

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/09-01/11 OA 10

Date: 18 September 2015

THE APPEALS CHAMBER

Before:

**Judge Piotr Hofmański, Presiding Judge
Judge Silvia Fernández de Gurmendi
Judge Christine Van den Wyngaert
Judge Howard Morrison
Judge Péter Kovács**

SITUATION IN THE REPUBLIC OF KENYA

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

Public document

Decision on the requests for time and page extension

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

The Office of the Prosecutor

Ms Fatou Bensouda

Ms Helen Brady

Counsel for William Samoei Ruto

Mr Karim Khan

Mr David Hooper

Legal Representatives of Victims

Mr Wilfred Nderitu

Counsel for Joshua Arap Sang

Mr Joseph Kipchumba Kigen-Katwa

Ms Caroline Buisman

The Office of Public Counsel for Victims

Ms Paolina Massidda

Registrar

Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeals of Mr William Samoei Ruto and Mr Joshua Arap Sang against the decision of Trial Chamber V(A) entitled “Decision on Prosecution Request for Admission of Prior Recorded Testimony” of 19 August 2015 (ICC-01/09-01/11-1938-Red-Corr),

Having before it the “Ruto Defence request for extension of page and time limits” of 11 September 2015 (ICC-01/09-01/11-1956-Red); the “Addendum to ‘Ruto Defense request for extension of page and time limits’” of 11 September 2015 (ICC-01/09-01/11-1957); the “Sang Defence Request to Join the *Addendum to the ‘Ruto Defense Request for Extension of Page and Time Limits’*” of 11 September 2015 (ICC-01/09-01/11-1958); and the “Prosecution’s Response to joint Defence request for extension of page and time limits” of 14 September 2015 (ICC-01/09-01/11-1961),

Renders pursuant to regulations 35 (2) and 37 (2) of the Regulations of the Court the following

DECISION

1. The time limit for the filing of the documents in support of the appeal by Mr William Samoei Ruto and Mr Joshua Arap Sang is extended to 16h00 on Monday, 5 October 2015.
2. The time limit for the filing of the Prosecutor’s and the victims’ response to the documents in support of the appeal, if any, is extended to 16h00 on Monday, 26 October 2015.
3. The page limit for the documents in support of the appeals of Mr William Samoei Ruto and Mr Joshua Arap Sang is extended by 40 pages such that each document shall not exceed 60 pages in total.
4. The page limit for the Prosecutor’s and the victims’ response to the documents in support of the appeal, if any, is extended by 80 pages such that each document shall not exceed 100 pages in total.

REASONS

I. PROCEDURAL HISTORY

1. On 10 September 2015, Trial Chamber V (A) (hereinafter: “Trial Chamber”) granted Mr William Samoei Ruto (hereinafter: “Mr Ruto”) and Mr Joshua Arap Sang (hereinafter: “Mr Sang”) leave to appeal¹ its “Decision on Prosecution Request for Admission of Prior Recorded Testimony” of 19 August 2015² (hereinafter: “Impugned Decision”).

2. On 11 September 2015, Mr Ruto filed before the Appeals Chamber the “Ruto Defence request for extension of page and time limits”³ (hereinafter: “Mr Ruto’s Request”) wherein he requests the Appeals Chamber to grant an extension of the page limit for his document in support of the appeal to 60 pages and a 14 day extension of the time limit for the filing of the document in support of the appeal so that the document in support of the appeal would be due on 5 October 2015.⁴ An addendum to Mr Ruto’s Request was filed on 11 September 2015⁵ (hereinafter: “Addendum to Mr Ruto’s Request”), whereby Mr Ruto modified his original request and sought instead an extension of 21 days so that the document in support of appeal would be due on 12 October 2015.⁶ Mr Ruto submits that exceptional circumstances and good cause “exist and justify the requested extension of page and time limits”.⁷ In Mr Ruto’s view, the number of issues certified on appeal,⁸ the complexity of the legal issues involved,⁹ the novelty of the issue,¹⁰ and the fact that he is simultaneously working on the

¹ “Decision on the Defence’s Applications for Leave to Appeal the “Decision on Prosecution Request for Admission of Prior Recorded Testimony””; a public redacted version was registered on the same day (ICC-01/09-01/11-1953-Red); a corrigendum was registered on 11 September 2015 (ICC-01/09-01/11-1953-Red-Corr) (hereinafter: “Decision Granting Leave to Appeal”).

² A corrigendum was registered on 28 August 2015 (ICC-01/09-01/11-1938-Conf-Corr); a public redacted version was registered on the same day (ICC-01/09-01/11-1938-Corr-Red2); “Partly Concurring Opinion of Judge Eboe-Osuji on the ‘Decision on Prosecution Request for Admission of Prior Recorded Testimony’”; a corrigendum was registered on 28 August 2015 (ICC-01/09-01/11-1938-Conf-Anx-Corr); a public redacted version was registered on the same day (ICC-01/09-01/11-1938-Anx-Corr-Red2) (hereinafter: “Partly Concurring Opinion”).

³ ICC-01/09-01/11-1956-Conf; a public redacted version was registered on the same date (ICC-01/09-01/11-1956-Red).

⁴ Mr Ruto’s Request, para. 21.

