

1 International Criminal Court
2 Trial Chamber I - Courtroom 1
3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito
4 and Judge René Blattman
5 Situation in the Democratic Republic of the Congo -
6 ICC-01/04-01/06
7 In the case of The Prosecutor v. Thomas Lubanga Dyilo
8 Wednesday, 5 May 2010
9 (The hearing starts at 2.30 p.m.)
10 (Open session at 2.30 p.m.)
11 THE COURT USHER: Please be seated.
12 PRESIDING JUDGE FULFORD: Is there any reason why we're in
13 closed session? No.
14 THE COURT OFFICER: We are in open session,
15 Mr President.
16 PRESIDING JUDGE FULFORD: Witness, please.
17 (The witness enters the courtroom)
18 WITNESS: UKUNYA NYONA BERTIN (On former oath)
19 (The witness answers through interpreter)
20 PRESIDING JUDGE FULFORD: Good afternoon, sir.
21 THE WITNESS: Good afternoon.
22 PRESIDING JUDGE FULFORD: Yes, Mr Sachdeva.
23 QUESTIONED BY MR SACHDEVA:
24 Q. Good afternoon, sir. Am I right in understanding that you
25 have brought your voter's card with you?

1 A. Yes, I have brought it with me.

2 Q. Would you mind handing it to the court usher so the parties
3 and participants can review the card?

4 A. I shall.

5 PRESIDING JUDGE FULFORD: Yes. Please carry on,
6 Mr Sachdeva.

7 MR SACHDEVA: Thank you, Mr President.

8 Q. Sir, it's right then, isn't it, that the card does not have
9 a fingerprint?

10 A. This is quite an old card, as you can see. It also fell
11 into the water.

12 Q. Well, sir, you, as president of the bureau, issued your
13 own card. Now, do you remember affixing your fingerprint on the card
14 in 2006?

15 A. Yes, indeed.

16 Q. And your centre, your bureau, had the necessary equipment
17 that allowed the fingerprints to be put on the card; is that right?

18 A. Yes.

19 MR SACHDEVA: Mr President, I'd like the original card to
20 be given an EVD number, with your leave.

21 PRESIDING JUDGE FULFORD: Now, does that mean that you want
22 the original card to remain the property of the Court, Mr Sachdeva?
23 Because if that's to happen, I imagine the witness may have a word
24 or two to say about that. Now, why is it that you want the card separately
25 to remain? Is it that you have in mind having some forensic tests

1 carried out on it, or something of that nature?

2 MR SACHDEVA: Indeed, Mr President.

3 PRESIDING JUDGE FULFORD: Right. Well, I think we'll
4 adjourn this particular application. I think once the witness has
5 completed his evidence, there will need to be a discussion with him
6 by somebody from the Registry to find out whether it is, in fact, going
7 to be possible for him to leave his card here for a period of time
8 without causing him undue inconvenience when he returns to the DRC.
9 But we note that what you would like is for the card to remain for
10 a period with the Court; is that right?

11 MR SACHDEVA: Yes, Mr President.

12 PRESIDING JUDGE FULFORD: Good. Okay. All right. Please
13 continue.

14 MR SACHDEVA:

15 Q. Sir, you told the Court today that your son -- your son,
16 Thonifwa Uroci Dieudonné, you gave those names to your son. Did he
17 have any other names?

