

1 International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra, and
4 Judge Christine Van den Wyngaert
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/07
6 In the case of the Prosecutor versus Germain Katanga and
7 Mathieu Ngudjolo Chui
8 Thursday, 20 October 2011
9 The hearing starts at 9.02 a.m.
10 (Open session)
11 COURT USHER: All rise.
12 PRESIDING JUDGE COTTE: (Interpretation) Please be seated. Good
13 morning to all. One of the Judges of the Chamber is unavailable today
14 for reasons of an accident. It's Judge Diarra who has her foot in a cast
15 and she will not be able to sit this morning, and I'm very sorry we will
16 not be able to sit this morning for that reason. She believes that she
17 will be able to come this afternoon. We are trying to find out whether
18 or not we can use the courtroom this afternoon, which apparently is
19 possible, and we have to check that we have the interpreters, the court
20 reporters and all of the technicians whom we cannot see but who are,
21 nonetheless, present and participate in our work.
22 If Judge Diarra can confirm that she is available this afternoon,
23 and if we have a courtroom and all of the necessary equipment and
24 manpower, we will sit from 2.00 to 4.00 in order to complete Germain
25 Katanga's testimony, which was almost finished, and to begin the

1 testimony of Mr. Mathieu Ngudjolo. I know that the Defence team has been
2 waiting to do so. Judge Diarra believes that she can sit through two
3 hours of hearing, and then, in theory, we will be sitting next week. If
4 the five-day plenary, as scheduled, finishes earlier, as many of us hope
5 will be the case, that would mean that we might be able to sit on
6 Thursday and Friday, and then again October 30th (* as interpreted),
7 Monday, until -- then there's another break until early November, I
8 believe it's the 6th. Would it be possible for everyone to sit this
9 afternoon for two hours? Is that feasible? Mr. Hooper?

10 MR. HOOPER: Certainly. Can I just indicate this and it's a firm
11 intention. If we have availability --

12 PRESIDING JUDGE COTTE: (No interpretation)

13 MR. HOOPER: If we do sit this afternoon, I will have just a few
14 questions, five minutes or so. If we don't sit further today, I will
15 have no more questions for Germain Katanga. That's a settled intention.
16 So if, for example, we don't meet again this afternoon, I'm not -- I make
17 it quite clear - proposing to ask Germain Katanga any further questions
18 when we meet again if it's next week or the week afterwards. And I do
19 that very conscious of the questions I might or could ask him. It's a
20 settled intention. It's not an intention I'm going to go back on, and
21 that will mean, I hope, that if we don't sit this afternoon, we're
22 released from the obligation not to have contact because we've had no
23 contact with him at all, of course, during the two weeks of his
24 testimony.

25 And it's not a position, as it were, I feel at all forced into

1 but I make that also plain. The Defence are not -- don't consider
2 themselves disadvantaged -- I don't feel we're disadvantaged by
3 implementing or putting into effect that decision at all, so don't feel
4 that. But it may be we won't meet again. I want to make it clear to the
5 Prosecutor and the Court that that's the position.

6 So if we sit this afternoon, there may be a few minutes of
7 questions; if we don't sit, I've got no further re-examination of
8 Germain Katanga and I can formally close it on the next occasion. But I
9 hope that we are dispensed, as it were, from having to stay in purdah and
10 relative isolation as far as he's concerned. I hope that's acceptable.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Hooper.
12 Before I call upon Mr. Kilenda, inasmuch as Judge Diarra feels able to
13 sit this afternoon, I myself would clearly prefer that you be able to ask
14 your last questions and finish your questioning because that was our
15 intention yesterday. So it's up to Judge Diarra. I, of course, am not
16 going to force her if she does not feel physically able to sit. You
17 know, a Judge has to feel comfortable sitting in the Court. If the
18 personnel of the courtroom is available and the courtroom, then we will
19 sit and that will enable you to finish and that would be preferable
20 because that was what we had planned.

21 MR. KILENDA: (Interpretation) Thank you, your Honour. First of
22 all, we're very sorry to hear the news about Judge Diarra. We've
23 listened to you very carefully. We would have understood that
24 Judge Diarra decide to have some rest and not sit this afternoon, but if
25 she does indeed feel able to sit this afternoon, since you mentioned a

1 two-hour hearing, we would suggest that we complete Mr. Germain Katanga's
2 testimony.

3 But as for Mr. Mathieu Ngudjolo, we would prefer to postpone his
4 testimony and begin only when we can actually commence. The reason I say
5 this is that you've most likely been informed by the Court Officer that
6 on Monday I wrote to the penitentiary requesting certain restrictions and
7 I stated that as from the beginning of his testimony we would suspend any
8 contact. And given the schedule, if we begin now and then interrupt his
9 testimony, that would mean that Mr. Mathieu Ngudjolo has no one else in
10 Europe, the only contacts he has are the members of his Defence team.
11 And therefore, we would prefer not to begin the testimony until we can
12 actually begin and continue. And so if -- unless, of course, you can
13 allow us to have contacts with him. But, of course, we understand, for
14 professional reasons, that we do not want to corrupt his testimony either
15 through our contacts.

