

Trial Hearing
WITNESS: DAR-OTP-P-0913

(Open Session)

ICC-02/05-01/20

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Al Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and Judge Althea Violet
7 Alexis-Windsor
8 Trial Hearing - Courtroom 2
9 Friday, 26 August 2022
10 (The hearing starts in open session at 9.31 a.m.)
11 THE COURT USHER: [9:31:54] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:32:16] Yes, good morning, everyone.
15 Good morning to you, sir.
16 And can we call the case, please.
17 THE COURT OFFICER: [9:32:25] Good morning, Madam President. Good
18 morning, your Honours.
19 This is the situation in Darfur, Sudan in the case of The Prosecutor vs
20 Ali Muhammad Ali Abd-Al-Rahman, case reference ICC-02/05-01/20.
21 And for the record, we are in open session.
22 PRESIDING JUDGE KORNER: [9:32:42] Yes, thank you very much.
23 We'll start with the Defence appearances this morning.
24 MR LAUCCI: [9:32:46] (Interpretation) Good morning, Madam President. Good
25 morning, your Honours. Good morning, colleagues. This morning, in addition to

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1 Mr Ali Muhammad Ali Abd-Al-Rahman, present in the courtroom, for his Defence,
2 the Defence team is made up of the same members as yesterday.

3 PRESIDING JUDGE KORNER: [9:33:03] Yes, thank you very much, Mr Laucci.
4 Victims.

5 MS VON WISTINGHAUSEN: [9:33:08] Yes, good morning, Madam President,
6 your Honours. The victims are represented today by associate counsel, Anand Shah;
7 case manager, Idriss Anbari; and myself, Natalie von Wistinghausen. Thank you.

8 PRESIDING JUDGE KORNER: [9:33:22] Thank you very much.
9 And the Prosecution, same as yesterday -- oh, not the -- definitely not the same as
10 yesterday.

11 MR JEREMY: [9:33:27] Good morning, Madam President, your Honours.
12 Appearances on behalf of the Prosecution today, Laura Morris, Claire Sabatini, myself
13 Edward Jeremy.

14 And I also put on the record that for an urgent family reason, Mr Nicholls will not be
15 in court today or Monday, and his duties in relation to the next witness will be
16 undertaken by my colleague, Alison Whitford. Thank you.

17 PRESIDING JUDGE KORNER: [9:33:57] Right. Well, I hope it's nothing too serious.
18 Thank you very much, Mr Jeremy.

19 Yes. Sir, you will conclude your evidence this morning and Mr Edwards is going to
20 continue to ask you questions.

21 MR EDWARDS: Thank you, your Honour.

22 WITNESS: DAR-OTP-P-0913 (On former oath)

23 (The witness speaks Fur)

24 (The witness gives evidence via video link)

25 QUESTIONED BY MR EDWARDS: (Continuing)

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1 Q. [9:34:30] Good morning, Mr Witness. When did you last meet Mohamed
2 Truck?

3 A. [9:34:51] Mohamed who?

4 Q. [9:34:54] Mohamed Truck, the driver that you told us about yesterday.

5 A. [9:35:14] I saw him the last time in Mukjar when he came to Mukjar.

6 Q. [9:35:20] Was that in 2004?

7 A. [9:35:35] Yes, yes, it was on the 17th. The year was 2004.

8 Q. [9:35:40] How old was he at the time, approximately?

9 A. [9:35:56] I don't know.

10 Q. [9:35:56] Approximately, sir. Help us out. Just give an estimate.

11 A. [9:36:11] I don't know. I don't know.

12 Q. [9:36:13] As far as you know, is he still alive?

13 A. [9:36:28] Yes, he's still alive.

14 Q. [9:36:31] Living where?

15 A. [9:36:42] I don't know. I don't know where he is now and I can't tell you that
16 he lives in a specific place or another.

17 Q. [9:36:50] How on earth do you know whether he's still alive or not then?

18 A. [9:37:12] I heard, I heard that he's still alive.

19 Q. [9:37:15] Did he have any other name or names?

20 A. [9:37:28] He used to work in Bindisi with Mohamed Truck.

21 Q. [9:37:49] Mr Witness, did Mohamed Truck have any other name or names,
22 please?

23 A. [9:38:05] I don't know any other names for him. I only know him as
24 Mohamed Truck.

25 Q. [9:38:12] Did you ever speak with Mohamed Truck about his work as

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1 Ali Kushayb's driver?

