

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **22 September 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**

URGENT

Public

Defence request for adjournment

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
Mr. James Stewart
Mr. Anton Steynberg

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
Ms. Caroline Buisman

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**

Ms. Paolina Massidda

**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
Section**

I. Introduction

1. The defence for Mr. William Samoei Ruto (“Defence”) urgently requests that, pursuant to Article 64(6)(f) of the Rome Statute, the Trial Chamber adjourn the trial proceedings in this case in order that Mr. Ruto can return to Kenya to deal with an on-going and extremely serious matter of national security.
2. In view of the seriousness of the situation and the fact that it is on-going, the Defence respectfully prays that a decision is rendered on this request today on an expedited and urgent basis. In the alternative, the Defence requests that an oral hearing be heard on this request tomorrow morning at the Trial Chamber’s earliest convenience, including before the start of the normal court sitting schedule.

II. Submissions

3. As the Trial Chamber is no doubt aware, there is an on-going terrorist attack taking place in Nairobi. According to the latest reports, scores of people have been killed and an unknown number of people are being held hostage in a Nairobi shopping centre.¹ Clearly, the Kenyan government is actively engaged in this on-going matter of national security, is using all its resources to bring the stand off to an end and is preparing to deal with the aftermath of this terrible event.
4. The attack which started yesterday and continues to unfold is, regrettably in today’s world, an example of the situations which form part of the normal state affairs which fall within the portfolio of a country’s deputy Head of State. Under the Kenyan Constitution, the President is not only the Head of State and Government, but the Commander-in-Chief of the Kenya Defence Forces and the

¹ See e.g. news report on current situation at “Kenya standoff: At least 59 dead, minister says”, available at <http://www.bbc.co.uk/news/world-africa-24193059> (last accessed at 11.19 on 22 September 2013).

chairperson of the National Security Council.² The Deputy President is the principal assistant of the President.³

5. Accordingly, in the immediacy, Mr. Ruto, as the serving Deputy President of Kenya, is required to return to Kenya to discharge his ordinary constitutional duties which include participating in security briefings and consultations and involvement in other on-going and very sensitive national security investigations the details of which cannot be gone into in this filing. Thereafter, Mr. Ruto will be required to deal with the aftermath of such a traumatic and tragic event for Kenya including attending funerals and other affairs of state.

III. Relief sought

6. The Defence requests that the Trial Chamber adjourn the trial proceedings in this case until such time as the security situation in Kenya resolves itself or an order of the Trial Chamber is issued.
7. The Defence also respectfully requests that a decision is rendered on this request today. In the alternative, the Defence requests that an oral hearing be heard on this request at the Chamber's earliest convenience tomorrow morning.

Respectfully submitted,



Karim A.A. Khan QC

Lead Counsel for Mr. William Samoei Ruto

Dated this 22nd Day of September 2013

At The Hague, The Netherlands

² The 2010 Constitution of Kenya, Article 131(1)(a), (c) and (d). A copy of the Constitution is available at: <http://www.kenyaembassy.com/pdfs/The%20Constitution%20of%20Kenya.pdf>.

³ The 2010 Constitution of Kenya, Article 147(1).