

1 International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Presiding Judge Bruno Cotte
4 Situation in the Democratic Republic of the Congo - ICC-01/04-01/07
5 In the case of The Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui
6 Trial Hearing
7 Wednesday, 2 December 2009
8 (The hearing starts at 9.57 a.m.)
9 (Open session)

10 THE COURT USHER: All rise. The International Criminal Court is now in session.

11 PRESIDING JUDGE COTTE: (Interpretation) Our hearing has begun. Please be
12 seated. The accused are with us.

13 I'll begin this hearing with a quotation. I hope you don't find it in poor
14 taste, but all this to say, "If everything were hit, everything would not die." I find
15 myself alone today, and the Court is very sorry about this problem. Judge Van den Wyngaert
16 had a traffic accident last night coming home from work, and I am told that, most fortunately,
17 it was not a serious traffic accident but, obviously, she cannot be here today, and it's
18 most likely she will not be able to come tomorrow or the day after that.

19 And so this means we will have to postpone the hearing of the witness that was
20 scheduled for today, and I truly apologise to the Prosecution and to everyone because,
21 once again, I realise this is wreaking havoc with your schedules. Wisdom leads us to
22 delaying the hearing of this witness until 26 January next because it's just too up in
23 the air as to whether or not Justice Van Den Wyngaert will be able to be here in Court.

24 Now, we did discuss a number of matters, and I can provide you with two answers
25 to two questions. Yesterday morning, Mr Hooper had asked for reclassification of a document,

1 a page from the personal notebook of the witness, Witness 233, that had been seen at
2 an earlier hearing. Mr Hooper wanted it to be reclassified as unclassified.

3 Now, I believe there were some objections. Do these objections still stand?

4 MR MACDONALD: (Interpretation) No, Your Honour.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you. So, I think we can assume
6 that the page from the personal notebook of Witness 233 which was adduced at earlier
7 hearings that Mr Hooper would like to see reclassified as public, unless there are other
8 objections, shall be reclassified as a public document, in keeping with the earlier request.

9 On 27 November past, at our hearing, the Chamber had asked the parties, particularly
10 the counsel for the two accused - pardon me, 24 November - whether they had any observations
11 regarding an application from the Prosecution, and this was 1630-Con-Ex, and it had to
12 do with disclosure pursuant to Rule 77 of the transcript of a -- this has to do with
13 P-316. It also deals with redactions.

14 So, apparently, you were not notified of this application. You were later
15 notified, and the Chamber would just like to know whether you have had time to look at
16 this application and whether you have any objections. If you have objections and you
17 need more time, you will have that time, of course. Now, if you can tell us possibly
18 that you do not have observations, the Chamber will be in a position to reply rather
19 quickly to the application, which will allow us to speed up our proceedings.

20 Mr Kilenda, I am asking you first, since I saw your glance.

21 MR KILENDA: (Interpretation) Thank you, Your Honour. We, honestly, we did
22 not have time to review this with the Prosecution. If you could give us some time, we
23 will be able to reply.

24 PRESIDING JUDGE COTTE: (Interpretation) That is very simple: That is what
25 we will do. You will get back to us. Should it be done by way of a filing? Yes, by

1 way of a filing.

2 Mr Hooper, with regard to this application having to do with Witness 316,
3 Mr Kilenda would like a bit more time. Because of the pace at which the hearings were
4 going, his team has not been able to work on that application. Are you like-minded?

5 MR HOOPER: Yes, our objection is to the redactions in the document, particularly
6 considering the situation with this witness and the possibilities that he has been a
7 corrupter of other witnesses. So, we strongly object to the redactions that appear and
8 we will provide those objections in writing by tomorrow.

9 PRESIDING JUDGE COTTE: (Interpretation) Fine, fine. The Court thanks you,
10 Mr Hooper. So there's no doubt it would be wiser to grant -- rather, to ask for written
11 submissions from each side. I think that will be all for today, because I don't believe
12 it's provided for in the Statutes to allow a single judge to sit, so it really was a
13 matter today of just rendering the decision and consulting you.

