatta* case commences.¹³ However, there is no such need at the present time. On the contrary, the Chamber stresses the significance of advancing as much as possible before the constraints identified by the Ruto Defence affect the present case.
8. The Chamber recalls its announcement made at the status conference of 19 August 2013 that it intends to sit on a daily basis until 4 October 2013.¹⁴ The Chamber shall then adjourn for a period of one week, following which it will continue to sit on a daily basis until the commencement of the *Kenyatta* case, scheduled for 12 November 2013, with an adjournment of one week before the commencement of that trial. The Chamber will issue further sitting schedules in due course.
9. The Prosecution is directed to liaise with the Victims and Witnesses Unit (the 'VWU') in order to manage in an orderly way the testimonies of the first batch of witnesses in accordance with the aforesaid schedule, so as to avoid interruption of witnesses' testimonies in view of the indicated adjournment periods.

¹³ *Prosecutor v. Uhuru Muigai Kenyatta*, Public redacted version of 'Decision on commencement date of trial', ICC-01/09-02/11-763-Red, 20 June 2013, p. 16.

¹⁴ ICC-01/09-01/11-T-24-CONF-ENG, p. 53, lines 9-19.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

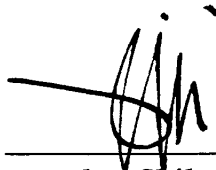
REJECTS the Application;

CONFIRMS that the Chamber shall sit on a daily basis from 10 September to 4 October 2013;

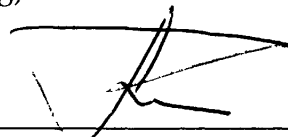
DECIDES that it will sit on a daily basis from 14 October to 1 November 2013; and

DIRECTS the Prosecution to liaise with the VWU in order to manage the testimonies of the first batch of witnesses in accordance with the aforesaid schedule.

Done in both English and French, the English version being authoritative.



Judge Chile Eboe-Osuji
(Presiding)

Judge Olga Herrera Carbuccia

Judge Robert Fremr

Dated 29 August 2013

At The Hague, The Netherlands