2 A. [9:38:23] He used to work in Bindisi in a stable.

3 Q. [9:38:56] Did you ever speak with Mohamed Truck about his work as

4 Ali Kushayb's driver?

5 A. [9:39:16] No, I didn't. And I didn't meet him.

6 Q. [9:39:24] How did you know that Mohamed Truck was Ali Kushayb's driver --

7 A. [9:39:38] (Overlapping speakers)

8 Q. [9:39:39] Wait a minute, please. Wait a minute, please. I haven't asked my
9 question. Please wait for my question.

10 You had never before seen Mohamed Truck driving Ali Kushayb, had you, before his
11 arrival at Mukjar?

12 A. [9:40:29] I knew him in Bindisi before he became a driver for Ali Kushayb. He
13 used to work in a stable in the area of Bindisi.

14 Q. [9:40:41] But before you saw him at Mukjar driving Ali Kushayb, you had never
15 seen him with Ali Kushayb before; is that right?

16 A. [9:41:16] He was a driver for Ali Kushayb. He met me at the residency and
17 they had five vehicles with them.

18 Q. [9:41:30] Sorry, did you say the presidency?

19 A. [9:41:36] I mean by that the headquarters of the police in -- on 17 March.

20 Q. [9:41:58] And that was the first time you had ever seen Mohamed Truck driving
21 Ali Kushayb, right?

22 A. [9:42:21] Yes. I only saw him when he was driving Ali Kushayb when he
23 arrived at the police station.

24 Q. [9:42:35] Yeah. Okay.

25 Your Honour, I've -- I've done what I can in public session for now. We're going to

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1 have to go back into private session for the same reasons as yesterday.

2 PRESIDING JUDGE KORNER: [9:42:47] Sorry, on the basis that the questions are
3 likely to reveal who he is?

4 MR EDWARDS: [9:42:55] Yes.

5 PRESIDING JUDGE KORNER: [9:42:56] All right.

6 Private session, please, then.

7 (Private session at 9.43 a.m.)

8 THE COURT OFFICER: [9:43:03] We're in private session, Madam President.

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

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8 (Open session at 10.31 a.m.)

9 THE COURT OFFICER: [10:31:28] We're back in open session, Madam President.

10 MR EDWARDS: [10:31:30]

11 Q. [10:31:34] Mr Witness, observing the prisoners being beaten, being placed into
12 vehicles and being driven off to their executions must have been one of the most
13 traumatic things that you witnessed in 2003, 2004?

14 A. [10:32:04] Yes.

15 Q. [10:32:13] Must have been one of the most unforgettable things that you
16 witnessed in 2003, 2004?

17 PRESIDING JUDGE KORNER: [10:32:37] Mr Edwards, I know what you're doing,
18 but I don't think this is helping him continue. I understand the purpose behind
19 these questions, but --

20 MR EDWARDS: [10:32:50] Okay, all right.

21 PRESIDING JUDGE KORNER: [10:32:52] -- I think it's just making him more
22 emotional.

23 MR EDWARDS: [10:32:57]

24 Q. [10:32:58] Let's confirm that you did not observe with your own eyes, for
25 example, the attack on Drangal, did you?

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1 A. [10:33:26] No, I didn't witness the attack. I didn't witness the attack, but I
2 heard the shooting and I saw the smoke rising.

3 Q. [10:33:38] Similarly, you didn't see with your own eyes the attack on your home
4 village?

5 A. [10:33:56] I only saw the smoke rising as well from my village because I was in
6 the forest.

7 Q. [10:34:06] You remember yesterday I was asking you some questions about the
8 very first interview you had over the telephone with an investigator of the
9 Prosecution in December 2020?
10 Tab 13, your Honour.

11 A. [10:34:36] Yes, I remember speaking to them.

12 Q. [10:34:41] And we established yesterday that you understood that they were
13 particularly interested in what you could say about Ali Kushayb; you remember that?

