



Original: English

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

Date: 02 October 2014

Date of public redacted version: 11 December 2017

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 redacted version of

Decision on the Prosecution's Request for Clarification of Decision ICC-01/09-01/11-1459-Conf-Exp

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
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 (the ‘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 renders the following Decision on the Prosecution’s Request for Clarification of Decision ICC-01/09-01/11-1459-Conf-Exp.

I. PROCEDURAL AND SUBMISSIONS HISTORY

1. On 20 June 2014, the Office of the Prosecutor (the ‘Prosecution’) submitted a request for delayed disclosure of data [REDACTED] until 2 August 2014 (the ‘Original Request’).¹
2. On 23 July 2014, the Chamber granted the Original Request (the ‘Original Decision’).²
3. On 25 July 2014, the Prosecution filed a further request, seeking that the deadline for disclosure be extended and that the concerned materials are disclosed on a rolling basis as soon as [REDACTED] or at least 30 days prior to the commencement the testimony of a Prosecution witness concerned by the data (‘Request for Extension’).³
4. On 14 August 2014, the Chamber issued its decision on the Request for Extension, granting it in part and directed the Prosecution to disclose the material no later than 22 August 2014 (‘Decision Granting Extension’).⁴

¹ Prosecution’s notification of information regarding contact between [REDACTED] and request for delayed disclosure, ICC-01/09-01/11-1381-Conf-Exp, available to the Prosecution and VWU only with confidential *ex parte* Annexes A - C, available to the Prosecution and VWU only. A confidential-redacted version was filed on 22 August 2014 and registered on 25 August 2014, ICC-01/09-01/11-1381-Conf-Red.

² Decision on Prosecution Request for Delayed Disclosure related to [REDACTED], ICC-01/09-01/11-1390-Conf-Exp, Prosecution and VWU only, a confidential redacted version was filed on the same day.

³ Prosecution’s request for extension of the disclosure deadline related to [REDACTED], ICC-01/09-01/11-1448-Conf-Exp, the request was reclassified as confidential on 27 August 2014.

⁴ Decision on Prosecution’s Request for Extension of the Disclosure Deadline related to [REDACTED], ICC-01/09-01/11-1459-Conf-Exp.

5. On 21 August 2014, the Prosecution filed a request for clarification of the Decision Granting Extension ('Clarification Request').⁵ Therein, it informed the Chamber that in the Request for Extension it represented the facts inaccurately which may have led the Chamber to authorise delayed disclosure for a larger volume of material than was originally granted. Accordingly, the Prosecution requested clarification, namely whether the Decision Granting Extension is to be interpreted as only imposing disclosure obligations on the material for which delayed disclosure was granted in the Original Decision.
6. Due to the urgency of the matter, the Chamber responded to the Clarification Request on 22 August 2014 via email, informing the Prosecution that the scope of disclosure ordered in the Decision Granting Extension was not to be interpreted as exceeding that of the Original Decision.⁶ It announced that a formal decision will be issued in due course.
7. On 16 September 2014, the Defence team for Mr Sang ('Sang Defence') filed a response, seeking the Prosecution's interpretation of the Decision Granting Extension to be rejected.⁷

II. ANALYSIS

8. The Chamber notes that the Decision Granting Extension granted, in part, a request under Regulation 35 of the Regulations of the Court (the 'Regulations') for extension of a deadline set by the Chamber in the Original Decision. The Decision Granting Extension is to be understood in the context of the Original Decision. It is

⁵ Prosecution's request for clarification of Decision ICC-01/09-01/11-1459-Conf-Exp and request for partial variation of deadline pursuant to Regulation 35(2), ICC-01/09-01/011-1462-Conf-Exp, Prosecution and VWU only. A confidential-redacted version was filed on 25 August 2014.

⁶ E-mail of a legal officer of the Chamber to the Prosecution on 22 August 2014, at 13:18.

⁷ Sang Defence Response to the Confidential Redacted Version of Prosecution's request for clarification of Decision ICC-01/09-01/11-1459-Conf-Exp and request for partial variation of deadline pursuant to Regulation 35(2), 21 August 2014, ICC-01/09-01/11-1462-Conf-Exp ('Response'), ICC-01/09-01/11-1516-Conf, paras 7, 12.

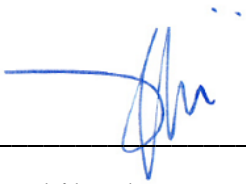
further noted that the Chamber had relied in its analysis on the findings made in the Original Decision.⁸

9. The Chamber is not convinced by the Sang Defence's submission that the Decision Granting Extension 'should not be reinterpreted in a manner favourable to the Prosecution in order to remedy an error in its own application upon which that Decision was based.'⁹ The Chamber considers this to be a matter of clarification and not an issue of reinterpretation or correcting mistakes made in the request that led to that decision.

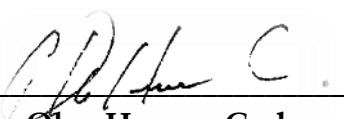
FOR THE FOREGOING REASONS THE CHAMBER HEREBY

CLARIFIES that the scope of disclosure ordered in the Decision Granting Extension does not exceed that of the Original Decision.

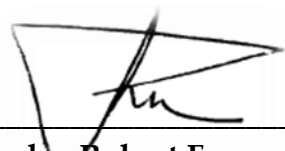
Done in both English and French, the English version being authoritative.



Judge Chile Eboe-Osuji, Presiding



Judge Olga Herrera Carbuca



Judge Robert Fremr

Dated 02 October 2014
 At The Hague, The Netherlands

⁸ Decision Granting Extension, ICC-01/09-01/11-1459-Conf-Exp, para. 8.

⁹ Response, ICC-01/09-01/11-1516-Conf, para. 6.