

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **1 May 2013**

TRIAL CHAMBER V

Before:
Judge Kuniko Ozaki, Presiding
Judge Robert Fremr
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

**Response of the Common Legal Representative for Victims to the Second Defence
Request to Vacate the Trial Commencement Date**

Source: **Wilfred Nderitu, Common Legal Representative for Victims**

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

The Office of the Prosecutor

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Legal Representatives of Victims

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**Unrepresented Applicants for
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REGISTRY

Registrar

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

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Other

I. INTRODUCTION AND LEGAL BASIS FOR THE FILING

1. On 22nd April 2013, the Defence for Mr. William Samoei Ruto filed the “Second Defence Request to Vacate the Trial Commencement Date” (“the Second Defence Request”)¹. In the Second Defence Request, the Defence requests the Trial Chamber to vacate the scheduled date for commencement of the trial (28th May 2013) and to have a new date for the commencement of the trial scheduled “for no earlier than November 2013”². Pursuant to Regulation 34 of the Regulations of the Court, the Chamber directed all parties to file any written response to the Second Defence Request filed by no later than 16:00 on 1 May 2013.
2. On 24th April 2013, upon becoming aware that the 2nd Defence Request had been filed and considering that the same affected the personal interests of the participating victims and therefore should have been notified to him, the Common Legal Representative for Victims (“the CLR”) instructed the designated member of the Office of the Public Counsel for Victims (“the OPCV) to request the Trial Chamber to order the notification of the said document to him.

II. CORE OF THE SUBMISSIONS

3. Having studied the Second Defence Request, the CLR wishes to make it clear from the outset that he is not fully seized of the facts in contention between the Defence and the Prosecution regarding late disclosure by the Prosecution and the expanded temporal focus of the Prosecution’s case, and therefore makes no argument either for or against those contentions, and/or the nature and extent of the effect they may have on the date for commencement of the trial or on Mr. Ruto’s fair trial rights.
4. Having said that, the CLR nevertheless reiterates the need for a fair and expeditious trial, as a means of not only facilitating the effective participation and representation of victims, but also as a means of insuring justice for the victims. In this regard, the CLR reiterates his earlier submissions (made at the time in connection with the Defence request for the Accused’s presence at trial via video-link) to the effect that “delays are an injustice to the victims who expect an expeditious conclusion of the trial”³.

¹ ICC-01/09-01/11-692-Conf

² “Second Defence Request to Vacate the Trial Commencement Date”, paragraph 1

³ Request of the Common Legal Representative for Victims to Submit a Response to the Joint Defence Submissions on Legal Basis for the Accused’s Presence at Trial via Video-Link, dated 19th March 2013

5. The CLR recognizes that the Trial Chamber has a duty to ensure that the Defence has the right to adequate time and facilities for the preparation of its case in rebuttal of the Prosecution's allegations. This duty however must be balanced with the global obligation to ensure that the trial is fair *and expeditious*, and that there is *due regard to the protection of victims* and witnesses as contemplated by Article 64(2) of the Rome Statute. The CLR reiterates that "protection" should be understood in a purposive way to include measures that enhance victim participation and minimize apprehension and disinclination ("participation lethargy") on the part of victims and witnesses in relation to their participation in the proceedings⁴.

III. PRAYER SOUGHT

6. For the foregoing reasons, the Common Legal Representative respectfully requests the Trial Chamber to have particular consideration for an expeditious trial in the interests of participating victims.

Respectfully submitted,



WILFRED NDERITU
Common Legal Representative for Victims

Dated this 1st day of May 2013
At Nairobi, Kenya

⁴ See generally "Submissions of the Common Legal Representative for Victims on the Defence Request Pursuant to Article 63(1) of the Rome Statute" dated 13th April 2013