

Trial Hearing
WITNESS: DAR-D31-P-0016

(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 (absent pursuant to Rule 140 *bis* of the Rules of Procedure and
8 Evidence)
9 Trial Hearing - Courtroom 2
10 Monday, 23 October 2023
11 (The hearing starts in open session at 9.31 a.m.)
12 THE COURT USHER: [9:31:03] All rise.
13 The International Criminal Court is now in session.
14 Please be seated.
15 PRESIDING JUDGE KORNER: [9:31:25] Yes. Good morning all.
16 As we mentioned last Friday, today and for the rest of this week we'll be sitting as
17 a bench of two, for the reasons that everybody knows and has agreed to.
18 Yes. Appearances from the Defence, please, then.
19 MR LAUCCI: [9:31:51] Good morning, Madam President, your Honour, dear
20 colleagues. This morning, together with Mr Abd-Al-Rahman present in the
21 courtroom, Mr Thomas Chatelet, our intern; Madam Eva Kalb, assistant evidence
22 reviewer; our case manager, Ahmad Issa; my colleague, Iain Edwards; and myself,
23 Cyril Laucci, counsel.
24 PRESIDING JUDGE KORNER: [9:32:14] Thank you very much.
25 Yes, Prosecution.

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1 MR NICHOLLS: [9:32:17] Good morning, Madam President. Good morning,
2 your Honour. Good morning everybody in the courtroom. Julian Nicholls, with
3 Claire Sabatini, Diana Saba, Alison Whitford and Edward Jeremy. Thank you.

4 PRESIDING JUDGE KORNER: [9:32:29] Thank you very much.
5 And the Representative of the Victims.

6 MS VON WISTINGHAUSEN: [9:32:34] Yes. Good morning, Madam President,
7 dear colleagues. Good morning to everyone in and around the courtroom. The
8 victims this morning are represented by my case manager Saif Kassis; our visiting
9 professional Charlotte Imhof; and myself, Natalie von Wistinghausen. Thank you.

10 PRESIDING JUDGE KORNER: [9:32:45] Thank you very much.
11 Yes. Mr Laucci, the reason I ask that the witness not come in just yet is this, I'm told
12 that you anticipate that most of his evidence will be -- have to be given in closed
13 session.

14 I can understand anything to do with his -- his job, and the like, but for the rest he's
15 actually commenting on -- well, it's not commenting exactly, he is giving his view of
16 matters from his experience, if you like.

17 But I don't -- it doesn't seem to me that those views would identify him. Anything,
18 obviously, as to how he's able to give them, is one thing. And as you yourself are
19 aware and are, for obvious reasons, keen on, it's important that the public hear as
20 much as possible and particularly about your defence.

21 MR LAUCCI: [9:33:51] Yes, and that's a dilemma, Madam President. The problem
22 is that for this witness -- I mean, almost everything he says, he knows because of his
23 experience, and his experience is pretty unique.

24 PRESIDING JUDGE KORNER: [9:34:10] Is it?

25 Well, I will leave it to you, Mr Laucci, if you genuinely feel that. But, as I say,

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1 certainly from what you've said in your opening, you're very anxious that the public
2 understands what your lay client's defence is.

3 MR LAUCCI: [9:34:30] Well, what I can propose, Madam President, is that we
4 definitely start this morning in private session, because we will go through his
5 identification and background.

6 PRESIDING JUDGE KORNER: [9:34:38] Yeah.

7 MR LAUCCI: [9:34:39] And maybe -- I mean, my examination-in-chief is divided by
8 chapter. I propose, every time I come to another chapter, to assess whether what I
9 intend to ask can be said in public session.

10 PRESIDING JUDGE KORNER: [9:34:56] All right.

11 MR LAUCCI: [9:34:56] We can revisit that.

12 PRESIDING JUDGE KORNER: [9:35:00] Well, as I say, I mean, you have a better
13 idea, perhaps, than us at this time, but I merely float the possibility that
14 when -- particularly when he's commenting on particular documents, then it -- I'm not
15 sure it would identify him for who he is but, as I say, I'll leave it up to you.

16 MR LAUCCI: [9:35:25] Yes. Thank you.

17 PRESIDING JUDGE KORNER: [9:35:27] All right.

18 So -- well, I suppose we might as well go straight into private session then.

19 MR LAUCCI: [9:35:36] I agree.

20 PRESIDING JUDGE KORNER: [9:35:37] Yeah. Let's have the witness in.

21 And to those few members of the public who are in the public gallery, I'm sorry, but
22 you're not going to be hearing anything for -- well, certainly I would imagine the next
23 hour or so.

24 Yes, thank you.

25 (Private session at 9.36 a.m.)

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18 (Open session at 10.59 a.m.)
19 THE COURT OFFICER: [10:59:43] We are back in open session, Madam President.
20 PRESIDING JUDGE KORNER: [10:59:55] Yes, we will take the break now until
21 11.30.
22 For those in the public gallery -- and perhaps security ought to tell you -- you're not
23 going to hear anything in the Court, the evidence is being given in private session.
24 So I'm not sure how much good you are going to get from sitting up there, and
25 perhaps security can let anybody know who comes into the public gallery.

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- 1 Yes, we will take the break until 11.30.
- 2 THE COURT USHER: [11:00:25] All rise.
- 3 (Recess taken at 11.00 a.m.)
- 4 (Upon resuming in open session at 11.31 a.m.)
- 5 THE COURT USHER: [11:31:44] All rise.
- 6 Please be seated.
- 7 PRESIDING JUDGE KORNER: [11:32:01] Yeah, we'll go back into private session.
- 8 That means, to anybody in the public gallery, I'm afraid you will not hear anything,
- 9 and it is unlikely that there will be any public session until this afternoon. Okay.
- 10 Yes, thank you.
- 11 (Private session at 11.32 a.m.)
- 12 THE COURT OFFICER: [11:32:35] We're in private session, Madam President.
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- 5 (The hearing ends in private session at 3.59 p.m.)