

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 8 June 2011

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge

**SITUATION IN THE REPUBLIC OF KENYA
IN THE CASE OF THE PROSECUTOR V. WILLIAM SAMOEI RUTO, HENRY
KIPRONO KOSGEY AND JOSHUA ARAP SANG**

Public

Decision on the Prosecutor's Request for Extension of Time

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

The Office of the Prosecutor

Luis Moreno-Ocampo, Prosecutor
Fatou Bensouda, Deputy Prosecutor

Counsel for William Samoei Ruto

Joseph Kipchumba Kigen-Katwa, David
Hooper and Kioko Kilukumi Musau

Counsel for Henry Kirprono Kosgey

George Odinga Oraro

Counsel for Joshua Arap Sang

Joseph Kipchumba Kigen-Katwa

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar

Silvana Arbia, Registrar
Didier Preira, Deputy Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”)¹ of the International Criminal Court hereby renders this decision on the “Prosecution’s Request for Extension of Time to Submit Observations on 59 Applications for Victims’ Participation in the Proceedings” (the “Prosecutor’s Request”).²

1. On 30 March 2011, the Single Judge issued the “First Decision on Victims’ Participation in the Case” (the “30 March 2011 Decision”),³ in which she established the framework for processing victims’ applications in this case. The Single Judge also determined that the parties to these proceedings shall be provided with redacted copies of the victims’ applications in order to submit observations if they so wish, within a time limit of two weeks.

2. On 18 May 2011, the Registry notified the parties of a first set of victims’ applications.⁴

3. On 3 June 2011, the Defence submitted its observations on the 59 victims’ applications within the time limit set by the Single Judge.⁵ No observations were received from the Prosecutor.

4. On 7 June 2011, at 17h23, the Chamber was notified of the Prosecutor’s Request in which he seeks to be granted extension of time on an exceptional basis arguing that his team applied the standard three-week deadline pursuant to regulation 34 of the Regulations of the Court.⁶ He further argues that the Trial Attorney was out of the country for an extended period of time, and that “disclosure obligations and a

¹ Pre-Trial Chamber II, “Decision Designating a Single Judge”, ICC-01/09-01/11-6.

² ICC-01/09-01/11-113.

³ Pre-Trial Chamber II, ICC-01/09-01/11-17.

⁴ ICC-01/09-01/11-92.

⁵ ICC-01/09-01/11-107-Conf.

⁶ ICC-01/09-01/11-113, para. 4.

variety of filings” make it “difficult, if not impossible, to meet all deadlines when an unexpected event intervenes”.⁷

5. The Single Judge notes article 21(1) of the Rome Statute (the “Statute”), rule 89 of the Rules of Procedure and Evidence (the “Rules”) and regulations 34(b) and 35(2) of the Regulations of the Court (the “Regulations”).

6. The Single Judge recalls that rule 89(1) of the Rules provides that the Prosecutor and the Defence “shall be entitled to reply within a time limit to be set by the Chamber” to victims’ applications. The reference to the phrase “within a time limit to be set by the Chamber” is self explanatory and makes clear that rule 89(1) of the Rules is the *lex specialis*. Moreover, based on the hierarchy of sources of law set out in article 21 of the Statute and regulation 1(1) of the Regulations, the Rules of Procedure and Evidence supersede the Regulations. In this regard, the Prosecutor argues that he relied on the time limit provided for in regulation 34(b) of the Regulations. However, the Single Judge disagrees with this interpretation as the legal basis to set up a time-limit is rule 89(1) and not regulation 34 of the Regulations. Even assuming *arguendo* that regulation 34 of the Regulations would be applicable, the 21 days time limit provided for in this provision does not apply, if the Chamber “otherwise ordered”. In the 30 March 2011 Decision, the Single Judge decided, on the basis of rule 89(1) of the Rules, that the deadline for receipt of the parties’ observations be two weeks. Since the Registry notified the Prosecutor on 18 May 2011 of the first set of victims’ applications, the applicable deadline in this case was 3 June 2011.

7. Regulation 35(2) of the Regulations reads:

The 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. After the lapse of a time limit, an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control.

⁷ ICC-01/09-01/11-113, para. 6.

8. The Single Judge considers that the Prosecutor has failed to advance any convincing justification for lodging his request for extension of time *four* days after the expiry of the deadline. It is essential that the Prosecutor organizes his office in a way that it remains functional at any time, even in the absence of individual members of the Prosecutor's team. The Single Judge's deadline policy set up in the 30 March 2011 Decision was known to the Prosecutor for more than two months and a system should have been established within his office to keep track with time limits established by the Chamber. The absence of the said Trial Lawyer does not justify the missing of a deadline established by the Chamber and by no means impede the Prosecutor to re-organize his team and comply with all of his obligations. Accordingly, it cannot be said that he was "unable to file the application within the time limit for reasons outside his or her control". Rather, the Prosecutor's Request makes clear that the two-week deadline established by the 30 March 2011 Decision was simply disregarded or overlooked. Moreover, invoking the Prosecutor's other statutory obligations equally cannot serve as a justification for not keeping track with time limits. In this regard, the Single Judge deems it desirable that the Prosecutor revisit best practices for his office.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

rejects the Prosecutor's Request.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Wednesday, 8 June 2011

At The Hague, The Netherlands