

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 Friday, 22 November 2013

10 (Upon commencing in open session at 9.37 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. Court officer,

14 please call the case.

15 THE COURT OFFICER: (Interpretation) Good morning. Situation in

16 the Republic of Kenya, in the case of The Prosecutor against William

17 Samoei Ruto and Joshua Arap Sang, reference ICC-01/09-01/11. And this is

18 a public session, Mr President.

19 PRESIDING JUDGE EBOE-OSUJI: Appearances, please.

20 MR STEYNBERG: Good morning, Mr President, your Honours

21 appearances for the Prosecution remain the same this morning.

22 PRESIDING JUDGE EBOE-OSUJI: Thank you. Mr Khan?

23 MR KHAN: Mr President, your Honours, good morning. The

24 appearances for the Defence remain the same, save that Mr Ruto is in

25 court and right at the back, Mr Anand Shah, our legal assistant is in

1 court. Otherwise the composition remains as yesterday.

2 PRESIDING JUDGE EBOE-OSUJI: Thank you.

3 MR KIGEN-KATWA: Mr President, Mr Sang's team remains the same.

4 Thank you.

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

6 MR NARANTSETSEG: Good morning, Mr President, your Honours. For

7 the victims, Orchlon Narantsetseg and my colleague Carolin Herzig today.

8 Thank you.

9 PRESIDING JUDGE EBOE-OSUJI: Before we come to the business of
10 the testimony of the witness on the stand, Prosecutor, any update on
11 where we stand with the next witness to be called?

12 MR STEYNBERG: Your Honours, no update save that in response to
13 the request sent by the Chamber's legal officer, we have asked the
14 witness 409 not to travel until there is a determination from the
15 Chamber. The situation remains that of the three witnesses, we have been
16 instructed to contact, Witness P32 has indicated he is not available for
17 the rest of this year. Both P128 and P409 are available but P -- only
18 P409 is in the position to travel immediately. The result being that he
19 could be ready to testify, if he leaves shortly, by Wednesday next week.
20 P128 would probably not be able to testify before Friday next week.
21 Those are, it seems, our choices, your Honours, and whatever the Court
22 directs we will follow that procedure.

23 PRESIDING JUDGE EBOE-OSUJI: So P128, you say, if it falls on
24 that witness to testify, would be available only on next Friday, that is,
25 the 29th?

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1 MR STEYNBERG: Your Honours, if the normal pre-trial preparation
2 schedule is followed that would be the case. The difficulty is he can
3 only be handed over to the VW on Sunday. VWU require a medical clearance
4 before he can fly which I'm told can only take place on Monday.

5 PRESIDING JUDGE EBOE-OSUJI: Can you put dates on those?

6 MR STEYNBERG: Yes, your Honour. The hand-over would be on the
7 24th to the VWU. Medical assessment and flight out of the hand-over
8 destination on Monday, the 25th. The arrival would be Tuesday morning,
9 the 26th. VWU insist on a rest day because of the overnight flight which
10 means we could only do the witness preparation on Wednesday, the 27th.
11 Unless the court were to waive the 24-hour rule between preparation and
12 trial starting, we would therefore only be able to start on Friday, the
13 29th.

14 PRESIDING JUDGE EBOE-OSUJI: And if the Court were able to waive
15 the 24 hours?

16 MR STEYNBERG: Your Honours, this witness's evidence is fairly
17 limited. The statement, witness statement, contains some nine pages of
18 narration. We think that this witness will be fairly limited. We
19 believe that we could accommodate both the witness preparation and
20 witness familiarisation conducted by VWU in one day. So we believe that
21 it would be possible for this witness to start testifying on Thursday,
22 depending on, obviously, what my learned friends have to say and the
23 Chamber's orders.

24 PRESIDING JUDGE EBOE-OSUJI: The 28th?

25 MR STEYNBERG: Thursday, the 28th, yes, your Honour.

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1 PRESIDING JUDGE EBOE-OSUJI: All right. And then if we are still
2 working on the hypothesis of -- the possibility of this witness --

3 MR STEYNBERG: Yes.

4 PRESIDING JUDGE EBOE-OSUJI: -- being the one, not making any
5 decision in that regard.

6 MR STEYNBERG: Of course.

7 PRESIDING JUDGE EBOE-OSUJI: But if it is the case that the
8 witness is able to start on the 28th, you would be able to complete the
9 examination-in-chief when?

10 MR STEYNBERG: Your Honours, if there are no interruptions,
11 I would say by the first session of Friday morning.

12 PRESIDING JUDGE EBOE-OSUJI: We cannot say if there are no
13 interruptions. This is a litigation experience. We have to factor in
14 what ordinarily goes on in the course of litigation. So keeping that in
15 mind, if he were then, or she, I don't know which pronoun to use, were to
16 start on the 28th, would -- you can complete by what time in the normal
17 course of events?

18 MR STEYNBERG: My estimate would be by the morning break on
19 Friday, the 29th.

20 PRESIDING JUDGE EBOE-OSUJI: All right.

21 MR STEYNBERG: If I can add one further piece of evidence, my
22 understanding is that Witness 128 will testify in English, which might
23 speed things up; whereas Witness 409 will require an interpreter.
24 Witness 409's evidence is somewhat more extensive. He does also
25 implicate both of the accused, so I anticipate there might be a little
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1 bit more cross-examination.

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

3 Mr Kigen-Katwa?

4 MR KIGEN-KATWA: Mr President, this witness touches my client.

5 PRESIDING JUDGE EBOE-OSUJI: Which one? We have spoken about two
6 witnesses, 409 and 128.

7 MR KIGEN-KATWA: 409, Mr President, on an issue which it is
8 alleged he was in --

9 PRESIDING JUDGE EBOE-OSUJI: Let's not discuss the details so we
10 can speed up the --

11 MR KIGEN-KATWA: And, Mr President, subject to what Mr Ruto's
12 team - and I'm saying this out of regard for them because the witness
13 mentions him extensively - we would not have a problem ourselves with
14 that Witness 409, Mr President.

15 PRESIDING JUDGE EBOE-OSUJI: You would not have difficulty
16 with --

17 MR KIGEN-KATWA: Yes.

18 PRESIDING JUDGE EBOE-OSUJI: -- Witness 409 --

19 MR KIGEN-KATWA: Yes, but --

20 PRESIDING JUDGE EBOE-OSUJI: -- so you can accommodate --

21 MR KIGEN-KATWA: Yes.

22 PRESIDING JUDGE EBOE-OSUJI: -- Witness 409?

23 MR KIGEN-KATWA: Yes. But I would want to say I defer my
24 position to what Mr Ruto's team says.

25 PRESIDING JUDGE EBOE-OSUJI: That's understandable and that's
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1 understood that they are part of the case as well.

2 MR KIGEN-KATWA: Thank you, Mr President.

3 PRESIDING JUDGE EBOE-OSUJI: Mr Khan?

4 MR KHAN: Mr President, of course, we have previously told the
5 Prosecution and the Court that we would be in very significant
6 difficulties to cross-examine either 128 or 409. Both of these witnesses
7 deal with Nandi Hills and both of these witnesses were scheduled to
8 appear very far down in the witness order, namely, witnesses 26 and 27
9 respectively. Your Honours, we of course --

10 PRESIDING JUDGE EBOE-OSUJI: You mean numbers 27 and 28 in the
11 lineup?

12 MR KHAN: In the order.

13 PRESIDING JUDGE EBOE-OSUJI: In the order.

14 MR KHAN: In the order of witnesses. Your Honours, of course
15 there has been disruption and we have attempted in good faith to be as
16 flexible as possible so that the trial can proceed without disruption.
17 Your Honours, we put forward an array of witnesses that we were able to
18 cross-examine. We all know, for example, that there is difficulties with
19 442, 469, 488. The two experts were also put forward as possible
20 witnesses to slot in. So it's not for want of trying, the Defence put
21 forward a menu of witnesses, so to speak, that we could cross-examine at
22 short notice, but, your Honours, a point comes where our desire to move
23 on must be balanced by the need to effectively move on. We can't --
24 unfortunately, I would not be in a position to properly cross-examine
25 either 128 or 409.

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1 We did anticipate that our investigations were staggered so that
2 in the limited time that we had, we could focus based upon the witness
3 list and the witness order that was given by the Prosecution, and I've
4 previously said in court and by way of e-mail yesterday in relation to
5 409, that we would not be in a position to adequately confront these
6 witnesses and question them before the new year. So, your Honour, that's
7 my submission on the matter.

8 We have been flexible. I hope the Court will accept, both in
9 relation to the witnesses we were able to deal with, and indeed, to
10 change our diaries and all the rest of it so that we could be here today
11 as directed by the Court. But, your Honours, unfortunately, it seems
12 because of a variety of factors with the various witnesses that the
13 Prosecution have contacted, it doesn't seem that there is a witness that
14 is available to the Prosecution that would allow us to proceed
15 effectively to examination-in-chief and cross-examination next week.
16 Your Honour, the only other option, which is, in my respectful
17 submission, never the best option but I put it forward, is of course if
18 the Prosecution and the Court are minded this a witness be called only
19 for the purposes of examination-in-chief. Of course, there would be no
20 objections to that with the caveat that the witness would have to be
21 recalled later for the purposes of Defence -- effective Defence
22 cross-examination, but I cannot proceed to P128 or P409 next week,
23 unfortunately. I hope that details our position clearly.

24 PRESIDING JUDGE EBOE-OSUJI: Do both witnesses come by your case
25 in equal measure, 128 and 409? In equal measure?
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1 MR KHAN: Yes, your Honour. Both deal with five meetings, five.
2 It's not an issue that I can just rush over. Five different meetings are
3 alleged. And these are one of the difficulties that we've put forward in
4 pre-trial motions about allegations that are not sometimes pled in the
5 DCC or the pre-trial brief but are raised in the witness evidence that we
6 have to be in a position to confront, unless it's struck out by order of
7 the Court so that the Defence is not put to these strenuous obligations
8 of confronting matters not alleged in the charges. But, your Honours, we
9 at the moment, absent such an order, we have to be in a position to at
10 least at the most basic level address allegations that the Prosecution
11 witnesses are raising in their proposed evidence.

12 PRESIDING JUDGE EBOE-OSUJI: I'm not sure that -- I see your
13 effort to answer my question but I still must ask you, the fact that both
14 witnesses discuss five meetings, does that necessarily mean that they
15 encumber your case in equal measure?

16 MR KHAN: Your Honour, of course, that's a matter for the Judges
17 in due course, but from my perspective, yes, at this moment I cannot say
18 that one is lighter than the other. Of course, in due course I'll make
19 submissions as to the merits or deficiencies of these witnesses, but at
20 the moment I must be in a position to adequately confront these witnesses
21 and I'm not unfortunately in that position despite -- it's not for want
22 of trying. It's because of the combination of change of witness orders,
23 change of the court calendar, and in the end, it's -- in my respectful
24 submission, it would be unfair to require us to deal with these witnesses
25 that we were not required to --
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1 PRESIDING JUDGE EBOE-OSUJI: All right, Mr Khan.

2 MR KHAN: Your Honour, just one additional matter --

3 PRESIDING JUDGE EBOE-OSUJI: Yes.

4 MR KHAN: -- we have also asked the Prosecution several times for
5 a new witness order, and I know the Prosecution are in difficulties. I'm
6 not alleging any bad faith at all. I know that there are a whole variety
7 of difficulties that always a calling party will have, but it would help
8 preparation to have regular updates as to the next ten witnesses so that
9 we can --

10 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, let's not discuss that now.
11 Let's just deal with what we have on hand. That's a different matter we
12 will deal with.

13 MR KHAN: So be it.

14 PRESIDING JUDGE EBOE-OSUJI: All right. Before I call on the
15 Prosecutor to respond on the possibility of examination-in-chief only,
16 I'd like to return to Mr Kigen-Katwa on Witness 128.

17 MR KIGEN-KATWA: Mr President, I'm equally ready on the same
18 terms as I explained in respect to Witness 409, Mr President.

19 PRESIDING JUDGE EBOE-OSUJI: So you will be ready for both 128
20 and 409?

21 MR KIGEN-KATWA: Yes, Mr President, again with the rider that --
22 with due regard to the other team. Thank you.

23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 Mr Narantsetseg, I'll get to you in a moment.

25 But, Mr Steynberg, the less satisfying option of
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1 examination-in-chief only has been put on the table. What do you say to
2 that?

3 MR STEYNBERG: Your Honours, the Prosecution is in principle
4 never in favour of breaking the evidence of witnesses.

5 PRESIDING JUDGE EBOE-OSUJI: Neither are we.

6 MR STEYNBERG: And more especially when the witnesses are
7 travelling for some distance. It would be severely disruptive, no doubt,
8 to the witness. Obviously I haven't had the opportunity of consulting
9 with VWU, but I imagine that they would also be very much opposed to that
10 sort of calendar.

11 Your Honours, it would seem that the witness would be brought
12 over here for -- for approximately four sessions' worth of evidence and
13 to put the witness and all of the parties into such inconvenience for the
14 sake of saving one day, your Honours, would seem to be somewhat
15 disproportionate. So my submission is, the witnesses are available, we
16 are in the hands of Court, but it would seem to the Prosecution that if
17 the witness cannot be started and finished in this session, then the more
18 sensible option would be to simply hold over the witness until the next
19 available opportunity.

20 Your Honour, if I may just address one issue, however, that my
21 learned friend did raise, and I haven't studied Witness 128's -- yes.
22 I haven't studied Witness 128's statement in any detail but my colleague
23 who will be leading this witness indicates that he, in fact, only speaks
24 of two meetings, only one of which Mr Ruto was allegedly present at. So
25 in my submission, this witness's evidence does engage the Defence for

1 Mr Ruto but not to nearly the same extent as Witness 409 and does not
2 engage, as far as I can see, the evidence relating to the second accused.

3 PRESIDING JUDGE EBOE-OSUJI: All right. Mr Khan, be prepared to
4 speak to that but not now. Mr Narantsetseg, please.

5 MR NARANTSETSEG: Thank you, Mr President. Can I ask for private
6 session?

7 PRESIDING JUDGE EBOE-OSUJI: You want to ask for private session?

8 MR NARANTSETSEG: Yes, please.

9 PRESIDING JUDGE EBOE-OSUJI: For how long?

10 MR NARANTSETSEG: No more than two or three minutes, that's all.

11 PRESIDING JUDGE EBOE-OSUJI: All right. We go to private session
12 for a minute or two.

13 *(Private session at 9.54 a.m.) Reclassified as Open session

14 THE COURT OFFICER: (Interpretation) We are in private session,
15 Mr President.

16 MR NARANTSETSEG: Your Honours, we, the victims, support -- we
17 support the Prosecution's proposal to call Witness P409 and 128. The
18 reason is this: These witnesses -- both of these witnesses are
19 dual-status witnesses, so just like all other witnesses, dual-status
20 witnesses, victims cannot wait to come here and testify and tell their
21 stories. And the victims also, they cannot wait to see the end result of
22 these proceedings.

23 As I have said earlier, your Honour, victims have been waiting
24 for the start of this trial for several years and given the lengthy
25 nature, complex nature of these proceedings, as your Honours know, these
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1 trials will last for years, in our respectful submission, your Honour,
2 the Chamber --

3 PRESIDING JUDGE EBOE-OSUJI: We are hoping -- we are hoping the
4 trial -- this trial doesn't last for years and we are not planning that
5 it lasts for years. With that in mind, proceed.

6 MR NARANTSETSEG: I understand, your Honour. Thank you.
7 Therefore, your Honours, in our respectful submission, the Chamber should
8 ensure the expeditiousness of these proceedings by processing these
9 witnesses as fast as possible, and at the same time, whenever a witness
10 is available the Chamber should hear their testimony, and therefore we
11 support the Prosecution's proposal.

12 The last thing I would like to add is if your Honours are minded
13 to grant the Prosecution's proposal and call these dual-status witnesses,
14 we would like to inform the Chamber that Mr Wilfred Nderitu, the common
15 legal representative, will be filing an application to question these two
16 dual-status witnesses himself.

17 This concludes our submission, your Honour. Thank you. The
18 reason I, of course, asked for private session is the fact that these
19 witnesses are dual status, it's confidential information. Thank you.

20 PRESIDING JUDGE EBOE-OSUJI: That is not something that can be
21 said in public?

22 MR NARANTSETSEG: We don't believe so, your Honour, because these
23 witnesses have assigned identification number which is not a public
24 information which should be kept confidential.

25 PRESIDING JUDGE EBOE-OSUJI: We go back to public session now.

1 (Open session at 9.57 a.m.)

2 THE COURT OFFICER: (Interpretation) We are in public session,
3 Mr President.

4 PRESIDING JUDGE EBOE-OSUJI: Prosecutor says 128 discusses two
5 meetings, not five. Does that change your position?

6 MR KHAN: Your Honour, it does not, and there are -- in any event
7 it's wrong. But there is a distinction in a case like this. One can't
8 dance around the issue, we say. This witness makes allegations that
9 Mr Ruto was in certain meetings. In addition, other members of the
10 network are said to have taken part in other meetings. Your Honours, we
11 can't -- we don't have the luxury whilst we have to attempt to grasp the
12 main issue which are the charges --

13 PRESIDING JUDGE EBOE-OSUJI: You mean the alleged network.

14 MR KHAN: Indeed, the alleged network. When the Defence has to
15 try to octopus-like grasp both the DCC and the pre-trial brief and also
16 deal with allegations that are just raised in the statements but are not
17 founded in the charges, we have to do our best, it would be professional
18 negligence to proceed without attempting to do the most basic
19 investigations. Now, your Honours, there is a clear factual nexus
20 between these two Nandi Hill witnesses so they can't simply be divorced
21 from each other --

22 PRESIDING JUDGE EBOE-OSUJI: All right. Mr Khan, let's stop
23 there. What I wanted from you was whether your position has changed and
24 you've just said no, that's enough --

25 MR KHAN: Your Honour, unfortunately --
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1 PRESIDING JUDGE EBOE-OSUJI: That's enough.

