

Trial Hearing
WITNESS: DAR-OTP-P-0547

(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 Ali 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 Wednesday, 15 June 2022
10 (The hearing starts in open session at 9.32 a.m.)
11 THE COURT USHER: [9:32:25] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:32:53] Yes. Could we call the case, please.
15 THE COURT OFFICER: [9:32:57] Good morning, Madam President. Good
16 morning, your Honours.
17 This is The situation in Darfur, Sudan, in the case of The Prosecutor versus
18 Ali Muhammad Ali Abd-Al-Rahman, case reference ICC-02/05-01/20.
19 And for the record, we are in open session.
20 PRESIDING JUDGE KORNER: [9:33:16] Yes, thank you.
21 Let's have the appearance for the Defence, first, then.
22 MR LAUCCI: [9:33:22](Interpretation) Good morning, your Honour, Madam
23 President. In the hall next to -- next Mr Ali Muhammad Ali Abd-Al-Rahman, there
24 is the assistant of proof, Camille Divet, who is also an analyst of the evidence,
25 Edwards, and myself, Laucci.

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1 PRESIDING JUDGE KORNER: [9:33:47] Yes, thank you.

2 Yes. Representatives of the victims.

3 MR SHAH: [9:33:50] Good morning, your Honours. Good morning to everyone in
4 and outside the courtroom.

5 The victims are represented today by my colleague, Idriss Anbari, and myself, Anand
6 Shah, associate counsel. Thank you.

7 PRESIDING JUDGE KORNER: [9:34:00] Yes.

8 Prosecution.

9 MR NICHOLLS: [9:34:03] Good morning, Madam President. Good morning,
10 your Honours.

11 It's me, Julian Nicholls, with Rachel *Mazzarella, Claire Sabatini, Mohanad Elkholy,
12 and our intern, Zakria Abdalmomen. Thank you.

13 PRESIDING JUDGE KORNER: [9:34:19] Yes. All right.

14 As I rather suspected, Mr Nicholls, given that protective measures have been granted
15 for this witness, almost everything he says is going to reveal his identity, isn't it?

16 MR NICHOLLS: [9:34:35] Yes, your Honour, and I was actually going to make a
17 submission. I've spoken with the Defence on that, but you're correct. I saw the
18 reference. I apologise for not being here yesterday, but I saw the reference. That is
19 exactly right. And without going into details, I think it would be more effective,
20 more efficient to just essentially stay in closed session. Mr Laucci, I believe, has one
21 session that he believes can be in public, but I think - I don't want to speak for
22 him - that will be at the end, but ...

23 PRESIDING JUDGE KORNER: [9:35:05] Is that cross examination or the bit where
24 he deals with --

25 MR LAUCCI: [9:35:10] The last chapter of any cross-examination, I believe can be

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1 done in public.

2 PRESIDING JUDGE KORNER: [9:35:14] All right. We'll -- we'll see where we get
3 to on that. I mean, it's obviously preferable if part of his evidence can be in public.
4 But, as I say, from reading the statement, it became clear to me that it wasn't going to
5 be possible.

6 Right. The next thing is the video. Which video is that? Is that one of the ones
7 that was attempted to be played in reexamination?

8 MR NICHOLLS: [9:35:39] For P-12?

9 PRESIDING JUDGE KORNER: [9:35:41] Yes.

10 MR NICHOLLS: [9:35:42] Yes.

11 PRESIDING JUDGE KORNER: [9:35:43] And you want to play it to this witness?

12 MR NICHOLLS: [9:35:45] Yes.

13 PRESIDING JUDGE KORNER: [9:35:47] Right. If there's an argument about
14 the -- what is -- what it says, Mr Laucci, I'm afraid the only way of resolving it is for it
15 to be played and the court *interpreters to tell us.

16 MR NICHOLLS: [9:36:00] Your Honour, I can say -- I don't mean to interrupt, but
17 I'm playing it for a very limited purpose.

18 PRESIDING JUDGE KORNER: [9:36:07] But not the part that Mr Laucci objects to.

19 MR NICHOLLS: [9:36:09] No. I mean, it's not for what is said at all. It is simply
20 to identify certain aspects on the video, and not of -- not their client. It's to point
21 some things out on the video. So the actual -- there shouldn't be any argument.

22 PRESIDING JUDGE KORNER: [9:36:32] Well, I mean, at the moment -- I mean, we
23 may as well resolve this before the witness comes in.

24 This is the video -- is that the second one where you say the accused is in military
25 uniform? Or is it the first one where he's talking about teachers, the man you say is

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1 Ali Kushayb is talking about teachers and the like?

2 MR NICHOLLS: [9:36:57] It is the second one. And I can say right up front, the
3 witness, I will ask him to identify the insignia on the uniform worn by somebody in
4 that video. That's it.