18 A. No, he does not bear any other names.

19 Q. Was he known by any other names?

20 A. There is a vulgar name which he bears.

21 Q. And what is that, please?

22 A. It is Yeye.

23 Q. Is it right that you travelled to Kinshasa before you came
24 to The Hague?

25 A. Yes, I was in Kinshasa.

1 Q. And you're aware, aren't you, that your son has also testified
2 here?

3 A. I do not know because I have not met with him.

4 Q. Was he not in Kinshasa with you while you were there?

5 A. No, I did not see him, not even on one occasion.

6 Q. Are you aware that your son went to Bunia and testified?

7 A. I would answer no to that, as well.

8 Q. Did you not travel with your son to Kinshasa?

9 A. No. They travelled before me, I think a month before me.

10 Q. And who's "they"? Who are you referring to?

11 A. My son.

12 Q. And why was your son travelling to Kinshasa?

13 A. I was told that it had something to do with protective measures;
14 notably, that he needed to be kept there.

15 Q. Who told you that?

16 A. He was the one who travelled there first. We met Mr Dieudonné
17 Mbuna at home.

18 Q. Did Mr Dieudonné Mbuna tell you why he wanted -- or why
19 your son had to travel to Kinshasa?

20 A. He didn't explain things to me, really. He just reassured
21 me, saying that the child had a case file and that he could be asked
22 or called upon to testify himself, and that the same could apply to
23 me.

24 Q. So at that point you were aware that he might come here
25 to testify; is that right?

1 A. Yes.

2 Q. Did you not ask Mr Mbuna why your son was coming here to
3 testify?

4 A. I did ask the question.

5 Q. And what did Mr Mbuna say?

6 A. He told me that there was another Thonifwa Uroci Dieudonné
7 here.

8 Q. And what did he say about that? What did he say about the
9 other Thonifwa Uroci?

10 A. Whatever the case may be, he did not explain much to me.
11 He did not explain much. He just reassured me, saying that this was
12 quite a serious case and that I should not be worried, that I should
13 remain calm. And then he asked me not to say this around me, so I
14 accepted.

15 Q. You spoke about a case file, that Mr Mbuna told you that
16 your child had a case file. Did you not inquire as to what that case
17 file was about?

18 A. Well, he said to me that Thonifwa Uroci had been recruited
19 by an individual and -- and that this Thonifwa Uroci, at the time when
20 we were speaking or talking, was to be found in The Hague, and that
21 it was shame that he found that another Thonifwa Uroci was living with
22 me at home.

23 Q. Were you aware of this information that Mbuna told you before
24 he told you?

25 A. This was the first time that I heard this piece of information.

1 Before I was not aware.

2 Q. And it's right that at the time that this information was
3 provided to you, you were -- well, let me ask you, where were you when
4 this information was passed to you? Where was the meeting?

5 A. They came to find me in Mahagi because, well, in Mahagi
6 I was alone whilst the family was in Logo. They found me in the company
7 of Thonifwa Uroci in Mahagi, because they were training to become drivers
8 and we were staying with him.

9 MR SACHDEVA: Mr President, with your leave, may I move into
10 private session for one question?

11 PRESIDING JUDGE FULFORD: Yes, of course, Mr Sachdeva.
12 Private session, please.

13 *(Private session at 2.47 p.m.) Reclassified as Open session

14 THE COURT OFFICER: We are in private session, Mr President.

15 PRESIDING JUDGE FULFORD: Yes.

16 MR SACHDEVA:

17 Q. And it's right, isn't it, that Mr Mbuna came to see you,
18 along with the current préfet of the Beju institute, Mr Albert
19 Adubang'o?

20 A. Yes, this préfet took him to Mahagi.

21 Q. When you say "him", you mean Mr Dieudonné Mbuna; is that
22 right?

23 A. Yes.

24 Q. So Mr Mbuna and Mr Albert Adubang'o came to see you, and
25 did you then take them to see your son, Thonifwa Uroci?

1 A. Yes. We went to see him where he was following this training
2 I mentioned.

3 Q. When --

4 MR SACHDEVA: Mr President, we can move into open session,
5 with your leave.

6 PRESIDING JUDGE FULFORD: Yes. Thank you very much.
7 Public session, please.

8 (Open session at 2.49 p.m.)

9 THE COURT OFFICER: We are in open session, Mr President.

10 PRESIDING JUDGE FULFORD: Yes.

11 MR SACHDEVA:

12 Q. When Mr Mbuna was talking to you about the case file regarding
13 your son, he told you, I take it, that you could receive certain benefits
14 for your child in schooling and aid; is that right?

