

Trial Hearing
Witness: KEN-OTP-P-0409

(Open Session)

ICC-01/09-01/11

1 ²International 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, and Judge Robert
7 Fremr
8 Trial Hearing
9 Friday, 21 February 2014
10 (The hearing starts in open session at 9.37 a.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
15 call the case.
16 THE INTERPRETER: Microphone, please.
17 THE COURT OFFICER: (Microphone not activated)
18 THE INTERPRETER: The microphone unfortunately is not on.
19 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Any changes in
20 appearances?
21 MR PUGLIATTI: Mr President, good morning. The Prosecution remains the same
22 save for the absence of Thomas Franzinger.
23 PRESIDING JUDGE EBOE-OSUJI: And I noticed there was somebody who joined
24 your team in the course of yesterday's proceeding.
25 MR PUGLIATTI: Indeed. And we were remiss to not add him to the record.

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- 1 That's Mr Peter Schotsman, our Prosecution interpreter.
- 2 PRESIDING JUDGE EBOE-OSUJI: Mr Narantsetseg.
- 3 MR NARANTSETSEG: We remain the same, your Honour. Thank you.
- 4 MR KHAN: Good morning, Mr President, your Honours. The Defence for Mr
- 5 Ruto remains the same, save that Ms Sullivan and Ms Jayaraj have rejoined us.
- 6 MR KIGEN-KATWA: Mr President, Mr Sang's team remains the same, except that
- 7 Logan Hambrick is out but will join us a little later. Thank you, Mr President.
- 8 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Prosecution, you
- 9 requested to commence without the witness in light of some matter you want to
- 10 address?
- 11 MR PUGLIATTI: Your Honours, yes, we did. And we're grateful that that request
- 12 was granted. I would just seek two or three minutes to put on the record and
- 13 explain to the Chamber how we intend to proceed with this witness. We've given it
- 14 some thought overnight, and we felt conscious of the Chamber's oral ruling on
- 15 modalities and practicalities of eliciting the evidence of this witness that if certain
- 16 things could be clarified at the start of the day, and we thought it best that that be in
- 17 the absence of the witness, that might be the best way to proceed, so that there is a
- 18 practicable, feasible, and amenable manner to elicit this evidence and progress
- 19 through what the witness has to say.
- 20 PRESIDING JUDGE EBOE-OSUJI: We're in open session. Is this something we
- 21 can discuss in the open session?
- 22 MR PUGLIATTI: From our perspective, we don't see why not. If your Honours
- 23 feel otherwise, we can --
- 24 PRESIDING JUDGE EBOE-OSUJI: No, no. You would know what you want to
- 25 discuss. Why don't you then proceed.

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1 MR PUGLIATTI: I'm grateful. So, of course, the witness the Court has before it is
2 one who understands the Kalenjin language, and this is an important part of their
3 testimony. And he's testifying to speeches that he listened to where at least parts of
4 those speeches were in Kalenjin. And given that he's able to recant and repeat the
5 words that he heard at the speeches, the Court has the benefit of there being created
6 an audio-visual record.

7 PRESIDING JUDGE EBOE-OSUJI: Did you say "recant" or "recount"?

8 MR PUGLIATTI: Recount, to recount.

9 PRESIDING JUDGE EBOE-OSUJI: Recount.

10 MR PUGLIATTI: Yes, I'm grateful. Recount.

11 We appear to have some transcription issues, but I'll --

12 PRESIDING JUDGE EBOE-OSUJI: Yes. The transcript seems to -- anyway. There
13 may be a need to technically sort out something with the transcript. I understand
14 it's being attended to. Please proceed.

15 MR PUGLIATTI: So as I mentioned, the benefit of that for the Court and for the
16 participants is that at a minimum an audio-visual record is created in the recording
17 of these proceedings for the Court. And all parties are free in the fullness of time to
18 make submission on what the witness then utters, and that needn't be here and now,
19 and it certainly need not be in the presence of the witness.

20 But, of course, there is only a small minority of witnesses in the courtroom who
21 understand the Kalenjin language itself. And so for the benefit of the majority who
22 don't, we're assisted by having in court interpretation from Swahili to English as
23 well. And the witness has shown himself able to also say what he heard, what he
24 says he heard in Swahili as well.