14 Before we end for this first sequence of a hearing, I would like to turn towards
15 Mr Katanga and Mr Ngudjolo and ask them simply if, at the end of these few days, the
16 interpretation has worked well for you? Mr Katanga, have you been able to follow the
17 discussions and the remarks as you would like?

18 THE INTERPRETER: We did not hear Mr Katanga. We did not hear Mr Katanga.

19 PRESIDING JUDGE COTTE: (Interpretation) Perhaps you turned on your microphone
20 too late. I will just ask the question again. Has the interpretation been working properly
21 during these days of hearings? Have you been able to follow the discussions and the
22 proceedings, the remarks being made, the questions?

23 MR KATANGA: (Interpretation) With all due respect, your Honour, I think all
24 the interpretation has been fine.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Katanga.

1 Mr Ngudjolo, as for you, have you been able to follow the proceedings and understand
2 them?

3 MR NGUDJOLO: (Interpretation) Yes, your Honour, I have understood just fine.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much.

5 Mr Prosecutor, any observations in particular, bearing in mind that I cannot
6 receive many -- a great deal of information, or requests, since I am sitting alone on
7 the Bench today?

8 On my own behalf, I would like to thank you for your contribution to these initial
9 days of hearings. We have been aware of the various challenges and we have been able
10 to -- we have been -- we have become accustomed to the procedures.

11 So we will see you once again on 26 January, unless there are other changes,
12 assuming that everyone's health remains good and there are no accidents of any kind.

13 MR GILISSEN: (Interpretation) I am sorry, your Honour. I was gesturing towards
14 you discreetly, but perhaps I should have been more forward. Just for information, in
15 light of the limits of this exercise considering the restrictions of the Bench, we would
16 have liked to have seen the redaction of a document for a series of arguments that we
17 have already advanced before the Bench regarding our participation in the trial.

18 We wanted to do that not in the form of an application, because we did not want
19 to give the impression we were taking an active or aggressive stance, but really rather
20 just to focus our interventions for the benefit of all - of all the parties - and, with
21 all due respect, also for the Bench. We wouldn't want to give the impression that any
22 misunderstanding -- we don't want to cause any misunderstandings, or give the wrong
23 impression.

24 I just wanted to make that point for everyone's information. It's a matter
25 of transparency and also to avoid a decision being rendered in the meantime, since the

1 observations will be filed with the Registry today, or tomorrow at the latest, and this
2 will allow all the parties to express themselves during the proceedings. I think this
3 will be a win-win for everyone. This is really what I wanted to say, your Honour.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much, Mr Gilissen.
5 Would anyone from either Defence team like to respond to Mr Gilissen's remarks?

6 Now, I gathered that the document would be disclosed -- ah, once the
7 cross-examination is dealt with, the Single Judge - and I am not supposed to be sitting
8 as a single judge, but I think, yes, you could file that quickly, because in my mind
9 and in the mind of the Chamber this question of the participation of the legal representatives
10 of victims is quite a priority.

11 MR GILISSEN: (Interpretation) I have to acknowledge that some of our remarks
12 were sort of in little segments, so to speak, but for technical reasons we were not able
13 to prepare this document completely, but it will be finalised today or tomorrow at the
14 latest.

15 PRESIDING JUDGE COTTE: (Interpretation) Once again, Mr Kilenda,
16 Mr Hooper -- Mr Hooper, Mr O'Shea, Professor Fofé, Mr Gilissen, Mr Macdonald,
17 Mr Luvengika, let us not be mistaken about the importance of these few moments. As the
18 Presiding Judge, I wish to apologise for the disorganisation of the hearing because of
19 the accident that occurred to my -- I just wanted to make sure that there were -- that
20 if there are objections regarding Witness 316 that they will be in writing. I also wanted
21 to make sure that the two accused have been able to follow the proceedings via interpretation.

22 I think we've dealt with everything. The hearing is now adjourned.

23 (The hearing ends at 10.11 a.m.)