

1 International Criminal Court

2 Trial Chamber V(a) - Courtroom 1

3 Situation: Republic of Kenya

4 In the case of The Prosecutor v. William Samoei Ruto

5 and Joshua Arap Sang - ICC-01/09-01/11

6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera Carbuccion

7 and Judge Robert Fremr

8 Trial Hearing

9 Tuesday, 22 October 2013

10 (The hearing starts in open session at 9.36 a.m.)

11 THE COURT USHER: All rise. The International Criminal Court is
12 now in session. Please be seated.

13 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.

14 Court officer, please announce the case.

15 THE COURT OFFICER: Situation in the Republic of Kenya in the
16 case of the Prosecutor versus William Samoei Ruto and Joshua Arap Sang,
17 case number ICC-01/09-01/11. We're in open session.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.

19 Appearances remain the same, I take it, as of yesterday?

20 MR OMOFADE: They remain the same.

21 MR HOOPER: Much the same, but we're joined today by
22 Brooke Stedman, who is sitting at the back there and is a legal assistant
23 with us. Thank you.

24 MS BUISMAN: The same, Mr President.

25 PRESIDING JUDGE EBOE-OSUJI: Thank you.

1 MR NARANTSETSEG: The same, Mr President.

2 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.

3 Prosecutor, I understand that before --

4 MR FAAL: Mr President, I apologise for interrupting while you
5 were still talking. I wish to say something. Yesterday Ms Buisman asked
6 two questions, one pertaining to Mr Ruto and another to Mr Sang. I would
7 admit that those were not the best questions one would ever ask, but I
8 want to apologise to the Court because I put her up to it. It was my --
9 entirely my fault. I also apologise to her. I should have asked those
10 questions during my cross; I missed them. She volunteered to assist and
11 I thank her for that. But all the same, considering that the Court did
12 not find them quite relevant or useful at the time, I apologise for
13 putting her up to it and I hope the Court would understand. Thank you,
14 Mr President.

15 PRESIDING JUDGE EBOE-OSUJI: Fair enough. But she should also
16 make her own judgement and not accept what's fed to her, but I get your
17 point.

18 MR OMOFADE: Mr President, I've asked that the witness be kept
19 out. There's a matter that I'd like to raise in private session. I
20 wonder if that could be done? It should only take about five minutes,
21 and I've taken the liberty of discussing briefly with the Defence and the
22 Court officers.

23 PRESIDING JUDGE EBOE-OSUJI: So you have discussed it with
24 counsel on the opposite side?

25 MR OMOFADE: Yes.

1 PRESIDING JUDGE EBOE-OSUJI: All right.

2 MR OMOFADE: I have to say, while I'm on my feet and to be fair
3 to Ms Buisman, she hadn't entered the courtroom when I discussed it with
4 Mr Hooper.

5 PRESIDING JUDGE EBOE-OSUJI: All right. Let's go into private
6 session then.

7 (Public session at 9.39 a.m.)

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- 15 (Closed session at 9.59 a.m.)
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4 (Open session at 10.01 a.m.)

5 THE COURT OFFICER: We're in we are in open session, your Honour.

6 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.

7 Witness, welcome back. Thank you for joining us again. We hope
8 you rested well. We ended yesterday in public session with the
9 Prosecution asking you questions in their examination-in-chief. The
10 Prosecution will continue asking you questions in examination-in-chief,
11 but they have requested that for about 30 minutes we will -- they want to
12 ask you those questions in private session so that you can talk freely
13 about identifying information. So we will go in -- start immediately
14 into private session for about 30 minutes or so.

15 THE WITNESS: Okay.

16 PRESIDING JUDGE EBOE-OSUJI: Court officers, can we go into
17 private session, please.

18 (Private session at 10.02 a.m.)

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Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 14 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 15 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 16 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 17 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 18 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 19 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 20 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 21 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 22 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 23 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 24 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 25 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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11 (Open session at 10.40 a.m.)

12 THE COURT OFFICER: We're in open session, your Honour.

13 PRESIDING JUDGE EBOE-OSUJI: Witness, we're now in open session.

14 And you will answer your questions again mindful of the advice given to

15 you earlier, about being careful not to reveal identifying information,

16 either your name or specific place where you live or stayed, as well as

17 refraining from at this stage -- in this session relaying or relating,

18 rather, information that is very unique in particular to you. Let's say

19 there is a certain unique event and you were with only one person who --

20 or two who observed that event with you, if you started talking about it

21 in open session the other person listening, if they hear you in public,

22 will then know that's you testifying. And then they will start putting

23 two and two together. That's what we will try to avoid in open sessions.

24 There is a certain contraption beyond your microphone, do you see it,

25 it's lit red? Yes.

1 THE WITNESS: Yes.

2 PRESIDING JUDGE EBOE-OSUJI: So when it's lit up red, it means we
3 are in open session, that means danger, danger, be careful about
4 revealing identifying information, but you must still tell us the truth.
5 When it lights up green, it means we are in private session, then you can
6 relax and speak freely about even identifying information. But now it is
7 red, so proceed with care.

8 MR OMOFADE: I'm grateful, Mr President.

9 Q. Witness, the last question that I asked is: Do you remember if
10 these persons that you saw, these young men, if they were carrying
11 anything?

12 A. Yes, they were carrying bows and arrows.

13 Q. And can you describe these bows and arrows? What were they made
14 of, do you know?

15 A. Yes, they were made of wood a carved wood -- a carved wood like
16 this and a string and a bow.

17 Q. And on this occasion in 2007, can you describe the number, can
18 you tell us the number, approximately that you saw in -- and it's in
19 location 2?

20 A. Yes, those -- they were around seven initiating.

21 Q. But for the whole -- for the entire ceremony in 2007, do you know
22 how many you saw apart from the ones you observed with bows and arrows?

23 A. Repeat --

24 MS BUISMAN: Mr President, excuse me. I think that question was
25 already asked and answered, but also we really don't see the relevance of
26

1 all this.

2 PRESIDING JUDGE EBOE-OSUJI: Objection is overruled.

3 Proceed.

4 MR OMOFADE:

5 Q. You described those that you saw carrying bows and arrows, but
6 I'm asking you these new initiated boys and the people that were taking
7 them to be initiated, can you give an estimate of the number that you
8 observed in location 2?

9 A. Yes, they were around -- in number I can guess they were around
10 15.

11 MR HOOPER: The question isn't rooted in any particular time as I
12 understand it. Are we talking about the entire month or is there a
13 specific occasion that my friend's referring to?

14 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, I think you can -- if
15 that question's left dangling at the end of the day, you can pursue it in
16 cross-examination.

17 MR OMOFADE: Okay.

18 Q. You said this ceremony starts around November the 29th, 28th, I
19 believe is the date you gave --

20 MR HOOPER: 27th and 28th.

21 MR OMOFADE:

22 Q. 27th and 28th. Do you remember how many you saw heading towards
23 location 6?

24 A. Those are the ones I'm telling you, they were around 50.

25 Q. Did you say 50 or 15?

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1 A. 50, let me say around 50.

2 Q. And let's move now to December because you said this ceremony
3 takes about a month. Did you observe this group leaving location 6 in
4 December?

5 A. Yes, after the period of staying in the bush was over, I saw them
6 moving from that area.

7 Q. And do you know the number of those that left the area?

8 A. I remember I saw them early in the morning around 6.00 in the --
9 it was around 6.00 in the morning and they were very big number. They
10 had already passed so I saw them moving to where they were -- they had
11 prepared to -- for that ceremony for these young boys to come out. So
12 when they usually come out it is when they were -- they changed and put
13 their ordinary clothes.

14 Q. But was the number the same as those that had gone in,
15 approximately 50?

16 A. Yeah, approximately. I can guess approximately 50.

17 Q. Now, I would like to ask you about the day of the election. It's
18 agreed that it's the 27 December 2007. Firstly, did you vote on that
19 day?

20 A. Yes, I voted.

21 Q. And at what location did you cast your vote?

22 A. At location 3.

23 Q. And generally in location 2 where you lived, what was the -- what
24 was the atmosphere on the day of the election?

25 A. I can say everything was cool, everything was cool, all was
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1 normal.

2 Q. And did you stay in location 2 on that day or did you go anywhere
3 else? This is on the day of the elections.

4 A. Yes, because I was not used in staying at location 2, after
5 casting my vote I remember I left location 2 around 10.00 in the morning
6 and I went in --

7 PRESIDING JUDGE EBOE-OSUJI: Wait, wait, wait. You're going to
8 give us a location where you went on the sheet?

9 THE WITNESS: Yes. I went to location 4.

10 MR OMOFADE:

11 Q. And was -- what was the atmosphere like at location 4?

12 A. Everything was normal. It was cool.

13 Q. Then let's move on to the following day, the 28th of December.

14 Did you stay at home that day or did you leave your home in location 2?

15 A. I think I go by date because I can't remember the date clearly,
16 but I remember -- maybe if we go by Monday, Tuesday, these days I can
17 remember very well other than dates. After voting I just went to
18 location 2, I went the following day I went to location 2.

