

Trial Hearing
Witness: KEN-OTP-P-0469

(Open Session)

ICC-01/09-01/11

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 and Joshua Arap
5 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 Monday, 7 April 2014
10 (The hearing starts in open session at 12.20 p.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Court officer, please call
15 the case.
16 THE COURT OFFICER: (Interpretation) Thank you, your Honour. Situation in
17 the Republic of Kenya, in the case of The Prosecutor versus William Samoei Ruto and
18 Joshua Arap Sang, ICC-01/09-01/11.
19 We are in open session.
20 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Appearances, please.
21 MR PUGLIATTI: Mr President, your Honours, good afternoon. For the
22 Prosecution, Lucio Garcia, Regina Weiss, Grace Goh, Peter Schotsman and I'm
23 Lorenzo Pugliatti.
24 PRESIDING JUDGE EBOE-OSUJI: Thank you.
25 MR NARANTSETSEG: Mr President, your Honours, Orchlon Narantsetseg and

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1 James Mawira for Victims. Thank you.

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

3 MS LAWRIE: Good afternoon, Mr President, your Honours. Appearances are the
4 same for Mr Ruto, save that we have been joined by our pro bono legal assistant
5 Ms Peta-Louise Bagott.

6 MS BUISMAN: Good afternoon, Mr President, your Honours. For Mr Sang, the
7 team remains the same.

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

9 We run slightly late, apologies for that, on account of the status conference in the
10 Banda case in which I also sit, and also Mr Khan is also in that case as well.

11 Witness, welcome back. Thank you for rejoining us. Ms Lawrie will continue her
12 cross-examination.

13 Just so we know the schedule for today's proceedings, you have been advised already
14 that we will go on until 1.30 and we adjourn at that time, and then when we come
15 back from lunch break we will continue until 4.30 today.

16 Ms Lawrie.

17 We are in open session.

18 MS LAWRIE: Mr President, I'd request that we go into private session for
19 approximately seven to ten minutes. But if it assists the Court, most of my
20 cross-examination I anticipate being able to conduct in public session, save for a final
21 section at the end. So the vast majority shall be in public.

22 PRESIDING JUDGE EBOE-OSUJI: And how much longer do you think you will
23 stay with this witness?

24 MS LAWRIE: I anticipate going into the second session, but likely not for long.

25 PRESIDING JUDGE EBOE-OSUJI: So we will be finishing today?

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- 1 MS LAWRIE: Yes.
- 2 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 3 We will then go into private session for five to seven minutes, you said? All right.
- 4 MS LAWRIE: Seven to ten, possibly.
- 5 PRESIDING JUDGE EBOE-OSUJI: Seven to ten.
- 6 *(Private session at 12.24 p.m.) Reclassified as open session
- 7 THE COURT OFFICER: (Interpretation) We are in private session, your Honour.
- 8 WITNESS: KEN-OTP-P-0469 (On former oath)
- 9 (The witness speaks Swahili)
- 10 QUESTIONED BY MS LAWRIE: (Continuing)
- 11 Q. Good afternoon, Witness. Last week you mentioned in your testimony the
- 12 location (Redacted). Do you recall?
- 13 A. Yes, I remember.
- 14 Q. I can spell the location for the record if that would assist. (Redacted)
- 15 (Redacted)
- 16 (Redacted) is close to your neighbourhood of (Redacted), isn't it?
- 17 A. (No interpretation)
- 18 MS LAWRIE: I have no interpretation, but I did hear the witness answer.
- 19 THE INTERPRETER: From the Swahili booth, "That is correct."
- 20 MS LAWRIE:
- 21 Q. And you know about a (Redacted) at that location owned by (Redacted) don't you?
- 22 And I'll just spell (Redacted) for the record. It's (Redacted).
- 23 A. Yes, I know that.
- 24 MS LAWRIE: With leave, Mr President, I would like to show a photograph. It is
- 25 KEN-OTP-0080-1068. Now, it is not in our bundle, but it was listed on the

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1 Prosecution's list of evidence. I don't believe they provided copies, but I have hard
2 copies here, but it is also on eCourt. So it's just a photograph. I think it is quite easy
3 to see on the screens, so it is as you wish.

4 Q. Madam, can you see the picture on the screen?

5 A. Yes, I can see it.

6 Q. This is the school in (Redacted) owned by (Redacted) isn't it?

7 A. That (Redacted) is a bit further away from that road.

8 Q. But it is in your area, isn't it?

9 A. Yes.

10 Q. And on the photograph we can see that the (Redacted) was called (Redacted)
11 can't we?

12 A. That is correct.

13 Q. And the building also says just below the words (Redacted)
14 (Redacted) doesn't it?

15 A. (No interpretation)

16 MS LAWRIE: I don't have any interpretation again, but I did hear Madam Witness
17 respond.

18 PRESIDING JUDGE EBOE-OSUJI: Is there difficulty with interpretation? I noticed
19 from the Banda proceeding this morning it appeared that the microphone issue was
20 resolved.

21 Ms Lawrie, can you put the question again, please.

22 MR PUGLIATTI: Just before my learned friend does that, I think at line 23 we
23 should spell that (Redacted) for the transcript. Also at the first line on page 5.

24 MS LAWRIE: I'm grateful to my learned friend. That's correct.

25 Q. I'll put the question again, Madam Witness. I was pointing to the photograph,

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1 and below it, below the words (Redacted) that you can see on that building, we

2 can see the words (Redacted) can't we?

3 A. Yes, that is what is written there.

4 Q. We can turn away from the photograph for a minute. You also testified last

5 week that (Redacted) and (Redacted) are located in (Redacted); that's correct, isn't it?

6 A. Yes.

7 Q. And you also told the Court that (Redacted) is very close to a

8 (Redacted); that's correct, isn't it?

9 A. That is correct.

10 MS LAWRIE: I can give the spelling for line 20 -- apologies, it has been corrected.

11 Q. Now, I would like to turn again to the map that we were looking at at the end of

12 Friday's session. It is at tab 6, and the ERN is KEN-D09-0033-0011. And I've got a

13 hard copy for the witness if that assists.

14 Madam, this is the same map that we were looking at at the end of Friday's session,

15 and I think it would be useful if we can just orientate you again in the map. On this

16 map do you see the location we referred to on Friday called (Redacted) It is at the

17 bottom middle of the page.

18 A. I can see that name (Redacted) written there.

19 Q. And if we go directly above the words (Redacted) you'll see again and we

20 referred to on Friday the words (Redacted) You can see that?

21 A. Yes, I can see that.

22 Q. And going back to (Redacted), if you move your finger towards the left of the

23 sheet of paper, you'll see the words (Redacted) Do you see it?

24 A. Yes, I see that.

25 Q. Madam, my position is that this is a map of your area; that's correct, isn't it?

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1 A. This is not a map of (Redacted).

2 PRESIDING JUDGE EBOE-OSUJI: Ms Lawrie, can you ask her about (Redacted)
3 whether she knows where it is.

4 MS LAWRIE: Certainly.

5 Q. Madam, are you familiar with the location (Redacted)

6 A. Yes, I know it.

7 Q. Madam, my position is also that the road that we referred to (Redacted)
8 (Redacted) is the Iten Highway; that's correct, isn't it?

9 A. Yes, it is the Iten Road.

10 Q. Madam, are you aware that (Redacted)
11 (Redacted) are all in an area known as (Redacted)

12 A. On Friday I told you, Counsel, that this concerns that particular location. But
13 you cannot ask me too many questions about that, because it does not concern me,
14 because (Redacted) and Iten Road and so on are in Kimumu. That is what I know.
15 That is what I am familiar with.

16 Q. Are you aware that (Redacted) is different from (Redacted)

17 A. That is not correct. If it is different from Kimumu, you wouldn't be talking
18 about Kimumu. I really do not understand what you are talking about. What you
19 have mentioned is not in Kimumu, because all the other places you have mentioned
20 are in Kimumu ward.

21 Q. Let me put the question again, Madam. Are you aware that (Redacted)
22 is different from (Redacted)

23 A. I do not know. I have said that the names that you mentioned are in Kimumu.
24 What you're saying here, these are not things that I mentioned in my interview.

25 Q. During your interviews with the Prosecution, you weren't asked which areas

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1 you believe fall within the area known as Kimumu, were you?

