



Original: English

No.: ICC-01/09-01/11
Date: 28 October 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*

Public

Public redacted version of Ruto Defence application to join the “Sang Defence Request for Reconsideration of the Page and Time Limits regarding the Defence ‘no case to answer’ Motion as determined in “Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on ‘No Case to Answer’ Motions)”, ICC-01/09-01/11-1611-Conf, 20 October 2014

Sources: Defence for Mr. William Samoei Ruto

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

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
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Other

1. On 2 October 2014, the defence for Mr. Joshua arap Sang ("Sang Defence") filed the *Sang Defence Request for Reconsideration of the Page and Time Limits regarding the Defence 'no case to answer' Motion as determined in "Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on 'No Case to Answer' Motions)"* ("Sang Request").¹ In this request, the Sang Defence requests the Trial Chamber to reconsider the page and time limits set by the Chamber in the *Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on 'No Case to Answer' Motions)* ("Decision")² in respect of the filing of any 'no case to answer' motion.
2. Specifically, the Sang Defence requests that the Chamber extends the page limit of said motion to at least 100 pages, and extends the time limit for same to at least 30 days upon providing oral notification.³
3. The defence for Mr. William Samoei Ruto ("Ruto Defence") joins the Sang Request. The Ruto Defence agrees with the Sang Defence's submission that "the parties were not heard on" the procedure to be followed by the parties when filing any 'no case to answer' motion "before the Decision was released, and new facts and circumstances have arisen since 3 June 2014 that necessitate the relief sought" in the Sang Request.⁴
4. In particular, the Ruto Defence underlines that the factual and evidential complexity of the case has changed significantly since the issuance of the Decision. The Ruto Defence shares the Sang Defence concern⁵ regarding the import and impact on any 'no case to answer' motion of the hostile testimony of the three witnesses heard in the previous session [REDACTED].⁶

¹ ICC-01/09-01/11-1585-Conf.

² ICC-01/09-01/11-1334.

³ See, e.g., Sang Request, paras. 4 and 34.

⁴ *Ibid*, para. 4.

⁵ *Ibid*, paras. 21-25.

⁶ [REDACTED]

Notwithstanding the fact that “a ‘no case to answer’ motion does not entail an evaluation of the strength of the evidence presented, especially as regards exhaustive questions of credibility or reliability”,⁷ the recent witness developments mean that in this particular case detailed submissions will need to be made, with a particular but not exclusive focus on the hostile witnesses,⁸ regarding whether the Prosecution’s evidence is “incapable of belief”.⁹ In order to properly and fairly make these submissions, the Defence submits that an extension of the time and page limits set out in the Decision is required and merited. This is particularly so when it is recalled that the purpose of a ‘no case to answer’ motion is to give proper effect to an accused’s fair trial rights.¹⁰

5. As noted by the Sang Defence, the Prosecution’s evidence does not comprise testimony alone.¹¹ There is now a considerable body of evidence which has been admitted into the record of a non-testimonial nature. This evidence will also have to be addressed in detail in any ‘no case to answer’ motion.
6. This response is filed confidentially pursuant to Regulation 23bis(2) of the Regulations of the Court.

Requested Relief

7. The Ruto Defence joins the Sang Request and respectfully requests that, in respect of the filing of any ‘no case to answer’ motion, it also be granted an extension of: (i) the page limit, from 40 to at least 100 pages; and (ii) the time limit, from 14 days to at least 30 days upon providing oral notification.

⁷ Decision, para. 24.

⁸ [REDACTED]

⁹ Decision, para. 24 (footnotes omitted).

¹⁰ Sang Request, para. 4 citing to Decision, para. 16.

¹¹ *Ibid*, paras. 26-28.

Respectfully submitted,



Karim A.A. Khan QC

Lead Counsel for Mr. William Samoei Ruto

Dated this 28th Day of October 2014
At The Hague, Netherlands