2 MR KHAN: Unfortunately, it hasn't changed.

3 PRESIDING JUDGE EBOE-OSUJI: All right.

4 (Trial Chamber confers)

5 PRESIDING JUDGE EBOE-OSUJI: We have consulted and it's
6 unfortunate that we cannot have another witness, that's what it boils
7 down to. After the witness currently on the stand, Witness 535, we will
8 not be ordering the calling of any of Witnesses 128 or 409, in light of
9 the submissions and the difficulties we've heard counsel for the
10 Prosecution and for Mr Ruto express. It seems like the only counsel who
11 is prepared to go quickly is Mr Kigen-Katwa. We will then be adjourning
12 after the testimony of the witness currently on the stand. We will hope
13 that we are not in this sort of position, although it's an awkward one
14 because we were supposed to be in recess now, but because of the
15 adjournment of the Kenyatta case, putting it over to February, we tried
16 to use the time that had become available to make more progress in the
17 current case. I'm hoping that that is the only explanation for why we
18 are here. But if we find ourselves in this predicament in the future, we
19 should always have backup and be prepared to go, everyone, and we will
20 hope that the break that's going to result will enable the Defence to do
21 all those investigations that they say they haven't done so that we
22 should all be prepared to roll with the flow in future.

23 We will stop there now and bring in Witness 535 and continue with
24 his testimony.

25 Court officer, is he on stand-by? All right, the blinds will
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1 come down for the witness to be led into the courtroom and then we'll
2 continue with his testimony.

3 MR STEYNBERG: Your Honour, if I may just speak to the other
4 issue my learned friend raised about the list of the further witnesses.
5 I can confirm that he did, in fact, ask me and that my intention had been
6 to provide him with that list prior to this session, but unfortunately,
7 the uncertainties about the witnesses in this session and the uncertainty
8 about the starting date of the next session has given me pause to commit
9 myself on the basis of so many unknowns.

10 Unfortunately, as must have been clear to the Chamber by now,
11 there are significant logistical challenges in getting witnesses to court
12 which are compounded if we do not have certainty as to the court
13 schedules. So the plea from the Prosecution side would be that as soon
14 as we can have confirmation of our starting date for the next -- well,
15 starting and ending dates for the next session, bearing in mind that
16 things may always change, the sooner I can provide my learned friend with
17 the information he requests and the sooner he can get on with his
18 investigations.

19 I have previously made submissions, and my learned friend
20 supported these, that it would be very difficult and onerous to begin the
21 session on 5 January due to the fact that the witnesses would have to
22 travel so far over the Christmas period. I have consulted since then
23 with VWU and they share my concerns in that regard. So my request would
24 be, your Honours, if your Honour could confirm as soon as possible our
25 starting date, our request is that it should be Monday, the 13th of
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1 January, and the length of that session which I imagine would be
2 circumscribed by the beginning of the Kenya 2 case on 5 February, the
3 sooner I can get some clarity as to my exact witness order and assist my
4 learned friends as requested.

5 PRESIDING JUDGE EBOE-OSUJI: It seems to me that what Mr Khan was
6 asking for is the list that would remain even if it moves with the
7 fluctuating judicial calendar, that list could always still be used, so
8 the judicial calendar or uncertainty of it shouldn't affect the principle
9 of that sort of lineup.

10 But (Microphone not activated) --

11 MR STEYNBERG: Your Honours --

12 PRESIDING JUDGE EBOE-OSUJI: One second.

13 (Trial Chamber confers)

14 PRESIDING JUDGE EBOE-OSUJI: We will be resuming after this
15 break, after the Christmas break, we will start the next session on 13
16 January.

17 MR STEYNBERG: I'm indebted to the Chamber, your Honours.

18 PRESIDING JUDGE EBOE-OSUJI: We will plan to proceed for three
19 weeks, again pending the developments in the Kenyatta case. The
20 difficulty of course is that, as you know, the two cases share personnel,
21 possibly courtroom and logistical support, so we somehow are tethered to
22 the other case and what happens there in that case affects how we move in
23 this one.

24 MR STEYNBERG: Thank you, your Honours, and perhaps I should
25 indicate from the Prosecution side that it may be prudent to make
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1 contingency plans in case for some or other reason that case does not
2 proceed and that perhaps with a week's break we could then proceed with
3 the following witnesses.

4 PRESIDING JUDGE EBOE-OSUJI: That's a very wise idea.

5 MR STEYNBERG: Just on the issue of the unchanging witness
6 orders, unfortunately, your Honours, for logistical reasons the sessions
7 and the timing does affect witnesses who can come. It affects it because
8 of travel times, because of preparation times necessary for certain
9 witnesses who have very, very long statements that have to be read back
10 to them.

11 Your Honours, I know you're anxious to proceed but if I may just
12 address one more matter very briefly. It's just a matter of clarity for
13 the record of something that arose yesterday. Your Honours asked me
14 where the Prosecution got the information that it was reported to the
15 Assembly of State parties that Mr Ruto would be addressing the Assembly.
16 I did not have the information to hand yesterday which resulted in my
17 learned friend characterising the information I presented as back-room
18 gossip. I have recently have come into possession of the minutes --

19 PRESIDING JUDGE EBOE-OSUJI: One second. Mr Steynberg, we have
20 closed that matter. Let's not proceed with it. We are not doing
21 anything with it anymore. We do not want to waste time litigating it.
22 It's not a live issue anymore and that's all.

23 MR STEYNBERG: My only concern, your Honours, is that it's been
24 widely reported in the media which is incorrect.

25 PRESIDING JUDGE EBOE-OSUJI: Well, what's going to happen is we

1 will open up the litigation now, you'll raise yours, and Mr Khan, I'm
2 sure, will get up and say something else and then there is a witness we
3 need to get to.

4 MR STEYNBERG: As the Court please, thank you.

5 PRESIDING JUDGE EBOE-OSUJI: Court officer, please bring in the
6 witness. Blinds down, first, please.

7 MR KHAN: And, Mr President, while that's done, do I take it then
8 that my learned friend will be giving a list for the next session, the
9 next three weeks, of the next witnesses that they are intending to call?
10 Your Honour, he did tell me yesterday, I think the Chamber as well, that
11 Witness 32 would be available, so perhaps if that witness is in the first
12 batch, it just helps me tick off preparation for the next session off my
13 session. So clarity would be very, very welcome, and I would ask that we
14 be given that information as soon as possible. Thank you so much.

15 PRESIDING JUDGE EBOE-OSUJI: What I understand from
16 Mr Steynberg's position is that -- I hope I'm not assuming too much --
17 that he will be prepared to do his best to give it, again subject to the
18 vagaries of the judicial calendar then adjustments would need to be made.
19 Is that the case?

20 MR STEYNBERG: That is the case, your Honours. And I can even be
21 more firm in my undertaking. I undertake to give him the list before the
22 end of the next week. As soon as we are out of court, I will turn my
23 mind to that.

24 * (Closed session at 10.08 p.m.) Reclassified as Open session

25 THE COURT OFFICER: (Interpretation) We are in closed session

Witness: KEN-OTP-P-0535 (On former oath) (Closed Session)
Procedural Matters

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1 since 10.08.

2 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. The witness
3 will be brought in now.

4 (The witness enters the courtroom)

5 WITNESS: KEN-OTP-P-0535 (On former oath)

6 PRESIDING JUDGE EBOE-OSUJI: Let's go back to open session.

7 (Open session at 10.10 a.m.)

8 THE COURT OFFICER: (Interpretation) We are now in open session,
9 your Honour.

10 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Witness,
11 welcome back to the witness seat.

12 Mr Omofade will continue his examination-in-chief of you. Just
13 to remind you to remember the advice given to you yesterday, listen to
14 the questions carefully and answer them as truthfully as you can, as
15 clearly as possible, and always observe the need to pace yourself in a
16 way that allows the interpreters and the court reporters to capture what
17 you are saying and assist the court in recording your evidence correctly.

18 Mr Omofade, we are in open session.

19 MR OMOFADE: Mr President, we left off yesterday in private
20 session. I need to continue what I was exploring with the witness that
21 could possibly identify him in private session this morning as well.

22 PRESIDING JUDGE EBOE-OSUJI: How long?

23 MR OMOFADE: I anticipate probably about 15 to 20 minutes.

24 PRESIDING JUDGE EBOE-OSUJI: That's a long time to be in private
25 session.

Witness: KEN-OTP-P-0535 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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1 MR OMOFADE: Your Honours will note the nature of the information
2 I was eliciting yesterday. I do think I might as well kill two birds
3 with one stone, as it were. What we might achieve is that as a result of
4 this we will have a longer public session at the end of the private
5 session.

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

8 *(Private session at 10.13 a.m.) Reclassified as Open session

9 THE COURT OFFICER: (Interpretation) We are now in private
10 session, your Honour.

11 PRESIDING JUDGE EBOE-OSUJI: Proceed.

12 QUESTIONED BY MR OMOFADE: (Continuing)

13 Q. Mr Witness, we left off yesterday where you were describing the
14 locations of the residences of person number 1, person number 4. Do you
15 remember that?

16 A. Yes, your Honour.

17 MR OMOFADE: And I wonder if the court officer could bring up on
18 the screen the same sketch, annex 1, that the witness was marking
19 yesterday.

20 Q. And, Mr Witness, you've marked for us the location of where
21 person number 4 lived. Do you know, or do you see on the map, the
22 location where person number 5 lives?

23 A. Yes, your Honour.

24 Q. And could you mark that out on the sketch in front of you by
25 drawing a circle around that particular location.

26

Witness: KEN-OTP-P-0535 (On former oath) (Private Session)
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1 A. (Marks).

2 Q. And could you mark next to it number 5 to indicate his number on
3 the list in front of you?

4 PRESIDING JUDGE EBOE-OSUJI: Wait, wait, don't mark number 5.
5 Let's maintain some logic and order in this thing. I know we moved from
6 number 1 and then A and B. Let's remain with the letters.

7 MR OMOFADE:

8 Q. In that case, could you mark -- could you write next to it,
9 number 2?

10 PRESIDING JUDGE EBOE-OSUJI: I said remaining with the letters,
11 C.

12 MR OMOFADE: I beg your Honour's pardon.

13 Q. "C."

14 A. (Marks).

15 Q. Mr Witness, I now want to ask you about persons number 1, number
16 4 and number 6. Person number 1, you already mentioned him previously.
17 Do you remember that?

18 A. Yes, your Honour.

19 Q. Now, on this occasion, when you saw person number 1 on the hill
20 with the Kalenjin, what made you conclude that he was one of their
21 leaders?

22 A. By the signs which he was showing.

23 Q. And what signs was he showing?

24 A. He would show them the direction where they could go.

25 Q. And person number 4, could you tell us a bit about him? Apart
26

Witness: KEN-OTP-P-0535 (On former oath) (Private Session)
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- 1 from living in the area that you've marked on the map, (Redacted)
- 2 (Redacted)
- 3 A. (Redacted)
- 4 Q. (Redacted)
- 5 (Redacted)
- 6 A. (Redacted)
- 7 Q. And person number 5, could you tell us about him? (Redacted)
- 8 (Redacted)
- 9 A. (Redacted)
- 10 Q. (Redacted)
- 11 (Redacted)
- 12 A. (Redacted)
- 13 (Redacted)
- 14 Q. (Redacted)
- 15 A. (Redacted)
- 16 Q. (Redacted)
- 17 (Redacted)
- 18 (Redacted) Do you remember saying that?
- 19 A. Yes, your Honour.
- 20 Q. So how long have you actually known person number 5? How long
- 21 had you known him before 2007?
- 22 A. (Redacted)
- 23 Q. (Redacted)
- 24 A. (Redacted)
- 25 MR OMOFADE: Your Honour, there is missing text on line 13 of the
- 26

Witness: KEN-OTP-P-0535 (On former oath) (Private Session)
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1 preceding page. I think what the witness said was "later back," but
2 I could ask him to repeat it if there is an issue there.

3 PRESIDING JUDGE EBOE-OSUJI: That's what I heard. Proceed,
4 Mr Omofade.

5 MR OMOFADE: Indeed, your Honour.

6 Q. So now, person number 4, when you saw him on the hill with the
7 Kalenjin that day, what made you think he was one of the leaders of that
8 group of Kalenjin boys and men?

9 A. (Redacted)

10 Q. Was he doing anything, apart from being on the hill with that
11 group of Kalenjin on that particular day?

12 A. Pardon, your question?

13 Q. Apart -- apart from being physically present with the group of
14 Kalenjin on the hill, did you see him doing anything else?

15 A. Yes. He was commanding the -- the Kalenjins.

16 Q. And how was he doing this?

17 A. By showing -- by the signs of his hands.

18 Q. And the person at number 5, what made you conclude that he was
19 also one of the leaders of the group of Kalenjin on that particular day?

20 A. I didn't get your -- your question, please.

21 Q. You've said person number 5 was also one of the leaders of the
22 group of Kalenjin that were on the hill that day. Do you remember saying
23 that?

24 A. Yes, your Honour.

25 Q. My question is: Why did you -- why do you say he was also one of
26

Witness: KEN-OTP-P-0535 (On former oath) (Private Session)
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1 their leaders on that day?

2 A. Because I saw him there, with other leaders.

3 Q. And what was he doing? Was he simply --

4 MR KHAN: Your Honour, I would ask my friend to be careful and
5 not lead.

6 MR OMOFADE:

7 Q. What was he doing there? Was he doing anything?

8 A. Yes. He was showing them the way they could go.

9 Q. When you say "showing them," who are you referring to?

10 A. The Kalenjins.

11 MR OMOFADE: Your Honours, we can go into public session now.

12 PRESIDING JUDGE EBOE-OSUJI: Back to public session.

13 (Open session at 10.26 a.m.)

14 THE COURT OFFICER: (Interpretation) We are now in public session,
15 your Honour. And the documents can be viewed by the people who are
16 inside the courtroom.

17 PRESIDING JUDGE EBOE-OSUJI: Proceed.

18 MR OMOFADE: Just for the record, although I intend to come back
19 to this document, it may be removed from the screen for the time being.

20 Q. Mr Witness, now, on this particular day, when you saw the
21 thousand or more Kalenjin on the hill, did anyone amongst your group
22 contact the police?

23 A. Yes, your Honour.

24 Q. And please just answer "yes" or "no." Do you know who contacted
25 the police?

Witness: KEN-OTP-P-0535 (On former oath) (Open Session)
Questioned by Mr Omofade (Continuing)

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1 A. Yes, your Honour.

2 Q. Now, please look on the list in front of you. Is that person's
3 name on that list?

4 A. Yes, your Honour.

5 Q. And can you indicate the number on the list where that person's
6 name appears?

7 A. Number 6.

8 Q. And what is the ethnicity of person number 6?

9 A. A Kikuyu.

10 Q. And how do you know he contacted the police?

11 A. We were with him.

12 Q. And how did he contact the police?

13 A. He called them with his mobile.

14 Q. And do you know what the result of this phone call was?

15 A. Yes, your Honour.

16 Q. Please tell us. Did the police arrive?

17 A. No.

18 Q. And do you know why they did not arrive?

19 A. They gave some excuses.

20 Q. Do you know what excuses they gave?

21 A. Yes, your Honour.

22 Q. Please tell us.

23 A. They said they had no fuel, they had not been ordered.

24 Q. When person number 6 phoned the police and they did not arrive,
25 what did your group do?

26

Witness: KEN-OTP-P-0535 (On former oath) (Open Session)
Questioned by Mr Omofade (Continuing)

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1 A. We started leaving the place.

2 Q. And where did you go? You said you started leaving the place.

3 Where did you go?

4 A. Towards the Uganda Road.

5 Q. Now, at this point, did you see where the -- what the group of
6 Kalenjin on the hill were doing? Did you hear the question, Mr Witness?

7 A. No.

8 Q. You said you started leaving the place, and my question was: At
9 that point, did you see what the group of Kalenjin on the hill were
10 doing?

11 A. I can't remember.

12 Q. Can you describe what the group of Kalenjin on that hill -- can
13 you describe what they were wearing?

14 A. Pardon, your question again?

15 Q. Did you see how this group of Kalenjin were dressed? Did you see
16 how they were dressed?

17 A. They had their ordinary clothes.

18 Q. You have told us they were singing songs. Were they carrying
19 anything?

20 A. Yes.

21 Q. Can you tell us what they were carrying, please?

22 A. They had bows and arrows.

23 Q. Did you see if they used the bows and arrows?

24 A. Yes, your Honour.

25 Q. Did -- where did they fire the bows and arrows to?

26

Witness: KEN-OTP-P-0535 (On former oath) (Open Session)
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1 A. Towards the Kikuyus.

2 Q. And did you see if these group of Kalenjin were disguised in any
3 way?

4 A. Please ask it again.

5 MR KHAN: Your Honour, perhaps my learned friend can just ask for
6 a description and take it in that way. I think it's the proper way of
7 asking questions.

8 MR OMOFADE: Mr President, I -- well, I'll ask the question the
9 way I see fit, unless your Honour says otherwise.

10 PRESIDING JUDGE EBOE-OSUJI: He is saying you were leading.

11 MR OMOFADE:

12 Q. Mr Witness, I did say Kikuyus. I actually meant Kalenjin.

13 Now, can you describe how these Kalenjin appeared?

14 A. At that time, they had put some ashes in their faces.

15 Q. And you had told us yesterday that they were coming down the hill
16 and burning houses. Do you know any of the persons whose houses were
17 burnt? Please just say "yes" or "no" for now.

18 A. Yes, your Honour.

19 Q. And do you see the names of any of those persons on the list in
20 front of you?

21 A. Yes, your Honour.

22 Q. Could you tell us the numbers where those names appear on the
23 list?

24 A. Number 7, number 8 and number 9.

25 Q. How do you know the houses of number 7, 8 and 9 were burnt? How
26

Witness: KEN-OTP-P-0535 (On former oath) (Open Session)
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1 do you know this?

2 A. We went there to -- to assist them.

3 Q. And please describe what you saw when you went there to assist
4 them.

5 A. We saw person number 5 standing, and the Kalenjin youth seated
6 and others squatting.

7 Q. You say you saw person number 5 standing and the youth squatting.
8 Were they -- how far away was person number 5 from the Kalenjin youth
9 that were seated and squatting?

10 A. Pardon, your question, please?

11 Q. How far away was person number 5 from these Kalenjin youth
12 seated?

13 A. He was with them.

14 Q. And do you know how many Kalenjin youth were with person
15 number 5?

16 A. No, your Honour.

17 Q. Is it possible to give an estimate? Were there about 10,
18 hundreds, thousands?

19 A. No, your Honour.

20 Q. And where exactly did this -- did you see person number 5 and
21 this group of Kalenjin youth?

22 A. They were at location 3.

23 Q. You said you started to leave the area. Did you manage to get
24 away from that area in the end?

25 A. Yes, your Honour.

26

Witness: KEN-OTP-P-0535 (On former oath) (Open Session)
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1 PRESIDING JUDGE EBOE-OSUJI: Counsel, you mean the testimony
2 about them leaving the area after the police were called and did not
3 come?

