

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, 18 October 2013

10 (The witness enters the courtroom)

11 (Upon commencing in open session at 10.38 a.m.)

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

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

15 Court officer, please call the case.

16 THE COURT OFFICER: (Interpretation) Situation in the Republic of
17 Kenya, The Prosecutor versus William Samoei Ruto and Joshua Arap Sang,
18 ICC-01/09-01/11. We are in open session, your Honour. I would also like
19 to inform you that the annotated version of document KEN-OTP-0076-0553
20 will be given the number OVDT 00014 or Exhibit number 14. Document
21 KEN-OTP-0076-0554 will be given the following number: OVDT-OTP 00015.

22 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. On that note
23 I think we should just proceed without the formality of appearances. We
24 do apologise for starting later than usual. There was some other urgent
25 matter that needed to be attended to in the office.

1 The witness is on the stand now. But before we resume his
2 examination-in-chief, we -- I need to note that today's hearing, the
3 adjustments are made only up to lunch break. That is we will continue on
4 till 12.30 today. And then we will take our lunch break then. And then
5 things will synchronize back into the usual schedule of 2.30 to 4.00.

6 Prosecutor, where did we end it yesterday? Open or
7 private session?

8 MR STEYNBERG: Your Honour, we opened in -- we ended in
9 open session, but I have a few matters to deal with, personal -- which
10 involved personal details of the accused, which I would like to deal with
11 in private session.

12 PRESIDING JUDGE EBOE-OSUJI: For how long?

13 MR STEYNBERG: I estimate no longer than ten minutes and I'll
14 probably only be about another ten minutes after that.

15 PRESIDING JUDGE EBOE-OSUJI: To the end of your
16 examination-in-chief?

17 MR STEYNBERG: I hope so, yes, your Honours.

18 PRESIDING JUDGE EBOE-OSUJI: All right. Then let's go into
19 private session.

20 MR KHAN: And, your Honour, of course --

21 PRESIDING JUDGE EBOE-OSUJI: Before we do then -- one second.
22 Before we go into private session, Mr Khan, you have something you want
23 to raise in open?

24 MR KHAN: Your Honour, just one aspect. My learned friend
25 of course misspoke at line 12, details of the accused of course is the

Witness: KEN-OTP-P-0376 (On former oath) (Private Session)
Questioned by Mr Steynberg (Continuing)

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1 details, I suppose, of the witness.

2 PRESIDING JUDGE EBOE-OSUJI: Yes. So we will then go into
3 private session for ten minutes or so.

4 (Private session at 10.42 a.m.) * Reclassified into open session.

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

7 PRESIDING JUDGE EBOE-OSUJI: Please proceed.

8 MR STEYNBERG: Thank you, your Honours.

9 WITNESS: KEN-OTP-P-0376 (On former oath)

10 QUESTIONED BY MR STEYNBERG: (Continuing)

11 Q. Good morning, witness.

12 A. Good morning.

13 Q. I only have a few more questions for you this morning. And I'd
14 like to begin where we left off yesterday evening. You were telling the
15 Chamber about the end of (Redacted) show-ground and the
16 operation Rudi Nyumbani that resulted in people returning to their homes.
17 You remember that?

18 A. Yes.

19 Q. Can you tell the Chamber firstly what was the attitude of the
20 IDPs at Eldoret show-ground towards returning back home?

21 A. Most of them were not for the idea of returning to their
22 neighbourhoods. The reasons were they were not completely sure that
23 peace had returned into their neighbourhood.

24 (Redacted)

25 (Redacted)

26

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 Q. And did you subsequently return to your home in Langas?

12 A. Yes.

13 Q. You've told the Court how your home had been destroyed and your
14 possessions looted. How did you rebuild your life in Langas?

15 A. I was like any other IDPs, I took with me the (Redacted)

16 (Redacted), and put it in my compound, and I started

17 living in the tent.

18 Q. Did you eventually rebuild your house?

19 A. I did not.

20 Q. Can I ask you, then, persons you have mentioned, persons 2 and
21 person 5, the two Kalenjin people you mentioned during the course of your
22 testimony, what -- what had become of them when you returned to Langas?

23 A. Person number 2, as I indicated earlier, he was (Redacted)

24 (Redacted). When I returned to my place, I found

25 (Redacted)

26

1 (Redacted)

2 Q. And what became -- where was person number 5 at that time?

3 A. He was just in Langas.

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 Q. Now, you've indicated that person 2 was leading a group of

23 Kalenjin warriors, and you've also expressed, shall we say, suspicion

24 about the role or the involvement of person number 5. (Redacted)

25 (Redacted)

26

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. Thank you. Now, I'd just like to get a few details of the losses
17 you personally suffered as a result of this violence. Can you estimate
18 the value of the house that was destroyed, your house?

19 A. Yes. The estimate was over (Redacted) Kenyan shillings.

20 Q. And I think it's clear from the photographs this was a (Redacted)
21 (Redacted) house with a (Redacted) correct?

22 A. Correct.

23 Q. The value of the (Redacted) you lost?

24 A. That would amount to (Redacted) shillings.

25 Q. And finally, your household contents?

26

1 A. Can you repeat, please.

2 Q. The contents of your house that was destroyed. What was the
3 value of your clothes, your pots and pans, furniture?

4 A. About (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 Q. And finally, you said you did not rebuild your house, and
9 I stopped going further because I don't want you to reveal any assistance
10 or details of any moves you might have been given with the assistance of
11 the court, but where did you go to after that, if you can tell us?

12 A. Pardon?

13 Q. Where did you live -- you're not still living in your tent; is
14 that correct?

15 A. Yes.

16 Q. Where did you -- where did you go -- where did you move to after
17 you stopped living in the tent?

18 A. While I was living in the tent, a humanitarian organisation by
19 the name (Redacted) was visiting the
20 neighbourhoods that had their houses destroyed, (Redacted)
21 (Redacted)
22 (Redacted) they would take into consideration and
23 construct some shelters for me and my -- and the persons around my
24 neighbourhood.

25 Q. And for whom did they construct these shelters?

26

1 A. After they had visited our neighbourhood and gone through the
2 houses that had been burnt down, all those houses that had been burnt,
3 the owners were constructed a shelter each. (Redacted)
4 (Redacted)
5 (Redacted)
6 (Redacted)
7 (Redacted) extend that assistance
8 to our neighbour.

9 Q. Can you just clarify who are you referring to when you say extend
10 it the assistance to our neighbours? Which neighbours?

11 A. The Kalenjin neighbours.

12 Q. Just finally before we proceed back into open session, can you
13 tell the Court, have you -- whether you've been personally affected
14 physically or psychologically by the violence and the experiences you had
15 during the post-election violence?

16 A. It affected me so much psychologically and mentally.

17 Q. Can you elaborate for the Court, please?

18 A. There I was, (Redacted), my residence has been
19 brought down, (Redacted) had no other means of livelihood.
20 Here is my (Redacted) and I had no other
21 place to go. That, in fact, affected me so much.

22 Q. Thank you, Mr Witness.

23 MR STEYNBERG: Your Honours, we may proceed back into
24 open session, with your permission.

25 PRESIDING JUDGE EBOE-OSUJI: We go back into open session.

1 (Open session at 11.00 a.m.)

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

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 MR STEYNBERG: Thank you, your Honours.

6 Q. Mr Witness, there are just one or two matters that I'd like
7 clarify arising out of your evidence yesterday. You recall that you
8 testified yesterday that during the course of the attacks --

9 MR STEYNBERG: If the Court will bear with me.

10 (Prosecution counsel confer)

11 MR STEYNBERG:

12 Q. I believe it was on the 31st, when you observed that -- that's
13 the 31st of December 2007, you observed the bodies of three Kalenjin
14 warriors that had been killed by Kikuyu youths. Do you recall that
15 evidence?

16 A. Yes.

17 Q. And you had told the Court that neither yourself nor any present
18 recognised these Kalenjin youths and you concluded that they had come
19 from another area; correct?

20 A. Yes.

21 Q. Now, I want to ask you a little bit about the Kikuyu youth or
22 youths who you say were responsible for killing these three Kalenjins.
23 You had been together with this group of Kikuyu youth at the shopping
24 centre; is that right?

25 A. Yes.

26

1 Q. And these Kikuyu youths, can you tell the Court whether they were
2 from your area or from another area?

3 A. The Kikuyu youths were from that area.

4 Q. And did you recognise any of these persons, even by sight?

5 A. Yes, by sight I could see they were the youths that I usually met
6 while on my way to various places.

7 Q. All right. Now, you've also told the Chamber that at the stage
8 when you proceeded with a group of Kikuyu youth back to your
9 neighbourhood, this is at the time when the Kikuyu youth had armed
10 themselves with pieces of timber from the trading shacks. Do you recall
11 the incident I'm referring to?

12 A. Yes.

13 Q. And you said you were set upon by a large group of Kalenjin
14 warriors armed with bows and arrows?

15 A. Yes.

16 Q. And that at that stage, you realised that this fight had been
17 properly organised?

18 A. Yes.

19 Q. Or properly arranged, I think, was the phrase.

20 A. Properly arranged.

21 Q. Now, what I'd like you to comment on is the killing of the three
22 Kalenjin youths and any damage to Kalenjin property by Kikuyu youths.
23 Would you describe that as also being properly arranged or not?

24 A. The damage for the Kalenjin property was not arranged.

25 Q. And the killing of the Kalenjin youths?

26

1 A. It was not arranged, okay.

2 Q. Now, going back to the attack by the Kalenjin youths that you say
3 was properly arranged, can you clarify for the Court from your
4 observations when this was arranged?

5 A. It's hard to say when it was arranged. I cannot tell when.

6 Q. Sorry, if I can once again clarify the record, it seems there
7 might be a word missing at line 1, you say, "The damage to Kalenjin
8 property was not arranged." My next question was, "And the killing of
9 the Kalenjin youths?" And the answer says, "It was not arranged," and it
10 indicates there might be a word missing or incorrect. Did you say
11 anything else? That's all I heard, it was not arranged?

12 A. The killing of the Kalenjin youths was not arranged.

13 Q. Thank you. I'd like to then move on to -- well, perhaps before
14 we get to that, when I asked you why you thought the killing of the --
15 the attacks by the Kalenjin youths were properly arranged, you pointed to
16 the fact that they all were armed with bows and arrows and the fact that
17 they were able to identify and burn Kikuyu houses; correct?

18 A. Yes.

19 Q. Are there any other reasons that led to this conclusion that the
20 attacks were arranged, properly arranged?

21 A. There the reason could be it could not have happened all at once
22 and in that manner, and they could not have known which houses to set
23 fire on if they had no prior knowledge of how to go about it.

24 Q. Thank you. I will move on from that issue.

25 Just one other -- yes, moving on then to evidence you gave
26

1 earlier regarding Mr Ruto and his position or relationship with Kalenjin
2 society, and I think I should just refer to your exact words and I'm
3 referring to the reel time record of transcript 51 at page 28, line 25,
4 you said: "Mr William Samoei Arap Ruto is highly regarded. He has a lot
5 of respect and his words are not taken -- they are taken highly. He is
6 highly regarded by his people." Over the page at line 5, you stated:
7 "If Ruto suggests or if he is -- if he shows his people where he's
8 heading to, people in that area or the Kalenjin people take Mr Ruto
9 seriously and normally no one would like to go against his directions."

10 You remember giving that evidence?

11 A. Yes.

12 Q. Can you give the Court any examples of occasions when Mr Ruto has
13 shown his people where he's heading to and they have taken him seriously?

14 A. I remember it was also election year in Kenya, the year 2002.
15 There were two presidential candidates from the same community vying for
16 the presidency. Honourable Samoei William Arap Ruto was campaigning for
17 one of the Kikuyu candidates for the presidency, and almost every
18 Kalenjin who was registered as a voter voted for the candidate which
19 honourable Ruto was supporting.

20 Q. And who was that?

21 A. The candidate was honourable Uhuru Muigai Kenyatta.

22 Q. Thank you. I'd like to move on, then, to some documents that
23 were shown to you when you were interviewed by the OTP investigators.

24 MR STEYNBERG: And, your Honours, the two documents I will be
25 referring to are admitted documents. First one I would like to show you
26

1 is KEN-OTP-0011-0196 and it's a list of casualties from the Moi Teaching
2 and Referral Hospital, and unless there is any objection I intend to lead
3 the witness on this aspect.

4 MR FAAL: No objection.

5 MR KIGEN-KATWA: None, Mr President.

6 MR STEYNBERG: Your Honours, for the Court's convenience, this
7 document is at tab number 1 of your binder.

8 Q. Do you recall investigators showing you this document during your
9 interview?

10 A. Yes.

11 MR STEYNBERG: Unfortunately the writing is quite small. Can we
12 zoom in, please, on the upper half of that page? Once more. Thank you.

