



Original: English

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

Date: 7 May 2014

TRIAL CHAMBER V(A)

Before: Judge, Chile Eboe-Osuji, Presiding
Judge Olga Herrera Carbuca
Judge Robert Fremr

SITUATION IN THE REPUBLIC OF KENYA

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

Public

Decision on urgent Prosecution request for extension of time to respond to any applications for leave to appeal the 'Decision on Prosecutor's Application for Witness Summonses and resulting Request for State Party Cooperation'

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Anton Steynberg

Counsel for William Samoei Ruto

Mr Karim Khan

Mr David Hooper

Mr Essa Faal

Ms Shyamala Alagendra

Counsel for Joshua Arap Sang

Mr Joseph Kipchumba Kigen-Katwa

Ms Caroline Buisman

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

Mr Githu Muigai, SC

Attorney General, Republic of Kenya

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber V(A) (the 'Chamber') of the International Criminal Court, in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, having regard to Regulations 34, 35(2) and 65(3) of the Regulations of the Court (the 'Regulations'), issues this 'Decision on urgent Prosecution request for extension of time to respond to any applications for leave to appeal the "Decision on Prosecutor's Application for Witness Summonses and resulting Request for State Party Cooperation"'.

1. On 5 May 2014, the Office of the Prosecutor (the 'Prosecution') filed the 'Urgent Prosecution Request for Extension of Time to Respond to any Applications for Leave to Appeal the "Decision on Prosecutor's Application for Witness Summonses and resulting Request for State Party Cooperation"' (the 'Request').¹ The Prosecution requests that the Chamber set a deadline no earlier than 16 May 2014 for it to file a consolidated response² to: (i) any applications for leave to appeal the 'Decision on Prosecutor's Application for Witness Summonses and resulting Request for State Party Cooperation' (the 'Summons Decision')³ and (ii) the submission of the Government of Kenya to be filed by 12 May 2014 (the 'Forthcoming Application').⁴
2. Later on 5 May 2014, both defence teams did seek leave to appeal the Summons Decision.⁵
3. On 6 May 2014, the defence team for Mr Ruto (the 'Ruto Defence') responded to the Request and requests that it be rejected (the 'Response').⁶

¹ ICC-01/09-01/11-1290.

² Request, ICC-01/09-01/11-1290, para. 8.

³ 17 April 2014, ICC-01/09-01/11-1274-Corr2.

⁴ See Decision on Government of the Republic of Kenya's Request for an extension of deadline to file leave to appeal and/or leave to submit amicus curiae observations on the Decision on the summon of witnesses, 2 May 2014, ICC-01/09-01/11-1287.

⁵ Defence application for leave to appeal the "Decision on Prosecutor's Application for Witness Summonses and resulting Request for State Party Cooperation", 5 May 2014, ICC-01/09-01/11-1291; Sang Defence Request for Leave to Appeal the Decision on Prosecutor's Application for Witness Summonses and resulting Request for State Party Cooperation, 5 May 2014, ICC-01/09-01/11-1293.

4. The Prosecution submits that good cause exists for varying the leave to appeal response deadline⁷ in the interests of fairness and judicial economy.⁸ The Prosecution argues that a consolidated response would simplify the filing process and promote a fair and expeditious hearing of the relevant issues.⁹ The requested extension would also help ensure equality of arms in the view of the Prosecution, as, without an extension, the Government of Kenya would gain an undue advantage by having advance notice of the Prosecution's arguments before the Forthcoming Application is filed.
5. The Ruto Defence responds that no extension of time is warranted because: (i) the Prosecution has already made extensive submissions related to the Forthcoming Application,¹⁰ making it meritless at this point to argue for a consolidated response,¹¹ (ii) the time saved from the Prosecution filing a consolidated response 'appears minimal as compared to the windfall provided to the Prosecution in terms of extra time to respond to the defence teams' applications'¹² and (iii) it is unlikely that the Government of Kenya would gain any 'undue advantage' if the Request is rejected.¹³
6. Regulation 35(2) of the Regulations provides, in relevant part, that '[t]he Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard'.

⁶ Defence response to "Urgent Prosecution Request for Extension of Time to Respond to any Applications for Leave to Appeal the 'Decision on Prosecutor's Application for Witness Summonses and resulting Request for State Party Cooperation'", 6 May 2014, ICC-01/09-01/11-1294.

⁷ Regulation 65(3) of the Regulations provides, in relevant part, that '[p]articipants may file a response within three days of notification of the application [for leave to appeal] described in sub-regulation 1, unless the Pre-Trial or Trial Chamber concerned orders an immediate hearing of the application'.

⁸ Request, ICC-01/09-01/11-1290, para. 6.

⁹ Request, ICC-01/09-01/11-1290, para. 7.

¹⁰ See Prosecution's Response to the Government of the Republic of Kenya's Request for an Extension of Time and/or Leave to Appeal the Decision on Prosecutor's Application for Witness Summonses and resulting Request for State Party Cooperation, 2 May 2014, ICC-01/09-01/11-1284.

¹¹ Response, ICC-01/09-01/11-1294, para. 3.

¹² Response, ICC-01/09-01/11-1294, para. 4.

¹³ Response, ICC 01/09 01/11 1294, para. 5.

7. Given the urgency and straightforward nature of the Prosecution's relief sought, the Chamber considers it appropriate to proceed to its ruling without hearing from the other participants who have yet to respond.
8. The Chamber accepts the Prosecution's arguments and considers that there is good cause to extend the relevant time limit so as to allow for the Prosecution to file the consolidated response which it requests. As to the Ruto Defence's arguments, the Chamber: (i) is not persuaded that the Prosecution's existing submissions affect the efficiency gained from having a consolidated response to these three new applications; (ii) does not consider that the Prosecution would gain any undue advantage by filing its response in a consolidated fashion and (iii) considers it most efficient to receive the Prosecution's response to the Forthcoming Application in the same filing as the one responding to the pending leave to appeal requests.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the relief sought by the Prosecution; and

ORDERS the Prosecution's consolidated response to be filed by 16 May 2014.

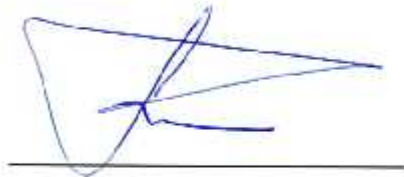
Done in both English and French, the English version being authoritative.

A blue ink signature, appearing to be 'Chile Eboe-Osuji', written over a horizontal line.

Judge Chile Eboe-Osuji, Presiding Judge

A blue ink signature, appearing to be 'Olga Herrera Carbuca', written over a horizontal line.

Judge Olga Herrera Carbuca

A blue ink signature, appearing to be 'Robert Fremr', written over a horizontal line.

Judge Robert Fremr

Dated 7 May 2014

At The Hague, The Netherlands