

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 12 December 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**

**Decision on the Sang Defence Request for Reclassification of Nine Confidential Exhibits**

**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**

*Amicus Curiae*

**REGISTRY**

---

**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**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 Article 64(7) of the Rome Statute and Regulation 23 *bis* of the Regulations of the Court, renders this Decision on the Sang Defence Request for Reclassification of Nine Confidential Exhibits.

1. On 27 October 2014, the defence team for Mr Sang (the ‘Sang Defence’) filed the ‘Sang Defence Request for Reclassification of Nine Confidential Exhibits’ (the ‘Request’), seeking that the following exhibits (the ‘Exhibits’) registered as ‘Confidential’ be reclassified as ‘Public’:<sup>1</sup>

- i. KEN-D11-0012-0001 – EVD-T-D11-00007
- ii. KEN-D11-0012-0002 – EVD-T-D11-00008
- iii. KEN-D11-0048-0118 – EVD-T-D11-00009
- iv. KEN-D11-0011-0029 – EVD-T-D11-00010
- v. KEN-D11-0012-0110 – EVD-T-D11-00011
- vi. KEN-D11-0013-0023 – EVD-T-D11-00012
- vii. KEN-D11-0013-0024 – EVD-T-D11-00013
- viii. KEN-OTP-0075-0041 – EVD-T-D11-00014
- ix. KEN-OTP-0099-0495 – EVD-T-D11-00015

2. Exhibits i.-v. and viii.-ix. were admitted into evidence during the cross-examination of Witness 268 on 4 and 5 November 2013.<sup>2</sup> Exhibits vi. and vii. were initially marked for identification on 5 November 2013 during the cross-examination of Witness 268<sup>3</sup> and subsequently admitted into evidence on 22 January 2014 during the cross-examination of Witness 356.<sup>4</sup>

<sup>1</sup> ICC-01/09-01/11-1618-Conf, para. 2.

<sup>2</sup> ICC-01/09-01/11-T-65-Red-Eng, page 124 lines 2-9; page 124 line 25 - page 125 line 2; ICC-01/09-01/11-T-66-Red-Eng, page 20 lines 4-9; page 65 lines 7-14.

<sup>3</sup> ICC-01/09-01/11-T-66-Red-Eng, page 51 lines 18-21.

<sup>4</sup> ICC-01/09-01/11-T-78-Red-Eng, page 93 line 24 – page 94 line 2.

3. The Chamber has taken into consideration that neither the Office of the Prosecutor nor the Defence for Mr Ruto have filed objections to the Request.
4. The Sang Defence requests that the Chamber reclassify the Exhibits as the basis for their classification as 'Confidential' no longer exists. The Chamber notes that all the Exhibits relate to alleged public Kass FM broadcasts and have been used in open sessions as well as referred to in public redacted transcripts. The Chamber further notes that there is no indication that reclassifying the Exhibits as 'Public' will pose a threat to the safety of any individual, or compromise ongoing investigations.
5. The Chamber therefore reclassifies the Exhibits listed in paragraph 1 above, as 'Public'.


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

**GRANTS** the Sang Defence Request; and

**DIRECTS** the Registry to reclassify as 'Public':

- Exhibits EVD-T-D11-00007; EVD-T-D11-00008; EVD-T-D11-00009; EVD-T-D11-00010; EVD-T-D11-00011; EVD-T-D11-00012; EVD-T-D11-00013; EVD-T-D11-00014; EVD-T-D11-00015; and
- the Sang Defence Request.

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



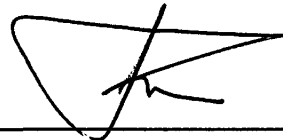
---

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



---

**Judge Olga Herrera Carbuccion**



---

**Judge Robert Fremr**

Dated 12 December 2014

At The Hague, The Netherlands