15 A. Yes.

16 Q. And he said that you could receive these benefits if you
17 were to come and tell your story here; is that right?

18 A. Yes.

19 Q. Did Mr Mbuna offer you any money?

20 A. Mbuna did not give me anything. Nothing.

21 Q. At the meeting at the house and then at the place where
22 your son was doing the training, did Mr Mbuna tell you what -- on behalf
23 of whom he was coming to see you? Did he tell you what he was doing?

24 A. He told me he was leading an investigation, quite simply.

25 Q. But you didn't know any more details than that; is that

1 right?

2 A. That is correct.

3 Q. When you met with --

4 MR SACHDEVA: Mr President, perhaps out of an abundance of
5 caution, can we move into private session?

6 PRESIDING JUDGE FULFORD: Private session, please.

7 *(Private session at 2.52 p.m.) Reclassified as Open session

8 THE COURT OFFICER: We are in private session, Mr President.

9 MR SACHDEVA:

10 Q. When you had the meeting at your home where Mr Mbuna was
11 present, the current préfet was also present, did you discuss the matters
12 that you have told the Court today with Mr Mbuna?

13 A. We did not discuss. He just exposed the situation to me
14 in brief.

15 Q. And the préfet was also present at that time?

16 A. Yes, he was present.

17 Q. Do you remember if the préfet said anything to Mr Mbuna
18 when being told of this information?

19 A. No, he didn't say anything.

20 MR SACHDEVA: Mr President, if I don't mention the name,
21 perhaps we can move back into open session?

22 PRESIDING JUDGE FULFORD: And let's just be clear about which
23 name isn't going to be mentioned.

24 MR SACHDEVA: Right, the name of the préfet.

25 PRESIDING JUDGE FULFORD: So we can refer to him as being

1 the préfet, without mentioning his name.

2 Yes. Sir, what we're going to do is we're going to move
3 back into public session and Mr Sachdeva will refer to somebody as
4 being "the préfet" without actually referring to his name so as to
5 protect his identity.

6 Yes, public session, please.

7 (Open session at 2.55 p.m.)

8 THE COURT OFFICER: We are in open session, Mr President.

9 MR SACHDEVA:

10 Q. Sir, when you went from your house to the place where your
11 son was being taught and you were with Mr Mbuna and the préfet as well,
12 did you together discuss matters of substance that -- that you have
13 discussed here?

14 A. It was Mr Mbuna who spoke. The préfet did not speak.

15 Q. And at that discussion, did you speak to Mr Mbuna?

16 A. I was rather taken aback, because this training seemed
17 somewhat strange to me. Anyway, it was a surprise for me.

18 Q. Did you say that you were -- that the information that was
19 being provided to you was strange? Is that right?

20 A. Yes.

21 Q. Now, after that meeting at your house and the meeting at
22 the place where your son was being trained, was there another occasion
23 where you met in the company of Mr Mbuna?

24 A. Subsequently, I did not have another opportunity, but it
25 was a delegation from here of which Mbuna was a member with whom I

1 met.

2 Q. And just to be clear, when you say "delegation from here",
3 do you mean the lawyers sitting to your left?

4 A. Yes.

5 Q. So you then met the lawyers - the Defence lawyers - and
6 Mr Mbuna at that occasion; is that right?

7 A. Yes.

8 Q. And your son was present?

9 A. He was present, but standing somewhat to one side.

10 Q. And it was there, wasn't it, that the Defence lawyers asked
11 you questions and you talked about the issues that you have spoken
12 about today?