13 Q. And is it correct that from this list, you identified three names
14 as being casualties of the violence that you've described?

15 A. Yes.

16 Q. And I'll point you to name number 8, and we are in open session,
17 so please don't read it out, but with reference to your list, can you
18 identify who that person -- who do you think that person is?

19 MR FAAL: Mr President, perhaps for my clarification, if we are
20 in open session, do I take it that what is being shown on the screen is
21 not also being shown outside? If that is the case, then perhaps it
22 should be removed from the screen.

23 MR STEYNBERG: Perhaps we should do that. I'm indebted to my
24 learned friend.

25 PRESIDING JUDGE EBOE-OSUJI: He's showing us --
26

1 (Trial Chamber and court officer confer)

2 PRESIDING JUDGE EBOE-OSUJI: I've been told that -- by the court
3 officer that the display is limited to inside the courtroom and it is not
4 going outside.

5 MR STEYNBERG: I'm indebted, your Honours. Sometimes one can be
6 caught by technical issues.

7 PRESIDING JUDGE EBOE-OSUJI: Well, I'm only giving you hearsay
8 evidence. I'm not in the public gallery to see.

9 MR STEYNBERG: Sometimes, your Honour, hearsay evidence can be
10 reliable.

11 Q. The question was person number 8 on the list, were you able to --
12 or who do you think that person is with reference to your list?

13 PRESIDING JUDGE EBOE-OSUJI: Can we move the screen? I cannot
14 easily see number 8 on the screen. I can see it on my sheet. But I
15 don't know if the witness can see person number -- all right.

16 MR STEYNBERG: Sorry. If the Court will bear with me I think
17 I might be misleading the witness.

18 (Prosecution counsel confer)

19 MR STEYNBERG: Yes, I beg your pardon. I'm informed that this
20 person is, in fact, not on the list.

21 Q. But can I ask you this, Mr Witness, the name number 8, do you
22 recognise that person?

23 A. Yes.

24 Q. And what can you tell us about that person with relation to the
25 violence in Langas?

26

1 A. This particular person met his death, or he was killed, when he
2 had returned to his home at night. That's when he was killed.

3 Q. Thank you. Do you know more or less when that was?

4 A. This was after January 1.

5 Q. Can you give a time frame, how long after January the 1st?

6 MR FAAL: Mr President, I did not wish to interrupt my learned
7 friend, but this is obviously leading, in view of the fact that the
8 information being solicited is put right in front of the witness.

9 PRESIDING JUDGE EBOE-OSUJI: Do you object to leading on this
10 point?

11 MR FAAL: Yes, Mr President, on the issue of who died and when.
12 It is -- it is in dispute and I had indicated that to my learned friend
13 earlier.

14 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, can you look at the
15 date of death indicated against these names?

16 MR STEYNBERG: I see that, your Honour. Perhaps we won't need to
17 press that any further. Thank you. The next two names the witness has
18 already testified about so I don't think there should be any issue with
19 those. If the Court will bear with me, please.

20 Q. Can you look please at number 19 on the list, if we could zoom in
21 on that, please. Do you know who that person is?

22 A. Yes.

23 Q. With reference to the PIS sheet, the other list of paper, can you
24 identify that person, please?

25 A. Yes.

26

1 Q. What number is that person?

2 A. Number 19.

3 Q. Sorry, I meant what number is the person on this list? Can you
4 look up, please? On this list. That's the PIS list.

5 A. Number 12.

6 Q. Thank you.

7 MR STEYNBERG: Mr Court officer, could we have the next page of
8 the exhibit, please. That's KEN-OTP-0011-0197 and can you zoom in on the
9 top half on number 71 in the list, please? Perhaps once more?

10 Q. Do you see the name at number 71, sir?

11 A. Yes, I -- yes, I can see it.

12 Q. And once again, with reference to the PIS sheet, are you able to
13 tell the Court who you think this person is?

14 A. Number 11.

15 Q. Thank you.

16 MR STEYNBERG: Thank you, your Honour. As I've said, this is an
17 admitted document, so on that basis, may it be given an EVD-number?

18 PRESIDING JUDGE EBOE-OSUJI: Any objection, Mr Katwa?

19 MR KIGEN-KATWA: None, Mr President.

20 PRESIDING JUDGE EBOE-OSUJI: Mr Faal?

21 MR FAAL: None.

22 PRESIDING JUDGE EBOE-OSUJI: The document will be admitted.

23 THE COURT OFFICER: (Interpretation) The document

24 KEN-OTP-0011-0196 will have the number EVD-T-OTP-00016. It's

25 confidential and it shall also be known as Exhibit 16 submitted by the

1 Prosecutor.

2 MR STEYNBERG: Thank you, your Honours. Thank you, Mr Witness.

3 I have no further questions.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you very much, Mr Steynberg.

5 Who will go first? Mr Faal, you?

6 MR FAAL: Yes, Mr President, just allow me a few seconds, let me
7 organise myself.

8 QUESTIONED BY MR FAAL:

9 Q. Good morning, Mr Witness.

10 A. Good morning.

11 Q. My name is Essa Faal. I would ask you some questions on behalf
12 of the Defence team of Mr William Ruto. Do you understand?

13 A. Yes, I do.

14 Q. Before I start, I would like to remind you about the advice of
15 the Judges that you should listen carefully to the questions I ask you.
16 If you do not understand the question, please let me know so that I can
17 repeat it or clarify it as necessary. Do you understand?

18 A. Yes.

19 Q. I know, sir, that you truly observe the five-second rule.
20 However, I would encourage you to speak a little more faster or to up the
21 pace a little bit, if that is all right with you. Now, Mr Witness, let's
22 talk about the issue you mentioned with regards to Mr Ruto at
23 Trans-Nationale Bank in Eldoret.

24 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, you know we are in open
25 session.

26

1 MR FAAL: Yes, I do.

2 Q. First of all, we deny Mr Ruto ever used the word madoadoa, but
3 I want you -- to ask you some questions on this topic nonetheless. Do
4 you understand me?

5 A. Yes, I do.

6 Q. You will agree with me, sir, that Mr Ruto is one of the
7 most-known and most-popular politicians in Kenya; is that right?

8 A. Yes.

9 Q. He is a crowd puller, isn't he?

10 A. He is.

11 Q. And whenever he -- wherever he goes, people will flock to listen
12 to him; is that right?

13 A. Yes.

14 Q. And members of the public and the press hang on almost every word
15 he says; am I right, sir?

16 A. Yes.

17 Q. And he was followed by the press during the 2007 campaign, wasn't
18 he?

19 A. I don't know.

20 Q. But you would agree with me that in many campaign events that he
21 attended, the press was also present; is that right?

22 A. I'm not sure.

23 Q. You said it was peaceful during the campaign in 2007 until before
24 the announcement of the presidential election results, yes?

25 A. Yes.

26

1 Q. And Kikuyus remained living peacefully with their neighbours
2 until the announcement of the results; is that right?

3 A. Yes.

4 Q. And, Mr Witness, you would agree with me that the term madoadoa
5 is a Swahili and not a Kalenjin word; is that right?

6 A. Yes.

7 Q. It wasn't coined or invented at the time of the 2007 elections,
8 was it?

9 A. Repeat again, the question?

10 Q. It was not coined or used for the first time in the 2007
11 elections, was it?

12 A. It was not the first time.

13 Q. It is, in fact, an old word that has been used for generations
14 throughout Kenya; is that right?

15 A. I can only say that I normally hear the word during election
16 time.

17 Q. But would you agree that it is an old Kiswahili word which has
18 been used in Kenya for generations?

19 A. Yes.

20 Q. You would agree with me that it is not a word that was coined by
21 Mr Ruto; correct?

22 A. Yes.

23 Q. Mr Witness, you followed the politics in 2007 very closely,
24 didn't you?

25 A. Yes.

26

1 Q. You heard only in their campaigns calling on people to vote in a
2 three-piece-suit fashion, didn't you?

3 A. I did.

4 Q. Of course, it did not mean that people who go to vote should go
5 in three-piece suit, did it?

6 A. No.

7 Q. It meant they should vote for ODM in all three levels of
8 elections, didn't it?

9 A. Yes.

10 Q. This was a campaign strategy for ODM to get a clean sweep of all
11 levels of representation in the election, wasn't it?

12 A. It was.

13 Q. In other words, they wanted the voters to vote uniformly for the
14 ODM in the presidential, parliamentary and in the civic elections;
15 correct?

16 A. Yes.

17 Q. And in this context, it is in this context, that some politicians
18 encouraged people not to vote madoadoa, didn't they?

19 A. Repeat?

20 Q. And it is in this context that some politicians encouraged people
21 not to vote madoadoa, didn't they?

22 A. Yes.

23 Q. And the meaning, vote ODM all the way, let's have a clean sweep,
24 that's what it meant, wasn't it?

25 A. To some, yes. To some, no.

26

1 Q. But what I am saying, Mr Witness, is that ODM was calling on
2 people to vote in a three-piece suit and not to vote madoadoa; correct?

3 A. Yes.

4 Q. And would you agree with me, Mr Witness, that this did not mean
5 that Kikuyus should be removed from the Rift Valley, did it?

6 A. It meant so.

7 Q. It is your testimony, witness, that when ODM said, "Vote in a
8 three-piece suit, vote for ODM for president, vote for ODM for
9 parliament, vote for ODM for the civic seats, don't vote madoadoa," it is
10 your testimony that that means remove the Kikuyus from the Rift Valley?
11 Is that what you're saying?

12 A. Yes.

13 Q. I will move on. I will move on.

14 Now let's turn on to what you heard some months before the
15 election, that is near Paradise and Trans-Nationale bank in Eldoret in
16 2007. Incidentally, do you remember the date?

17 A. No.

18 Q. Or the month?

19 A. No.

20 MR FAAL: Mr President, permit me to consult, please. One second
21 to consult.

22 (Defence counsel confer)

23 MR FAAL:

24 Q. Mr Witness, I would just take you back a little bit, to your
25 statement earlier on, that when ODM told people to vote in a three-piece
26

1 suit and not to vote madoadoa, you interpreted this to mean that Kikuyus
2 should be removed from the Rift Valley. Do you recall that?

3 A. Yes.

4 Q. Mr Witness, I want to show you the video of a rally in Eldoret,
5 and I would ask you a few questions after seeing that video.

6 MR FAAL: And, Mr President, with your permission, I would ask
7 that we play video KEN-D09-0021-0041.

8 PRESIDING JUDGE EBOE-OSUJI: Please, Court Officer, pull up the
9 video. Mr Faal, so I can understand the line of question, the
10 proposition being that the word madoadoa could mean hodgepodge, so to
11 speak, and it could apply to the ballot, how people voted in a
12 multi-candidate election?

13 MR FAAL: Yes, indeed, Mr President.

14 PRESIDING JUDGE EBOE-OSUJI: So that madoadoa could mean voting
15 for a Member of Parliament of one party and voting for, say, a regional
16 governor, so to speak, for another party and voting for presidency of yet
17 another party?

18 MR FAAL: That is exactly what it meant.

19 PRESIDING JUDGE EBOE-OSUJI: So that would be voting madoadoa?

20 MR FAAL: Yes, Mr President.

21 Court Officer, kindly bring up the video, please.

22 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, the question the
23 Court Officer is asking me is would this be a good time to implement the
24 new system of parties playing their own videos?

25 MR FAAL: We would give it a shot and I hope we will succeed.

1 PRESIDING JUDGE EBOE-OSUJI: You want to give it a try and see
2 how it goes?

3 MR FAAL: Yes, Mr President.

4 PRESIDING JUDGE EBOE-OSUJI: All right, then. So you'll go first
5 and if it doesn't work, well, then there is the backup of the Registry
6 doing it for you.

7 MR FAAL: Thank you very much, Mr President. So we would play
8 the video. Mr President, there is a transcript, and it is contained in
9 tab 24.

10 PRESIDING JUDGE EBOE-OSUJI: Do we have your bundle?

11 MR FAAL: Perhaps this is the right time to distribute the
12 bundle, Mr President.

13 MR STEYNBERG: Perhaps, your Honours, while that is being done I
14 can indicate that both the video and the bundle were disclosed late after
15 the 24-hour rule, but I have indicated to my learned friends that I will
16 not object on that basis. I will however object to any attempt to
17 introduce this as an exhibit.

18 MR FAAL: Mr President, I'll just acknowledge that we have been
19 so informed by my learned friend, and at the appropriate time we would
20 make a request as to what we want done with the video.

21 PRESIDING JUDGE EBOE-OSUJI: So at the appropriate time you will
22 litigate the question of admissibility?

23 MR FAAL: Yes, Mr Mr President.

24 PRESIDING JUDGE EBOE-OSUJI: Right.

25 MR FAAL: So may I ask that the video be played, please? Go
26

1 ahead. It's about three minutes. We will just play the entire video.

2 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, why do you always produce
3 outsized documents? They are always too large.

