

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 18 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 Defence request for disclosure of eight documents

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

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

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*, pursuant to Article 64(3)(c) of the Rome Statute (“Statute”) and Rules 77 and 81 of the Rules of Procedure and Evidence (“Rules”), issues this Decision on Defence request for disclosure of eight documents.

I. Procedural history and submissions

1. On 25 January 2013, the Office of the Prosecutor (“Prosecution”) filed an application requesting the authorisation to disclose one additional document after the 9 January 2013 disclosure deadline.¹ In this application, the Prosecution submitted that, if the request were to be granted, it would file an updated version of the list of evidence (“LOE”), which would include the additional document. Further, the Prosecution informed the Chamber that it intends (i) to remove several documents from this updated LOE on which it does not intend to rely for purpose of the trial and (ii) to correct some clerical errors.²
2. On 11 February 2013, the defence teams for Mr Ruto and Mr Sang (together the “Defence”) filed a response³ in which they informed the Chamber that they do not object to the disclosure of the additional document. In respect of the Prosecution’s notification of the withdrawal of several documents from the LOE, the Defence noted that 22 of the items designated for removal had not yet been disclosed to the Defence. It requested the Chamber to order the Prosecution to disclose these items to the Defence, even if they are withdrawn (“Request”).⁴

¹ Prosecution’s application for an extension to the deadline set by Decision ICC-01/09-01/11-440 to disclose one additional incriminatory document, ICC-01/09-01/11-570-Conf, with Annex 1 and 2 filed confidential *ex parte* Prosecution and VWU only and Annex 3 filed confidential.

² ICC-01/09-01/11-570-Conf, para. 2.

³ Joint Defence Response to Application for an extension of the deadline set by Decision ICC-01/09-01/11-440 to disclose one additional incriminatory document, ICC-01/09-01/11-595-Conf.

⁴ ICC-01/09-01/11-595-Conf, paras 9, 12.

3. On 21 February 2013, the Chamber issued a decision authorising the disclosure of the additional document.⁵ In respect of the Request, the Chamber considered it to be a new request and ordered the Prosecution to respond to this request by no later than 26 February 2013.⁶
4. Accordingly, on 26 February 2013, the Prosecution filed its response to the Defence's Request ("Response").⁷ Therein, the Prosecution informs the Chamber that ten of the 22 items in question had already been disclosed to the Defence under different ERNs.⁸ With respect to another four items, the Prosecution informed the Chamber that it will disclose them to the Defence.⁹ For the remaining eight documents ("Eight Documents"), the Prosecution informed the Chamber that it did not intend to disclose them to the Defence.¹⁰
5. On 14 March 2013, the Chamber, after noting that it did not have access to six emails covered by the Request, ordered the Prosecution to provide the Chamber with copies of them.¹¹
6. On 15 March 2013, the Prosecution provided the Chamber with the documents requested.¹²
7. On 5 April 2013, the Chamber requested the Prosecution to provide information in response to ten questions it had about the Eight Documents ("5 April Order").¹³

⁵ Decision on Prosecution's application to disclose one additional document, ICC-01/09-01/11-614.

⁶ ICC-01/09-01/11-614, para. 10.

⁷ Prosecution's response to joint Defence request for communication of 22 documents under Rule 77, ICC-01/09-01/11-627, with confidential *ex parte*, Prosecution only annex, ICC-01/09-01/11-627-AnxA.

⁸ Response, ICC-01/09-01/11-627, para. 7 and footnote 7.

⁹ Response, ICC-01/09-01/11-627, para. 8.

¹⁰ Response, ICC-01/09-01/11-627, paras 9 and 10.

¹¹ Order to the Prosecution to provide copies of documents it seeks to withhold from the Defence, 14 March 2013, ICC-01/09-01/11-649.

¹² Prosecution's provision of documents pursuant to the Chamber's order (ICC-01/09-01/11-649), 15 March 2013, ICC-01/09-01/11-651, with 6 confidential *ex parte*, Prosecution only annexes.

8. On 12 April 2013, the Prosecution provided the additional information sought by the Chamber (“Additional Information”).¹⁴ The Prosecution informed the Chamber that: (i) while retaining its position that the Eight Documents are not relevant, the Prosecution undertakes to disclose the Eight Documents requested by the Defence under Rule 77 with limited redactions to protect only the identity of the source,¹⁵ (ii) the source has strong security concerns¹⁶ and (iii) in view of its decision to disclose the Eight Documents, the Prosecution submits that it has addressed the concerns raised in the 5 April Order.¹⁷
9. As the Prosecution has now agreed to disclose all of the documents covered by the Request, the Chamber considers the Request to be moot.

THE CHAMBER HEREBY

DISMISSES the Request.

¹³ Order to the Prosecution to provide additional details on eight documents subject to a disclosure request, 5 April 2013, ICC-01/09-01/11-669-Conf-Exp (notified, along with a confidential redacted version, on 8 April 2013).

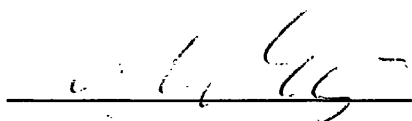
¹⁴ Prosecution’s response to Trial Chamber V’s order “to provide additional details on eight documents subject to a disclosure request” (ICC-01/09-01/11-669-Conf-Exp), 12 April 2013, ICC-01/09-01/11-679-Conf-Exp, with four confidential, *ex parte* annexes (confidential redacted version filed 16 April 2013).

¹⁵ Additional Information, ICC-01/09-01/11-679-Conf-Exp, para. 13. *See also* “Decision on the protocol establishing a redaction regime”, ICC-01/09-02/11-495-AnxA-Corr, paras. 41-43.

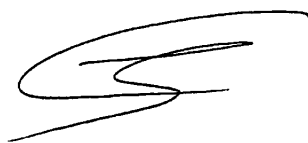
¹⁶ Additional Information, ICC-01/09-01/11-679-Conf-Exp, para. 16, Annexes A-D.

¹⁷ Additional Information, ICC-01/09-01/11-679-Conf-Exp, para. 18.

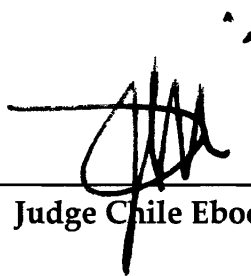
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding



Judge Christine Van den Wyngaert



Judge Chile Eboe-Osuji

Dated this 18 April 2013

At The Hague, The Netherlands