

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11
Date: 1 February 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***

**URGENT
Confidential**

**Confidential redacted version of 'Order delaying the deadline for disclosure of
the identity of witness P-450 pursuant to the Prosecution's request dated 28
January 2013'**

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 ("Court"), in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, pursuant to Articles 54(3)(f), 64(2), 64(6)(e), 67 and 68(1) of the Rome Statute, Rules 76, 81(2) and 81(4) of the Rules of Procedure and Evidence and Regulation 35 of the Regulations of the Court ("Regulations"), issues this Order delaying the deadline for disclosure of the identity of witness P-450 pursuant to the Prosecution's request dated 28 January 2013 ("Order").

1. On 4 January 2013, the Chamber directed the Office of the Prosecutor ("Prosecution") to provide an updated report on the security situation and protection status of witness P-450 by 28 January 2013, in order for the Chamber to make a determination on any continued non-disclosure of the witness's identity.¹
2. On the day of the deadline, the Prosecution filed on a confidential *ex parte*, Prosecution and Victims and Witnesses Unit ("VWU") only, basis, the "Prosecution update pursuant to 'Decision on first prosecution application for delayed disclosure of witness identities' (ICC-01/09-01/11-531-Conf-Exp)" ("Update").² A confidential redacted version was filed on the same day.³
3. This Order is issued on a confidential *ex parte*, Prosecution and VWU only, basis as it refers to confidential and sensitive materials with respect to witness security. A confidential redacted version will be issued simultaneously.
4. The Defence has already responded to the Prosecution's initial application to delay disclosure of the identity of P-450, and it submitted in that filing that any practical advantage gained in terms of witness security was insufficient to

¹ ICC-01/09-01/11-531-Conf-Exp.

² ICC-01/09-01/11-572-Conf-Exp.

³ ICC-01/09-01/11-572-Conf-Red.

outweigh the prejudice to the defence of delayed disclosure of P-450's identity.⁴ Given that the Chamber has already heard from the Defence on this issue and having regard to the urgency of the matter, the Chamber considers, exceptionally, that it is appropriate to render a decision on the continuing non-disclosure without hearing from the Defence.

5. In the Update, the Prosecution informs the Chamber that [REDACTED] according to the Prosecution, impacts the speed of the communication. The Prosecution, therefore, requests an extension of two weeks, until 11 February 2013, for disclosure of the witness's identity, in order for it to get in contact with the witness and ask for his final consent to testify before the Court. The Prosecution emphasises that it was not advised in advance that P-450 [REDACTED].⁵
6. Under these circumstances, the Chamber considers that a brief extension of the deadline for disclosure of the witness's identity is warranted and grants the requested extension. The Prosecution should, however, make every effort to contact the witness and secure his consent before 11 February 2013 and is directed to disclose the witness's identity as soon as it receives such consent, or has satisfied itself that the witness will be testifying. If, on 11 February 2013, the Prosecution has not been able to contact the witness or secure his consent, the witness must be withdrawn.

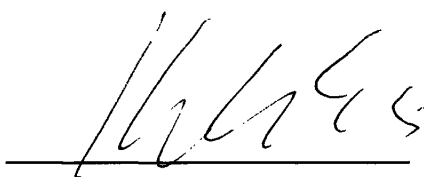
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

⁴ Joint Defence Response to Public Redacted Version of the 5 November 2012 "Prosecution's application for delayed disclosure of the identities of certain witnesses and authorisation of redactions pursuant to Decision ICC-01/09-01/11-458", 11 December 2012, ICC-01/09-01/11-507-Conf, Para 29.

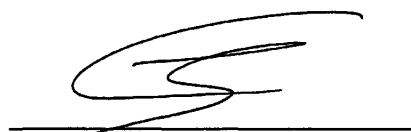
⁵ ICC-01/09-01/11-572-Conf-Exp, para. 4.

GRANTS an extension for disclosure of witness P-450's identity until such time as the Prosecution receives final confirmation that witness P-450 consents to testify, but in any case, disclosure of the witness's identity or withdrawal the witness is to take place no later than 11 February 2013.

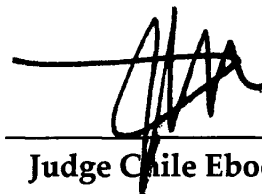
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding



Judge Christine Van den Wyngaert



Judge Chile Eboe-Osuji

Dated this 31 January 2013

At The Hague, The Netherlands