25 And my learned friends appropriately enough said that if the witness can say what

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1 he heard in Kalenjin, he should say that, and the Prosecution doesn't disagree with
2 that. I think everybody in court is on the same page on that.
3 And suddenly based on our observations of the witness towards the end of
4 yesterday's session, it appears that doing it that way around, that he say it in
5 Kalenjin first and then explain to the Court in Swahili, which can then be
6 interpreted, that, the same words, it also seems to our eyes to make more sense in the
7 mind of the witness. He seemed more comfortable to do it that way.
8 So I propose that that's how I'll proceed. And then once he's said it in Kalenjin to
9 create the audio record and then Swahili to create the written record, which can be
10 attested to later by the parties, I would then ask the witness if any meaning or
11 significance that he may or may not attach to those words -- and I stress the parties
12 can debate these at a later time.
13 And then finally when we know whether those words placed in their context by the
14 witness are pertinent and are relevant, then, if necessary, we can put on the record
15 the exact Kalenjin words in the manner that we did yesterday with the assistance of
16 our friends from the Defence. But I submit that we should only engage in that
17 exercise when it's strictly necessary. So certainly this way the record will be
18 preserved both in writing and audio visually and submissions can be made later.
19 Now, the reason I'm proposing to proceed in this way, and I intend to proceed in
20 this way if the Court is minded, is that the witness has stated that he attended no
21 fewer than five rallies. And I don't wish to presuppose the witness's evidence, but I
22 imagine, I anticipate that there may be further speeches he heard where similar or at
23 least repetitious phrases may arise. And we submit to engage in the transcription
24 exercise of the Kalenjin words for every word uttered at every rally, we could be
25 here for quite some time indeed. And certainly, once any new content that arises, if,

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1 should they arise, any new phrases, any new terms, we would put those on the
2 record with the Kalenjin.

3 PRESIDING JUDGE EBOE-OSUJI: Let me -- I may have lost you. What are you
4 proposing that we do differently? It seems to me -- so let me tell you where we are.
5 The Chamber is also of the view that it should be better to, where some Kalenjin
6 phrases or words are being used and the witness is testifying to those, we'll receive
7 the Kalenjin first, and then the witness tells us what that means, and he does so in
8 Swahili so that the interpreters will interpret that, and then any discussions that
9 need to be done we'll do.

10 We didn't do it that way systematically yesterday, but we think we should proceed
11 with that system from now going forward. It seems to me that you are agreeable to
12 that. That is also what you are thinking, is that correct?

13 MR PUGLIATTI: It's exactly correct, your Honour.

14 PRESIDING JUDGE EBOE-OSUJI: Now, beyond that, what else are you saying we
15 should do differently?

16 MR PUGLIATTI: If it's terms or words which are similar or repetitious to words
17 that have already been noted in the record, in the manner that we did yesterday, we
18 don't want to, for lack of a simpler phrase, spell it out every time, because then it will
19 take too long.

20 Now, we noted your Honour's indication at the end of yesterday's hearing that we
21 already have certain phrases noted in the record which appear similar or repetitious
22 to how we left yesterday's evidence. And your Honour noted that it might be
23 effective to inquire with the witness whether what we have noted is the same as
24 what he subsequently says he heard or whether there are variations.

25 And we concur with your Honours that this is more efficient progressing when

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1 things are similar or repetitious than having to spell it out each time.

2 And the last qualifier I'll make is that we do consider it important that if new
3 content, clearly new topics are brought into the record by the witness, that those be
4 spelled out at that instance.

5 PRESIDING JUDGE EBOE-OSUJI: We indicated -- you are right indeed. I see your
6 concern. Your concern is whether each time we do the same exercise of Kalenjin,
7 even though the words may be the same as we had already received onto the record.
8 Of course, yes, we did indicate that it would be more efficient if the words are
9 already on the record to not be too repetitive an exercise in that regard, but the
10 Defence have a different view, and they're entitled to their view. So it's a matter of
11 whether they also see the need to prefer the regime of efficiency or whether they
12 have an issue of forensic importance to them that drives them to insist that it be done
13 that way. So we will hear from them, and then we will --

14 MR PUGLIATTI: If I may very quickly just before my learned friends do respond?
15 Of course, there are -- it's a balance. It's a balance that needs to be drawn between
16 putting it on the record with that technique every single time for multiple rallies
17 versus the efficiency of these proceedings and moving forward and progressing.
18 Now, of course, this is a Prosecution witness, and the Prosecution has called this
19 witness, and the Prosecution ultimately is the party eliciting the evidence. The
20 Defence will cross-examine the witness, I'm sure, and they'll have ample opportunity
21 to canvass spoken discrepancies or versions of events as experienced by the witness.
22 It's the very purpose of their questioning. So in our submission, their ability to
23 cross-examine and to canvass these issues fully takes into account that balance.

24 PRESIDING JUDGE EBOE-OSUJI: Mr Khan?

25 MR KHAN: Your Honours, why is the Prosecution reluctant for the witness to

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1 specify in relation to only five rallies the words that Mr Ruto is alleged to have said?

2 Your Honour --

3 PRESIDING JUDGE EBOE-OSUJI: They're not reluctant to do so. They just want
4 to see if there is a more efficient way of doing that. It's not reluctance. So can you
5 address --

6 MR KHAN: Well, your Honour --

7 PRESIDING JUDGE EBOE-OSUJI: -- the need why we should do it the way you
8 prefer?

9 MR KHAN: Well, your Honour, before I say that, in the statement, one of the
10 difficulties is how the Prosecution approached this from the beginning, because
11 normally in a statement which one is taking in a criminal proceeding, knowing the
12 requirement of specificity and detail, one would have elicited in that interview over
13 three days what was said exactly and then the translation.

