

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Original: English**

**No. ICC-01/09-01/11 OA2**

**Date: 17 August 2011**

**THE APPEALS CHAMBER**

**Before:**

**Judge Anita Ušacka, Presiding Judge  
Judge Sang-Hyun Song  
Judge Akua Kuenyehia  
Judge Erkki Kourula  
Judge Daniel David Ntanda Nsereko**

**SITUATION IN THE REPUBLIC OF KENYA**

**IN THE CASE OF THE PROSECUTOR v. WILLIAM SAMOEI RUTO,  
HENRY KIPRONO KOSGEY and JOSHUA ARAP SANG**

**Public document**

**Decision on the “Appeal against the Single Judge’s Decision on the ‘Request by  
Ms. Moraa Gesicho to Appear as Amicus Curiae’”**

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

**The Office of the Prosecutor**

Ms Fatou Bensouda, Deputy Prosecutor  
Mr Fabricio Guariglia

**Appellant**

Ms Moraa Gesicho

**Counsel for William Samoei Ruto**

Mr Joseph Kipchumba Kigen-Katwa  
Mr David Hooper  
Mr Kioko Kilukumi Musau

**Counsel for Henry Kiprono Kosgey**

Mr George Odinga Oraro,

**Counsel for Joshua Arap Sang**

Mr Joseph Kipchumba Kigen-Katwa

**REGISTRY**

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**Registrar**

Ms Silvana Arbia



The Appeals Chamber of the International Criminal Court,

In the appeal of Ms Moraa Gesicho against the decision of Pre-Trial Chamber II entitled “Decision on the ‘Request by Ms. Moraa Gesicho to Appear as Amicus Curiae’” of 12 April 2011 May (ICC-01/09-01/11-49),

After deliberation,

*Renders* unanimously, the following

## DECISION

The appeal is dismissed.

## REASONS

### I. PROCEDURAL HISTORY

1. On 5 April 2011, shortly before the initial appearance of Mr William Samoei Ruto, Mr Henry Kiprono Kosgey and Mr Joshua Arap Sang,<sup>1</sup> the Registrar transmitted to Pre-Trial Chamber II the “Request by Ms. Moraa Gesicho to Appear as Amicus Curiae”, in which Ms Gesicho requested (i) leave to submit *amicus curiae* observations; and (ii) a stay of the “decision summoning the 6 alleged perpetrators of post 2007 election violence pending the decision on this application”.<sup>2</sup>

2. On 12 April 2011, Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber II, rejected the request to submit *amicus curiae* observations, pursuant to rule 103 (1) of the Rules of Procedure and Evidence and dismissed *in limine* the request to stay the proceedings (hereinafter: “the Impugned Decisions”).<sup>3</sup>

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<sup>1</sup> The initial appearance hearing in this case was scheduled for 7 April 2011; see “Decision on the Prosecutor’s Application for Summons to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang”, 8 March 2011, ICC-01/09-01/11-01.

<sup>2</sup> ICC-01/09-01/11-39-Anx, p. 14.

<sup>3</sup> “Decision on the ‘Request by Ms. Moraa Gesicho to Appear as Amicus Curiae’”, ICC-01/09-01/11-49.

3. On 11 August 2011, the Registrar transmitted to the Appeals Chamber Ms Gesicho's "Appeal against the Single Judge's Decision on the 'Request by Ms. Moraa Gesicho to Appear as Amicus Curiae'"<sup>4</sup> (hereinafter: "Appeal").

## II. MERITS

4. The Appeals Chamber notes that Ms Gesicho filed her Appeal directly before it, invoking article 82 of the Statute as a legal basis.<sup>5</sup> However, the Impugned Decision does not fall into any of the categories of decisions that can be appealed without leave of the Pre-Trial Chamber. The Impugned Decision is neither a decision "with respect to jurisdiction or admissibility" (article 82 (1) (a) of the Statute), nor a decision "granting or denying release of the person being investigated or prosecuted" (article 82 (1) (b) of the Statute, nor a decision of a "Pre-Trial Chamber to act on its own initiative under article 56, paragraph 3" (article 82 (1) (c) of the Statute. Nor is it an order under article 75 of the Statute that could be appealed pursuant to article 82 (4) of the Statute. In addition, the Appeals Chamber notes that even if the Impugned Decision fell under any of the categories provided for in article 82 (1) or (4) of the Statute, the Appeals would have been filed out of time (see rules 154 and 150 of the Rules of Procedure and Evidence).

5. Accordingly, the Appeals Chamber dismisses the appeal as inadmissible.

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



**Judge Anita Ušacka**  
**Presiding Judge**

Dated this 17th day of August 2011

At The Hague, The Netherlands

<sup>4</sup> ICC-01/09-01/11-252-Anx1.

<sup>5</sup> Appeal, p.2.