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

5 PRESIDING JUDGE EBOE-OSUJI: Please proceed.

6 MR OMOFADE:

7 Q. And how did the Kalenjin youth react when you started to leave
8 the area?

9 A. They start going down the hill.

10 Q. Were they coming towards you?

11 A. Yes, your Honour.

12 Q. Then please describe what happened.

13 A. When we were leaving the place because they were coming down,
14 when they were more and more, we tried to run away.

15 Q. Please continue. Did you manage to get away, all of you?

16 A. No, your Honour. We had person number 10, who was drunk, he
17 couldn't run away with us, so that we left him behind.

18 Q. And do you know what happened to person number 10 when you left
19 him behind?

20 A. Yes, your Honour.

21 Q. Please describe what happened?

22 A. When we tried to get person number 10 -- no, sorry, person
23 number -- number 10, we could not manage to take him with us because they
24 were throwing stones, they were shooting us with bows, now they were
25 more, but at the time we left, person number 10, and we -- when we
26

Witness: KEN-OTP-P-0535 (On former oath) (Open Session)
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1 were -- we were going, we saw him being beaten by the Kalenjins -- by the
2 Kalenjins.

3 Q. Did you see what they were beating him with? Did you see what
4 they used to beat him?

5 A. They had -- they were beating him with stones.

6 Q. And do you know what happened to person number -- number 10, as a
7 result of this?

8 A. Yes, your Honour.

9 Q. Please tell us.

10 A. He died.

11 Q. And do you know what ethnicity person number 10 is?

12 A. Yes, your Honour.

13 Q. Please tell us.

14 A. He was a Kikuyu.

15 Q. And you've told us that person number 7, 8 and 9, their houses
16 were burnt. Do you know the ethnicity of these persons?

17 A. Yes, your Honour.

18 Q. Please tell us their ethnicity.

19 A. All are Kikuyus.

20 Q. Now, you've been describing how you managed to escape the group
21 and how person number 10 was attacked. Where did the rest of your group
22 go?

23 A. We decided to leave the place. Now, we -- we were going towards
24 Uganda Road, now to move from that place.

25 Q. And describe for us what happened as you were going towards
26

Witness: KEN-OTP-P-0535 (On former oath) (Open Session)
Questioned by Mr Omofade (Continuing)

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1 Uganda Road?

2 A. When we were trying to go to Uganda Road, we heard a scream. It
3 was a big scream.

4 PRESIDING JUDGE EBOE-OSUJI: Counsel --

5 MR OMOFADE:

6 Q. Please take your time, Mr Witness.

7 Are you okay to continue, Mr Witness?

8 A. All right. When we heard the scream and the scream was going up,
9 up, we decided to go and leave the -- our children, wives on Uganda Road
10 and we head where the scream was --

11 PRESIDING JUDGE EBOE-OSUJI: Counsel, just -- we've heard about
12 Uganda Road. Is there an alternative name? Not to ask for the
13 alternative to be used, just so we can capture it on the record. For
14 Uganda Road, is it known by any other name? It looks like Mr Hooper at
15 some point had made a suggestion that Uganda Road had another name.

16 MR KHAN: Your Honour, it's the Eldoret-Jua Kali Road.

17 PRESIDING JUDGE EBOE-OSUJI: Witness, you know that? Is
18 Uganda Road also known as the Eldoret-Jua Kali Road?

19 THE WITNESS: (Interpretation) Yes, your Honour.

20 PRESIDING JUDGE EBOE-OSUJI: All right. You don't have to call
21 it Eldoret-Jua Kali Road, you can keep on calling it Uganda Road. We now
22 know what you mean.

23 Please proceed.

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

25 Q. And, Mr Witness, what you were describing is that when you heard
26

Witness: KEN-OTP-P-0535 (On former oath) (Open Session)
Questioned by Mr Omofade (Continuing)

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1 the scream, you left your wives and children and I think what you said,
2 although the transcript did not reflect it, I think you said you head
3 back. Who were those -- which -- which group went towards the scream?

4 A. Kikuyu men.

5 Q. And why did you decide to go towards the scream?

6 A. Because the scream, they were shouting and saying, "Help, help,
7 help." So that we decided, all men, to go and help.

8 Q. And did you eventually get to where the scream had come from?

9 A. Yes.

10 Q. Please describe for us what you saw.

11 A. When we reached there, we found person number 6 being attacked.
12 He was being -- he was being beaten by the Kalenjins, by the Kalenjins.

13 Q. Do you know how many Kalenjins were beating person number 6?

14 A. No, your Honour.

15 Q. Do you know if the Kalenjins that were beating person number 6
16 were part of the group that had been on the hill?

17 A. Yes, your Honour.

18 Q. Are you saying yes, they were part of that group?

19 A. Yes, your Honour.

20 Q. Did you see what they were beating person number 6 with?

21 A. Yes, your Honour.

22 Q. Please describe what they were beating him with.

23 A. They had rungus and pangas, bows and arrows.

24 Q. And you say you can't tell us -- you can't remember a number but
25 was this a large group of Kalenjin or a small group?

26

Witness: KEN-OTP-P-0535 (On former oath) (Open Session)
Questioned by Mr Omofade (Continuing)

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1 A. It was a large group.

2 Q. And what was person number 6 doing when this was going on?

3 A. He had a gun, he was shooting in the air. When he tried to run,
4 he fell down. That's the time the Kalenjins attacked him.

5 Q. Just for the transcript, did you say he was shooting in the air?

6 A. Yes, your Honour.

7 Q. Do you know what happened to his gun?

8 A. Yes, your Honour.

9 Q. Please tell us.

10 A. They took the gun. The Kalenjin took the gun, and they went with
11 it.

12 Q. Do you know if person number 6 shot at any of the Kalenjin?

13 A. No, your Honour.

14 Q. Are you saying no, he did not shoot at any of them?

15 A. Yes, he did not shoot anyone.

16 Q. Do you know why?

17 A. Yes, your Honour.

18 Q. Please tell us.

19 A. He was ordered by the government not to use the gun.

20 Q. In any event, do you know what eventually happened to person
21 number 6?

22 A. Yes, your Honour.

23 Q. Please tell us what happened to him.

24 A. There is -- there is a neighbour who came with a car, and he took
25 him to -- to the hospital, Moi Referral and -- Moi Teaching and Referral

Witness: KEN-OTP-P-0535 (On former oath) (Closed Session)
Questioned by Mr Omofade (Continuing)

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1 Hospital.

2 PRESIDING JUDGE EBOE-OSUJI: Mr Omofade, can we leave it there?

3 MR OMOFADE: We can, your Honour.

4 PRESIDING JUDGE EBOE-OSUJI: Witness, we will take our morning
5 break now. We will be back in the court with you in 30 minutes. We will
6 bring down the shades and let you off for now.

7 * (Closed session at 11.00 a.m.) Reclassified as Open session

8 THE COURT OFFICER: (Interpretation) We are in closed session,
9 your Honour.

10 PRESIDING JUDGE EBOE-OSUJI: Thank you. Please escort the
11 witness.

12 (The witness stands down)

13 PRESIDING JUDGE EBOE-OSUJI: The Court will rise.

14 (Recess taken at 11.01 a.m.)

15 (The witness enters the courtroom)

16 (Upon resuming in open session at 11.35 a.m.)

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

18 THE COURT OFFICER: (Interpretation) We are in open session,
19 Mr President.

20 PRESIDING JUDGE EBOE-OSUJI: Mr Omofade, please proceed.

21 MR OMOFADE:

22 Q. Mr Witness, you've been -- you've been telling us about what
23 happened to person number 6 and how he was attacked. Do you remember
24 telling us that before the break?

25 A. Yes, your Honour.

Witness: KEN-OTP-P-0535 (On former oath) (Open Session)
Questioned by Mr Omofade (Continuing)

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1 Q. You also said that a neighbour took him to Moi Referral Hospital
2 in a car. Do you know what eventually happened to person number 6? Did
3 he survive the attack?

4 A. Yes.

5 Q. How do you know he survived the attack?

6 A. Later on, we confirmed that he was air-lifted to Nairobi where he
7 went for treatment.

8 Q. And please just confirm what was person number 6's ethnicity?

9 A. Yes, he was a Kikuyu.

10 Q. What did your group do after you went to where person number 6
11 was being attacked?

12 A. That's the time we realised the war -- more was -- that's the
13 time we decided to leave the place completely.

14 Q. And where did you go?

15 A. We went towards Uganda Road, now leaving to town, Eldoret town.

16 Q. And did you manage to get to Uganda Road?

17 A. Yes, your Honour.

18 PRESIDING JUDGE EBOE-OSUJI: Mr Omofade, still on person number
19 6, was it your intention to use the past tense in describing the
20 ethnicity? Does anything turn on it?

21 MR OMOFADE: Nothing turns on it, your Honour.

22 PRESIDING JUDGE EBOE-OSUJI: The point is, is this person still
23 alive as we speak?

24 MR OMOFADE: Apparently he's still alive, so --

25 PRESIDING JUDGE EBOE-OSUJI: All right. Proceed, please.

Witness: KEN-OTP-P-0535 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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1 MR OMOFADE: Probably my grammar, your Honour.

2 Q. Mr Witness, then what happened when you got to Uganda Road?

3 Please tell us.

4 A. We were on our way towards town. We were on our way towards
5 Eldoret town. We reached a place.

6 Q. Okay. Please don't mention the place you reached, but tell us
7 what happened at that place.

8 A. When we reached at that place, we were ordered, women and
9 children to leave, men to carry their identification cards on their
10 mouth.

11 Q. And who ordered you to do this?

12 A. There were some -- there were some people -- there were some
13 people there who we met there.

14 MR OMOFADE: Mr President, I wonder if we could go into private
15 session for just one question and then we'll come straight back out.

16 PRESIDING JUDGE EBOE-OSUJI: Was the testimony to the effect that
17 the men were ordered to carry identification cards on their mouths?

18 MR OMOFADE: That's the testimony.

19 PRESIDING JUDGE EBOE-OSUJI: All right. We will go into private
20 session, then, for one question.

21 *(Private session at 11.41 a.m.) Reclassified as Open session

22 THE COURT OFFICER: (Interpretation) We are in private session,
23 Mr President.

24 MR OMOFADE:

25 Q. Mr Witness, what is this place that you reached on Uganda Road?

26

Witness: KEN-OTP-P-0535 (On former oath) (Private Session)
Questioned by Mr Omofade (Continuing)

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1 A. (Redacted)

2 MR OMOFADE: We can go back into public session.

3 PRESIDING JUDGE EBOE-OSUJI: Was there a reason why this should
4 remain in private session?

5 MR OMOFADE: Your Honours, the understanding from the witness's
6 testimony is that (Redacted)
7 (Redacted) and that might easily identify the group that was
8 there and the actual location of this incident. The witness himself was
9 also reluctant to mention it and that's what I detected.

10 PRESIDING JUDGE EBOE-OSUJI: Go back to public, then.
11 (Open session at 11.43 a.m.)

12 THE COURT OFFICER: (Interpretation) We are in open session, your
13 Honour.

14 MR OMOFADE:

15 Q. Now, please describe the people that ordered you to carry
16 identity cards in your mouths? What was this group like?

17 A. They were Luo and Luhyas.

18 Q. Do you know the number? Can you estimate how many they were?

19 A. No, I can't estimate but they were more.

20 Q. Do you mean more than your group?

21 A. Yes, your Honour.

22 Q. And approximately how many Kikuyu were you in your group at this
23 time?

24 A. I can't estimate because when we were in the roadblock, we were
25 being joined by the others from other places.

Witness: KEN-OTP-P-0535 (On former oath) (Open Session)
Questioned by Mr Omofade (Continuing)

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1 Q. Mr Witness, I know it's a bit difficult but would you say you
2 were in the tens or in the hundreds?

3 A. We were in hundreds.

4 Q. And this group that ordered you to carry your identification
5 cards, were they armed?

6 A. Yes, your Honour.

7 PRESIDING JUDGE EBOE-OSUJI: Mr Omofade, for purposes of the
8 proceedings, would you expect that there may be a difference or any
9 significance to it between, say, 200 and 900, if we are talking about
10 hundreds. The point is, is it possible to try and pinpoint the number as
11 much as possible?

12 MR OMOFADE: I'll try again, your Honour. I know the witness has
13 struggled with estimates in the past.

14 PRESIDING JUDGE EBOE-OSUJI: Can you try to narrow it?

15 MR OMOFADE:

16 Q. Mr Witness, talking only about your own group for now, when you
17 say there were hundreds, can you estimate whether it was 200, 300, 400?
18 Please help us?

19 PRESIDING JUDGE EBOE-OSUJI: Or even a little over 100.

20 THE WITNESS: (Interpretation) Yes, your Honour. We were more,
21 about -- if I can estimate, about 1.000, above.

22 MR OMOFADE:

23 Q. And please describe what else happened at this place.

24 A. The road were closed by refrigerators, stones, burning tires.

25 Q. Please carry on.

26

Witness: KEN-OTP-P-0535 (On former oath) (Open Session)
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1 PRESIDING JUDGE EBOE-OSUJI: Put a question, counsel.

2 MR OMOFADE:

3 Q. Apart from the road being closed, what else did this group of
4 Luos and Luhyas do?

5 A. All men, we were being told to carry our identification cards on
6 mouths. They were searching on our pockets. They took money, wallets
7 and our phones.

8 Q. And how did you know that this group was made up of Luos and
9 Luhyas alone?

10 A. By their mother tongue, the way they pronounce words.

11 Q. Did they speak to you -- well, in what language did they speak to
12 you?

13 A. They were speaking in Swahili, but you could differentiate with
14 their pronunciations.

15 Q. And what did they --

16 PRESIDING JUDGE EBOE-OSUJI: Sorry, I see the transcript. So far
17 the transcript has been excellent but there is a chevron there. I also
18 did not hear the word. Could what with their pronunciation?
19 Differentiate?

20 MR OMOFADE: Differentiate is what I heard, Mr President.

21 PRESIDING JUDGE EBOE-OSUJI: Okay.

22 MR OMOFADE:

23 Q. And what were the words they were saying to you?

24 A. They were telling us right -- they were telling us now time is to
25 leave to destination Othaya.

26

Witness: KEN-OTP-P-0535 (On former oath) (Open Session)
Questioned by Mr Omofade (Continuing)

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1 Q. Could you repeat your answer, Mr Witness?

2 A. They were telling us now is the time, now we have to leave the
3 place and our destination will be Othaya.

4 Q. And I think the transcript has picked up the correct spelling.
5 What do you understand Othaya to mean? Where is Othaya?

6 A. Othaya is the place where President Mwai Kibaki comes from.

7 Q. Did they tell you why they want you to go to Othaya?

8 A. Yes, your Honour.

9 Q. What did they say?

10 A. They told us because Othaya is the place where the president
11 comes from, that's the place we should go.

12 Q. Did they eventually allow your group to pass?

13 A. Yes, your Honour.

14 Q. Please tell us what happened next.

15 A. That's the time we left roadblock and then we went towards
16 Eldoret town. We reached -- I don't have the -- the transcripts to show
17 the position.

18 MR OMOFADE: I wonder if the PIS form could be placed.

19 THE WITNESS: That's the time we left the place now heading
20 towards Eldoret town and we reached at location 4.

21 MR OMOFADE:

22 Q. And location 4, do you know the main ethnic group that lives in
23 this location?

24 A. Yes, your Honour.

25 Q. What ethnic group is it?

26

Witness: KEN-OTP-P-0535 (On former oath) (Open Session)
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1 A. They are Kikuyus.

2 Q. And tell us what you -- what happened when you got to location 4.

3 A. When we reached at location 4, they received us, they gave us
4 food, water, and then they gave us a place to rest.

5 Q. And how long did you stay there for?

6 A. About five hours.

7 Q. And what happened afterwards?

8 A. We headed towards Eldoret town.

9 Q. And what happened at Eldoret town?

10 A. We went to police station.

11 Q. And which police station is this?

12 A. Eldoret police station.

13 Q. Now, you told us previously that your group left the wives and
14 children. Please tell us what happened to the wives and children.

15 A. Repeat your question, please.

16 Q. You told us previously that when you heard the screams, the wife
17 and children stayed and the men went towards where the scream was.
18 Please tell us what happened to the wives and children afterwards.

19 A. I can't recall, your Honour.

20 Q. Did the wives and children join you at Eldoret police station?

21 A. Yes, your Honour.

22 Q. And on this particular day, where did you spend the night?

23 A. At Eldoret police station.

24 Q. Now, I want to ask you about the following day, the next day.
25 What did you do the following day?

26

Witness: KEN-OTP-P-0535 (On former oath) (Open Session)
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1 A. That day, we left police station and headed to position -- to
2 location 4.

3 Q. And what did you do at location 4?

4 A. We went there to search for food and water.

5 Q. Tell us what happened on the way to location 4.

6 A. When we were at location 4, we were heading to location 4, we
7 heard screams, people shouting, shouting, at that location.

8 Q. And what else happened?

9 A. The police were there. The police were there. When we were --
10 we were shouting, shouting for help, the police came and shoot in the
11 air.

12 Q. Firstly, which people were shouting?

13 A. Were Kikuyus.

14 Q. And what were they shouting?

15 A. The Kalenjin, the Kalenjin were coming towards location 4.
16 That's why they were shouting.

17 Q. What is the -- what are the words that these Kikuyu were
18 shouting?

19 A. They were shouting, "Help, help, help."

20 Q. And what did you see when this shouting was going on? Please
21 describe exactly what you saw.

22 A. At that point -- I'd like the annex to show how things were
23 going.

24 MR OMOFADE: I wonder if the court officer could bring the annex
25 1 back on the screen, please.
26

Witness: KEN-OTP-P-0535 (On former oath) (Open Session)
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1 Mr President, I'm in the Court's hands here, but I think it might
2 be safer to deal with this in private session because of some of the
3 locations.

4 PRESIDING JUDGE EBOE-OSUJI: Let's see how we go, what --
5 Witness, the question that the lawyer asked you was what did you see when
6 this shouting for help was going on. Are you saying the answer to that
7 question about what you saw when the shouting for help was going on, that
8 the answer to the question is in the annex, in the sketch you drew?

9 THE WITNESS: Yes, Mr President.

10 THE COURT OFFICER: (Interpretation) Your Honour, I can confirm
11 that the document available on your screen is only accessible within the
12 courtroom. This is a confidential document and it is not being broadcast
13 outside the courtroom.

