



COALITION FOR THE INTERNATIONAL CRIMINAL COURT
ICC TRIAL SUMMARY

Reference: Ruto/Sang_TCI_01/09/14

Case Name:
Ruto and Sang

Situation Country: Kenya

Chamber:
Trial Chamber V(a)

Date: 01/09/14

Type of Proceedings: Trial Proceedings

Parties and Participants Present:

- Judge: Chile Eboe-Osuji (presiding), Olga Herrera Carbuccion, Robert Fremr
- Office of the Prosecutor: Anton Steynberg
- Defence of Mr. Ruto: Karim Khan, Joseph Kipchumba Kigen-Katwa
- Defence of Mr. Sang: Joseph Kipchumba Kigen-Katwa
- Accused Present: Joshua Arap Sang, William Samoei Ruto
- Legal Representative of Victims: Orchlou Naransetseg
- Legal Counsel of Witness 604: Gregory Mutai

Oral Rulings

The Presiding Judge Eboe- Osuji ordered the Victims and Witness Unit (VWU) to do the following:1) begin the process of familiarizing Witness 604 and his Legal Counsel Mr. Mutai according to usual protocol.

2) conduct an immediate second medical examination of Witness 604 and report back to the Chamber.



Submission Details

Witness 604's Legal Counsel:

Witness 604 was summoned to appear before the Chamber via video link but instead his legal counsel Mr. Mutai appeared, seeking to have the testimony adjourned for 21 days based on the following reasons:

1. The inadequate health status of the Witness. A recently issued medical report indicate that it would be too stressful for the Witness to testify because of an 'acute depression';
2. The OTP had failed to provide the legal counsel of the Witness with witness statements;
3. The Witness sought to appoint a new lead counsel;
4. The Witness wishes to submit a list of phone bill payments as additional evidence;
5. The Witness claimed his passport had been taken away from him by the Office of the Prosecutor.

Office of the Prosecutor:

The OTP partially opposed the Witness' request for a 21 day postponement of testimony, finding a more limited postponement of 2-3 days sufficient.

In reference to the health status of the Witness, the prosecution pointed out that the Witness and his counsel had failed to mention any health issues in earlier contact with the OTP. The OTP asked the Chamber to consider the symptoms of depression as highly subjective and the diagnosis questionable, suggesting a second examination by the VWU.

The OTP provided details on previous communication between the Counsel and the OTP, emphasizing that they never promised to give a copy of the witness' initial statements to Mr. Mutai. They would however be willing to provide these statements, should Mr. Mutai be put on the Court's official List of Counsel. The OTP questioned the necessity of appointing a new senior counsel for representation purposes. The Prosecution responded to Mr. Mutai's claim of the OTP taking Witness 604's passport, saying that it is the VWU that normally would take passports for the purpose of visa applications as part of standard procedure, but never in a coercive manner.

Judge Eboe-Osuji asked the OTP if the actions of Witness 604 leading up to his earlier submitted affidavit would be something they considered looking into, with the intention of submitting charges. The OTP expressed that its primary interest was to secure the testimony and would be willing to not pursue charges under Article 70, related to offenses against the administration of justice.

The Legal representative for Victims:

The LRV opposed the Witness request for deferral, considering 21 days excessive for the purpose of Mr. Mutai's familiarization process with witness statements.



Mr. Ruto's Defence:

The defence did not see any merit in causing further delay and thus agreed with the prosecution that a limited postponement of 2-3 days would suffice. An extensive familiarization process was not considered necessary as the witness statements are not voluminous. The defence finished their submission with an oral request to receive a scheme of payments made by the VWU to all witnesses, in order to get an understanding of the numbers involved.

Mr. Sang's Defence:

Mr. Sang's defence opposed the time period asked for by Witness 604, and submitted that 14 days should be enough for a proper familiarization process.

The Judge:

The Presiding Judge directed the VWU to begin the familiarization process with Mr. Mutai according to usual protocol and to immediately conduct a medical examination of Witness 604 by the VWU psychologist and doctor present in Nairobi.

Victim Witness Unit (VWU):

The VWU confirmed the possibility of submitting a record of expenses to the Chamber, who could then decide to forward it to Mr. Ruto's defense or not. The VWU would immediately start working on the Chamber's request.

The Registry:

In response to Mr. Mutai's application to be put on the List of Counsel, the Registry had not received a complete application and will need the basic application form to conduct an expedited provisional admission tonight.



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Summary

Witness 604's Legal Counsel Mr. Gregory Mutai voiced a request for a 21 day extension to appear for testimony based on five reasons - the primary ones being the health status of the Witness and Mr. Mutai's lack of access to the OTP's witness statements.

All parties agreed that the request for 21 days postponement was excessive and should be limited to a couple of days for Mr. Mutai to be put on the list of counsel and to finish the familiarization process with the VWU.

The Judge ordered the VWU to start the familiarization process according to protocol and to conduct a second medical examination of Witness 604 to assess his health status.

The Registry had not received a complete application from Mr. Mutai but would conduct an expedited admission immediately if the basic application form were to be fully submitted this afternoon, 1 September.

Next Hearing Date:02/09/14

Private/Closed Sessions:1h