

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 14 August 2014

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

Confidential

Decision on the Sang Defence Application for Presence of Mr Sang via Video-link

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

Mr Joseph Kipchumba Kigen-Katwa

Ms Caroline Buisman

Legal Representatives of Victims

Mr Wilfred Nderitu

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

Ms Paolina Massidda

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber V(A) (the 'Chamber') of the International Criminal Court (the 'Court'), in the case of *The Prosecutor v William Samoei Ruto and Joshua Arap Sang*, pursuant to Articles 64(2) and 64(6)(f) of the Rome Statute, renders this Decision on the Sang Defence Application for Presence of Mr Sang via Video-link.

1. On 17 April 2014, the Chamber issued the 'Decision on Prosecutor's Application for Witness Summonses and resulting Request for State Party Cooperation' ordering the appearance of eight witnesses by summonses (the 'Summons Decision').¹ On 19 June 2014, a further summons was issued for a ninth witness.²
2. On 9 July 2014, the Chamber further directed that the hearing of the summonsed witnesses 'will proceed in the manner of the regular video-link mode, and not the "extended video-link" mode, in light of the comparative advantages of the regular video-link mode in the saving of costs and time' (the 'Direction on Schedule of Testimony').³
3. On 18 July 2014, the Defence for Mr Sang (the 'Sang Defence') requested that Mr Sang be allowed to follow the testimony of summonsed witnesses via video-link from Kenya so he can 'attend to his family and such matters as may necessarily require his presence in Kenya whenever he is not in court' (the 'Request').⁴ The Sang Defence submits that if the video-link request were granted: (a) there would be no prejudice to the proceedings, as Mr Sang would remain fully present for proceedings alongside the testifying witnesses and support staff;⁵ (b) the accused would be in close proximity to the witnesses, whose evidence 'constitutes the core

¹ ICC-01/09-01/11-1274-Corr2.

² Decision on Prosecutor's Second Supplementary Request to Summon a Witness, 19 June 2014. ICC-01/09-01/11-1377-Conf (a redacted version was notified on the same day).

³ Directions on the Schedule for the Testimony of Summonsed Witnesses, ICC-01/09-01/11-1424-Conf, para. 13 (footnotes omitted).

⁴ Sang Defence Application for Client to be Present via Video-Link during Testimony of Summoned Witnesses, ICC-01/09-01/11-1441-Conf, paras 9-10.

⁵ Request, ICC-01/09-01/11-1441-Conf, para. 11.

of the case’;⁶ (c) there should be little additional logistical or financial burden borne by the Court;⁷ and (d) Mr Sang ‘will waive his right to make any objection, which might somehow arise due to his presence outside the courtroom’.⁸ In respect of the timing of the Request, the Sang Defence explains that the reason it was not made previously is because the parties had favoured holding *in situ* hearings.⁹

4. On the same day, the Chamber issued its ‘Decision on Prosecution’s Submission of Schedule of Evidence of Summoned Witnesses’, in which it directed the Registry to implement the Chamber’s direction to it in the Summons Decision on the basis of a tentative schedule presented by the Office of the Prosecutor (the ‘Prosecution’), which took into consideration the approved regular video-link.¹⁰
5. On 11 August 2014, the Prosecution filed its response, opposing the Request.¹¹ It submits that the Sang Defence failed to demonstrate a cogent factual or legal basis for the Request.¹²
6. The Chamber recalls that the timing and manner of the summonsed witnesses’ testimony has been litigated considerably. Specifically, the parties were asked to make submissions on all aspects of the testimony of the summonsed witnesses, including whether the modalities of a video-link testimony should be regular or ‘extended’.¹³ In the Direction on Schedule of Testimony, taking into consideration the parties’ submissions, as well as the observations made by the Registry in this regard, the Chamber decided that the testimony of the summonsed witnesses will be taken via video-link in the regular mode.

⁶ Request, ICC-01/09-01/11-1441-Conf, para. 15.

⁷ Request, ICC-01/09-01/11-1441-Conf, para. 19.

⁸ Request, ICC-01/09-01/11-1441-Conf, para. 21.

⁹ Request, ICC-01/09-01/11-1441-Conf, para. 3.

¹⁰ ICC-01/09-01/11-1442-Conf, para. 8.

¹¹ Prosecution’s Response to “Sang Defence Application for Client to be Present via Video-link during Testimony of Summoned Witnesses”, ICC-01/09-01/11-1456-Conf.

¹² ICC-01/09-01/11-1456-Conf, para. 7.

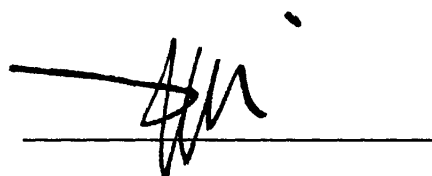
¹³ ICC-01/09-01/11-T-123-CONF-ENG, page 79, lines 20-21, ‘That is for the video link option if we can receive submissions on that, video link in the usual form or the extended form or in situ proceedings.’

7. The Chamber observes that the 'regular' video-link, which was chosen in the Direction on Schedule of Testimony, involves the presence of only the witness, a Courtroom Officer and an IT representative, while a set-up that includes other persons, such as the defence teams, a member of the Prosecution or the accused, is an 'extended' video-link.¹⁴ The general considerations that motivated the Chamber's choice in proceeding in that way (including considerations of greater efficiency) militate against granting Mr Sang's request.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Request.

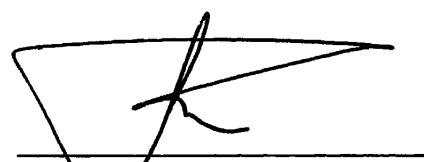
Done in both English and French, the English version being authoritative.



Judge Chile Eboe-Osuji
(Presiding)



Judge Olga Herrera Carbuccia



Judge Robert Fremr

Dated 14 August 2014

At The Hague, The Netherlands

¹⁴ ICC-01/09-01/11-1424-Conf, para.13 and footnote 25, referring to: Registry Report on the consultations in relation to the summonses to appear for OTP Witnesses, 25 June 2014, ICC-01/09-01/11-1407-Conf, para. 8.