19 Q. Okay. For now let's keep to the day after voting, the day after
20 the election, what did you do that day?

21 A. I think I went to location 4 -- was it a Friday? We can go by --
22 because if we can go that way, I think I can remember very well.

23 Q. Unfortunately, Mr Witness, it's your testimony so I can't suggest
24 the date to you.

25 A. So I think I went to location 4 because that is where I used to
26

1 work and I was not commonly during day-time staying in location 2.

2 Q. And do you know when the election results started being
3 announced?

4 A. I think they were -- either in the voting day in the evening or
5 the other day in the morning is when we started receiving results from
6 various areas of -- of the election.

7 Q. And in your location - this is location 2 - what was the support
8 like for each of the parties? Was it mainly ODM supporting or mainly
9 PDU -- PNU supporting?

10 A. They were ODM supporters.

11 Q. And did you see any of the ODM supporters in location 2 on this
12 day?

13 A. I can say the whole area were ODM supporters, so all of them.
14 Very few of them were PNU supporters.

15 Q. And on this occasion as well, what was the atmosphere like?

16 A. Because the election were -- because the results of the election
17 had started coming in, most of the ODM supporters were convinced that
18 they were going to win the election. So most of them started celebrating
19 the way they -- the results were being announced, they started
20 celebrating, so there was that celebration from the side of the ODM.

21 Q. Well, how do you know that most of the ODM supporters in your
22 location thought that the ODM was going to win? How do you know this?

23 A. Repeat.

24 Q. How do you know that most of the ODM supporters in location 2
25 thought that ODM was going to win?

1 A. They had -- they were convinced -- what I can say, they were
2 really convinced that the ODM are going to win in this election.

3 Q. Do you remember the date the presidential elections were
4 announced?

5 A. Yes, I remember it was on Sunday, 30th or 29th, but I remember it
6 was on Sunday.

7 Q. I don't know that it's in dispute that they were announced on the
8 30th.

9 PRESIDING JUDGE EBOE-OSUJI: And does anyone have a perpetual
10 calendar? The witness says he works better with days of the week. I
11 think -- the 30th would be a Sunday.

12 MR OMOFADE: Your Honours, I'm happy to provide one over the
13 luncheon adjournment or over the short break, but I don't know if there's
14 any --

15 MR HOOPER: There's no dispute. 27th was a Thursday, election
16 voting day; and then the results came out on the 30th, the Sunday.

17 PRESIDING JUDGE EBOE-OSUJI: The Sunday.

18 MR OMOFADE:

19 Q. And the day of the election, the presidential election results,
20 where did you -- how did you spend that day? Where did you wake up?

21 A. During the day they announced, I was at location 2 in the
22 morning. So I was preparing my plot because I had harvested some few
23 maize, so I was clearing the plot. So at around 10.00 -- at around
24 10.00 a.m. a friend of mine with the name --

25 PRESIDING JUDGE EBOE-OSUJI: Wait.

26

1 Simpler than that: Where did you wake up on the day? Wasn't
2 that your question?

3 MR OMOFADE: That was the question. The witness went slightly
4 further.

5 PRESIDING JUDGE EBOE-OSUJI: Right. If you can just -- if the
6 location where you woke up is on the protected information sheet, the
7 PIS, you can indicate it.

8 MR OMOFADE: Your Honour, I think the difficulty was beyond that.
9 He's indicated the location as location 2. He was then going to go on to
10 name a person he spoke to. That was the difficulty.

11 PRESIDING JUDGE EBOE-OSUJI: All right. Okay. So do not name
12 the person you spoke to.

13 Prosecutor, you have the answer you wanted --

14 MR OMOFADE: To --

15 PRESIDING JUDGE EBOE-OSUJI: -- of your question, don't you?

16 MR OMOFADE: Your Honour, I do, but the person he spoke to and
17 the text of that conversation is also what I need to explore further.

18 PRESIDING JUDGE EBOE-OSUJI: We cannot do that in open session.

19 MR OMOFADE: No, we can't.

20 PRESIDING JUDGE EBOE-OSUJI: How long would -- do you think you
21 will need so we can briefly go into private session and get the text of
22 the name and the precise conversation had.

23 MR OMOFADE: I can do this in just one or two questions.

24 PRESIDING JUDGE EBOE-OSUJI: All right. Well, we'll go into
25 private session briefly for a minute or two.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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1 (Private session at 11.01 a.m.)
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25 (Open session at 11.03 a.m.)

1 THE COURT OFFICER: We're in open session, your Honour.

2 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.

3 And it's come to our lunch break time. We will adjourn briefly
4 for the morning break and resume at 11.30. But we will bring down the
5 blinds and let the witness out first.

6 (Closed session at 11.04 a.m.)

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13 (Recess taken at 11.05 a.m.)

14 (Upon resuming in open session at 11.41 a.m.)

15 (The witness entered court)

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

17 THE COURT OFFICER: We're in open session, your Honour.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.

19 Mr Omofade, we were in private before we rise. We went back into
20 open.

21 MR OMOFADE: We were in private. We can remain in open now,
22 Mr President.

23 Q. Mr Witness, welcome back. You were telling us before the short
24 break about a conversation you had with a particular person on the
25 elections. Now, could you tell us what happened -- what you did after --
26

1 after you had this discussion with your friend?

2 A. Yes. So after the discussion around 12.00 noon I decided to go
3 to location -- I decided to go to location 1.

4 Q. And why did you decide to go to location 1?

5 A. I went to location 1 to see number 6.

6 Q. And is that person number 6?

7 A. Yes, he lived there.

8 Q. And did you get to the place of person number 6?

9 A. Yes, I went there.

10 Q. What did you do there?

11 A. We had a normal conversation and -- because the time was moving I
12 decided to stay there until the election were announced.

13 Q. And were you there when the election results were announced?

14 A. Yes, I was there.

15 Q. And how did you find out about the election results?

16 A. As I was there I was watching TV, and I was watching Citizen TV.
17 By then the man who was leading the team was Mr Kiviutu. I remember he
18 went to announce the -- he went to announce the outcome, but he could not
19 do it because of the ODM supporters.

20 Q. Is this what you observed from watching TV?

21 A. Yes, that's what I observed.

22 Q. And can you help us a bit more. Who is Mr Kiviutu?

23 A. He was the chairman of the Electoral Commission.

24 Q. And did you observe anything else from watching the TV that day
25 on that occasion?

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1 A. Yes, I remember Pentagon -- those ODM leaders who were in
2 Pentagon would not let Mr -- the commissioner announce the result. There
3 was sort of a quarrels from the commission. They were not understanding
4 one another. So after a short while later I saw Mr Kiviutu being
5 escorted by the general service police outside from the hall.

6 Q. Did you eventually hear the election results announced?

7 A. Yes, because once he was escorted out there was a blackout of TV.
8 The Citizen TV, I think it was switched off because it could not bring
9 that picture again. So we decided to switch other channels on the TV.
10 So I went KBC, channel -- that's belongs to Kenyan Broadcasting
11 Corporation. So -- and it -- KBC is when I saw Mr Chairman Commissioner
12 announcing the results.

13 Q. And did you eventually leave the place of person number 6?

14 A. Yes. After the announcement, so I just left there and went to --
15 I went back to location 2.

16 Q. And around what time of the day was this that you left to return
17 to location 2?

18 A. It was around -- between 6.00 and -- between 5.00 and 6.00,
19 around that time.

20 Q. And on your way back to location 2, did anything unusual happen?

21 A. Yes, on this day I met people shouting -- people who were
22 shouting that the election has been rigged. Especially ODM supporters,
23 they were just shouting in groups. But I can't remember in the event of
24 that on my way.

25 Q. You say they were ODM supporters. Do you know what ethnic groups
26

1 they came from?

2 A. At location 1, from location 1 towards location 2, there were --
3 most of them were Luos, Luos and Luhyas and a small number of Kalenjin.

4 Q. Did you observe anything else on your way back from location 1 to
5 location 2?

6 A. There is only -- there was only those noises and -- at
7 location 2. There was only noises, people were just shouting. The
8 others they were in groups discussing about that election.

9 Q. And just help us, did you walk or did you -- did you go by car or
10 bus?

11 A. I remember I had a -- I went with a bicycle, I reached a place
12 where there was so many noises and people were shouting here and there,
13 so I decided to leave my bicycle at -- that location is not indicated
14 here, but I left it on the way and I proceeded by foot -- by walking.

15 Q. Eventually did you get to (Redacted) at location 2?

16 A. Yes, I got there.

17 Q. And what happened when you got (Redacted)?

18 A. When I got (Redacted), which was around -- it wasn't dark yet, but I
19 guess it was around 7.00. So when I was at (Redacted)
20 (Redacted) burning and I thought it was an

21 accident. There was a bit of noises there and I thought that maybe it
22 was an accident. So by then I was leaving -- I was leaving the number --

23 PRESIDING JUDGE EBOE-OSUJI: Wait, wait, wait now. Let us go
24 into private session.

25 MR OMOFADE: Indeed, your Honour.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

Page 40

1 (Private session at 11.52 a.m.)
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Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 41 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 42 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 43 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 44 redacted – Private session.

