

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/09-01/11
Date: 26 September 2013

TRIAL CHAMBER V(A)

Before: Judge Chile Eboe-Osuji, Presiding Judge
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

Confidential

Prosecution's request for to reply to Defence filing ICC-01/09-01/11-985

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Introduction

1. The Prosecution requests Trial Chamber V(A) ("Chamber") for leave to file a reply under Regulation 24(5)¹ to the Ruto Defence filing entitled "Defence Response to Prosecution filing in Compliance with the Chamber's 'Order Regarding Applications for Notice of Possibility of Variation of Legal Characterisation'".² The reply is necessary in order to rectify the Defence's non-compliance with terms of the Chamber's decision allowing the Defence to raise objections.

Procedural History

2. On 3 July 2012, the Office of the Prosecutor (the 'Prosecution') filed an application (the 'Prosecution Application') for notice to be given under Regulation 55(2) of the Regulations with respect to Mr Ruto's individual criminal responsibility.³
3. On 4 July 2012, the then Legal Representative of Victims (the 'LRV') filed submissions seeking that notice be given under Regulation 55 of the Regulations for possible recharacterisations above and beyond those contained in the Prosecution Application (the 'LRV Application').⁴
4. On 24 July 2012, the defence team for Mr Ruto (the 'Ruto Defence') responded to the Prosecution Application.⁵
5. On 25 July 2012, the defence team for Mr Sang (the 'Sang Defence') filed a response to the Prosecution Application.⁶
6. Also on 25 July 2012, the Ruto Defence and Sang Defence (collectively, the 'Defence') jointly responded to the LRV Application.⁷

¹ Regulations of the Court.

² ICC-01/09-01/11-985

³ ICC-01/09-01/11-433.

⁴ ICC-01/09-01/11-436.

⁵ ICC-01/09-01/11-442.

⁶ ICC-01/09-01/11-443.

⁷ ICC-01/09-01/11-444.

7. On 12 August 2013, the Prosecution reiterated its request for the Chamber to give notice prior to or at the commencement of trial that it may change the legal characterisation of the form of individual criminal responsibility of Mr Ruto.⁸
8. On 19 August 2013, a status conference was held where, inter alia, the parties and participants further addressed whether notice should be given for any of the proposed recharacterisations.⁹
9. On 5 September the Chamber issued its Order Regarding Applications for Notice of Possibility of Variation of Legal Characterisation ('Order') in which it ordered the Prosecution to submit certain additional details pertaining to the precise facts and circumstances it relied upon in support of its request for notification of possible recharacterisations and granted the Defence until 24 September 2013 "to raise reasoned objections, if any, following the receipt of the additional details provided...".¹⁰ In this decision, the Chamber explained the necessity for the provision of these additional details as "[s]uch a showing allows for the Defence to be able to make full submissions on whether the facts and circumstances described in the charges are exceeded and, if notice under Regulation 55(2) of the Regulations is given, to be informed in detail of the factual allegations to which any potential change in the legal characterisation of the facts relate".¹¹
10. On 17 September, in compliance with the Chamber's order, the Prosecution filed a chart setting out in detail the facts and circumstances relied upon in support of the Prosecution Application ('Prosecution Filing').¹²
11. On 24 September the Ruto Defence filed its purported response to the Prosecution filing ('Ruto Defence Response'). The Sang Defence did not file a response.¹³

⁸ ICC-01/09-01/11-848.

⁹ ICC-01/09-01/11-T-24-Red-ENG.

¹⁰ ICC-01/09-01/11-907.

¹¹ *Ibid.*, para. 10.

¹² ICC-01/09-01/11-943.

¹³ ICC-01/09-01/11-985.

Submissions

12. The Prosecution submits that a reply is necessary in the circumstances to explain why the submissions contained in the Ruto Defence Response do not comply with, or alternatively exceed, the terms of the Chamber's order granting permission to raise objections to the "**additional** details provided by the Prosecution", ¹⁴ and why they should therefore be struck out or disregarded by the Chamber.
13. Alternatively, a reply is necessary to respond to the eight pages of new arguments on the merits of the Prosecution Application, which the Ruto Defence have submitted out of time and outside of the sequence of filings permitted by the Regulations.

Relief

14. The Prosecution accordingly requests leave to reply to the Ruto Defence Response. Should the request be granted, the Prosecution undertakes to file its reply within five days of the notification of the Chamber's decision granting this relief.



Fatou Bensouda, Prosecutor

Dated this 26th day of September 2013

At The Hague, the Netherlands

¹⁴ Order, p.6, final para. of disposition (emphasis added).