

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

02 May 2014

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

Urgent

**Decision on Government of the Republic of Kenya's Request for an extension of
deadline to file leave to appeal and/or leave to submit *amicus curiae* observations on
the Decision on the summon of witnesses**

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 Khan
Mr David Hooper
Mr Essa Faal
Ms Shyamala Alagendra

Counsel for Joshua Arap Sang

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

Mr Githu Muigai, SC, Attorney General
of the Republic of Kenya

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 Regulation 35 of the Regulations of the Court (the ‘Regulations’), renders this Decision on Government of the Republic of Kenya’s Request for an extension of deadline to file leave to appeal and/or leave to submit *amicus curiae* observations on the Decision on the summon of witnesses.

1. On 25 April 2014, the Government of the Republic of Kenya (‘Government of Kenya’) filed a request¹ in relation to the Chamber’s ‘Decision on Prosecutor’s Application for Witness Summonses and resulting Request for State Party Cooperation’.² Therein, the Government of Kenya requests: (i) to be notified of the Decision and the Dissenting Opinion to it in accordance with Regulation 31 of the Regulations of the Court (‘Regulations’),³ and (ii) to be granted a total of ten days to file a request for leave to appeal the Decision,⁴ or (iii) alternatively, in case the Government of Kenya is not permitted to seek leave to appeal, to be granted leave to file *amicus curiae* observations, also within ten days of the notification, pursuant to Rule 103 of the Rules.⁵
2. The Chamber considers that, given the nature of the Request and the need for a timely decision by the Chamber, it is, exceptionally, appropriate to decide on this matter without hearing prior submissions from the parties.

¹ The Government of the Republic of Kenya’s Request for an Extension of Time and/or Leave to Seek Leave to Appeal the Decision on Prosecutor’s Application for Witness Summonses and resulting Request for State Party Cooperation, 25 April 2014, ICC-01/09-01/11-1277 (the ‘Request’).

² ICC-01/09-01/11-1274, 17 April 2014 (the ‘Decision’), with public Annex A, Dissenting Opinion of Judge Herrera Carbuca on the ‘Decision on Prosecutor’s Application for Witness Summonses and resulting Request for State Party Cooperation’ (‘Dissenting Opinion’), ICC-01/09-01/11-1274-Anx, registered on 29 April 2014. A first corrigendum to the Decision was registered on 29 April 2014 and a second one was registered on 30 April 2014, ICC-01/09-01/11-1274-Corr2.

³ Request, ICC-01/09-01/11-1277, paras 4 and 11.

⁴ Request, ICC-01/09-01/11-1277, paras 4 and 11.

⁵ Request, ICC-01/09-01/11-1277, paras 5 and 11.

3. In respect of the first prong of the Request, the Chamber notes that it instructed the Registry on 29 April 2014⁶ to notify the Government of Kenya of the Decision⁷ and the Dissenting Opinion. Therefore, the Chamber considers this part of the Request to be moot.
4. In respect of the second part of the Request, the Chamber notes that the Government of Kenya seeks an extension of deadline to file a request for leave to appeal pursuant to Regulation 35 of the Regulations.
5. The Chamber notes that Regulation 35(2) of the Regulations provides that the Chamber may extend a time limit if 'good cause is shown'. In its submissions, the Government of Kenya argues that such good cause is shown because 'it has an interest in the proceedings, yet a large docket and cannot exclusively devote its time and resources to responding to ICC issues'.⁸
6. The Chamber does not consider that the reasons advanced by the Government of Kenya constitute good cause. It is the Government of Kenya's responsibility to allocate its resources in such a manner that it is able to participate in the proceedings before the Court.
7. However, considering the circumstances of the filing of the Decision, the fact that the Dissenting Opinion was not filed simultaneously and that two corrigenda to the Decision were issued, the Chamber considers it nevertheless appropriate to exceptionally extend the deadline to file ten days after the filing of the Dissenting Opinion, no later than 12 May 2014.
8. Having been granted an extension of time, it is up Government of Kenya to use that time to make any application they find it appropriate to make (either as to their

⁶ E-mail of the Chamber to the Registry on 29 April 2013 at 16:47.

⁷ In its corrected version, ICC-01/09-01/11-1274-Corr2.

⁸ Request, ICC-01/09-01/11-1277, para. 8.

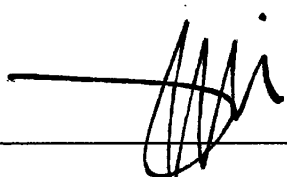
own leave to appeal or, alternatively, as to leave to join as *amicus curiae* to any other request for leave to appeal), without prejudice to the Chamber's decision at the appropriate time on any such application to be made by Government of Kenya, when the occasion is ripe. The Chamber will rule upon any eventual application in due course.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DECLARES the request for the Government of Kenya to be notified of the Decision and Dissenting Opinion as moot; and

GRANTS the Government of Kenya until 12 May 2014 to file the application it wishes to make.


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



Judge Chile Eboe-Osuji
(Presiding)



Judge Olga Herrera Carbuccia



Judge Robert Fremr

Dated 02 May 2014

At The Hague, The Netherlands