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10 (Open session at 12.05 p.m.)

11 THE COURT OFFICER: We're in open session, your Honour.

12 PRESIDING JUDGE EBOE-OSUJI: Thank you.

13 Prosecutor, please proceed.

14 MR OMOFADE:

15 Q. So, Mr Witness, you were explaining what happened in front of the
16 house of person number 12. Could you help us, please. You've used the
17 word "thermos" and then you used the word "jerrycan." What is it that
18 person number 12 was holding?

19 A. I refer them as jerrycan or -- it was a 5-litre plastic
20 container.

21 Q. And you said you sniffed it. What made you sniff it?

22 A. Because he had told us they had used petrol, so that's why we
23 sniffed it.

24 Q. Now, the 20 or so Kalenjin youths that were in front of person
25 12's house, what did they say when you spoke to them about setting fire

1 to his house?

2 A. They were rude. They could not even listen to us because they
3 were -- some of them were telling us we have to leave the land. That is
4 what they were -- they couldn't even listen to us.

5 Q. And please just answer yes or no. Did you recognise any of the
6 Kalenjin youths that were in front of person 12's house?

7 A. Yes.

8 Q. Were they people you had seen before this night that you're
9 talking about?

10 A. Yes, they were people I used to see.

11 Q. In any event, you were referring to a sound that you heard, and I
12 believe the way you described it was a "Wooooo" sound. Do you remember
13 telling us that?

14 A. Yes.

15 Q. What happened when you heard this sound?

16 A. When I heard that sound, the -- it were two sounds. So the first
17 sound came from the other side and it is -- I can say it was just -- they
18 were communicating by the Kalenjin who we were arguing with. Because
19 some of them and others who were a bit higher responded, saying "Wooooo."
20 So when they responded that way, we decided to go to the other side, to
21 the house that had been set ablaze. It belongs to a woman.

22 Q. Okay. We'll come to the other house in a minute, but you said
23 those that were responding were a bit higher. What do you mean when you
24 say that?

25 A. I mean, I think the -- the number was greater than the first
26

1 number because the sound, the "Wooooo" sound, was a big sound.

2 Q. And then you have just said that you decided to go to the other
3 side, to the house that has been set ablaze. Is this another house that
4 had been set ablaze?

5 A. Yes.

6 Q. And just answer yes or no for the time being. Did you know the
7 owner of this second house that had been set ablaze?

8 A. Yes, I knew.

9 Q. You said it's a woman. Perhaps with the benefit of the form in
10 front of you, is that woman's name on the list in front of you?

11 A. Yes, it's there. It's number 11.

12 Q. And do you know what ethnic group number 11 belongs to?

13 A. Yes, it was a Kikuyu.

14 Q. And in any event did you get to the house of number 11? Did you
15 arrive there?

16 A. Yes, I went there.

17 Q. Did you go there alone or with somebody else or with others?

18 A. I went with the others who had come to number 12, so we went
19 to -- we were in a group, we went in a group.

20 Q. Approximately how many were you in this group?

21 A. I think we were around eight or ten.

22 Q. And what did you observe when you arrived at the house of
23 number 11?

24 A. So when we got there, there was a very big number of Kalenjin
25 youth and they -- so we could not see clearly but because of the flame of
26

1 the fire it would -- see they were carrying bows and arrows. So I met
2 another -- I met another neighbour -- our neighbours who were Kikuyus and
3 now something like war started there because the Kalenjins could not
4 listen to what we tried to argue with them.

5 Q. Okay. I'll take you back a bit. Firstly, how did you know that
6 the youths there were Kalenjin?

7 A. They were familiar. The people -- they were people whom we knew.
8 They were familiar. Generally they were neighbours. The people who
9 lived together.

10 Q. And just answer only yes or no to this next question. Would you
11 know the names of any of these people?

12 A. Yes, I can remember, I can remember the names.

13 PRESIDING JUDGE EBOE-OSUJI: Um --

14 MR OMOFADE:

15 Q. Okay. Pause.

16 PRESIDING JUDGE EBOE-OSUJI: Pause. I don't know if we were
17 going to do the same thing and realise we paused at the same time,
18 Mr Omofade, but I believe line 22, the word was in line -- that says
19 "who" should be "we." That's what I heard the witness say, but you can
20 clarify it if you need to. I thought I heard him say they are the
21 people, we lived together.

22 MR OMOFADE: Your Honours, that's what I heard as well. I don't
23 know if the --

24 Q. Mr Witness, when you say they were familiar, these were people
25 who were familiar. Generally they were neighbours. What did you say
26

1 after that, did you --

2 PRESIDING JUDGE EBOE-OSUJI: I thought I also heard him say they
3 were our neighbours and they were people we lived together, but let
4 him ...

5 MR OMOFADE:

6 Q. Mr Witness, perhaps it's more convenient. Could you repeat your
7 answer to that. My question was: Okay. I'll take you back a bit.
8 Firstly, how do you know that the youths were Kalenjin? What's your
9 response?

10 A. My response was they are the people who were familiar and the
11 people who had -- I had known for a long period. So in this location,
12 location 2, we lived earlier together. We had no grudge or any conflict
13 between we and them.

14 Q. And you say there was like a war, there was arguing. Firstly,
15 what was your group saying to the group of Kalenjin youths?

16 A. When I got there, I already got a group -- a bigger group of
17 people (Redacted), and when we joined they had -- they were arguing,
18 they were -- had tried to argue with them but I think it came to a point
19 of they could argue no more. So in order to stop the Kalenjins from
20 burning more houses -- so we all -- (Redacted)
21 (Redacted), we decided at least to confront them, to attack them, to
22 make them not to burn any more house.

23 Q. But for the time being I would just like you to explain what was
24 said (Redacted), and if you remember what was said also by the
25 group of Kalenjins. Do you remember any of the talking that took place?
26

1 A. I remember the Kalenjin youth were telling Kikuyu people to
2 vacate the land and that is why they were burning, to force them out of
3 this area. But Kikuyu people, they were always arguing and telling them:
4 We bought this plot -- we bought these plots of ours and there is no way
5 you are taking this. It was something like that I can remember they were
6 arguing about.

7 Q. What did you understand them to mean when they said you should
8 vacate this land? What did you understand - this is you as
9 Mr Witness - what did you understand them to mean?

10 A. According to me, I understood it as they were -- they wanted to
11 evict Kikuyu from this area.

12 Q. In any event, what happened afterwards when you say you decided
13 to stop them from burning more houses? What happened?

14 A. So, what I can say, we overpowered them and they started to
15 disappear. So person number 12 was very bitter because his house was
16 burnt and even number 11, and after we had overpowered them, they
17 insisted, especially number 11 and number 12, they insisted that we have
18 to report what they have done to the chief. So -- so -- can I go? Okay.

19 So when we overpowered them they ran towards where the chief
20 lived on his direction, and we followed them.

21 Q. And just yes or no for the time being. Do you know the name of
22 the chief?

23 A. Yes, I know.

24 Q. Is the name on the list that is in front of you?

25 A. Yes, he's number 2.

26

1 Q. Now, you said when they -- you said you overpowered them and they
2 ran to where the chief lived, in his direction. You followed them. Did
3 you see whether -- did you see where they went, these Kalenjin youths?

4 A. As we followed them, since they were -- already now it was dark.
5 So you could not see which angle, which route the -- they disappeared.
6 But we managed to reach where chief lived.

7 Q. And what did you do afterwards, after you reached where the chief
8 lived?

9 A. When we reached there, I remember we found two to three boys --
10 guys on chief's gate, and I think they didn't know whether we are Kikuyu.
11 They tried to talk in Kalenjin but we asked -- we told them we want to
12 see the chief. Then they told us the chief is not around. So
13 after maybe around five minutes, because we decided to go back, we heard
14 the same "Wooooo." It was just at night now. We could not see who is
15 saying and we could hear where that "Wooooo" is coming from. So we
16 became a bit afraid and we decided to go back and now guard our houses
17 that they should not come and go on burning it.

18 Q. Now, at what time did you get back to -- well, at what time, do
19 you know the time you left outside of the chief's house, just about the
20 time of the day?

21 A. I can't remember the time, but it was dark already.

22 Q. And when you dispersed from the chief's house, did you go to your
23 own place, your own home?

24 A. As I remember, when we came back from that chief area we met that
25 group of Kikuyus because it was on Sunday and all people had not arrived.

1 So we met a small group who was still anxious to know whether we met with
2 the chief or we did not meet with the chief. So we decided that because
3 we were not sure whether Kalenjin would come and go on burning our
4 houses, so we decided to go every -- in intervals to go in your house,
5 you eat, and you come back because we decided to sleep outside guarding
6 our houses.