14 A. [10:35:25] What? I didn't get that. I didn't understand the question. Can
15 you repeat, please.

16 Q. [10:35:30] During that screen -- during that first telephone interview, the
17 investigator told you that they were particularly interested in what you could say
18 about Ali Kushayb?

19 A. [10:35:58] Yes, that's correct.

20 MS MORRIS: [10:36:02] Your Honour, apologies. I'm just concerned that the term
21 "interview" may be confusing to the witness. It's a telephone call that's never read
22 back to him. So perhaps counsel could just rephrase the context of that initial call.

23 PRESIDING JUDGE KORNER: [10:36:22] (Microphone not activated)

24 MS MORRIS: [10:36:23] Pardon me?

25 PRESIDING JUDGE KORNER: [10:36:25] Sorry. He's agreed that the investigator

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1 who he spoke to was particularly interested in Ali Kushayb. So I don't know
2 whether you -- whether it matters whether you call it an interview or a telephone call.

3 MS MORRIS: [10:36:38] I understand, it's just that I'm sure in every discussion, that
4 was of interest, but the screening note in particular is of different weight so perhaps
5 could be couched more accurately in that -- in that it's never read back to him
6 (Overlapping speakers)

7 PRESIDING JUDGE KORNER: [10:36:51] No, no, I know that and I think we all
8 know that.

9 MR EDWARDS: (Overlapping speakers)

10 PRESIDING JUDGE KORNER: [10:36:51] I don't think we need to be reminded of
11 that.

12 MR EDWARDS: [10:36:56] (Overlapping speakers)

13 PRESIDING JUDGE KORNER: [10:36:57] And it's not -- don't worry, Mr Edwards.
14 I don't think that was a terribly well-timed intervention.

15 Yes, carry on.

16 MR EDWARDS: [10:37:08]

17 Q. [10:37:09] And in that 90-minute telephone conversation you talk about the
18 attack on Drangal, the attack on Bindisi, the attack on your -- your home village.
19 Just interpret that for now, please.

20 A. [10:37:40] Yes, that's -- that's correct.

21 Q. [10:37:41] And of course this was the perfect opportunity for you to tell the
22 investigator about the most dramatic, the most traumatic experience you had in 2003,
23 2004 involving Ali Kushayb, wasn't it?

24 A. [10:38:30] Yes, that's correct.

25 Q. [10:38:33] Did you tell the investigator about being an eyewitness to these

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1 detainees being led off to their executions?

2 A. [10:39:09] Yes, I told them.

3 Q. [10:39:13] I recognise that there could have been some confusion in that
4 question.

5 During that telephone conversation, the first telephone conversation with the
6 investigator, did you mention witnessing the detainees being driven off to their
7 executions?

8 A. [10:39:52] Yes, I told them that they were taken from the police station.

9 Q. [10:40:00] Did you tell the investigator about --

10 A. (Overlapping speakers)

11 Q. [10:40:07] Wait a minute, did you tell the investigator about the theft of 3,000
12 heads of cattle and 65 camels by Ali Kushayb in Sindu hills?

13 A. [10:41:22] Ali Kushayb did not steal the camels himself. He sent his people to
14 take the cattle, but as for the camels, they were taken by the officers.

15 Q. [10:41:39] Okay. And did you tell the investigator about a conversation you
16 overheard relating to Ali Kushayb and Al-Tayyib discussing sending 500 cattle to
17 Omdurman?

18 A. [10:42:14] Yes, I told him about that.

19 Q. [10:42:19] The sending of 500 heads of cattle to Omdurman, was that more or
20 less traumatic than witnessing the detainees being sent off to be executed?

21 THE INTERPRETER: [10:43:38] The witness is breaking up. I can't hear what he's
22 saying. Message from the Fur interpreter. Message from the Fur interpreter: Can
23 we ask the witness to repeat, please, because I couldn't hear everything that he said.

24 PRESIDING JUDGE KORNER: [10:43:55] Mr Edwards, I rather think that's a
25 comment anyhow and it's one that is perfectly clear to the judges.

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1 MR EDWARDS: [10:44:03] Yeah, no doubt, yes. All right.