13 A. Yes.

14 Q. And the préfet was also there at the same time?

15 A. No, at the time we're talking about the préfet was not there.
16 He had also been invited, however.

17 MR SACHDEVA: Mr President, may we move into private session
18 for one question?

19 PRESIDING JUDGE FULFORD: Certainly. Private session,
20 please.

21 *(Private session at 3.00 p.m.) Reclassified as Open session

22 THE COURT OFFICER: We are in private session, Mr President.

23 MR SACHDEVA:

24 Q. Sir, are you aware if the préfet, Mr Albert Adubang'o, is
25 a member of a political party?

1 A. I beg your pardon? Could you ask the question again?

2 Q. Certainly. Do you know if the préfet, Mr Albert Adubang'o,
3 is a member of a political party?

4 A. In any event, no, I don't know.

5 MR SACHDEVA: Mr President, we can move back into
6 private -- open session.

7 PRESIDING JUDGE FULFORD: Thank you. Open session, please.
8 (Open session at 3.01 p.m.)

9 THE COURT OFFICER: We are in open session, Mr President.

10 MR SACHDEVA:

11 Q. Sir, is it right that your son Thonifwa Uroci joined the
12 first year of secondary school at the age of 18?

13 A. No, he was younger than that.

14 Q. How old was he?

15 A. Between 16 and 17 years of age, I believe.

16 MR SACHDEVA: Mr President, that's the cross-examination.

17 PRESIDING JUDGE FULFORD: Thank you very much indeed,
18 Mr Sachdeva. That's very clear.

19 Anything else, Mr Desalliers?

20 MR DESALLIERS: (Interpretation) Yes, a few questions,
21 your Honour.

22 QUESTIONED BY MR DESALLIERS: (Interpretation)

23 Q. Sir, now while Mr Keta was asking you questions, a document
24 was shown to you. Does the witness -- do you have that bundle of
25 documents with you? It is tab 26 *(EVD-D01-00103) I'm referring to,

1 page 9 of 13, please. Now, one of the things that we see here on this
2 document is that -- and, your Honour, I believe I will have to ask
3 my question in private session.

4 PRESIDING JUDGE FULFORD: Private session, please.

5 *(Private session at 3.04 p.m.) Reclassified as Open session

6 THE COURT OFFICER: We are in private session, Mr President.

7 MR DESALLIERS: (Interpretation)

8 Q. We see here that (Redacted) is the guardian
9 of the child Dieudonné Thonifwa Uroci. My question is as follows:
10 Is (Redacted) -- has he already been the guardian of Dieudonné Thonifwa
11 Uroci?

12 A. In any event, no.

13 Q. During the questioning by the OTP - and perhaps also by
14 the legal representative of victims - mention was made of your voter's
15 card and the method used to prepare this card. You explained that
16 you signed it yourself and another person plastified the card. Could
17 you tell us who entered the information so that it would be placed
18 on the card?

19 A. I beg your pardon? Could you ask the question again?

20 Q. Yes. Your voter card, do you remember who entered the
21 information into the computer so that the card could be issued?

22 A. The data entry operator.

23 MR DESALLIERS: (Interpretation) Thank you. Thank you,
24 sir. I have no further questions, your Honour.

25 PRESIDING JUDGE FULFORD: Mr Desalliers, that leaves

1 outstanding the issue of whether there's a problem with, whether it's
2 desirable for there to be some kind of examination of this witness's
3 card as indicated by Mr Sachdeva.

4 I think it's probably best not to put the witness in the
5 embarrassing position of having to discuss in open court what the
6 difficulties may be for him. I think that would be an unnecessary
7 and insensitive thing to do.

8 What I propose is, that we rise for a few minutes. Now that
9 he's effectively completed his evidence, I think it would -- and since
10 he knows you and other members of the team that you're a part of, I
11 think it would be best if you were to speak to him directly - you will,
12 of course, do this in a neutral way. I know that we can trust you
13 to do that - to find out what the difficulties may be, if any, to liaise
14 with Mr Sachdeva and find out exactly what he has in mind - so, what's
15 really proposed - which I don't want to investigate on the Bench; this
16 is a matter for counsel, not for us at this stage.

17 And then I either have a message sent out to us to say that
18 everything is resolved and there's no need for us to come back in;
19 or if there are any outstanding issues on this that require our
20 adjudication, then we'll be in our rabbit hole down the corridor and
21 you can call for us.

22 I'm going to put a time limit on this. Can we please try
23 and make sure that this is completed at the latest by half-past-3,
24 so we're not waiting there indefinitely. That deals with that.

