

Trial Hearing
WITNESS: DAR-OTP-P-0131

(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 ("Ali Kushayb")
5 - 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 Monday, 13 February 2023
10 (The hearing starts in open session at 4.02 p.m.)
11 THE COURT USHER: [16:02:52] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [16:03:18] Yes. Good afternoon, all. A somewhat
15 unusual hour to begin sitting.
16 Appearances, please, for the Prosecution.
17 MR NICHOLLS: [16:03:29] Good afternoon, Madam President. Good afternoon,
18 your Honours. Julian Nicholls with Rachel Mazzarella, Claire Sabatini and
19 Ed Jeremy. Thank you.
20 (Trial Chamber confers)
21 PRESIDING JUDGE KORNER: [16:04:12] Sorry about that.
22 Yes, appearances for the Defence.
23 MR LAUCCI: [16:04:16] Good afternoon, Madam President, your Honours, dear
24 colleagues. Together with Mr Ali Muhammad Ali Abd-Al-Rahman present in the
25 courtroom today, the Defence, in turn: Madam Marguerite Remy, Madam Eva Kalb

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1 and Madam Marcela Velarde, the assistant evidence reviewer; Mr Ahmad Issa, case
2 manager; Mr Iain Edwards; and myself, counsel.

3 PRESIDING JUDGE KORNER: [16:04:41] Yes, thank you, Mr Laucci.

4 And finally the representative of the victims.

5 MS VON WISTINGHAUSEN: [16:04:46] Yes, good afternoon, Madam President,
6 your Honours, dear colleagues. The participating victims today are represented by
7 associate counsel Anand Shah; we have two interns, Nur Mahameed and
8 Randa Bellahdid; and myself, Natalie von Wistinghausen. Thank you.

9 PRESIDING JUDGE KORNER: [16:05:00] Thank you very much,

10 Ms von Wistinghausen.

11 Yes, Mr Nicholls, I gather you wanted to say something before the witness comes in.

12 MR NICHOLLS: [16:05:08] Yes, your Honour.

13 PRESIDING JUDGE KORNER: [16:05:20] Yes, sorry, I'm told the Defence do as well,
14 but somebody said you did, Mr Nicholls.

15 MR NICHOLLS: [16:05:26] We both do, I believe, your Honour.

16 PRESIDING JUDGE KORNER: [16:05:27] Oh, right.

17 MR NICHOLLS: [16:05:28] First of all, I hope you feel better soon, your Honour.

18 That's not the point of my preliminary, but we hope you do feel better soon.

19 PRESIDING JUDGE KORNER: [16:05:37] Thank you.

20 MR NICHOLLS: [16:05:38] I've looked at the recommendations for protective
21 measures and, your Honour, I would request that we just do this whole session in
22 private session. I think because of the witness's role, almost all of it would need to
23 be anyway, we'd need to jump in and out, and I'm going to really try and finish him
24 today, my two hours. But I think it will be necessary for it to be virtually all in
25 private session.

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1 PRESIDING JUDGE KORNER: [16:06:04] Yes, well, I'm going in order, obviously,
2 because I appreciate the hours -- we shortened the hours for various reasons, but I
3 have said we'll sit to 7 today, so that will -- yes, it will give you actually two hours,
4 quite right.

5 While I'm on the subject of how he gives his evidence, can I -- this is your last witness,
6 I gather, so it's a bit late, but can I in future highly recommend what I call the gold
7 standard of Mr Jeremy's summaries for a court in future, which is a narrative of what
8 they're going to say, rather than plying through pages and -- I mean, can I say
9 straightaway, interrupting myself, it's helpful, but the best were those, plus the
10 narrative summaries.

11 So if the Defence put on a case, they may want to remember that as well.

12 MR NICHOLLS: [16:07:03] I'm sorry about that, your Honour. If we have any
13 rebuttal case, we will -- we will do that.

14 PRESIDING JUDGE KORNER: [16:07:09] All right. Yes, all right, thank you.
15 Yes, first of all, Mr Laucci, any objection to it all being in -- or was it you, Mr Edwards,
16 taking the witness?

17 MR LAUCCI: [16:07:19] Mr Edwards is taking the witness, but I think I can answer
18 that. There is no objection.

19 PRESIDING JUDGE KORNER: [16:07:22] All right. Then we'll say all of that -- all
20 of the evidence will be taken in private session, which will mean for those in the
21 public gallery you won't be able to hear anything at all.

22 Yes, but there's another matter you want to raise. Is that -- can that stay in open
23 session or do you want that in --

24 MR LAUCCI: [16:07:40] Yes, it can.

25 PRESIDING JUDGE KORNER: [16:07:41] Right.

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1 MR LAUCCI: [16:07:42] Very quickly because I don't want to waste time. First of
2 all, my best wishes of full and speedy recovery. Actually, what I have to say is a
3 little bit connected to this and I wanted to clarify once again and put on record that
4 our initial objections to sitting today only meant at -- well, making sure that there was
5 no discomfort caused to yourself in the first place and anybody else. We believe that
6 the request to postpone the appearance of this witness was totally reasonable. You
7 have decided otherwise. We hope that this will not cause you discomfort, but yes, I
8 wanted to make that point because of this exchange that was at the end of last week.

9 PRESIDING JUDGE KORNER: [16:08:33] Well, actually, Mr Laucci, your original
10 objection was you said the new rule didn't allow for two judges to sit, unless the
11 witness had already started. And I didn't -- I don't think that can be right because
12 otherwise it would mean a trial would come to a grinding halt possibly for a number
13 of days. But I decided it wasn't worth the -- at this early stage arguing the toss, if
14 that's the right word. And I appreciate -- I appreciate that you then withdrew the
15 objection, Mr Laucci, but on balance, we decided that it was better for the case for the
16 reasons you expressed actually in your email that I sit, even though it's perhaps not
17 the most comfortable, which is why the hours have been reduced.

18 And just so there's no mystery about this, the moral of the story of how not to break
19 your humerus or fracture your humerus is do not read Google Maps while walking
20 on a pavement and not looking where you're going, so ...

21 MR LAUCCI: [16:09:55] I will remember that for myself, Madam President. In
22 order to stop this discussion here, we can agree to disagree on the interpretation of
23 Rule 140 *bis* and that's the end of it.

24 PRESIDING JUDGE KORNER: [16:10:06] Yes, all right. Thank you very much.

25 All right, well, if there's nothing else, we'll have the witness come into the video room

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1 and we might as well go into private session straightaway.

2 (Private session at 4.10 p.m.)

3 THE COURT OFFICER: [16:10:30] We are in private session, Madam President.

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 WITNESS: DAR OTP P 0131

11 (The witness speaks Arabic)

12 (The witness gives evidence via video link)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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- 23 (Recess taken at 5.05 p.m.)
- 24 (Upon resuming in private session at 5.36 p.m.)
- 25 (Redacted)

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- 10 (The hearing ends in private session at 7.00 p.m.)