14 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, so that we can get through this
15 quickly, the point was it's about our procedure. If you don't agree with that
16 procedure, just say you don't agree.

17 MR KHAN: Your Honour --

18 PRESIDING JUDGE EBOE-OSUJI: You're entitled to say "We want the words
19 revisited every time." How we do it is a different question. Whether we say, well,
20 we already have the spellings, we don't want to task Mr Bosek again with getting up
21 and repeating what we already have, what he'd done on a previous occasion. I
22 mean, he was generous enough. That's not his job, but he's been kind enough to
23 assist us with that.

24 And whether we want to keep doing that every time or whether we would say, well,
25 witness, the words you said you heard on the occasion B, are they the same as you

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1 said we heard on occasion A?

2 MR KHAN: Your Honour, I'm grateful. I've spoken to my learned friend, Mr
3 Bosek. He's very kindly indicated he's more than willing to assist the Court. We
4 do require with the greatest of respect and with the leave of the Court that the
5 witness is required to say in relation to every rally he says he attended, what he says,
6 the exact formulation to the best of his recollection that he attributes to Mr Ruto that
7 is the basis of the charges proffered by the Prosecution.

8 PRESIDING JUDGE EBOE-OSUJI: Okay. We'll leave it there.

9 MR KHAN: Your Honour, could I also make the observation, I know my learned
10 friends have an interpreter in Swahili, is there another interpreter they have got in
11 the Kalenjin language? Because ultimately the words that are of interest to the
12 Court are the words uttered in Kalenjin. And that's just an observation I make,
13 because in a criminal proceeding, the Bench want to have an understanding of what
14 is said -- allegedly said by an individual in the original language.
15 Your Honour, there is an interpreter here in Swahili. It may be of assistance at some
16 point for my learned friends to have somebody in Kalenjin. But, your Honours, Mr
17 Bosek has indicated he's willing to assist, and we have absolutely no objections to
18 that. And I'm grateful for that assistance.

19 PRESIDING JUDGE EBOE-OSUJI: Mr Bosek, once more, the Court Chamber
20 thanks you very much for your willingness to assist.

21 MR BOSEK: I'm most obliged, Mr President, your Honours.

22 (Trial Chamber confers)

23 PRESIDING JUDGE EBOE-OSUJI: We are having difficulties with the transcript.

24 MR PUGLIATTI: As are we, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: Yes. It's being attended to. All right. I

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1 believe we can still work while other things are being done.

2 All right. I've been requested to urge everyone to reconnect to the transcript so that
3 there are no difficulties. She's done it for each of us. So if you can do it on your
4 own stations as well.

5 (Trial Chamber confers)

6 PRESIDING JUDGE EBOE-OSUJI: We will proceed as follows: We will repeat it
7 every time, we'll repeat the exercise of getting the Kalenjin words that the witness
8 said he heard spoken. Mr Bosek has kindly agreed to keep on assisting. We're
9 grateful to him.

10 Let's proceed in that way. If there is a need to revisit the matter later on, we will do
11 so at that time. But for now, that's how we will proceed.

12 MR KIGEN-KATWA: Mr President, you will recall yesterday that we had an
13 argument about some words. And I was made to understand that the English
14 translation that we received on the transcript is a translation of the Kiswahili into
15 French and then into English. Mr President, I observed that in fact in that process
16 some words change meaning. And I just wanted to highlight that point, Mr
17 President, because there was the use of the word "herb," and in English "herb"
18 doesn't mean weed. But I'm told the word for "herb" and "grass" in French are
19 almost similar, and that could have been the cause of the disagreement yesterday.
20 Mr President, I just wanted to highlight that just in case it comes up later on.

21 PRESIDING JUDGE EBOE-OSUJI: Fair enough. The disagreement was on
22 whether the word was "weed" or "grass," wasn't it?

23 MR KIGEN-KATWA: Yes, Mr President. But the interpreter insisted that the word
24 that had been used was "herb," and that it mean "weed." I remember quite clearly.

25 PRESIDING JUDGE EBOE-OSUJI: No, no. The record is what somebody says.

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1 We need not settle what interpreters said. I thought I heard "weed" or "grass" or
2 "herb," any of those. But we'll leave it at that. We need not delay.

3 (Trial Chamber confers)

4 PRESIDING JUDGE EBOE-OSUJI: One more matter. Mr Narantsetseg, the matter
5 of when the victims' counsel, that is either Mr Nderitu or yourself, should commence
6 examination if the Chamber grants leave for you to examine the witness, we thought
7 we'd return to that matter. You should be prepared to start. We will not be
8 adjourning the proceedings so that Mr Nderitu comes from Kenya to examine the
9 witness himself. We will not do that.

