

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 9 March 2015

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 Ruto Defence Request to access information related to Witness 727

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

Counsel Support Section

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, in the case of *The Prosecutor v William Samoei Ruto and Joshua Arap Sang*, pursuant to Articles 64(2) and 68(1) of the Rome Statute, renders this 'Decision on the Ruto Defence Request to access information related to Witness 727'.

1. On 4 March 2015, the defence for Mr Ruto (the 'Ruto Defence') sought access to certain information held on a mobile phone and related SIM card belonging to Witness 727 (the 'Requested Information'), currently in the custody of the Victims and Witnesses Unit (the 'VWU').¹ The Ruto Defence requests that the VWU be instructed to seek the witness's consent to his telephone and SIM card being handed over directly to the Office of the Prosecutor (the 'Prosecution') for the purposes of an inspection and resulting report to be disclosed to the Ruto Defence (the 'Request').²
2. The Ruto Defence submits that the Requested Information is *prima facie* material to the preparation of the defence and may be exculpatory in nature.³ The Defence states that it only became aware of the existence of this telephone and SIM card on 26 February 2015.⁴ It also refers to a similar request concerning Witness 658, which was previously granted by the Chamber.⁵
3. The Ruto Defence submits that it has consulted with the Prosecution and the VWU, and that they do not oppose the Request. In fact, the VWU has proposed that such a Request be made to the Chamber.⁶
4. On 5 March 2015, by way of e-mail, the Prosecution informed the Chamber that it does not oppose the Request.⁷

¹ Ruto Defence request relating to P-0727's phone and SIM card referred to in July 2010 Prosecution interview, ICC-01/09-01/11-1831-Conf.

² Request, ICC-01/09-01/11-1831-Conf, paras 2 and 4.

³ Request, ICC-01/09-01/11-1831-Conf, para. 1.

⁴ Request, ICC-01/09-01/11-1831-Conf, para. 10.

⁵ Request, ICC-01/09-01/11-1831-Conf, para. 2.

⁶ Request, ICC-01/09-01/11-1831-Conf, paras 3 and 12 and Annex B.

⁷ E-mail from the Prosecution to Trial Chamber V-A Communications at 14:24.

5. On 6 March 2015, the defence for Mr Sang (the 'Sang Defence') (together with the Ruto Defence: the 'Defence'), filed its observations in support of the Request, submitting that both accused are entitled to receive the Requested Information.⁸
6. In light of the agreement among the parties and the VWU, and taking into consideration its previous decision on a similar request,⁹ the Chamber directs the VWU to:
 - (a) inform the witness of the Request and the content of the responses and observations.
 - (b) inquire whether he consents to his phone being handed over to the Prosecution, providing the PIN code to the phone and having the Prosecution compile a report, with redactions if necessary, for the Defence;
 - (c) inform the witness that he is not obliged to agree to his phone being handed over to anyone and that this is a voluntary decision that is fully at his discretion;
 - (d) inform the Chamber and the parties of the witness's decision as soon as possible and no later than Friday, 13 March 2015; and
 - (e) if the witness consents, provide the telephone and SIM card to the Prosecution immediately, and no later than Friday, 13 March 2015.

⁸ 'Sang Defence Response to "Ruto Defence Request relating to P-0727's phone and SIM card referred to in July 2010 Prosecution interview", ICC-01/09-01/11-1831-Conf, 4 March 2015', ICC-01/09-01/11-1833-Conf, paras 1, 2 and 4. Pursuant to Regulation 35 of the Regulations of the Court, the Chamber shortened the deadline for responses to 16:00 on 6 March 2015. E-mail from Trial Chamber V-A Communications to counsel and VWU on 5 March 2015 at 14:23.

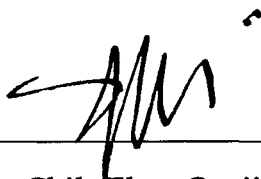
⁹ Record of an Order on the Defence Request to Inspect the Phone and SIM Card of a Witness, ICC-01/09-01/11-1735-Conf and Conf-Anx.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Request; and

DIRECTS the VWU to proceed pursuant to paragraph 6 above.

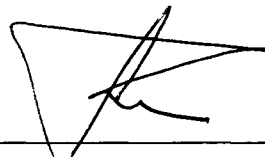
Done in both English and French, the English version being authoritative.



Judge Chile Eboe-Osuji
(Presiding)



Judge Olga Herrera Carbuccion



Judge Robert Fremr

Dated 9 March 2015

At The Hague, The Netherlands