2 A. I was living in (Redacted) and (Redacted) is in (Redacted)

3 Q. Madam, could you answer the question?

4 I can put it again if that assists. During your interviews with the Prosecution, you
5 were not asked about which areas you believe fall within the area of Kimumu, were
6 you?

7 A. (Redacted) is in Kimumu.

8 PRESIDING JUDGE EBOE-OSUJI: Ms Lawrie, you have to move on.

9 MS LAWRIE: Mr President, if it assists, I can give an indication of where I'm going.

10 The Prosecution have charged certain areas. It appears that there has been no or
11 little investigation as to what falls within those areas.

12 Now, it is unfortunate that it is falling on the Defence to do it during
13 cross-examination, but I would submit that this is an important area of inquiry in
14 order that we understand where the evidence which is being elicited is directly
15 relevant to the charges as framed by the Prosecution.

16 MR PUGLIATTI: Mr President, if I may just respond to that? Of course my learned
17 friend is free to conduct her cross-examination as she sees fit and to explore such
18 matters. My only observation is that if it gets to the point where it appears that the
19 same or very, very similar questions are repeatedly being put to the witness, and the
20 witness has exhausted her knowledge on the topic, that it may also be prudent to
21 move on at that point.

22 MS LAWRIE: If it assists, Mr President, by advising, I've possibly got two more
23 questions maximum to put to this question and this topic, and I will be moving on.

24 PRESIDING JUDGE EBOE-OSUJI: Does this matter arise directly from this witness's
25 testimony, what you are seeking to establish?

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1 MS LAWRIE: Mr President, it does. This witness we've heard for over a day
2 evidence which, according to the Prosecution, is relevant to the charges for Kimumu.
3 I'm investigating whether that evidence is relevant to the charges as framed for
4 Kimumu.

5 PRESIDING JUDGE EBOE-OSUJI: All right. You have two more questions you
6 said you have in this - in the zone of this subject matter. Let's see if we can get them
7 out quickly.

8 MS LAWRIE: I will do two questions.

9 Q. Madam, a final question about what you discussed with the Prosecution during
10 interview. The investigators didn't ask you, did they, about the meaning of terms
11 such as "location" and "sub-location," did they?

12 A. Can you kindly repeat your question, please?

13 Q. Certainly. During your Prosecution interviews, the investigators didn't ask
14 you the meaning of the terms "location" and "sub-location," did they?

15 A. They didn't ask me that question.

16 Q. Madam, I'd just like to turn to Chief Sang. Are you aware that Chief Sang is
17 not the chief of Kimumu, but is the chief of Chepkoilel location? And I'll spell it, it is
18 C-H-E-P-K-O-I-L-E-L. Chepkoilel location. Are you aware of that?

19 A. If Chief Sang is not the chief of Kimumu -- well, I know that he is the chief of
20 Kimumu. (Redacted). So tell me, who was
21 the Chief of Kimumu? I know that Chief Sang is indeed the Chief of Kimumu. I do
22 not want you to ask me questions about locations and sub-locations. Just ask me
23 questions about Kimumu.

24 Q. While we're in closed session I'd just like to ask you some questions about (Redacted)
25 (Redacted)

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1 You told the Court on Friday that when you were at showground you learned during

2 (Redacted) Do you recall telling the Court that?

3 A. (No interpretation)

4 PRESIDING JUDGE EBOE-OSUJI: Interpretation.

5 THE INTERPRETER: From the Swahili booth: "Yes, I said that."

6 MS LAWRIE:

7 Q. And you went to showground on 6 January 2008, that's correct, isn't it?

8 A. Yes.

9 Q. (Redacted) sometime after 6 January 2008, wasn't it?

10 A. Yes.

11 MS LAWRIE: Mr President, we can move to public session. I've got three

12 documents which I should exhibit. I think I can do them in public session without

13 disclosing any identifying information, but I'll be guided. If there's any concerns,

14 I can do it now.

15 PRESIDING JUDGE EBOE-OSUJI: So if you do disclose the material, would that be

16 within the courtroom, or also for public viewing?

17 MS LAWRIE: Sorry, I should be clear. What I seek to do is to tender three

18 documents which I've shown to the witness thus far.

19 PRESIDING JUDGE EBOE-OSUJI: All right. We will go to public session then.

20 THE WITNESS: (Interpretation) I have a question to ask you before we go into

21 open session. If you allow me, I will say something and ask counsel a question to try

22 to find out where she's going to. If she wants to produce photographs, I do not

23 know where that is leading to, so I would want you to allow me to ask her a question.

24 PRESIDING JUDGE EBOE-OSUJI: Witness, counsel has already referred to some

25 documents. You've seen some of them, including the map -- I take it, Ms Lawrie?

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1 MS LAWRIE: That's correct.

2 PRESIDING JUDGE EBOE-OSUJI: It is those things that she's already referred to she
3 now wants to put -- there's a way we do it in court. We will -- she will ask the Court
4 to make those a formal part of the case file, and that's what she wants to do.

5 But do not, again, worry about where her questions are taking you. What I'd like
6 you to do is, again, to listen carefully when she asks you a question, just concentrate
7 on that question one at a time. If you understand the question, you answer it. If
8 the answer you feel the question calls for is simply yes, you can say "Yes." If the
9 answer is simply "No," you tell her that. If it is something you don't know, you can
10 tell her you do not know. If it is something you do not remember, you can also tell
11 her that. So if you follow that general advice, you will see that we will make
12 progress.

13 If she asks you a question that is not correct, the Prosecution lawyer will object and
14 sometimes I don't even need the Prosecution lawyer to object and I will intervene.
15 Don't worry about whether the question is correct or incorrect, just listen to it and
16 answer it.

17 If you do not understand the question, you can also, as you have been doing, say
18 "I don't understand. Please, repeat." So that way -- that approach will help to
19 remove the stress from you of always trying to figure out where is this question going
20 to. Thank you.

21 Public session.

22 (Open session at 12.48 p.m.)

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

24 PRESIDING JUDGE EBOE-OSUJI: Thank you.

25 Ms Lawrie.

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1 MS LAWRIE: The first item I would seek to tender is a photograph that was shown
2 to the witness on Friday. It's KEN-D09-0033-0007. We would seek this to be
3 admitted as the next confidential Ruto Defence exhibit, and the witness did recognise
4 the individual who was shown in that photograph.

5 MR PUGLIATTI: The Prosecution is objecting with a reservation because it's not as
6 unequivocal as my learned friend stated. It is the case that the witness recognised
7 the individual. I think that this can be the -- the name of the individual can be
8 discussed openly. The witness said that she recognised the photograph of Assistant
9 Chief Maswai. When my learned friend put another name, a full -- a fuller name to
10 the witness, the witness did not accept that name. So that's our first reservation.
11 We would accept it on the basis that it's a photo that the witness recognises as
12 Assistant Chief Maswai.

13 Our second reservation is to that individual -- the jurisdiction of the individual, the
14 purported jurisdiction, because again my learned friend put to the witness that this
15 individual was the assistant chief for the Kimumu sub-location, and again, the
16 witness was not in a position to confirm that. She stated she's not familiar with
17 sub-locations.

18 So provided that the photograph is admitted as simply being Assistant Chief Mawai,
19 we wouldn't object on that basis.

20 PRESIDING JUDGE EBOE-OSUJI: Ms Lawrie.

21 MS LAWRIE: Mr President, that's fine. That's what the witness testified to.

22 PRESIDING JUDGE EBOE-OSUJI: The photograph is then admitted with those
23 considerations on the record as well.

24 MS LAWRIE: The second item I would seek to tender is the photograph that the
25 witness was shown this morning. Again, I would seek to tender it as a confidential

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1 Ruto Defence exhibit. That's KEN-OTP-0080-1068. The witness did identify it and
2 its location.

3 MR PUGLIATTI: Yes, once again we're objecting because in our submission it's
4 very unclear from the questions asked on the record so far whether that is the
5 location -- and I will speak in guided terms -- whether that is the location that my
6 learned friend was asking the witness about.

7 And if I may just go through it very briefly. The witness was asked about the
8 incident at location number 7 where she saw person number 8 being attacked and she
9 was asked was there a school near that location, and the witness said yes.

10 Now, when the photograph was subsequently shown to the witness -- oh, and of
11 course that the school near the location of the beating was owned by a certain
12 Mr something. When the photograph was then shown to the witness, it was not
13 established or clarified with the witness whether the photograph is the same
14 institution that was being referred to earlier, nor whether it is the school that was
15 owned by that individual.

