

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11
Date: 10 January 2013

TRIAL CHAMBER V

Before: Judge Kuniko Ozaki, Presiding
Judge Christine Van den Wyngaert
Judge Chile Eboe-Osuji

SITUATION IN THE REPUBLIC OF KENYA

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

Confidential

**Decision on the prosecution's urgent application for extension of time limit
pursuant to Regulation 35 to disclose incriminatory material regarding P-24**

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

The Office of the Prosecutor

Ms Fatou Bensouda

Counsel for William Samoei Ruto

Mr Kioko Kilukumi Musau

Mr David Hooper

Legal Representatives of Victims

Counsel for Joshua Arap Sang

Mr Joseph Kipchumba Kigen-Katwa

Mr Joel Kimutai Bosek

Legal Representatives of 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

Ms Silvana Arbia

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber V ("Chamber") of the International Criminal Court in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, pursuant to Regulations 23 *bis* and 35 of the Regulations of the Court ("Regulations"), renders the following Decision on prosecution's urgent application for extension of time limit pursuant to Regulation 35 to disclose incriminatory material regarding P-24.

1. On 9 July 2012, the Chamber issued its "Decision on the schedule leading up to trial",¹ in which it ordered the Office of the Prosecutor ("prosecution"), *inter alia*, to complete all disclosure and provide a list of witnesses and list of evidence to be relied on at trial to the defence by 9 January 2013.²
2. On 9 January 2013, a few hours before the expiration of the time limit, the prosecution filed the "Prosecution's urgent application of extension of time limit pursuant to Regulation 35 to disclose incriminatory material regarding P-24" ("Application").³ The prosecution requests authorisation to delay disclosure to the defence of the identity of witness P-24, the incriminating material related to P-24 and the addition of the witness's name on the list of witnesses and the list of evidence until 23 January 2013.⁴
3. This decision is issued on a confidential basis as it refers to confidential and sensitive materials with respect to witness security. Considering the extreme urgency of the Application, the Chamber has decided, pursuant to Regulation 35(2) of the Regulations, that it is not appropriate in the present case to give the defence the opportunity to be heard on the Application prior to issuing its ruling.⁵ The

¹ ICC-01/09-01/11-440.

² ICC-01/09-01/11-440, paras 13-14.

³ ICC-01/09-01/11-536-Conf-Exp. A confidential redacted version was filed on the same day, 9 January 2013. ICC-01/09-01/11-536-Conf-Red.

⁴ ICC-01/09-01/11-536-Conf-Exp, para. 12.

⁵ The Chamber also notes that it sent an email at 16:52pm on 9 January 2013 indicating its intended ruling on the Application in order to prevent the defence from spending its resources to file a response to an Application which the Chamber had already resolved to grant.

Chamber emphasises the exceptional nature of this decision, and urges the prosecution in the future to make such requests sufficiently before the Chamber's deadlines in order for the defence to be given an adequate opportunity to respond.

4. Witness P-24 has not previously been the subject of any application for delayed disclosure, and it was anticipated that his identity would be disclosed to the defence on 9 January 2013. However, in its Application the prosecution submits that on 4 January 2013, witness P-24 informed the prosecution during a telephone conversation that he was very dissatisfied with his living conditions and that he no longer consented to the disclosure of his identity to the defence.⁶ According to the prosecution the Victims and Witnesses Unit ("VWU") and the prosecution repeatedly tried to contact the Witness after this conversation in order to resolve the issue but were unable to reach him.⁷
5. The prosecution further informs the Chamber that it will not disclose witness P-24's identity and his materials without his consent but it is confident that the witness can be persuaded to agree to the disclosure of his identity if the prosecution or VWU could contact him or visit him in person.⁸
6. The prosecution submits that the witness P-24 is an important witness for the case and that the requested delay is minimal.⁹ Further, the prosecution announces that, in case witness P-24 persists in his refusal to have his identity disclosed, it will withdraw him as a witness.¹⁰
7. In view of the wholly unexpected nature of what appears to be the witness's last-minute change of position, the Chamber considers that the reasons advanced in the

⁶ ICC-01/09-01/11-536-Conf-Exp, para. 5.

⁷ ICC-01/09-01/11-536-Conf-Exp, para. 6.

⁸ ICC-01/09-01/11-536-Conf-Exp, para. 8.

⁹ ICC-01/09-01/11-536-Conf-Exp, para. 7 and 8.

¹⁰ ICC-01/09-01/11-536-Conf-Exp, para. 9.

Application justify a short variation of time limit pursuant to Regulation 35(2) of the Regulations until 23 January 2013. The length of the extension requested is limited and will not cause undue prejudice to the defence.

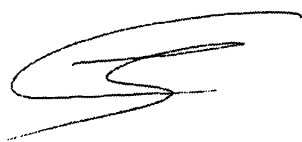
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the relief sought in the Application to delay the addition of P-24 to the list of witnesses and related incriminating material to the list of evidence until 23 January 2013.

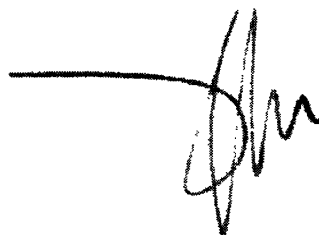
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding Judge



Judge Christine Van den Wyngaert



Judge Chile Eboe-Osuji

Dated 10 January 2013

At The Hague, The Netherlands