

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 18 September 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

Public

Decision on Page and Time Limits for the 'No Case to Answer' Motion

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 A. A. Khan
Mr David Hooper
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Ms Shyamala Alagendra

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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

Deputy Registrar

Victims and Witnesses Unit

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 and 67 of the Rome Statute (the 'Statute') and Regulations 35 and 37 of the Regulations of the Court (the 'Regulations'), renders this 'Decision on Page and Time Limits for the 'No Case to Answer' Motion'.

I. PROCEDURAL BACKGROUND

1. On 3 June 2014, the Chamber rendered its 'Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on 'No Case to Answer' Motions), (the 'Decision No. 5').¹ Decision No. 5 directed as follows:

the Defence to notify the Chamber orally no later than the last day of the Prosecution's case - or completion of the presentation of any evidence by the Legal Representative or as requested by the Chamber, as applicable - of their intention to file 'no case to answer' motions, if any. Any such 'no case to answer' motion shall be filed no later than 14 days after said day. Such a motion, not exceeding 40 pages in length, shall specify the particular counts being challenged. Responses by the Prosecution and the Legal Representative, at a length to be determined by the Chamber at the relevant time, shall be filed within 14 days after notification of the motion, or if considered more efficient by the Chamber, such responses will be made during an oral hearing which will be scheduled within a similar time frame.²

2. On 10 February 2015, the Chamber rendered its 'Decision on the Sang Defence's Request for Reconsideration of Page and Time Limits' (the 'Reconsideration Decision'), in which it rejected a request from the defence team of Mr Sang (the 'Sang Defence') seeking an extension of page limit to 100 pages and a time limit of 30 days to file the Motion.³ The Chamber however indicated that as the case was continuing, this determination was 'without prejudice to any future application which may be brought in that regard'.⁴

¹ ICC-01/09-01/11-1334.

² Decision No. 5, ICC-01/09-01/11-1334, para. 37.

³ ICC-01/09-01/11-1813.

⁴ Reconsideration Decision, ICC-01/09-01/11-1813, para. 23.

3. On 18 August 2015, the Chamber rendered its 'Decision on Prosecution Request for Admission of Prior Recorded Testimony' (the 'Rule 68 Decision').⁵
4. On 8 September 2015, the Office of the Prosecutor (the 'Prosecution') filed the 'Prosecution's Request for notice under regulation 55(2) of possibility of variation [of legal characterisation] with respect to individual criminal responsibility of Mr Joshua Arap Sang' (the 'Regulation 55 Request').⁶
5. On 10 September 2015, the Chamber rendered the 'Decision on the Defence's Applications for Leave to Appeal the "Decision on Prosecution Request for Admission of Prior Recorded Testimony"', granting leave to appeal various issues arising out of the Rule 68 Decision ('Leave to Appeal Decision').⁷
6. On that same date, the Prosecution filed a 'Notice of Closure of the Prosecution's Case',⁸ and on that same date the defence team of Mr Ruto (the 'Ruto Defence', together with the Sang Defence, the 'Defence'), informed the Chamber of its intention to file the Motion,⁹ which was followed with a similar communication by the Sang Defence the day after.¹⁰
7. On 11 September 2015, the Chamber issued the 'Decision on the Ruto Defence's request to modify the schedule for the submission of a 'no case to answer' motion', rejecting the request seeking 'a modification of the schedule to file a 'no case to answer' motion to no later than 14 days after: (a) any Appeals Chamber judgment on the Defence appeals [...] or alternatively, (b) the decision of the Chamber denying leave to appeal the Decision'.¹¹

⁵ ICC-01/09-01/11-1938-Conf-Corr and ICC-01/09-01/11-1938-Corr-Red2.

⁶ ICC-01/09-01/11-1951.

⁷ ICC-01/09-01/11-1953-Conf-Corr.

⁸ ICC-01/09-01/11-1954.

⁹ See e-mail from the Ruto Defence to Trial Chamber V-A Communications on 10 September 2015 at 18:13.

¹⁰ See e-mail from the Sang Defence to Trial Chamber V-A Communications on 11 September 2015 at 7:07.

¹¹ ICC-01/09-01/11-1955, para. 1.