16 So we suggest it's not been established that that is the school that was being asked
17 about.

18 PRESIDING JUDGE EBOE-OSUJI: Ms Lawrie, any reply?

19 MS LAWRIE: My recollection, I would have to check the transcript again, is that the
20 witness did identify --

21 PRESIDING JUDGE EBOE-OSUJI: Speak with care. We are in public session.

22 MS LAWRIE: I'm guided. That the witness did identify the location. She
23 identified the name that I put to her. She also identified that it was in her area.
24 I think sufficient information has been elicited that we can properly admit this
25 photograph into evidence.

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1 PRESIDING JUDGE EBOE-OSUJI: And argue about the significance later?

2 MS LAWRIE: Certainly.

3 MR PUGLIATTI: Mr President, if I may just make one further point. When the
4 witness was asked, "Is that the school near the location where you saw the beating?"
5 and the witness's reply was, "That one is a bit further away."

6 MS LAWRIE: If it helps at all --

7 (Trial Chamber confers)

8 PRESIDING JUDGE EBOE-OSUJI: Ms Lawrie, can you speak to your last document.

9 MS LAWRIE: The third document? Certainly. That's the map. The ERN is

10 KEN-D09-0033-0011. I would ask that it also be admitted as confidential.

11 Mr President, I think if you're alluding to the connection between the second item and

12 the third item that I'm seeking to admit, then there obviously is a link. It is a map.

13 The relevance is -- of this map is that the witness has testified to various locations.

14 Those locations are on -- identified on the map. I would submit it's also probative.

15 It's an open-source document. There's sufficient indicia of reliability and

16 authenticity that the Bench will be able to assess its significance in due course.

17 I would say also the overlap with the second item that I seek to tender is also

18 significant. And on that basis I would seek to have it admitted.

19 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti?

20 MR PUGLIATTI: No objection.

21 PRESIDING JUDGE EBOE-OSUJI: The Chamber will admit the three items as the

22 next in the Ruto Defence exhibits.

23 In relation to the second item, that is the photograph of the location we've been

24 discussing argument about the forensic value of, that will be received in due course,

25 at the appropriate time.

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- 1 MS LAWRIE: I'm grateful.
- 2 PRESIDING JUDGE EBOE-OSUJI: But you have to wait.
- 3 THE COURT OFFICER: (Interpretation) Thank you, your Honour.
- 4 The document KEN-D09-0033-0007 will have the number EVD-T-D09-00187.
- 5 Document KEN-OTP-0080-1068 will have the EVD number EVD-T-D09-00188. And
- 6 document KEN-D09-0033-0011 will have the EVD number T-D09-00189. These three
- 7 documents are confidential.
- 8 PRESIDING JUDGE EBOE-OSUJI: Thank you. Ms Lawrie, please proceed.
- 9 MS LAWRIE: I'm grateful. If I could ask the court officer to provide the witness
- 10 with the Defence PIS I will be grateful. She has it. Thank you.
- 11 Q. Madam, if you could look at the Defence PIS in front of you, I'm not sure if you
- 12 have it. I see that you have the map.
- 13 Madam, if you can turn to the part of the PIS which lists names and -- well, it's people
- 14 and locations. Can you see that? It's on I think the second page of the PIS.
- 15 Now, we are in public session so I would remind you not to say any names. You
- 16 know of the person marked as person A on the Defence PIS. Now, I am conscious
- 17 that you only know him by one of the names listed there; that's correct, isn't it?
- 18 Please don't say the name.
- 19 A. Yes, I know this person.
- 20 Q. He's a Kalenjin, isn't he?
- 21 A. Yes, that's a Kalenjin.
- 22 Q. I'm asking whether the individual is a Kalenjin, just for the clarity of the record.
- 23 A. This person is Kalenjin.
- 24 Q. And you told the Prosecution that during the violence this person provided
- 25 refuge to Kikuyus, didn't you?

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1 A. Yes, I said that.

2 Q. And he did provide refuge to Kikuyus; you're aware of that, aren't you?

3 A. Yes, I know that.

4 Q. Are you aware that person A provided refuge to some Kikuyu neighbours and
5 their children at his home on 30 December 2007, the night the presidential results
6 were announced?

7 A. Please, could you put the question again?

8 PRESIDING JUDGE EBOE-OSUJI: Ms Lawrie, your point is as to the date, isn't it,
9 and the event around the time?

10 MS LAWRIE: Exactly.

11 PRESIDING JUDGE EBOE-OSUJI: All right. So, Witness, Ms Lawrie's question is
12 that she is saying that the refuge that this person provided to Kikuyus was
13 particularly on 30 December 2007, the night that the presidential results were
14 announced. Do you know that?

15 THE WITNESS: (Interpretation) I can't know that, your Honour. I don't know if
16 it was 31 December for the simple reason I knew that this person at number 1 -- this
17 person gave refuge to these people. When somebody came to showground I was
18 told, but on that date I didn't have that information. I didn't know if she had given
19 refuge to these people.

20 PRESIDING JUDGE EBOE-OSUJI: Are you saying that you know that the person at
21 number 1 did give refuge to Kikuyus, but you did not know the precise dates when
22 he did that? Is that your -- what you're saying?

23 THE WITNESS: (Interpretation) I can't know if it -- or, I can't know the date
24 because I found out when they came to Eldoret Showground, and it was at that time
25 that I found out about it, that that person came to the aid of the Kikuyus.

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1 MS LAWRIE:

2 Q. So, just to confirm, you later came to know this information; that's correct, isn't
3 it?

4 A. Yes, it was later when we were at Eldoret Showground. This person came and
5 told us that people wanted to kill him because they -- that person had helped the
6 Kikuyu during the post-electoral violence.

7 PRESIDING JUDGE EBOE-OSUJI: Let's get that clearly on the record, Ms Lawrie,
8 because it has relevance to the way you asked a certain question earlier. You know
9 what I'm getting at? All right, let me put it this way: Witness, I want to understand
10 what you're saying. Are you saying that it was during your stay at the showgrounds
11 that you learnt that person number - person A, person A had given refuge to
12 Kikuyus?

13 THE WITNESS: (Interpretation) Yes.

14 PRESIDING JUDGE EBOE-OSUJI: But you had no information as to the dates when
15 he gave that refuge?

16 THE WITNESS: (Interpretation) No, I didn't know the date.

17 MS LAWRIE:

18 Q. But it was during the post-election violence that he gave this refuge; that's
19 correct, isn't it?

20 A. Yes.

21 Q. And did you hear that he took some of his Kikuyu neighbours' possessions,
22 including some of their vehicles for safekeeping? Did you hear that?

23 A. The number 1 came to showground and told us that he was almost killed
24 because he helped the Kikuyu, but I don't know if he kept their vehicles. I didn't say
25 when I was interviewed that he had kept their vehicles; what I said was that he was

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1 nearly killed because it was said that he had helped the Kikuyu during the
2 post-electoral violence.

3 Q. For the clarity of the record I mean kept for safekeeping, but I can move on.

4 A final question, Madam Witness, about this topic is that did you hear that the
5 specifics of the threat and the situation that this individual found himself, fearing that
6 he would be killed, arose because he escorted his Kikuyu neighbours as far as location
7 A, and that's on the Defence PIS, and then the neighbours continued on to seek safety
8 in Eldoret? Did you hear about that?

9 PRESIDING JUDGE EBOE-OSUJI: You will have to repeat that question, Ms Lawrie,
10 but hold on.

11 Witness, can you look at the document Ms Lawrie gave you, you were looking at.

12 See -- where you see person A, if you look further down, there is a location, that is the
13 name of her place. Do not mention it. Do not mention it. But do you see a certain
14 place? That is the last item that appears on that document. Do you see it?

15 THE WITNESS: (Interpretation) Yes, I see it.

16 PRESIDING JUDGE EBOE-OSUJI: Ms Lawrie, now you have -- you can take
17 back -- repeat the question now that she knows what you'll be talking about.

18 MS LAWRIE: certainly. I'm grateful, Mr President.

19 Q. Madam, did you hear that person A escorted - apologies, let me take it from
20 the -- madam, did you hear that the specifics of the threat and the situation that this
21 individual found himself in, the fear that he would be killed, is because he escorted
22 his Kikuyu neighbours as far as location A and then his neighbours went on to
23 Eldoret? Did you hear of those specifics?