5 PRESIDING JUDGE KORNER: [9:37:10] All right.

6 Well, any objection *to that one, Mr Laucci, if it's not going to --

7 MR LAUCCI: [9:37:15] If it's only about insignia, maybe one way forward could be
8 to use the pictures that have already been used actually with that witness, which are
9 taken from that video and where the insignia appears.

10 And as to our objection, the objection is not about the -- the transcript of what the
11 main speaker is saying but about what somebody in the -- in the crowd would say.

12 PRESIDING JUDGE KORNER: [9:37:47] No, I remember -- wait. There's supposed
13 to be a cheer saying, "Three cheers for Ali Kushayb," or words to that effect.

14 MR LAUCCI: [9:37:53] Well, this is what is in the transcripts, but we have listened,
15 including with our Arabic speakers, and we are not able to identify that.

16 PRESIDING JUDGE KORNER: [9:38:03] All right. But you're not going play that
17 part for this witness, Mr --

18 MR NICHOLLS: [9:38:06] No. Not to make it confusing - I now have to look at the
19 objection again - but that objection was to the first video with the teachers, and I think
20 it's the same objection for this one as well.

21 MR LAUCCI: [9:38:20] Actually, the same problem appears in the
22 transcript -- transcript of both videos. There is -- towards the end, it's written in the
23 transcript "crowd", or I don't know, says, and -- including the name Ali Kushayb.
24 So -- and we cannot hear that.

25 MR NICHOLLS: [9:38:41] But ...

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1 PRESIDING JUDGE KORNER: [9:38:47] Well, I suppose -- I suppose it could be
2 played without sound.

3 MR NICHOLLS: [9:38:49] Yeah. As I say, your Honour, I think we can deal with
4 that later. I do intend to play the video, and I do intend to tender it afterwards, just
5 so that's up front.

6 PRESIDING JUDGE KORNER: [9:39:00] Yes. Well, that's what I mean, then we
7 better just resolve -- I mean, just resolve this. If, for the purposes of this witness, you
8 want to get him to explain the military -- the insignia on the uniforms and that's it,
9 therefore, the -- the sound, I suppose -- but, actually -- I mean, what you're forgetting,
10 Mr Laucci, and I'm afraid I am too, is that this is not a case where we've got a jury.
11 So one way or the other, the judges know this is what allegedly is said, and we'll just
12 have to wait and see what the evidence comes out as.

13 MR LAUCCI: [9:39:41] I fully agree, Madam President, and I did not object to the
14 use of the pictures or of the video. I just say, if the video is -- the intention is to put it
15 into evidence, there is an objection on this point of the real transcript.

16 PRESIDING JUDGE KORNER: [9:39:58] Well, then, I think, sooner rather than later,
17 because it's obviously a video that's going to come up again with other witnesses, we
18 had better resolve the question of whether or not the -- the crowd mentioning the
19 name of Ali Kushayb actually can be heard.

20 All right. Is there anything else before the witness comes in?

21 MR NICHOLLS: [9:40:20] Not from me, your Honour.

22 PRESIDING JUDGE KORNER: [9:40:21] I suppose we can start in public session and
23 then go immediately into private.

24 MR NICHOLLS: [9:40:28] Yes, I think so.

25 PRESIDING JUDGE KORNER: [9:40:31] When he takes the oath, I mean, for what

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1 it's worth, or we can just go straight into private. I mean, one, two -- two people in
2 the public gallery.

3 I'm very sorry, everybody, but there are witnesses, I'm afraid, where this has to
4 happen.

5 Yes, all right. Well, I'll tell you what, then why don't we start in private session and
6 carry on.

7 So let's go into private while the witness is being brought in.

8 (Private session at 9.41 a.m.)

9 THE COURT OFFICER: [9:41:08] We're in private session, Madam President.

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- 20 (Upon resuming in open session at 11.32 a.m.)
- 21 THE COURT USHER: [11:32:09] All rise.
- 22 Please be seated.
- 23 MR NICHOLLS: [11:32:45] Sorry, can I confirm, are we in private or did we start --
- 24 PRESIDING JUDGE KORNER: [11:32:49] No, I think we're staying in private, aren't
- 25 we?

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1 THE COURT OFFICER: [11:32:53] Your Honours, we're in open session. I can
2 move to private.

3 PRESIDING JUDGE KORNER: [11:32:59] Are we? Why are we in open?

4 Yes, no, well, we should go into private session. Thanks.

5 (Private session at 11.33 a.m.)

6 THE COURT OFFICER: [11:33:22] We're in private session, Madam President.

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- 4 (The hearing ends in private session at 4.03 p.m.)