4 MR FAAL: Mr President, I do not wish to strain the already
5 strained eyes of the Justices. I have difficulty reading very tiny
6 script and I really do not wish to subject the Judges to that.

7 PRESIDING JUDGE EBOE-OSUJI: You speak for yourself.

8 MR FAAL: Yes, indeed. But, Mr President, if only you saw the
9 original version, you would realise exactly what I'm talking about, very
10 difficult document to read.

11 PRESIDING JUDGE EBOE-OSUJI: Please proceed.

12 MR FAAL: Thank you.

13 MR STEYNBERG: Sorry, your Honour, if I may, my learned friends
14 haven't given us a binder and while we have already made our own copies
15 I would at least ask that rather than just referring to tabs if he could
16 also refer to the ERN so we know which document is being referred to.

17 PRESIDING JUDGE EBOE-OSUJI: Do you have a spare binder for the
18 Prosecution?

19 MR FAAL: No, Mr President.

20 PRESIDING JUDGE EBOE-OSUJI: Please, can we always do that on
21 both sides. Whenever there is a binder, make extra copies for counsel so
22 all of us are working from the same materials for us. It doesn't cost
23 much.

24 MR FAAL: Much obliged.

25 PRESIDING JUDGE EBOE-OSUJI: It's faster than them scrambling to
26

1 look for something.

2 MR FAAL: Much obliged.

3 MR NARANTSETSEG: Mr President, can we also request a copy for
4 victims counsel.

5 PRESIDING JUDGE EBOE-OSUJI: And also a copy for victims counsel.

6 MR FAAL: We will endeavour to do so next time, Mr President.

7 PRESIDING JUDGE EBOE-OSUJI: Thank you.

8 MR FALL: Mr President, we would now play the video. My
9 colleague has just indicated that it's a little bit complicated for us to
10 be playing the videos from this end. We can do it this time round but
11 perhaps maybe -- no problem. Okay, we will continue. We will proceed,
12 yes. Please play the video.

13 PRESIDING JUDGE EBOE-OSUJI: Where did you say the tab is?

14 MR FAAL: 24. Let me give the transcript reference. It's
15 KEN-D09-0021-0042. It's in tab 24, Mr President. And could you kindly
16 play the video, please? Perhaps maybe considering that we have lost a
17 bit of time, I would ask that we play it from -- okay, we play the entire
18 video. It's about three minutes. It's short.

19 (Viewing of the video excerpt)

20 MR FAAL:

21 Q. Mr Witness, did you hear in that video Raila Odinga saying that
22 ODM supporters should vote a three-piece suit? Did you hear that?

23 A. Yes.

24 Q. And did you hear him say that they should vote ODM at the top,
25 ODM at the middle, and ODM at the bottom, and not madoadoa? Did you hear
26

1 that?

2 A. Yes.

3 Q. And Mr Witness, you would agree with me that he never asked for
4 the removal of Kikuyus in that speech, did he?

5 A. But when he says should not vote for madoadoa, but should vote
6 from top to bottom, it is my belief he meant that if you did contrary to
7 his wish, then you are not with them.

8 PRESIDING JUDGE EBOE-OSUJI: One second. In the transcript here,
9 what you're referring to, counsel, is it the expression at page 2,
10 "hatutaki madoadoa."

11 MR FAAL: Exactly, Mr President. In the middle of the
12 transcript, yes.

13 PRESIDING JUDGE EBOE-OSUJI: That is ascribed to Mr Raila Odinga
14 in the video.

15 MR FAAL: Yes. Mr President, we ask for this video and the
16 transcript to be marked for identification, please.

17 MR STEYNBERG: No objection.

18 PRESIDING JUDGE EBOE-OSUJI: Mr Katwa?

19 MR KIGEN-KATWA: None whatsoever.

20 PRESIDING JUDGE EBOE-OSUJI: The video and the transcript will be
21 marked.

22 MR FAAL: Mr President, we want to be given the numbers, the MFI
23 numbers, for the video and the transcript.

24 PRESIDING JUDGE EBOE-OSUJI: The Court Officer will let you know
25 that, the next in the series for the Ruto Defence for identification.

26

1 THE COURT OFFICER: (Interpretation) Video KEN-D09-0021-0041,
2 public, will be marked MFI-D09-00062. The transcript of the video
3 KEN-D09-0021-0042, public document, will be marked MFI-TD-009 -- D09,
4 I beg your pardon, 00063. And the two documents are public documents.

5 MR STEYNBERG: Before Mr Faal stands up, I wish to make one
6 observation about that vide. I didn't object at the time because
7 I wasn't sure what was going to be referred to but I note that we
8 listened to a three-minute video and all that was referred to was a clip
9 which by my estimation no more than five or ten seconds. And I wonder
10 whether it's really necessary, I know that some context is necessary, but
11 is it necessary to play a whole video when only a few seconds are, in
12 fact, relevant to the evidence of this witness? And my concern is that a
13 lot of often self-serving political speech making is being shown to the
14 Court unnecessarily and it is unnecessary and it's simply a waste of our
15 time. But I leave it in the hands of the Court. Thank you.

16 PRESIDING JUDGE EBOE-OSUJI: When you say to us play for three
17 seconds?

18 MR STEYNBERG: I beg your pardon, your Honour?

19 PRESIDING JUDGE EBOE-OSUJI: Did you play it was played for the
20 Court for how long?

21 MR STEYNBERG: Three minutes, your Honour. It's been taken down
22 now but it was approximately three minutes long and the only part my
23 learned friend referred to was part which is time stamped 01.32 to 01.44
24 so that's 12 seconds.

25 PRESIDING JUDGE EBOE-OSUJI: But the -- it's not unduly long, if
26

1 it showed other things happening around the time.

2 MR STEYNBERG: Your Honour, this one was not unduly long but
3 I simply note the concern that I've noted in the past as well and I know
4 that you have said we should object when it happens. I'm just placing it
5 on the record.

6 PRESIDING JUDGE EBOE-OSUJI: The point is noted and we have
7 indicated ourselves that videos should not be played unnecessarily but
8 here in this particular instance, they played a video to address a
9 specific point that you had raised in your examination-in-chief, and
10 I think it was proper to look at it in context.

11 MR STEYNBERG: As --

12 PRESIDING JUDGE EBOE-OSUJI: Thank you.

13 MR FAAL: Thank you very much, Mr President. Mr President,
14 perhaps before I proceed I just wish to flag that a lot of what I have to
15 cover now would deal with information which we may ordinarily want to do
16 in private session, but in the interests of ensuring that a lot of the
17 information, the evidence we bring out, is also available publicly, I
18 have made an arrangement whereby we would provide the information to the
19 witness in, for instance, names and so forth, we have also provided our
20 own PIS form which would be available to the witness, and in many
21 instances, we would just be referring to the material on these PISs
22 without necessarily having to go into private session. But there are
23 some instances of course where I would have to ask for private session.

24 PRESIDING JUDGE EBOE-OSUJI: It's good to know that. Also your
25 ability and your right to ask closed leading questions could help
26

1 minimise the risk we are talking about, if you keep properly in mind the
2 need to protect the identity of the witness. It is typically more
3 difficult for the examiner in chief who would -- who is not free to lead
4 as much as you are entitled to do, so that sort of facility hopefully
5 will help us get around the problem.

6 MR FAAL: Indeed, Mr President, indeed. Thank you.

7 Q. Mr Witness, let us now talk about Langas. Mr Witness, you
8 obviously know Langas much more than I do but you would agree with me
9 that it is a big town, isn't it?

10 A. Langas is not a big -- it's not a town. It's an estate.

11 Q. Yes. You would agree with me, Mr Witness, that it is a big
12 estate. Thanks for that clarification.

13 A. Yeah, it's big.

14 Q. And it is comprised of Kisumu Ndogo, Kahuruko, Kamteini,
15 Kasarani, KK, Kona-Mbaya, and Nairobi Ndogo, isn't it?

16 A. Yes.

17 MR FAAL: Perhaps, Mr President, I could spell some of the areas
18 in Langas that have not yet been put into the record. Kahuruko --

19 PRESIDING JUDGE EBOE-OSUJI: And you will also notice that there
20 are some words that have already been put on the record that are not
21 coming through so the presumption has to be that there are different
22 court reporters during the relays while these things may not get passed
23 on, to make it easier for them instead of them going back to read the
24 transcript of their colleagues for you to also spell.

25 MR FAAL: All right. I would endeavour to do so. Page 29 of the
26

1 transcript, paragraph 9, the answer I heard the witness say is that
2 Langas is not a big -- it's a big -- it's not a big -- it's not -- it's
3 not a town, it's an estate. Yes, that is correct.

4 So I'll now go ahead and spell some of these names. Kahuruko is
5 not -- has not been spelled in the record. It is K-a-h-u-r-u-k-o.
6 Kamteini is K-a-m-t-e-i-n-i. KK, it's KK. The others have been spelled
7 in the record before.

8 PRESIDING JUDGE EBOE-OSUJI: You might want to spell Kisii must
9 be Ndogo. I believe you mentioned it.

10 MR. FALL: Yes, I did.

11 PRESIDING JUDGE EBOE-OSUJI: It doesn't come out.

12 MR FAAL: I thought it was already in the record. Nonetheless,
13 I'll go ahead and spell it. It's Kisimu, K-i-s-i-m-u. Ndogo, N-d-o-g-o.
14 Kisimu K-i-s-i-m-u -- K-i-s-u-m-u, sorry. K-i-s-u-m-u. My apologies.
15 Kisumu Ndogo. Ndogo is N-d-o-g-o.

16 Q. And, Mr Witness, you would agree with me that Langas is quite a
17 cosmopolitan estate, isn't it?

18 A. Yes.

19 Q. And even though it is cosmopolitan, some of the areas are
20 inhabited by one predominant ethnic group; is that right?

21 A. Yes.

22 Q. For instance, Kisumu Ndogo is dominated by Luos, isn't it?

23 A. Yes.

24 Q. And KK, Kahuruko, Kamteini and Kona-Mbaya are dominated by
25 Kikuyus; is that correct?

1 A. Yes.

2 Q. And Nairobi Ndogo and Kasarani are mixed, aren't they?

3 A. Yes.

4 Q. In fact, Mr Witness, you would agree with me that many Kalenjins
5 do not live inside Langas estate, wouldn't you?

6 A. Yes.

7 Q. The Kalenjins live in outlying areas such as Kapsaret, Ngambo and
8 Lemok; is that right?

9 A. Yes.

10 Q. I would spell Kapsaret, K-a-p-s-a-r-e-t, Kapsaret; Ngambo,
11 N-g-a-m-b-o; and Lemok, L-e-m-o-k.

12 So, Mr Witness, you would agree with me, therefore, that
13 Kalenjins are a minority ethnic group in Langas; is that right?

14 A. Not right.

15 Q. Mr Witness, do you recall telling the Prosecution in your
16 statement that Langas was dominated mainly by Kikuyus and Luos? Do you
17 recall that?

18 A. Yes.

19 Q. And you recall telling us that the Kalenjins live mostly in the
20 outlying areas; is that right?

21 A. I remember saying the Kalenjins are also mainly in Langas.

22 Q. I agree with you, Mr Witness, there are many in Langas but they
23 are not the majority in Langas, are they?

24 A. They are not the majority.

25 Q. And you would agree with me that the Kikuyus are in fact the
26

1 majority in Langas?

2 A. Yes.

3 Q. Mr Witness, in your testimony, on 16 October, while identifying
4 the ethnic groups that live in Langas, you indicated that there are
5 Kalenjins, Kisiis, Luhyas and a few Luos. Do you remember that? And the
6 transcript reference is 16 October, page 93, lines 2. Do you recall
7 saying that?

8 A. I said so.

9 Q. And would you agree with me that, in fact, the Luos are the
10 second-highest population in Langas; is that right?

11 A. When I said the Kikuyus were the majority, and when talking about
12 the Luos, giving them a lower number, I meant in terms of property, Luos
13 do not own huge percentage of Langas at all.

14 Q. In terms of population, would you say that the Luos are the
15 second-highest population in Langas?

16 A. Yes.

17 Q. You told the Court that the day after voting, Langas was calm.
18 Do you remember?

19 A. Yes.

20 Q. You also said in your testimony here that prior to vote -- to the
21 voting, the Kikuyus and Kalenjins would use derogatory language against
22 one another?

23 A. Yes.

24 Q. You will recall that you said the Kikuyus would call the
25 Kalenjins dachurie; is that right?

1 A. Yes.

2 Q. Do you know the term lumbwa?

3 A. Yes.

4 Q. What does it mean, Mr Witness? It means dog, isn't it?

5 A. No.

6 Q. What does it mean, Mr Witness?

7 A. During colonial times, when the railway was being constructed, at
8 least at a place that was inhabited by Kalenjins and they named that
9 railway station Lumbwa and it was in Nyanza Province. The railway
10 station was then known as Lumbwa Railway Station. But as years went by,
11 the people occupying that particular area claimed and said that most
12 people would refer that place as umbwa, and so the colonial government
13 changed the name from Lumbwa Railway Station to Kapterian (* phon). That
14 is my understanding of lumbwa.

