



Original: English

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

Date: 5 June 2014

APPEALS CHAMBER

Before: Judge Akua Kuenyehia, Presiding Judge
Judge Sang-Hyun Song
Judge Sanji Mmasenono Monageng
Judge Erkki Kourula
Judge Anita Ušacka

SITUATION IN THE REPUBLIC OF KENYA

IN THE CASE OF

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

Public

**Sang Defence response to the Government of the Republic of Kenya's request
to file amicus submissions in the appeal against
the Decision on Prosecutor's application for witness summonses
and resulting request for State party cooperation**

Source: Defence for Mr. Joshua arap Sang

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor
James Stewart, Deputy Prosecutor
Helen Brady, Appeals Counsel

Counsel for William Ruto

Karim Khan QC, David Hooper QC
Shyamala Alagendra and Essa Faal

Counsel for Joshua Sang

Joseph Kipchumba Kigen-Katwa
Caroline Buisman

Legal Representatives of the Victims

Wilfred Nderitu

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Orchlon Narantsetseg

**The Office of Public Counsel for the
Defence**

States' Representatives

The Government of Kenya

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Patrick Craig

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 3 June 2014, the Government of the Republic of Kenya (“GOK”) requested leave under Rule 103 to file submissions as *amicus curiae* in the appeal against the *Decision on Prosecutor’s Application for Witness Summonses and resulting Request for State Party Cooperation* (“Request”).¹ In particular, the GOK seeks leave to make observations on the Second Issue certified for appeal by Trial Chamber V(A).² The Appeals Chamber ordered the parties to respond to the Request by 5 June 2014.³
2. The Defence for Mr. Joshua arap Sang (“Defence”) supports the GOK’s application under Rule 103 to file *amicus* observations on the Second Issue. The Defence has previously supported the inclusion of the GOK in the process of determining whether a Trial Chamber of the International Criminal Court can summons witnesses and require States Parties to enforce such summons.⁴
3. The Defence recalls jurisprudence to the effect that a Chamber will entertain *amicus* observations where “specific expertise” is needed on a particular subject.⁵ The Defence submits that here, the GOK can provide such expertise, and thus their input is desirable for the proper determination of the Second Issue being appealed. Given the Second Issue directly implicates Kenyan domestic law and the GOK’s obligations under the Rome Statute, the GOK’s interpretation and understanding of such laws and obligations may be of assistance in determining whether or not Trial Chamber V(A) erred in law. In addition, due to the significance of the appeal to the GOK and the importance of accurately interpreting its domestic laws, the Defence submits the GOK has a legitimate interest in participating in an *amicus* role.

¹ Government of the Republic of Kenya’s request to file *amicus* submissions in the appeal against the *Decision on Prosecutor’s application for witness summonses and resulting request for State party cooperation*, ICC-01/09-01/11-1333 OA7 OA8, 3 June 2014.

² *Ibid*, para 2.

³ Order for responses to the Republic of Kenya’s request for leave to make observations under rule 103 of the Rules of Procedure and Evidence, ICC-01/09-01/11-1388, 4 June 2014.

⁴ Sang Defence Response to the Prosecution’s Request under Article 64(6)(b) and Article 93 to Summon Witnesses, ICC-01/09-01/11-1138-Conf, 8 January 2014, paras 3-5.

⁵ Decision on the “Request for leave to submit Amicus Curiae Observations on behalf of the Kenyan Section of the International Commission of Jurists Pursuant to Rule 103 of the Rules of Procedure and Evidence, ICC-01/09-01/11-84, 11 May 2011, para 8.

4. The Defence supports the GOK's requested time limit, if successful in its request, in which to file its observations. The Defence would like the appeal process to be completed as expeditiously as possible.



Joseph Kipchumba Kigen-Katwa
On behalf of Mr. Joshua arap Sang
Dated this 5th day of June 2014
In Nairobi, Kenya