10 If he joins us in good time for him to ask the questions himself, that will be between
11 him and you to decide who asks the questions. But if he's not in court by the time
12 the Prosecution finishes and there is enough time for you to ask the questions, the
13 Court will require you to ask those questions.

14 You've been in court and listening to the testimony of the witness, including those
15 received in private session, and we know that you're well able to ask the questions.
16 So we thought we would put you on alert well ahead of the completion of the
17 Prosecutor's examination in chief.

18 MR NARANTSETSEG: I'm grateful, your Honour. But if I may, may I propose
19 another solution? Something we have consulted with our Prosecution friends,
20 Prosecution and some friends of the Defence, I have consulted Mr Nderitu about
21 this, and he wishes that ideally he would want to question the witness himself, but if
22 he is not in time to question himself, he was also open to the idea that, with the
23 Chamber's leave of course, if the Defence can proceed with their cross-examination,
24 and when he comes in Monday, he can take on after the Defence, your Honours.
25 As your Honours know, in accordance to your decision on the victim participation

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1 and representation, we are not allowed to raise any new issues. We will only
2 question the witness as regards to the personal harm he and his family has suffered.
3 Therefore, your Honours, in our view --

4 PRESIDING JUDGE EBOE-OSUJI: What was the Chamber's ruling about the order,
5 the order of questioning when leave is given to victims' counsel to ask questions?

6 MR NARANTSETSEG: Your Honours, we are mindful of that order, your Honour.
7 We are in principal are called to question the witness if your Honours grant our
8 request just following the Prosecution's direct examination, your Honour. But on
9 this exceptional case, your Honour, since Mr Nderitu wishes to question this himself,
10 we would be grateful, your Honours, if you allowed the Defence to continue
11 following the Prosecution's direct examination and allow him to question the
12 witness starting Monday.

13 (Trial Chamber confers)

14 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, you heard Mr Narantsetseg. So he's
15 asking whether the Defence might be minded to go first. We want to avoid a
16 situation where there is a large gap where we're waiting for Mr Nderitu to come
17 from Nairobi.

18 MR KHAN: Your Honour, I'm grateful. As far as our Defence team is concerned,
19 we would object, we would have difficulties, because obviously we are
20 cross-examining a witness on testimony that's been elicited by the Prosecution and
21 anything from the legal representatives of the Defence, and it wouldn't be right, it
22 would be very inefficient to have to revisit matters.

23 PRESIDING JUDGE EBOE-OSUJI: All right. We'll leave it at that.

24 Mr Narantsetseg, as indicated, if the Prosecution finishes in good time today, if we
25 have maybe one hour or 30 minutes, perhaps we can allow counsel to go and

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1 prepare and do other things, but if it is more time than that, we will require you to
2 start. Thank you.

3 MR NARANTSETSEG: I'm grateful, your Honour. Thank you.

4 PRESIDING JUDGE EBOE-OSUJI: We will now begin the testimony of the witness.

5 MR KIGEN-KATWA: Mr President, could I indicate that if the Prosecution are
6 through today, I am prepared to go first. And whatever comes up from the victims,
7 when Nderitu comes on Monday, I could request my colleague Mr Khan to take care
8 of. That way we can accommodate.

9 PRESIDING JUDGE EBOE-OSUJI: So you can accommodate Mr Nderitu in that
10 way?

11 MR KIGEN-KATWA: Yes.

12 PRESIDING JUDGE EBOE-OSUJI: Okay.

13 MR KIGEN-KATWA: Assuming we are ready today. Of course, if we get to
14 Monday, I'm sure Mr Nderitu will take care of himself.

15 PRESIDING JUDGE EBOE-OSUJI: Yes, yes. Thank you. All right. That's kind
16 of you, very, very -- okay.

17 Let's bring down the blinds and then bring the witness in.

18 *(Closed session at 10.02 a.m.) (Reclassified as Open session)

19 THE COURT OFFICER: (Interpretation) We're in closed session, your Honour.

20 PRESIDING JUDGE EBOE-OSUJI: Did we end in private or closed session
21 yesterday? We were in open, right?

22 MR PUGLIATTI: I believe it was open.

23 PRESIDING JUDGE EBOE-OSUJI: Okay.

24 (The witness enters the courtroom)

