

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/09-01/11 OA 7 OA 8

Date: 5 June 2014

THE 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 document

**Decision on the request of the Prosecutor for an extension of the time limit for
her consolidated response to the documents in support of the appeals**

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

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor
Ms Helen Brady

Counsel for Mr William Samoei Ruto
Mr Karim A. A. Khan
Mr David Hooper

Counsel for Mr Joshua Arap Sang
Mr Joseph Kipchumba Kigen-Katwa
Ms Caroline Buisman

REGISTRY

Registrar
Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeals of Mr William Samoei Ruto and Mr Joshua Arap Sang against the decision of Trial Chamber V (A) entitled “Decision on Prosecutor’s Application for Witness Summonses and resulting Request for State Party Cooperation” of 17 April 2014 (ICC-01/09-01/11-1274-Corr2),

Having before it the “Prosecution Response to the Defence Requests for an Extension of the Page Limit for the defence Appeals against ‘Decision on Prosecutor’s Application for Witness Summonses and resulting Request for State Party Cooperation’ and Prosecution Request for an Extension of the page Limit and the Time Limit” of 2 June 2014 (ICC-01/09-01/11-1328),

Renders pursuant to regulation 35 (2) of the Regulations of the Court the following

DECISION

The time limit for the Prosecutor’s consolidated response to the documents in support of the appeals is extended to 16h00 on Friday, 20 June 2014.

REASONS

1. On 23 May 2014, Trial Chamber V (A) granted Mr William Samoei Ruto (hereinafter: “Mr Ruto”) and Mr Joshua Arap Sang (hereinafter: “Mr Sang”) leave to appeal¹ its “Decision on Prosecutor’s Application for Witness Summonses and resulting Request for State Party Cooperation” of 17 April 2014.²
2. Mr Sang filed before the Appeals Chamber the “Urgent Sang Defence Application for an Extension of the Page Limit for the Defence’s Appeal against the ‘Decision on Prosecutor’s Application for Witness Summonses and resulting Request for State Party Cooperation’” dated 29 May 2014 and registered on 30 May 2014.³

¹ “Decision on defence applications for leave to appeal the ‘Decision on the Prosecutor’s Application for Witness Summonses and resulting Request for State Party Cooperation’ and the request of the Government of Kenya to submit *amicus curiae* observations”, ICC-01/09-01/11-1313.

² ICC-01/09-01/11-1274-Corr2.

³ ICC-01/09-01/11-1320.

3. On 30 May 2014, Mr Ruto filed the “Ruto Defence application to join the Urgent Sang Defence Application for an Extension of the Page Limit for the Defence’s Appeal against the ‘Decision on Prosecutor’s Application for Witness Summonses and resulting Request for State Party Cooperation’”⁴ (hereinafter: “Mr Ruto’s Request for Page Extension”), by which he requested an extension of the page limit for his document in support of the appeal from 20 to 40 pages for the same arguments as those advanced by Mr Sang.⁵

4. On 2 June 2014, the Prosecutor filed the “Prosecution Response to the Defence Requests for an Extension of the Page Limit for the Defence Appeals against the ‘Decision on Prosecutor’s Application for Witness Summonses and resulting Request for State Party Cooperation’ and Prosecution Request for an Extension of the Page Limit and the Time Limit”⁶ (hereinafter: “Prosecutor’s Request for Time Limit Extension”). She did not oppose the extension of the page limits for the documents in support of the appeals.⁷ Indicating that she would file a consolidated response to the two documents in support of the appeal, she also sought an extension of the page limit for her response “to the combined total number of pages granted to the Defence for the purposes of filing their respective appeals”.⁸ In addition, the Prosecutor requested a five-day extension of the time limit for the filing of her consolidated response to the documents in support of the appeals, submitting that the complex nature of the issues at hand as well as the need to address both Mr Ruto and Mr Sang’s arguments constitutes good cause.⁹

5. On 2 June 2014, the Appeals Chamber issued the “Order for responses to the request of the Prosecutor for an extension of the time limit for her response to the documents in support of the appeal”,¹⁰ by which it allowed Mr Ruto and Mr Sang to respond to the Prosecutor’s Request for Time Limit Extension by 14h00 on Wednesday, 4 June 2014.

6. On 3 June 2014, Mr Sang filed the “Sang Defence response to the request of the Prosecutor for an extension of the time limit for her response to the documents in

⁴ ICC-01/09-01/11-1322.

⁵ Mr Ruto’s Request for Page Extension, paras 4-6.

⁶ ICC-01/09-01/11-1328.

⁷ Prosecutor’s Request for Time Limit Extension, para. 2.

⁸ Prosecutor’s Request for Time Limit Extension, para. 3.

⁹ Prosecutor’s Request for Time Limit Extension, para. 4.

¹⁰ ICC-01/09-01/11-1331.

support of the appeal”¹¹ (hereinafter: “Mr Sang’s Reponse”). Mr Sang states that he “does not necessarily oppose” the extension of time sought by the Prosecutor, but that “equality between the parties is an important consideration”.¹²

7. On the same day, the Appeals Chamber rendered the “Decision on requests of Mr William Samoei Ruto and Mr Joshua Arap Sang for extension of page limit for their documents in support of the appeal”¹³ (hereinafter: “Decision on Page Limit Extension”), by which it extended the page limits for the documents in support of the appeals of Mr Ruto and Mr Sang by five pages each and granted leave to the Prosecutor to file a consolidated response to the documents in support of the appeals of no more than 45 pages. The Appeals Chamber stated that it would decide separately on the Prosecutor’s request for an extension of the time limit for the submission of her consolidated response.¹⁴

8. On 4 June 2014, Mr Ruto filed the “Defence response to Prosecution request for an Extension of the Time Limit”¹⁵ (hereinafter: “Mr Ruto’s Response”). He submits that the Prosecutor’s request should be rejected because it fails to establish good cause considering that the Prosecutor’s position on the two issues certified for appeal is well-known since it has been fully litigated; it simply needs to be synthesised.¹⁶ Furthermore, in his view, the fact that the Appeals Chamber ordered the arguments to be presented in a “concise and focussed manner” also militates against granting the request.¹⁷

9. Pursuant to regulation 35 (2) of the Regulations of the Court, a Chamber may extend or reduce a time limit if good cause is shown. The Appeals Chamber recalls that it has already found that complex issues on appeal may constitute good cause and may thus justify extensions of the time limit.¹⁸ The Appeals Chamber notes that, in the present case, it already found that the two issues on appeal appear to be novel and complex.¹⁹ The Appeals Chamber considers that in light of the two issues on appeal

¹¹ ICC-01/09-01/11-1332.

¹² Mr Sang’s Response, para. 2.

¹³ ICC-01/09-01/11-1335.

¹⁴ Decision on Page Limit Extension, para. 7.

¹⁵ ICC-01/09-01/11-1337.

¹⁶ Mr Ruto’s Response, para. 3.

¹⁷ Mr Ruto’s Response, para. 4.

¹⁸ *Prosecutor v. Germain Katanga*, “Decision on the requests of Mr Germain Katanga and the Prosecutor relating to the time limits for their filings on appeal”, 4 April 2014, ICC-01/04-01/07-3454, para. 18.

¹⁹ Decision on Page Limit Extension, para. 5.

good cause for a limited extension of time has been shown. However, the Appeals Chamber considers that, in the circumstances of this case, an extension to 16h00 on Friday, 20 June 2014 is sufficient.

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



Judge Akua Kuenyehia
Presiding Judge

Dated this 5th June 2014

At The Hague, The Netherlands