7 MR OMOFADE: Mr President, I -- I need to explore some areas in
8 private session.

9 PRESIDING JUDGE EBOE-OSUJI: For how long?

10 MR OMOFADE: Probably 15 minutes.

11 PRESIDING JUDGE EBOE-OSUJI: All right. We'll go into
12 private session and see if we can make it shorter than that, shorter than
13 15 minutes.

14 Let's go into private session.

15 (Private session at 12.26 p.m.)

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Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 53 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 54 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 55 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 56 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

Page 57

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13 (Open session at 12.36 p.m.)

14 THE COURT OFFICER: We're in open session, your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: Please proceed, Mr Omofade.

16 MR OMOFADE:

17 Q. The -- I was asking you about number 11. How long have you known
18 number 11?

19 PRESIDING JUDGE EBOE-OSUJI: I think the witness has answered
20 that question already. Let's not continue to worry that question. It
21 might provoke other answers unless there is something specific that
22 you're looking for that has not been said, then -- but if we go back to
23 retrace what he said on this, there might be -- provoking some
24 difficulty.

25 Witness, as you will have noticed, we are now back in

1 public session.

2 THE WITNESS: Yes.

3 MR OMOFADE:

4 Q. Now, number 2, do you know the ethnic group that number 2 belongs
5 to?

6 A. He's a Kalenjin.

7 Q. Do you know -- you've referred to him as the chief. What is he
8 chief of?

9 A. The chief of sublocation. He's assistant chief of sublocation.

10 Q. And is that a sublocation of any of the locations on the list
11 there?

12 A. Yes. Location 2.

13 Q. And do you know how -- well, do you know when he became the
14 assistant chief of this sublocation?

15 A. Yes, when I moved there -- that year, 1992/1993 is when he became
16 the chief of that area.

17 Q. And do you know how he got this position?

18 A. Well, according to what I heard, that is, according from what I
19 heard from the other people there, this -- in order for him to get this
20 position, he is related somehow to Mr William Ruto, so that's how I heard
21 it.

22 PRESIDING JUDGE EBOE-OSUJI: Line 4, I think the witness said
23 "somehow." Okay. The correction has been made. Because what was
24 indicated before indicated a certain certainty that was not in the
25 answer. That was why I thought we should catch it immediately.

26

1 MR OMOFADE: I'm grateful, your Honour.

2 MR HOOPER: Can I just interpose at this time, I hope not
3 inappropriate, to say there's no relation at all between this named
4 person and Mr Ruto, and the "somehow" and the rest of it is, at best,
5 gossip.

6 MR OMOFADE: Well --

7 PRESIDING JUDGE EBOE-OSUJI: Mr --

8 MR OMOFADE: [Overlapping speakers] --

9 PRESIDING JUDGE EBOE-OSUJI: -- Hooper you know you shouldn't
10 have done that. You can do this in your cross-examination.

11 MR OMOFADE: Your Honours, that's highly inappropriate and my
12 learned friend well knows that.

13 MR HOOPER: Well, the interjection was done on the basis that
14 what was being led was done on a basis that my friend must have
15 appreciated was surely the basis of gossip --

16 PRESIDING JUDGE EBOE-OSUJI: Which we say you can take up in your
17 cross-examination --

18 MR HOOPER: Your Honour --

19 PRESIDING JUDGE EBOE-OSUJI: -- and submissions when we get to
20 it.

21 MR OMOFADE: Your Honours --

22 PRESIDING JUDGE EBOE-OSUJI: Mr Omofade, can you proceed, please.

23 MR OMOFADE: Can we go into private session for probably three
24 minutes just to explore this further.

25 PRESIDING JUDGE EBOE-OSUJI: We go into private session then.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

Page 60

1 (Private session at 12.42 p.m.)

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12 Page 60 redacted – Private session.

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Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 61 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 62 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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14 (Open session at 12.50 p.m.)

15 THE COURT OFFICER: We're in open session, your Honour.

16 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.

17 Mr Omofade, please proceed.

18 MR OMOFADE:

19 Q. Now, Witness, you've been telling us about the events of the
20 30th of December, the day the election results were announced. That was
21 a Sunday. Now, the following day, can you tell us where you were? This
22 is the Monday, the 31st of December.

23 A. Yes, on Monday in the morning -- on that night we had not slept
24 in my house, I slept outside, because we were afraid the Kalenjin could
25 come at night under darkness at night. So early in the morning, it was

1 around 6.00 is when we dispersed from -- around 5.00 is when we dispersed
2 from where we slept and I went to my house. So when I was in my house
3 early in the morning I saw people from Kikuyu communities carrying
4 whatever anyone could manage to carry moving on -- moving on towards --
5 towards the road -- towards the main road. So as they were moving on I
6 saw there was two lorries who came from -- from the main road toward --
7 heading toward (Redacted). And because I did not take interest with these
8 lorries because in the most December Kalenjin used to use lorries for
9 transportation in the -- in the ceremonies. So most they preferred using
10 lorries. So these lorries passed just near (Redacted) --

11 PRESIDING JUDGE EBOE-OSUJI: Wait, please.

12 Please proceed, counsel.

13 MR OMOFADE:

14 Q. For the time being could you describe the lorries you saw. What
15 colour were they?

16 A. One was white and the other one was creamish like this colour on
17 the wall.

18 Q. And did you see if these lorries had any passengers in them, any
19 persons in them?

20 A. Yes, there were passengers in both lorries.

21 Q. Did you see how many there were?

22 A. They were but I could not -- it was very impossible to count
23 because those lorries had a big, big cover, on this side cover, you see.
24 So we could see them holding -- holding those bars. We could see many
25 hands holding those bars and some were -- could see the head up to this
26

1 place. Maybe they were trying to see around outside.

2 Q. Well, were these open-top lorries or closed lorries?

3 A. On the side where they were closed but at a certain level they
4 were -- there were bars.

5 Q. And do you know how many -- can you estimate how many were in
6 each lorry?

7 A. One could -- a lorry could -- I could estimate maybe in each
8 lorry there were 40 or 50 in each.

9 Q. And help us, were they -- do you know if they were men, women, or
10 children, or a mixture of all in these lorries.

11 A. What I can say I think they were men because whenever there were
12 women you could see them covering their head by -- I don't know -- they
13 usually covered their head. But they were men. They were not women.
14 Because where I was, it was a bit higher you could see -- you could not
15 see the whole body of them. You could see part of the heads.

16 Q. And did you know -- was it possible to tell what ethnic group
17 these occupants of the lorries were? Was it possible to tell?

18 A. Yes, I could hear them murmuring. They were speaking in -- but
19 whenever I picked two or three words from what they were speaking because
20 they were somehow happy. They were shouting where they were on the back
21 of the lorry. So they were Kalenjin because I could pick one or two
22 words what they were just shouting out.

23 Q. And I want you -- I want to take you back slightly to what you
24 said about the Kikuyu women who were carrying everything they could
25 carry. Can you describe the kinds of things that they were carrying? If
26

1 you can't remember, please say so.

2 A. Yeah, I saw some of them carrying a mattress, blankets, folding
3 with a rope on and hanging it on the head like this. And I saw them
4 carrying -- most of them were carrying mattress and blankets and -- with
5 that rope and moving on by walking.

6 Q. And did anything else happen? Did you see or observe anything
7 else that day?

8 A. Yes. Around 8.00 -- 8.00, 8.30, so the other side of where I
9 lived, at the other side I can call it -- the other side of location --

10 Q. Well, for the time being just tell us what you observed.

11 A. Okay.

12 Q. What did you observe?

13 A. So I started seeing Kalenjin youth forming around the upper area
14 of the place where I lived.

15 Q. And how could you tell that they were Kalenjin youths?

16 A. Those I could not see -- see them, see them from where I was. I
17 was a distance. I knew they were Kalenjin youth because a group -- they
18 started coming in a small group. Then after -- maybe
19 after (* indiscernible) they started shouting "Oooooo," so those people
20 who were on the other side from where I was. So it was this "Oooooo"
21 shouting they could -- that (* indiscernible) whenever they shouted, the
22 other small group shouted from the other side. So they were shouting in
23 intervals. And the way they were shouting in intervals, the number
24 started to increase, just -- they were not moving. They were just
25 shouting and the other side were shouting, the outside were shouting, and
26

1 the number kept on increasing the way they went on shouting.

2 Q. Okay. And you said they were forming around the upper area.

3 Now, don't tell us the location --

4 A. Yes.

5 Q. -- for the time being but just describe what you mean by the
6 upper area.

7 A. Where it was there was like a valley. So they were the upper
8 area of this valley.

9 PRESIDING JUDGE EBOE-OSUJI: Counsel, we will leave it there for
10 now.

11 MR OMOFADE: I'm grateful.

12 PRESIDING JUDGE EBOE-OSUJI: How much longer do you have in your
13 examination-in-chief?

14 MR OMOFADE: Mr President, it does look we're looking at the
15 second session of tomorrow. I hope to be able to complete within the
16 second session of tomorrow.