15 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, can you spell lumbwa?
16 I see that in some instances we've seen lubwa and some instances lumbwa.
17 Can you spell it for the record?

18 MR FAAL: Mr President, it is spelled L-u-m-b-w-a, lumbwa.

19 PRESIDING JUDGE EBOE-OSUJI: All right. And the transcript shows
20 at line 1 at page 33, the witness saying, "During colonial times, when
21 the area was being constructed...", I believe what he said was when the
22 railway was being constructed.

23 MR FAAL: Indeed, Mr President.

24 PRESIDING JUDGE EBOE-OSUJI: Not when the area.

25 MR FAAL: Indeed.

1 THE WITNESS: Your Honour, I said when the railway line was under
2 constructions.

3 PRESIDING JUDGE EBOE-OSUJI: That was my understanding.

4 MR FAAL: Indeed, Mr President, that is absolutely correct. May
5 I proceed, Mr President?

6 PRESIDING JUDGE EBOE-OSUJI: Please.

7 MR FAAL:

8 Q. Mr Witness, what would the word umbwa, u-m-b-w-a, umbwa, what
9 does it mean?

10 A. Umbwa in Kiswahili means a dog.

11 Q. Was this term ever used by Kikuyus in reference to Kalenjins?

12 A. When that word was used, those years, referring to Kalenjins as
13 lumbwa, it meant you people from Lumbwa area. For instance, a person
14 from Kisii area would, and is, referred to mostly as mugaka (* phon).

15 PRESIDING JUDGE EBOE-OSUJI: Sir, please, the question this time
16 is no longer about lumbwa but umbwa, and the counsel is asking you
17 whether Kikuyus ever used the term umbwa, not lumbwa but umbwa, to refer
18 to Kalenjins. What is your answer to that?

19 THE WITNESS: No.

20 MR FAAL:

21 Q. Mr Witness, what would you say if I suggest to you that Kalenjins
22 claim that Kikuyus refer to them as either lumbwa or umbwa which means
23 dog?

24 A. I disagree.

25 Q. In spite of the mutual name calling that occurred in Langas in

1 2007, the place was still calm before the elections; correct?

2 A. Yes.

3 Q. And the voting was peaceful, wasn't it?

4 A. It was.

5 Q. After the voting, the people were eager to learn about the
6 results of the presidential elections; correct?

7 A. Correct.

8 Q. You would agree with me, Mr Witness, that the results were
9 delayed?

10 A. Yes.

11 Q. The Luos who live in Langas predominantly supported Raila Odinga,
12 didn't they?

13 A. Yes.

14 Q. In particular, those who resided at Kisumu Ndogo, Raila Odinga
15 was their candidate, wasn't he?

16 A. Yes.

17 Q. You would agree with me that they also supported other ODM
18 candidates, didn't they?

19 A. They did.

20 Q. And do you recall watching on TV or listening to the radio about
21 the tallying of the votes? Did you?

22 A. No.

23 Q. Did you follow the tallying of the votes at all?

24 A. No.

25 Q. Mr Witness, do you recall the morning of 28 December 2007,

1 Raila Odinga leading in the tallying of the results by about 1 million
2 votes? Do you recall that?

3 A. No.

4 Q. Mr Witness, we have seen the sketch plan that you have drawn of
5 the area in Langas. Did you at any point in time during those days, 27,
6 28, 29 December, go to the place called Kisumu Ndogo? Did you?

7 A. No.

8 Q. Do you realise that the delay in the announcement of the results
9 caused a bit of tension in Langas?

10 A. Yes.

11 Q. Would you agree with me, Mr Witness, that on 28 December 2007, in
12 Kisumu Ndogo, the tensions escalated, resulting in a clash between Luos
13 and Kikuyus, the police had to come -- the police had to come in to
14 separate the groups? Do you recall -- do you know that?

15 A. I got that information at Kona-Mbaya.

16 Q. And this occurred on 28 December 2007; correct?

17 A. Yes.

18 Q. Mr Witness, you would agree that this was the first post-election
19 clash, wasn't it, happening a day after the voting?

20 A. I wouldn't call it a clash but a commotion.

21 Q. There was fist-fighting between these two groups?

22 A. I don't know because I was -- I wasn't there.

23 Q. There was stone throwing between the two groups?

24 A. I also don't know.

25 Q. Some kiosks were destroyed?

1 A. I heard so.

2 Q. On the morning of 29 December, do you realise that the lead that
3 Raila Odinga had the day before had considerably reduced? Do you know
4 that?

5 A. No.

6 PRESIDING JUDGE EBOE-OSUJI: Counsel, I do not want to interrupt
7 your flow but the lead you said was there on the 28th of December. You
8 said it was 1 million.

9 MR FAAL: Yes.

10 PRESIDING JUDGE EBOE-OSUJI: So the record is clear, so the
11 record is clear, you mean the difference between Mr Odinga and the next
12 candidate was 1 million?

13 MR FAAL: Yes, Mr President, perfect. Yes, yes.

14 Q. But on 29 December, Mr Witness, there was a rumour that the
15 elections were being rigged; is that right?

16 A. Yes.

17 Q. And the rumour was it was being rigged in favour of Mwai Kibaki
18 of the PNU; correct?

19 A. Yes.

20 Q. And this information angered the supporters of the ODM; correct?

21 A. Very much.

22 Q. You testified before this Court that on 29 December, there was a
23 rumour in Langas that Kibaki had won the election; correct?

24 A. Yes.

25 Q. And this rumour further angered the ODM supporters, didn't it?

1 A. It did.

2 Q. And the situation in Langas on 29 December deteriorated further,
3 didn't it?

4 A. It did.

5 Q. The situation got worse and there was confrontation between
6 Kikuyus and Luos, didn't it?

7 A. I heard that at Kona-Mbaya.

8 Q. And this event occurred on 29 December 2007; correct?

9 A. Yes.

10 Q. And this -- excuse me, Mr President. This confrontation led to
11 fighting between Luo youths and Kikuyu youths, didn't it?

12 A. I heard so.

13 Q. And, Mr Witness, this fighting occurred in the context of
14 protests by Luos that the election was rigged?

15 A. Correct.

16 Q. And, Mr Witness, on the night of -- on the day -- afternoon,
17 rather, of 29 December 2007, Kikuyu youths killed a number of Luos at the
18 house or the compound of Professor Odhiambo; correct?

19 A. I don't know.

20 Q. Professor Odhiambo is professor, as the -- spelled in the normal
21 way, and Odhiambo, O-d-h-i-a-m-b-o. Professor Odhiambo. Mr Witness, you
22 want to tell this Court that you did not hear or learn about the killing
23 of the Luos at Professor Odhiambo's compound in Langas on
24 29 December 2007? Is that your testimony?

25 A. I have said before at Kona-Mbaya I got information that there

1 were confrontation between the Kikuyus and the Luos at Kisumu Ndogo.
2 I did not say that I saw it myself. I got information to that effect at
3 Kona-Mbaya.

4 PRESIDING JUDGE EBOE-OSUJI: Counsel, just one small matter. For
5 the record, court reporters, counsel spelled Odhiambo as O-d-h-i-a-m, as
6 in Mike, b-o.

7 MR FAAL: Thank you, Mr President, for that correction.

8 Q. Mr Witness, I agree you heard that there was fighting between
9 Luos and Kikuyus on 29 December 2007. The question is: Did you hear
10 that Kikuyus have killed a number of Luos at Professor Odhiambo's plot in
11 Langas on 29 December 2007?

12 A. I heard some Luos had been killed, but I didn't hear the exact
13 place where they were killed.

14 Q. Fair enough. You had been showed by the Prosecution a document
15 which contained the list of individuals who were killed in Langas, and
16 the list is contained in the -- in a report provided by Moi Teaching and
17 Referral Hospital. I would show you the same document. I would show you
18 a similar document, rather, from a report submitted by the hospital, and
19 ask you some questions thereafter. Is that okay?

20 A. It's okay.

21 MR FAAL: Mr President, I would refer the Court to tab 2, the ERN
22 number of the document I wish to refer to is KEN-OTP-0006-021 -- 1021.
23 And, yes, and Mr President, perhaps with the indulgence of the court
24 staff, I would want the document to be provided to the witness. We have
25 highlighted the relevant parts we would want the witness to look at.

1 PRESIDING JUDGE EBOE-OSUJI: Court staff, can you please assist
2 the Defence and hand over the document to the witness.

3 MR FAAL: Mr President, if the Judges would prefer the smaller
4 version, we would provide that after lunch. Mr President, we also ask
5 that the Defence PIS be circulated. Unfortunately we cannot -- we do not
6 have a colour printer and we were unable to print it in colour.

7 PRESIDING JUDGE EBOE-OSUJI: Mr Khan surely can afford a small
8 portable colour printer.

9 MR FAAL: Mr President, this Defence team is privately funded,
10 Mr President.

11 PRESIDING JUDGE EBOE-OSUJI: More reason why.

12 MR FAAL: More difficulties for the Defence. So, Mr President,
13 we have provided the witness with a -- with the report from Moi Teaching
14 and Referral Hospital. We have also provided him with the Defence PIS
15 document, which contains a list of names. So I would advise the witness
16 not to read out the names that I refer to you.

17 THE WITNESS: Yes.

18 MR FAAL:

19 Q. But what I propose to do is to direct you to a particular number
20 on the bigger document, and ask you to confirm or deny whether that
21 number -- and ask you to confirm the details of that person that I will
22 read out but do not mention the name and do not mention the age of the
23 person, correct? Are we together?

24 A. Yes, yes.

25 PRESIDING JUDGE EBOE-OSUJI: You just lead him, counsel.

1 MR FAAL: Yes.

2 Q. And, Mr Witness, on the page you have been directed at, you can
3 see that the document contains names of individuals, their age, sex,
4 ethnicity and place where they died. Could you see that?

5 A. Yes.

6 Q. Could you scroll down to number 38 on the list?

7 A. Yes.

8 Q. It's highlighted.

9 A. Yes.

10 Q. And on number 38, you would see that the name of this person is
11 the same as the person E on the other document provided, the PIS
12 provided, person E on the PIS. Don't read out the name, please.

13 A. Yes, I can see. I see it.

14 Q. It's the same name?

15 A. It's the same name.

16 Q. All right. And you have seen the age. It's the same age as the
17 one provided in the PIS; is that right?

18 A. Yes.

19 Q. And the other details of this person is that he is a male, Luo by
20 tribe, and date of death is 29 December 2007, and place of death is
21 Langas; is that -- is that correct?

22 A. Yes.

23 Q. Now, please scroll down to number 83, please, should be on the
24 next page?

25 PRESIDING JUDGE EBOE-OSUJI: You want to also reflect on the

1 record the cause of death? Or is that something --

2 MR FAAL: Yes, Mr President. I would -- you would note,
3 Mr Witness, could we go back to number 38, please?

4 MR STEYNBERG: Your Honour, if I may just request some
5 assistance, also just refer to the ERN of the page of this document to
6 which he's referring it would be helpful to all of us, remembering we
7 don't have the tabs.

8 MR FAAL: Very well.

9 PRESIDING JUDGE EBOE-OSUJI: It would also be 1039, page --

10 MR FAAL: The material, the information I just read out is
11 contained in ERN number -- ERN -- KEN---

12 PRESIDING JUDGE EBOE-OSUJI: I already gave it to them.

13 MR FAAL: All right, thank you very much, Mr President.

14 Q. So, Mr Witness, let's go back to number 38. You would see that
15 the cause of death is head injury?

16 A. Yes.

17 Q. Now, let's move on to the next one.

18 PRESIDING JUDGE EBOE-OSUJI: Wait. Head injury due to sharp.

19 MR FAAL: Yes, Mr President. Yes, it's head injury due to sharp.
20 There is a word that is missing, obviously.

21 PRESIDING JUDGE EBOE-OSUJI: I just wanted you to reflect
22 accurately what is on the document.

23 MR FAAL: Thank you very much, Mr President.

24 Q. And now let's move on to 83, number 83. Can you find it?

25 A. Yes.

1 Q. And you see that the name mentioned in 83 is the same as person F
2 in the PIS, isn't it?

3 A. Yes.

4 Q. And the sex of this person is male; Luo ethnicity, tribe is what
5 is used; and date of death is 29 December 2007; place of death, Langas;
6 and cause of death, head injury, multiple cuts and arrow shot; correct?