⁵ “Addendum to “Ruto Defence request for extension of page and time limits””, ICC-01/09-01/11-1957.

⁶ Addendum to Mr Ruto’s Request, para. 4.

⁷ Mr Ruto’s Request, para. 14.

⁸ Mr Ruto’s Request, para. 15.

⁹ Mr Ruto’s Request, para. 16.

¹⁰ Mr Ruto’s Request, paras 17-18.

preparation of a “no case to answer” motion before the Trial Chamber¹¹ warrant the page and time extension sought.

3. On 11 September 2015, Mr Sang filed the “Sang Defence Request to Join the *Addendum to the ‘Ruto Defense request for extension of page and time limits’*”,¹² whereby Mr Sang joined Mr Ruto’s Request and the Addendum to Mr Ruto’s Request seeking the same time and page extension requested by Mr Ruto.¹³ Mr Sang further referred to the limited resources of his legal team as an additional circumstance warranting the time and page extension sought.¹⁴

4. On 14 September 2015, the Prosecutor filed the “Prosecution’s Response to joint Defence request for extension of page and time limits”,¹⁵ whereby she requested the Appeals Chamber to partially grant the requests for time and page extension submitted by Mr Ruto and Mr Sang.¹⁶ In the Prosecutor’s view, the time and page extension sought by Mr Ruto and Mr Sang “are excessive in the circumstances”.¹⁷ She submits that a 14 day extension “would not unduly affect the progress of trial proceedings” and “would be reasonably adequate” to file the documents in support of the appeal.¹⁸ The Prosecutor further notes that Mr Ruto and Mr Sang have requested an extension of the time limit to file their “no case to answer” motions before the Trial Chamber.¹⁹ In relation to the page extension sought by Mr Ruto and Mr Sang, the Prosecutor requests the Appeals Chamber to extend the page limit for the documents in support of the appeal to 40 pages each.²⁰ Finally, the Prosecutor requests, “[i]n the interest of fairness”, a time extension of 14 days to file her response to the documents in support of the appeal and the extension of the page limit to 60 pages.²¹

II. MERITS

5. Pursuant to regulation 35 (2) of the Regulations of the Court, a Chamber may extend or reduce a time limit if good cause is shown. In relation to page limits,

¹¹ Addendum to Mr Ruto’s Request, paras 2-3.

¹² ICC-01/09-01/11-1958 (hereinafter: “Mr Sang’s Request”).

¹³ Mr Sang’s Request, paras 3-4.

¹⁴ Mr Sang’s Request, para. 3.

¹⁵ ICC-01/09-01/11-1961 (hereinafter: “Prosecutor’s Response”).

¹⁶ Prosecutor’s Response, para. 8.

¹⁷ Prosecutor’s Response, para. 3.

¹⁸ Prosecutor’s Response, paras 4-5.

¹⁹ Prosecutor’s Response, para. 5.

²⁰ Prosecutor’s Response, para. 7.

²¹ Prosecutor’s Response, para. 7.

regulation 37 (2) of the Regulations of the Court provides that a Chamber may grant an extension of the page limits “in exceptional circumstances”.

6. In the case at hand, the Appeals Chamber notes that the issues for which leave to appeal have been granted are novel and complex. In addition, the Appeals Chamber notes that the Impugned Decision and the Partly Concurring Opinion are lengthy documents and are likely to raise significant issues of law and fact. In this regard, the Appeals Chamber observes that seven issues have been certified on appeal by the Trial Chamber.²² Finally, the Appeals Chamber notes that the deadline set by the Trial Chamber for the filing of “no case to answer” motions²³ is four days later than the time limit for the filing of the documents in support of the appeal, resulting in the legal teams for Mr Ruto and Mr Sang being compelled to work simultaneously in the preparation of two complex filings.

7. For the foregoing reasons, the Appeals Chamber considers that good cause has been shown warranting a time extension for the filing of the documents in support of the appeal and the Prosecutor’s response thereto. The Appeals Chamber considers it appropriate in the circumstances to extend the time limit for any response by participating victims at the same time. However, the Appeals Chamber considers that, in the circumstances of this case, an extension to 16h00 on Monday, 5 October 2015 for the filing of the documents in support of the appeal, and to 16h00 on Monday, 26 October 2015 for the filing of the responses to the documents in support of the appeal are sufficient.

8. In relation to the requests for page extension, the Appeals Chamber considers that exceptional circumstances exist justifying the extension of the page limit of the documents in support of the appeal and the responses thereto. Accordingly, the Appeals Chamber grants an extension of the page limit such that each document in support of the appeal shall not exceed 60 pages in total. In relation to the Prosecutor and the victims, the Appeals Chamber deems it appropriate to grant an extension of the page limit for their respective consolidated responses such that each response shall not exceed 100 pages.

²² Decision Granting Leave to Appeal, para. 20.

²³ “Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on ‘No Case to Answer’ Motions)”, 3 June 2014, ICC-01/09-01/11-1334, para. 37.

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

A handwritten signature in black ink, appearing to read 'Hofmański', written over a horizontal line.

Judge Piotr Hofmański
Presiding Judge

Dated this 18th September 2015

At The Hague, The Netherlands