

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11
Date: 18 December 2013

TRIAL CHAMBER V(A)

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

SITUATION IN THE REPUBLIC OF KENYA

IN THE CASE OF

***THE PROSECUTOR v.
WILLIAM SAMOEI RUTO AND JOSHUA ARAP SANG***

Public

Defence response to Prosecution request for extension of time limit

Sources: Defence for Mr. William Samoei Ruto

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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Mr. James Stewart
Mr. Anton Steynberg

Counsel for William Samoei Ruto

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Legal Representatives of the Victims

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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
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Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Herman von Hebel

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. The defence for Mr. William Samoei Ruto ("Defence") respectfully requests that the Trial Chamber reject the *Prosecution request for extension of time limit* ("Request").¹

II. Submissions

2. Contrary to the Prosecution's claims, good cause has not been shown for the requested six day extension of the time limit² to respond to the *Defence Request pursuant to Article 63(1) of the Rome Statute and Rule 134quater of the Rules of Procedure and Evidence to excuse Mr. William Samoei Ruto from attendance at trial* ("Excusal Request").³ The Defence's objections to the Request can be briefly stated.
3. *First*, the Request runs contrary to the plain wording of Rule 134quater. Rule 134quater expressly mandates the Trial Chamber to consider any request made thereunder "expeditiously".⁴ In order to be able to so consider the request, submissions from the parties must also be received expeditiously. In turn, this will permit, for example, the Trial Chamber to consider issuing a brief decision with reasons to follow.
4. *Second*, granting the Request will prejudice Mr. Ruto by requiring him to travel to attend trial when the Excusal Request might be granted. Trial proceedings are scheduled to resume on the day the Prosecution propose to file the response. There is, thus, a risk that Mr. Ruto might be required to undertake unnecessary travel. The Defence emphasises that the Excusal Request is not being made for Mr. Ruto's personal convenience but, rather, so that he can perform his "extraordinary public duties".

¹ ICC-01/09-01/11-1125.

² *Ibid.*, para. 3.

³ ICC-01/09-01/11-1124.

⁴ See Resolution ICC-ASP/12/Res.7 (Advance Version), p. 4.

5. *Third*, the Excusal Request engages issues which have not only been extensively litigated at the Trial Chamber and Appeals Chamber levels but also the plain wording of a rule which was comprehensively debated during the recent Assembly of States Parties (“ASP”). The Defence notes that the Prosecution had a presence at the ASP. The Prosecution’s claims that the Excusal Request “engages novel issues” and granting the extension will enable it to make “more concise and targeted submissions” must, therefore, be viewed against this background.⁵ The issues raised by the Excusal Request were reasonably foreseeable and there must exist a body of knowledge within the Prosecution from which to draw in order to prepare the necessary response within the normal time limit. The Defence also submits that it is reasonable to expect the Prosecution - as a well-staffed, professional international organisation - to have put in place contingency measures for personnel to work on urgent matters over the holiday period.

III. Relief requested

6. Based on the above submissions, the Defence requests that the Trial Chamber dismiss the Request.

Respectfully submitted,



Karim A.A. Khan QC
Lead Counsel for Mr. William Samoei Ruto

Dated this 18th Day of December 2013
At The Hague, Netherlands

⁵ Request, para. 3.