

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11
Date: 19 September 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***

**Confidential *ex parte*, Defence for Mr Ruto, Prosecution and VWU only
Order regarding Defence notification pursuant to the code of Professional
Conduct for counsel**

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Anton Steynberg

Counsel for William Samoei Ruto

Mr Karim Khan

Mr David Hooper

Mr Essa Faal

Ms Shyamala Alagendra

Counsel for Joshua Arap Sang

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

Mr Herman von Hebel

Deputy Registrar

Victims and Witnesses Unit

Mr Patrick Craig

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber V(A) (the 'Chamber') of the International Criminal Court, in the case of *The Prosecutor v William Samoei Ruto and Joshua Arap Sang*, pursuant to Article 64(6)(f) of the Rome Statute (the 'Statute') and Regulation 23bis of the Regulations of the Court, renders its Order regarding Defence notification pursuant to the code of Professional Conduct for counsel.

I. BACKGROUND

1. On 12 September 2013, the defence team for Mr Ruto ('Defence') filed an *ex parte*, Ruto Defence only, notification with the Chamber ('Notification').¹ Therein it informs the Chamber that the lead counsel for the Defence received an email from a third person stating that this person has information that two Prosecution witnesses have decided that they will not testify for the Prosecution anymore. The email proceeds to state that this development will be advantageous for the Defence and indicates that the witnesses may have been coached.²
2. As justification for the *ex parte* classification of the Notification the Defence submits that it is still reviewing the information received and monitoring the developments which may impact the Defence's strategy in this case.³
3. The Defence is of the view that the conduct of the third person contacting the lead counsel for the Defence and the matters raised in the email could prejudice the judicial process of the case.⁴ It is concerned that the impression could be created that Mr Ruto or the Defence is implicated in matters of witness interference and therefore wishes to notify the Chamber of the received communication in order to provide a

¹ Defence notification pursuant to the Code of Professional Conduct for counsel, registered on 13 September 2013, ICC-01/09-01/11-936-Conf-Exp, available to the Ruto Defence only.

² Notification, ICC-01/09-01/11-936-Conf-Exp, para. 2. A copy of the email is attached as an *ex parte* Annex, available to the Ruto Defence only to the Notification, ICC-01/09-01/11-936-Conf-Exp-Anx.

³ Notification, ICC-01/09-01/11-936-Conf-Exp, para. 9.

⁴ Notification, ICC-01/09-01/11-936-Conf-Exp, para. 7.

contemporaneous record of the Defence's conduct in this matter.⁵ It further informs the Chamber that the sender of the email is unknown to the Defence, that it has not responded to the email and that it does not consider it appropriate to make any inquiries concerning this email.⁶

4. The Chamber takes note of the information provided in the Notification. In respect of the level of classification of the notification, the Chamber is of the view that there are no reasons for the content of the Notification and the annexed email not to be made available to the Office of the Prosecutor. Whereas the Chamber is conscious of the Defence concern that its strategy in the case could be revealed, it notes that the Defence stated that it does not intend to respond or react in any way to the email. The Chamber therefore considers that informing the Prosecution of the fact that the Defence has received this email and the contents of the email are not prejudicial to the Defence strategy. Additionally, the Chamber considers that the information provided in the email may contain relevant information for investigations into offences against the administration of justice pursuant to Article 70 of the Statute.⁷ The Chamber further considers that since the email contains matters relating to witness security, it is appropriate to also notify the Victims and Witnesses Unit ('VWU') of the filing.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

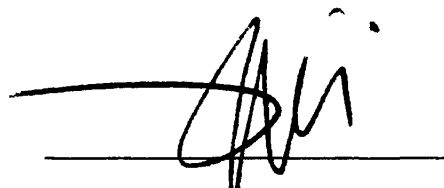
ORDERS the Registry to re-classify filing ICC-01/09-01/11-936-Conf-Exp, Ruto Defence only, and its annex as confidential *ex parte*, Ruto Defence, Prosecution and VWU only.

⁵ Notification, ICC-01/09-01/11-936-Conf-Exp, para. 8.

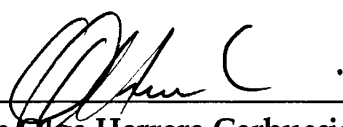
⁶ Notification, ICC-01/09-01/11-936-Conf-Exp, paras 5- 6.

⁷ See also, Order regarding Defence Counsel's 'Provision of Information', 23 May 2013, ICC01/-09-01/11-752-Conf-Exp, para. 5.

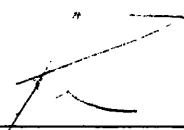
Done in both English and French, the English version being authoritative.



Judge Chile Eboe-Osuji
(Presiding)



Judge Olga Herrera Carbuca



Judge Robert Fremr

Dated 19 September 2013

At The Hague, The Netherlands