



Original: English

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

Date: 14 September 2015

**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**

**Public**

**Sang Defence Response to *Ruto Defence application*  
*for extension of time limit to submit a 'no case to answer' motion***

**Source: Defence for Joshua arap Sang**

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

**The Office of the Prosecutor**

Fatou Bensouda  
Anton Steynberg

**Counsel for the Defence**

**For William Samoei Ruto:**

Karim Khan QC, David Hooper QC  
Essa Faal, Shyamala Alagendra  
Leigh Lawrie

**For Joshua Arap Sang**

Joseph Kipchumba Kigen-Katwa  
Caroline Buisman

**Legal Representatives of the Victims**

Wilfred Nderitu

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**Office of Public Counsel for Victims**

Paolina Massidda

**Office of Public Counsel for the Defence**

**Amicus Curiae**

**States' Representatives**

**REGISTRY**

---

**Registrar**

Herman von Hebel

**Counsel Support Section**

**Deputy Registrar**

**Victims and Witnesses Unit**

Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

1. The Defence for Joshua arap Sang (“Defence”) seeks to join and support the *Ruto Defence application for extension of time limit to submit a ‘no case to answer’ motion* (“Application”),<sup>1</sup> which sought to extend the deadline for submission of the Defence’s ‘no case to answer’ motion to fourteen days after the submission of the Defence document in support of its appeal on the *Decision on Prosecution Request for Admission of Prior Recorded Testimony* (“Rule 68 Decision”).<sup>2</sup> The Application submits that good cause exists for an extension pursuant to Regulation 35 of the Regulations of the Court.
2. As noted in the Application, the Prosecution closed its case on 10 September 2015. That closure signified the beginning of the fourteen day time limit within which the Defence has to file its ‘no case to answer’ motion.<sup>3</sup> The Chamber has recently indicated that the Defence should make an alternative argument within that motion – taking into consideration the statements of five witnesses that have been admitted onto the record through Rule 68, and alternatively making arguments as to the sufficiency of the evidence without those statements, in the event that the Appeals Chamber overturns its Rule 68 Decision.
3. During this same time frame, the Defence will have to prepare pleadings before the Appeals Chamber in relation to the Rule 68 Decision. Additionally, the Sang Defence has to respond to the *Prosecution’s Request for notice under regulation 55(2) of possibility of variation with respect to individual criminal responsibility of Mr Joshua arap Sang*.<sup>4</sup>
4. The three filings – the no case to answer motion, the Rule 68 Appeal, and the recharacterization response – are complex filings, each involving a mixture of fact and law. The impact of their outcomes on the case is significant and weighty. Despite its continual preparation for the ‘no case to answer’ motion, the Defence had no prior indication that it would need to argue in the alternative. Nor could it have anticipated that it would be granted leave to appeal, or that the Prosecution would file a request for notice under Regulation 55(2). Therefore, the Defence was not in a position to

---

<sup>1</sup> ICC-01/09-01/11-1959.

<sup>2</sup> ICC-01/09-01/11-1938-Conf-Corr.

<sup>3</sup> ICC-01/09-01/11-1134.

<sup>4</sup> ICC-01/09-01/11-1951.

prepare for those filings in advance and must now balance writing those submissions simultaneously with its 'no case to answer' motion.

5. The Defence respectfully acknowledges that the Trial Chamber has already indicated that it wants to "avoid unnecessary delays" in regard to the scheduling of the 'no case to answer' motions.<sup>5</sup> However, the Article 67(1)(c) right to be tried without undue delay belongs to the accused, to protect his interests. In this instance, Mr Sang will not complain of or be prejudiced by a short fourteen-day delay. In fact, his rights would be better protected if his Defence team were afforded adequate time for the preparation of his Defence, per Article 67(1)(b), especially keeping in mind that his team operates under the legal aid scheme and has fewer resources to invoke at short notice when several deadlines hit at once.
6. Consequently, the Defence respectfully requests that the Trial Chamber extend the deadline for submission of its 'no case to answer' motion to 14 days after the submission of the Defence document in support of its appeal of the Rule 68 Decision.

Respectfully Submitted,



---

Joseph Kipchumba Kigen-Katwa  
On behalf of Mr Joshua arap Sang  
Dated this 14<sup>th</sup> day of September 2015  
In Nairobi, Kenya

---

<sup>5</sup> ICC-01/09-01/11-1955, para. 5.