24 A. I told you the following, this is what I will once again repeat. Where it
25 concerns person number 1, I heard people speak about this person when the chief

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1 came to Eldoret Showground in order to repatriate the people within the framework
2 of the operation. And when the chief came he was refused because it was said that --
3 PRESIDING JUDGE EBOE-OSUJI: All right. Witness, one second. One second,
4 please. All right, so that we can quickly get the answer and move on to something
5 else, if you know the detail that Ms Lawrie just indicated you can answer yes or no, if
6 you don't know it you can tell her you do not know of that detail. Just answer the
7 question only if you know about that detail. We realise you were not there when
8 this happened, you were telling us what somebody told you at the showground.
9 The task now for you is whether you can recognise the detail she's giving you in the
10 story that you were given about what person A had done.
11 So the question is: Did you learn that the reason why person number A was exposed
12 to risk at the time was because he had escorted the Kikuyu neighbours, he was trying
13 to protect, that he had escorted them all the way to location A and then those people
14 seeking refuge continue then on to Eldoret? Do you know that to be part of the
15 story?

16 A. No, I didn't have that information.

17 MS LAWRIE:

18 Q. Madam, you're a resident at Eldoret Showground for more than a
19 year-and-a-half, weren't you?

20 A. I don't know how many months it was. January 2008, the 6th, I went to
21 showground, and I left that place on 10 October 2009. I can't tell you how many
22 months that is I spent there.

23 Q. During your time at Showground, the IDPs organised themselves and
24 appointed various individuals to represent them, didn't they?

25 A. Yes, there were elections.

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1 Q. They appointed chairmen and chairwomen for various matters, didn't they?

2 A. Yes.

3 Q. Madam, if you could take a look at the Defence PIS and look at the person listed
4 at B. Don't say the name, please. Can you see the name? Just say "Yes" or "No."

5 A. Yes, I can see the name.

6 Q. You're aware, aren't you, that this person was an IDP chairperson; that's correct,
7 isn't it?

8 A. I don't know this individual.

9 MS LAWRIE: With leave, Mr President, I would like to show the witness a
10 photograph. It should be shown confidentially, only in court, and the ERN is
11 KEN-D09-0033-0013.

12 Q. Madam, can you see the person on the screen? Just say "Yes" or "No."

13 A. Yes.

14 Q. Does this refresh your memory as to the person listed at person B? Is that her?

15 A. Yes, I know her.

16 Q. Is the person in the photograph, is that person B on the Defence PIS? Please
17 just say "Yes" or "No."

18 THE WITNESS: Your Honour, I would like to say something.

19 PRESIDING JUDGE EBOE-OSUJI: Private session.

20 *(Private session at 1.17 p.m.) Reclassified as open session

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

22 PRESIDING JUDGE EBOE-OSUJI: Witness, please, you said you wanted to say
23 something.

24 THE WITNESS: (Interpretation) In 2007-2008, during that period,
25 everywhere --when people came from Malili Nne or from Huruma, they had their

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1 president and a vice-president. So for each region there was a president and a
2 vice-president.

3 But while I was there, there were many of us. I know this lady, I know this woman,
4 but I do not know whether she was a vice-chairperson or chairperson. I don't know
5 whether she was a chairperson representing her region or not or she was chairperson
6 of the entire camp. (Redacted)

7 I know the chairman who was there for the entire camp, but I do not know whether
8 this woman was chairperson for the people from (Redacted) or the general chairperson
9 for the showground.

10 PRESIDING JUDGE EBOE-OSUJI: But did you know her name and whether her
11 name is the name that appears at B?

12 THE WITNESS: (Interpretation) Her name is (Redacted) but I do not know her family
13 name. We simply refer to her as (Redacted)

14 PRESIDING JUDGE EBOE-OSUJI: And are you saying -- was she then one of the
15 coordinators of the IDPs, even though you may not know what specific role she
16 played?

17 THE WITNESS: (Interpretation) I have said that during that period I do not know
18 whether she was simply representing her place of origin. I know her by sight. But I
19 do not know whether she represented her place of origin, or she was general
20 chairperson for Eldoret Showground. I know this lady, (Redacted)
21 (Redacted)

22 (Redacted). But I do not know particularly which position she had while we were at
23 the Eldoret Showground, but I know what she does now.

24 PRESIDING JUDGE EBOE-OSUJI: Ms Lawrie, do you have any question to pursue
25 in private session on that or can we --

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1 MS LAWRIE: Just one or two. It might be easier to do it quickly in private session.

2 I'll be very brief.

3 Q. Madam, would it help if I said that (Redacted), who you've just seen in the
4 photograph, was involved with the IDPs from (Redacted) And that's
5 (Redacted) near (Redacted)

6 A. Madam, I have told you that I know this lady. I know that she came from the
7 (Redacted) area, and now you are talking about (Redacted) or whatever you
8 said. I know that she came from the (Redacted) area. That is what I know.

9 PRESIDING JUDGE EBOE-OSUJI: Ms Lawrie, you can leave it at that, on that
10 specific point.

11 MS LAWRIE: Yes.

12 Q. This lady, (Redacted) was involved with coordinating IDPs; that's correct, isn't it?

13 A. Can you kindly repeat your question, please.

14 Q. Certainly. The woman in the photograph, (Redacted) she was
15 working/coordinating/assisting IDPs in showground, wasn't she, while you were
16 there?

17 A. How could she have been helping them? She was also an IDP. She had also
18 fled and found herself there, so how could she have been assisting them?

19 PRESIDING JUDGE EBOE-OSUJI: What the lawyer is asking was, even though you
20 may not know her title specifically, but from your own impression and from what
21 you know, she was one of those people helping out, helping the IDPs, helping keep
22 them coordinated as opposed to just simply being an IDP who was there on her own.
23 She was helping to coordinate the IDPs. Is that your understanding?

24 THE WITNESS: (Interpretation) Your Honour, it would be difficult for me to
25 answer that question. There were about 23,000 of us at the Eldoret Showground at

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1 that time. So I cannot tell you what her position was. I did not come from
2 (Redacted). I had been living in (Redacted). So counsel should ask me questions about
3 (Redacted)

4 PRESIDING JUDGE EBOE-OSUJI: Maybe there's some -- maybe there's a
5 misunderstanding. The question was not for you to tell the Court her precise
6 position, but whether you're aware -- if you were here in this courtroom, and people
7 are doing different things, there are court officers who are helping, and there are
8 those of us sitting up here, and there are people sitting on the counsels' position. So
9 we are involved in this process in different ways.

10 Would you say that generally she was also involved in co-ordinating the IDPs?

11 THE WITNESS: (Interpretation) I do not know whether she held any position
12 while we were at the Eldoret Showground.

13 PRESIDING JUDGE EBOE-OSUJI: How did you come to know her name and who
14 she was? You say there were 23,000 people or more.

15 THE WITNESS: (Interpretation) Your Honour, they used to take down our names
16 and our contacts. That is how I know that there were about 23,000 of us. They took
17 down our notes, and they carried out a head count. That is how I know about that
18 number.

19 PRESIDING JUDGE EBOE-OSUJI: And how did you come to know about this
20 woman, (Redacted) What was it about her specifically that made you know who she
21 was or who she is?

22 THE WITNESS: (Interpretation) Mr President, while we were at the Eldoret
23 Showground, there were about 23,000 of us. There was camp A, camp B, C, D and E.
24 I was with (Redacted) in (Redacted) so I knew the names of the people who were with me in
25 (Redacted) For example, they knew my name and I also knew their names. If, for

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- 1 example, you go and ask my name, maybe they will not tell you because people were
2 calling me (Redacted). As I told you at the beginning, I knew this
3 person because she was called (Redacted) and we were in the same camp, that is (Redacted)
4 PRESIDING JUDGE EBOE-OSUJI: You said earlier on that (Redacted)
5 (Redacted)
6 THE WITNESS: (Interpretation) (Redacted)
7 (Redacted)
8 (Redacted)
9 PRESIDING JUDGE EBOE-OSUJI: Did she hold any position (Redacted)
10 (Redacted), but does she hold a position from what you could
11 see during the stay at the showground, (Redacted)
12 (Redacted)
13 THE WITNESS: (Interpretation) She did not hold that position when we were at
14 the Eldoret Showground. (Redacted)
15 PRESIDING JUDGE EBOE-OSUJI: Ms Lawrie.
16 MS LAWRIE: Your Honour, I can move on. I notice the time as well. I can seek
17 the admission of the photograph and then we can finish, or I can do it after lunch.
18 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti.
19 MS LAWRIE: The basis is that she recognised the name and she said he
20 was -- (microphone not activated).
21 MR PUGLIATTI: Once again, we don't object but with a reservation, with a
22 qualification the witness recognised the photo as a woman that she knew as (Redacted) and
23 (Redacted) alone and also that this woman was from the (Redacted) area but that she didn't
24 know her position at the time in the showgrounds. On that basis we wouldn't object.
25 PRESIDING JUDGE EBOE-OSUJI: The photo will then be admitted on that basis as

