

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 13 April 2015

TRIAL CHAMBER V(A)

Before:

**Judge Chile Eboe-Osuji, Presiding
Judge Olga Herrera Carbuccia
Judge Robert Fremr**

SITUATION IN THE REPUBLIC OF KENYA

IN THE CASE OF

THE PROSECUTOR v WILLIAM SAMOEI RUTO and JOSHUA ARAP SANG

Confidential, *ex parte*, Prosecution and Mr Nyekorach-Matsanga only

**Decision on Mr David Nyekorach-Matsanga's filing ICC-01/09-01/11-1810-Conf-
Exp-Anx1**

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

Counsel for Joshua Arap Sang

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

**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

Detention Section

**Victims Participation and Reparations
Section**

Others
Mr David Nyekorach-Matsanga

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*, having regard to Article 64(6)(f) of the Rome Statute ('Statute') and Regulations 23(1) and 29 of the Regulations of the Court ('Regulations') renders the following 'Decision on Mr David Nyekorach-Matsanga's filing ICC-01/09-01/11-1810-Conf-Exp-Anx1'.

I. SUBMISSIONS

1. On 10 February 2015, Mr David Nyekorach-Matsanga ('Mr Nyekorach-Matsanga') filed an application before the Chamber ('Motion').¹ The Motion, amongst other things, makes allegations against the Office of the Prosecutor ('Prosecution') and Prosecution witnesses. The Motion further appears to request the Chamber to 'terminate the case'² and to 'disregard' and 'review' the evidence provided by the Prosecution witnesses.³
2. In response to Mr Nyekorach-Matsanga's filing, on 27 February 2015, the Prosecution filed the 'Prosecution's Request in relation to David Nyekorach-Matsanga' ('Request'),⁴ whereby it requests the Chamber 'to declare [him] a vexatious litigant and to dismiss [the Motion] *in limine*'.⁵ The Prosecution further requests the Chamber 'to instruct the Registrar to expunge [the Motion] from the case record and to bar all future filings from [Mr Nyekorach-Matsanga]'.⁶ Finally, the Prosecution seeks permission to file a public redacted version of the Request and 'invites the Chamber to render a public decision on its request'.⁷

¹ 'Application by Dr. David Nyekorach Matsanga to Trial Chamber V(A) against fake fraudulent, fictitious in nature person and an agent of intelligence system (French) DSGE posing as expert witness for OTP (Prof. Harve Maupeu) in the case of William Ruto and Arap Sang', ICC-01/09-01/11-1810-Conf-Exp-Anx1.

² Motion, ICC-01/09-01/11-1810-Conf-Exp-Anx1, para. 42, points 1 and 5.

³ Motion, ICC-01/09-01/11-1810-Conf-Exp-Anx1, para. 42, points 2 and 3.

⁴ ICC-01/09-01/11-1825-Conf-Exp.

⁵ Request, ICC-01/09-01/11-1825-Conf-Exp, para. 4.

⁶ Request, ICC-01/09-01/11-1825-Conf-Exp, para. 4.

⁷ Request, ICC-01/09-01/11-1825-Conf-Exp, para. 5.

3. The Prosecution submits that Mr Nyekorach-Matsanga is a 'vexatious litigant' because: (i) he lacks standing to address the Chamber;⁸ (ii) his filing does not assist the proceedings in the case;⁹ and (iii) his filings reveal confidential information.¹⁰
4. Relying on, *inter alia*, Articles 64(6)(f) and 64(9)(b) of the Statute, Rule 134(3) of the Rules of Procedure and Evidence and Regulation 29 of the Regulations,¹¹ the Prosecution argues that the Chamber has the 'power and duty to control the proceedings before it',¹² consequently the Chamber has the power to declare Mr Nyekorach-Matsanga to be a vexatious litigant.¹³
5. On 20 March 2015, the Registry filed Mr Nyekorach-Matsanga's response to the Request ('Response'), whereby he requests the Chamber to dismiss the Prosecution's Request,¹⁴ reiterating that the Chamber should terminate the case.¹⁵

II. FINDINGS OF THE CHAMBER

6. The Chamber finds that Mr Nyekorach-Matsanga does not have standing to make submissions in this case without prior leave from the Chamber. The Motion fails to identify a proper legal basis on which Mr Nyekorach-Matsanga could make submissions to the Chamber. Moreover, no legal justification is given for the Chamber to grant the requests sought in the Motion.

⁸ Request, ICC-01/09-01/11-1825-Conf-Exp, para. 16.

⁹ Request, ICC-01/09-01/11-1825-Conf-Exp, paras 17 to 20.

¹⁰ Request, ICC-01/09-01/11-1825-Conf-Exp, paras 21 and 22.

¹¹ Request, ICC-01/09-01/11-1825-Conf-Exp, para. 8.

¹² Request, ICC-01/09-01/11-1825-Conf-Exp, para. 7.

¹³ Request, ICC-01/09-01/11-1825-Conf-Exp, para. 10.

¹⁴ Annex 1 to Registry Transmission of documents received from Mr. David Nyekorach-Matsanga, ICC-01/09-01/11-1845-Conf-Exp-Anx1, page 15, para. 1.

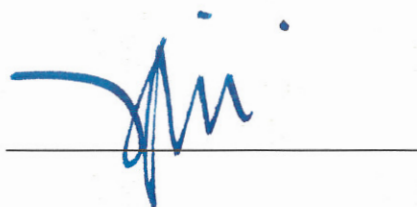
¹⁵ Response, ICC-01/09-01/11-1845-Conf-Exp-Anx1, page 15, para. 1.

7. The Chamber also observes with concern the inappropriate tone and unsubstantiated content of the Motion and the Response.¹⁶
8. Accordingly, should any further submissions of this nature be received from Mr Nyekorach-Matsanga, the Registry will be directed to expunge them from the record without further consideration by the Chamber.
9. For the foregoing reasons, the Chamber - considering it unnecessary to address the Prosecution's request to declare Mr Nyekorach-Matsanga a vexatious litigant and to file a public version of the Request - dismisses the Motion *in limine*.

FOR THE FOREGOING REASONS THE CHAMBER HEREBY

DISMISSES the Motion *in limine*.

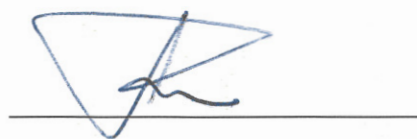
Done in both English and French, the English version being authoritative.

A blue ink signature, appearing to be 'Chile Eboe-Osuji', written over a horizontal line.

Judge Chile Eboe-Osuji, Presiding

A blue ink signature, appearing to be 'Olga Herrera Carbuccion', written over a horizontal line.

Judge Olga Herrera Carbuccion

A blue ink signature, appearing to be 'Robert Fremr', written over a horizontal line.

Judge Robert Fremr

Dated 13 April 2015

At The Hague, The Netherlands

¹⁶ The Chamber additionally notes the extensive formatting and editorial errors in the Motion and the Response, and that confidential annexes C-F of the Response appear to be missing.