25 PRESIDING JUDGE EBOE-OSUJI: Welcome back, Witness. The Prosecution will

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- 1 continue asking you questions today.
- 2 So, Mr Pugliatti, we go back to open session, I take it?
- 3 MR PUGLIATTI: Yes, please.
- 4 PRESIDING JUDGE EBOE-OSUJI: Let's go to open session.
- 5 (Open session at 10.04 a.m.)
- 6 THE COURT OFFICER: (Interpretation) We are in open session, your Honour.
- 7 PRESIDING JUDGE EBOE-OSUJI: Thank you. Mr Pugliatti, please proceed.
- 8 WITNESS: KEN-OTP-P-0409 (On former oath)
- 9 (The witness speaks Swahili)
- 10 QUESTIONED BY MR PUGLIATTI: (Continuing)
- 11 Q. Witness, good morning.
- 12 A. (Interpretation) Good morning.
- 13 Q. Yes. When we left off yesterday afternoon, you had told the Court about
- 14 attending a rally in Nandi Hills stadium. Do you remember?
- 15 A. Yes, I remember.
- 16 Q. And you had told the Court about listening to a speech from Henry Kosgey,
- 17 and then you were telling the Court about listening to a speech by William Ruto.
- 18 Do you recall?
- 19 A. Yes, I said that.
- 20 Q. And do you recall that you told the Court that Mr Ruto started his speech in
- 21 Swahili and then moved into the Kalenjin language?
- 22 A. Indeed.
- 23 Q. And when I asked you what do you recall Mr Ruto saying when he spoke in
- 24 Kalenjin, you told the Court something in Kalenjin. And when you said it in
- 25 Swahili, we have it as "We don't want the trees which were brought by the whites."

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1 Do you remember saying that yesterday at the end of the day?

2 A. Yes, I remember.

3 Q. Okay. So we're going to repeat the exercise that we did yesterday of making
4 sure that the Court has on the record the exact Kalenjin words that you heard. So
5 I'm going to ask you now to repeat slowly and clearly the Kalenjin words you heard
6 Mr Ruto say when he said as you say "We don't want the trees which were brought
7 by the whites." Can you do that?

8 A. Agreed.

9 Q. So if my learned friends from the Defence are ready with their pens, Witness,
10 if you could now say slowly and clearly the Kalenjin words that you heard.

11 A. (Speaks Kalenjin)

12 MR BOSEK: Mr President and your Honours, "Makimache ketit ne giibu
13 chumbek." Could I spell it?

14 PRESIDING JUDGE EBOE-OSUJI: Why don't you repeat that so that the process
15 we followed yesterday, once he agrees that that's it, then you spell it.

16 MR BOSEK: Witness, "magimache ketit ne giibu chumbek."

17 THE WITNESS: (No interpretation)

18 MR BOSEK: He's saying it's okay.

19 THE INTERPRETER: "That's correct."

20 MR BOSEK: Magimache, magimache, Mr President, your Honours is

21 M-A-G-I-C-H-E (sic). The second word "ketit" is K-E-T-I-T. The third word is N-E.

22 The fourth word will be G-I-I-P-U. Then "chumbek" is C-H-U-M-B-E-K.

23 PRESIDING JUDGE EBOE-OSUJI: B-E-K, you said?

24 MR BOSEK: Yes, Mr President, your Honours.

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

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1 MR PUGLIATTI:

2 Q. (Microphone not activated) Yes, now it works.

3 Witness, I'm going to now repeat those words to you in Kalenjin. Please listen and
4 tell me if this is what you heard Mr Ruto say. "Magiche ketit ne giibu chumbek."

5 Is that what you heard Mr Ruto say?

6 A. He didn't say exactly what I said.

7 MR KHAN: Mr President, can I just make a suggestion? It may be welcome by my
8 learned friend. It's my respectful submission, our concern was to get the Kalenjin
9 words on the record. And Mr Bosek of course put the Kalenjin words to the
10 witness. The witness accepted that they were the words, and we have a
11 transcription. So I'm not insisting, and it's not required in my respectful
12 submission, for my learned friend once again to repeat the words. It just may assist
13 matters. But it's a matter for my friend, of course.

14 PRESIDING JUDGE EBOE-OSUJI: No. We do require for him to do that. We
15 required for Mr Pugliatti to put it back to the witness so that later on we don't run
16 into any arguments later as you may well see happening now.

17 MR KHAN: So be it. I'm grateful.

18 MR KIGEN-KATWA: And, Mr President, what's happening is that my learned
19 colleague missed out the first word. He didn't say it, and I think that's what the
20 witness is concerned with.

21 PRESIDING JUDGE EBOE-OSUJI: Which word would that be?

22 MR KIGEN-KATWA: "Makimache." My learned friend I think missed out two, a
23 vowel and a consonant. If you could read it again, I'm sure the witness will be able
24 to confirm.

25 MR PUGLIATTI: I mean, obviously I'm at a disadvantage because I don't speak the

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1 language, so I don't know if I'm speaking the words correctly. But I'm assisted if
2 the first word could be respelled for the record because, and I may be wrong, but I
3 don't see it.

4 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, how would you spell the first
5 word?