8. On that same date, the Ruto Defence filed an application seeking an extension of the deadline for submitting the Motion,¹² which was joined by the Sang Defence on 14 September 2015 (the 'First Defence Request').¹³ The Defence jointly requests an extension of time limit of 14 days after the submission of the Defence document in support of its appeal to the Rule 68 Decision.
9. Also on the same day, the Prosecution filed a response to the First Defence Request, stating that it 'does not oppose a limited extension of the time line' for filing the Motion, provided the Prosecution is granted a similar extension.¹⁴
10. On 15 September 2015, the Sang Defence filed a request for reconsideration of the page limit of the Motion,¹⁵ which was joined by the Ruto Defence on 16 September 2015 (the 'Second Defence Request').¹⁶ The Defence jointly requests an extension of page limit to 100 pages.
11. On 16 September 2015, the Prosecution filed its response to the Second Defence Request, stating that it should be rejected as it does not meet the threshold for reconsideration. The Prosecution however submits that, if in the opinion of the Chamber, exceptional circumstances justify reconsideration, then an increase of five pages should be enough.¹⁷

¹² Ruto Defence application for extension of time limit to submit a 'no case to answer' motion, ICC-01/09-01/11-1959.

¹³ Sang Defence Response to Ruto Defence application for extension of time limit to submit a 'no case to answer' motion, ICC-01/09-01/11-1960.

¹⁴ Prosecution's consolidated response to the joint Defence request for extension of time limit to submit a "no case to answer" motion, ICC-01/09-01/11-1962, para. 13. The Chamber shortened the deadline for responses to 16 September 2015, pursuant to e-mail from Trial Chamber V-A Communications to Counsel on 14 September 2015 at 11:22.

¹⁵ Sang Defence Second Request for Reconsideration of Page Limit, ICC-01/09-01/11-1963-Conf.

¹⁶ Ruto Defence Request to Join the "Sang Defence Second Request for Reconsideration of Page Limit", ICC-01/09-01/11-1964-Conf.

¹⁷ Prosecution's response to Sang Defence second request for reconsideration of page limit, ICC-01/09-01/11-1965-Conf, paras 2 and 4. The Chamber shortened the deadline for responses to 16 September 2015, pursuant to e-mail from Trial Chamber V-A Communications to Counsel on 15 September 2015 at 15:44.

12. On that same date, the legal representative for victims (the 'LRV') filed his observations, stating that he does not oppose the First Defence Request.¹⁸

II. SUBMISSIONS

First Defence Request

13. The Defence submits that good cause exists for the requested extension of time in view of the complex and important matters it has to consider in both the Motion and its appeal of the Rule 68 Decision.¹⁹ Additionally, the Sang Defence submits that it will need to address the unanticipated Regulation 55 Request.²⁰ The Defence submits that, despite the right of the accused to be tried without undue delay under Article 67(1)(c) of the Statute, the requested extension of time limit does not constitute an unnecessary delay in the proceedings, but on the contrary, if granted, such an extension gives the Defence adequate time to prepare its case and secure its rights to a fair trial under Article 67(1)(b) of the Statute.²¹
14. Although the Prosecution does not oppose the First Defence Request, it notes that the Defence has simultaneously requested before the Appeals Chamber a 21-day extension of deadline of the time limit for filing its appeal briefs relating to the Rule 68 Decision.²² The Prosecution has not opposed the extension of deadline request before the Appeals Chamber in principle, although it has suggested a 14-day extension instead of 21 days.²³ Although the Prosecution contests some of the Defence submissions that it requires more time to prepare

¹⁸ Common Legal Representative for Victims' Reply to the Ruto Defence Application for Extension of Time Limit to Submit a 'no case to answer' Motion, ICC-01/09-01/11-1966; 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, ICC-01/09-01/11-1967.

¹⁹ ICC-01/09-01/11-1959, paras 3-11.

²⁰ ICC-01/09-01/11-1960, para. 4.

²¹ ICC-01/09-01/11-1959, para. 12, ICC-01/09-01/11-1960, para. 5.

²² Prosecution Response, ICC-01/09-01/11-1962, paras 3 and 10.

²³ ICC-01/09-01/11-1962, paras 3 and 4.

the Motion,²⁴ it accepts that the pending Regulation 55 Request may provide a reasonable ground for modification of the timetable, especially if the Prosecution is also required to address the Defence appeal briefs and the Motion within a short span of time.²⁵

15. The LRV submits that the appeal briefs as well as the Motion are critically important for all the parties concerned, including the LRV, and that an extension of time is desirable in the circumstances.²⁶

Second Defence Request

16. The Sang Defence submits that although the Chamber rejected its first request for an extension of page limit in the Reconsideration Decision, it was done without prejudice to any future application in this regard.²⁷ The Sang Defence states that the factual and evidential complexity of the case has changed since the Reconsideration Decision and the requested extension is all the more warranted now that the Defence has to address the Motion in the alternative in respect of the Rule 68 Decision and its pending appeal.²⁸ Accordingly, the Sang Defence submits that an extended page limit is required to adequately address these issues and secure the accused's right to a fair trial.²⁹
17. The Ruto Defence submits that the extension of page limit is warranted for it to address several substantive legal and factual issues arising from the statements admitted pursuant to the Rule 68 Decision.³⁰

²⁴ ICC-01/09-01/11-1962, paras 7 and 8.