14 PRESIDING JUDGE EBOE-OSUJI: Thank you.

15 Witness, try proceeding. If there is a need to go into closed
16 session, we will do that, but try your best to answer the question
17 without disclosing your identity.

18 THE WITNESS: Pardon, Mr President?

19 PRESIDING JUDGE EBOE-OSUJI: Proceed. Try to tell us what you
20 want to tell us about the answer to the question about what you saw when
21 the shout for help was going on.

22 THE WITNESS: By that time -- by that time, while they were
23 shouting on this land and the Rai factory, there is a part there, that's
24 the place where the Kalenjins and the Luo and the Luhyas were trying to
25 come to attack location 4. That's why they were shouting, shouting, and
26

Witness: KEN-OTP-P-0535 (On former oath) (Open Session)
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1 then the -- the police officers were there but they could not -- they
2 could not -- they could not chase them away, but they were shooting on
3 the air. That's what I was trying to say.

4 MR OMOFADE:

5 Q. Please pause, Mr Witness.

6 MR OMOFADE: It appears that the witness was attempting to mark
7 the -- the sketch in front of him but that didn't show up on the screen.

8 PRESIDING JUDGE EBOE-OSUJI: All right. Witness, can you -- you
9 mentioned -- yes, I've killed all the microphones except my own.
10 (Microphone not activated). All right. You mentioned Rai factory in
11 your answer. Can you draw a circle around it?

12 THE WITNESS: Yes, your Honour. (Marks).

13 PRESIDING JUDGE EBOE-OSUJI: And can you put the letter, can we
14 use the letter D now?

15 MR OMOFADE: D, your Honour.

16 PRESIDING JUDGE EBOE-OSUJI: Let's -- can you mark D on top of
17 the circle you've just drawn?

18 THE WITNESS: Yes, your Honour. (Marks).

19 PRESIDING JUDGE EBOE-OSUJI: Counsel, it seems to me that we can
20 proceed. The record seems to be clear now, with the answer the witness
21 already gave.

22 MR OMOFADE:

23 Q. Can you -- Mr Witness, can you draw a line showing where the
24 Luos, the Kalenjin and the Luhyas were coming from?

25 A. Yes, your Honour.

26

Witness: KEN-OTP-P-0535 (On former oath) (Open Session)
Questioned by Mr Omofade (Continuing)

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1 PRESIDING JUDGE EBOE-OSUJI: You can do an arrow where they are
2 coming from, towards where.

3 THE WITNESS: (Marks)

4 PRESIDING JUDGE EBOE-OSUJI: All right. There is an arrow just
5 drawn by the witness, just west of the circle around Rai factory. Is
6 that where you say there was a path, Witness?

7 THE WITNESS: Yes, your Honour.

8 PRESIDING JUDGE EBOE-OSUJI: All right. I would have asked --
9 can you put an E at the end of the arrow, at the arrow point, at the end
10 of the arrow, put the letter E there so we can find it on the transcript
11 later.

12 THE WITNESS: (Marks)

13 PRESIDING JUDGE EBOE-OSUJI: That should be good enough. So
14 let's not -- it's not perfect but we can make sense of it coupled with
15 the transcript.

16 MR OMOFADE:

17 Q. And, Mr Witness, could you also then mark an X -- just mark where
18 your group was in relation to the arrow you have just drawn.

19 PRESIDING JUDGE EBOE-OSUJI: Instead of an X, can we use F?

20 MR OMOFADE:

21 Q. Could you mark an F there, please?

22 A. (Marks)

23 Q. And just for the record, it's a word that's been mentioned
24 previously, the factory is Raiply, R-a-i-p-l-y?

25 PRESIDING JUDGE EBOE-OSUJI: Indeed, and that seems to be what's
26

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1 written on the -- although it's a little difficult to see, but that's
2 what's on the -- it's consistent with what appears on this sketch.

3 MR OMOFADE: All right.

4 Q. So please tell us what this -- please describe what this group of
5 Kalenjin, Luo and Luhya did.

6 A. They were trying to enter to location 4.

7 Q. Did they enter location 4 eventually? Did they succeed?

8 A. No, your Honour.

9 Q. What was happening to location 4 at this point? What was
10 happening in location 4 at this point?

11 A. At that location 4, we were there, we were shouting, and they
12 were trying to enter location 4, but the police came and -- and helped us
13 by shooting their guns in the air.

14 Q. And what -- do you know -- well, what happened to the residents
15 of location 4? The people who lived at location 4, what happened to
16 them?

17 A. Pardon, your question, please?

18 Q. What happened to the people who normally live at location 4?

19 A. I'm not getting your question, please.

20 Q. When the group of Kalenjin, Luo and Luhya were trying to get into
21 location 4, what were the people who live in location 4 doing?

22 A. They were trying -- they were trying to make them not to come to
23 location 4.

24 Q. And describe how they were doing this.

25 A. By shouting, screaming, and asking for help.

26

Witness: KEN-OTP-P-0535 (On former oath) (Open Session)
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1 Q. Did the group of Kalenjin, Luo and Luhya, did they remain at the
2 place you have marked, or did they go away?

3 A. When the police were shooting on the air, they were running away.

4 Q. Do you know if they returned?

5 A. They did it for several time.

6 Q. Did they eventually manage to attack location 4?

7 A. No, your Honour.

8 Q. And do you know why these people were trying to get to
9 location 4?

10 A. Yes, your Honour.

11 Q. Why?

12 A. Location 4 has been owned by rich people.

13 Q. And do you -- and which people from which ethnic group?

14 A. From Kikuyus.

15 Q. Did you eventually go back to your own home at location 1?

16 A. No, your Honour.

17 Q. Did you return to see what had happened to your home?

18 A. Yes, your Honour.

19 Q. How many days after the election results, the presidential
20 election results, were announced, how many days after did you return to
21 your own home?

22 A. When the government built houses for us.

23 Q. In the period while these attacks were going on, did you go to
24 your house at all to see whether your house had been attacked?

25 A. No, your Honour.

26

Witness: KEN-OTP-P-0535 (On former oath) (Open Session)
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1 Q. Tell us what had happened to your own house.

2 A. Later on, I was told my house was burnt.

3 Q. And who told you this?

4 A. My neighbours.

5 Q. And when did they tell you that your house had been burnt?

6 A. Can't recall, your Honour.

7 Q. Who burnt your house?

8 A. I didn't see who burnt my house.

9 Q. Did your neighbours tell you who burnt your house?

10 A. Yes, your Honour.

11 Q. What did they say?

12 A. They told me that my house was burnt by Kalenjins.

13 Q. And was it burnt during the violence in the days after the
14 election?

15 A. Yes, your Honour.

16 Q. And apart from your house, was anything else burnt?

17 A. Yes, your Honour.

18 Q. Tell us what else was burnt.

19 A. (Redacted)

20 Q. And --

21 MR OMOFADE: Mr President, I wonder if we could go into private
22 session for a few minutes.

23 PRESIDING JUDGE EBOE-OSUJI: For how long?

24 MR OMOFADE: Probably five minutes.

25 PRESIDING JUDGE EBOE-OSUJI: Private session, then.

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1 *(Private session at 12.22 p.m.) Reclassified as Open session

2 THE COURT OFFICER: (Interpretation) We are in private session.

3 MR OMOFADE:

4 Q. Mr Witness, you've already told us that (Redacted)

5 (Redacted)

6 A. Yes, your Honour.

7 Q. What happened to (Redacted)

8 (Redacted)

9 A. The answer is -- pardon for your question, please?

10 Q. (Redacted) what happened to

11 the things (Redacted)

12 A. (Redacted)

13 Q. (Redacted)

14 (Redacted)

15 A. (Redacted)

16 Q. Was there anything else?

17 A. (Redacted)

18 (Redacted)

19 MR KHAN: Your Honour, if it helps, my learned friend can lead on
20 any matters regarding loss of the witness. It's not disputed.

21 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

22 (Redacted)

23 (Redacted)

24 MR OMOFADE: It appears so, save that the witness also described

25 (Redacted)

26

Witness: KEN-OTP-P-0535 (On former oath) (Private Session)
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1 PRESIDING JUDGE EBOE-OSUJI: Well, he says you can lead. Mr Khan
2 and Mr Kigen-Katwa, I take it you do not disagree with leading on this
3 part?

4 MR KIGEN-KATWA: I don't, Mr President.

5 MR OMOFADE:

6 Q. (Redacted)
7 (Redacted) can you describe the other things
8 that (Redacted)

9 A. (Redacted)
10 (Redacted)

11 Q. (Redacted)

12 A. (Redacted)

13 Q. And do you know the value of the items (Redacted)
14 (Redacted)

15 A. I can't estimate.

16 Q. Is it -- is it possible for you to estimate what it would cost to
17 it replace all of those items?

18 A. Yes, your Honour.

19 Q. How much would it be, in Kenyan shillings?

20 A. (Redacted)

21 Q. (Redacted)
22 (Redacted)

23 A. (Redacted)

24 Q. Now, you've told us that the government rebuilt the house for
25 you. Explain to us how this happened.

26

Witness: KEN-OTP-P-0535 (On former oath) (Private Session)
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1 A. The government had a project of resettling all the
2 internal-displaced people. That's when they decided to build for us the
3 house.

4 Q. And did the government build the house for you, or did they give
5 you money to build -- to rebuild the house yourself?

6 A. No. They built for us.

7 MR KHAN: Mr President, all of this can go into public session, I
8 believe.

9 MR OMOFADE: It can, your Honour. It was my omission. I thought
10 we were in public.

11 PRESIDING JUDGE EBOE-OSUJI: We will go back into public session,
12 then.

13 (Open session at 12.29 p.m.)

14 THE COURT OFFICER: (Interpretation) We are now in public session,
15 your Honour.

16 MR OMOFADE:

17 Q. And when the government rebuilt the house for you, when did this
18 happen, what year?

19 A. I'm not sure of the time they built the house.

20 MR KHAN: Once again, Mr President, my learned friend has the
21 statement and I have no problem at all with the witness being led on
22 this -- on these issues dealing with the rebuilding of his home.

23 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa?

24 MR KIGEN-KATWA: No objection, Mr President.

25 PRESIDING JUDGE EBOE-OSUJI: Mr Omofade.

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1 MR OMOFADE:

2 Q. Did you move back to your house in August 2008? Does that date
3 ring a bell?

4 A. Yes, your Honour.

5 Q. Now, between when the violence happened and August 2008, where
6 were you staying? If the location is on the list in front of you, please
7 refer to it. If not, we can go briefly into private session --

8 MR KHAN: Your Honour, my learned friend can lead on these
9 issues. They are not in dispute. So he can lead so that we can get to
10 the conclusion as quickly as possible.

11 MR OMOFADE: I don't think it's the leading that's the issue.
12 I think it's the identification that's the issue.

13 MR KHAN: Your Honour, my friend can give the number to help the
14 witness.

15 MR OMOFADE:

16 Q. Mr Witness, how many weeks did you stay at Eldoret police
17 station?

18 A. Only the day we arrived there.

19 Q. Did your family also stay there with you?

20 A. Yes, your Honour.

21 Q. And after you and your family left Eldoret police station, did
22 you then go and stay with person number 11?

23 A. Yes, your Honour.

24 Q. And did you stay with person number 11 until you moved back to
25 your house in August 2008?

26

Witness: KEN-OTP-P-0535 (On former oath) (Open Session)
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1 A. Yes, your Honour.

2 Q. Now, the house that the government built for you, was it exactly
3 the same, in terms -- the same size as the one you had previously?

4 A. No, your Honour.

5 Q. The house you had previously, can you describe how many bedrooms
6 were in that house?

7 A. We had three bedrooms.

8 Q. And did the house that the government built also have three
9 bedrooms?

10 A. No, your Honour.

11 Q. How many bedrooms did it have?

12 A. Only one.

13 Q. (Redacted)

14 A. No, your Honour.

15 Q. And just before I finish my questioning, Mr Witness, I want to
16 ask you about something we were trying to cover yesterday when there was
17 clearly a translation problem. Do you remember when I was asking you to
18 describe Huruma? Do you remember talking about that yesterday?

19 A. Yes, your Honour.

20 Q. And can you help us --

21 MR KHAN: Your Honour, could I have a transcript reference,
22 please, if he's going to previous evidence? It would be helpful.

23 PRESIDING JUDGE EBOE-OSUJI: Before we -- while perhaps a member
24 of your -- let's proceed for now and see how we go. If we run into
25 difficulty, then we can worry about the transcript reference, but, yes,

26

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1 yesterday there was some difficulty with the geography of Huruma. That
2 we know. The issue now is let's see what Mr Omofade wants to do.

3 MR OMOFADE: Your Honours, I intend to pose questions similar to
4 the ones I posed yesterday. I make no secret of that. And except my
5 friend is disputing that this occurred yesterday.

6 PRESIDING JUDGE EBOE-OSUJI: I don't think he's disputing it,
7 just out of the abundance of caution in case you ask a question he may
8 have difficulty with. That's what I think his concern -- right, Mr Khan?

9 MR KHAN: Indeed, I'm grateful.

10 PRESIDING JUDGE EBOE-OSUJI: Yes. And so I say let's proceed
11 until we run into that difficulty. Let's not anticipate a difficulty and
12 let it slow us down when we haven't got there, because we may not have a
13 difficulty.

14 MR OMOFADE:

15 Q. Mr Witness, do you know what the sub-locations of Huruma are?

16 A. Yes, your Honour.

17 Q. Please tell us the sub-locations of Huruma.

18 A. We have Huruma itself, a sub-location. We have Kapsaos, as a
19 sub-location.

20 PRESIDING JUDGE EBOE-OSUJI: Sorry, Kapsaos, you said? Is it
21 within Huruma?

22 THE WITNESS: Yes, Mr President.

23 PRESIDING JUDGE EBOE-OSUJI: Okay.

24 THE WITNESS: And then we have Kibulgenyi.

25 MR OMOFADE: As regards a spelling, I believe that is
26

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1 K-i-b-u-l-g-e-n-y-i.

2 Q. And apart from these two sub-locations, are there any other
3 divisions or subdivisions in the Huruma area?

4 A. I can't recall, your Honour.

5 PRESIDING JUDGE EBOE-OSUJI: All right. Let's do what we did
6 yesterday, and the question is: Is it possible that there were other
7 sub-locations within Huruma but you do not know what they are called?

8 THE WITNESS: Yes, Mr President.

9 MR OMOFADE: Your Honour, I understand your Honour's point but
10 I think a fairer reflection might be that he doesn't recall what they are
11 called. He did say, "I don't recall," rather than that he doesn't know.

12 PRESIDING JUDGE EBOE-OSUJI: I stand corrected, then. You can
13 take it from there. So we have established that it's a matter of -- that
14 there may be others but he doesn't recall the names.

15 MR OMOFADE:

16 Q. Now, let's start with Kibulgenyi. Does Kibulgenyi have any
17 subdivisions?

18 A. Yes, your Honour.

19 Q. Please tell us what they are.

20 A. We have Kamkunji.

21 Q. And is that spelled K-a-m-k-u-n-j-i?

22 A. Repeat, please, your spelling?

23 Q. K-a-m-k-u-n-j-i?

24 A. That's correct.

25 Q. Apart from Kamkunji, please name the others.

26

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1 A. We have Kapchumba.

2 Q. Any others?

3 A. I know only those two.

4 Q. Now, the other subdivision, Kapsaos, do you know if it has any
5 divisions or subdivisions?

6 A. No, your Honour.

7 Q. And is it that you don't know or it does not have any
8 subdivisions?

9 A. I don't know.

10 Q. Now, this makeup of Huruma, is this as you know it to have been
11 in 2007?

12 A. Yes, your Honour.

13 Q. And do you know if Huruma is still divided in this way today?

14 A. No, your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: Mr Omofade, I see we have 16 minutes
16 to 1.00. I take it you will be ending by then.

17 MR OMOFADE: I will be. In fact, I'll be ending in about five
18 minutes.

19 PRESIDING JUDGE EBOE-OSUJI: Okay.

20 MR OMOFADE: Mr President, the only other matter that I -- would
21 your Honours forgive me for a minute?

22 (Prosecution counsel confer)

23 MR OMOFADE:

24 Q. Mr Witness, when you say -- I asked you if the makeup of Huruma
25 is the same today as it was in 2007. Do you know whether it is the same

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1 or not?

2 A. I don't know, your Honour.

3 MR OMOFADE: Mr President, that's all I have for the witness,
4 aside from having EVD numbers assigned to both annexes and asking that
5 they be admitted.

6 PRESIDING JUDGE EBOE-OSUJI: How many annexes do we have?
7 I thought it was only one.

8 MR OMOFADE: Your Honour, it's the one.

9 PRESIDING JUDGE EBOE-OSUJI: And then the PIS.

10 MR OMOFADE: Well, I'm referring to the second one which was
11 marked by the witness. I believe both ought to be exhibited as opposed
12 to the one that was unmarked and annexed to his witness statement.

13 PRESIDING JUDGE EBOE-OSUJI: Why do we need to do both? Could we
14 use the annotated version alone? Do you need both?

15 MR OMOFADE: It's for completeness of the record and the reason
16 behind it is because the Defence may also want to refer to the same
17 document.

18 PRESIDING JUDGE EBOE-OSUJI: Fair enough, fair enough. And of
19 course the PIS.

20 MR OMOFADE: Your Honour, beat me to it, yes.

21 MR KHAN: No objections to either, your Honour.

22 MR KIGEN-KATWA: No objections, Mr President.

23 PRESIDING JUDGE EBOE-OSUJI: So the sketch in both forms, both
24 the plain form and the annotated form would be admitted into the record
25 as the next in the Prosecution exhibits. As well, the PIS will be
26

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1 admitted as the next in the Prosecution PIS.

2 THE COURT OFFICER: (Interpretation) Yes, your Honour. Document
3 KEN-OTP-0088-0080, confidential document, the original version of the
4 map, of the sketch, will have EVD-OTP-00030, item number 30 submitted by
5 the Office of the Prosecutor.

6 Next, document KEN-ICC-0001-0011, annotated version by the
7 witness will have EVD-OTP-00031, item number 31 submitted by the Office
8 of the Prosecutor. The level of this item is confidential.

9 And lastly, the version -- the submitted version of document PIS,
10 protected information sheet in English, will be recorded under reference
11 KEN-PIS-0001-0021. It has four pages and it will also be confidential
12 and accessible for those who are present in the courtroom with their
13 respective teams. Thank you, your Honour.