6 MR KIGEN-KATWA: The spelling was correct. It's my colleague who missed it
7 out. It's not --

8 PRESIDING JUDGE EBOE-OSUJI: Okay. I'll tell you what I have. What I have
9 would be M-A-G-I-C-H-E, the first word.

10 MR KIGEN-KATWA: Exactly, Mr President. That's correct.

11 PRESIDING JUDGE EBOE-OSUJI: And Mr Pugliatti did read it maybe --

12 MR BOSEK: Mr President, I've discovered that the spelling is actually wrong.

13 And I also wish to say, Mr President, that I'm a Kipsigis. And a K will come in.

14 For Nandi, it will likely be G. It's the same word, but they flow together. It should
15 have been M-A -- for the Kipsigis will be G-I, but for the Nandi it will be

16 K-I-M-A-C-H-E. So that it's Makimache.

17 PRESIDING JUDGE EBOE-OSUJI: All right. Can you take it slowly again. Let's
18 spell what the witness actually said. You heard him.

19 MR BOSEK: Yes.

20 PRESIDING JUDGE EBOE-OSUJI: Yes. It may well be that there may be, you
21 know, variances in dialect among the Kalenjins resulting in different spellings, but
22 we want exactly what the witness had said in the way I'm sure you can do it that
23 way.

24 MR BOSEK: Thank you, Mr President.

25 PRESIDING JUDGE EBOE-OSUJI: Thank you.

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1 MR BOSEK: The witness actually said "Makimache ketit ne giibu chumbek." And
2 I've said, Mr President, that Makimache will be M-A-K-I-M-A-C-H-E.

3 PRESIDING JUDGE EBOE-OSUJI: So the only difference then would be with the
4 "Makimache," right?

5 MR BOSEK: Yes, Mr President.

6 PRESIDING JUDGE EBOE-OSUJI: So the "ketit ne giibu chumbek" will still be the
7 same?

8 MR BOSEK: "Kiibu" will be K-I-I-B-U, yes.

9 MR PUGLIATTI: One final clarification. Yesterday the spelling of "Makimache"
10 was with an O, not an A. So if that could be clarified, I would be grateful.

11 MR KHAN: Your Honour, I think the difficulty is the transcript actually hasn't
12 accurately recorded the spelling that my learned friend gave. The spelling that he
13 gave was M-A-G-I-M-A-C-H-E, whereas on the transcript at page 17, line 25, it's
14 spelled M-A-G-I-C-H-E.

15 PRESIDING JUDGE EBOE-OSUJI: That is actually what I recorded myself not
16 looking at the transcript on that occasion. So let's forget the previous exercise --

17 MR KHAN: So be it.

18 PRESIDING JUDGE EBOE-OSUJI: -- and take it from the revised stance now. We
19 now have M-A-K-I or G-I, but let's say M-A-K-I-M-A-C-H-E, K-E-T-I-T, N-E,
20 G-I-I-B-U, C-H-U-M-B-E-K.

21 Mr Pugliatti, can you take it from there, please.

22 MR PUGLIATTI: Respectfully --

23 PRESIDING JUDGE EBOE-OSUJI: See if the witness reacts differently to that
24 spelling.

25 MR PUGLIATTI: Just before I do, respectfully, I believe Mr Bosek corrected the

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1 "giibu" to "kiibu." I believe he corrected it to the Kalenjin being K-I-I-B-U.

2 PRESIDING JUDGE EBOE-OSUJI: All right. Fair enough. Can we then do that?

3 MR PUGLIATTI:

4 Q. Witness, I'm going to read to you once again the Kalenjin words, and you can
5 listen please and tell the Court if this is what you heard Mr Ruto saying, "makimache
6 ketit ne kiibu chumbek"?

7 A. It is correct.

8 Q. And for the record, could you say in Swahili what that means?

9 A. That means "we do not want trees which were brought by the whites."

10 Q. Now, Witness, can you tell the Court what your understanding of that phrase,
11 that sentence means to you?

12 A. What was meant by that, that he didn't want people who had taken their
13 wealth through the whites.

14 Q. Okay. I have some follow-up questions. I just want to break that down.
15 You said he didn't want people who had taken their wealth. Which people is he
16 referring to? Who are the people?

17 A. It was the Luhya, the Luo, the Kikuyu, and the Kisii.

18 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, I do recall this witness saying, he
19 said it of course in the context of his recounting of what Mr Kosgey, he said Mr
20 Kosgey had said, and he said in the previous occasion that at the time he didn't
21 understand what those meant, but it was later on that he understood what was
22 meant. So keep that in mind when you ask him questions about what words meant.
23 I do not know whether that's the same with what he heard of Mr -- according to him,
24 from Mr Ruto.

25 MR PUGLIATTI:

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1 Q. Witness, is this the same thing you heard --

2 MR KHAN: Your Honour, my friend shouldn't lead. I think the question can be
3 put differently.

4 MR PUGLIATTI:

5 Q. I'll actually ask a different question. Witness, when you understood what
6 you just told the Court about reference to the trees, when did you come to
7 understand that?

8 A. It was afterwards.

9 Q. And what did you understand it to mean?

10 A. Well, I ended up understanding that they didn't want the tribes such as ours
11 who were there to be in that place.