²⁵ ICC-01/09-01/11-1962, Para 11, 12

²⁶ ICC-01/09-01/11-1966, paras 1-4; ICC-01/09-01/11-1967, paras 1-7.

²⁷ ICC-01/09-01/11-1963-Conf, Para 4

²⁸ ICC-01/09-01/11-1963-Conf, para. 6.

²⁹ ICC-01/09-01/11-1963-Conf, paras 7-8.

³⁰ ICC-01/09-01/11-1964-Conf, para. 3

18. The Prosecution submits that the Second Defence Request does not bring to light any 'new documentary evidence' that the Defence has to address in the Motion. The Prosecution argues that the evidence admitted by way of the Rule 68 Decision is not new to the Defence.³¹ The Prosecution also submits that most of the circumstances referred to in the Second Defence Request, including the Rule 68 Decision, were already within the contemplation of the Chamber in the Reconsideration Decision.³² The Prosecution thus contends that the only relevant change in circumstances is the requirement of the parties to make submissions in the alternative. It also submits that the Defence is not required to address the entirety of the Prosecution's evidence in the Motion, as this would be beyond its scope.³³

III. ANALYSIS

19. The Chamber notes that the possibility of appeals proceedings arising out of the Rule 68 Decision would have been apparent to the Defence since September 2014, when the Prosecution informed the Chamber and the Defence that it would seek the admission of the written statements of witnesses allegedly subjected to interference.³⁴ That factor alone would thus be insufficient to justify the requested extensions.

20. Nonetheless, the Chamber recognises, particularly for the Sang Defence, that under the current circumstances there are close competing deadlines for: (a) the Motion; (b) responses to the Regulation 55 Request; and (c) appeal briefs for the Rule 68 Decision. Moreover, the Chamber acknowledges that all three pending submissions are important for the future conduct of the case, as they may entail complex legal issues that may have a significant impact in the outcome of the

³¹ ICC-01/09-01/11-1965-Conf, para. 7

³² ICC-01/09-01/11-1965-Conf, para. 2

³³ ICC-01/09-01/11-1965-Conf, paras 9-11.

³⁴ ICC-01/09-01/11-1962, para. 7.

case. Although these reasons for an extension of time limit may not apply similarly to the Ruto Defence, the Chamber nevertheless considers that simultaneous filing of the Motion by both Defence teams, and subsequent responses thereto, is more appropriate for the expeditiousness and efficiency of proceedings. However, the Chamber considers that an extension of time limit should not depend on the determination of a pending request before the Appeals Chamber. An appropriate balance must be struck in a manner that results in efficient conduct of the proceedings in both Chambers.

21. As regards the Second Defence Request, the Chamber considers that the proceedings in the case thus far, including but not limited to the admission of evidence pursuant to the Rule 68 Decision, justifies an extension of page limits for the Motion.
22. For the same reasons as above, the Chamber is of the view that an extension of the time limit and the page limit is also warranted for the submission of the Prosecution and the LRV's responses to the Motion, particularly since they will have to address lengthier submissions in that respect.
23. Moreover, given the importance of the Motion, the Chamber will consider further oral submissions in a hearing to be convened for that purpose.³⁵

FOR THE FOREGOING REASONS, THE CHAMBER, HEREBY

DIRECTS the Defence to file the Motion no later than 23 October 2015;

DIRECTS the Prosecution and the LRV to file any responses to the Motion no later than 20 November 2015;

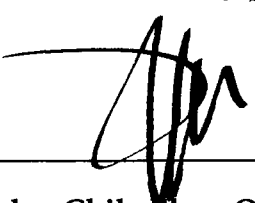
³⁵ Decision No. 5, ICC-01/09-01/11-1334, para. 37.

GRANTS an extension of page limit in relation to the Motion and responses thereto to 100 pages;

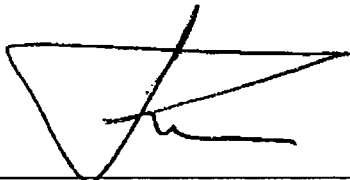
CONVENES a hearing to hear further oral submissions on the Motion on Tuesday, 24 November 2015; and

DIRECTS the Registry, pursuant to Regulation 23*bis* of the Regulations, to reclassify filings ICC-01/09-01/11-1963-Conf, ICC-01/09-01/11-1964-Conf and ICC-01/09-01/11-1965-Conf as 'Public'.

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



Judge Chile Eboe-Osuji
(Presiding)

Judge Olga Herrera Carbuccion

Judge Robert Fremr

Dated 18 September 2015

At The Hague, The Netherlands