7 A. Correct.

8 Q. I will take you to yet another. Could you scroll down to 89,
9 please?

10 A. Yes.

11 Q. You can see that the name and age of this person corresponds to
12 person G in the PIS?

13 A. Yes.

14 Q. And the details of the person are: Sex, male; tribe Luo; place
15 of death, Langas; date of death, 29 December 2007; cause of death, head
16 injury, multiple cuts due to sharp object. Did you see that?

17 A. Yes.

18 Q. Could you move down to number 97, please?

19 A. Yes.

20 Q. And you would see that the name on 97 corresponds with person H
21 in the PIS, isn't it?

22 A. Yes.

23 Q. And the details of this person are are: Sex, male; tribe, Luo;
24 place of death, Langas; date of death, 29 December 2007; cause of death,
25 head injury due to sharp object; correct?

1 A. Yes.

2 Q. And finally, I take you to number 34, which is in the first page.

3 Could you find it, Mr Witness?

4 A. Yes.

5 Q. And this number corresponds with person I in the PIS?

6 A. Yes.

7 Q. And this person is Kikuyu, and was killed in Langas; correct?

8 A. Yes.

9 Q. So, Mr Witness, you can put those documents away for the time
10 being. You will agree with me, Mr Witness, that Luos were killed in
11 Langas?

12 A. Yes.

13 Q. And, Mr Witness, if you examine this document, you would see that
14 on 28 and 29 December, there is no Kalenjin listed as having died in --
15 in Langas. You can take my word for it because I have checked it and the
16 Prosecution would check it, and if I am wrong, they would say it, but no
17 Kalenjin was killed in Langas on 28 and 29 December 2007. What do you
18 say to that?

19 A. I would say as you have stated earlier, the Luos were angry
20 because of the outcome, and that is how the confrontation and fighting
21 ensued among the Kikuyus and Luos because that particular side where Luos
22 are majority, there are no Kalenjins.

23 Q. Thank you, thank you, Mr Witness. But at this stage, there was
24 no Kalenjin involved in the fighting, would you agree to that?

25 A. I would agree, but it was because there were no Kalenjins on that

1 particular side.

2 Q. Mr Witness -- Mr President, perhaps before I move forward I would
3 ask that this document, the report that we have provided, just the parts
4 we have referred to, which is the annex 3 of the report, be -- be
5 admitted into evidence. Mr President, the -- this annex is different
6 from the document the Prosecution used. Otherwise we would have just
7 recited the exhibit number that's been assigned to the Prosecution
8 document but the documents are different.

9 PRESIDING JUDGE EBOE-OSUJI: But they bear OTP ERN number; is
10 that right?

11 MR FAAL: Yes, Mr President.

12 PRESIDING JUDGE EBOE-OSUJI: So you received them from the OTP?

13 MR FAAL: Yes, Mr President.

14 PRESIDING JUDGE EBOE-OSUJI: So what's your application?

15 MR FAAL: For the document to be admitted into evidence, the part
16 that I asked for the annex C, the annex 3 of the document, be admitted
17 into evidence.

18 PRESIDING JUDGE EBOE-OSUJI: Any objection?

19 MR STEYNBERG: Your Honour, I doubt whether I will have an
20 objection but seeing the time, may I ask that I have the lunch
21 adjournment to look over this document and to advise the Chamber of the
22 Prosecution's position?

23 PRESIDING JUDGE EBOE-OSUJI: Let's make the ruling now and then
24 this is your document and you can address the matter of the -- any
25 contention in it in the course of the submissions.

1 MR STEYNBERG: As the Court pleases.

2 MR FAAL: Mr President, if it helps I'll just read out the ERNs
3 of the part of the document I want admitted which is KEN-OTP-006-1039 to
4 1041.

5 MR STEYNBERG: Your Honours, then my only submission would be
6 that if this is part of a larger report, that perhaps the whole report
7 should go in for the context of this document.

8 PRESIDING JUDGE EBOE-OSUJI: Do you have any difficulty with
9 that?

10 MR FAAL: Yes, Mr President. I think we are entitled to have the
11 portion -- we are entitled to having the portion that we want to go in
12 but if that causes any difficulty we would have the entire document in
13 evidence. Thank you.

14 PRESIDING JUDGE EBOE-OSUJI: We will put in the entire document.

15 MR FAAL: Much obliged, Mr President.

16 PRESIDING JUDGE EBOE-OSUJI: We will mark it now and then we have
17 to adjourn for lunch. Do you have any question that you must pose?

18 MR FAAL: Not in -- we are still not finished with this document,
19 but this is a convenient time to stop, Mr President.

20 PRESIDING JUDGE EBOE-OSUJI: So you will continue after lunch.

21 MR FAAL: Indeed, Mr President, thank you.

22 PRESIDING JUDGE EBOE-OSUJI: Court officers, can you log in the
23 exhibit, the document admitted as the next in
24 the series of exhibits for
25 the Ruto Defence.

1 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0006-1021,
2 R 01, confidential version will be given the following number

3 EVD-TD09-00064. And shall also be known as Exhibit 64, 64, of the
4 Defence -- of the Ruto Defence team.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. With that
6 done, the blinds will come down now so that the witness is escorted out
7 of the courtroom, and then we will rise.

8 (Closed session at 12.33 p.m.) * Reclassified into open session.

9 MR STEYNBERG: Your Honours, perhaps while this is happening may
10 I just ask whether my learned friends might be in a position to either
11 provide us with a bundle over the extended lunch break or at least a list
12 of the documents in order that they are tabbed in -- in the Bench's
13 binder so that we can arrange them accordingly?

14 PRESIDING JUDGE EBOE-OSUJI: Court Officers, you can escort the
15 witness, please.

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

18 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
19 (The witness stands down)

20 MR FAAL: Mr President, we would provide the necessary documents
21 and I have just been informed by lead counsel that we would do it in
22 black and white. We can't afford colour.

23 PRESIDING JUDGE EBOE-OSUJI: The PIS you should be able to print
24 these things in colour. I mean --

25 MR FAAL: Much obliged.

1 PRESIDING JUDGE EBOE-OSUJI: The Court will rise now.

2 (Recess taken at 12.34 p.m.)

3 (The witness enters the courtroom)

4 (Upon resuming in open session at 2.43 p.m.)

5 THE COURT USHER: Please be seated.

6 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. I apologise
7 once more for the slightly late start. The matter that detained us in
8 the morning continued to do so but we hope to resolve it quickly.

9 Mr Faal, you were on your feet and we are in open session. We
10 continue there?

11 MR FAAL: Yes, Mr President, we continue in open session.

12 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Welcome back,
13 witness. You're still being cross-examined by the lawyer for Mr Ruto, so
14 he will continue.

15 THE WITNESS: Yes.

16 MR FAAL:

17 Q. Good afternoon, Mr Witness, welcome back.

18 A. Good afternoon.

19 Q. Before we left for lunch, we were talking about the events in
20 Langas. Do you recall that?

21 A. Yes.

22 Q. And, Mr Witness, you would agree with me that the fighting
23 between the Kikuyus and the Luos still continued on 30 December when the
24 results were announced; correct?

25 A. As I said earlier, I heard about it.

1 Q. Indeed, Mr Witness, the fighting also continued on 31 December,
2 when Kikuyus beheaded a number of Luos and put their heads on sticks and
3 displayed them around Langas; correct?

4 A. I'm not aware of that.

5 Q. Okay, Mr Witness, we would move on and we would come back to this
6 issue of the killing of Luos whose heads were displayed on sticks around
7 Langas. But in the meantime, you talked about a person whose house was
8 burnt in Langas, and the person called you on 29 December 2007 to tell
9 you. Do you remember that?

10 A. Yes, I do.

11 MR FAAL: Mr President, for this segment of the cross, we would
12 want to go into private session.

13 PRESIDING JUDGE EBOE-OSUJI: For how long?

14 MR FAAL: Excuse me, no more than ten minutes, Mr President.

15 PRESIDING JUDGE EBOE-OSUJI: No more than ten, okay. We will
16 then go into private session for ten minutes.

17 (Private session at 2.47 p.m.) * Reclassified into open session.

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

20 MR FAAL: Thank you, Mr President.

21 Q. Mr Witness, we are now in private session. You can freely
22 mention the names of the individuals I am going to talk about in this --
23 in the questions that I ask.

24 A. Thank you.

25 Q. You claim that you received a call from person 6 telling you that

1 (Redacted). Do you remember that?

2 A. Yes, I do.

3 Q. (Redacted)

4 A. Yes.

5 MR STEYNBERG: Your Honours, my recollection, I believe this
6 witness's evidence was (Redacted). I may be wrong but perhaps my
7 learned friend could refer us then to the exact spot in the record.

8 MR FAAL: Indeed, that is correct, Mr President. For the
9 purposes of preciseness, I would say that (Redacted)

10 Q. Is that correct?

11 A. Yes.

12 Q. And do you know the name of (Redacted)

13 A. No.

14 Q. And your friend told you that this incident happened on the day
15 his house was burnt; correct?

16 A. Yes.

17 Q. And, Mr Witness, your testimony is that this house was burnt on
18 29 December 2007; correct?

19 A. Yes.

20 Q. In fact, in your statement to the Prosecution, you stated that
21 the house was burnt at the night of 29 December 2007; correct?

22 A. Yes.

23 Q. Mr Witness, (Redacted) person number 6, (Redacted)
24 and would you be surprised to note that (Redacted) his house was not
25 burnt on the 29th, it was burnt object the 31st of December, 2007? What

1 do you say to that?

2 A. I wouldn't be surprised.

3 Q. So you are therefore agreeing that you may have made a mistake
4 when you said that the house was burnt on 29th; correct?

5 A. According to my recollection, it was burnt on that 29th.

6 Q. And also, Mr Witness, the information we received from (Redacted)
7 is that his house was burnt on the afternoon, not at night. What do you
8 say to that?

9 A. I gave information as he told me.

10 Q. Mr Witness, obviously (Redacted) would not make a mistake?

11 PRESIDING JUDGE EBOE-OSUJI: The question is overruled. Let's
12 not argue with the witness.

13 MR FAAL: Mr President, perhaps maybe -- okay, I'll just rephrase
14 the question.

15 Q. Mr Witness, you know (Redacted)
16 (Redacted)

17 PRESIDING JUDGE EBOE-OSUJI: Counsel, it is still argumentative.
18 The fact that you've rephrased it, it's not about how you ask it, it's
19 the effect of it.

20 MR FAAL: Thank you, Mr President. What I was trying to drive
21 at, Mr President is the date of (Redacted)

22 PRESIDING JUDGE EBOE-OSUJI: If you put the date as a question to
23 the witness, you have to take the answer he gives you, and then at the
24 end of the day, when the witness is not there, when you're making
25 submissions, then you can make arguments to the judges about the purport

1 or effect of the evidence, but not to argue with the witness about it.

2 MR FAAL: Thank you, Mr President. I am guided.

3 Q. Mr Witness, I put it to you that (Redacted)
4 on 31 December 2007. On that day, he was at the Eldoret cathedral as an
5 IDP. What do you say about that?

6 A. Can you repeat?

7 Q. I put it to you that (Redacted)
8 31 December 2007. He was an IDP on that day at the Eldoret cathedral.
9 What do you say about that?

10 MR STEYNBERG: Sorry, your Honour, before the witness answers, I
11 don't know if my learned friend misspoke when he talks about the 31st,
12 because this witness's evidence was that (Redacted) on the night of the 29th
13 to the 30th. So I'm not sure why my learned friend is putting a
14 proposition which he did not -- as a negative which this witness did not
15 testify to, if you follow where I'm going.

16 MR FAAL: Mr President, he was (Redacted) on 31st December.
17 So --

18 PRESIDING JUDGE EBOE-OSUJI: So that means he would not (Redacted)
19 by the 29th, 30th.

20 MR FAAL: Obviously, Mr President.

21 PRESIDING JUDGE EBOE-OSUJI: All right. Why don't you then ask
22 that question.

23 MR FAAL:

24 Q. Mr Witness, I put it to you that (Redacted)
25 (Redacted) on 29 December when the house was attacked, according to

1 you. What do you say about that?

2 A. The evidence I gave before this Court are the words and
3 information given to me by (Redacted)

4 Q. As I mentioned earlier, Mr Witness, (Redacted)
5 (Redacted)

6 PRESIDING JUDGE EBOE-OSUJI: No, please.

7 MR FAAL: Mr President, I --

8 PRESIDING JUDGE EBOE-OSUJI: It's wrong to actually be putting
9 evidence of one witness to another witness on the stand. So you don't
10 have a right to press that position. You stated your proposition, the
11 witness reacts to it. If you want to call (Redacted) here, you do that,
12 but let's not argue with the witness.

13 MR FAAL: Very well.

14 PRESIDING JUDGE EBOE-OSUJI: Apart from the propriety of it, if
15 you start arguing with a witness you'll provoke argument from witnesses
16 and we'll never leave here.

