



Original: English

No.: ICC-01/09-01/11
Date: 26 August 2011

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding 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
With Confidential Annex A**

**Defence Request pursuant to Rule 124(1) for Mr. William Ruto
to Waive his Right to be Present for part of the Confirmation of Charges Hearing**

Source: Defence for Mr. William Samoei Ruto

Document 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 Ruto

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

Counsel for Henry 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 the Victims

Sureta Chana

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms. Silvana Arbia

Counsel Support Section

Deputy Registrar

Mr. Didier Daniel Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. On 17 August 2011, the Single Judge issued a *Decision Requesting Observations on the Schedule for the Confirmation of Charges Hearing*, in which the Single Judge indicated that the Confirmation Hearing would last eight days, from 1 to 12 September 2011.¹ Pursuant to Rule 124(1), the Defence for Mr. William Ruto hereby requests in writing that the Pre-Trial Chamber allow him to waive his right to be present for some portions of the hearing on the confirmation of the charges.
2. Mr. Ruto desires to be present for the start of the confirmation of the charges hearing on 1 September, and will make efforts to be present on any other date that his counsel or the Court requires, but he is unable to be present for the entirety of the hearing. For the portions of the confirmation hearing for which Mr. Ruto is unable to be present, he will not require the use of communications technology to enable him to view the hearing from outside the courtroom.²
3. The Defence has attached as Confidential Annex A a request personally executed by Mr. Ruto to this effect.³ In accordance with the provisions of Article 61(2)(a) and Rule 124(2), the Defence submits that this personally executed request demonstrates that Mr. Ruto understands his right to be fully present at the hearing and the consequences of waiving this right.

II. Applicable Legal Principles

4. Article 62(2)(a) provides that the Pre-Trial Chamber may hold the confirmation of charges hearing in the absence of the person charged when the said person has waived his right to be present.
5. Rule 124(1) states that “if the person concerned wishes to waive the right to be present at the hearing on the confirmation of charges, he or she shall submit a written request to the Pre-Trial Chamber”. Rule 124(2) particularly states that the hearing may only be held in

¹ *Prosecutor v. Ruto et al*, ICC-01/09-01/11-272, Decision Requesting Observations on the Schedule for the Confirmation of Charges Hearing, 22 August 2011 (“**Scheduling Request**”).

² See Rule 124(3).

³ The Annex is classified as confidential because it contains information relating to his personal schedule which may not otherwise be available to the public.

the absence of the suspects if the Pre-Trial Chamber is satisfied that the person concerned understands the right to be present at the hearing and the consequences of waiving that right.

6. Rule 125(1) requires that the Pre-Trial Chamber must decide whether there is cause to hold the confirmation hearing in the absence of the suspects.

III. Submissions

Waiver of Mr. Ruto's Presence for part of the Confirmation of Charges Hearing

7. The Defence notes that in the *Banda & Jerbo* hearing on the confirmation of charges, the Pre-Trial Chamber was satisfied that both suspects (neither of whom were in the custody of the court) understood their right to be present at the confirmation of charges hearing and the consequences of waiving that right. Accordingly, their presence was waived.⁴ Similarly, in the *Katanga & Ngudjolo* hearing on the confirmation of the charges, the Pre-Trial Chamber determined that Mr. Katanga had made an informed decision to waive his right to be present and decided that the hearing would continue in his absence.⁵
8. Likewise, the Defence has explained to Mr. Ruto the legal arguments that are likely to be covered at the confirmation hearing and the evidence that the Prosecution and Defence intend to adduce. He has been made aware of the Single Judge's Scheduling Order.⁶ Mr. Ruto understands the consequences of waiving his right to be present; this is made clear in the attached personally executed request to be absent from part of the proceedings.
9. Mr. Ruto seeks to waive his right to be present at the confirmation of charges hearing so that he can be in Kenya to continue his legislative duties and fulfil his obligations as an elected official to members of his constituency. He also has an important personal matter for which he needs to be in attendance.

IV. Conclusion

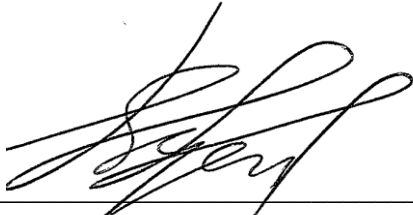
10. The Defence requests that the Pre-Trial Chamber find, pursuant to Article 61(2)(a) and Rule 125(1), that there is cause to hold part of the hearing on confirmation of charges in

⁴ *Prosecutor v. Banda & Jerbo*, ICC-02/05-03/09-103, Decision on issues related to the hearing on the confirmation of charges, 17 November 2010.

⁵ *Prosecutor v. Katanga & Ngudjolo*, ICC-01/04-01/07-T-46 ENG, 11 July 2008 at pg. 23-24.

⁶ ICC-01/04-01/11-294.

the absence of Mr. Ruto, given that he has knowingly waived his right to be present and understands the consequences thereof.



Joseph Kipchumba Kigen-Katwa
On behalf of Mr. William Samoei Ruto

Dated this 26th day of August 2011

In Nairobi, Kenya