

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 24 August 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 “Defence Request for Leave to Appeal the ‘Urgent Decision on the
‘Urgent Defence Application for Postponement of the Confirmation Hearing and
Extension of Time to Disclose and List Evidence’ (ICC-01/09-01/11-260)”**

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

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”)¹ of the International Criminal Court (the “Court”), hereby renders the decision on the “Defence Request for Leave to Appeal the ‘Urgent Decision on the ‘Urgent Defence Application for Postponement of the Confirmation Hearing and Extension of Time to Disclose and List Evidence’ (ICC-01/09-01/11-260)” (the “Request”)².

1. On 8 March 2011, the Chamber, by majority, decided to summon William Samoei Ruto (“Mr. Ruto”), Henry Kiprono Kosgey (“Mr. Kosgey”) and Joshua Arap Sang (“Mr. Sang”) to appear before it.³ Pursuant to this decision, the suspects voluntarily appeared before the Court at the initial appearance hearing held on 7 April 2011 during which, *inter alia*, the Chamber set the date for the commencement of the confirmation of charges hearing for 1 September 2011.
2. On 12 August 2011, the Single Judge issued the “Decision on the ‘Urgent Defence Application for Postponement of the Confirmation Hearing and Extension of Time to Disclose and List of Evidence’ (the “12 August 2011 Decision”).⁴
3. On 23 August 2011, the Chamber was notified of the Request submitted by the Defence of Mr. Ruto and Mr. Sang which had been filed on 22 August 2011 at 16h24.
4. The Prosecutor responded to the Request the same day and mistakenly filed his response in the record of the case of the *Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*.⁵ On the same date, the Prosecutor re-filed his response in the record of the present case.⁶

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

² ICC-01/09-01/11-280.

³ Pre-Trial Chamber II, “Decision on the Prosecutor’s Application for Summons to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang”, ICC-01/09-01/11-1.

⁴ Pre-Trial Chamber II, ICC-01/09-01/11-260.

⁵ ICC-01/09-02/11-261.

⁶ ICC-01/09-01/11-284.

5. The Single Judge notes article 82(1)(d) of the Rome Statute (the “Statute”), rule 155(1) of the Rules of Procedure and Evidence and regulation 33 of the Regulations of the Court (the “Regulations”).

6. The Single Judge notes that the five-day time limit to lodge a leave to appeal the 12 August 2011 Decision under article 82(1)(d) of the Statute expired on Friday, 19 August 2011 at 24h00.⁷ Pursuant to regulation 33(1)(d) and (2) of the Regulations, “[d]ocuments shall be filed with the Registry, *at the latest*, on the first working day of the Court following the expiry of the time limit” (emphasis added) and within regular filing hours.⁸ The Defence, however, filed its Request on Monday, 22 August 2011, at 16h24. Therefore, the Single Judge cannot but consider that the Request of the Defence is filed out of time and must be dismissed *in limine*.

FOR THESE REASONS THE SINGLE JUDGE HEREBY

- a) dismisses *in limine*** the Request submitted by the Defence of Mr. Ruto and Mr. Sang;
- b) orders** the Registrar to strike out document ICC-01/09-02/11-261 from the record of the case of *Prosecutor v Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*.

⁷ Regulation 33(1)(a) of the Regulations.

⁸ In accordance with regulation 33(2) of the Regulations, “[d]ocuments shall be filed with the Registry between 9am and 4pm The Hague time (...)”.

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



Ekaterina Trendafilova
Single Judge

Dated this Wednesday, 24 August 2011

At The Hague, The Netherlands