

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 27 August 2013

TRIAL CHAMBER V(A)

Before: Judge Chile Eboe-Osuji, Presiding
Judge Olga Herrera Carbuca
Judge Robert Fremr

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 “Defence
Application to Vary Court Sitting Schedule”**

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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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

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I. INTRODUCTION AND LEGAL BASIS FOR THE FILING

1. On 19th August 2013, a Status Conference was held in this case at which it was indicated that the proposed Court sitting schedule, from 10 September 2013 until 4 October 2013, will be 09.30 to 16.00 on a daily basis, Monday to Friday.¹
2. On the same day the Sang Defence requested in an e-mail to the Trial Chamber that the two Kenyan cases are heard in blocks of 4-6 weeks, where one case is heard alone during that period, and then the other case is heard for a similar period.²
3. On 20th August 2013, the Appeals Chamber granted the Prosecution's request for suspensive effect³ of the Decision of the Trial Chamber from 18th June 2013, in which the Trial Chamber by majority had granted Mr. Ruto excusal from continuous presence at the trial as long as the absence resulted from the performance of his duties of state.⁴
4. As consequence of the abovementioned decision of the Appeal Chamber, the Ruto Defence submitted on 20 August 2013 the "Defence Application to Vary Court Sitting Schedule"⁵
5. On 21st August 2013, the Trial Chamber, pursuant to Regulation 34 of the Regulations of the Court, Trial Chamber directed the parties and participants to file responses, if any, to the Defence Application no later than 27 August 2013.

II. CORE OF THE SUBMISSIONS

¹ ICC-01/09-01/11-T-24-CONF-ENG, p. 53, lines 9 to 20.

² E-mail from Defence team member Logan Hambrick on 19th August 2013.

³ ICC-01/09-01/11-862

⁴ ICC-01/09-01/11-777

⁵ ICC-01/09-01/11-863

6. From the outset, the Common Legal Representative for Victims (“the CLR”) wishes to state that he does not object to the trial being conducted on an “on-and-off” basis. In this regard, the CLR is aware of constraints regarding availability of courtrooms and the schedules for other cases before the Court. The CLR however takes the view that sittings of two weeks each are likely to be grossly disruptive of his work, given that it is expected that he would continue to carry out his work in the field and at the same time follow through court proceedings and submit such filings and give such instructions to the designated officer of the Office of the Public Counsel for Victims as the circumstances of the case shall require.
7. The CLR’s field missions require a lot of pre-mission preparation involving many offices of the Court, and the CLR submits that legitimate interests relating to such missions would in fact be imperilled or placed in jeopardy were the Defence Application to be granted as it is. Two-week “on-and-off” sessions would in essence mean that it is during the “off session” periods that the CLR would be expected to conduct *in situ* missions. By extension, most of the pre-mission preparation and post-mission reporting requirements would have to be undertaken during “in session” periods. This would create an unbearable burden on the part of the CLR and his team, particularly given the limited financial, human and other resources at their disposal.
8. To the above extent, the CLR disagrees with the Defence submission that sitting two weeks on and two weeks off would meet all the concerns of the victims and emphasizes that the interests of the victims are not limited to the permanent physical presence of the Accused during trial, but are also affected by short sitting schedules, which are bound to be disruptive and inefficient, and antithetical to the working routine/fulfilment of the mandate of the CLR. In addition to the foregoing, the CLR

submits that the concerns of the victims as detailed in his response to the Excusal Request filed by the Defence are not an exhaustive of such concerns, and that the said response was at any rate not prepared with the Defence Application to Vary Court Sitting Schedule in mind.

9. The CLR associates himself with the “Prosecution’s observations on Defence Application to Vary Court Sitting Schedule”⁶ to the effect that the court schedule should be “sufficiently flexible so as to allow for witnesses to finish their testimonies prior to any scheduled break”.

III. RELIEF SOUGHT

10. Accordingly, the CLR requests that the Trial Chamber do vary the sitting schedule so that the court is in session for (a minimum period of) three weeks to (a preferable period of) four weeks at a time, and for a similar period off-session.
11. In light of the fact that the awaited Appeal Chambers decision and the Defence Application to Vary the Sitting Schedule are interlinked, the CLR also proposes that the determination of the sitting schedule be limited to the period from now up to the expected “Partial Absence Decision” by the Appeals Chamber.
12. The CLR also requests the Trial Chamber to review the sitting schedule after Appeals Chamber decision in order to balance the right to a fair trial of the accused and the principle of expeditiousness and fair proceedings so far as all parties and participants are concerned, and also in order to take into account any disruptions or inefficiencies that may have arisen from the schedule eventually decided upon based on the present Defence Application.

⁶ ICC-01/09-01/11-873

Respectfully submitted,

A handwritten signature in purple ink, consisting of a series of loops and a long horizontal stroke extending to the right.

WILFRED NDERITU
Common Legal Representative for Victims

Dated this 27th day of August 2013

At Nairobi, Kenya