17 MR FAAL: I am guided by that, Mr President. I would move on.

18 Q. I put it to you that (Redacted)
19 on (Redacted) at the Moi Teaching and
20 Referral Hospital. What do you say about that?

21 A. I'm not aware of that.

22 Q. Mr Witness, you're familiar, are you, with the kind of
23 documentation that would normally be issued in Eldoret when a person (Redacted)
24 in hospital, are you?

25 A. Yes.

1 Q. And if you see documentation from Eldoret hospital about a person
2 (Redacted), you would be able to tell whether this is the kind of
3 documentation that would be issued, would you?

4 A. Yes.

5 Q. Mr Witness, the name (Redacted) does it ring a bell to you?
6 (Redacted)

7 A. No.

8 Q. What do you say if I say to you that's the name of (Redacted)
9 (Redacted) He was (Redacted)

10 A. It is you who is telling me.

11 Q. But would that ring a bell to you? Would you say that that is
12 the person (Redacted)

13 A. If (Redacted) I would agree.

14 MR FAAL: Mr President, (Redacted)

15 (Redacted) the Moi Teaching and Referral Hospital. (Redacted)

16 (Redacted)

17 We want to put them to the witness for him to see whether he would change
18 his mind about (Redacted)

19 MR STEYNBERG: Your Honour, I have no objection to the documents
20 being put to this witness, but again, the evidence is already on record
21 that (Redacted) So it mustn't be put in a
22 misleading way that if this person (Redacted) therefore this witness is wrong
23 because the two propositions are not logically connected. And, secondly,
24 this witness -- we would object to it going in as evidence because the
25 person who can properly authenticate that is either somebody from the

1 hospital or (Redacted) himself.

2 MR FAAL: Mr President, our purpose is to present the documents
3 to the witness, mark them for identification, and ask the witness whether
4 he wishes to change his mind about his story or not. That's all we
5 intend to do with regards to this particular documents.

6 PRESIDING JUDGE EBOE-OSUJI: It's difficult to see how that gets
7 you there, though.

8 MR FAAL: Mr President, I think it is possible to be able to put
9 to the witness the documents showing that (Redacted)
10 (Redacted) at a particular day, (Redacted)
11 (Redacted). We have all that
12 documentation. That would at least show that (Redacted)
13 (Redacted) The question whether somebody else (Redacted) is a matter of evidence.
14 We are prepared to call (Redacted) as a witness at another day to show
15 that (Redacted) at that time and (Redacted) at a particular
16 date.

17 PRESIDING JUDGE EBOE-OSUJI: The point I make is this: You and
18 the witness are talking at cross-purposes on that matter. If your
19 objective is to get the witness to change his mind, one would be looking
20 for a different kind of evidence than what you have in mind. If it's
21 something he created that would refresh his memory or something that may
22 refresh his memory.

23 MR FAAL: I have tried using the name and it didn't work and
24 perhaps maybe this may work, Mr President.

25 PRESIDING JUDGE EBOE-OSUJI: Fair enough. Proceed.

1 MR FAAL: Thank you very much. Mr President we would like to put
2 up the screen document number KEN-D09-0021-005. It's in tab 7,

3 Mr President. Could you kindly put it up the screen, please.

4 MR STEYNBERG: Your Honours, I believe my learned friend
5 misspoke. It's 0015.

6 MR FAAL: Yes, indeed, 0015. Mr President, what is displayed on
7 the screen is a bit faint. I propose to hand a hard copy to the witness,
8 if that helps.

9 Q. Mr Witness, you have been handed a document which is in the
10 letterhead of Moi Teaching and Referral Hospital.

11 A. Yes.

12 Q. And it is an (Redacted)
13 (Redacted) correct?

14 A. Correct.

15 Q. And you could see that (Redacted)
16 (Redacted) correct?

17 A. Correct.

18 Q. You would also see that the (Redacted)
19 correct?

20 A. Correct.

21 Q. And if you look at (Redacted)
22 correct, even though (Redacted) is scratched off, to
23 the right-hand side of the document?

24 A. In fact, I would have an objection, why the date, the name
25 (Redacted) had been struck off.

1 Q. Yes, we notice it has been struck off. So -- but I'll ask you
2 other questions and then we proceed. The hospital would have an
3 explanation why they did that. Understand.

4 And look at the bottom of the document. You would see
5 (Redacted)

6 A. Yes.

7 Q. And the (Redacted) correct?

8 A. Yes.

9 Q. And you would agree with me that this document purports to be a
10 (Redacted) Moi Teaching
11 referral hospital, on (Redacted) correct?

12 MR STEYNBERG: I beg your pardon, your Honour, (Redacted) I
13 believe my learned friend misspoke.

14 MR FAAL:

15 Q. (Redacted) I meant to say, excuse me.

16 A. Yes.

17 Q. Thank you, Mr Witness. I will show you another document. This
18 is contained in tab 8. It is KEN-D09-0021-0016. Could you put it up the
19 screen, please?

20 MR FAAL: Mr President, it looks like this one too is faint. We
21 will provide a hard copy to the witness.

22 Q. And, Mr Witness, you would agree with me that this document is
23 headed "Moi Teaching and Referral Hospital, (Redacted); correct?

24 A. Yes.

25 Q. And you would agree with me that the name of the (Redacted) written

1 on the document is (Redacted)

2 A. Yes.

3 Q. And the sex is male; correct?

4 A. Correct.

5 Q. And the (Redacted) is MTRH; correct?

6 A. Yes.

7 Q. And the (Redacted)

8 A. Yes.

9 Q. And the (Redacted) written on the document is (Redacted)
10 (Redacted). Could you see that?

11 A. Yes.

12 Q. And the (Redacted)

13 A. Yes.

14 Q. And he (Redacted)

15 A. Yes.

16 Q. And the (Redacted)

17 correct?

18 A. Yes.

19 Q. And the (Redacted) -- sorry, excuse me,
20 I withdraw that. The person's (Redacted)

21 (* phon); correct?

22 A. I don't know.

23 Q. Look under (Redacted)

24 did you see that?

25 A. Yes, I can see the name.

1 Q. And the (Redacted) is that this person,
2 (Redacted)

3 A. Yes.

4 Q. And that the (Redacted)

5 A. Yes.

6 Q. Could you see that?

7 A. Yes.

8 Q. At the bottom of the document, you would see a name, a
9 (Redacted) correct?

10 A. Yes.

11 Q. And you see that it's been (Redacted)
12 name (Redacted)

13 A. Yes.

14 Q. And it is dated (Redacted)

15 A. Yes.

16 Q. I would now take you to one last document. It is
17 KEN-D09-0021-0017. It's contained in tab 9. We would crave your
18 indulgence to provide him with a hard copy. Mr Witness, you've been
19 handed a document, the heading is (Redacted)
20 (Redacted) is that right?

21 A. Yes.

22 Q. And the (Redacted) correct?

23 A. Yes.

24 Q. And the name of (Redacted) correct?

25 A. Yes.

1 Q. And the sex of the person is male; correct?

2 A. Yes.

3 Q. And the (Redacted) correct?

4 A. Yes.

5 Q. And the person is (Redacted)

6 correct?

7 A. Yes.

8 THE INTERPRETER: Mr President, five-second rule for the

9 interpreters, thank you.

10 MR FAAL: Thank you for that reminder.

11 Q. And the usual (Redacted)

12 Eldoret, Uasin Gishu; correct?

13 A. Yes.

14 Q. And that this document is dated (Redacted) correct?

15 A. Yes.

16 Q. And the (Redacted) correct?

17 A. Yes.

18 Q. And the bottom of the document, the middle page of the document,

19 has (Redacted) correct?

20 A. Yes.

21 Q. Mr Witness, having seen these documents, would you agree that

22 (Redacted)

23 (Redacted)

24 A. I have got a reservation on these documents.

25 Q. Do you agree or do you not agree that (Redacted)

1 (Redacted)

2 A. I don't agree because of the discrepancy on these documents in
3 front of me.

4 Q. What discrepancy would you say?

5 A. On the first paper, that is (Redacted), it is stated that
6 it is dated (Redacted)

7 Q. Yes?

8 A. And the (Redacted)

9 Q. Yes. And is there a problem with that, Mr Witness?

10 A. The (Redacted) And the document
11 here is dated (Redacted).

12 Q. Mr Witness that is the date of the (Redacted) This is an (Redacted)
13 It's the date on which the (Redacted). Do you have anything else
14 in these documents which suggest to you that the documents are not what
15 they are supposed to be?

16 A. It's now clear.

17 Q. Now that it is clear to you, would you say that (Redacted)
18 (Redacted)

19 A. I did not know (Redacted)
20 (Redacted) I was talking about,
21 I didn't know his name.

22 Q. Yes. But, Mr Witness, it is -- is it possible that you could
23 have made a mistake? Is it possible that you were told that (Redacted)
24 and you believed that (Redacted) in the violence?

25 A. It is true (Redacted), but the name differs because I didn't

1 know the name.

2 PRESIDING JUDGE EBOE-OSUJI: Counsel, I think you have to move
3 on.

4 MR FAAL: Yes, Mr President. Mr President, perhaps before I go
5 further I would ask that these three documents be marked for
6 identification.

7 MR STEYNBERG: No objection, your Honour.

8 PRESIDING JUDGE EBOE-OSUJI: Mr Katwa?

9 MR KIGEN-KATWA: Mr President.

10 PRESIDING JUDGE EBOE-OSUJI: The documents will then be marked
11 MFI, next in the series for the Ruto Defence.

12 MR FAAL: Do you want me to provide you with the ERN numbers
13 again?

14 THE COURT OFFICER: (Interpretation) Document KEN-D09-0021-0015
15 will be marked as MFI-TD09-00065, confidential. Document
16 KEN-D09-0021-0016 will be marked as MFI-TD09-00066. Confidential.

17 And finally, document KEN-D09-0021-0017 will be marked as MFI
18 TD09-00067, confidential as well.

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

20 MR FAAL: Mr President, we can go into open session.

21 PRESIDING JUDGE EBOE-OSUJI: We go now into open session.

22 (Open session at 3.16 p.m.)

23 THE COURT OFFICER: (Interpretation) Mr President, we are in
24 open session.

25 PRESIDING JUDGE EBOE-OSUJI: Thank you.

1 MR FAAL:

2 Q. Mr Witness, you would agree with me that the late chief
3 David Samoei organised a peace meeting in Langas during the violence;
4 correct?

5 A. I'm not aware.

6 Q. Mr Witness, you know the chief, the former chief, of Langas who
7 died a while back, do you know him, David Samoei?

8 A. He was not David Samoei. He was Peter Samoei.

9 Q. Thank you, Mr Witness, for that correction. But the chief of
10 Langas or the person who was chief of Langas in 2007 organised a peace
11 meeting in December of 2007, to be specific on 30 December 2007; is that
12 right?

13 A. I'm not aware.

14 Q. Mr Witness, do you remember telling the Prosecution that the
15 chief of Langas organised a peace meeting in Langas? Do you remember
16 saying that?

17 A. What I did say, and by that time I was in Jubilee Catholic
18 Church, that the chief of Langas made -- or met the two warring groups,
19 the Luos and Kikuyus, but not at Kona-Mbaya.

20 Q. Mr Witness, the question was whether you are aware that the
21 former chief of Langas organised a peace meeting between the Kikuyus and
22 the Luos?

23 A. I'm aware of that.

24 Q. You would also agree with me that the Kalenjins were not part of
25 this peace meeting; correct?

1 A. Correct.

2 Q. And chief Samoei was a Kalenjin; correct?

3 A. Correct.

4 Q. Mr Witness, the two warring parties in Langas at this time were
5 Kikuyus and Luos; correct?

6 A. Correct.

7 Q. Mr Witness, did you hear about the plight of Kalenjin milk
8 vendors in Langas on 31 December 2007? Did you hear what happened to
9 them?

10 A. I heard it.

11 Q. And you heard that Kikuyus killed some Kalenjin milk vendors,
12 didn't you?

13 A. No.

14 Q. What was it you heard about the Kalenjin milk vendors,
15 Mr Witness?

16 A. What I heard is that the Kalenjin milk vendors, when they arrived
17 at Kona-Mbaya to sell their milk, the Kikuyu youths nudged the jerrycans
18 containing the milk and poured it and told the Kalenjins to go away.

19 Q. And this was on 31 December 2007; correct?

20 A. I can't remember the date.

21 Q. And this was before Kalenjins got involved in the violence, in
22 the fighting in Langas; correct?

23 A. Not correct.

24 Q. Mr Witness, on this day, we say was 31 December 2007, Kalenjin
25 milk vendors went to sell milk in Langas; is that not correct?

1 A. It's correct.

2 Q. At this time, those milk vendors were not aware that there was
3 fighting going on in Langas, were they?

4 A. There are two routes to enter Langas from Kalenjin side. The
5 Kalenjin milk vendors could have passed the tarmac road from Kapsaret to
6 enter Langas near the junction of the show-ground. The Kalenjin youths
7 who attacked (Redacted) in particular emerged from the position I have
8 showed in my drawing, from the area where Marsy polytechnic was situated.