14 PRESIDING JUDGE EBOE-OSUJI: Thank you.

15 Of course, we welcome the new competent interpretation voice
16 which we have who have joined the case. We welcome them.

17 We have certain eccentric languages we use in the proceedings.
18 One of them is instead of "item number," we will say "exhibit number."
19 So it will be Exhibit number 30 and Exhibit number 31, for the
20 Prosecution.

21 Now, we are now done with the Prosecution examination-in-chief.
22 We will begin with Mr -- is that Kigen-Katwa or Mr Ruto's Defence counsel
23 cross-examining first? If you do have cross-examination.

24 MR KIGEN-KATWA: Mr President, I am very unlikely to have any
25 questions to ask, and for that reason, I would rather that Ruto's team
26

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1 goes first. It's an issue we have consulted on. And subject to what
2 comes from the cross-examination, I will have made up my mind whether
3 I will cross-examine.

4 PRESIDING JUDGE EBOE-OSUJI: All right --

5 MR STEYNBERG: Your Honour, I believe that should be Mr Ruto's
6 team.

7 MR KHAN: Your Honour, my learned friend was referring to the
8 team, not the person. But, your Honours, I in that case will go first.

9 Your Honours, we have ten minutes to go before lunch. I know
10 today is a Friday. It would be very nice I think for the witness, in
11 particular, if he could be released before the weekend so the witness
12 doesn't need to stay in the -- in The Hague over the weekend and the
13 court go to that additional cost. Your Honour, to ensure that that's a
14 viable for me, I'm trying to cut down my area of questioning. Your
15 Honour said previously there is no need to prove the case, all of it
16 through various witnesses. Is it possible to have a one-hour lunch break
17 today rather than an hour and a half and that may allow me to finish
18 today and then the witness hopefully go home, you know, earlier.

19 PRESIDING JUDGE EBOE-OSUJI: One second. I see Mr Narantsetseg
20 has been wanting to say something for some time now. Mr Narantsetseg?

21 MR NARANTSETSEG: Thank you, Mr President, your Honours. With
22 all due respect, we have an application pending before the Chamber, your
23 Honour. According to your decision, issued 20 October, your Honours have
24 reserved your ruling on the application made by Mr Nderitu in view of
25 questioning the witness on stand. In accordance to your decision, your
26

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1 Honour, we were expecting that you would hear the submissions of the
2 Prosecution and the Defence teams and would also allow us to make a reply
3 so that you will be able to make a ruling on the application. Thank you.

4 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, that makes your application
5 a little complicated now.

6 Now, let's do this. We will hear the submissions, but before we
7 do that, I bring this for purposes of management of this case going
8 forward, especially in the next session.

9 I remember during the session this morning, in private session,
10 was it Mr Narantsetseg that had expressed a thought that he expected we
11 were going to conduct this case for a number of years and I said no, we
12 don't want -- we want to finish this case as quickly as possible.

13 Now, with that in mind, I return to the matter of agreed
14 statement of facts. There are some agreed statements of fact, I believe,
15 between the Prosecution and the Defence. In fact, two such documents
16 exist. They must have meaning in the case. And what we will try to
17 avoid is a situation where we have agreed statements of facts and
18 witnesses are called and put on the stand to repeat just those agreed
19 statements of fact and we take a lot of time doing that. We are not
20 saying that witnesses should not testify, but if we have agreed
21 statements of fact, there is a reason for that, and we have to make that
22 count.

23 This is just a thought I thought we would express at this stage.

24 (Trial Chamber confers)

25 (Trial Chamber and court officer confer)

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1 PRESIDING JUDGE EBOE-OSUJI: All right. As you know, there are
2 two cases sitting simultaneously. There is the Bemba case as well that's
3 also sitting as we do. And we need to coordinate to make sure we cannot
4 make life too complicated for the system. So we are waiting to hear from
5 Mr Rojas with information.

6 MR KHAN: I'm most grateful, your Honour.

7 PRESIDING JUDGE EBOE-OSUJI: Yes. We will then have a one-hour
8 lunch break. We will rise now and come back at 2.00. The blinds will
9 come down and the witness will be escorted from the courtroom. We will
10 be taking submissions when we come back from Mr Narantsetseg and we would
11 expect to do that in five minutes for everyone.

12 * (Closed session at 1.00 p.m.) Reclassified as Open session

13 THE COURT OFFICER: (Interpretation) We are in closed session,
14 your Honour.

15 (The witness stands down)

16 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

17 (Recess taken at 1.00 p.m.)

18 (Upon resuming in open session at 2.09 p.m.)

19 THE COURT OFFICER: (Interpretation) We are in open session, your
20 Honour.

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

22 Mr Narantsetseg?

23 MR NARANTSETSEG: Thank you, Mr President, your Honours. I will
24 make it as short and possible and I will not add anything that's already
25 been provided to your Chamber, to your honourable Chamber by Mr Nderitu's

1 written submission. But there must be certain areas of, let's say,
2 misunderstanding because we gathered this from the Sang Defence response,
3 so I would like to, with your leave, your Honours, just make two or three
4 clarifications.

5 And that would be the end.

6 The Sang Defence suggested we haven't -- that legal
7 representative hasn't provided sufficient reasons for separate
8 questioning apart from the Prosecution's examination-in-chief. Your
9 Honour, in our view, Mr Nderitu, the legal representative, has provided
10 sufficient reasoning. In paragraph 10 of his filing he did say that this
11 witness who is on the stand will give evidence which will -- will touch
12 upon overall interest of the victims and also -- and this because his
13 evidence may also assist the Chamber arriving at truth.

14 Your Honour, in our view, if your Honours grant -- minded to
15 grant our application, we will question this witness about the personal
16 harm this witness and his family have suffered during the post-election
17 violence, your Honour, and his story is part of that truth, your Honour,
18 the part of the whole truth that we hope that your Honour and the Chamber
19 will ascertain at the end of this case. And we do acknowledge the fact
20 that this witness is not a dual-status witness. However, your Honour, in
21 terms of the personal harm this witness has suffered, the fact that this
22 witness didn't register with the relevant database that we have doesn't
23 erase the fact that he has suffered. It doesn't invalidate the pain he
24 has experienced, your Honour, during the post-election violence. And in
25 our view, your Honour, in this regard, the victims registration process
26

1 is a matter of formality. Indeed, your Honour, his accounts are
2 representative of the personal stories of thousands of other victims who
3 have suffered enormously during this violence, your Honour.

4 And the second question is -- we gathered that from the Sang
5 Defence response that common legal representative didn't provide an
6 outline of areas for examination, your Honour. But, your Honours, we
7 submit that if you have read carefully his latest filing, he did say that
8 he wished to examine this witness along the similar lines that he
9 examined Prosecution witness P0536. In this way, your Honour, he was
10 referring to his earlier application that he made September of this year
11 where he applied, your Honour, with your honourable Chamber to question
12 some five dual-status witnesses. I have provided in advance a copy, hard
13 copy, of that application, your Honour. In that application, especially
14 at paragraph 3, the legal representative lists more than a dozen of areas
15 that he would wish to question dual-status at the same time
16 non-dual-status witnesses. In principle, all those areas will relate to
17 the personal harm that either dual-status or non-dual-status witness have
18 suffered personally.

19 Your Honour, throughout the Prosecution's examination-in-chief,
20 we have carefully observed the conduct of the questioning, and the
21 Prosecution did cover -- did ask some questions that we were initially
22 planning to ask, so if your Honours are minded to grant the application
23 we will leave out those questions, but there are other important areas
24 that we wish to cover, which hadn't been sufficiently covered by the
25 Prosecution.

1 Your Honours, my last two points. We would like to assure you
2 that we will not ask repetitive questions and our questions will solely
3 relate to the personal harm this witness has suffered and his family as
4 well, and maybe some other issues which may impact upon the prospectus
5 reparation awards, your Honour, if such awards are given to the victims
6 at the end of the case, if, of course, the accused persons are found
7 guilty. Lastly, I would like to conclude, your Honour, we will not take
8 any more time -- any longer time-frame than which has already been given
9 to the Prosecution. We would need maximum one and a half sessions and we
10 will try our best to finish it in one session, and we believe that
11 granting our request will not unduly burden the proceedings and would not
12 make it difficult for the testimony of this witness completed in a short
13 time-frame of this session, your Honour. This concludes our submission.
14 And if your Honours need further information, we will be able to provide.
15 Thank you.

16 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Mr Katwa, you
17 already made your submissions in writing. Do you wish to add anything
18 else?

19 MR KIGEN-KATWA: With your permission, Mr President, just three
20 things.

21 PRESIDING JUDGE EBOE-OSUJI: Can you do that in one minute?

22 MR KIGEN-KATWA: Yes, Mr President. The first one is that we
23 maintain the arguments we made in our filing. The second one,
24 Mr President, is that our filing was made before the Prosecution
25 conducted their -- conducted the evidence in-chief and it is our
26

1 submission that the evidence that was led by the Prosecution covers even
2 the areas that the victims intended to -- victims' counsel intended to
3 elicit. And for those reasons, Mr President and your Honours, we
4 maintain that allowing the victims' counsel to ask questions to the
5 witness will actually unduly burden the proceedings. Thank you,
6 Mr President and your Honours.

7 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, you will take
8 submissions?

9 MS ALAGENDRA: Yes, your Honour, please. Your Honour, we are in
10 fact happy to leave it in the hands of the Chamber but we just have a few
11 observations to make, and firstly is that this is not a dual-status
12 witness and perhaps cognizant of this fact is what led Mr Omofade, we
13 say, to sufficiently examine the witness on issues which the counsel for
14 victims wishes to now ask questions on. And, your Honour, when it comes
15 to balancing the interests before this Chamber and we are looking at
16 whether or not this witness should be allowed to go home this weekend, or
17 whether to remain here and to be asked questions for another one and a
18 half sessions which we say have been sufficiently covered, we submit that
19 the balance, I think, lies in favour of the witness going home, your
20 Honour. But ultimately we are happy to leave it in the hands of the
21 Chamber, your Honour.

22 PRESIDING JUDGE EBOE-OSUJI: Thank you. Mr Steynberg?

23 MR STEYNBERG: Thank you. Very briefly, your Honour. As we've
24 said previously, the Prosecution is generally in favour of encouraging
25 the participation of the victims and the victims' representatives

1 provided sufficient interest has been demonstrated. Your Honours, whilst
2 it would have been very nice if we could have finished this witness
3 before the weekend break, we believe that if there is an interest which
4 has been demonstrated, then the principle should not give way to
5 expedience and we do not oppose the application for these reasons.

6 Your Honours, perhaps if I can just add to that. To the extent
7 that the issues have already been covered to some extent by the
8 Prosecution, I would have thought that one and a half sessions might be a
9 little bit excessive and I wonder whether my learned friend wouldn't be
10 able to cover the matter in slightly less time than that.

11 (Trial Chamber confers)

12 PRESIDING JUDGE EBOE-OSUJI: The Chamber makes its ruling.

13 Having considered the submissions of the counsel for victims, and
14 the submissions of Defence counsel for both Mr Sang and for Mr Ruto, as
15 well as the submissions of the Prosecutor, the Chamber rejects the
16 application. The Chamber notes that Witness 535 is not a dual-status
17 witness in the sense of being both a witness and a victim that is
18 registered as such and the reason for the registration has a purpose and
19 that purpose needs to be reflected in the proceedings. The Chamber is
20 not satisfied that the testimony to the extent that it has been outlined
21 or indicated will be distinguishable in principle from the testimonies of
22 other previous witnesses who were victims but not dual-status victim
23 witnesses, who have already testified. In those previous instances, the
24 counsel for victims did not request to examine those other witnesses who
25 were not registered as dual status.

1 The legal representative has not advanced any distinct reasons as
2 to why the questions should be asked by him in the circumstances. We
3 also note in particular that the Prosecution did cover the area of harm
4 suffered by the witness. That was quite adequate for the purpose, in the
5 Chamber's view. For those reasons, the Chamber will not grant the
6 request for separate questions to be asked on the matter.

7 That is the ruling of the Chamber.

8 We will bring back the witness for the counsel for Mr Ruto to
9 commence his cross-examination. Mr Khan -- Ms Alagendra, we will hope --
10 we will expect you to finish today.

11 MR KHAN: Indeed, Mr President, and we will be so guided.

12 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. The blinds
13 will come down and the witness will be led in.

14 * (Closed session at 2.21 p.m.) Reclassified as Open session

15 MR KHAN: Mr President, while the witness is being brought in, I
16 will try to finish today as indicated. I would ask for just two or three
17 minutes once the witness has been released at the end of today's
18 testimony to raise one matter with the Court, if I may.

19 PRESIDING JUDGE EBOE-OSUJI: Well, if you can then finish much
20 sooner to allow that room, ample room for you to raise whatever issue you
21 have. Thank you.

22 THE COURT OFFICER: (Interpretation) We are in private (* as
23 interpreted) session and the witness is being brought into the courtroom.
24 (The witness enters the courtroom)

25 PRESIDING JUDGE EBOE-OSUJI: Let's go back to public session.

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1 (Open session at 2.23 p.m.)

2 THE COURT OFFICER: (Interpretation) We are in open session, your
3 Honour.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you. Witness, welcome back.
5 The Prosecution counsel has finished asking you his questions. It is now
6 the turn of counsel for Mr Ruto to ask you questions in
7 cross-examination. I wish to refresh my advice to you given at the
8 beginning of your testimony, for you to listen carefully to the
9 questions, make sure you understand them before answering. If you do not
10 understand the question, please indicate that you do not understand, as
11 you have been doing, by the way. Also, try not to guess at answers to
12 questions. Answer questions that you know the answers to.

13 There is nothing wrong with somebody not knowing something. Just
14 keep that in mind.

15 So with that out of the way, Mr Khan, is that you or is it
16 Ms Alagendra who will lead the questioning?

17 MR KHAN: Your Honour, with the Court's leave, it will be myself.

18 PRESIDING JUDGE EBOE-OSUJI: All right. Please proceed.

19 QUESTIONED BY MR KHAN:

20 Q. Witness, my name is Karim Khan and I represent Mr Ruto, who sits
21 behind me. Now, you'll be glad to hear that hopefully we will finish
22 with your evidence today. I will try everything so that by the weekend
23 you can go back home. Do you understand?

24 A. Yes, your Honour.

25 MR KHAN: And, your Honour, I know we have people in the gallery

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1 but just for literally one minute if we could go into private session.

2 PRESIDING JUDGE EBOE-OSUJI: Private session, then.

3 *(Private session at 2.26 p.m.) Reclassified as Open session

4 THE COURT OFFICER: (Interpretation) We are in private session.

5 MR KHAN:

6 Q. Witness, I just wanted to put you at your ease. I know it's
7 never an easy matter coming and travelling to give evidence and we also
8 have been told by the Prosecution (Redacted), so we
9 want -- I wanted to thank you specifically for taking the trouble to come
10 to the court and so that the Judges could hear what you have to say. We
11 don't take it for granted and we applaud it, so I just wanted to say that
12 to you personally in private session.

13 Your Honours, we can go into public with your leave.

14 PRESIDING JUDGE EBOE-OSUJI: Let's go to public session.

15 (Open session at 2.27 p.m.)

16 THE COURT OFFICER: (Interpretation) We are in public session,
17 your Honour.

18 PRESIDING JUDGE EBOE-OSUJI: Please proceed, Mr Khan.

19 MR KHAN: I'm grateful.

20 Q. Witness, I was thanking you for coming to give evidence and what
21 I want to ask you about at the outset is an aspect of your evidence to
22 the Prosecution. You, on various occasions, talked about members of the
23 Kalenjin community and ODM. Do you remember giving answers talking about
24 ODM and Kalenjin people?

25 A. Yes, your Honour.

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1 Q. And am I correct, Witness, that North Rift area is rather
2 cosmopolitan, people from all or many ethnic groups in Kenya reside in
3 the North Rift region? Is that a fair assessment?

4 A. Yes, your Honour.

5 Q. And, Witness, going to the 2007 elections, it's correct, is it
6 not, that those elections were vigorously contested by the various
7 parties in Kenya?

8 A. Yes, your Honour.

9 Q. Now, you talked a little bit about the ODM, the Orange Democratic
10 Movement, that was led by honourable Raila Odinga. The main opposition
11 party that was in government at the time, in fact, was the party of the
12 honourable President Mwai Kibaki; is that right?

13 A. Yes, your Honour.

14 Q. And that -- he led the PNU, is that a -- is that correct?

15 A. Yes, your Honour.

16 Q. And the PNU party in North Rift area contained many Kalenjin
17 people, didn't it?

18 A. Yes, your Honour.

19 Q. For example, sir, the PNU presidential -- the PNU candidate for
20 the Eldoret North constituency was Mr Jonathan Bii; is that right?

21 A. Yes, your Honour.

22 Q. Mr Bii was and is a member of the Kalenjin community; correct?

23 A. Yes, your Honour.

24 Q. I'm grateful. And, Witness, likewise, the PNU candidate for the
25 Emgwen parliamentary constituency was Mr Steven Tarus. That's right, is
26

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1 it not?

2 A. I didn't know.

3 Q. Witness, are you aware that the PNU Rift Valley coordinator for
4 the 2007 elections was a Kalenjin called Mr Abraham Limo? Are you aware
5 of that?

6 A. Yes, your Honour.

7 Q. And so it's fair to say that members of the Kalenjin community
8 were very much invested, some of them were very much invested in the PNU
9 political machinery in North Rift; is that right?

10 A. Yes, your Honour.

11 Q. And of course, we know that, Witness, that you lost property and
12 that there was a lot of suffering from members of all communities in
13 Kenya in 2007, but am I correct that members of the Kikuyu community were
14 killed? That's right, is it not?

15 A. It's right.

16 Q. And similarly, members of the Kalenjin, Luo, Luhya, and Kisii
17 communities also suffered similar losses. That's correct, is it not?

18 A. Yes.

19 Q. In fact, the tragic reality is that perhaps no tribe, no ethnic
20 community in Kenya, was untouched by the havoc that existed after the
21 2007 elections; is that a fair assessment, Witness?

22 A. Repeat your question, please.

23 Q. Everybody suffered, members of all ethnic communities suffered,
24 in the post-election violence in Kenya; is that right?