17 PRESIDING JUDGE EBOE-OSUJI: When you say "second session of
18 tomorrow" --

19 MR OMOFADE: Yes. So the first --

20 PRESIDING JUDGE EBOE-OSUJI: -- so before the lunch break?

21 MR OMOFADE: Before lunch, yes.

22 PRESIDING JUDGE EBOE-OSUJI: All right. See if you can cut out
23 some of the questions and so we can get to the point more quickly in
24 time. That might help us. We will return at 2.30 and we'll bring down
25 the blinds and escort the witness out for the lunch break.

- 1 (Closed session at 1.01 p.m.)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Recess taken at 1.02 p.m.)
- 15 (Upon resuming in open session at 2.39 p.m.)
- 16 (The witness entered court)
- 17 THE COURT USHER: All rise. Please be seated.
- 18 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 19 THE COURT OFFICER: We're in open session, your Honour.
- 20 PRESIDING JUDGE EBOE-OSUJI: Thank you, court officer.
- 21 Mr Omofade.
- 22 MR OMOFADE:
- 23 Q. Welcome back, Mr Witness.
- 24 A. Yes.
- 25 Q. Before the lunch break you were telling us how you happened to

1 hear the sounds that you described as "Wooooo" sounds and the Kalenjin
2 youth converging on a certain upper area. Do you remember telling us
3 that?

4 A. Yes.

5 Q. Can you tell us what happened afterwards?

6 A. As I said earlier, they were -- first group started saying
7 "Wooooo," then when they stopped the other group took over. So -- and
8 the way they went on saying that, the number of both sides went
9 increasing. So they -- it is -- they are calling the other Kalenjin to
10 join them. So the number went on increasing.

11 Q. Do you know what kind of number we are now talking about when the
12 others joined them?

13 A. Those who were -- others who started saying that, they were
14 around -- around 50 to hundred. So the way they went saying it we took
15 around -- almost keep half an hour so then there were very big number of
16 Kalenjin youth.

17 Q. But this larger number, can you estimate how many they would have
18 been?

19 A. The number I can estimate when I was leaving that area they were
20 more than 300.

21 Q. And what did this group do after that?

22 A. When they were in a big number they started now coming to where
23 we were, the lower ground. So -- at this area I and a neighbour of mine,
24 we were the ones who left there, we were the last people to leave this
25 area. We left there because they had started approaching us. And before
26

1 we could leave when one Kijana, he called them Kijana, that's the
2 gentleman. He came running towards where I was and I was with another
3 guy and they told us: Things are worse, so you better run and save your
4 life. And he pretending to pass us -- he went and joined the other
5 ground of Kalenjin who were on the other side.

6 Q. Did you say he pretended to pass us or he -- what did he do
7 before he joined the other Kalenjin on the other side? Just for the
8 transcript.

9 A. According to myself he didn't want to show those other Kalenjins
10 that he spoke to us -- to me and the guy who I was with.

11 Q. And when you say "Kijana," is it a spelling you have given
12 earlier, K-i-j-a-n-a?

13 A. Yes.

14 Q. Now, what happened to the group that was about 300, the group of
15 Kalenjin about 300, what -- where did they end up, do you know?

16 A. The way they were in big numbers we started running and they
17 started following us. I remember when we started running away from them,
18 I remember looking behind and saw around maybe 10 to 20 youth of
19 Kalenjins who were a bit faster running towards us with bows and arrow.
20 (*indiscernible) so as we were running I had the -- there were other
21 Kalenjins at the upper high area who were telling those who were
22 running -- chasing us, let me say that, that to leave us go and they
23 started now -- as they are coming -- coming down in a very big number.
24 And by the time they started dropping to this area, we had all vacated
25 there.

1 Q. Okay. And did you say this group had bows and arrows, this group
2 that came closer to you, this group of 10 to 20?

3 A. Yes.

4 Q. And what happened next?

5 A. So we were -- after running from that area we went to, there was
6 another open area where we went and stopped there because we -- we
7 wanted -- we didn't want to run far from our -- from our area that is
8 location -- we didn't want to go far from location 2. So we went a bit
9 further where there was an open area and we decided to stop there and see
10 how those who were following us, that they could come to that area. And
11 in this area there was also another -- there was a village which is not
12 located in -- on this paper -- there was a location which is not located
13 here.

14 Q. I will ask you about that location afterwards in private session,
15 but what happened when you got to that particular location?

16 A. So when we reached this location there was another group from the
17 other side coming from the other side. And as we were running to this
18 area, remember I told you they used to say "Woooooo." So those who were
19 behind us, remember they shout that word "woooooo." And the group --
20 there was another group to where we were heading but a bit further
21 responded. So we didn't go to the -- that -- towards that area. So we
22 decided to go to a certain place where there was open ground. And in
23 this area -- so that group -- other group started -- because they were at
24 a certain upper area also, they started now dropping towards that
25 location that I've told you is not indicated in the paper. So -- so
26

1 we -- it was a confusion. We couldn't know about this sound because it
2 was early in the morning and there were those people who were running and
3 those people who were coming after -- after them. So let me say that.
4 So we couldn't differentiate between the attackers and those who were
5 being attacked. So we decided to stop. It is when we were -- this --
6 that this area when we stopped we decided there was a plot which was
7 being built, the owner was contracting a house, and the house itself was
8 not completed. So we jumped in that plot and now because we are -- we
9 would not understand how he was going so we decided to stay there and
10 watch that group which was on the other side to see whether they were --
11 they were the attackers or they were the ones being attacked.

12 Q. Okay. Pause there. Your group at this time, how many were in
13 your group approximately?

14 A. When we -- when we left there -- when we left location 2, we were
15 the last people, we were two. And when we came to that location which
16 I'm telling you is not indicated here, we found another group of Kikuyu
17 people who were also camped -- who had come to there. So there were 30,
18 around 30 -- yeah, 30, not more than 30.

19 PRESIDING JUDGE EBOE-OSUJI: Counsel, if you're going to dwell on
20 that location, we may consider going into private session to give that
21 location a number, if that will help with easier understanding of the
22 testimony.

23 MR OMOFADE: [Overlapping speakers] --

24 PRESIDING JUDGE EBOE-OSUJI: If it's something you think would
25 work.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

Page 73

1 MR OMOFADE: I think it would work. I was trying to leave it as
2 long as possible to see how the flow of testimony could come out.

3 PRESIDING JUDGE EBOE-OSUJI: Why don't we go into private session
4 briefly, give it a number on the PIS, and come back out.

5 MR OMOFADE: We can certainly do that.

6 (Private session at 2.51 p.m.)

7 (Redacted)

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Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 74 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 75 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 76 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 77 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 78 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 79 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 80 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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Page 81 redacted – Private session.

Witness: KEN-OTP-P-0487 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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15 (Open session at 3.10 p.m.)

16 MR OMOFADE: And, Mr President, I don't see the document on my
17 screen. It may be that it does -- it does appear on other screens, but I
18 don't know if the witness has it either.

19 PRESIDING JUDGE EBOE-OSUJI: All right. You have a hard copy;
20 right?

21 THE WITNESS: Yes, I have --

22 PRESIDING JUDGE EBOE-OSUJI: All right, Prosecutor, we will
23 provide with a hard copy. At the end of it, you can give the hard copy
24 to the court officers and they will upload it. Let's not go back and
25 recreate that thing and say and do all that.

Witness: KEN-OTP-P-0487 (On former oath) (Open Session)
Questioned by Mr Omofade (Continuing)

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1 Are we in open session now?

2 THE COURT OFFICER: Yes, your Honour, we're in open session.

3 PRESIDING JUDGE EBOE-OSUJI: Thank you.

4 All right, Witness, can you -- you said at some point you were at
5 location 8.

6 THE WITNESS: Yes.

7 PRESIDING JUDGE EBOE-OSUJI: All right. Can you tell us what
8 happened from there.

9 THE WITNESS: Yes. I came -- so after running, I came to this
10 location 8 --

11 PRESIDING JUDGE EBOE-OSUJI: And you said you met a number of
12 people at location 8?

13 THE WITNESS: Yes.

14 PRESIDING JUDGE EBOE-OSUJI: Up to you said about 30 people you
15 met at location 8; is that correct?

16 THE WITNESS: Yes. I would like to describe something here. You
17 can see these two lines which -- they are below --

18 PRESIDING JUDGE EBOE-OSUJI: Location 8 --

19 THE WITNESS: The one and location 8 --

20 PRESIDING JUDGE EBOE-OSUJI: There are two lines we see
21 underneath --

22 THE WITNESS: Yeah. This symbolises a road. It was not a big
23 road but it is somewhere a car could pass. So this is the road we used
24 to pass to go to my house -- to go to my area. So it's just a road.

25 Shall I proceed?

26

1 PRESIDING JUDGE EBOE-OSUJI: Please.

2 THE WITNESS: So when I was in this location, 8, our -- we were
3 just over this road on --

4 PRESIDING JUDGE EBOE-OSUJI: You were over?

5 THE WITNESS: Just on the road. It was --

6 PRESIDING JUDGE EBOE-OSUJI: On the road. The road below
7 location 8?

8 THE WITNESS: Yes, location 8.

9 PRESIDING JUDGE EBOE-OSUJI: Okay.

10 THE WITNESS: And it was just close to -- you can see the other
11 line on the other side which is marked -- that is marked with that dash.

