



COALITION FOR THE INTERNATIONAL CRIMINAL COURT
ICC TRIAL SUMMARY

Reference: Ruto/Sang_TCV(a) _02/09/14

Case Name:
Ruto and Sang

Situation Country: Kenya

Chamber: Trial Chamber V(a)

Date: 02/09/14

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
- Defence of Mr. Sang: Joseph Kipchumba Kigen-Katwa
- Accused Present: Joshua Arap Sang, William Samoei Ruto
- LRV: Orchlon Naranrsetseg
- Legal Counsel for Witness P-0604: Gregory Mutai

Oral Rulings

The Presiding Judge Chile Eboe-Osuji granted in part Witness P-0604's request for postponement of testimony, postponing it to Thursday, 4 September.



Submission Details

The Judge:

The Presiding Judge Chile Eboe-Osuji granted in part Witness P-0604's request for postponement of testimony, postponing it to Thursday, 4 September. The decision was based on VWU's medical assessment where it found the Witness fit to testify.

The VWU will be in charge of the familiarization process with the witness and should make available the preliminary medical assessment for all parties.

Following an earlier application, the Judge is of the view that additional counsel is not necessary for the Witness.

The Judge said that Mr. Mutai's application to be permitted as counsel before the ICC had been provisionally approved and he could thus represent Witness P-0604 in the proceedings. His function should be limited to guiding the witness on matters relating to self-incrimination. The parts of the testimony that may be related to self-incrimination ought to be given in closed session and may not be used against witness in relation to Article 70(1)(c), relating to issues with possible witness interference. Mr. Mutai is responsible to inform the Witness accordingly.

The Office of the Prosecutor(OTP):

The OTP wished to add another 23 items to the list of evidence with the purpose of bringing light to the circumstances of witnesses withdrawing testimonies under alleged pressure from the Defense. The items in question included photographs of cell phone records, a photography of a meeting, screening notes and a single page of an investigator's notes.

The OTP argued that the material should be added to the list of evidence so that the OTP could challenge any potential inconsistencies in the witnesses' testimony. It moreover said that it was information important for the Chamber, as it provides a sense of the bigger picture of the alleged campaign of witness intimidation by the Defense. The OTP emphasized that conflicting narratives exists on this issue and that the evidence would allow the Chamber to make an informed decision in the matter.

The OTP emphasized that it did not intend to use the evidence as a means of introducing another case of offences against Article 70 proceedings, also referred to as offences against the administration of justice. If there was to be a case of interference, it would be filed with the Pre-Trial Chamber.

The LRV:

The Legal Representative for Victims, Orchlon Naranrsetseg, supported the OTP's application and submitted that the prosecution should be allowed to use the items in order to show alleged acts of interference and the impact of that interference, in order to establish the truth in the matter.



Mr. Ruto's Defence:

The Defence partially supported the OTP's application as long as the added evidence would be used to confront the witnesses with information previously given to the OTP. The Defence would however have a major problem if the prosecution went beyond that by arguing matters belonging to Article 70 proceedings.

The Defence raised serious concerns that the OTP is trying to make the alleged system of victim intimidation the main case as an excuse for own systematic investigative failings which threatens to compromise the proper focus of the case.

Mr. Sang's Defence:

Mr. Sang's defence also supported the OTP's submission of evidence if the witness is found to be hostile. The defense does however find that the narrative presented by the OTP, accusing the defense for intimidating and bribing witnesses, to be false.

Mr. Ruto's Defence:

The Defence made a final submission, once again asking the VWU's to disclose a schedule of payments that have been made to witnesses in order for the defense to evaluate the credibility of witnesses. They emphasized that no identifying information should be needed as they are only interested in the numbers involved.

The Judge:

The presiding Judge finally said that the Trial Chamber would make a decision on the matter before Witness 604 began his testimony on Thursday.



Next Hearing Date: 04/09/14

Private/Closed Sessions: 0.5h

Summary

Presiding Judge Chile Eboe-Osuji in part granted Witness P-0604's request to postpone the testimony, **directing it to Thursday 4 September**. The Judge ordered the VWU to be in charge of the familiarization process and to make the medical assessment finding the witness ready to testify available for the parties.

The Judge was of the view that an application of additional counsel is not necessary for Witness 604 as the permission of Mr. Mutai as counsel would suffice. His function should be limited to guiding the witness on matters relating to self-incrimination and to properly inform the witness that all parts of the testimony that may be related to the matter will be given in closed session and may not be used against witness in relation to Article 70(1)(c).

The OTP wished to add another 23 items to its list of evidence, the purpose being to bring clarity to the circumstances of witnesses withdrawing testimonies under alleged pressure from the Defence. The OTP submitted it did not intend to use the evidence as a means of introducing a case of offences against Article 70 proceedings.

All parties supported the OTP's submission, although Ruto's defence voiced concerns that the OTP is trying to divert the focus away from the main case by diverting it to matters belonging to Article 70 proceedings.

The Judge will make a decision on the submission of additional evidence before the start of Witness 604's testimony on Thursday, September 4.