25 A. Yes, your Honour.

26

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1 Q. And, Witness, you described at one of the roadblocks that you
2 encountered, that you described to the Court --

3 PRESIDING JUDGE EBOE-OSUJI: Counsel, before you proceed,
4 I noticed you're leaving the area of your last line of inquiry. When you
5 asked questions about similar losses, I see that in line 9, it is
6 something you may need to explain, the questioning, whether "similar
7 losses" means losses that were similar in every respect or whether the
8 phrase "similar losses" receipted to your previous question in the sense
9 of Kikuyus having been killed, meaning others were similarly -- were also
10 killed.

11 MR KHAN: I'm grateful.

12 Q. Witness, it's my fault. Let me try again. Am I correct that
13 members of many ethnic communities were killed in the violence of
14 2007-2008 in Kenya?

15 A. Correct, your Honour.

16 Q. And members of this wide diversity of communities in Kenya also
17 suffered property damage and displacement?

18 PRESIDING JUDGE EBOE-OSUJI: One question at a time.

19 MR KHAN:

20 Q. Witness, in North Rift area, many people from all communities
21 were displaced; is that right?

22 A. Yes, your Honour.

23 Q. And, Witness, you described to the Prosecution that the voting
24 itself on 27 December 2007 was peaceful; is that right?

25 A. Yes, your Honour.

26

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1 Q. You described a scene where communities had been living in peace,
2 although tension increased in 2007, up to the elections. Is that a fair
3 assessment of what was taking place in North Rift and the area you lived?

4 A. Yes, your Honour.

5 Q. Now, if you remember when the voting finished on 27 December
6 2007, you went home and you started listening to the results coming in;
7 is that right?

8 A. Yes, your Honour.

9 Q. And am I correct that even with five hours gone, with the very,
10 very early results coming in, Raila Odinga was leading in the results
11 that were being released by the ECK?

12 PRESIDING JUDGE EBOE-OSUJI: Counsel, can you rephrase?

13 MR KHAN:

14 Q. Witness, are you aware -- do you remember -- let me start again.
15 Do you remember that right from the outset, Raila Odinga was leading in
16 the results that were coming in?

17 A. Yes, your Honour.

18 Q. And, Witness, I have videos if we need to get there but do you
19 remember that the day after the elections, on 28 December, by 5.00 p.m.,
20 Raila Odinga was leading, in fact, by almost 1 million votes? Do you
21 remember that being broadcast on the radio or on television?

22 A. Yes, your Honour.

23 Q. And on 29 December, by mid-day, Raila Odinga was still leading
24 although by this time the lead had reduced to 300,000 votes. Do you
25 remember that?

26

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1 A. Yes, I do remember.

2 Q. So it did come as a surprise, did it not, when the final
3 presidential results were announced proclaiming the honourable President
4 Kibaki as the victor? It was a surprise to many people; is that right?

5 A. Yes, your Honour.

6 Q. And, Witness, you gave evidence that some of the -- the anger and
7 the emotion that you saw was accompanied by people saying effectively
8 this cannot be right, Raila Odinga was leading? Is that right?

9 A. Yes, your Honour.

10 Q. Witness, do you remember the 2002 swearing-in ceremony of
11 President Kibaki? Do you remember ever seeing any of that?

12 A. I do, your Honour.

13 Q. And, Witness, did you manage to see the 2007 swearing-in ceremony
14 of the honourable -- His Excellency President Kibaki?

15 A. Yes, your Honour.

16 Q. And, Witness, am I right that you also had the opportunity to see
17 the swearing-in ceremony of President Uhuru Kenyatta and the deputy
18 president, Mr Ruto, just this year?

19 A. Yes, your Honour.

20 Q. Is it correct, Witness, that there was a huge difference between
21 the 2013 and 2002 swearing-in ceremonies for those presidents and what
22 took place in 2007?

23 PRESIDING JUDGE EBOE-OSUJI: Counsel, it's a complex question.

24 You will -- even for me to think I know what you're trying to say but we
25 have a witness on the stand and we have to care about his own

26

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1 understanding of it.

2 MR KHAN: Grateful.

3 PRESIDING JUDGE EBOE-OSUJI: Especially one that has been
4 answering your questions uniformly in the positive. Think about
5 rephrasing that.

6 By the way, at some point, in this case, because this is for us
7 not just the witness, the argument has been asserted by questioning
8 repeatedly previous witnesses and now this one, that the result, the
9 final result, was a surprise, and now you've mentioned 2002 and 2007 in
10 your last few questions. I suppose that at some point we will be hearing
11 evidence of the result trends in 2002 and 2013, in the sense that whoever
12 was declared the winner was always the winner from day 1 so as to create
13 that difference that happened or accentuated, rather, in 2007.

14 MR KHAN: Indeed, your Honour, we will bring a witness, if we get
15 to that stage, to explain those issues.

16 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

17 MR KHAN:

18 Q. Witness, thank you for bearing with me. What I'll do, if you
19 agree, is that I'll show you a video and then I'll put some questions and
20 hopefully things will become clear.

21 MR KHAN: Your Honour, with the Court's leave, we will play
22 KEN-D09-0026-0003. It's not very long but I think it should be watched
23 in full.

24 Q. So, Witness, if you could be so kind as to look at your screen
25 and hopefully we will play the video very shortly.

26

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1 (Viewing of the video excerpt)

2 MR KHAN: Your Honour, there seems to be some problem with
3 control being released from here. Perhaps the court officer -- it would
4 be one video that I show today. Perhaps the court officer could be so
5 kind as to control it from his device. If he's so kind, I can repeat the
6 EVD number, it's KEN-D09-0026-0003.

7 (Viewing of the video excerpt)

8 MR KHAN: Perhaps the screen can be kept on for a moment on the
9 last frame.

10 Q. Witness, you've been shown a TV report from 2007 that was aired
11 on the Kenyan television channel, and it showed flashbacks to the 2007
12 inauguration of the first -- for the first term of President Kibaki. Did
13 you see that? 2002. So did you see that, the flashback showing the 2002
14 swearing in of President Kibaki at Uhuru Park?

15 A. Yes, your Honour.

16 Q. Quite different from the -- what was described as the subdued
17 swearing in at State House in 2007, would you agree?

18 A. Yes, I do.

19 PRESIDING JUDGE EBOE-OSUJI: Agree to what? Agree to what he saw
20 on video or agree that that was indeed his recollection of the events at
21 the time?

22 MR KHAN:

23 Q. Witness, you agree -- would you agree with me that from watching
24 that video, the swearing-in ceremony of President Kibaki from what you
25 could see on television was far more subdued than the jubilation that was
26

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1 clearly apparent in 2002? Do you agree with me?

2 A. Yes, I do.

3 Q. Witness, can you see right at the -- if we could play, sorry, the
4 tape, just let it run for a moment, I'm looking at the banner, Witness,
5 at the bottom of the screen and if it can be stopped there, Witness, do
6 you see there, in the -- sometimes it's called the ticker tape or the
7 banner at the bottom, it says in red: "Briefs." And then: "Government
8 Raila and Ruto -- Raila Ruto have not been arrested"? Can you read that,
9 Witness? Can you see that, sir? Just on the bottom of the screen, just
10 under KTN.

11 A. Yes, I do. I see it.

12 Q. And do you remember rumours flying in Kenya, just after the
13 swearing in, that honourable Raila Odinga and honourable Ruto had been
14 arrested by the government? Do you remember hearing that?

15 A. Yes, I do.

16 Q. And, Witness, do you recall that very shortly after the
17 elections, there was a blanket ban on television broadcasts, the TV
18 screens in Kenya went black, didn't they? Do you remember that?

19 A. Yes, I do remember.

20 Q. Would you agree with me, sir, that the environment generated at
21 that time massively escalated the tensions that existed in the country?

22 A. Yes, your Honour.

23 Q. And, Witness, did you -- do you recall hearing reports from
24 international observers and diplomats, like the ambassador of the United
25 States of America to Kenya and the European Union, expressing significant
26

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1 concern with what were termed widespread irregularities in the election
2 process? Do you remember hearing people complaining along those lines?

3 A. Yes, I do, your Honour.

4 Q. And, Witness, do you remember hearing reports that in different
5 parts of Kenya, in different parts of Kenya, that AP officers had been
6 accosted and attacked by civilians because of suspicion that they were
7 transporting ballot boxes stuffed with fake ballot papers? Do you
8 remember that?

9 PRESIDING JUDGE EBOE-OSUJI: AP officers?

10 MR KHAN: AP officers, indeed.

11 PRESIDING JUDGE EBOE-OSUJI: What is that?

12 MR KHAN:

13 Q. Witness, is it correct, I'll put it in this way, an AP officer is
14 an administrative police officer? Is that right?

15 A. Yes, your Honour.

16 Q. And do you recall at the time seeing on the news various reports
17 that AP officers in different parts of Kenya had been accosted, sometimes
18 attacked, and indeed killed on occasion, because they were suspecting --
19 they were suspected of ferrying stuffed ballot boxes? Is that right?

20 A. Yes, your Honour.

21 Q. And it was believed that the stuffed ballot boxes that they were
22 ferrying were stuffed in favour of the honourable President Kibaki; is
23 that right?

24 A. Yes, your Honour.

25 Q. So, Witness, we have an environment, do we not, in the immediate
26

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1 aftermath of the elections where tension was high and rumour was
2 spreading like wildfire? Is that a fair assessment? There was a lot of
3 rumour about what lay in store?

4 A. Pardon, your question, please.

5 Q. Did you recall that in the period of the violence, let me put it
6 differently, that during the violence in Kenya, there were a lot -- there
7 were many rumours that were flying about, a lot of guesswork?

8 A. Yes, your Honour.

9 Q. Indeed, are you aware that, perhaps even on SMS, there were all
10 kind of rumours that the Mungiki were going to enter the field, so to
11 speak, and engage in violence? Did you hear about that?

12 PRESIDING JUDGE EBOE-OSUJI: Whose SMS?

13 MR KHAN:

14 Q. Witness, did you ever hear that there were SMSs that were making
15 the rounds, so to speak, saying that Mungiki were moving into North Rift
16 area?

17 A. I'm not sure of.

18 Q. Did you ever hear rumours, Witness, that Mungiki, members of the
19 Mungiki gang were going to take part in attacks against non-Kikuyus,
20 including the Kalenjin? Did you hear such rumours?

21 A. Yes, your Honour.

22 PRESIDING JUDGE EBOE-OSUJI: For the record, my question earlier
23 was not "who is SMS" but "whose SMS," just to correct what appears on the
24 transcript. But proceed, Mr Khan.

25 MR KHAN: I'm most grateful, your Honour.

26

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1 Q. Witness, you voted in the elections, did you not?

2 A. I voted.

3 Q. And you voted, if I could say -- if I could ask, you voted for a
4 PNU president; is that right?

5 A. Yes, your Honour.

6 Q. And, Witness, do you recall the candidates that stood for
7 election in Eldoret North? It was William Ruto and Jonathan Bii; is that
8 correct?

9 A. Correct.

10 Q. Both were Kalenjins?

11 A. Yes, your Honour.

12 Q. And can I ask who you voted for?

13 PRESIDING JUDGE EBOE-OSUJI: Witness, you don't have to answer
14 that question but it's entirely up to you.

15 MR KHAN:

16 Q. Witness, if it causes any discomfort at all, please don't feel --
17 I'm very happy to move on. It's completely up to you.

18 A. You can continue.

19 Q. Well, Witness, put it this way, if you exercised your vote for a
20 member of parliament, you voted for a Kalenjin; is that right?

21 A. Yes.

22 Q. Witness, I'm going to ask you some questions now regarding
23 location -- just bear with me one moment. Some questions about Huruma.
24 You gave evidence in public regarding those general questions.

25 Witness, are you aware of how Kenya is -- I'll put it
26

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1 differently. Are you aware of how Uasin Gishu is organised
2 administratively?

3 A. No, your Honour.

4 Q. Is it correct that Uasin Gishu is organised into three main
5 districts?

6 MR OMOFADE: Your Honours, I have to object. He said he's not
7 aware of how it's organised.

8 MR KHAN: Your Honour, I did hear the answer, but of course I'm
9 entitled, I think, with your leave to continue to --

10 PRESIDING JUDGE EBOE-OSUJI: Objection is overruled. Proceed.

11 MR KHAN: I'm grateful.

12 Q. Witness, have you heard of the Eldoret North district of Uasin
13 Gishu? Have you heard that phrase, that term, Eldoret, Eldoret North
14 district?

15 A. No, sir.

16 Q. Witness, have you heard the term Eldoret East District?

17 A. Yes, your Honour.

18 Q. That's an administrative district, is it not?

19 A. Yes, your Honour.

20 Q. And it's a district of Uasin Gishu, am I right?

21 A. Yes, your Honour.

22 Q. I'm grateful, Witness. And similarly, have you heard of the
23 Eldoret South District?

24 A. Yes, your Honour.

25 Q. Witness, have you heard of a division, a place called Turbo?

26

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1 A. I don't -- the last word I didn't heard.

2 Q. Have you heard of the Turbo division in Uasin Gishu?

3 A. I'd like you to pronounce that word correctly, I'm not --

4 Q. Turbo, perhaps. It's spelled T-u-r-b-o, but please forgive my
5 terrible pronunciation if it's different.

6 A. Yes, your Honour.

7 Q. So sorry. You've heard of that place? And have you heard of a
8 place called -- a division called Soy?

9 A. Yes, your Honour.

10 Q. Similarly, Moiben, M-o-i-b-e-n, Moiben?

11 A. Yes, your Honour.

12 Q. Just three more, Witness. You've heard of the Kapsaret division?

13 A. Yes, your Honour.

14 Q. A division called Kesses, K-e-s-s-e-s, Kesses?

15 A. Yes, your Honour.

16 Q. And finally, Witness, a division called Ainabkoi,
17 A-i-n-a-b-k-o-i?

18 A. Yes, your Honour.

19 Q. Am I correct, Witness, that these divisions form part of the
20 organisational structure in the districts of Uasin Gishu? They are --

21 MR OMOFADE: Mr President, I still have to object. He has said
22 he doesn't know how it is organised and counsel is repeatedly putting
23 this assertion to the witness.

24 PRESIDING JUDGE EBOE-OSUJI: Overruled. Proceed.

25 MR KHAN: I'm grateful.

26

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1 Q. Witness, I think my last question was that are you aware that
2 those divisions, those places I mentioned, like Turbo and Kapsaret, form
3 part of the administrative structure of Uasin Gishu? Are you aware of
4 that, sir?

5 A. Now I'm aware of it.

6 Q. Have you heard those places, those divisions, being used when
7 people are talking about the organisation of government, so to speak? At
8 the local level?

9 A. Pardon, your question, please?

10 Q. Have you heard of those divisions, like Kapsaret division, being
11 spoken about when people are discussing the organisation of local
12 government, of local issues?

13 A. Yes, your Honour.

14 Q. Now, witness, I want to ask you some questions -- witness, I want
15 to ask you some questions regarding the Turbo division. Are you aware
16 that under the Turbo division there is -- so you've got Turbo division on
17 the top, so to speak, and underneath it you have a place called Kapyemit,
18 Kapyemit. And that's called a location, the Kapyemit location. Are you
19 aware of such a location?

20 A. Yes, your Honour.

21 Q. And have you heard that beneath the Kapyemit location is a
22 sub-location called Kapsaos, K-a-p-s-a-o-s?

23 PRESIDING JUDGE EBOE-OSUJI: Hold that question. Hold it. Hold
24 it, please. Let us first establish that the witness's last answer,
25 because I see that you asked a multiple question in there. Are we
26

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1 talking about his awareness of a particular location called Kapyemit?

2 Was that it?

3 MR KHAN: Your Honour, I was seeking to --

4 PRESIDING JUDGE EBOE-OSUJI: Or its relationship with another
5 administrative unit? That's the double-edged -- the double-barrelled
6 question. So let's settle it, strip it down.

7 MR KHAN: I'm grateful.

8 Q. Witness, let me try again. You know a place called Kapyemit?

9 That's right, is it not?

10 A. Yes, your Honour.

11 Q. Are you aware that there is a location called Kapyemit -- that
12 there is an administrative area called Kapyemit which is within the Turbo
13 division? Are you aware of that, Witness?

14 MR OMOFADE: Mr President --

15 MR KHAN: And, your Honour -- sorry, before my learned friend
16 interrupts I will say this is an issue of importance. The objections of
17 course should be -- and I always take it that my learned friend will
18 object appropriately but it should not be used as device to prevent the
19 Defence eliciting key and critical evidence from a witness (* overlapping
20 speakers) --

21 PRESIDING JUDGE EBOE-OSUJI: Do not anticipate the ruling. Just
22 let him make his objection and then we will take it from there.

23 MR OMOFADE: I'm grateful, Mr President. Perhaps my learned
24 friend ought to put a time-frame to the questions he's asking. We know
25 we are talking about incidents that occurred in 2007. We are in 2013,

26

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1 and this is all I ask my friend to do. I think it's only fair to the
2 witness.

3 PRESIDING JUDGE EBOE-OSUJI: And I think there is evidence to the
4 effect that there had been some sort of reorganisation between -- in the
5 meantime, isn't it?

6 MR OMOFADE: That's the publicly available information.

7 PRESIDING JUDGE EBOE-OSUJI: Yes. You see, Mr Khan.

8 MR KHAN: Well, your Honour, I'd ask my learned friend just to
9 refer me to the public information regarding that reorganisation in due
10 course, but I will carry on.

11 Q. Witness, am I correct, looking at the events of 2007/2008, there
12 was still a place called Kapyemit, that's an administrative area?

13 A. Yes, your Honour.

14 Q. And that administrative area, Witness, came under the
15 responsibility of the Turbo division; is that right?

16 A. I'm not sure of it.

17 Q. Are you aware, Witness, that under the Kapyemit location - and
18 I'm sorry I have to pronounce it again terribly - there is a sub-location
19 called Kapsaos, K-a-p-s-a-o-s, Kapsaos?

20 A. Yes, your Honour.

21 Q. And, Witness, am I correct that there is beneath Kapsaos --

22 MR KHAN: Your Honour, sorry, bear with me for a moment.

23 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, you can help your
24 friend with some of the pronunciations.

25 MR KIGEN-KATWA: I could, Mr President, I think the word should
26

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1 be Kapsaos, Mr President.

2 MR KHAN: Your Honour, my learned friend is having far too much
3 fun watching my terrible pronunciation.

4 Q. But, Witness, under the Kapyemit location there's two
5 sub-locations called Huruma and Kapsaos; is that right?

6 A. Yes, your Honour.

7 Q. And there is a place called Maili Nne which is under Kapsaos?

8 A. Yes, your Honour.

9 Q. And, Witness, similarly, that under the Soy division, there a
10 place -- there is a location called Kibulgenyi. You've heard of that,
11 Witness?