12 PRESIDING JUDGE EBOE-OSUJI: The line to the left --

13 THE WITNESS: Yes.

14 PRESIDING JUDGE EBOE-OSUJI: -- that looks like a railway line?

15 THE WITNESS: Yes.

16 PRESIDING JUDGE EBOE-OSUJI: Okay. Proceed.

17 THE WITNESS: So as we were here you can see from -- from
18 location 9 there were a group of Kalenjins from location 9 all the way
19 up -- from -- I can't remember the name but you can see near the side
20 indicated. All these here they were Kalenjins. So as we were here, the
21 groups were advancing from these areas --

22 PRESIDING JUDGE EBOE-OSUJI: From where?

23 THE WITNESS: -- from where I've indicated.

24 PRESIDING JUDGE EBOE-OSUJI: Okay. You said you last mentioned
25 location 9 and you say you could see Kalenjins at location 9. Is that

26

1 what you were saying?

2 THE WITNESS: Yes.

3 PRESIDING JUDGE EBOE-OSUJI: And what was happening then?

4 THE WITNESS: The big group of Kalenjin attackers came from --

5 all the way from location 9 all the way up, up, up until location --

6 location 2, as you can see I have indicated it there on the paper, the

7 other paper --

8 PRESIDING JUDGE EBOE-OSUJI: Okay. And we do see location 2, a
9 place that corresponds with location 2 on the sketch, although it is not
10 marked location 2, but that's all right.

11 THE WITNESS: Yes.

12 PRESIDING JUDGE EBOE-OSUJI: All right. Continue.

13 THE WITNESS: So they were all at this area. So when we reached
14 a group -- another group -- the group who had followed us had -- they
15 stopped at location 2 which is not marked in the map because it was a
16 higher area. We were -- and when you come to location 8 and location 9,
17 I think -- location 8 and location 10, they were -- they were -- the
18 lower area. So when --

19 PRESIDING JUDGE EBOE-OSUJI: Wait one second. So the location on
20 the PIS that said location 2, we see the name also on the map. You are
21 saying that it is raised area, it is higher plains on the topography, it
22 is higher ground?

23 THE WITNESS: Yes. All the area -- all this area from a bit --
24 from location 9 a bit -- how can I recall it? From location 9 you move a
25 bit and then there is a line which I have drawn all the way -- so all
26

1 this area is upper area and the other area is down.

2 PRESIDING JUDGE EBOE-OSUJI: Okay. Let me understand. What your
3 are saying is that locations 8 and 10 --

4 THE WITNESS: Mm-hmm.

5 PRESIDING JUDGE EBOE-OSUJI: -- are lower than location 2?

6 THE WITNESS: Yes. Yes, that's what I'm saying.

7 PRESIDING JUDGE EBOE-OSUJI: All right. Continue.

8 THE WITNESS: Okay. So as we were here you can see at location 8
9 there is things like boxes I have drawn there, those were -- they were
10 the houses of the people, and it happened that one of the houses that we
11 hid was in this location 8, just across the road. And from this -- these
12 boxes I've wrote here, you can see there is -- I have never indicated
13 anything on that area, it was just an open area. So this open area is
14 when -- where these -- there were these attackers attacked this -- this
15 person I was referring -- I was talking to was a village elder and that
16 was where they killed him.

17 There was also a commotion of -- there was also a commotion of
18 war -- of people fighting, but we could not -- I could not tell who were
19 being attacked and who were being attacked, because it was early in the
20 morning. So when this guy I'm talking about, who after we have seen what
21 was going on in this area, we decided to come to location 8, just across
22 the road you come to location 8. So from location 8 you can see there is
23 a word just a bit further, a bit further I have indicated there is a word
24 there --

25 PRESIDING JUDGE EBOE-OSUJI: There is a body of water you said?

26

1 THE WITNESS: Huh?

2 PRESIDING JUDGE EBOE-OSUJI: Sorry, you say there is what?

3 THE WITNESS: A word.

4 PRESIDING JUDGE EBOE-OSUJI: How do you spell that?

5 THE WITNESS: The word quarry, that's what I mean.

6 MR OMOFADE: Your Honour, I believe he's indicating the word, the
7 five-letter word --

8 PRESIDING JUDGE EBOE-OSUJI: Sorry, sorry, sorry, sorry. I see
9 that. My apology. I didn't follow. All right. So there is -- okay --
10 I see the word indicated. I believe we can see a quarry.

11 THE WITNESS: Yes.

12 PRESIDING JUDGE EBOE-OSUJI: All right.

13 THE WITNESS: So all this area was an open area, there were no
14 houses by it. So when we came to this location 8, part of -- so there
15 was a small road which I had indicated here but it divided location 8 and
16 this open area. So this is where we came back. And as we were here, it
17 was when a young man who -- who were among the group of this village
18 elder came and met us at location 8. He was very, very terrified and
19 afraid. So when he met us here, that is, when he started explaining to
20 us what had happened so it was a way of cautioning us not to go towards
21 location 9 because that is where there was a public -- we could get a
22 public transport. And he also cautioned us that there was no transport
23 that was operating at that day.

24 PRESIDING JUDGE EBOE-OSUJI: Thank you.

25 Prosecutor, proceed.

26

1 MR OMOFADE: I'm grateful, your Honour.

2 Q. So after he had told you that it would be impossible for you to
3 get public transport that day, what did you decide to do?

4 A. So we decided to stay here at location 8 because we could not
5 trust -- we could not go anywhere because this location from -- this
6 location 8 onwards, it was populated. There were houses all over. And
7 we decided to stay at location 8 watching the attackers who were at
8 location 2 and the far side of -- especially location 2 because it was
9 closer than where we were. So we were just at -- as we were here at this
10 location 8, I remember the attackers from location 2.

11 Now, they had multiplied to -- they were very lot -- I can give
12 them to be 800 or around thousand because they were all on this high
13 ground areas. Whenever you could look up at them you could only see only
14 youth, Kalenjin youth, come with bows, some shouting. I remember they
15 were shouting call -- calling non-Kikuyus to join them when we were at
16 this area. So they started coming towards us, ascending towards us. So
17 as we were here, we were afraid and we could not move in the -- anyhow.
18 So we just waited. By good luck I can say two -- there were two police
19 officers. I can't -- I don't know where they came from, but I saw them.
20 So as these attackers came towards us where we were, these two police
21 officers, they just -- they didn't want to be known that they're among
22 us. So the -- and the -- they didn't want to be known that they are
23 there. So when these attackers came to location 8, they started burning
24 because some of the people had vacated this location 8. They started
25 burning this -- this location 8 -- these houses at this location 8. So
26

1 when they were doing that -- and so we couldn't know where to go and
2 where to run, so we decided -- we decided to stay there --

3 Q. Okay --

4 A. -- so --

5 Q. Just pause for a minute. I'll certainly allow you to continue.
6 I just want to clear up a number of things.

7 A. Okay.

8 Q. When you say they started burning, firstly, is it all the 800 or
9 thousand youths, Kalenjin youths that descended down to location 8? Is
10 it all of them, do you know?

11 A. The way they were ascending on us, it is as though they were --
12 they were communicating, a certain group code -- start ascending towards
13 us a group of around -- I can guess to be 30 to 40 youth.

14 Q. Okay. And when they started burning, did you see them burning
15 the houses from where you were, from where you were?

16 A. Yes. Where we were we could see the way they were coming, and we
17 could see them burning those houses because they carried jerrycans and
18 they had a stick and they folded a cloth on this stick. So when they
19 threw the petrol in the house, they could light that cloth and then throw
20 that -- throw that cloth on the fire. I think we were also putting
21 petrol on that cloth.

22 Q. And what did your group do? Did you -- you said you could not
23 escape so you stayed there. How did this end? Where did you end up?

24 A. Yes, I remember when they started attacking us and burning
25 houses, I saw two policemen. I don't know whether they were in that --
26

1 because there was a Land Cruiser in section 8 -- in location 8 on that
2 open area, it was trying to -- I think it was trying to disperse the
3 groups that were -- I remember fighting in this area. So the
4 Land Cruiser was only moving -- it was not stopping, just moving, moving
5 all around among the people. People -- whenever the Land Cruiser could
6 come this way, they would run this way, whenever they were this way, they
7 would run that way, so there was that commotion. So those police
8 officers, when they were there, these Kalenjin youth went on burning.
9 And when they saw what they were doing, they tried to shoot on the air,
10 but where we were we could hear them because it wasn't far, we could hear
11 them saying -- saying that is -- that is bluff, that is not a police --
12 these are people who are scaring us. They were saying -- they were
13 encouraging those who were ascending on us to come -- to come and attack
14 us.