12 Q. And what caused you to understand this?

13 A. He didn't use this language normally when he addressed the people.

14 Q. And did Mr Ruto say anything else on this matter?

15 A. He repeated the same thing saying that we shouldn't let the grass penetrate
16 into your house.

17 Q. Yes, I will come to that. I'm still asking you about Mr Ruto talking about the
18 trees brought by the white men. In regards to this matter, did Mr Ruto say
19 anything else?

20 A. No. They addressed different subjects. Mr Ruto said that the day when you
21 have to carry out the work would come, and you have to carry it out as we have
22 instructed.

23 Q. Yes, I'll come to that as well, Witness. I'm still asking you about Mr Ruto's
24 comments regarding what he referred to or who he referred to as trees. So just
25 asking you about trees, did Mr Ruto say anything other on that matter regarding the

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1 trees they did not want, you said?

2 A. There are people who bought a lot of land in that place.

3 Q. And did Mr Ruto say anything in that regard concerning the people who
4 bought a lot of land in that place?

5 A. According to his speech, I understood that he was targeting these people who
6 had bought this land.

7 Q. And when you say "targeting," what do you understand that to mean?

8 A. What does that mean? That means that it was necessary to show the other
9 tribes, the ethnic groups that were there, that they were different from their ethnic
10 group.

11 Q. And how would that be shown?

12 A. Saying that he didn't want trees that were brought by the white people.
13 They wanted to target the tribes or the ethnic groups that had worked for the whites
14 during a long period.

15 Q. Okay. Witness, I'll move on. I'll just take you back to something you said a
16 moment ago. And you said that another thing Mr Ruto said during his speech -- if
17 the Court will just bear with me.

18 A. Yes, I said that.

19 Q. You said a moment ago that, and I'm just reading from the transcript at page
20 23, line 14 -- line 11 -- 14, rather, he repeated the same thing saying that "We
21 shouldn't let the grass penetrate into your house." Do you recall saying that?

22 A. Yes, I said that.

23 Q. Okay. So for the benefit of the Court once again slowly and clearly, please
24 can you repeat the Kalenjin words that you recalled?

25 A. (Speaks Kalenjin)

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1 Q. Bear with us, Witness, one moment.

2 MR BOSEK: Witness: "Makimache ometai suswek kolanda agoi got."

3 THE WITNESS: (Interpretation) Yes, that's correct.

4 MR BOSEK: The first word, Mr President, your Honours, will be

5 M-A-K-I-M-A-C-H-E. The second word it is "ometai", O-M-E-T-A-I. "Suswek",

6 which is the third word, is S-U-S-W-E-K. The fourth word, "kolanda" is

7 K-O-L-A-N-D-H -- sorry -- that is K-O-L-A-N-D-A. "Agoi" is A-G-O-I. "Got" is

8 G-O-T.

9 PRESIDING JUDGE EBOE-OSUJI: Thank you very much, Mr Bosek.

10 MR PUGLIATTI:

11 Q. Okay. Witness, I'm going to repeat those Kalenjin words. Please listen to

12 me. And tell me if this is correct or not. "Makimache ometai suswek kolanda agoi

13 got." Are those the words you heard?

14 A. Yes, that's what I said. And that's what I heard.

15 Q. And just for clarity on the record, one more time in Swahili, what does that

16 mean please to you?

17 A. In Swahili that means "don't let the grass creep into your houses."

18 Q. Okay. And when you heard that, did you understand what it meant or did

19 you come later to understand what that meant to you?

20 A. It was later that I understood the meaning.

21 Q. And when you understood later, what did you understand it to mean?

22 A. I understood the meaning, because it was the other tribes that had bought

23 land in many areas.

24 Q. Did Mr Ruto when he said this tell the crowd anything else?

25 A. He added and said the following, "When the day comes, do the work

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1 according to our instructions."

2 Q. All right. I'll ask you some questions about that, Mr Witness. Did you
3 understand at the time or did you come to understand later any meaning in Mr
4 Ruto's words?

5 A. Would you be so kind as to repeat your question, please?

6 Q. I'll tell you what, Mr Witness, let's get the Kalenjin on the record, and then
7 we'll come to discussing it. So what we have is you heard -- you said you heard Mr
8 Ruto say that "When the day comes, do the work according to our instructions."
9 Now, slowly and clearly, could you please say one at a time what you heard in
10 Kalenjin when Mr Ruto said that.

11 PRESIDING JUDGE EBOE-OSUJI: Are we to understand that that was also in
12 Kalenjin? The witness doesn't say that.

13 MR PUGLIATTI: That's a very good point, your Honour. I'll clarify that and then,
14 if necessary, we'll get the Kalenjin.

15 Q. Witness, when Mr Ruto said "When the day comes, do the work according to
16 our instructions," in which language was he speaking?

17 A. He spoke those words in Kalenjin.

18 Q. All right. So we'll ask you to repeat those words in Kalenjin slowly and
19 clearly and one at a time. In your own time, go ahead.

