



Original: **English**

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

Date: **23 August 2011**

**PRE-TRIAL CHAMBER II**

**Before:** Judge Ekaterina Trendafilova, Single Judge  
Judge Hans-Peter Kaul  
Judge Cuno Tarfusser

**SITUATION IN THE REPUBLIC OF KENYA**

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

**Public Document**

**Prosecution's Request that the "Defence Request for Leave to Appeal the 'Urgent Decision on the 'Urgent Defence Application for Postponement of the Confirmation of Hearing and Extension of Time to Disclose and List Evidence'" be Dismissed as Filed Out of Time**

**Source:** The Office of the Prosecutor

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

*Court to:*

**The Office of the Prosecutor**

**Counsel for William Ruto**

Joseph Kipchumba Kigen-Katwa,  
David Hooper QC, Kioko Kilukumi  
Musau and Kithure Kindiki

**Counsel for Hnery Kosgey**

George Odinga Oraro, Julius Kemboy  
and Allan Kosgey

**Counsel for Joshua Sang**

Joseph Kipchumba Kigen-Katwa, Joel  
Kimutai Bosek and Philemon K. B. Koech

**Legal Representatives of Victims**

Sureta Chana

**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**

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**Registrar**

Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

1. On 12 August 2011, the Single Judge issued its “Urgent Decision on the ‘Urgent Defence Application for Postponement of the Confirmation of Hearing and Extension of Time to Disclose and List Evidence’” (“Decision”).<sup>1</sup> An Application for leave to appeal that decision was due to be filed on 22 August.
2. On 22 August 2011, after hours, the defence for Mr. William Samoei Ruto and Mr Joshua Arap Sang filed an application for leave to appeal the Decision.<sup>2</sup> The Reception date and hour as stated in the notification e-mail reads “22/08/2011 - 16:24”.<sup>3</sup> It was notified on 23 August.
3. The Prosecution notes that under Regulation 33(2), documents *shall* be filed between 9am and 4pm The Hague time. Regulation 33(3) provides that documents received or filed after the prescribed filing time will be notified on the next working day, unless otherwise ordered by the Chamber.
4. The Application was filed 24 minutes after expiry of the time-limit. It was thus filed out of time, and was accordingly so treated by CMS. The Defence did not seek a variation of time-limit, nor did the Chamber authorize the Defence to file its application outside the prescribed filing time (including after-hours). The Prosecution further notes that Chambers of this Court have adopted a very restrictive position pertaining to the possibility of varying the statutory time-limit applicable to applications for leave to appeal.<sup>4</sup>
5. The Prosecution accordingly requests that the Application be dismissed in limine as it was filed out of the applicable time-limit. Should the Pre-Trial Chamber

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<sup>1</sup> ICC-01/09-01/11-260 (“Decision”)

<sup>2</sup> ICC-01/09-01/11-280 (“Application for Leave to Appeal”)

<sup>3</sup> Court Management-Court Records E-mail of 23 August 2011, reception time 10:53

<sup>4</sup> Rule 155 (1) establishes that a written application seeking leave to appeal must be filed within five days of notification; to date, Chambers of this Court have held Regulation 35’s allowance of variation of time limits, which is applicable to most filings, specifically does not apply to applications for leave to appeal, since the time limit for seeking leave to appeal is jurisdictional and prescribed in the Statute (see, inter alia, ICC-01/04-01/06-1125, para. 19).

consider that the Application was timely filed, the Prosecution will respond to the merits by the original due date or within a time-limit established by the Chamber.



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Luis Moreno-Ocampo,  
Prosecutor

Dated this 23<sup>rd</sup> day of August 2011  
At The Hague, The Netherlands