9 Q. Mr Witness, the Kalenjins, according to you, attacked (Redacted) on
10 the day -- on the day this person was killed near your house, person
11 number 11; correct?

12 PRESIDING JUDGE EBOE-OSUJI: Person number 11.

13 MR FAAL: On the Prosecution PIS -- the Defence PIS, the persons
14 are given letters and not numbers.

15 PRESIDING JUDGE EBOE-OSUJI: Letters. I remember that now.

16 THE WITNESS: Yes.

17 MR FAAL:

18 Q. And this date would be the marker on the date the Kalenjins
19 became involved in the violence; correct?

20 A. Yes.

21 Q. Mr Witness, I would take you back to the document you were showed
22 by the Prosecution. Rather, I would show you our own version. We showed
23 it to you earlier. And you would see in that document the name of person
24 number 11, and please do not announce the name.

25 A. Yes.

1 Q. You would take a look at it and you would let the Court know the
2 date of death of that person?

3 PRESIDING JUDGE EBOE-OSUJI: Counsel, why don't you use the
4 prosecutor's own document? Because the Prosecutor's document that was
5 shown to this witness for that purpose -- sorry, that was shown to the
6 witness.

7 MR FAAL: I could very well do that. I do not have the reference
8 at hand but if you give me a few seconds, I'll get it.

9 PRESIDING JUDGE EBOE-OSUJI: And the Prosecutor did draw this
10 person -- the witness's attention to number 71 on the Prosecutor's own
11 list.

12 MR FAAL: Thank you very much, Mr President. I would get the
13 document and in a moment I'd have it displayed on the screen, please.

14 PRESIDING JUDGE EBOE-OSUJI: While you do that, Judge Fremr and
15 I will need a little time-out here.

16 MR FAAL: Yes, yes.
17 (Trial Chamber confers)

18 MR FAAL: Mr President, may I proceed?

19 PRESIDING JUDGE EBOE-OSUJI: Yes, please.

20 MR FAAL: Mr President, I would wish to use our own document
21 instead of the Prosecution document.

22 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

23 MR FAAL: Thank you very much.

24 PRESIDING JUDGE EBOE-OSUJI: Is it the same document ultimately?

25 MR FAAL: Mr President, there is a history to these reports. One

1 of the documents is not entirely accurate, so there have been corrections
2 made, and we are using the corrected document instead of the previous
3 document which the Prosecution used. If you look at it, Mr President,
4 say, for instance, this document, the date of death of the person --

5 PRESIDING JUDGE EBOE-OSUJI: Wait, wait, wait. If it's something
6 that will -- you'll be asking the witness a question about, it's better
7 not to discuss the evidence. It's fair enough that you want to use your
8 own so you may proceed.

9 MR FAAL: Thank you very much, Mr President. So we would use our
10 document instead of the Prosecution document, but this is also a
11 Prosecution-disclosed document. It's a Prosecution disclosure so we
12 would prefer to use this one. Mr President, the ERN number, Exhibit
13 number 64 it was. KEN-OTP-0006-1039, tab 2 in the binders. And on this
14 one, it is number 28. Could the witness be -- could someone provide the
15 document to the witness? Court officer, would you assist?

16 Q. Mr Witness, you've been showed this document before, and you had
17 identified person number 11 as the same person on number -- number 28 on
18 that big document we provided you. Do you recall that?

19 A. Yes.

20 Q. And these are the one and the same person. Person 28 is the same
21 as person number 11; correct?

22 A. I have number --

23 Q. Person number 28 on the big document --

24 A. Yes.

25 Q. -- is the same as person number 11 on the PIS; correct?

1 A. I don't have that.

2 Q. We would provide you with a copy of the PIS again. You should
3 have it. Yes, that's the one. You should have two of those. One is --

4 A. Yes, I have it.

5 Q. Okay.

6 PRESIDING JUDGE EBOE-OSUJI: And you were referred to person
7 number 11 on that document.

8 THE WITNESS: Yes, person number 11 and the other document is
9 person number 28?

10 MR FAAL:

11 Q. Mr Witness, is this the person you said was killed in your
12 neighbourhood on that first day the Kalenjins attacked your
13 neighbourhood; correct?

14 A. He's the person.

15 Q. And you agree that this person died on the first day the
16 Kalenjins attacked your neighbourhood; correct?

17 A. Yes.

18 Q. And could you kindly look at the date of death of this person and
19 read it out to the Judges, please?

20 A. It is indicated here as 1st January.

21 Q. So you would say that this person died on 1st January 2008;
22 correct?

23 A. It's indicated 1st January.

24 Q. Okay. Thank you very much, Mr Witness. We would move on.

25 PRESIDING JUDGE EBOE-OSUJI: Counsel, before you move on, again,

1 this is to allow us at the end of the day to make sense of this evidence.

2 On the Prosecutor's document which I mentioned --

3 MR FAAL: Yes.

4 PRESIDING JUDGE EBOE-OSUJI: -- would this be the same person as
5 person number 71 on the Prosecutor's own list of persons from the Moi
6 Teaching and Referral Hospital?

7 MR FAAL: I would believe so. These are all
8 Prosecution-disclosed materials, both of them are disclosed by the
9 Prosecution. We have studied the documents. We realise that the one
10 used by the Prosecution contained errors. If you look at some of the
11 dates, it's 2012. So this other one appears to be a correction of -- of
12 the document the Prosecution used.

13 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, do you accept that?
14 Because we have to make sense of all these documents, especially mindful
15 of -- I mean, taking into account that your own list, Prosecutor, has as
16 a subtitle: Post-election skirmishes. Does it begin to look like the
17 Defence is right that that is a corrected version?

18 MR STEYNBERG: Your Honours, these are all documents that we
19 received, I believe, from the CIPEV collection. I can attest only to the
20 authenticity of the documents that we did receive them from that source.
21 I cannot attest to the accuracy of any of these documents. As my learned
22 friend has pointed out, there are discrepancies between various versions.
23 One knows also that this person, according to the account of the witness,
24 did not die at the hospital. So whatever date is recorded as the date of
25 death must be a matter which was reported by a third party. So all that

1 in my submission can be put to this witness is that it's recorded on this
2 document that the date of death was the 1st of January, but nothing more
3 than that.

4 PRESIDING JUDGE EBOE-OSUJI: When you say on this document, you
5 mean the Defence's own version?

6 MR STEYNBERG: I beg your pardon, your Honour?

7 PRESIDING JUDGE EBOE-OSUJI: Yes, yes. We spoke about two
8 documents. I mentioned the Defence's version of the list and your
9 version of the list. And I note that in the Defence's version, the DOD
10 is the 1st of January, 2008. But in your own document, the DOD
11 attributed to the same person is the 1st of February, 2012, so that's
12 the -- at least we note now on the record that that discrepancy exists so
13 we can move on later on, if you have any evidence to tell us.

14 MR STEYNBERG: Thank you, your Honour, as the Court pleases. On
15 the document which the Prosecution referred to, it would appear the date
16 is clearly incorrect. That of course does not mean the other date is
17 correct, but I can take it no further than that.

18 MR FAAL: Mr President, perhaps I should hasten to place on the
19 record that these are both Prosecution-disclosed documents. We have used
20 the one we believe is more accurate. We, however, cannot say that the
21 document we used is accurate. We cannot say that.

22 PRESIDING JUDGE EBOE-OSUJI: Fair enough. I wasn't making an
23 issue out of it. I was just noting it so we all keep it in mind as we
24 use the document and argue what they mean later.

25 MR FAAL: Indeed, Mr President. We also wanted to extract some

1 evidence through this witness to show that, in fact, the date that is put
2 on the document we have used is, in fact, closer to what happened.

3 Q. So, Mr Witness, we would now proceed. You would agree,
4 Mr Witness, that -- Mr Witness, you would agree with me that as of 31
5 December 2007, Luos were killed in -- in Langas and Kalenjin milk sellers
6 were also attacked; correct?

7 A. I won't say no. I wouldn't say yes. Because on that particular
8 day I was entirely at the Jubilee Catholic Church, 31 December.

9 Q. Mr Witness, if you were present during the killing of person
10 number 11, then you were not present at the Jubilee Catholic Church
11 during the afternoon of 1st January 2008. What do you say to that?

12 A. Repeat, please?

13 Q. If you were present during the killing of person number 11, I put
14 it to you, then, that you were not at the Jubilee Catholic Church on the
15 afternoon of 1st January 2008. What do you say to that?

16 A. In fact, I can swear, on January 1st, I was in Jubilee Catholic
17 Church.

18 MR FAAL: Mr President, may we go into private session, please,
19 for three minutes at most?

20 PRESIDING JUDGE EBOE-OSUJI: We will go into private session.
21 (Private session at 3.39 p.m.) * Reclassified into open session.

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

24 PRESIDING JUDGE EBOE-OSUJI: Thank you.

25 MR FAAL:

1 Q. Mr Witness, did you know person number 11, (Redacted) we'll call
2 him (Redacted)

3 A. Yes, I knew him.

4 Q. You know that he was a (Redacted); correct?

5 A. No. He was not a (Redacted)

6 Q. What work did he do?

7 A. (Redacted)

8 (Redacted)

9 Q. Mr Witness --

10 PRESIDING JUDGE EBOE-OSUJI: One second, witness. Can you please
11 repeat again or repeat your answer? You said he was (Redacted),
12 (Redacted) you mentioned but that
13 was not captured by the record.

14 THE WITNESS: (Redacted)

15 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

16 (Redacted)

17 THE WITNESS: (Redacted)

18 PRESIDING JUDGE EBOE-OSUJI: How do you spell that, please.

19 THE WITNESS: (Redacted)

20 (Redacted)

21 PRESIDING JUDGE EBOE-OSUJI: Thank you, please proceed.

22 MR FAAL:

23 Q. Mr Witness, what do you say if I say to you that (Redacted) was in
24 fact a (Redacted) at the (Redacted) and was killed by
25 Luos. What do you say to that?

1 A. I totally disagree. (Redacted) was (Redacted) for sale
2 as I've stated around (Redacted) Eldoret town.

3 Q. All right. Very well. I would leave that point, and move on.

4 MR FALL: Perhaps, Mr President, I -- the issue I want to deal
5 with now could better be -- no, I'll just -- we'll just go back to public
6 session, Mr President.

7 PRESIDING JUDGE EBOE-OSUJI: We go back to public session.
8 (Open session at 3.43 p.m.)

9 THE COURT OFFICER: (Interpretation) Mr President, we are in
10 public session.

11 MR FAAL:

12 Q. Mr Witness, do you know of an organisation called Mungiki?

13 A. I don't know it, but I hear about it.

14 Q. And if you have heard about it, you probably heard that it is a
15 Kikuyu sect; is that right?

16 A. Yes.

17 Q. And it is an sect that is known for beheading their victims and
18 displaying their heads; correct?

19 A. Yes.

20 Q. And, Mr Witness, you would agree with me that it is an sect that
21 operates in many Kikuyu-dominated towns and villages; correct?

22 A. I'm not aware.

23 Q. But are you aware, Mr Witness, that this is a sect that also
24 operated in Langas?

25 A. I'm not aware.

1 Q. Mr Witness, is it your testimony that you have never heard of the
2 presence of Mungiki in Langas in 2007 and 2008? Is that your testimony?

3 A. I have heard about it, but I cannot testify facts, that I know
4 them.

5 Q. Yes. The question, Mr Witness, is: Are you aware that Mungikis
6 operated in Langas in 2007 and 2008?

7 A. I'm not aware.

8 Q. Perhaps I should repeat the question. The question is: It's not
9 whether you know the Mungikis. The question is whether you are aware
10 that they, in fact, operated in Langas in 2007 and 2008?

11 PRESIDING JUDGE EBOE-OSUJI: Counsel -- counsel, what's the
12 difference? So that we -- because I am also not sure I understand the
13 difference between know and aware, in terms of your --

14 MR FAAL: Yes. Mr Witness being aware of their existence in a
15 particular location and knowing who are the members are completely
16 different. I think that by saying I don't know them, I understood the
17 witness to be suggesting that he could not identify who is Mungiki and
18 who is not. So perhaps maybe I should just ask a clarifying question.

19 PRESIDING JUDGE EBOE-OSUJI: Yes.

20 MR FAAL: Thank you very much, Mr President.

21 Q. Mr Witness, the -- you are not being asked whether you can
22 identify the members of the Mungiki. Do you understand? You are not
23 being asked whether you can identify them.

24 A. Yes, I understand.

25 Q. The question is: Are you aware that Mungikis were operating in

1 Langas in 2007 and 2008?

2 PRESIDING JUDGE EBOE-OSUJI: Counsel, wait. That question
3 becomes vague, if you're using the word awareness. You might want to
4 rephrase it in terms that are more concrete, in appreciation, so that we
5 are not having the witness answering a different question from what
6 you're asking.

