



Original: **English**

No.: ICC-01/09-01/11  
Date: 11 September 2015

**TRIAL CHAMBER V(A)**

**Before:** Judge Chile Eboe-Osuji, Presiding  
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**

**Ruto Defence application for extension of time limit to submit a 'no case to answer' motion**

**Sources:** Defence for Mr. William Samoei Ruto

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

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**REGISTRY**

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**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
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**Other**

## I. Introduction

1. Today, 11 September 2015, Trial Chamber V(A) issued its decision (“Decision”)<sup>1</sup> rejecting the *Ruto Defence request to modify the schedule for the submission of a ‘no case to answer’ motion* (“Request”).<sup>2</sup>
2. The defence for William Samoei Ruto (“Defence”) respectfully requests, pursuant to Regulation 35(2) of the Regulations of the Court (“Regulations”), that the Trial Chamber extend the deadline<sup>3</sup> for submitting a ‘no case to answer motion’ – set at 24 September 2015 now that the Prosecution closed its case on 10 September 2015<sup>4</sup> – to 14 days after the deadline for submission of the Defence appellate brief in support of its appeal of the *Decision on Prosecution Request for Admission of Prior Recorded Testimony* (“Impugned Decision”).<sup>5</sup>
3. The Defence submits that good cause exists for the requested extension of time in view of the novel, complex and vitally important matters involved in both the ‘no case to answer’ submission and the seven issues that the Chamber has certified for appeal arising from the Impugned Decision.<sup>6</sup> The Defence appreciates the Trial Chamber’s recognition “of the need to avoid unnecessary delays” in finding that “the schedule for ‘no case to answer’ motions is to be maintained”.<sup>7</sup> The Defence respectfully submits that in the present circumstances, when the overlapping litigation in question is arguably of the most significance to date with respect to the course of the present proceedings, the requested limited extension of time is justified by the Defence’s requirement for adequate time to properly and fully address both of these vital filings.

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<sup>1</sup> ICC-01/09/01-11-1955.

<sup>2</sup> 8 September 2015, ICC-01/09-01-11.

<sup>3</sup> See Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on ‘No Case to Answer’ Motions), 3 June 2014, ICC-01/09-01/11-1134, para. 37; Decision on the Sang Defence’s Request for Reconsideration of Page and Time Limits, 10 February 2015, ICC-01/09-01/11-1813.

<sup>4</sup> ICC-01/09-01/11-1954.

<sup>5</sup> ICC-01/09-01/11-1938-Conf-Corr.

<sup>6</sup> Leave to Appeal the Impugned Decision was granted on 10 September 2015 (ICC-01/09-01/11-1953-Conf-Corr).

<sup>7</sup> Decision, para. 5.

## II. Applicable Law

4. Regulation 35(2) of the Regulations permits a Chamber to “extend [...] a time limit if good cause is shown”.<sup>8</sup>

## III. Submissions

5. The Request sought a modification of the schedule for submission of a ‘no case to answer’ motion “for reasons of efficiency and to avoid duplication of effort and re-litigation”<sup>9</sup> in the event the Appeals Chamber issued a judgment on the Impugned Decision that resulted in some or all of the evidentiary items admitted under the Impugned Decision being excised from the record to be considered for purposes of the ‘no case to answer motion’.
6. The Trial Chamber dealt with the concerns raised by the Defence by noting that the Defence should be able to address in any ‘no case to answer’ motion “*the evidence before the Chamber both in terms of the current record, and in the alternative, in a situation where the aforementioned materials would not form part of the evidence*”.<sup>10</sup>
7. The present application for an extension of the time limit to submit a ‘no case to answer’ motion accordingly does not seek an extension on the basis of a future Appeals Chamber judgment, but rather in view of the nature of both the ‘no case to answer’ motion and the Defence appellate brief in support of its appeal of the Impugned Decision, the deadlines for which presently fall within three days of one another – respectively 24 September and 21 September 2015.
8. In the ‘no case to answer’ motion the Defence must review, consider and address the entirety of the Prosecution’s evidence admitted into the record with respect to multiple avenues of individual criminal responsibility for Mr. Ruto pursuant

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<sup>8</sup> See also ICC-01/05-01/08-631-Red OA2, para. 34, ICC-01/05-01/08-827 OA3, para. 6; ICC-02/11-01/11-189 OA, para. 4.