16 PRESIDING JUDGE COTTE: (Interpretation) Well, what you've just
17 said encourages me to reflect upon what I said. If your team prefers not
18 to begin this afternoon with Mr. Ngudjolo's testimony for the reasons
19 that you've described, the fact that we will not be sitting continually
20 every day in the next few weeks, it does seem perhaps preferable not to
21 have the other Judges and members of the Court come merely for a few
22 minutes. This is a kind of Status Conference here.

23 Mr. Hooper, if you truly have the impression that you would not
24 have been prevented from completing your work, I would accept the
25 proposal that you made and it would most likely be a wiser decision. My

1 concern was to enable you to finish and also to enable Mr. Ngudjolo to
2 begin his testimony. But if his counsel prefer not to do so for the
3 reasons they've just mentioned and that they prefer to wait, for example,
4 until next Thursday, then I would be willing to accept that proposal.
5 But I do want to be perfectly certain, Mr. Hooper, again, that you would
6 not feel deprived, that you do not feel forced to give up those five or
7 ten minutes of your last questions.

8 MR. HOOPER: Your Honour, no, I can say with confidence that I've
9 closed my case and I do so without any pressure or concern. If I thought
10 it was necessary to have Judge Diarra limp in this afternoon for a
11 minute, I'd do it. It would be not appropriate. And I can indicate that
12 in part my reasoning because yesterday when I came to -- was it 1.25? --
13 I'd forgotten that I'd already put in the document because we discussed
14 it right at the outset. That was the document that -- of the 6th of
15 March that was put in. So I didn't need to revert to that. It was only
16 when I left the Court that I realised that that which was my principal
17 concern had actually been dealt with and wasn't to be revisited.

18 So I don't feel in any way at all concerned. I can say that I've
19 closed the case and I can repeat those words if necessary -- well, now
20 I've closed my case. I've closed my case now. And we can merely, I
21 suppose, recognise that fact the next time the Court is fully composed.

22 And Mr. Katanga for his part -- the Court may wish to say a few
23 words to him then, I don't know. It's entirely a matter for the Court.

24 But I have no further questions to ask and I close the case.

25 Thank you.

1 PRESIDING JUDGE COTTE: (Interpretation) Thank you. I can see
2 from the look on your face, Mr. Katanga, that you agree.

3 Prosecutor, I haven't forgotten you, Mr. MacDonald, although I
4 was looking to the right. What is your opinion?

5 MR. MACDONALD: (Interpretation) It's fine, whether we sit this
6 afternoon, next Thursday, or Monday, the 30th (* as interpreted). But
7 could we be informed on Tuesday that we're sitting, in other words, that
8 we not be informed the day before that we are sitting the next day? Of
9 course, everyone organises their personal and professional lives
10 accordingly. Would it be possible to have at least 24 hours' notice
11 before we are to sit?

12 PRESIDING JUDGE COTTE: (Interpretation) Well, I can also say
13 that from a personal point of view I tend to plan ahead. I like to have
14 things settled ahead of time and I'm suffering, I must say, that such is
15 not the case. It's difficult for me to manage the hearing schedule that
16 I would have preferred be far more predictable and stable. So, yes,
17 indeed, as soon as I know next week whether or not we will be able to sit
18 on Thursday and Friday, which I do hope will be the case, I will inform
19 you. Even if I have to inform you at 2.00 in the morning, I will do so.
20 But as soon as I know you will be informed.

21 Mr. Gilissen, Mr. Luvengika?

22 MR. GILISSEN: (Interpretation) I think everything has been
23 said. We would like to wish a prompt convalescence to Judge Diarra, of
24 course.

25 PRESIDING JUDGE COTTE: (Interpretation) Mr. Luvengika, I see

1 you nodding.

2 MR. LUVENGIKA: (Interpretation) Yes, yes, we agree. I agree
3 with the decision that has been taken, and thank you very much.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you to all for
5 your understanding.

6 We will not be sitting this afternoon, therefore. The final
7 comments and testimony of Mr. Germain Katanga has been completed.

8 Mr. Ngudjolo, you've understood, I'm sure, that we're very sorry
9 we are not able to follow the schedule as was planned, but we do hope
10 that as soon as we know we will be able to resume during the second half
11 of next week.

12 Have a good day. Have a good afternoon. And as soon as I have
13 further information you will be informed. This very brief hearing shall
14 now rise.

15 The hearing ends at 9.16 a.m.

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