

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/09 OA2

Date: 26 June 2012

THE APPEALS CHAMBER

Before: Judge Sang-Hyun Song, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Anita Usacka

SITUATION IN THE REPUBLIC OF KENYA

Confidential, *ex parte*, available only to the Prosecution and Mr Nyekorach-Matsanga

Prosecution's response to "Application of Dr. David Nyekorach-Matsanga for leave to reply, pursuant to Regulations of the Court, Regulation 24(5), to the Prosecution's confidential comments, dated 12 June 2012"

Source: Office of the Prosecutor

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

Counsel for Mr Nyekorach-Matsanga
Mr Charles A. Taku
Ms Beth S. Lyons

REGISTRY

Registrar

Silvana Arbia, Registrar

Didier Preira, Deputy-Registrar

1. The Prosecution hereby responds to the "Application of Dr. David Nyekorach-Matsanga for leave to reply, pursuant to Regulations of the Court, Regulation 24(5), to the Prosecution's confidential comments, dated 12 June 2012" ("Application").¹
2. The Application should be denied. While styled as a request for leave to reply, the document is in fact a reply, containing substantive arguments. To the extent that replies are permissible in Article 42 disqualification proceedings, Regulation 24(5) of the Regulations of the Court applies. That provision requires leave to reply to be granted before any substantive submissions are made.² The Application circumvents this requirement and should be denied on this basis alone.
3. In addition, the Application fails to demonstrate why a reply is necessary for the Appeals Chamber to adjudicate Mr Matsanga's Article 42 complaint.
4. For these reasons, the Prosecution respectfully requests the Appeals Chamber to reject the Application and not to consider the substantive submissions contained therein when ruling upon Mr Matsanga's Article 42 complaint.



Fatou Bensouda,
Prosecutor

Dated this 26th day of June, 2012
At The Hague, The Netherlands

¹ ICC-01/09-92-Conf-Exp.

² *See, e.g.*, Order on the application on behalf of victims a/1646/10 and a/1647/10 for leave to reply, ICC-02/05-03/09-242, 31 October 2011, para 3 ("Requests submitted pursuant to Regulation 24(5) of the Regulations should only include arguments as to why leave should be granted."); Decision on the "Requête aux fins d'être autorisés à soumettre un Addendum", 6 March 2012, ICC-02/05-03/09-304, para 6 ("a reply to a response may be filed only with the Chamber's leave in accordance with Regulation 24(5) of the Regulations").