12 A. Yes, your Honour.

13 Q. And, Witness, you were aware of that location in 2007/2008, am I
14 right?

15 A. Yes, your Honour.

16 Q. And under -- Witness, under the Kibulgenyi location, there is a
17 sub-location called Kilimani; is that right?

18 A. Yes, your Honour.

19 Q. And, Witness, Kilimani itself is comprised villages including a
20 place called Kambi Thomas, Kambi Mwangi, Raiply, 64 Stadium, Roadblock
21 and Pipeline, they all come under the Kilimani sub-location; is that
22 right, Witness?

23 A. Yes, your Honour.

24 Q. And that was the state of play in 2007/2008, was it not?

25 A. Pardon, your question, please?

26

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1 PRESIDING JUDGE EBOE-OSUJI: Indeed.

2 MR KHAN:

3 Q. And that was the organisational system that was in operation in
4 2007; is that right?

5 A. I'm not sure of it.

6 Q. Witness, are you aware, yourself, of any change to the divisions
7 or the division boundaries in Uasin Gishu since 2007? Are you aware if
8 there has been any change, or you don't know?

9 A. I'm not aware of it.

10 Q. So you're not aware there has been any changes?

11 A. Yes, your Honour.

12 Q. I'm most grateful. Witness --

13 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, so there is no confusion,
14 on the assumption that the last question proceeded from the exchange I
15 had with the Prosecutor, I do not know if it was Mr Hooper or if it was
16 the Prosecution that had indicated that there had been a change of
17 name -- the national level, regional level, that sort of thing, and that
18 is what I was talking about, whether that had also permeated to the local
19 level.

20 MR KHAN: Your Honour, I'm grateful. I think the change --

21 PRESIDING JUDGE EBOE-OSUJI: It's not about down to the regional
22 or local government level.

23 MR KHAN: No, your Honour, that was devolution on a political
24 level rather than an administrative organisational change and I think
25 that took place in 2010.

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1 PRESIDING JUDGE EBOE-OSUJI: Yes, and the point was, we do not
2 know whether that had affected other things, so that was why it was
3 important to put a time to your questions to the witness concerning these
4 administrative divisions at a local government level.

5 MR KHAN: Yes, your Honour, and I can say, and my learned friend
6 will contradict me, there is no evidence that there has been any change
7 since 2007 on the local administrative structure that I've already
8 detailed.

9 Q. Now, Witness, I'm going to move to another topic because I have
10 45 minutes left and there is a fair bit to do. I'm going to talk firstly
11 about -- if you look at the paper, sir, that the Prosecution gave you,
12 number 6, do you see the individual named at number 6?

13 A. Yes, your Honour.

14 Q. I'm going to ask you some questions about that person.

15 MR KHAN: And I think for that, at first instance I would need to
16 go into private session for a few minutes, your Honour.

17 PRESIDING JUDGE EBOE-OSUJI: Private session -- do you have any
18 indication of how many minutes?

19 MR KHAN: Your Honour, I hope three or four minutes.

20 PRESIDING JUDGE EBOE-OSUJI: All right.

21 MR KHAN: I'll do my best anyway.

22 PRESIDING JUDGE EBOE-OSUJI: We will go to private session, then.

23 *(Private session at 3.14 p.m.) Reclassified as Open session

24 THE COURT OFFICER: (Interpretation) We are in private session,
25 your Honour.

26

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1 MR KHAN:

2 Q. Witness, we are now in private session so we can -- whatever you
3 say is not being broadcast outside. But do you know the full name of the
4 person -- of (Redacted)

5 A. No, your Honour.

6 Q. If I told you the full name was (Redacted) would that
7 help refresh your memory? (Redacted)

8 A. I know him as (Redacted)

9 Q. And, Witness, can I ask, sir, when did you last see (Redacted)

10 A. When he was attacked by the Kalenjins.

11 Q. So back in 2007, am I right?

12 A. Yes, your Honour.

13 Q. Witness, I'm going to show you a photograph.

14 MR KHAN: And for the court record it's at KEN -- and if my
15 learned -- if my friend from the registry could be so kind as to help,
16 it's KEN-D09-0026-0011.

17 Q. And a photograph will come up, sir, and I would like to you tell
18 the Court if you recognise that person.

19 MR KHAN: Your Honours, it may save time, I have hard copies that
20 can be distributed.

21 PRESIDING JUDGE EBOE-OSUJI: We already have the -- the document
22 pulled up on the monitor.

23 MR KHAN:

24 Q. And this is a confidential photograph. And, Witness, do you
25 recognise the gentleman in that photograph?

26

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1 A. Yes, your Honour.

2 Q. Is that the (Redacted) that you've been speaking about when you
3 were asked questions by the Prosecution?

4 A. Yes, your Honour.

5 Q. I thank you so much.

6 Witness, (Redacted) are you aware that he has (Redacted)
7 (Redacted) are you aware of
8 that?

9 A. No, sir.

10 Q. Are you aware sometimes he's called (Redacted)

11 A. I used to know him as (Redacted)

12 Q. And, Witness, are you aware that previously he was the
13 (Redacted)

14 (Redacted) Had you heard that?

15 A. No, your Honour.

16 Q. He was a well-respected member of the community. Is that a fair
17 assessment or not?

18 A. Yes, it's a fair.

19 Q. In fact, Witness, (Redacted) is
20 that right?

21 A. Yes, your Honour.

22 Q. Are you aware that he had a -- he had (Redacted)
23 (Redacted)

24 A. No, sir.

25 Q. Witness, when you saw the attack on (Redacted), horrible event it
26

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1 must have been, how far away were you from him, sir?

2 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, can we go to public session
3 and we will refer to him as number 6?

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

5 PRESIDING JUDGE EBOE-OSUJI: All right.

6 MR KHAN:

7 Q. Witness, we are going into public session so we'll now only refer
8 to that individual as person number 6. Thank you so much.

9 PRESIDING JUDGE EBOE-OSUJI: Public session.
10 (Open session at 3.19 p.m.)

11 THE COURT OFFICER: (Interpretation) We are now in public session,
12 your Honour.

13 PRESIDING JUDGE EBOE-OSUJI: Thank you. Witness, now you've
14 heard, we are in public session. Mr Khan, please.

15 MR KHAN: I'm grateful.

16 Q. So, Witness, I'm asking you some questions about person number 6.
17 And my question was how far away were you from person number 6 at the
18 time you saw him being attacked?

19 A. I can't estimate the distance where I was but I saw what was
20 happening.

21 Q. Am I correct, Witness, that you told the Prosecution in your
22 statement that it was about -- you were about 500 metres away from person
23 number 6? Do you remember saying that?

24 A. Yes, your Honour.

25 Q. And I understand you're not so good with distances but it was

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1 a -- you were a reasonable distance away from him; is that right, when
2 you observed the attack?

3 A. Yes, your Honour.

4 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, where are we going with
5 that line of question?

6 MR KHAN: Your Honour, I'm coming to it hopefully.

7 PRESIDING JUDGE EBOE-OSUJI: Make it quick.

8 MR KHAN:

9 Q. And, Witness, you saw the number 6 shoot in the air, run and then
10 collapse. Do you remember saying that to the Prosecution when you were
11 questioned?

12 A. Yes, your Honour.

13 Q. The reason he collapsed was because he was hit in the head with a
14 stone. Are you aware of that?

15 A. No, sir.

16 Q. Witness, when you gave evidence yesterday, you spoke several
17 times about Kalenjin boys, but are you aware that the individuals that
18 attacked (Redacted) were largely school boys? Are you aware of that?

19 A. No, your Honour.

20 Q. In fact, some of the boys that attacked (Redacted) were, in fact --
21 let me move on to something else.

22 I want to go back to witness 6, person number 6. The person that
23 attacked -- the people that attacked person number 6 were, in fact,
24 classmates of person 6 -- of the son of person 6, are you aware of that?

25 A. Pardon, your question, please?

26

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1 Q. Schoolmates, schoolmates of the son of person 6 took part in the
2 attack that led to the injury of person 6, so he was attacked by
3 schoolmates of his son. Are you aware of that?

4 A. No, sir.

5 Q. And are you aware that the reason, in fact, person 6 shot in the
6 air is because he saw children and he said, "I couldn't bring myself to
7 kill them"? Are you aware that that's the reason why nobody was killed
8 by his gun?

9 A. I'm not aware.

10 Q. Witness, you haven't spoken to person 6 since the attack, have
11 you?

12 A. No, your Honour.

13 Q. Did you ever hear from anybody else that person 6 stated that he
14 had been attacked with stones, not arrows, by persons from the Luo and
15 Luhya community as well as Kalenjins?

16 A. Your question, please, pardon?

17 Q. Have you -- did you ever hear that person 6 states that he was
18 assaulted by a mob of people composed of members of the Luo community,
19 the Luhya, Kalenjin and even a few Kikuyus? It was a mixed bunch that
20 attacked him. Did you hear that?

21 A. No, your Honour.

22 Q. Witness, did you ever hear that a few minutes before he was
23 attacked, witness -- person 6 had, in fact, chased away some Kikuyu youth
24 who were armed with pangas and who were about to attack two Luo boys and
25 a lady? Did you ever hear of that?

26

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1 A. No, your Honour.

2 Q. Are you aware that when person 6 was taken to hospital and in
3 need of blood, in fact, it was a relative of person number 4 that gave
4 him blood, gave him a blood transfer? Did you ever hear that?

5 A. No, your Honour.

6 Q. That person being a Kalenjin.

7 A. No, your Honour.

8 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, is there an ethnicity
9 attached to the schoolboys, according to you, who attacked person number
10 6?

11 MR KHAN: Your Honour, our instructions from person number 6 is
12 that it was a mixed bunch of Luo, Luhya, Kalenjin, and even a couple of
13 Kikuyus and they were aged about 16 or 17 and maybe a couple of
14 18-year-olds.

15 PRESIDING JUDGE EBOE-OSUJI: Would you call 16-, 17-,
16 18-year-olds schoolboys in the sense you've led your questioning so far?

17 MR KHAN: Your Honour, I was putting what the witness number 6 --
18 person 6 describes these individuals at, that they were schoolboys, and
19 I was giving the witness, putting my case, or trying to -- and giving the
20 witness an opportunity to see whether or not those questions helped jog
21 his memory about what he saw it at the time or what he heard afterwards.
22 That was what I was attempting to do, your Honour.

23 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

24 MR KHAN: I'm grateful. I'm moving on, in any event.

25 Q. Are you aware -- I think just one question on that. Are you
26

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1 aware that person 6 is, in fact, and was in 2007, a supporter of the ODM
2 political party?

3 A. Pardon, please, your question?

4 Q. Are you aware that person 6 was an ODM supporter?

5 A. I'm not aware.

6 Q. Are you aware that, in fact, person 6 campaigned for William Ruto
7 himself in the 2007 presidential elections and local elections? He was a
8 supporter of William Ruto, are you aware of that?

9 A. No, your Honour.

10 Q. I thank you, Witness. Witness, I'm going to go briefly in the
11 time allowed to a killing, the death of somebody you named, and his name
12 is on number 10 of the document before you. Can you see that name, sir?

13 A. Yes, your Honour.

14 Q. And I want to read something, just one paragraph, that witness
15 6 -- person 6 says and I want you to let me know if that helps refresh
16 your memory. And person 6 states this:

17 "When I was escorting the three Luos, two boy and one girl that I
18 had rescued, I saw a tall Luo man hit," and he gives the name that's
19 person number 10, "on the head with a stone. I saw him do it and
20 I confronted him and asked him why he did that. I pointed my gun at him
21 and told him that I could also kill him. He panicked. If he was not a
22 Luo, he was a Luhya from Busia. I told him that it was a bad thing" --

23 MR OMOFADE: Mr President, it's not quite clear what counsel is
24 doing. Are we putting the testimony or proposed testimony of a person
25 who might or might not come before this court? Or are we putting on the
26

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1 record the account of someone who has already testified? If it's the
2 former, this then it's certainly not right.

3 MR KHAN: Your Honour, I was endeavouring to put my question.
4 The Prosecution, of course, filed a motion that parties should put their
5 case. And what I was seeking to do before my learned friend intervened
6 was to put an account to the witness to give this witness a chance to say
7 whether or not it accords with his own recollection or whether or not
8 it's disputed, and if so, give this witness a proper and full opportunity
9 to say why he disagrees with it. Your Honour, it's three lines left.

10 PRESIDING JUDGE EBOE-OSUJI: The --

11 MR OMOFADE: Well, putting the case is a different matter
12 entirely. And for the last two pages or so, counsel has put the case and
13 that's the proper way, we suggest, to do it. But to quote from documents
14 that are not in the presence of any of us from a person who may or may
15 not have given a statement to the Defence alone is inappropriate, we
16 suggest.

17 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, the question is, is this
18 material that's already on the record?

19 MR KHAN: Your Honour, it's not already on the record. Of
20 course, the Defence -- the Prosecution no doubt would complain in a
21 Defence case if an individual came that gave a different account to a
22 Prosecution witness if the witness hadn't been given an opportunity at
23 the very least to accept it or reject it, and there is no prejudice at
24 all to the Prosecution. The witness is here, he can simply state, in my
25 respectful submission, whether or not the narrative of person 6 accords

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1 to his understanding or if it's false or wrong or inaccurate, and your
2 Honours will assess that at the end of the day.

3 (Trial Chamber confers)

4 PRESIDING JUDGE EBOE-OSUJI: Objection is sustained, Mr Khan.

5 MR KHAN: I'm grateful, Mr President.

6 Q. Witness, are you aware that person number 10 in fact was a --

7 MR KHAN: Your Honour, perhaps we could go into private session
8 just for a moment.

9 PRESIDING JUDGE EBOE-OSUJI: How long?

10 MR KHAN: 20 second perhaps.

11 PRESIDING JUDGE EBOE-OSUJI: All right. Private session, then.

12 *(Private session at 3.33 p.m.) Reclassified as Open session

13 THE COURT OFFICER: (Interpretation) We are in private session,
14 your Honour.

15 MR KHAN:

16 Q. Witness, are you aware that person number 10, in fact, was what
17 (Redacted)

18 A. Yes, your Honour.

19 Q. (Redacted)

20 A. Yes, your Honour.

21 Q. (Redacted) Is that a fair
22 description?

23 A. Yes, your Honour.

24 Q. And the actual person that killed number 10 was about 30 years of
25 age. Did you see such a person take part in the attack, that actually

26

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1 killed person 10?

2 A. No, your Honour.

3 MR KHAN: Your Honour, I'll move on, back to public session
4 perhaps.

5 PRESIDING JUDGE EBOE-OSUJI: Could you spell the (Redacted)

6 MR KHAN: (Redacted) And, your Honour, because it's
7 distinctive -- I actually don't see why the dead person's identity is in
8 private, but I thought it would be more appropriate to make amends for my
9 last mistake.

10 PRESIDING JUDGE EBOE-OSUJI: We move to public session.

11 MR KHAN: I'm grateful.

12 (Open session at 3.35 p.m.)

13 THE COURT OFFICER: (Interpretation) We are in public session,
14 your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, proceed, please.

16 MR KHAN:

17 Q. Witness, you gave evidence about seeing various people on a hill,
18 and you said that you saw person number 5, person number 1, and also
19 person number 4 on the hill that you describe. Do you remember saying
20 that?

21 A. Yes, your Honour.

22 Q. What was your distance from these people, Witness? How far were
23 you?

24 A. I'm not sure of the distance, but where I was, I was able to see
25 them.

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1 Q. You told the Prosecution you were 500 metres away. Do you
2 remember saying that?

3 A. I'm not sure of.

4 Q. You say that the people on the hill that were around the three
5 individuals I've just referred to were armed with bows and arrows; is
6 that right?

7 A. Yes, your Honour.

8 Q. So it's fair to say you were at least an arrow's shot away from
9 these people; is that right?

10 A. No, your Honour.

11 Q. You were closer than an arrow's shot away?

12 A. No, your Honour.

13 Q. Were you further away than an arrow's shot away, Witness?

14 A. Yes, your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: What's the distance it of an arrow
16 shot?

17 MR KHAN: Your Honour, just coming to that.

18 Q. Witness, it's correct, is it not, that a Kalenjin bow can shoot
19 quite a distance?

20 A. I'm not sure of how distance can go.

21 Q. Witness, can you give any estimate at all as to how far you were
22 from that scene? You said 500 metres to the Prosecution when you were
23 interviewed but what assessment would you give now? Can you give an
24 assessment?

25 MR OMOFADE: Just to correct the record, and I know it must be a
26

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1 mistake by my learned friend, this isn't the incident that he described
2 with 500 metres, and I'm just correcting my learned friend.

3 MR KHAN:

4 Q. Witness, you couldn't hear the three individuals speak from where
5 you were, could you?

6 A. Yes, your Honour.

7 PRESIDING JUDGE EBOE-OSUJI: There is a way the question was
8 asked and then it got inverted at some point. Mr Khan, can you put it in
9 a more straight line, your question, so we know what he's responding to?

10 MR KHAN:

11 Q. Witness, you were not able to hear what these people were saying?

12 PRESIDING JUDGE EBOE-OSUJI: Do you agree with that, Witness?

13 THE WITNESS: Yes.

14 MR KHAN:

15 Q. And am I right that you recognised their shape?

16 A. Yes, your Honour.

17 Q. Was it, in fact, more identification by -- by shape than facial
18 recognition? You couldn't see their face so clearly but you recognised
19 their body; is that right?

20 A. No, your Honour.

21 Q. You say that --

22 PRESIDING JUDGE EBOE-OSUJI: Sorry, are you saying "no" to what?
23 Could you see their face clearly? Or could you not?

24 THE WITNESS: Could not see their face clearly but you could
25 identify who they were.

26

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1 MR KHAN:

2 Q. And you told the Prosecution earlier, you told the Court,
3 I should say, earlier, that you thought that person number 4 was a leader
4 due to that person's position, the position that person held. That's why
5 you thought he was a leader; is that right?

6 A. Pardon for your question, please.

7 Q. The basis of you concluding that person number 4 was a leader was
8 due to the position that he held; is that right?

