



Reference: Ruto/Sang_TCV(a)_05/09/14

Case Name:
Ruto and Sang

Situation Country:
Kenya

Chamber:
Trial Chamber V(a)

Date: 05/09/14

Type of Proceedings: Trial Proceedings

Parties and Participants Present:

- Judges: Chile Eboe-Osuji (presiding), Olga Herrera Carbuccion, Robert Fremr
- Office of the Prosecutor: Anton Steynberg
- Defence: Karim Khan QC
- Accused Present: Joshua Arap Sang, William Samoei Ruto
- LRV: Orchlou Narantsetseg
- Legal Counsel for Witness P-0604: Gregory Mutai

Oral Rulings

The Presiding Judge Chile Eboe-Osuji **denied the Prosecution's application, from 4 September, to declare Witness P-0604 hostile.** The Chamber was of the view that the prosecution had to question the witness further to explore the true and false parts in the statements given to the Office of the Prosecutor. The Judge said that the prosecution could, at a later stage, apply again for the witness to be declared hostile if necessary.

Morning Session

Witness Name/Number: P-0604
Appearing For: Prosecution
Protective Measures Provided: The Witness testified via video-link
Witness Details: Male



Submission Details

The Defence of Mr. Sang

The Defence of Mr. Sang opposed the Prosecution's application to declare Witness P-0604 hostile. The Defence submitted that there was no legal basis for it and that no questions had been asked to clarify what was true and not in the testimony.

The Prosecution

The Prosecution remained firm with their submissions and argued that renouncing previous statements in the affidavit given by the Witness was enough to shed light on the statements being false.

The Defence of Mr. Ruto

Mr. Khan said that the Chamber ought to consider the actual, underlying, purpose of the application. He said that it would be enough for the Prosecution to ask neutral questions to sort out what is true and not in the testimony if it is done methodologically.

The Presiding Judge

The Judge denied the Prosecution's application to declare Witness P-0604 hostile.

Testimony Details

Prosecution Examination

The Witness said that all of the information given in the affidavit was true and that he wanted to submit an affidavit because his previous statements were false. He further said that he understood that it is important to tell the truth in an affidavit. The Witness said the last time he read the affidavit was Tuesday, 2 September and finds the affidavit complete when going through it.

The Witness furthermore clarified that the affidavit did not specify what was false or true in the statements he had given to the Office of the Prosecutor because he did not have the statements with him at the time to make reference to.

The Witness explained that the person who contacted him about the testimony had described topics he had to cover in his statement in order to be considered a good prosecution witness. She had told him to talk about political rallies where Ruto or his close allies attending. He should also talk about attending a meeting in Ruto's home where the people attending were making plans to kill Kikuyus. He also said that she told him to mention the violence going on in the Eldoret and Turbo areas. The Witness couldn't recall any other things the woman had told him to discuss. This was the primary reasons for giving a false testimony according to the witness.

The Witness did not answer the Prosecution's question regarding why the account of another prosecution witness telling him about the benefits of testifying and what to say was not included in the 11 August affidavit.



Afternoon Session

Witness Name/Number: P-0604
Appearing For: Prosecution
Protective Measures Provided: The Witness testified via video-link
Witness Details: Male

Examination/Proceedings: Examination-in-Chief Prosecution

Testimony Details

Prosecution Examination

The Witness confirmed that he did not mention details regarding the woman's recommendations on what to tell the Prosecution in his previous statements, in his 11 August affidavit. He said that the affidavit was written in general, so no specific issues were included.

The Prosecution asked the Witness about Mr. Ruto's status in the Kalenjin society. The Witness said that Ruto was not the king of the Kalenjin or the most important leader at the time of the 2007 elections. The Witness said he would describe Mr. Ruto as a leader and that at the present there are no leaders more powerful than him because he is the Deputy President of Kenya. In 2007, other leaders were also important according to the Witness.

The Witness said he had not been present at a meeting where threats were being made against him because of his political opinions. He said that he heard about the meeting from two other people, which he gave detail about in private session. The Witness furthermore explained that he had claimed to be present at the meeting to make his statement seem more concrete and true.



Next Hearing Date: 08/09/14

Private/Closed Sessions: 2.5h

Summary

The Chamber rendered a ruling, granting the use of protective measures during the testimony of Witness P-0604.

The examination in chief by the Prosecution of Witness P-0604 continued. The Witness provided insight on the false testimonies given by him prior to the submission of his affidavit 11 August. The witness said that a woman from the Prosecution had bribed him to submit a false testimony against Mr. Ruto and that the representatives who submitted his diary entries new that some of them were false.

The Prosecution applied to have Witness P-0604 declared hostile by the Chamber, to allow for cross-examination and the use of leading and closed questions. The Chamber denied the application.

The Witness confirmed that he renounced the part of his statement where he described Ruto as the most powerful leader in the Kalenjin community during the 2007 elections and that other leaders were important too.