

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11
Date: 16 September 2015

TRIAL CHAMBER V(A)

Before: Judge Chile Eboe-Osuji, Presiding
Judge Olga Herrera Carbuca
Judge Robert Fremr

SITUATION IN THE REPUBLIC OF KENYA

*IN THE CASE OF
THE PROSECUTOR*

v.

WILLIAM SAMOEI RUTO AND JOSHUA ARAP SANG

Public

**Common Legal Representative for Victims' Reply to the Sang Defence
Response to Ruto Defence Application for Extension of Time Limit to Submit
a 'no case to answer' Motion**

Source: Wilfred Nderitu, Common Legal Representative for Victims

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

The Office of the Prosecutor

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Legal Representatives of Victims

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Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Core of the Arguments:

1. From the outset, the Common Legal Representative for Victims (“the CLR”) states that he does not object, in the main, to the “Sang Defence Response to Ruto Defence Application for Extension of Time Limit to Submit a ‘no case to answer’ Motion”.¹ In this regard, the CLR reiterates his submissions contained in the “Common Legal Representative for Victims’ Reply to the Ruto Defence Application for Extension of Time Limit to Submit a ‘no case to answer’ Motion”².
2. Indeed, it is conceded that the indication that the Defence should make an alternative argument within the ‘no case to answer’ motion in relation to evidence admitted onto the record pursuant to Rule 68 of the Rules of Procedure and Evidence is relevant in considering the request for extension of the time limit for the filing of the motion in question. Specifically in relation to the Sang Defence, it is submitted that it is also relevant that the said Defence team has to deal with the issue of potential legal re-characterization of the facts in order to include individual criminal responsibility of Mr. Joshua arap Sang,³ in addition to the fact that the Appeals brief in connection with Rule 68 will also require to be prepared at more or less the same time.
3. Given the overlapping of the time limit for presentation of the Appeals brief, the submissions of ‘no case to answer’ and the response to the Prosecution’s request for possible legal re-characterization of the facts, it is submitted that it would be reasonable to extend the time limit for the filing of the ‘no case to answer’ motion.
4. As acknowledged by the CLR in the “Common Legal Representative for Victims’ Reply to the Ruto Defence Application for Extension of Time

¹ ICC-01/09-01/11-1960

² The Ruto Defence filing is ICC-01/09-01/11-1959

³ See ICC-01/09-01/11-1951 + Conf-AnxA, “Prosecution’s Request for notice under regulation 55(2) of possibility of variation with respect to individual criminal responsibility of Mr. Joshua arap Sang “

Limit to Submit a 'no case to answer' Motion", the Appeals brief raises novel and complex points of law in respect of which it would be reasonable to presume that an appreciable amount of preparation for its filing will be required. The CLR further acknowledges that both the submission of 'no case to answer' and the response to the legal re-characterization of facts are important filings, with potentially fairly important consequences both for the Defence and for the Prosecution, and for the case in general. This, it is submitted, would justify the extension of the time limit.

5. The CLR reiterates his submissions in his Reply to the Ruto Defence filing on extension of time to the effect that adequate preparation by the Defence for the submissions of 'no case to answer' would be consistent with giving effect to the right of the accused persons "to have adequate time and facilities for the preparation of the defence..." outlined in Article 67(1)(b) of the Rome Statute, as an ingredient of the right to a fair trial.
6. Furthermore, it is to be noted that the proximity in time of the presentation of the filings by the Sang Defence may have an undesirable ripple effect that is likely to cause a correspondingly heavy burden in relation to the filings by the Prosecution and the victims in response to the 'no case to answer' submissions and the Appeals brief. This, viewed within the context that the Sang Defence (and, equally, the CLR) is under-resourced vis-à-vis both the Prosecution and the Ruto Defence makes it desirable that the contemplated filings be spread out in such a manner as will allow for a proper preparation of the filings by all parties and participants.

Conclusion:

7. Accordingly, the CLR agrees that there is justification for the extension of time for the filing of the 'no case to answer' submissions.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Wilfred Nderitu', with a long horizontal stroke extending to the right.

WILFRED NDERITU

Common Legal Representative for Victims

Dated this 16th day of September, 2015

In Nairobi, Kenya