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- 1 the next in the Ruto Defence exhibits.
- 2 THE COURT OFFICER: (Interpretation) D09-0033-0013 will be reference
- 3 EVD-T-D09-00190. It is a confidential document.
- 4 (Trial Chamber confers)
- 5 PRESIDING JUDGE EBOE-OSUJI: Thank you very much, court officer.
- 6 We will now take our lunch break now and we return at 3 o'clock.
- 7 The blinds will come down and the witness will be escorted from the courtroom.
- 8 (The witness stands down)
- 9 *(Closed session at 1.33 p.m.) Reclassified as open session
- 10 THE COURT OFFICER: (Interpretation) We are in closed session, your Honour.
- 11 PRESIDING JUDGE EBOE-OSUJI: The Court will adjourn.
- 12 THE COURT OFFICER: All rise.
- 13 (Recess taken at 1.33 p.m.)
- 14 (Upon resuming in open session at 3.07 p.m.)
- 15 THE COURT USHER: All rise.
- 16 Please be seated.
- 17 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 18 And, Witness, welcome back.
- 19 We're in open session. Ms Lawrie, please proceed.
- 20 MS LAWRIE:
- 21 Q. Madam, welcome back. I just wish to touch on two topics in quite brief terms.
- 22 Turning to the 2007 elections, these were very closely fought, weren't they?
- 23 A. Yes.
- 24 Q. The ODM thought that they would win, didn't they?
- 25 A. Yes.

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1 Q. And the PNU thought that they were all set to win as well, didn't they?

2 A. Yes.

3 Q. So just before this tight race finished and before the election results were
4 announced - and I'm using your words here - there was great tension in the air, wasn't
5 there?

6 A. Yes.

7 Q. And when the results were finally announced violence suddenly erupted in
8 your area, didn't it?

9 A. Yes.

10 Q. Now, in the midst of all this, rumours started to circulate about the arrest of
11 Raila Odinga and William Ruto, didn't they?

12 A. After the announcement of the results, Raila Odinga and William Ruto were
13 arrested the following day, that is on the 31st. That is what was being said then.

14 Q. These were the rumours, weren't they?

15 A. It was those people who had come from Maruru who said that they had learned
16 that Raila and William Ruto had been arrested, so I do not know whether those were
17 simply rumours or whether it was true. Based on what I know myself, they were not
18 arrested.

19 Q. And these rumours and what was being said about -- (Overlapping speakers)

20 A. They were being sought so that they could go to where they were supposed to
21 be going.

22 THE INTERPRETER: And from the Swahili booth, your Honour, could counsel wait
23 for interpretation to finish?

24 MS LAWRIE:

25 Q. And these rumours and the stories which were being circulated, this increased

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1 the tension, didn't it?

2 A. Yes.

3 Q. I want to touch briefly on your testimony about the statement that you said
4 Raila Odinga made on 30 December 2007. You told the Court, and it was on 3 April
5 and I'm referring to page 69 at lines 7 to 9, "We continued ..." -- and I'm quoting. "We
6 continued to watch TV, and it is then that I saw the former prime minister, Raila
7 Odinga, on TV and saying the following ...", quotes, "'If I am not declared the winner,
8 the Mediterranean Sea and the Red Sea will be full of blood," close quotes. Do you
9 remember saying that?

10 A. (No interpretation)

11 PRESIDING JUDGE EBOE-OSUJI: Wait, wait, wait. All right. Witness, the
12 question now was whether you remember saying that. You can say "Yes" or "No."

13 THE WITNESS: (Interpretation) No, I did not say that. I did not mention the date
14 of the 31st. It was on that day that I saw Raila Odinga say those words.

15 MS LAWRIE:

16 Q. Madam, in fairness I'm just going to read back to you your testimony of 3 April.

17 PRESIDING JUDGE EBOE-OSUJI: What are you interested in, so we can isolate
18 what needs to be dealt with?

19 MS LAWRIE: The statement - the terms of the statement - that the witness heard
20 says that she heard Raila Odinga say and the date was given as 30 December 2007,
21 according to her testimony, but it's the statement that I'm interested in.

22 PRESIDING JUDGE EBOE-OSUJI: All right. All right. Let's first get the statement
23 and then we will deal with the date, if need be.

24 Witness, for now forget about the date when you may have seen that statement made
25 on TV, if you did see that statement made, but for now the question is what you said

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1 Mr Odinga said. The question was: Did you say you saw Mr Odinga on TV say
2 those words that the Mediterranean Sea or the Red Sea will be filled with blood if
3 they were not declared winners? Was that your question, Ms Lawrie?

4 MS LAWRIE: Yes.

5 THE WITNESS: (Interpretation) Yes. I saw him on the television, and that is
6 what he said.

7 PRESIDING JUDGE EBOE-OSUJI: And do not tell us where you were watching
8 television or with whom you were watching television. For now if you can help us
9 with the date that you said you actually saw Mr Odinga on TV, say those words.

10 THE WITNESS: (Interpretation) It was on 30 December 2007.

11 PRESIDING JUDGE EBOE-OSUJI: Thank you.

12 Ms Lawrie.

13 MS LAWRIE:

14 Q. Madam, I suggest that you're mistaken in your recollection and that Mr Odinga
15 never said those words.

16 A. He said that on television on 30 December 2007. This is what he said: If he's
17 not declared the winner, the Mediterranean Sea and the Red Sea would be filled with
18 blood. Then he started crying.

19 Q. Was he crying tears?

20 A. I saw him crying on television.

21 Q. Madam, our --

22 A. Tears flowed.

23 Q. Madam, our position is that the only reference that Mr Odinga made to the sea
24 during the elections was to a Tsunami and that what he meant by that was that there
25 was going to be a great wave of support for the ODM. Would you agree that you

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1 might be mistaken and that -- in your recollection of Mr Odinga's turn of phrase?

2 A. No, I am not mistaken. I am not mistaken. There was a conflict in Kenya in
3 2007 and 2008, and I remember very well the talks that took place -- or, rather, the
4 interviews in 2012.

5 Now, I'm wondering, are your questions referring to the period of the conflict or the
6 time at which I gave the interviews? Because at that time no one knew what was
7 going to happen in Kenya -- or, rather, no one knew that what was happening in 2007
8 would be a subject for discussion in the Court here. So that is why I want to know
9 whether you are referring to what happened in 2007 and 2008 or afterwards in 2012,
10 when I went for the interviews.

11 If you are talking about the events of 2007 and 2008, and you are doubting, I can tell
12 you that there is no one with the humility to come and say before the Court that I did
13 this or I did not do that.

14 PRESIDING JUDGE EBOE-OSUJI: Witness, remember the advice I gave you earlier
15 to speak with moderate speed, not too fast and not too slow as well, but do not speak
16 too fast, please.

17 Your answer then to the last question was that no, you were not mistaken in what you
18 told the Court?

19 THE WITNESS: (Interpretation) In regard to that.

20 MS LAWRIE: Mr President, I'm going to move on, but I'm just going to make a
21 couple of corrections to the transcript. At page 32, line 11, I believe the transcript
22 says "she has flowed," and that should be "tears flowed." The second correction is at
23 page 32, line 13, that should be to Tsunami, T-S-U-N-A-M-I.

24 Q. Madam, you testified last week that when you were watching the TV on 29
25 December 2007, you saw William Ruto hit Mr Kivuitu. Do you recall saying that?

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1 A. Yes, I remember that.

2 Q. You also told the Court that present was James Orengo and a lady from NARC
3 Kenya, didn't you?

4 A. Yes, I remember that.

5 Q. The lady from NARC Kenya was Martha Karua, wasn't it?

6 A. (No interpretation)

7 MS LAWRIE: I have no interpretation. I can put the question again if that assists,
8 although I did hear the witness's answer.

