

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 11 September 2015

TRIAL CHAMBER V(A)

Before: Judge Chile Eboe-Osuji, Presiding
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***

Public

**Decision on the Ruto Defence's request to modify the schedule for the submission
of a 'no case to answer' motion**

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 A. A. 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

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*, pursuant to Article 64(6)(f) of the Rome Statute (the ‘Statute’), renders this ‘Decision on the Ruto Defence’s request to modify the schedule for the submission of a ‘no case to answer’ motion’.

I. INTRODUCTION

1. On 8 September 2015, the defence team for Mr Ruto (the ‘Ruto Defence’) filed a request to modify the schedule for the submission of a ‘no case to answer’ motion (the ‘Request’).¹ On the same day, the defence team for Mr Sang (together with the Ruto Defence, the ‘Defence’) filed a response, joining and supporting the Request.² In the Request, the Defence seeks a modification of the schedule to file a ‘no case to answer’ motion to no later than 14 days after: (a) any Appeals Chamber judgment on the Defence appeals against the Chamber’s ‘Decision on Prosecution Request for Admission of Prior Recorded Testimony’ (the ‘Decision’);³ or alternatively, (b) the decision of the Chamber denying leave to appeal the Decision.⁴
2. On 9 September 2015, the Office of the Prosecutor (‘Prosecution’) filed its consolidated response to the Request.⁵ The Prosecution does not oppose the Request but submits that the Defence, in requesting a modification of the schedule to file a ‘no case to answer’ motion, has waived its right to a speedy trial under Article 67(1)(c) of the Statute. The Prosecution also argues that under

¹ Ruto Defence request to modify the schedule for the submission of a ‘no case to answer’ motion, ICC-01/09-01/11-1949-Conf.

² Sang Defence Response to Ruto Defence request to modify the schedule for the submission of a ‘no case to answer’ motion, ICC-01/09-01/11-1950-Conf.

³ ICC-01/09-01/11-1938-Conf-Corr + Conf-Anx-Corr & Conf-Corr-AnxII and ICC-01/09-01/11-1938-Corr-Red2 + Anx-Corr-Red2.

⁴ ICC-01/09-01/11-1949-Conf; ICC-01/09-01/11-1950-Conf.

⁵ Prosecution’s consolidated response to the joint defence request to modify the schedule for submission of a ‘no case to answer’ motion, ICC-01/09-01/11-1952-Conf.

these circumstances, and in the event any 'no case to answer' motion is refused, the Defence should be ready to present a Defence case without further delays. The Prosecution also indicates its intention to oppose any future request to recall the witnesses whose prior recorded testimony were admitted by way of the Decision.⁶

3. On 10 September 2015, the Chamber granted leave to appeal the Decision.⁷
4. The Chamber recalls that the schedule previously established to file any 'no case to answer' motion is no later than 14 days after the closure of the Prosecution's case.⁸
5. Mindful of the need to avoid unnecessary delays, the Chamber considers that the schedule for 'no case to answer' motions is to be maintained. The Chamber considers that the defence should be able to address, in any 'no case to answer' submission they make, the evidence before the Chamber both in terms of the current record, and in the alternative, in a situation where the aforementioned materials would not form part of the evidence. The Prosecution's response to any such motion must similarly address the alternative situations.

FOR THE FOREGOING REASONS, THE CHAMBER, HEREBY

REJECTS the Request.

⁶ ICC-01/09-01/11-1952-Conf.

⁷ Decision on the Defence's Applications for Leave to Appeal the "Decision on Prosecution Request for Admission of Prior Recorded Testimony", ICC-01/09-01/11-1953-Conf and ICC-01/09-01/11-1953-Red.

⁸ Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on 'No Case to Answer' Motions), 3 June 2014, ICC-01/09-01/11-1134, para. 37; Decision on the Sang Defence's Request for Reconsideration of Page and Time Limits, 10 February 2015, ICC-01/09-01/11-1813.

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



Judge Chile Eboe-Osuji
(Presiding)



Judge Olga Herrera Carbuccion



Judge Robert Fremr

Dated 11 September 2015

At The Hague, The Netherlands