

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11
Date: 28 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 redacted version of Decision on the prosecution's urgent
application for additional time to add P-24 to its witness list**

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

Counsel for Joshua Arap Sang

Mr Joseph Kipchumba Kigen-Katwa

Mr Joel Kimutai Bosek

Legal Representatives of Victims

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

Ms Maria Luisa Martinod-Jacome

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 the prosecution's urgent request for additional time to add P-24 to its witness list.

1. On 9 January 2013, a few hours before the expiration of the time limit, the Office of the Prosecutor ("Prosecution") filed the "Prosecution's urgent application for extension of time limit pursuant to Regulation 35 to disclose incriminatory material regarding P-24"¹ requesting 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 2013.²
2. On 10 January 2013 the Chamber granted the Prosecution a short variation of the time limit until 23 January 2013.³
3. On 23 January 2013 the Prosecution filed an urgent request for additional time to add P-24 to the list of witnesses ("Application").⁴ On 23 January 2013 the Chamber temporarily authorised a delay pending its ruling on the Application.⁵
4. This Decision is issued on a confidential *ex parte* basis as it refers to sensitive materials relating to witness protection measures. A confidential redacted version will be issued simultaneously. In view of Regulation 35(2) of the Regulations, the

¹ 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.

² ICC-01/09-01/11-536-Conf-Red, para. 12.

³ Decision on the prosecution's urgent application for extension of time limit pursuant to Regulation 35 to disclose incriminatory material regarding P-24, ICC-01/09-01/11-542-Conf.

⁴ Prosecution's urgent request for additional time to add P-0024 to the list of witnesses based on exceptional circumstances, ICC-01/09-01/11-563-Conf-Exp. A confidential redacted version was filed on 24 January 2013, ICC-01/09-01/11-563-Conf-Red.

⁵ Email communication from Trial Chamber V to the parties on 23 January 2013 at 16:56.

Chamber considers, exceptionally, that the urgency of the present application makes it appropriate to render a decision without hearing from the Defence.

5. The Prosecution submits that witness P-24 is a “unique and important witness for the Prosecution” and if he were not to be called at trial, it would have a serious impact on the Prosecution case.⁶ [REDACTED].⁷ However, according to the Prosecution, in early January 2013⁸ he “started to express unhappiness with his situation and then refusal to continue to cooperate with the Court”.⁹ During a meeting with the Prosecution and the VWU on 20 and 21 January 2013, P-24 expressed dissatisfaction with [REDACTED] and financial situation and stated his unwillingness to continue as a witness.¹⁰ The witness [REDACTED].¹¹
6. The Prosecution submits that the VWU obtained all relevant documentation from P-24 necessary to assess his financial situation and to determine whether P-24 “can and should receive any financial assistance”.¹² The Prosecution contends that for security reasons P-24 is [REDACTED].¹³
7. Accordingly, the Prosecution requests an additional delay of 30 days before identifying P-24 to the defence as a witness, in order to allow the VWU an opportunity to assess the witness’s situation and to determine whether assistance should be provided to him, and to permit the Prosecution to appeal the decision, if necessary. The Prosecution notes the “extraordinary circumstances” and

⁶ ICC-01/09-01/11-563-Conf-Red, para. 13.

⁷ ICC-01/09-01/11-563-Conf-Exp, para. 2.

⁸ ICC-01/09-01/11-536-Conf-Red, para. 5.

⁹ ICC-01/09-01/11-563-Conf-Exp, para. 2.

¹⁰ ICC-01/09-01/11-563-Conf-Exp, paras 5 – 6.

¹¹ ICC-01/09-01/11-563-Conf-Exp, para. 6.

¹² ICC-01/09-01/11-563-Conf-Red, para. 7.

¹³ ICC-01/09-01/11-563-Conf-Exp, para. 9.

emphasises that “both the VWU and the Prosecution have done all that they could to resolve P-0024’s issues within the time period allotted by the Chamber”.¹⁴

8. In the special circumstances indicated in this Application, the Chamber considers that a brief extension of the delay is warranted until the Registry has made its decision on assistance to this witness. After being informed of the Registry’s decision, the Prosecution has three working days to (a) disclose the identity of the witness; (b) withdraw the witness; or (c) submit the Registry’s decision for review, to the extent that this decision has an impact on the witness’s cooperation with the Court. In the event that the decision is submitted for review, the defence will be granted an opportunity to be heard, if necessary, on the timeline for disclosure.
9. The Chamber stresses that this additional extension of time to disclose P-24’s identity is exceptional and granted solely in order to give the VWU an opportunity to evaluate whether there are reasons to adjust the particular living conditions of this witness, [REDACTED].

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

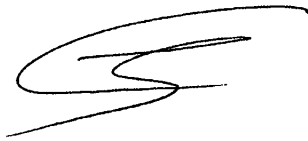
GRANTS a further delay for the addition of P-24 to the Prosecution’s list of witnesses and related incriminating material to the list of evidence until the Chamber’s final determination on this matter.

¹⁴ ICC-01/09-01/11-563-Conf-Red, para. 14.

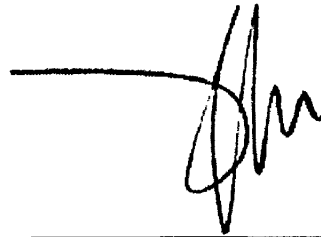
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding Judge



Judge Christine Van den Wyngaert



Judge Chile Eboe-Osuji

Dated 28 January 2013

At The Hague, The Netherlands