9 PRESIDING JUDGE EBOE-OSUJI: Interpreters, the witness said "ndiyo".

10 Witness, help us again. The lawyer's question was the lady from NARC Kenya was
11 Ms Martha Karua and your answer is?

12 THE WITNESS: (Interpretation) I said "Yes."

13 MS LAWRIE: Thank you. I believe that the spelling of Martha Karua has been
14 corrected at page 34, although it's still not been corrected at page 33, line 24. It's
15 Martha, ordinary spelling, Karua, K-A-R-U-A.

16 Q. Witness, you'll agree that the hitting of the head of the electoral commission,
17 Mr Kivuitu, by a member of the Pentagon, Mr Ruto, is a particularly dramatic event,
18 isn't it?

19 PRESIDING JUDGE EBOE-OSUJI: Ms Lawrie, I can see why you want to ask that
20 question, but do you need to ask it? Isn't it something you want to argue? I'm not
21 stopping you, but think about it. If you believe you must ask it of this witness, go
22 ahead.

23 MS LAWRIE: I can move on. I was going to with the Court's leave play two
24 connected videos. So I propose to play them one after the other. The first video is
25 KEN-D09-0020-1 -- 0142. I'll take the last four digits again. It's 0142, and that's a

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1 public video and it can be played publicly. I'm going to start it at time stamp 12
2 seconds.

3 I should also advise, Mr President, that I propose to pause from time to time and to
4 allow the witness to absorb certain pieces of information in the video. I think that
5 would be fairer to her. And then at the end of playing both videos I will put my
6 propositions.

7 (Viewing of the video excerpt KEN-D09-0020-0142)

8 MS LAWRIE: And for the record I've paused it at 1 minute 5 seconds.

9 Q. Madam, I'm sure you recognise the speaker in the video as Mr William Ruto,
10 don't you?

11 A. Yes, I think I can say that it is him.

12 Q. And he looks calm and is speaking very calmly, isn't he?

13 PRESIDING JUDGE EBOE-OSUJI: Ms Lawrie, perhaps you should finish the whole
14 tape. I thought you were going to pause for the witness to absorb at the end of
15 which you will ask your questions.

16 MS LAWRIE: Certainly. I was just going to point out elements which I will then
17 seek to rely upon at the end in fairness to the witness.

18 PRESIDING JUDGE EBOE-OSUJI: The point is the witness should note that so far
19 Mr Ruto appears calm on the video.

20 MS LAWRIE: I'm guided. Will she agree to that?

21 Q. Madam, will you agree that on the video that we've just been watching,
22 Mr Ruto looks calm and is speaking calmly?

23 A. This footage is from 29 December, so my question to you is --

24 PRESIDING JUDGE EBOE-OSUJI: Witness --

25 THE WITNESS: (Interpretation) -- on which date was this video footage taken? I

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1 have said 29 December.

2 PRESIDING JUDGE EBOE-OSUJI: Witness, for now, let's just stay with the video
3 and see what Ms Lawrie wants to do with it. So far she's saying you can see that up
4 until now, since you and I and all of us in this courtroom have been watching this
5 video of Mr Ruto, up until this point in the video appears to be calm. We can move
6 on.

7 MS LAWRIE:

8 Q. And in the video he's speaking to an individual he's referring to as
9 Mr Chairman. You'll confirm that, will you?

10 A. Yes.

11 Q. And looking at the screen as it's been paused just now, you'll agree that the
12 woman to the right of the screen is Honourable Charity Ngilu, isn't it?

13 A. Yes, it is Charity Ngilu.

14 MS LAWRIE: I'll continue to play the video.

15 (Viewing of the video excerpt KEN-D09-0020-0142)

16 MS LAWRIE:

17 Q. And, again, I've paused at it one minute 27 seconds. Now, I accept you can't
18 see the voice that we've just heard, but there's been a voice come from off stage. Do
19 you recognise that as the voice of Mr Kivuitu?

20 A. I can't make out the voice of that gentleman. He has since passed away. And
21 I can't remember what his voice was like at that time.

22 Q. I'll just play until the end of the video.

23 (Viewing of the video excerpt KEN-D09-0020-0142)

24 MS LAWRIE: Mr President, I propose to play the second video, and it's

25 KEN-D09-0033-0023. It's in English, so there is no transcript, and it can be played

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1 publicly. And, again, I propose just to go through and pause from time to time to
2 observe what is going on.

3 (Viewing of the video excerpt KEN-D09-0033-0023)

4 MS LAWRIE:

5 Q. Now, I accept it was very quick, but did you see that there were camera flashes
6 and cameras being held up in that video?

7 We can continue.

8 PRESIDING JUDGE EBOE-OSUJI: No, let's repeat that.

9 (Viewing of the video excerpt KEN-D09-0033-0023)

10 MS LAWRIE: That might be a better position to pause it at. It's at 3 seconds.

11 Q. Madam, can you see that there's a camera being held aloft in that shot?

12 A. Please continue.

13 PRESIDING JUDGE EBOE-OSUJI: And there was also some pushing and shoving.

14 We can see that.

15 MS LAWRIE: Certainly.

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

17 (Viewing of the video excerpt KEN-D09-0033-0023)

18 MS LAWRIE:

19 Q. I've paused it at 48 seconds. Madam, did you recognise the man on the
20 podium as Mr Kivuitu?

21 A. Yes, it is indeed Kivuitu.

22 MS LAWRIE: I'll continue to play the video.

23 (Viewing of the video excerpt KEN-D09-0033-0023)

24 MS LAWRIE:

25 Q. Again, just for the record, in this shot I think we can see several cameras being

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1 held aloft. Would you confirm that, Madam Witness? It's at time stamp 53
2 seconds.

3 PRESIDING JUDGE EBOE-OSUJI: I think the video speaks for itself at that point.
4 We can continue.

5 MS LAWRIE: I'm guided. I'll continue to play.

6 (Viewing of the video excerpt KEN-D09-0033-0023)

7 MS LAWRIE:

8 Q. For the record, we've played until the end of the video. Now, Madam Witness,
9 the woman in the hat at the end of the video who speaks that's Honourable Martha
10 Karua of NARC Kenya, isn't it?

11 A. Yes, that's her.

12 Q. Honourable Martha Karua has been a political opponent of Mr Ruto, hasn't
13 he -- hasn't she?

14 A. To my knowledge, no. I don't know what sort of dealings they had. I'm not
15 in a position to know that.

16 Q. Madam, it's correct that the two videos that we've just seen show events at the
17 KICC in Nairobi on 29 December 2007, yes?

18 A. The votes were counted at KICC. Now, did you want to ask me another
19 question or do you want me to continue with my reply? I'll reply -- I'll continue with
20 my reply. You showed me the footage of Martha Karua speaking about the video of
21 29 December with William Ruto when he slapped Kivuitu. You did not show that
22 image.

23 I have come here -- I came to this -- well, it was said I have come to this world and I
24 shall leave this world. Why is it that when the election results were announced and
25 the percentage was very high you say nothing, but in other cases you make problems?

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1 PRESIDING JUDGE EBOE-OSUJI: Witness, the point -- one point you made has
2 been noted, and that point is that you say the part of -- or, the video does not show
3 the part where you said Mr Ruto had slapped Mr Kivuitu. Your testimony is that
4 that in fact did happen. You saw it on TV. Is that what you are telling us?

5 THE WITNESS: (Interpretation) Yes, I saw that on the television.

6 PRESIDING JUDGE EBOE-OSUJI: That is noted. But for now, what Ms Lawrie is
7 also asking you is whether what you saw on TV, the extent that the video
8 showed -- shows what we've now seen on screen, those are part of the events that
9 happened at the KICC on 29 December 2007. Would you agree with that?

10 THE WITNESS: (No interpretation).

11 PRESIDING JUDGE EBOE-OSUJI: Interpretation, please.

12 THE INTERPRETER: Message from the Swahili interpreter: The Swahili
13 interpreter did not hear any reply from the witness. Was a reply given?

14 PRESIDING JUDGE EBOE-OSUJI: The reply was given. I'll ask again. Witness, is
15 it the case that to the extent that the video we've now seen -- or, videos, rather, show
16 what they show, that which was seen on the video were part of the events that
17 happened at the KICC on 29 December 2007. Can you respond?

18 THE WITNESS: (Interpretation) Your Honour, I saw Ms Karua, but the part
19 during which Mr Ruto struck Kivuitu I didn't see.