25 I assume, therefore, we're not going to be able to sit tomorrow

1 because there is no evidence waiting for us tomorrow. Can I ask on
2 a preliminary basis that at least one member of each team is available
3 for 2.30 tomorrow afternoon simply for us to deliver -- for us possibly
4 to deliver an oral decision. You'll be notified later as to whether
5 or not we're going to do that, but if we could just put that potentially
6 in diaries for tomorrow afternoon.

7 Sir, that has brought your evidence, I think, to a close.
8 This Court can only function if people such as yourself are prepared
9 to give of your time, potentially at some real cost to yourself and
10 potentially putting yourself in danger by coming here to give evidence.
11 We readily appreciate the sacrifice that you've made, and you leave
12 now with our thanks.

13 No doubt there's been interpreted for you the fact that
14 there's going to be a conversation in a moment with your -- with counsel
15 who have called you so that we can resolve Mr Sachdeva's suggestion
16 that there should be some kind of forensic examination of your card.
17 But that aside, our thanks.

18 Usher, could you please accompany the witness back to the
19 witness waiting room.

20 (The witness is excused)

21 PRESIDING JUDGE FULFORD: I've been given some
22 encouragement by my fellow Judges. We will sit at 2.30 tomorrow
23 afternoon to deliver what will be about a 20-minute oral judgment.
24 Really, only one member of the Bar need attend; it's entirely up to
25 you who comes, but we only require one person representing you all

1 for those purposes. It will simply be a matter of reading out a decision
2 and nothing else will happen tomorrow afternoon.

3 Mr Desalliers, I put it then in your care to either call
4 us back on the bench or to send us a message by half-past-3. Thank
5 you very much.

6 THE COURT OFFICER: All rise.

7 (Recess taken at 3.12 p.m.)

8 (Upon resuming at 3.42 p.m.)

9 *(Private session) Reclassified as Open session

10 THE COURT USHER: All rise. Please be seated.

11 THE COURT OFFICER: Your Honours, we're in private session.

12 PRESIDING JUDGE FULFORD: What's the problem?

13 MR DESALLIERS: (Interpretation) Mr President, I'd like
14 to summarise what transpired. We began by discussing with the Office
15 of the Prosecution in order to try to understand exactly what the position
16 of the Office of the Prosecutor was regarding the identity of the witness
17 because, obviously, discussion on fingerprints is related to the
18 witness's identity, and I must say I didn't really understand their
19 position, so I'm going to leave it up to the Prosecutor to explain
20 it to the Chamber better than I could do.

21 We did, however, check with the witness to ascertain what
22 the consequences would be if we were to keep his voting card here.
23 What we need to understand is that the voting card in the DRC is not
24 just any document; it is the document that is used as an identity card,
25 to identify a citizen. And he said, "Well, I couldn't even leave the

1 airport if I didn't have this card with me."

2 It's the kind of identification card which is requested
3 during any kind of travel within the country and even road checks which
4 are very frequent in the DRC, you can be asked for your identity card
5 at any point in time, and therefore it would be a serious problem for
6 the witness if he were to leave his card here in The Hague.

7 I'd like to add that the passport is of no use in that respect
8 to the witness because it's not the document that is used by the
9 authorities in order to check people's identity. And, according to
10 what we have understood, the passport isn't even given to the witness
11 because when our witnesses go back, they go back without their passport,
12 which is kept in the vaults of the Witnesses and Victims Unit.

13 So, Mr President, we feel that it would not be terribly useful
14 and, indeed, the witness has explained that there was a fingerprint
15 that was erased. And if you think in terms of, well, victim 270 was
16 asked and was told that the witness was the president of the voting
17 office. So we don't see where the problem is regarding the
18 identification of this witness, and we do not understand the purpose
19 of this exercise which would indeed be very costly for the witness
20 in terms of the consequences.

21 PRESIDING JUDGE FULFORD: Thank you. Mr Sachdeva.

22 MR SACHDEVA: Thank you, Mr President. The issue is that
23 the witness only has one identification document and this is it and,
24 as he said in evidence, he issued his own identification document.
25 Now, he has said that the fingerprint was there but has been washed

1 off.