9 A. No.

10 PRESIDING JUDGE EBOE-OSUJI: Position held in the community?

11 MR KHAN: Well, in government, if I can say it publicly, in
12 government.

13 PRESIDING JUDGE EBOE-OSUJI: Now, you've got the full question,
14 Witness. Can you answer it?

15 THE WITNESS: No, your Honour.

16 MR KHAN:

17 Q. And you say that you could also tell that this person was a
18 leader because you could see him moving his hands; is that right? By the
19 signs of his hands? Is that why you concluded he was a leader?

20 A. Yes, your Honour.

21 MR KHAN: Your Honour, if we could go into private session,
22 please, for five minutes, I hope.

23 PRESIDING JUDGE EBOE-OSUJI: Private session. I'm looking at the
24 clock so -- and you did make a request, there are some submissions you
25 said you wanted to make before we adjourned for the week -- for the

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1 session, that is. Mindful of the clock. Let's go to private session.

2 *(Private session at 3.43 p.m.) Reclassified as Open session

3 THE COURT OFFICER: (Interpretation) We are in private session,
4 your Honour.

5 MR KHAN:

6 Q. Now, Witness, we are in private session again. I want to talk
7 about the person at number 5, (Redacted). Are you aware that person
8 number 5, in fact, (Redacted) in place number 1, in
9 (Redacted) Are you aware of that?

10 A. Yes, your Honour.

11 Q. In fact, he's the person (Redacted)
12 (Redacted)
13 (Redacted) is that right?

14 A. Yes, your Honour.

15 Q. Witness, he has -- are you aware (Redacted)
16 (Redacted)? Are you aware of that?

17 A. Yes, your Honour.

18 Q. Are you aware he's also (Redacted)
19 (Redacted)

20 A. Yes, your Honour.

21 Q. Witness, are you aware he's (Redacted) years of age?

22 A. Not aware of the age.

23 Q. Are you aware that his home was actually (Redacted)
24 (Redacted)?

25 A. Yes, your Honour.

26

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1 Q. Are you aware that people would (Redacted)

2 (Redacted)

3 A. I'm not sure.

4 Q. He's a well-respected member of the community, is he not?

5 A. Yes.

6 Q. He has children that are (Redacted), are you

7 aware of that?

8 A. Yes, I am.

9 Q. He's a man that's viewed (Redacted); is

10 that right?

11 A. Yes, your Honour.

12 Q. From what you saw with -- from what you say you saw, you have no

13 way of knowing whether or not he was calming people down, talking to

14 people, or commanding them? You can't be certain, can you, Witness?

15 A. Yes, your Honour.

16 Q. You agree with me you cannot be certain?

17 A. Pardon?

18 Q. You cannot be certain whether he was simply talking to the people

19 on that hill rather than leading them in any criminal activities?

20 A. I'm not aware of it.

21 Q. I'm grateful. I want to go now to person number 4 and again this

22 will have to be, I'm afraid, in private to move on. Person number 4,

23 Witness, (Redacted) is he not?

24 A. He is.

25 Q. And (Redacted),

26

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1 isn't it?

2 A. Yes, your Honour.

3 Q. And it was in (Redacted) location in 2007, am I right?

4 A. Yes, your Honour.

5 Q. And he (Redacted). Are
6 you aware of that?

7 A. No, your Honour.

8 Q. Are you aware that the district commissioner of Uasin Gishu in
9 2007 was Bernard -- Mr Bernard Kinyua?

10 A. I'm not aware.

11 Q. Are you aware that to be (Redacted)
12 (Redacted)?

13 A. Pardon?

14 Q. (Redacted)
15 (Redacted). Are you aware of that?

16 A. Yes, your Honour.

17 Q. Are you aware that person 4, in fact, (Redacted)
18 (Redacted) during the violence? Are you aware of that?

19 A. No, your Honour.

20 Q. And are you aware --

21 PRESIDING JUDGE EBOE-OSUJI: Mr Khan --

22 MR KHAN: Yes?

23 PRESIDING JUDGE EBOE-OSUJI: -- was he (Redacted) in
24 2007? Is that the question?

25 MR KHAN: Indeed.

26

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1 PRESIDING JUDGE EBOE-OSUJI: All right. Witness, is that the
2 case? Do you know that he was the (Redacted) in 2007?

3 THE WITNESS: Yes, Mr President.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 MR KHAN:

6 Q. Are you aware that under the (Redacted)
7 (Redacted)

8 (Redacted) Are you aware of that,
9 broadly speaking, Witness?

10 A. Yes, your Honour.

11 Q. Are you aware that (Redacted) -- are you aware that
12 (Redacted)
13 (Redacted)
14 (Redacted)

15 A. I'm not aware.

16 Q. I'm grateful. Witness, from your map that you drew, you gave
17 evidence that there was (Redacted)
18 the hill. Do you know what I'm talking about? It's on the map. You
19 drew (Redacted) the hill, (Redacted) the hill,
20 on your annex C map. Witness?

21 A. Yes, your Honour.

22 Q. Can I ask you, how could you actually see that (Redacted) from
23 where you were standing? You've indicated at point A where you were
24 standing, sir, and then you draw the hill, and then it appears that on
25 the other side of the hill you've displayed or written, (Redacted)

26

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1 How could you see what was happening there from the lower part of the
2 hill? How can you could you see over the hill and see the (Redacted)

3 PRESIDING JUDGE EBOE-OSUJI: Can we pull up that -- does anyone
4 have a copy that the witness can --

5 MR KHAN: He has it, I think, before him now. It can be called
6 up by EVD number perhaps. Thank you so much. Thank you.

7 Q. Witness, you can see it on the screen -- and thank you for the
8 court officer's help. You can see there that you've put down on point A
9 where you were standing. Then you draw a hill which is an escarpment and
10 you say people on the top of that hill and then on the other side of the
11 hill, behind that line, you show (Redacted). And what my question is,
12 is that if you're on the lower slopes helping people, how could you see
13 over the hill and what was happening beyond? Could you see that or -- or
14 not?

15 A. The position I was, I could see (Redacted)

16 Q. Witness, Huruma is, in fact, a Kikuyu stronghold. It didn't
17 suffer too much damage itself, did it, the Kikuyu centre -- the Huruma
18 centre, during the violence? That's right, isn't it?

19 A. Yes, your Honour.

20 PRESIDING JUDGE EBOE-OSUJI: Do we remain in private session?
21 Your five minutes are --

22 MR KHAN: Yes, we can go into public.

23 PRESIDING JUDGE EBOE-OSUJI: Yes, public session.

24 (Open session at 3.52 p.m.)

25 THE COURT OFFICER: (Interpretation) We are in public session,

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1 your Honour.

2 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, watch the clock. We are
3 rising at 4.00.

4 MR KHAN: I'm most grateful.

5 Q. Witness, one of the reasons why you say people went to sleep in
6 location 4 is that was really a front line, so to speak, of some of the
7 skirmishes and fighting between Kikuyu community and PNU supporters and
8 people that were angry at the results and it centred on location 4,
9 didn't it, that battleground, with youth coming and going and fighting
10 and retreating and all the rest of it? The centre of that was at
11 location 4, am I right?

12 A. Yes, your Honour.

13 Q. Are you aware that on 30 December 2007, immediately after the
14 announcement of the elections, Luos living in Huruma were, in fact,
15 chased out of Huruma by Kikuyus? Are you aware of that, sir?

16 A. No, your Honour.

17 Q. Are you aware at least, sir, that a large number of Luos, for
18 whatever reason, left Huruma on 30 December 2007? Are you aware of that,
19 sir?

20 A. No, I'm not aware.

21 Q. Are you aware that they left behind their belongings?

22 A. No, your Honour.

23 Q. Are you aware that those Luos returned on 31 December, this time
24 with Kalenjins and other members of those communities to try and attack
25 Huruma and that was the skirmishes and the fighting that took place on
26

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1 the 31st? Are you aware of that, Witness?

2 A. No, your Honour.

3 Q. Witness, are you aware that the home of person -- no, I think we
4 can say (Redacted) -- that (Redacted) was burnt? Are you aware of
5 that or not?

6 A. I'm not aware of it.

7 Q. (Redacted)

8 A. Yes, your Honour.

9 Q. (Redacted)
10 (Redacted)

11 A. I was not aware.

12 Q. (Redacted)
13 (Redacted)
14 (Redacted)

15 A. I was not aware.

16 Q. Are you aware that a Kalenjin teacher was killed?

17 A. No, your Honour.

18 Q. Am I correct that members of the Kikuyu community who were armed,
19 who armed themselves with pangas, were fighting against members of other
20 communities, different youths were separated and all kinds of fighting
21 was going on immediately after the election results were announced?

22 A. No, I'm not aware.

23 MR KHAN: Your Honour, the last segment private session and then
24 I'm finished with your leave. So if we could please go into private
25 session.

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1 PRESIDING JUDGE EBOE-OSUJI: Private session.

2 *(Private session at 3.56 p.m.) Reclassified as Open session

3 THE COURT OFFICER: (Interpretation) We are in private session,
4 your Honour.

5 MR KHAN:

6 Q. Witness, are you aware that in fact there was some quite intense
7 fighting in (Redacted) between Kikuyus and Kalenjins and other
8 communities before the Mungiki came and intervened on the side of the
9 Kikuyus? Are you aware of that?

10 A. No, your Honour.

11 Q. Are you aware of somebody called (Redacted)?

12 A. I'm not aware.

13 Q. He was later killed in another incident. You haven't heard of
14 that person, (Redacted)?

15 A. No, your Honour.

16 Q. Have you heard of somebody called (Redacted)? It's number 3 on the
17 list, (Redacted). Have you heard of that person?

18 A. Pardon?

19 Q. Have you heard, if you look at the document before you and look
20 at the names 2, 3 and 4, on the other document that's been given to you,
21 there was another document that's been given to you, looks like this,
22 with a stop in the middle on the front page, and if you look at persons
23 1, 2, 3 and 4, do you know those people, sir?

24 A. Please repeat their numbers.

25 Q. 1, 2, 3 and 4?

26

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1 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, what are you talking about,
2 what document?

3 MR KHAN: Your Honour, I thought it had been handed up before the
4 session started. It was certainly given to the witness.

5 PRESIDING JUDGE EBOE-OSUJI: Are you -- was it given to the
6 witness?

7 MR KHAN: Well, Your Honour, I think they were all given to the
8 court officer and then I -- and the Prosecution have it, so I thought
9 they were all distributed at that time.

10 PRESIDING JUDGE EBOE-OSUJI: Yes, but you should make sure that
11 the thing had been pulled up and that everybody was looking at it before
12 you proceeded to ask the questions.

13 MR KHAN: Right. I apologise, your Honour. If I may proceed
14 it's just a very quick question, your Honour, and I apologise for that.

15 Q. Witness, if you look at the names at 1, 2, 3 and 4, do you
16 recognise any of those names?

17 A. No, your Honour.

18 Q. You never heard that they were involved in the fighting that took
19 place?

20 A. No, your Honour.

21 Q. Did you ever hear that members of the Mungiki were involved in
22 that fighting?

23 A. I was not aware.

24 Q. Did you hear that rumours of Mungiki involvement further fueled
25 the hostilities that could be seen after the election results?

26

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1 A. Yes, your Honour.

2 PRESIDING JUDGE EBOE-OSUJI: Should we have been in private
3 session for that?

4 MR KHAN: Yes, your Honour, because I was giving names of
5 individuals and I didn't want to name those individuals in public just
6 yet. It may be that a time will come when they will be named in public
7 but not just yet.

8 PRESIDING JUDGE EBOE-OSUJI: But you were going to use the PIS.
9 It would have been enough to have him look at the document and --

10 MR KHAN: Yes. Well, Your Honour, I stand corrected for next
11 time. Maybe it's my attempt to try to let the witness go by -- before
12 the weekend that I've been moving at quite a quick pace.

13 Your Honour, those are my questions of this witness.

14 Q. Mr Witness, thank you very much for your patience. I wish you a
15 very safe journey back home, but I have no further questions on behalf of
16 Mr Ruto. Thank you very much for your patience.

17 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa?

18 MR KHAN: Your Honour, just at the end, of course, I'll seek to
19 admit the -- the -- mark for identification the PIS form and also the
20 video that was shown, and also the photograph can be given an exhibit
21 number because it was recognised by the witness to be person 4.

22 PRESIDING JUDGE EBOE-OSUJI: Yes. So we have the photograph and
23 the video.

24 MR KHAN: Actually, I stand corrected --

25 PRESIDING JUDGE EBOE-OSUJI: Isn't the video already part of

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1 the --

2 MR KHAN: No, that video hasn't been shown before, your Honour.
3 Your Honour mentioned, in fact, previously a 2002 video, so we've shown
4 that. But that should be given an exhibit number because the witness has
5 recognised it. So the video should be given an exhibit number, the
6 photograph an exhibit number, and then the PIS form can be given an MFI
7 number.

8 PRESIDING JUDGE EBOE-OSUJI: All right. Any objections?

9 MR OMOFADE: Your Honours, I will take it in order. As for the
10 photograph, we agree that an EVD number, an exhibit number can be
11 assigned. The video, all that the witness did was he watched the video.
12 He didn't say he saw that television broadcast when it was made, so the
13 extent to which he can actually say this happened, this was broadcast in
14 2007, and it reflected what transpired in 2002, the witness can't say
15 that. He can only say what he was shown here, so an identification
16 number we suggest, as with the PIS.

17 MR KHAN: Your Honour, the Prosecution - of course, it's their
18 right, I suppose, to some extent - seek to oppose at -- on every
19 conceivable argument the admission by the Defence into exhibits -- of
20 exhibits. The witness said he saw that. It accorded to his
21 recollection. He saw the 2002 election swearing in, the 2007, and indeed
22 the 2013. Your Honour, no reason on earth why a public TV report that
23 the witness verifies should not be given an exhibit number.
24 (Trial Chamber confers)

25 PRESIDING JUDGE EBOE-OSUJI: All right. The Chamber's ruling is

26

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1 that the photo would be admitted as exhibit. The video and the PIS will
2 be MFI'd. We go back to public session now, don't we?
3 (Open session at 4.03 p.m.)

4 THE COURT OFFICER: (Interpretation) We are in public session,
5 Mr President.

6 PRESIDING JUDGE EBOE-OSUJI: Thank you.

7 THE COURT OFFICER: (Interpretation) Mr President, the PIS will be
8 given number KEN-PIS-0001-0025. It will be a confidential document. And
9 it has been adduced into evidence by the Defence for Mr Ruto.

10 The document KEN-D09-0026-0003, which is an audiovisual material,
11 public in nature, will be given the reference number MFI-T-D09-00093.
12 And the photograph under number KEN-D09-0026-0011, which is a
13 confidential document, will be given the reference number
14 EVD-T-0009-0094, and it is -- it is document number 94 for Mr Ruto.

15 PRESIDING JUDGE EBOE-OSUJI: Exhibit number 94 for Mr Ruto. So
16 it will be -- Mr Kigen-Katwa, you were about to rise to say that you have
17 no questions?

18 MR KIGEN-KATWA: Mr President, I do not have any questions for
19 this witness. Thank you.

20 PRESIDING JUDGE EBOE-OSUJI: Thank you. And Mr Omofade?

21 MR OMOFADE: Mr President, no re-examination. I do observe,
22 however, that the -- the last series of questions that Mr Khan was
23 posing, many of them were prefixed with -- with are you aware, and all
24 the witness said was: "I'm not aware."

25 PRESIDING JUDGE EBOE-OSUJI: That will be a matter (* overlapping

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1 speakers) --

2 MR OMOFADE: The record speaks for itself. I only point it out.

3 PRESIDING JUDGE EBOE-OSUJI: Yes. We leave it at that.

4 Witness, thank you very much for coming to testify. We greatly
5 appreciate the assistance you've given. Your time with us has now come
6 to an end. We wish you safe journey as you travel back. In due course,
7 the Chamber will evaluate the evidence you've given. Thank you.

8 Mr Khan, did you say you have something to say in one minute?

9 MR KHAN: Yes, your Honour. I'm happy to do that while the
10 witness is here.

11 PRESIDING JUDGE EBOE-OSUJI: Yes, he can stay with us and watch
12 you make submissions for now.

13 MR KHAN: Yes. Your Honour, I learned from my learned friend,
14 the senior trial attorney for the Prosecution, Mr Steynberg, that today
15 is the last day in court for the Prosecution of my learned friend
16 Mr Omofade. I've known him for quite a while. He prosecuted me in the
17 Abu Garda case, the Banda and Jerbo case, and now in this case. And
18 I wanted to say that, on behalf of all of us, that we wish him the very
19 best in his future, back home we believe. He's been a pleasure to work
20 with always. We've had courtesy, and so I wanted to say no more than bon
21 voyage and the very best of luck.

22 Your Honour, I've been tugged from the side and it was negligent
23 of me. Of course, my learned friend Ms Alagendra has known Mr Omofade,
24 both as a former colleague in the Prosecution and now in the Defence, and
25 Mr Faal, who cannot be here with us, has also asked me to extend his warm

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1 regards and best wishes to Mr Omofade and for whatever lies in store for
2 him in the future. Your Honour, no more than that.

3 PRESIDING JUDGE EBOE-OSUJI: Fair enough. We will not detain the
4 system. You know, we did not know the information but we join you in
5 wishing Mr Omofade all the best if that's indeed the case.

6 MR OMOFADE: And I'm grateful to my friend and to your Honour.

7 PRESIDING JUDGE EBOE-OSUJI: Thank you. We will now bring the
8 proceedings to an end for this session. We will reconvene on 13 January
9 2014.

10 The blinds will come down for the witness to be escorted from the
11 courtroom.

12 * (Closed session at 4.09 p.m.) Reclassified as Open session

13 THE COURT OFFICER: (Interpretation) We are in closed session,
14 Mr President.

15 PRESIDING JUDGE EBOE-OSUJI: Escort the witness from the
16 courtroom.

17 (The witness stands down)

18 PRESIDING JUDGE EBOE-OSUJI: And before we finally adjourn, I
19 will take the opportunity on behalf of the Bench to thank everyone who
20 has assisted in making this session a success, the Registry staff, the
21 interpreters and the court reporters. We thank you all. Without you,
22 this would not be possible. Thanks a lot.

23 The Chamber will now rise.

24 * (The hearing ends in closed session at 4.10 p.m.) Reclassified as Open session

25 RECLASSIFICATION REPORT

Witness: KEN-OTP-P-0535 (On former oath) (Closed Session)
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- 1 Pursuant Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
- 2 2013, and the instructions in the email dated 10 December 2013, the version of the
- 3 transcript with its redactions becomes Public.