

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 7 August 2013

Date of public redacted version: 11 December 2017

**TRIAL CHAMBER V(A)**

**Before:** Judge Chile Eboe-Osuji, Presiding Judge  
Judge Olga Herrera Carbuca  
Judge Robert Fremr

**SITUATION IN THE REPUBLIC OF KENYA**

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

**Public redacted version of**

**Decision on the Prosecution's Request to Add Two Witnesses  
to its List of Witnesses**

Order to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

**The Office of the Prosecutor**

Ms Fatou Bensouda

Mr Anton Steynberg

**Counsel for William Samoei Ruto**

**Counsel for Joshua Arap Sang**

**Legal Representatives of Victims**

**Legal Representatives of 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**

Mr Herman von Hebel

**Deputy Registrar**

**Victims and Witnesses Unit**

Mr Patrick Craig

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

**Trial Chamber V(A)** (the ‘Chamber’) of the International Criminal Court, in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, pursuant to Articles 67(1)(b) and 68(1) of the Rome Statute, issues the following Decision on the Prosecution’s Request to Add Two Witnesses to its List of Witnesses.

1. On 2 August 2013, the Prosecution filed the ‘Prosecution’s fourth request pursuant to Regulation 35(2) of the Regulations of the Court’ (the ‘Request’),<sup>1</sup> in which it seeks authorisation to include two new witnesses on its list of witnesses and adduce their evidence at trial.<sup>2</sup> On the basis of [REDACTED], the Prosecution submits that the combined evidence of P-0604 and [REDACTED] will help [REDACTED].<sup>3</sup>
2. The Prosecution requests permission from the Chamber to maintain confidentiality of the information contained in the Request.<sup>4</sup> It submits that the number of incidents of witness interference attributed to Mr Ruto and/or his associates has significantly increased as the date of commencement of trial draws nearer and, therefore, disclosure of the information contained in the filing would entail a threat to the safety of the proposed witnesses and their families.<sup>5</sup> The Prosecution further requests: permission to delay the filing of a confidential redacted version of the Request in order to protect the confidentiality of [REDACTED];<sup>6</sup> permission to [REDACTED];<sup>7</sup> and that the Chamber issue its decision *ex parte* so as to allow the implementation of necessary protective measures for the proposed witnesses and their families.<sup>8</sup>
3. The Chamber notes that the Prosecution seeks authorisation to delay the filing of a confidential version of the Request ‘until such a time as [REDACTED]’ and requests the

---

<sup>1</sup> ICC-01/09-01/11-837-Conf-Exp.

<sup>2</sup> Request, ICC-01/09-01/11-837-Conf-Exp, paras 1 and 43(a).

<sup>3</sup> Request, ICC-01/09-01/11-837-Conf-Exp, para. 1.

<sup>4</sup> Request, ICC-01/09-01/11-837-Conf-Exp, para. 28.

<sup>5</sup> Request, ICC-01/09-01/11-837-Conf-Exp, paras 29 and 33-37.

<sup>6</sup> Request, ICC-01/09-01/11-837-Conf-Exp, paras 30 and 38-41.

<sup>7</sup> Request, ICC-01/09-01/11-837-Conf-Exp, para. 31.

<sup>8</sup> Request, ICC-01/09-01/11-837-Conf-Exp, paras 32 and 42.

Chamber to issue its decision on the Request *ex parte*.<sup>9</sup> Without prejudice to the reasons for which the Prosecution seeks to withhold the information contained in the Request from the Defence, the Chamber is unable to accept the proposed manner of handling the Request. In particular, the Chamber considers that the addition of two witnesses to the Prosecution's list so close to the trial date<sup>10</sup> may impact on the fair trial rights of the accused. It is therefore imperative that the Defence be given an opportunity to respond and make observations on how the proposed addition of witnesses would affect its preparation for trial. The Chamber also notes that, irrespective of the reasons for withholding information from the Defence, if the Prosecution is to rely on these new witnesses it must be prepared to make the necessary full disclosure as soon as possible. As the Prosecution's Request does not contemplate an alternative to the examination of the Request *ex parte*, the Chamber is constrained to dismiss the Request *in limine* in view of the Chamber's conclusion above.

4. The Chamber, however, underscores that it has not considered the merits of the Request and therefore the present ruling does not foreclose a renewed application by the Prosecution upon notice to the Defence according to the ordinary procedure.

---

<sup>9</sup> Request, ICC-01/09-01/11-837-Conf-Exp, para. 43.

<sup>10</sup> Decision on prosecution requests to add witnesses and evidence and defence request to reschedule the trial start date, 3 June 2013, ICC-01/09-01/11-762.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**DISMISSES** the Request without prejudice.


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



**Judge Chile Eboe-Osuji  
(Presiding Judge)**



**Judge Olga Herrera Carbuccia**



**Judge Robert Fremr**

Dated 7 August 2013  
At The Hague, The Netherlands