<sup>9</sup> Request, para. 11.

<sup>10</sup> Decision, para. 11.

to Article 25(3) of the Rome Statute. Further, this will be the first instance in which ‘no case to answer’ proceedings are brought before the ICC, entailing consideration of novel legal issues. Should the Defence succeed in convincing the Trial Chamber of the merits of its ‘no case to answer motion’, in full or in part, Mr. Ruto may be acquitted or the case against him significantly altered to the benefit of the Defence. It is, the Defence respectfully submits, self-evident that the ‘no case to answer’ motion requires the dedicated and full attention of the legal team.

9. As the Trial Chamber is also aware, the seven legal issues that the Chamber has certified for appeal arising from the Impugned Decision deal with a variety of complex legal areas. The complexity of the issues involved was previously cited by both the Prosecution and Defence in seeking from and being granted by the Chamber extensions of the page and time limits in filing the underlying application and responses.<sup>11</sup> The appeal will require detailed and considered analysis of a plethora of legal questions arising from the application of amended Rule 68 in this case. Additionally, the Impugned Decision itself is a lengthy 61 pages, with Presiding Judge Eboe-Osuji's separate, partly concurring opinion<sup>12</sup> amounting to 17 pages.
10. Further, the legal landscape with respect to this appeal is also new because this is the first time an application under amended Rule 68 has been judicially considered. The complexity and novelty of the application has been acknowledged by Prosecution counsel who stated that it is “a very complex application”, “deals with...numerous...witnesses” and “a lot of evidence”.<sup>13</sup>

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<sup>11</sup> See, e.g., ICC-01/09-01/11-1864-Conf, e-mail from Trial Chamber V-A Communications to counsel on 23 April 2015 at 10.13 a.m. (provided in ICC-01/09-01/11-1956-Conf-AnxA), ICC-01/09-01/11-T-198-CONF-ENG ET, p. 27 line 13 to p. 29 line 15; ICC-01/09-01/11-T-199-CONF-ENG ET, p. 5 lines 8-19, p. 8 lines 14-20.

<sup>12</sup> ICC-01/09-01/11-1938-Conf-Anx.

<sup>13</sup> ICC-01/09-01/11-T-192-CONF-ENG ET 25-03-2015, p. 31, lines 7-8.

11. Like the 'no case to answer' motion, the interpretation of amended Rule 68 by the Appeals Chamber is of fundamental importance to the course of proceedings in this case as the Appeals Chamber judgment on the Impugned Decision may prove decisive in the Chamber's determination on the Defence 'no case to answer' motion.
12. The Defence is cognizant of the Chamber's determination that: "*Mindful of the need to avoid unnecessary delays, the Chamber considers that the schedule for 'no case to answer' motions is to be maintained*".<sup>14</sup> The Defence respectfully submits that in the above described circumstances, in which the Defence must concurrently address two submissions of the highest level of complexity and importance, the requested extension of the time limit of the 'no case to answer' motion to 14 days after the submission of the Defence appellate brief does not constitute an 'unnecessary delay'. Instead, the grant of such extension would appropriately balance<sup>15</sup> the expeditiousness of proceedings with Mr. Ruto's fundamental right to adequate time to prepare his Defence and best preserve Mr. Ruto's right to a fair trial.
13. In view of the tight time frames for the filing of both the 'no case to answer' motion and the Defence appellate brief, the Defence additionally requests, pursuant to Regulation 35(2) of the Regulations, that the Trial Chamber shorten the deadline for responses to this application.

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<sup>14</sup> Decision, para. 5.

<sup>15</sup> Article 64(2) of the Rome Statute provides that the Trial Chamber shall ensure that a trial is both "fair and expeditious and is conducted with full respect for the rights of the accused".

**IV. Relief requested**

14. For the reasons set out above, the Defence respectfully requests that the Trial Chamber:

- i. extend the deadline for submission of the Defence 'no case to answer' motion to 14 days after the submission of the Defence document in support of its appeal of the Impugned Decision; and
  
- ii. shorten the time limit for any response to this application.

Respectfully submitted,



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**Karim A.A. Khan QC**  
Lead Counsel for Mr. William Samoei Ruto

Dated this 11th Day of September 2015  
At The Hague, the Netherlands