

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 13 April 2011

**PRE-TRIAL CHAMBER II**

**Before: Judge Ekaterina Trendafilova, Single Judge**

**SITUATION IN THE REPUBLIC OF KENYA  
IN THE CASE OF THE PROSECUTOR V. WILLIAM SAMOEI RUTO, HENRY  
KIPRONO KOSGEY AND JOSHUA ARAP SANG**

**Public**

**Decision on the Re-filing of the "Defence Request for Variation of Decision on  
Summons or in the Alternative Request for Leave to Appeal"**

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

**The Office of the Prosecutor**  
Luis Moreno Ocampo Prosecutor  
Fatou Bensouda, Deputy-Prosecutor

**Counsel for William Samoei Ruto**  
Joseph Kipchumba Kigen-Katwa, David  
Hooper and Kioko Kilukumi Musau

**Counsel for Joshua Arap Sang**  
Joseph Kipchumba Kigen-Katwa

**Legal Representatives of the Victims**

**Legal Representatives of the 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**

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**Registrar & Deputy Registrar**  
Silvana Arbia, Registrar  
Didier Preira, Deputy-Registrar

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”)<sup>1</sup> of the International Criminal Court (the “Court”) hereby renders the “Decision on the Re-filing of the ‘Defence Request for Variation of Decision on Summons or in the Alternative Request for Leave to Appeal’”.

1. On 8 March 2011, the Chamber, by majority, issued its “Decision on the Prosecutor’s Application for Summonses to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang”.<sup>2</sup> In the same decision, the Chamber imposed certain conditions restricting liberty (other than detention) on the three suspects.

3. On 6 April 2011, the Single Judge issued the Corrigendum of the “Decision Establishing Modalities to be Observed When Complying with Summons Conditions” (the “Decision Establishing Modalities”),<sup>3</sup> setting out the modalities to be observed by the suspects when complying with one of the conditions imposed.

4. On 12 April 2011, counsel for William Samoei Ruto and Joshua Arap Sang submitted the “Defence Request for Variation of Decision on Summons or in the Alternative Request for Leave to Appeal”, requesting that the Single Judge modify the modalities to be observed by the two suspects or, in the alternative, grant leave to appeal the Decision Establishing Modalities.<sup>4</sup> A corrigendum was submitted correcting some references in the text and footnotes.<sup>5</sup>

5. The Single Judge notes article 21(2) of the Rome Statute and regulation 36(3) of the Regulations of the Court (the “Regulations”).

<sup>1</sup> Pre-Trial Chamber II, “Decision Designating a Single Judge”, ICC-01/09-01/11-6.

<sup>2</sup> Pre-Trial Chamber II, “Decision on the Prosecutor’s Application for Summonses to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang”, ICC-01/09-01/11-1.

<sup>3</sup> Pre-Trial Chamber II, ICC-01/09-01/11-38-Corr.

<sup>4</sup> ICC-01/09-01/11-47.

<sup>5</sup> ICC-01/09-01/11-47-Corr.

6. The Single Judge notes that the formatting requirements of regulation 36(3), fourth sentence, of the Regulations were not respected. The Single Judge also notes that, even though the Defence has corrected some text elements in its initial submission, which were previously referring erroneously to the case of *The Prosecutor v Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, not all mistakes have been rectified.

7. The Single Judge disapproves the Defence's approach disrespecting the formatting requirements of official submissions as they may have the potential to circumvent the requisite page limit of 20 pages. The Single Judge also takes note of previous rulings of this Chamber in relation to an application submitted by counsel on behalf of Joshua Arap Sang,<sup>6</sup> and that of the Appeals Chamber<sup>7</sup> in which it has been emphasized that all parties and participants shall comply with the formatting requirements as provided in regulation 36(3) of the Regulations. Therefore, it is the view of the Single Judge that the submission as filed should be rejected.

**FOR THESE REASONS, THE SINGLE JUDGE HEREBY**

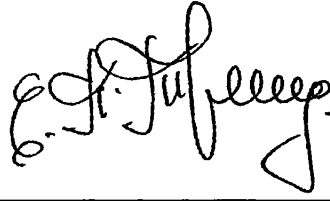
- a) **rejects** the "Corrigendum of the Defence Request for Variation of Decision on Summons or in the Alternative Request for Leave to Appeal" as filed;
- b) **orders** the Defence to re-file its submission complying with regulation 36(3) of the Regulations no later than **Thursday 14 April 2011, at 16h00**.

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<sup>6</sup> Pre-Trial Chamber II, "Decision on Application for Leave to Participate under Articles 58, 42(5), (7)-(8)(a) of the Rome Statute and Rule 34(1)(d) and (2) of the Rules of procedure and Evidence, ICC-01/09-47, p. 6.

<sup>7</sup> Appeals Chamber, Decision on the 'Observations de la Défense relatives à l'irrecevabilité du «Prosecution's Document in Support of Appeal against Trial Chamber I's decision of 8 July to stay the proceedings for abuse of process» daté du 26 juillet 2010", ICC-01/04-01/06-2543; Appeals Chamber, "Decision on the re-filing of the document in support of the appeal", ICC-01/04-01/06-1445.

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



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**Judge Ekaterina Trendafilova**  
**Single Judge**

Dated this Wednesday, 13 April 2011

At The Hague, The Netherlands