15 So it is at this point that these police officers -- they saw how
16 these youth -- the way they were coming to us, they go -- they started
17 increasing in number, they were grouping around 20 youth, and then after
18 five minutes another 20 youth joined them and then reinforce them, that
19 is the way they were grouping towards us. So as the police officers saw
20 the number increasing, I remember they shot one of the attackers. And on
21 that -- one of the attackers was shot it was when they retreated and went
22 back to location 2, the upper area. So as they were here, around five
23 minutes -- ten to five minutes, as we were still here we saw another two
24 administration police officers emerge among the Kalenjin who were in the
25 upper area.

26

1 PRESIDING JUDGE EBOE-OSUJI: Okay. You will need to --
2 Prosecutor, you will need to lead him from there on where he just
3 stopped with --

4 MR OMOFADE: [Overlapping speakers] --

5 PRESIDING JUDGE EBOE-OSUJI: -- two administration police
6 officers emerged. You will need to -- when I finish what I am going to
7 do next, you will need to lead him from there and move forward.

8 In the meantime, Witness, in your testimony, your narrative now,
9 you've mentioned police officers and you mentioned Land Cruiser. You
10 also mentioned shooting in the air. Let's see what you're saying. What
11 was the relationship between police officers and the Land Cruiser, the
12 police officers you mentioned earlier? Was there any relationship to the
13 Land Cruiser and the police officers?

14 THE WITNESS: The police officers whom I saw? Well, where I
15 don't know if -- because they -- the Land Cruiser had regular police
16 officers --

17 PRESIDING JUDGE EBOE-OSUJI: All right. So the Land Cruiser was
18 a police Land Cruiser?

19 THE WITNESS: Yes, it was a police Land Cruiser.

20 PRESIDING JUDGE EBOE-OSUJI: Thank you. And you also -- and that
21 is the Land Cruiser you said the Land Cruiser would go one way and the
22 youth would run another way. Is that what you were talking about?

23 THE WITNESS: I was saying this, where we were --

24 PRESIDING JUDGE EBOE-OSUJI: No. I'm saying is it the same
25 Land Cruiser you said -- earlier in your story you said was trying to
26

1 disperse the youth. The Land Cruiser would drive one way and the youth
2 would run the other way. Is that the police Land Cruiser?

3 THE WITNESS: Yes, it is Land Cruiser.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you. You also said something
5 about shooting in the air. Who was shooting in the air and why?

6 THE WITNESS: The police officers --

7 PRESIDING JUDGE EBOE-OSUJI: Okay. So the police officers were
8 the ones who shot in the air?

9 THE WITNESS: Yes.

10 PRESIDING JUDGE EBOE-OSUJI: Do you know why?

11 THE WITNESS: Yes.

12 PRESIDING JUDGE EBOE-OSUJI: Why do you think they shot in the
13 air?

14 THE WITNESS: They -- they were shooting in the air to scare the
15 attackers, Kalenjin attackers --

16 PRESIDING JUDGE EBOE-OSUJI: Thank you.

17 Prosecutor, proceed.

18 MR OMOFADE:

19 Q. And you say there came a time -- at some point two police
20 officers -- I know the transcript didn't pick it up but I heard you say
21 emerged from amongst the Kalenjin attackers; is that correct? Is that
22 what you said?

23 A. Yes.

24 Q. How do you know they came from amongst the Kalenjin group?

25 A. As you can see, we were at location 8 and they emerged from
26

1 location 2 on the map, and location 2 was the upper -- it was upper area.
2 So when we were at location 8 you could see the whole of location 2,
3 anybody coming from that among location 2 you could see him. It wasn't
4 far.

5 Q. And were they dressed in normal police uniform or what were they
6 wearing?

7 A. Yes, they were wearing the normal police uniform.

8 Q. Okay. And what happened after these police officers emerged from
9 the Kalenjin youth?

10 A. So when they came -- remember, the two officers who were on our
11 side had shot one Kalenjin officer -- one Kalenjin youth at this place
12 indicated quarry here. So when these two police officers emerged from
13 the Kalenjin, they had their arm -- they were armed with their guns, they
14 drop -- they came down to near where we were. And the police officers
15 who were on our side -- I remember they exchanged some -- a few words
16 arguing: Why are you shooting our people? And they -- just they had a
17 bit -- a bit of talk. And then the two officers who had -- who had come
18 from the Kalenjin side, they said that they had no problem, they want
19 only to pick the dead body and that's all they wanted. So -- so where we
20 were, they were told they have no problems, they can pick their body and
21 we stayed there.

22 So after -- so when we were here, now the Kalenjin who were at
23 this upper area, very big number of them came down, dropped, they came --
24 they dropped from the -- our area and they came to this other area. They
25 were around -- more than -- let me -- the first group was around more
26

1 than 50 because they were very big number when they ascended to this
2 place. So I remember when they took the body the two administration
3 police officers who had come from their side didn't go with them. I saw
4 them, I saw one of them taking cover at this place, maybe at this place
5 called quarry here, because it was an open area, you could see anything.
6 So one of them took cover, and the other one came to this road, this road
7 on section 8, the road that I have said -- indicated. So he stood on
8 this road. So as they did that another group of Kalenjin dropped -- now
9 they came in a full force without fear. So as we were here we saw --

10 PRESIDING JUDGE EBOE-OSUJI: Wait. Prosecutor, try breaking the
11 stride so we don't have a long blob of narrative on the transcript. You
12 have to come in from time to time to break the thing so we can see what
13 happened next.

14 MR OMOFADE: Yes. I -- I -- I have done it in the past but he's
15 actually proceeding along the lines of the question I was going to pose
16 next [overlapping speakers] --

17 PRESIDING JUDGE EBOE-OSUJI: It's better to ask those questions
18 to use it than to have a non-interrupted flow of narrative on the
19 transcript.

20 MR OMOFADE:

21 Q. Witness, please pause occasionally so I can ask a few questions.
22 I -- now, you -- you got to the point where you said there was one of the
23 police officers in the middle of the road and this is the road that you
24 describe as running underneath location 8; is that right?

25 A. Yes.

1 Q. Now, then you say that the other Kalenjin youths then emerged
2 from the upper ground. Is that what happened?

3 A. Yes.

4 Q. Then what happened after that state? What did the group that
5 emerged from the upper ground, what did they do?

6 A. They started burning location 8 and -- because number -- they
7 started burning now and we were afraid. We decided to take cover.

8 Q. And where did you take cover? Just use the map -- the sketch to
9 describe, please.

10 A. Yes. In location 9 -- no, location 10, in location 10, that --
11 that is where we took cover.

12 Q. And how long were you in location 10 where you took cover?

13 A. Maybe around 30 minutes because as we took cover we could see
14 them -- all this location 8 was in fire and they were coming to
15 location 10, they had started burning some of the houses because location
16 8 is a mix up of Kikuyus, Luhyas, and other tribes.

17 Q. And where did you -- where did you go when you left about
18 30 minutes afterwards?

19 A. Yes, I remember we took cover on our -- it was a plot and it
20 belongs to a Luhya, that's where we took cover. We stayed there for --
21 for a very short period. As we stayed there, the group from location --
22 that was returning from location 9, location 2, all the group were in
23 location 8 and 10. They are now -- started covering. They were on this
24 railway. You can see they had covered all of this area. So as we were
25 in this hiding, while we were covering our -- she was a Luhya, part of a
26

1 Luhya, she told us not to speak our mother tongue, just to stay and watch
2 the movement of the attackers.

3 Q. Pause there. How many were you at this point in your group that
4 were hiding in this farm of the Luhya lady?

5 A. I remember most of our group, once they saw Kalenjins ascending
6 also got afraid and everyone took his own way. I remember we were told
7 because I had my cousin and he was new in that area so I couldn't leave
8 him. So we took cover in this area.

9 Q. When she said you should not speak your mother tongue and to stay
10 and watch the attackers, did the attackers actually come to her farm?

11 A. Yes, they had surrounded all that area and they were moving --
12 there was a gate in this plot and they were moving along that road --
13 they were -- after the gate there was a road and they were all in various
14 areas of the -- they had -- can't say combed all these areas.

15 Q. And did you eventually leave the Luhya woman's farm?

16 A. Yes, we left. We eventually left when the youth had passed so we
17 could not follow the road, so we decided to jump the fence to the next
18 plot because the plots were 50 by a hundred, measuring 50 by a hundred,
19 so we started to jumping from this plot to another plot. And as we were
20 going to jump to another plot, I saw a gate of -- the gate of that woman
21 written in a very big number, the other side of it an ODM and the other
22 side was written 41.

23 Q. Which woman are you talking about?

24 A. Where we had taken cover.

25 Q. And what did you understand this writing "ODM" and "41," what did
26

1 you understand it to mean?

2 A. At that very moment, I had no idea about it. But as we -- as I
3 moved on towards -- as I was running when I kept seeing so many plots
4 that belonged to non-Kikuyus, they had this label, ODM 41. So later I
5 came to understand that it meant ODM was supported by 41 tribes against
6 one tribe, so it was Kikuyu.

