

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 14 March 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***

Public

**Order to the Prosecution to provide copies of documents it seeks to withhold
from the Defence**

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
Mr Wilfred Nderitu

Counsel for Joshua Arap Sang
Mr Joseph Kipchumba Kigen-Katwa
Mr Silas Chekera
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 (“Court”), in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, pursuant to Regulation 28 of the Regulations of the Court, issues this Order to the Prosecution to provide copies of documents it seeks to withhold from the Defence (“Order”).

1. On 25 January 2013, the Office of the Prosecutor (“Prosecution”) filed an application requesting the authorisation to disclose one additional document after the 9 January 2013 disclosure deadline.¹ In this application, the Prosecution submitted that, if the request were to be granted, it would file an updated version of the list of evidence (“LOE”), which would include the additional document. Further, the Prosecution informed the Chamber that it intends (i) to remove several documents from this updated LOE on which it does not intend to rely for purpose of the trial and (ii) to correct some clerical errors.²
2. On 11 February 2013, the defence teams for Mr Ruto and Mr Sang (together the “Defence”) filed a response³ in which they informed the Chamber that they do not object to the disclosure of the additional document. In respect of the Prosecution’s notification of the withdrawal of several documents from the LOE, the Defence noted that 22 of the items designated for removal had not yet been disclosed to the Defence. It requested the Chamber to order the Prosecution to disclose these items to the Defence, even if they are withdrawn (“Defence’s Request”).⁴

¹ Prosecution’s application for an extension to the deadline set by Decision ICC-01/09-01/11-440 to disclose one additional incriminatory document, ICC-01/09-01/11-570-Conf, with Annex 1 and 2 filed confidential *ex parte* Prosecution and VWU only and Annex 3 filed confidential.

² ICC-01/09-01/11-570-Conf, para. 2.

³ Joint Defence Response to Application for an extension of the deadline set by Decision ICC-01/09-01/11-440 to disclose one additional incriminatory document, ICC-01/09-01/11-595-Conf.

⁴ ICC-01/09-01/11-595-Conf, paras 9 and 12.

3. On 21 February 2013, the Chamber issued a decision authorising the disclosure of the additional document.⁵ In respect of the Defence's Request, the Chamber considered it to be a new request and ordered the Prosecution to respond to this request by no later than 26 February 2013.⁶
4. Accordingly, on 26 February 2013, the Prosecution filed its response to the Defence's Request ("Prosecution's Response").⁷ Therein, the Prosecution informs the Chamber that ten of the 22 items in question had already been disclosed to the Defence under different ERNs.⁸ With respect to another four items, the Prosecution informed the Chamber that it will disclose them to the Defence.⁹
5. For the remaining eight documents, the Prosecution informs the Chamber that it does not intend to disclose them to the Defence.¹⁰ The Chamber notes that it does not have access to six of these documents.¹¹ In order to be able to make an informed decision on the Defence's Request and the information provided in the Prosecution's Response the Chamber needs to be provided with copies of the documents to which it does not have access.

⁵ Decision on Prosecution's application to disclose one additional document, ICC-01/09-01/11-614.

⁶ ICC-01/09-01/11-614, para. 10.

⁷ Prosecution's response to joint Defence request for communication of 22 documents under Rule 77, ICC-01/09-01/11-627, with confidential *ex parte*, Prosecution only annex, ICC-01/09-01/11-627-AnxA.

⁸ ICC-01/09-01/11-627, para. 7 and footnote 7.

⁹ ICC-01/09-01/11-627, para. 8.

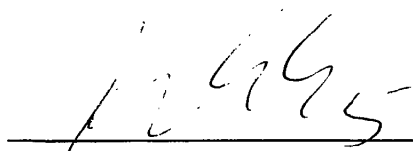
¹⁰ ICC-01/09-01/11-627, paras 9 and 10.

¹¹ KEN-OTP-0027-0251, KEN-OTP-0027-0253, KEN-OTP-0027-0257, KEN-OTP-0027-0264, KEN-OTP-0027-0266 and KEN-OTP-0027-0274. See ICC-01/09-01/11-627, para. 9 and ICC-01/09-01/11-627-Conf-Exp-AnxA.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

ORDERS the Prosecution to provide the Chamber with copies of the documents specified in footnote 11 of this Order by no later than 15 March 2013.

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



Judge Kuniko Ozaki, Presiding



Judge Christine Van den Wyngaert



Dated this 14 March 2013

At The Hague, The Netherlands