2 Q. [10:44:08] I'm wrapping up, Mr Witness.

3 We can go back into public session.

4 PRESIDING JUDGE KORNER: [10:44:14] Yes, public session, please.

5 Oh, we are in public session.

6 MR EDWARDS: [10:44:23] Oh, yes.

7 Q. [10:44:26] Mr Witness, you've decided to tell the Prosecution that you have
8 knowledge of Ali Kushayb's crimes in the hope of obtaining some sort of financial
9 benefit from his conviction; is that right?

10 A. [10:45:39] No, I do not testify against Ali Kushayb in order to obtain any kind of
11 financial benefit. I'm not doing this for money. I am one of the people who got
12 harmed by his actions. It is not for money.

13 Q. [10:46:05] But you certainly have a financial interest for you and your 15
14 dependents if he's convicted?

15 A. [10:46:47] If the Court can pay me any money, I will not reject it, but I am
16 testifying because I was one of the people who got afflicted by all the damages that
17 happened. My whole body is affected by what happened and I am only after justice.

18 Q. [10:47:22] Mr Witness, I accept that you may have been present in Bindisi in
19 August 2003 and that your home village was destroyed, but you have invented the
20 story of seeing Ali Kushayb for the first time in Garsila; what do you say about that?

21 A. [10:48:13] How can I just invent that? I am under oath and I took a solemn
22 undertaking to say the truth.

23 Q. [10:48:24] And you have invented the second and third times of seeing
24 Ali Kushayb in Mukjar; what do you have to say about that?

25 A. [10:48:56] No, this is not correct. I am under oath. I took a solemn

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1 undertaking before the Court. How can I just say something that is totally incorrect?

2 Q. [10:49:13] Thank you, Mr Witness.

3 Those are my questions.

4 PRESIDING JUDGE KORNER: [10:49:17] Yes, any re-examination, Ms Morris?

5 MS MORRIS: [10:49:20] No, Madam President.

6 PRESIDING JUDGE KORNER: [10:49:25] Judge Alexis-Windsor has a question.

7 JUDGE ALEXIS-WINDSOR: [10:49:37] Good day, sir. I have one question for you.

8 I want you to be careful, we are in open session.

9 My question is this: In that place in Mukjar --

10 THE WITNESS: [10:49:47](Interpretation) Peace and blessings be upon you.

11 JUDGE ALEXIS-WINDSOR: [10:49:54] Thank you.

12 In that place in Mukjar where you worked in 2004, were you the only person working
13 there of the Fur ethnicity?

14 THE WITNESS: [10:50:28](Interpretation) No. There were 291 people there when
15 we were graduated.

16 (Trial Chamber confers)

17 JUDGE ALEXIS-WINDSOR: [10:50:40] I'm sorry, sir. Let me ask the question in a
18 different way then.

19 You said that you were working, that you had responsibilities -- you know what, it's
20 not working.

21 I need to go into private session, please. I've tried to go around it. It's not
22 working.

23 (Private session at 10.51 a.m.)

24 THE COURT OFFICER: [10:51:08] We're in private session, your Honours.

25 (Redacted)

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19 (Open session at 11.01 a.m.)
20 THE COURT OFFICER: [11:01:03] We're back in open session, Madam President.
21 PRESIDING JUDGE KORNER: [11:01:05] Sir, if you -- you can submit requests to us,
22 but there's not anything that we can do about it. Do you understand? If you want
23 to say something about your situation, being very careful because we are in open
24 session, then you can do so. But if you want us to grant some requests that are
25 personal to you, I'm afraid that's not something that we can deal with, at least not at

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1 this stage.

2 THE WITNESS: [11:02:17](Interpretation) The requests I have are not personal in
3 nature.

4 PRESIDING JUDGE KORNER: [11:02:25] Certainly, sir. Go ahead, remembering
5 that the public can hear what you're saying.

6 THE WITNESS: [11:02:59](Interpretation) My requests are not personal in nature.
7 They apply to the entire community from my country. Fine then.