7 Q. Had you seen this sign anywhere else before, ODM 41?

8 A. I hadn't seen it anywhere. I hadn't seen it anywhere.

9 Q. How do you know that only the houses of non-Kikuyu had this sign?

10 A. Because as we were in this house and as we were moving on, those
11 houses or those plots that did not have that label, ODM 41, could see
12 them burning, they were set on fire.

13 Q. But the houses that were already on fire, how could you tell, if
14 they were already burning, how could you tell that there hadn't been "ODM
15 41" written on them before the burning?

16 A. Pardon?

17 Q. You say the houses that had -- that were burning did not have
18 "ODM 41." How do you know whether they had "ODM 41" before they started
19 burning?

20 A. As I said, that sign was written on the gate and those were from
21 the gate you could see there was no other that sign ODM 41. And if the
22 plot had no gate, it had a fence, you could see them written on the posts
23 of the fence, ODM 41.

24 Q. Did you -- when you left the Luhya woman's farm and saw this
25 burning -- these burning houses, where did you go after that? And please
26

1 use the list if you need to.

2 A. Pardon?

3 Q. My question was: Where did you go afterwards.

4 A. Mm-hmm --

5 Q. And if you need to refer to something that will identify you,
6 please use the list of locations in front of you.

7 A. Okay. So from here after we left this area so we ran maybe I --
8 on this road I didn't indicate it far beyond where it went, but now we
9 went on jumping from plot to plot, plot to plot, and we -- we came to
10 our -- a certain area, another place which was an open area. So we
11 decided to stop there a bit. So as -- before we could -- I remember we
12 could jump more, I -- at this upper area, that is, location 2, I saw when
13 I was in location 10, I saw lorries that I had seen in the -- in the
14 morning. Well, I can't say that they were the real -- the ones I saw in
15 the morning, but they resembled the lorries that I saw in the morning.
16 They were at location 2. And I could see people dropping from that
17 lorry.

18 Q. And when you saw people dropping, what kind of people were
19 dropping from these lorries? Were they men, women, children, or a
20 mixture of all of these?

21 A. There was no women we could see, but they were -- most of them
22 were youth.

23 Q. Can you describe the youths that you saw emerging from these
24 lorries?

25 A. I can say they were -- though I was not so close to get their
26

1 ages, but they were the youth -- they weren't older. They were not older
2 but according to how they were jumping from the lorry and how they were
3 behaving.

4 Q. Did you know who these lorries belonged to?

5 A. At that present time I could not tell, but later when things came
6 to cool (Realtime transcript read in error "call"), I came to know that
7 they belonged to a businessman, lorry businessman, older, Jackson Kibor.

8 Q. And --

9 PRESIDING JUDGE EBOE-OSUJI: Counsel, one second. Line 13, I
10 believe the word is "cool," not "call."

11 MR OMOFADE: That's correct, your Honour.

12 PRESIDING JUDGE EBOE-OSUJI: All right.

13 MR OMOFADE: That's what I heard.

14 PRESIDING JUDGE EBOE-OSUJI: One -- one -- Witness, about
15 these -- the signs you said you saw, you started seeing when you were
16 fleeing, the sign "ODM 41," do not tell us now where you live or where
17 you lived at the time. But in your neighbourhood did you -- was it a
18 mixed neighbourhood or was everybody Kikuyu in your neighbourhood?

19 THE WITNESS: I didn't get you.

20 PRESIDING JUDGE EBOE-OSUJI: Around your neighbourhood -- I mean
21 amidst you, where you lived, neighbours, your neighbours, what were their
22 ethnicities, the ethnic groups of the -- your neighbours at the time? Do
23 not tell us where you live.

24 THE WITNESS: Yes, I get it. Majority were Kalenjin and very few
25 Luhyas and a few Luos, like two or three.

1 PRESIDING JUDGE EBOE-OSUJI: Your neighbours at the time?

2 THE WITNESS: Yes.

3 PRESIDING JUDGE EBOE-OSUJI: Did you see the sign "ODM 41" on
4 their houses before all this hell broke loose and you started running?

5 THE WITNESS: In location 2, when I left location 2, it was in
6 the morning and I was the last person from -- my neighbours were (Redacted)
7 (Redacted) -- but my plot was (Redacted). So --

8 PRESIDING JUDGE EBOE-OSUJI: No, no, no, I didn't ask you to
9 describe in detail your house --

10 THE WITNESS: Okay.

11 PRESIDING JUDGE EBOE-OSUJI: -- and where you live. What I
12 wanted to know is whether you had started seeing the same sign on your
13 neighbours' houses, your neighbours who were not Kikuyu.

14 THE WITNESS: Yes, at location 2 I didn't see it.

15 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, please proceed.

16 MR OMOFADE:

17 Q. You were telling us about whom you heard later on that these
18 lorries belonged to. Do you remember saying they belonged to -- you
19 heard they belonged to Jackson Kibor?

20 A. Yeah.

21 Q. And you said he was a businessman, a lorry businessman. Did you
22 know this before you spoke -- before you heard this information?

23 A. I didn't knew him before.

24 Q. What time did you get to your own home? And don't tell us where
25 you live, but what time did you get to your home on the day of this whole
26

1 incident you're talking about?

2 A. I didn't get your question, but are you referring to location 1
3 or location 2?

4 Q. Well, where did you go after this encounter with the lorries that
5 were carrying these youths? Where did you go afterwards?

6 A. So we were -- I was heading to location 1. It was a distance
7 from where I was to location 1, so we had to pass through some few farms
8 to come to location 1. Maybe I can go on giving those areas as locations
9 so that maybe you can just understand that.

10 Q. Well, I don't want to ask you about the places you went as much
11 as where you ended up arriving.

12 A. Okay. I ended up arriving -- after all what had happened, I
13 ended up arriving at location 1.

14 Q. And what did you do at location 1 when you got there?

15 A. It was late and I was really tired, very, very tired, and I was
16 tired and hungry so my mind was through and I had -- I was with number 7
17 and number 8, and I was tired. So my duty at that time was to make that
18 they reached -- they reached location 1 very safely because along the way
19 there were youth harassing people and robbing anything, stealing from
20 shops and stealing everything, just ...

21 Q. All this -- this incident that you've described where you were in
22 location number 8, and so on, where were -- where were person 7 and
23 person 8 at this time when this was happening -- when you were going
24 through all this experience in location 8? Where were person 7 and
25 person 8?

26

1 PRESIDING JUDGE EBOE-OSUJI: Witness, just as a where they were
2 and do not add any more. If where they were --

3 THE WITNESS: They were in church.

4 PRESIDING JUDGE EBOE-OSUJI: [Overlapping speakers] locations --

5 THE WITNESS: They had gone to church.

6 MR OMOFADE:

7 Q. And also be careful. Don't -- don't say which church. Had they
8 gone to church for a normal church service or why had they gone to
9 church?

10 A. They had gone there to take cover.

11 Q. And where was person 10 also at this time?

12 A. At this time I had not met person 10.

13 Q. And when did you meet up with person 7 and person 8 again?

14 A. I remember they called me because they had a phone. They called
15 me and they were afraid. They were afraid because they heard that
16 Kalenjin people had started burning people in the church.

17 Q. And when they called you, how did you meet up? Did you go to
18 them or did they come to you?

19 A. I went to them because I knew what --

20 PRESIDING JUDGE EBOE-OSUJI: Wait, wait, wait. He just asked you
21 the question and you've answered it. Did they come to you or did you go
22 to them. You said you went to them.

23 THE WITNESS: Yes.

24 PRESIDING JUDGE EBOE-OSUJI: That's all the answer we need for
25 now.

1 THE WITNESS: Okay.

2 PRESIDING JUDGE EBOE-OSUJI: If he has more questions on that, he
3 will ask you.

4 MR OMOFADE: I'm grateful, your Honour.

5 And, your Honour, it does appear that the following questions
6 ought to be in private session. I don't know if we can cover much
7 before -- before we adjourn or not.

8 PRESIDING JUDGE EBOE-OSUJI: I don't think so. It's one minute
9 to adjournment time.

10 MR OMOFADE: In that case, I propose to continue in the morning,
11 and I can actually assure your Honours that I will be finishing in the
12 first session. I've probably got an hour left to go.

13 PRESIDING JUDGE EBOE-OSUJI: Good. Remember what I advised
14 earlier, there is -- in North American courtrooms there's an expression:
15 Forget the windup and make the pitch. It's a baseball terminology.
16 Sometimes it helps to make the pitch, get straight to the point, and the
17 details, if we need them, can come later.

18 MR OMOFADE: Your Honour, it's appreciated. It's -- I believe
19 it's the same in UK courtrooms as well.

20 PRESIDING JUDGE EBOE-OSUJI: Good.

21 We will now bring down the blinds and escort the witness off the
22 witness-stand and then we will rise for the day.

23 (Closed session at 4.01 p.m.)

24 (Redacted)

25 (Redacted).

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (The hearing ends in closed session at 4.01 p.m.)