

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 6 May 2013

**TRIAL CHAMBER V**

**Before:** Judge Kuniko Ozaki, Presiding  
Judge Robert Fremr  
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**

**Order scheduling status conferences and provisionally vacating the trial start date**

**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 A. A. Khan

Mr David Hooper

Mr Kioko Kilukumi Musau

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**

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**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** (“Chamber”) of the International Criminal Court (“Court”, “ICC”), in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, having regard to Article 64 of the Rome Statute (“Statute”) and Rule 132 of the Rules of Procedure and Evidence, issues this Order scheduling status conferences and vacating the trial start date.

1. On 12 April 2013, the Office of the Prosecutor (“Prosecution”) filed a request to add five witnesses to its witness list and add their evidence to its list of evidence. In addition, the Prosecution requested the Chamber to hold an *ex parte* hearing.<sup>1</sup>
2. On 16 April 2013, the defence for Mr Ruto (“Ruto Defence”) informed the Chamber that it did not object to the request for an *ex parte*, Prosecution only hearing,<sup>2</sup> but requested that it be followed by a status conference with all parties present and that the Chamber also hold a subsequent *ex parte*, Defence only, hearing to address defence investigation issues.<sup>3</sup>
3. On 18 April 2013, the defence for Mr Sang (“Sang Defence”) joined the Ruto Defence’s request for a status conference,<sup>4</sup> indicating that it wished to discuss the Prosecution’s request to add new witnesses, as well as the feasibility of the 28 May 2013 date for the start of trial.
4. On 22 April 2013, the Ruto Defence filed the Second Defence Request to Vacate the Trial Commencement Date (“Second Defence Request”), in which it requested that the trial date of 28 May 2013 be vacated in order to allow the Defence adequate time to prepare its case.<sup>5</sup>

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<sup>1</sup> Prosecution’s Request Pursuant to Regulation 35(2) of the Regulations of the Court, ICC-01/09-01/11-680-Conf-Exp. A confidential redacted version was filed on 15 April 2013, ICC-01/09-01/11-680-Conf-Red.

<sup>2</sup> Defence Request for Status Conference, ICC-01/09-01/11-683-Conf, para. 2. A public redacted version was filed on 25 April 2013, ICC-01/09-01/11-683-Red, paras 2, 7-9.

<sup>3</sup> ICC-01/09-01/11-683-Red.

<sup>4</sup> Sang Defence Request for Status Conference pursuant to Rule 132(2), ICC-01/09-01/11-687-Conf.

<sup>5</sup> ICC-01/09-01/11-692-Conf. A public redacted version was filed on 25 April 2013, ICC-01/09-01/11-692-Red, and notified on 26 April 2013.

5. On 2 May 2013, the Prosecution responded to the requests by the Ruto Defence and the Sang Defence, stating that it did not object to a status conference or to the *ex parte* hearing requested by the Ruto Defence.<sup>6</sup>
6. The Chamber considers it necessary to receive additional information from the Prosecution about the request to add five witnesses to the Prosecution's witness list. The request for an *ex parte*, Prosecution, only hearing is therefore granted. This status conference will take place on **7 May 2013**.
7. The Chamber also considers it necessary to hold a status conference with both parties and the representative for victims in order to address both the Prosecution request to add five witnesses and the Defence request to vacate the trial start date. Accordingly, the Chamber hereby schedules a status conference for **14 May 2013**.
8. Finally, the Ruto Defence has requested an *ex parte*, Defence only, status conference in order to raise "critical defence investigative issues" relevant to the viability of the trial start date.<sup>7</sup> Both Defence teams were asked to provide details to the Chamber concerning precisely which issues they would like to raise in an *ex parte* status conference.<sup>8</sup> These details were provided on 3 May 2013.<sup>9</sup> The Chamber considers it opportune to hold an *ex parte*, Defence only, hearing immediately preceding the *inter partes* status conference on **14 May 2013**.
9. The Chamber cannot decide on the pending requests detailed above until having heard further submissions by the parties. In addition, a number of procedural issues relating to the conduct of proceedings still remain to be determined. Given these facts and bearing in mind that the Registry and the Victims and Witnesses Unit will need a minimum of two weeks to make the necessary arrangements for

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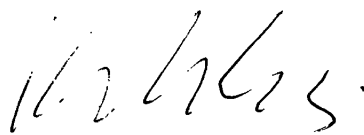
<sup>6</sup> Prosecution observations on Defence Request for Status Conference, ICC-01/09-01/11-717-Conf.

<sup>7</sup> ICC-01/09-01/11-683-Red, para. 7.

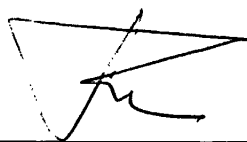
<sup>8</sup> Email communication from a Legal Officer of Trial Chamber V to both Defence teams on 2 May 2013 at 17:41.

<sup>9</sup> Email communication from the Sang Defence to Trial Chamber V on 3 May 2013 at 13:29 and email communication from the Ruto Defence to Trial Chamber V on 3 May 2013 at 15:58.

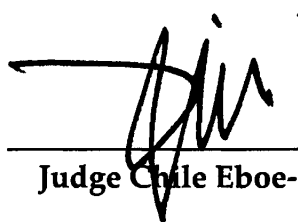
the start of trial, the Chamber considers that it is not feasible, at this stage, to retain 28<sup>th</sup> of May 2013 as the start date for the trial. Therefore, the Chamber hereby, without prejudice to the Chamber's decisions on the pending requests, **vacates the trial date of 28 May 2013**. The new start date for trial will be set in the Chamber's decision on the Second Defence Request, which will be rendered in due course.



**Judge Kuniko Ozaki, Presiding Judge**



**Judge Robert Fremr**



**Judge Chile Eboe-Osuji**

Dated 6 May 2013

At The Hague, The Netherlands