20 PRESIDING JUDGE EBOE-OSUJI: Okay, let's --

21 THE WITNESS: That was on 29 December 2007.

22 PRESIDING JUDGE EBOE-OSUJI: All right. With the exception of that part, where
23 you said Mr Ruto struck Mr Karua (sic), if one brought that and put it on that video
24 together with everything else we've seen, would you say that everything else we've
25 seen was part of what you saw on TV on that date?

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1 THE WITNESS: (Interpretation) Your Honour, the part that comes to my mind is
2 when Mr Ruto hit Mr Kivuitu. As for the rest, I don't remember.

3 PRESIDING JUDGE EBOE-OSUJI: Ms Lawrie, please continue.

4 MS LAWRIE:

5 Q. Madam, are you aware that Martha Karua has never made any allegation that
6 Mr Ruto hit Mr Kivuitu at the KICC? Are you aware of that?

7 A. In my interview, I never said that Ms Karua said that Ruto had hit Kivuitu.
8 I was an eyewitness. Personally I saw Ruto hit Mr Kivuitu.

9 Q. But Martha Karua was present at the KICC, wasn't she?

10 PRESIDING JUDGE EBOE-OSUJI: Ms Lawrie, it looks like you can move on. It
11 becomes argumentative at this point.

12 MS LAWRIE:

13 Q. Madam, are you also aware that Mr Kivuitu never made any allegation against
14 Mr Ruto?

15 A. In my statement I said that Ruto hit Kivuitu, and Kivuitu responded by saying
16 that I have been born on a particular day and I shall die. So all the other questions
17 that you're asking me, I don't know where they come from.

18 Q. In fact, journalists who covered this event - and we've seen that media cameras
19 were present - journalists such as Faizah Wanjiru of Citizen TV deny such a thing
20 ever happened?

21 MR PUGLIATTI: I'm going to object, Mr President. I --

22 PRESIDING JUDGE EBOE-OSUJI: Objection is sustained.

23 Ms Lawrie, you're simply saying to the witness that the event never happened. Why
24 don't you just put it to her and get her reaction and then we'll move on.

25 MS LAWRIE:

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1 Q. Madam, we say that at no time did Mr Ruto hit Mr Kivuitu and what you have
2 told about -- the Court about this is simply not true. That's correct, isn't it?

3 A. I'm telling you the truth. It was on 29 December 2007. Mr Ruto hit Kivuitu.
4 If you want me to tell you which day of the week it was, it was a Saturday, 29
5 December 2007.

6 Q. This is my final question. Did you ever read anything about this incident in
7 the newspapers?

8 A. In my statement I never - I never - mentioned reading about the incident in the
9 press. I said that I saw it on television.

10 Q. Madam, just for clarity, I'm not talking about your statement. I'm talking
11 about your recollection. Did you ever read anything about this incident in the
12 newspapers?

13 A. I told you and I repeat I never read that in the press. I saw it on the television
14 and it was on a Saturday, 27 or 29 December 2007. I saw Mr Ruto hit Mr Samuel
15 Kivuitu.

16 MS LAWRIE: Mr President, your Honours, the basis of my final questions you'll
17 find at tab 21. I don't propose to put it to the witness, but it's just for your
18 information.

19 I'll tender, or seek to tender, the two videos that we've just played to the witness.
20 The first is KEN-D09-0020-0142. We would seek to have that admitted publicly. It's
21 the scene -- it's the video showing Mr Ruto addressing the KICC. The witness has
22 spoken about certain interactions between Mr Kivuitu and Mr Ruto, and we say that
23 there is sufficient overlap between the testimony and the videos. Any other dispute
24 is a matter of weight and we'd seek to have it admitted.

25 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti?

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1 MR PUGLIATTI: Yes, there's no objection. We note that the witness acknowledged
2 that that was footage from the 29th for that particular ERN, so we're not objecting to
3 that.

4 PRESIDING JUDGE EBOE-OSUJI: The materials will then be admitted as the next in
5 the Ruto Defence exhibits.

6 MS LAWRIE: I'd also seek to tender the second video as well. I can give the ERN
7 for that as well. It's similar footage. It's KEN-D09-0033-0023 and we'd also seek to
8 have that publicly admitted.

9 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti?

10 MR PUGLIATTI: In fact the witness didn't affirmatively state the date of that
11 footage, but certainly to a reasonable observer it appears to be a continuation of the
12 same set of footage of the previous ERN. So although our usual basis for objecting is
13 present, or at least the basis for admitting it is absent, in this situation given the
14 connection to the first video we won't be objecting.

15 PRESIDING JUDGE EBOE-OSUJI: We will admit it. Whether or not it is a
16 continuation or shot from different cameras and angles we will debate later, but the
17 material will be admitted as well.

18 MS LAWRIE: Mr President, for the final session I would seek to go into private
19 session. It will take probably five minutes. Five to seven minutes.

20 THE COURT OFFICER: (Interpretation) Document KEN-D09-0020-0142 will be
21 given the following EVD number: EVD-T-D09-00191. Document
22 KEN-D09-0033-0023 shall be given the following number: EVD-T-D09-00192.
23 These two documents are public.

24 PRESIDING JUDGE EBOE-OSUJI: Thank you.

25 Ms Lawrie, you say we go into private session for the rest of your cross-examination,

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1 is that it?

2 MS LAWRIE: Exactly, Mr President. It will probably take about five to seven
3 minutes.

4 PRESIDING JUDGE EBOE-OSUJI: All right.

5 Mr Pugliatti, do you see a need to re-examine so far?

6 MR PUGLIATTI: Indeed. There's five to seven minutes left, but so far no
7 re-examination from the Prosecution. The only thing we'll be seeking to do before
8 the end of this witness's testimony is to admit into evidence the Prosecution's PIS
9 sheet, but no further questions.

10 PRESIDING JUDGE EBOE-OSUJI: All right, let's do that at the end of Ms Lawrie's
11 exercise.

12 MR PUGLIATTI: Indeed. I wasn't proposing to do it at this moment. Just putting
13 the Court on notice.

14 PRESIDING JUDGE EBOE-OSUJI: We will go into private session.

15 *(Private session at 3.56 p.m.) Reclassified as open session

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

17 MS LAWRIE: Mr President, I wonder if I might ask the Court's indulgence to finish
18 the cross-examination in this session? I don't imagine that I would go much beyond
19 4 o'clock, maybe ten-past-4. I'm not sure if that would be easier for everybody,
20 rather than breaking and then coming back?

21 PRESIDING JUDGE EBOE-OSUJI: Yes, proceed.

22 MS LAWRIE:

23 Q. Madam, we understand from information which has been provided to us by the
24 Prosecution that you know a woman called (Redacted) That's correct, isn't it?

25 A. I never gave the name of (Redacted) in my statement.

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1 Q. I can put the question again. I'm not talking about your statement. I'm asking,
2 or I'm -- our position is that you know a woman called (Redacted) and that's
3 correct, isn't it?

4 A. I know many people with the first name of (Redacted)
5 (Redacted) Could you give the surname?

6 Q. I'm talking about (Redacted)

7 A. I never had any visits from some person called (Redacted) or (Redacted)
8 Could you -- well, are you saying that we were staying together in Showground? I
9 always have lived at home with my children.

10 PRESIDING JUDGE EBOE-OSUJI: Witness, for now the question is whether you
11 know anyone called (Redacted), never mind whether or not this person has
12 visited you, or whether you're friends or not.

13 THE WITNESS: (No interpretation)

14 PRESIDING JUDGE EBOE-OSUJI: What is your answer?

15 THE WITNESS: (Interpretation) I don't know. I don't know that person.

16 MS LAWRIE:

17 Q. Madam, my position is that you do know a woman called (Redacted) and
18 (Redacted). That's correct, isn't it?

19 A. Personally (Redacted)
20 never.

21 Q. Madam, my position is also that (Redacted) knows that you're a witness in
22 (Redacted)

23 A. You're talking about someone called (Redacted) Who is this person?

24 Q. My position, Witness, is also that you've discussed your involvement in the case
25 with a woman called (Redacted) That's correct, isn't it?

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1 PRESIDING JUDGE EBOE-OSUJI: Witness, when she tells you something like that,
2 it is normal for lawyers to ask questions in that way. And it is then for you to say
3 yes, you agree with her or no, you do not agree with her, or you do not remember, or
4 you do not know what she's talking about. But it's better for you to be clearer by
5 saying "Yes" or "No". If you don't remember, you say you don't remember.