7 MR FAAL: Thank you very much, Mr President. Perhaps maybe this
8 would help.

9 Q. Mr Witness, do you know whether or not Mungikis participated in
10 the violence in Langas in 2007, 2008?

11 A. I'm not aware.

12 Q. Very well. Mr Witness, you told us earlier that after houses
13 were burnt in Langas, on your way back to Kona-Mbaya, you came across a
14 group of Kikuyus. Do you remember that?

15 A. I met them at Kona-Mbaya.

16 Q. And do you recall telling the Court that you went --

17 PRESIDING JUDGE EBOE-OSUJI: Wait, wait, wait. Can we go into
18 private session for a second?

19 (Public session at 3.48 p.m.) * Reclassified into open session.

20 THE COURT OFFICER: (Interpretation) Mr President, we are in
21 private session.

22 PRESIDING JUDGE EBOE-OSUJI: I forgot that we can't do these
23 things in a second. Was that testimony you're going -- you're headed in
24 the direction of now given in private session or public session?

25 MR FAAL: I was going to go into private session immediately

1 after that question. I thought it was a question that could be asked in
2 public, but I was going to go into private session immediately after
3 that.

4 PRESIDING JUDGE EBOE-OSUJI: But your asking it in public may do
5 the damage even with the question itself.

6 MR FAAL: I thought that this -- if in my recollection serves me
7 right, I think this was evidence that was made in public. But all the
8 same, I mean we are still better off going into private session.

9 PRESIDING JUDGE EBOE-OSUJI: Fair enough. So how long do you
10 think we will stay here, then?

11 MR FAAL: Maybe five minutes at most.

12 PRESIDING JUDGE EBOE-OSUJI: Right. Proceed.

13 MR FAAL: Thank you very much, Mr President.

14 Q. Mr Witness, we are now in private session, so feel free to talk
15 openly. Do you recall telling this Court that soon after your house was
16 burnt, you went back to Kona-Mbaya, and on your way you came across a
17 number of Kikuyus, about 20 young Kikuyus? Do you recall that?

18 A. It was not on my way, but at Kona-Mbaya, after I arrived at
19 Kona-Mbaya.

20 Q. And at this time, you were with person number 9; is that right?

21 A. Not right.

22 Q. Mr Witness, do you recall -- do you recall telling this Court,
23 the transcript reference is the transcript of 17 October at page 62,
24 lines 1 to 5, told the Court that you were together with person number 9?

25 MR STEYNBERG: Your Honours, that is not my reading of this. My

1 reading of this is: I decided to call a friend of mine. Is this friend
2 on the list? Yes, he is person number 9. So it's at that point that
3 reference is not correct.

4 MR FAAL: My mistake, Mr President. I meant to say person
5 number 4.

6 THE WITNESS: Yes.

7 MR FAAL:

8 Q. Do you --

9 PRESIDING JUDGE EBOE-OSUJI: Could you ask the question again?

10 MR FAAL:

11 Q. When you went back to Kona-Mbaya, were you with person number 4?

12 A. Yes.

13 Q. While at Kona-Mbaya, you were with another person who is person A
14 on the PIS - correct? - on the Defence PIS, person A?

15 A. Can't recall person A.

16 Q. We are in private session so I can call out the name. It's
17 (Redacted), a person called (Redacted). Do you know
18 him?

19 A. I'm sorry, at no time did I mention such a name in my evidence in
20 this court.

21 PRESIDING JUDGE EBOE-OSUJI: He's not asking you about -- he's
22 asking you -- this is a fresh question, fresh evidence he's seeking from
23 you. Were you with (Redacted) as well?

24 THE WITNESS: No.

25 MR FAAL:

1 Q. How about (Redacted)

2 A. I can't recall.

3 Q. Mr Witness, you told the Court that you went to your
4 neighbourhood with the Kikuyu youths. Do you remember that?

5 A. Yes.

6 Q. Mr Witness, was this the extent of your involvement with the
7 Kikuyu youths on that day?

8 A. The purpose of going with the Kikuyu, I had come to seek help
9 because of the issue that was happening at (Redacted)

10 Q. And in seeking that help, you spoke to the Kikuyu youths, didn't
11 you?

12 A. I did.

13 Q. And you informed them that your area was being attacked; correct?

14 A. Yes.

15 Q. And you organised them to go to your neighbourhood; correct?

16 A. It was not an organisation. I just asked them to accompany me.

17 Q. And they agreed to go with you?

18 A. Some agreed. Some were left behind.

19 Q. And then you took them to your neighbourhood, didn't you?

20 A. Yes. We headed to my neighbourhood.

21 Q. And you got them to fight the attackers, the aggressors, as you
22 called them?

23 A. It was not a fight, but we wanted to confront them.

24 Q. And you even directed them to burn the houses of your neighbours,
25 didn't you?

1 A. I did not.

2 Q. Mr Witness, you testified that Kalenjin houses were not
3 destroyed, they were not burned, do you remember that?

4 A. I remember are saying there was a Kalenjin house that was put on
5 fire in my neighbourhood.

6 Q. Which one was that, Mr Witness?

7 A. It was a hut thatched with grass belonging to (Redacted)
8 another (Redacted) known as (Redacted)

9 Q. And that would be person C on the Defence PIS, isn't it?

10 A. Yes.

11 Q. And not only was his house burnt, you also organised the burning
12 of the house of person D, (Redacted), didn't you?

13 A. I'm sorry, the house of (Redacted) was never burnt.

14 PRESIDING JUDGE EBOE-OSUJI: Counsel, remember to observe the
15 pause and also watch the tone.

16 MR FAAL: Thank you.

17 PRESIDING JUDGE EBOE-OSUJI: As I told you earlier, it's all in
18 the words, not the tone.

19 MR FAAL: Thank you very much, Mr President. Much obliged.

20 Q. What would you say, sir, to the suggestion that it has been
21 alleged that you also burnt down the house of (Redacted)
22 (Redacted)

23 A. I will term that as totally lies.

24 Q. Mr Witness, isn't that, in fact, the reason why (Redacted) his
25 name on the list of those who sought benefit from the rebuilding of

1 houses by (Redacted)

2 (Redacted)

3 Q. Well, Mr Witness, you testified that (Redacted) -- that only one

4 Kalenjin house was burnt in your neighbourhood, but (Redacted) name was

5 included in the list of those people whose houses was to be rebuilt. (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 Q. Mr Witness, let me tell you that it's because his house was

10 burnt?

11 PRESIDING JUDGE EBOE-OSUJI: Wait.

12 THE WITNESS: It's not that because his house was burnt. That's

13 why I'm asking the Court's time to explain why his house -- he was given

14 a house by the (Redacted)

15 PRESIDING JUDGE EBOE-OSUJI: Please proceed with the explanation.

16 THE WITNESS: As I said earlier, the humanitarian organisation,

17 (Redacted) to come and build shelters for

18 those IDPs, (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted) The Kalenjin people went into a meeting

23 with the area chief and they were told, and they agreed to that, to

24 pinpoint those vulnerable among themselves, old women, old men, who were

25 in need of a shelter. Maybe their former shelters were old. They came

1 up with the names of people they would like helped. (Redacted)

2 (Redacted)

3 (Redacted)

4 PRESIDING JUDGE EBOE-OSUJI: Before proceeding, counsel, the
5 record needs to be corrected at line 16. The witness had said, "Maybe
6 their former shelters were old." That is what I heard.

7 MR FAAL: Indeed, Mr President, "old," not "own."

8 PRESIDING JUDGE EBOE-OSUJI: Not "own."

9 MR FAAL: Could I take it by your pronouncement that the record
10 has been corrected and that I move on. That the word used by the witness
11 is "old" not "own."

12 PRESIDING JUDGE EBOE-OSUJI: Witness, do you have something to
13 add?

14 THE WITNESS: Yes, on top of that.

15 PRESIDING JUDGE EBOE-OSUJI: Please proceed.

16 THE WITNESS: (Redacted)
17 (Redacted). The Kalenjins elders also included some few names from
18 Luos and Kisiis. (Redacted) those
19 shelters were built for them.

20 PRESIDING JUDGE EBOE-OSUJI: Counsel, it is person number 2 we
21 are talking about now, isn't it?

22 MR FAAL: Yes, Mr President.

23 PRESIDING JUDGE EBOE-OSUJI: Sir, can you tell us how old would
24 person number 2 have been at this time? We are talking about when the
25 (Redacted) -- (Redacted) name of number 2 on the list that was given to

1 (Redacted). How old was he at that time?

2 THE WITNESS: (Redacted)

3 PRESIDING JUDGE EBOE-OSUJI: And what sort of house did he have
4 before his name was put on the list?

5 THE WITNESS: It was a (Redacted).

6 PRESIDING JUDGE EBOE-OSUJI: Thank you. Please proceed.

7 MR FAAL:

8 Q. Mr Witness, (Redacted)

9 (Redacted) What do you say about that?

10 A. These were the same -- the same type of houses that were also
11 built, but I've got something to add on top of that. The plot that the
12 house was built, it is a plot that is my (Redacted) neighbour.

13 I testified in this court that while (Redacted), and he

14 was in his home, (Redacted)

15 (Redacted)

16 (Redacted)

17 MR FAAL: Perhaps I should just wrap it it with two or three
18 questions.

19 Q. Mr Witness, the suggestion to you is that (Redacted) house was burnt
20 down and that is why it was rebuilt.

21 A. I totally disagree. It was never burnt down.

22 Q. So it is your suggestion, your testimony, Mr Witness, that (Redacted)
23 (Redacted)

24 (Redacted)

25 A. Yes.

1 Q. And, Mr Witness, you testified earlier that it was Kalenjin
2 elders who included (Redacted) name (Redacted). Do you remember that?

3 A. I do.

4 Q. Mr Witness, I would read you the statement you gave to the
5 Prosecution, and this is what you said in paragraph 53: (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted) I'll take it again, Mr President. This is what the

9 statement says, paragraph 53: (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted) Did you say that to the

13 Prosecution?

14 A. I said so but these are two different issues. (Redacted)

15 (Redacted)

16 (Redacted). But on the issue of constructing the

17 shelters, I testified person number 5 did not benefit on that. (Redacted)

18 (Redacted). It was only person number 2 and that

19 neighbour -- my neighbour known as (Redacted)

20 Q. Mr Witness, I put it to you that a number of those who

21 participated in the fighting say that you and other Kikuyu

22 (* indiscernible) organised them to go and fight. Some refused to go and

23 fight because you sent (Redacted) to safety at the police station and got

24 them to go and fight the Kalenjins. What do you say to that?

25 A. I totally disagree with your assumption and your testimony.

1 MR FAAL: Mr President, I think this is a convenient point to
2 stop.

3 PRESIDING JUDGE EBOE-OSUJI: Good. Thank you. So we will
4 adjourn for the day -- for the week, as it were, and then take it up
5 again on Monday.

6 Witness, we will be adjourning now, as you heard me say. That
7 means you will have to be free for the weekend, but you're still under
8 oath and still in your testimony. Please do not discuss your testimony
9 with anybody over the weekend. We will see you on Monday morning.

10 THE WITNESS: Thank you.

11 PRESIDING JUDGE EBOE-OSUJI: Thank you. The blinds will come
12 down and then the witness will be escorted.

13 MR STEYNBERG: Your Honour, may I inquire from my learned friend
14 an estimation so we can make arrangements for the following witness?
15 (Closed session at 4.09 p.m.) * Reclassified into open session.

16 MR FAAL: Mr President in answer to the question posed by my
17 learned friend, I envisage that by the end of the first session on
18 Monday, we should be finished with this witness. Thank you,
19 Mr President.

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

21 PRESIDING JUDGE EBOE-OSUJI: Thank you. Please escort the
22 witness off the witness stand.

23 (The witness stands down)

24 PRESIDING JUDGE EBOE-OSUJI: Mr Katwa, you were about to say
25 something. I take it you were about to say you have no questions for the

1 witness.

2 MR KIGEN-KATWA: Mr President, it is true I intended to give an
3 indication that I have no intention of asking any questions assuming the
4 testimony remains the way it has gone so far. Mr President, I have a
5 second request. Mr President, I request the leave of the Court to be
6 absent on Monday and Tuesday. My learned colleagues, Caroline Buisman
7 and Philemon Koech will take charge with your permission, Mr President.

8 PRESIDING JUDGE EBOE-OSUJI: Thank you. The Court will now
9 adjourn and we meet again on Monday.

10 (The hearing ends in closed session at 4.10 p.m.) * Reclassified into open session.

11 RECLASSIFICATION REPORT

12 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24
13 September 2013, and the instructions in the email dated 22 January 2014,
14 the version of the transcript with its redactions becomes Public.