8 PRESIDING JUDGE KORNER: [11:03:43] Okay, yes, could you pause for translation,
9 please.

10 THE WITNESS: [11:03:55](Interpretation) My requests in brief are as follows: First,
11 to put on trial those who perpetrated crimes in Darfur, fair trials; second, to disarm
12 the Janjaweed; third, to kick out the new settlers and to return the original inhabitants
13 to their lands.

14 These are my main three requests to this Court.

15 PRESIDING JUDGE KORNER: [11:04:38] Sir, thank you very much for those
16 remarks. And I thank you also for coming to testify here in this case. I know it has
17 not been easy for you.

18 THE WITNESS: [11:05:12](Interpretation) I haven't finished my requests yet. I
19 have other ones I'd like to address the Court about. Do you allow me to do that?

20 PRESIDING JUDGE KORNER: [11:05:27] We won't stop you, but really these are
21 matters that are not, I'm afraid, matters for the judges of this Court. They are
22 matters really better raised elsewhere. But if you think it will help, then we certainly
23 won't stop you.

24 THE WITNESS: [11:06:16](Interpretation) If it's beyond your purview to respond to
25 these requests, you may direct me to whomever I should present these requests to.

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1 PRESIDING JUDGE KORNER: [11:06:40] I'm not sure I can do that. All I can say is
2 I'm afraid that matters such as you raise really relate to the politics of your country.
3 Our job is to decide whether the Prosecution have proved the case in this particular
4 case. I'm afraid that other matters are really beyond our competence.

5 THE WITNESS: [11:07:39](Interpretation) If these things are outside your
6 competence, then you can tell me who has the competence so I can address them
7 instead.

8 PRESIDING JUDGE KORNER: [11:07:58] I suppose that your closest organisation is
9 probably the Office of the Prosecutor.

10 MS MORRIS: [11:08:11] Madam President, we're happy to meet with the witness
11 upon the completion of his testimony and go over some of these concerns.

12 PRESIDING JUDGE KORNER: [11:08:30] Right. Thank you.

13 THE WITNESS: [11:08:44](Interpretation) Fine. God bless you.

14 PRESIDING JUDGE KORNER: [11:08:48] Yes, thank you. Sir, again, I thank you
15 very much for coming to give evidence and we wish you a safe return to wherever
16 you are now residing. Yes, thank you. That concludes your evidence.

17 THE WITNESS: [11:09:15](Interpretation) God bless you. I recognise that my
18 testimony has now concluded.

19 (The witness is excused)

20 PRESIDING JUDGE KORNER: [11:09:51] Yes, all right, any other matters -- the
21 witness whose health was causing problems, is he fit and available for Monday?

22 MR JEREMY: [11:10:07] He is, Madam President. And as I mentioned, my
23 colleague Ms Whitford will lead that witness now instead of Mr Nicholls.

24 PRESIDING JUDGE KORNER: [11:10:17] Right. Because he is viva voce, isn't he,
25 except for what we suggested were parts of his evidence.

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1 MR JEREMY: [11:10:25] That's right.

2 PRESIDING JUDGE KORNER: [11:10:26] Yes, I think we'd better have by 4 o'clock
3 today, well, at the latest, anything that's new, if you see what I mean, or has it already
4 been sent?

5 MR JEREMY: [11:10:41] In terms of the ...

6 PRESIDING JUDGE KORNER: [11:10:43] In other words, the suggestion was - and
7 the Defence didn't dissent - that parts of his statement which were more general, as
8 opposed to specific, should be -- I don't suppose you will know, Mr Jeremy, because
9 you won't be dealing with this, but we sent, Chambers sent an email saying we
10 would -- we accept that this witness should be viva voce but that parts of his
11 statement, many parts, a lengthy bit was a more general description, which in order
12 not to have to go through, because it's not specific either to -- allegedly to the accused
13 or any of the incidents, it should be placed into a separate document which he would
14 produce. And what we'd like to do, and the Defence in particular I'm sure would
15 like to see as soon as possible, is how this document is going to be produced.

16 All right?

17 Yes. Right, if there are no other matters, then we are adjourned until Monday
18 morning at 9.30.

19 THE COURT USHER: [11:11:52] All rise.

20 (The hearing ends in open session at 11.11 a.m.)