6 So I'm giving you a direction on how to answer the question she's asking you now, in
7 case you're wondering: How do I answer that question?

8 Ms Lawrie, can you put the last question? Your last question was that --

9 Witness, the last question Ms Lawrie asked was that you have discussed your
10 involvement in this case with this person called (Redacted) Do you agree with
11 that or not?

12 THE WITNESS: (Interpretation) I do not agree because I do not even know that
13 person. I do not know who she is.

14 MS LAWRIE:

15 Q. And in fairness, Witness, our position is also specifically that you discussed
16 with (Redacted) the story of Mr Ruto hitting Mr Kivuitu, didn't you?

17 A. I have never discussed anything with this woman as to Ruto hitting Kivuitu.
18 This is something I saw on television. It was on 29 December 2007. It is something
19 I saw. It is not something that anyone told me or that I discussed with anyone else.

20 Q. Madam, we also understand from information provided to us by the
21 Prosecution that you know a woman called (Redacted). That's correct, isn't it?

22 A. I know (Redacted)

23 Q. Do you know whether (Redacted) has had any contact with the
24 Prosecution?

25 A. (Redacted).

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1 Q. And you've discussed your involvement in the case with (Redacted)

2 haven't you?

3 A. I did not speak with her (Redacted)

4 (Redacted)

5 Q. (Redacted)

6 A. I remember only this person and her name is (Redacted) as well as another

7 woman (Redacted). In fact, it is a gentleman, it is a man

8 (Redacted) and his name is (Redacted)

9 Q. Can you give us any more details about this gentleman (Redacted)

10 (Redacted) You've given his one name. Can you give another name?

11 A. His name was (Redacted) We also refer to him as (Redacted)

12 Q. (Redacted)

13 A. (Redacted)

14 Q. And is it correct that you were (Redacted)

15 A. (Redacted)

16 (Redacted)

17 (Redacted)

18 PRESIDING JUDGE EBOE-OSUJI: Witness, to spell this person's name, would it be

19 correct that the spelling is something like (Redacted) and another (Redacted) Would

20 that be how you would spell the name?

21 THE WITNESS: (Interpretation) Yes, that is correct.

22 MS LAWRIE:

23 Q. And can you tell us when (Redacted)

24 A. The first thing I need to tell you is that (Redacted) was not my husband. I have

25 said that (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. Is this gentleman's name (Redacted)

5 A. His name was (Redacted) and his full name was (Redacted)

6 Q. Witness, returning to (Redacted) it's our position that you discussed with
7 her the incident with Kivuitu being allegedly hit by William Ruto. That's the case,
8 isn't it?

9 A. I do not agree with you, because regarding William Ruto slapping Kivuitu, no
10 one told me about it. I saw it myself on television on 29 December 2007. I repeat
11 and I will repeat it again.

12 Q. Madam, we say that you had discussions with a (Redacted) and a (Redacted)
13 (Redacted) about Kivuitu being hit or slapped, and together you three ladies came up
14 with this story. That's the truth, isn't it?

15 A. Counsel, I do not know what I have to tell you for you to accept what I'm telling
16 you. On 29 December 2007, personally I saw on television William Ruto hit Kivuitu.
17 No one told me about it. I saw it myself.

18 Q. And finally, Witness, we say the reason that this is not reported anywhere - and
19 by this I mean the incident with Mr Ruto hitting Mr Kivuitu - the reason that's not
20 reported anywhere is because it didn't happen and it's a fabric of your imagination.

21 PRESIDING JUDGE EBOE-OSUJI: That is argumentative.

22 Witness, you don't need to answer that. The question rather for you to answer
23 would be this: You said you saw that event yourself on television. Did you tell
24 that --

25 THE WITNESS: (No interpretation)

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1 PRESIDING JUDGE EBOE-OSUJI: One second. Did you tell (Redacted) that?

2 Did you tell in your discussions, did you say to (Redacted) "Oh, I saw this on
3 television"? Did you say that to (Redacted)

4 THE WITNESS: (Interpretation) Mr President, when it comes to this issue of
5 seeing Ruto slap Kivuitu, I did not discuss it with anyone. No one told me about it.
6 I personally saw that on television on 29 December 2007. I saw Ruto hit Kivuitu.

7 PRESIDING JUDGE EBOE-OSUJI: And you've never related that event to anybody
8 else? That's what you're telling us?

9 THE WITNESS: (Interpretation) I didn't tell anyone that, because I thought that
10 everyone had seen that incident on their own television. Maybe all of us -- maybe all
11 of them also saw that, but I'm telling you about what I saw with my own eyes.

12 PRESIDING JUDGE EBOE-OSUJI: Ms Lawrie, continue, if you have any more
13 questions.

14 MS LAWRIE: No, Mr President. We can go back to public session.

15 PRESIDING JUDGE EBOE-OSUJI: All right. We'll go back to public session.

16 (Open session at 4.15 p.m.)

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

18 PRESIDING JUDGE EBOE-OSUJI: Thank you. Ms Lawrie.

19 MS LAWRIE: Madam, I have no further questions for you. Now, while we may
20 differ on certain issues, we're very grateful for you having come to The Hague to
21 testify. We know it can't have been easy and we wish you a very safe journey.

22 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti.

23 MR PUGLIATTI: No re-examination from the Prosecution.

24 PRESIDING JUDGE EBOE-OSUJI: All right. Witness, thank you very much for
25 coming in. Ms Lawrie's comments, the last one, again, reflects the Judges' position

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- 1 as well. We thank you for coming to assist us with what you have testified to. We
2 know particularly it was a difficult exercise for you, as it has been for some other
3 witnesses as well, and we're grateful that you were able to come.
4 We will be evaluating your testimony after we've heard everyone else, and then we
5 will deliver our judgment as the case may be. We thank you and we wish you safe
6 journey back home.
7 We will bring down the blinds and usher the witness out of the courtroom.
8 Before we do that, Witness, if you can bear with us for a minute. No more questions
9 would be asked of you, but if you can sit for a little while.
10 Mr Pugliatti, where are we in terms of the next witness up?
11 MR PUGLIATTI: Yes, Mr President. The Prosecution's next witness is the expert,
12 number 488, if I'm not mistaken, Mr Lers Bromley. He will be en route to The Hague
13 imminently and he's - will be available to take the stand on Wednesday morning.
14 PRESIDING JUDGE EBOE-OSUJI: Wednesday morning.
15 MR PUGLIATTI: Yes, Wednesday morning.
16 PRESIDING JUDGE EBOE-OSUJI: All right. Then that concludes our proceedings
17 for today.
18 MS LAWRIE: I just have one housekeeping matter.
19 PRESIDING JUDGE EBOE-OSUJI: Before we do, Mr Pugliatti's PIS, right?
20 MR PUGLIATTI: I imagine Ms Lawrie may have risen for the same reason.
21 PRESIDING JUDGE EBOE-OSUJI: Is that why you were rising? Okay.
22 MR PUGLIATTI: So we're grateful if our PIS, which has been used in the course of
23 this witness's proceedings could be admitted into the -- into the record.
24 PRESIDING JUDGE EBOE-OSUJI: The PIS admitted as the next Prosecution PIS.
25 MR PUGLIATTI: I'm grateful.

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1 MS LAWRIE: Can I request the same for the Defence PIS?

2 PRESIDING JUDGE EBOE-OSUJI: Same for the Defence.

3 THE COURT OFFICER: (Interpretation) The Prosecution PIS used for Witness

4 KEN-OTP-P0469 will have the reference KEN-PIS-0001-0052.

5 The PIS is made up of four pages. The Defence -- the Ruto Defence PIS D09 used for

6 Witness KEN-OTP-P0469 will be assigned the reference KEN-PIS-0001-0056. This

7 PIS is made up of two pages.

8 PRESIDING JUDGE EBOE-OSUJI: Thank you. We will bring down the blinds and

9 usher the witness out of the courtroom.

10 *(Closed session at 4.20 p.m.) Reclassified as open session

11 THE COURT OFFICER: (Interpretation) We are in closed session, Mr President.

12 (The witness is excused)

13 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

14 THE COURT OFFICER: All rise.

15 *(The hearing ends in closed session at 4.21 p.m.) Reclassified as open session

16 RECLASSIFICATION REPORT

17 Pursuant Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September

18 2013, and the instructions in the email dated 23rd May 2014, the version of the

19 transcript with its redactions becomes Public.