2 Our position is that there was no fingerprint there in the
3 first place and we would like to know the reasons why there's no
4 fingerprint there. There have been other voters' cards that have been
5 tendered in this case. All contain fingerprints and, indeed, the
6 voter's card for Witness 89 which had been -- which was in a much worse
7 condition still contained their fingerprint.

8 Of course I can't get into details of forensic analysis but
9 it would appear to me that if the ink had been washed off then, similarly,
10 the signature would have also been affected and, in my submission,
11 the signature remains intact but the fingerprint apparently has been
12 washed off. So it goes to the identification; it also goes to, in
13 our submission, the credibility of the witness and, for those reasons,
14 we would have liked to have conducted an analysis if it were possible
15 to ascertain whether there was a fingerprint on the card in the first
16 place.

17 However, we understand that we do not want to unduly disturb
18 the witness and also to affect his travel back to the DRC. So I don't
19 know where we can go from here, to be honest. He doesn't have a passport
20 and therefore he needs an identification document.

21 PRESIDING JUDGE FULFORD: What's the issue with him,
22 Mr Sachdeva? I understand the limited point that there may be a
23 credibility attack if there is something inexplicably odd about his
24 identification card, namely, it's a card that seemingly doesn't have
25 a fingerprint, in your submission, when it should have. But going

1 slightly wider than that, do you contest his identity? Do you suggest
2 there's a possibility that this man may be masquerading under a false
3 identity?

4 MR SACHDEVA: Well, our position is, Mr President, that he
5 is not the father of victim 225.

6 PRESIDING JUDGE FULFORD: Slightly different point. Are
7 you saying that the name he's given, so the identity which he's provided
8 to this Court, is potentially a false identity? That he has not given
9 his true name?

10 MR SACHDEVA: Mr President, that could be within the realms
11 of possibility, yes.

12 PRESIDING JUDGE FULFORD: Thank you very much.

13 Mr Sachdeva, on behalf of the Prosecution, has applied to
14 the Court for us to retain the voting card of the witness who's just
15 left the witness box so that forensic tests can be carried out on it
16 to see whether it is a bogus card because, as Mr Sachdeva suggests,
17 it appears not to carry a fingerprint when, on similar cards that we've
18 seen in this case, a fingerprint routinely is seen. It's suggested
19 that this issue may go to the witness's credibility and, indeed, the
20 Prosecution have in mind the possibility that this witness has provided
21 a false identity to the Court.

22 Mr Desalliers, on behalf of the Defence, opposes this
23 application. It is submitted that the consequences for the witness
24 would be dire. He is due now to return to the DRC and if he doesn't
25 have this card, which is effectively his only identification card,

1 he is likely, very shortly, to find himself in trouble with the
2 authorities because, for instance, when he's stopped at a road check
3 without any identification, then he is likely to be confronted with
4 serious difficulties.

5 Whilst we are sympathetic to Mr Sachdeva's desire to carry
6 out all avenues of research which the Prosecution consider will be
7 helpful to their case. Balancing the matter, the consequences for
8 this witness will be too grave to permit us to allow the Prosecution's
9 application. If this witness returns to the DRC without his
10 identification card, the consequences for him could be truly dire and
11 profound.

12 In those circumstances, given that no other solution has
13 been suggested to us, our order is that the card is immediately returned
14 to the witness so that he can return to the DRC with it.

15 I'm sorry that took you all a certain amount of time. Thank
16 you very much for your assistance. We'll sit again at half-past-2
17 tomorrow afternoon.

18 THE COURT USHER: All rise.

19 (The hearing ends at 3.52 p.m.)

20 RECLASSIFICATION REPORT

21 Pursuant to Trial Chamber I's email instruction dated 12th January
22 2012, the transcript is reclassified as public after the indicated
23 redactions have been implemented as ordered by the Chamber. All private
24 and closed sessions (*) are now available to the public with the exception
25 of the portions of the transcript that have been redacted.