

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **17 December 2015**

APPEALS CHAMBER

Before: Judge Piotr Hofmański, Presiding Judge
Judge Silvia Fernández de Gurmendi
Judge Christine Van den Wyngaert
Judge Howard Morrison
Judge Péter Kovács

SITUATION IN THE REPUBLIC OF KENYA

IN THE CASE OF

***THE PROSECUTOR v.
WILLIAM SAMOEI RUTO AND JOSHUA ARAP SANG***

**Public
With Public Annex A**

Sang Defence Submission in addition to Appeal against the decision of Trial Chamber V (A) of 19 August 2015 entitled “Decision on Prosecution Request for Admission of Prior Recorded Testimony”

Source: Defence for Joshua arap Sang

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

The Office of the Prosecutor

Ms. Fatou Bensouda
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Anton Steynberg

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Mr. Karim A. A. Khan QC
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Amicus Curiae

African Union Commission

REGISTRY

Registrar

Mr. Herman von Hebel

I. Procedural Background

1. On 5 October 2015, Joshua Sang filed his *Appeal against the decision of Trial Chamber V (A) of 19 August 2015 entitled “Decision on Prosecution Request for Admission of Prior Recorded Testimony”*.¹ A public redacted version of this appeal was filed on 13 October 2015.²
2. On 5 October 2015, Mr. William Ruto equally filed his *Appeal against the “Decision on Prosecution Request for Admission of Prior Recorded Testimony”*.³ A public redacted version of this appeal was filed on 6 October 2015.⁴
3. On 5 October 2015, Prof. Charles Chernor Jalloh, representing the African Union Commission, submitted a public filing entitled *African Union Request for Leave to Submit Amicus Curiae Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence on the Rule 68 Amendments at the Twelfth Session of the ICC Assembly of States Parties*.⁵
4. The Appeals Chamber granted this request on 12 October 2015 and allowed the African Union to make submissions by 19 October 2015 in the pending appeal proceedings on Rule 68 in the case of Ruto and Sang.⁶
5. 19 October 2015, the African Union Commission “A.U.C” filed its *Amicus Curiae Observations on the Rule 68 Amendments at the Twelfth Session of the Assembly of States Parties*.⁷
6. During the 14th Session of the Assembly of State Parties (“ASP”) held between 18 and 26 November 2015, the ASP under agenda No.18 on Review of the Application

¹ ICC-01/09-01/11-1982-Conf.

² ICC-01/09-01/11-1982-Red

³ ICC-01/09-01/11-1981-Conf.

⁴ ICC-01/09-01/11-1981-Red.

⁵ ICC-01/09-01/11-1983.

⁶ Public Decision on applications for leave to submit amicus curiae observations pursuant to rule 103 of the Rules of Procedure and Evidence, ICC-01/09-01/11-1987.

⁷ ICC-01/09-01/11-1988.

and Implementation of the Rules of Procedure and Evidence Introduced During the 12th Assembly adopted the following resolution:

Following the debate on the supplementary item “Review of the Application and implementation of amendments to the Rules of Procedure and Evidence introduced at the 12th Assembly”, the Assembly *recalled* resolution ICC-ASP/12/Res.7, dated 27 November 2013, which amended rule 68 of the Rules of Procedure & Evidence, which entered into force on the above date, and consistent with the Rome Statute *reaffirmed* its understanding that amended rule 68 shall not be applied retroactively.⁸

The said resolution is annexed to this filing.

II. SUBMISSIONS

7. Mr. Joshua Sang respectfully submits that the ASP resolution is relevant to the matters presently under consideration by this Chamber relating to the ambit and interpretation of amended Rule 68. Accordingly, Mr. Joshua Sang respectfully places the ASP resolution into the record of the present appeal for consideration by the Appeals Chamber when assessing Mr. Joshua Sang’s appeal.

Respectfully submitted,



Joseph Kipchumba Kigen-Katwa
On behalf of Joshua arap Sang

Dated this 17th day of December 2015
At Nairobi, Kenya

⁸ ICC-ASP/14/L.1 Draft Proceedings at para 63.