

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 17 April 2013

TRIAL CHAMBER V

Before: Judge Kuniko Ozaki, Presiding
Judge Christine Van den Wyngaert
Judge Chile Eboe-Osuji

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF
*THE PROSECUTOR v. WILLIAM SAMOEI RUTO and JOSHUA ARAP SANG***

Public

**Decision on Prosecution request to substitute two documents on the list of
evidence**

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

The Office of the Prosecutor
Ms Fatou Bensouda

Counsel for William Samoei Ruto
Mr Karim Khan
Mr Kioko Kilukumi Musau
Mr David Hooper

Legal Representatives of Victims
Mr Wilfred Nderitu

Counsel for Joshua Arap Sang
Mr Joseph Kipchumba Kigen-Katwa
Mr Silas Chekera
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

Deputy Registrar

Victims and Witnesses Unit
Ms Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber V (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, having regard to Article 64 (3)(a) of the Rome Statute (“Statute”), Rule 69 of the Rules of Procedure and Evidence (“Rules”) and Regulation 34 of the Regulations of Court, issues this Decision on Prosecution request to substitute two documents on the list of evidence.

1. On 9 July 2012, the Chamber issued its “Decision leading up to trial”,¹ in which it, *inter alia*, set 9 January 2013 as the date for the Office of the Prosecutor (“Prosecution”) to file the list of evidence to be relied on at trial.²
2. On 15 March 2013, after having received an extension of time,³ the Prosecution filed the “Second Joint Submission by the Prosecution and the Defence as to Agreed Facts and Authenticity of Evidence” (“Submission”).⁴ The Submission is joined by two annexes, one containing the list of substantive facts on which the Prosecution and the defence teams for Mr Ruto and Mr Sang (“Defence”) agreed⁵ and the second containing a list of some items of evidence upon which the Prosecution and Defence agreed as to their authenticity.⁶
3. Further, in the Submission the Prosecution informs the Chamber that two reports which the Prosecution included in the list of evidence are accessible

¹ Decision on the schedule leading up to trial, ICC-01/09-01/11-440.

² ICC-01/09-01/11-440, para. 14.

³ Decision on the joint defence request for extension of time, 14 March 2013, ICC-01/09-01/11-650.

⁴ ICC-01/09-01/11-653.

⁵ ICC-01/09-01/11-653-AnxA.

⁶ ICC-01/09-01/11-653-AnxB-Conf.

on the internet in a more complete version ("two Documents").⁷ The Prosecution submits that the Defence indicated that it is willing to agree to the authenticity of the two Documents if complete versions are provided. Therefore, it requests, with the Defence's agreement, the Chamber to authorise the replacement of these two Documents with the complete versions on the list of evidence.⁸ The Defence did not respond to the Prosecution's Submission.

4. The Chamber notes that the replacement of the two documents on the list of evidence with more complete versions allows for an additional agreement between the parties under Rule 69 of the Rules. Further, both documents are in the public domain and therefore already accessible to the Defence, which does not object to the substitution. Accordingly, the Chamber considers that the Defence is not prejudiced by substituting the complete versions of the two Documents on the list of evidence and, having regard to Article 64(3)(a) of the Statute, authorises the Prosecution to replace the incomplete versions of these documents with the complete versions.

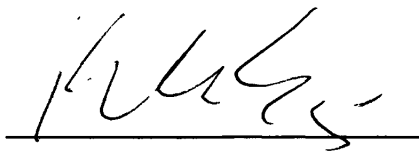
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

AUTHORISES the Prosecution to substitute the complete versions of KEN-OTP-0001-1115 and KEN-OTP-0001-1527 on the list of evidence.

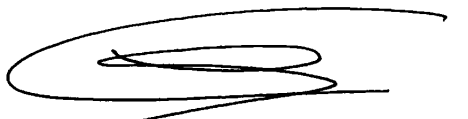
⁷ ICC-01/09-01/11-653, para.5. The documents are registered under KEN-OTP-0001-1115 and KEN-OTP-0001-1527.

⁸ ICC-01/09-01/11-653, para.5.

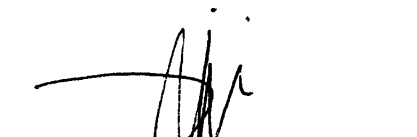
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding



Judge Christine Van den Wyngaert



Judge Chile Eboe-Osuji

Dated this 17 April 2013

At The Hague, The Netherlands