

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 April 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 Re-filing of the “Defence Request for Variation of Decision on
Summons or in the Alternative Request for Leave to Appeal”**

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 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 (the “Court”) hereby renders the “Decision on the Re-filing of the ‘Defence Request for Variation of Decision on Summons or in the Alternative Request for Leave to Appeal’”.

1. On 8 March 2011, the Chamber, by majority, issued its “Decision on the Prosecutor’s Application for Summonses to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang”.² In the same decision, the Chamber imposed certain conditions restricting liberty (other than detention) on the three suspects.

3. On 6 April 2011, the Single Judge issued the Corrigendum of the “Decision Establishing Modalities to be Observed When Complying with Summons Conditions” (the “Decision Establishing Modalities”),³ setting out the modalities to be observed by the suspects when complying with one of the conditions imposed.

4. On 12 April 2011, counsel for William Samoei Ruto and Joshua Arap Sang submitted the “Defence Request for Variation of Decision on Summons or in the Alternative Request for Leave to Appeal”, requesting that the Single Judge modify the modalities to be observed by the two suspects or, in the alternative, grant leave to appeal the Decision Establishing Modalities.⁴ A corrigendum was submitted correcting some references in the text and footnotes.⁵

5. The Single Judge notes article 21(2) of the Rome Statute and regulation 36(3) of the Regulations of the Court (the “Regulations”).

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

² Pre-Trial Chamber II, “Decision on the Prosecutor’s Application for Summonses to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang”, ICC-01/09-01/11-1.

³ Pre-Trial Chamber II, ICC-01/09-01/11-38-Corr.

⁴ ICC-01/09-01/11-47.

⁵ ICC-01/09-01/11-47-Corr.

6. The Single Judge notes that the formatting requirements of regulation 36(3), fourth sentence, of the Regulations were not respected. The Single Judge also notes that, even though the Defence has corrected some text elements in its initial submission, which were previously referring erroneously to the case of *The Prosecutor v Francis Kirihi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, not all mistakes have been rectified.

7. The Single Judge disapproves the Defence's approach disrespecting the formatting requirements of official submissions as they may have the potential to circumvent the requisite page limit of 20 pages. The Single Judge also takes note of previous rulings of this Chamber in relation to an application submitted by counsel on behalf of Joshua Arap Sang,⁶ and that of the Appeals Chamber⁷ in which it has been emphasized that all parties and participants shall comply with the formatting requirements as provided in regulation 36(3) of the Regulations. Therefore, it is the view of the Single Judge that the submission as filed should be rejected.

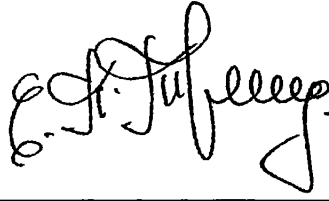
FOR THESE REASONS, THE SINGLE JUDGE HEREBY

- a) **rejects** the "Corrigendum of the Defence Request for Variation of Decision on Summons or in the Alternative Request for Leave to Appeal" as filed;
- b) **orders** the Defence to re-file its submission complying with regulation 36(3) of the Regulations no later than **Thursday 14 April 2011, at 16h00**.

⁶ Pre-Trial Chamber II, "Decision on Application for Leave to Participate under Articles 58, 42(5), (7)-(8)(a) of the Rome Statute and Rule 34(1)(d) and (2) of the Rules of procedure and Evidence, ICC-01/09-47, p. 6.

⁷ Appeals Chamber, Decision on the 'Observations de la Défense relatives à l'irrecevabilité du «Prosecution's Document in Support of Appeal against Trial Chamber I's decision of 8 July to stay the proceedings for abuse of process» daté du 26 juillet 2010", ICC-01/04-01/06-2543; Appeals Chamber, "Decision on the re-filing of the document in support of the appeal", ICC-01/04-01/06-1445.

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

A handwritten signature in black ink, appearing to read 'E. Trendafilova', written in a cursive style.

Judge Ekaterina Trendafilova
Single Judge

Dated this Wednesday, 13 April 2011

At The Hague, The Netherlands