20 A. (Speaks Kalenjin)

21 PRESIDING JUDGE EBOE-OSUJI: Can you repeat that again slowly.

22 THE WITNESS: (Interpretation) I shall repeat, yes. (Speaks Kalenjin)

23 MR BOSEK: Witness, "kimache oai kazit komye ne kiagonin," is that correct?

24 THE WITNESS: (No interpretation)

25 MR BOSEK: Mr President, your Honours, the first word is "kimache" is K --

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1 PRESIDING JUDGE EBOE-OSUJI: One second, one second. "Iko sawa," that's not
2 Kalenjin.

3 MR BOSEK: That's correct. That's Kiswahili. He said in Kiswahili that it's okay.

4 PRESIDING JUDGE EBOE-OSUJI: Right. We need the interpretation of that to
5 come in.

6 Interpreters, tell us, the witness accepted what Mr Bosek said, is that it?

7 Mr Bosek, can you do that again, please.

8 And interpreters, can you let us know when the witness reacts to Mr Bosek's reading
9 back the words.

10 MR BOSEK: Mr Witness: "Kimache oai kazit komye ne kiagonin."

11 THE WITNESS: (Interpretation) Yes, that's correct.

12 MR BOSEK: Mr President, your Honours, "kimache" is K-I-M-A-C-H-E. "Oai" is
13 O-A-I. "Kazit" is K-A-Z-I-T. "Komye", K-O-M-Y-E. Then the other word is N-E.
14 "Kiagonin" is K-I-A-G-O-N-I-N.

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

16 Mr Pugliatti, back to you.

17 MR PUGLIATTI:

18 Q. Witness, it's now me again repeating the Kalenjin. Please listen carefully.

19 "Kimache oai kazit komye ne kiagonin," is that correct?

20 A. Yes, that's correct.

21 Q. And for the record, what does that mean in Swahili?

22 A. In Swahili that means: "I want you to do the work that we asked you to do,
23 and you should do it well."

24 Q. I'm just going to ask you some questions to break that down. Who is he
25 asking to do the work?

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1 A. It seems to me that he was thinking of those to whom he had asked to do this
2 work. We thought it was us. We thought that he was asking us to vote. But, in
3 fact, we knew, we knew that it was about voting.

4 Q. Just to get some clarity, who is "we"? Who are you referring to when you say
5 "we"?

6 A. There are people who knew what work they were supposed to do when the
7 time came even before it was said in Kalenjin.

8 Q. And was that your impression at the time of hearing it?

9 A. Personally I thought he was talking about the elections, but when he said
10 those words in Kalenjin, it seemed that there was work to be done that they were to
11 do.

12 Q. Who is "they" who was to do the work when he spoke in Kalenjin?

13 A. The members of his ethnic group.

14 Q. And just to be clear, what did you understand the members of his ethnic
15 group were supposed to do?

16 A. It was later that I got the answer, because there was a war, and it appeared
17 that he had asked the members of his ethnic group to do that work.

18 Q. Just so the record is as clear as it can be, when you say later that you got the
19 answer, just explain what you mean by the answer?

20 A. There was a conflict later on. That's -- that's the reason.

21 Q. Okay, Witness, I'll ask you some different questions now about Mr Ruto's
22 speech. Is there anything else that you remember or that sticks in your mind from
23 that speech?

24 A. In his speech he said the following, "You must do the work as I have asked
25 you." That's what I remember. And I was wondering what kind of work he was

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1 talking about.

2 Q. Yes, I understand that. I've asked you questions on that and you've given us
3 answers. I was asking if there were any different matters or any different topics or
4 words that you recall Mr Ruto saying?

5 A. He spoke about the trees and about removing grass, and he also mentioned
6 the work that I've just spoken about. That's what -- that's what I remember.

7 Q. Now, you've already testified that your understanding of when his reference
8 to "trees" was non-Kalenjin groups, is that correct?

9 A. Yes, yes, that's correct.

10 Q. And you've also testified that his use of the word "grass" was also in your
11 mind a reference to non-Kalenjin groups, is that correct?

12 A. That's correct.

13 Q. Now, to the best of your recollection, did Mr Ruto use any other terms or
14 words to refer to non-Kalenjin groups?

15 A. Yes, I do remember.

16 Q. Can you tell the Court what those words you remember are?

17 A. He said "We don't want any madoadoa."

18 Q. Is "madoadoa" a Kalenjin word or a Swahili word?

19 A. "Madoadoa" is a Swahili word.

20 Q. And can you tell the Court what "madoadoa" means in Swahili?

21 A. In referring to "madoadoa," he didn't want people from two colours.

22 Q. Witness, take your time. Just using your own words, can you tell the Court a
23 little bit more detail about what you understand this term to mean?

24 A. You know, when a piece of clothing is of the same colour, just one colour, you
25 can't refer to it as being madoadoa. But if a piece of clothing has more than one

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1 colour, you can use the term "madoadoa."

2 Q. And in what context is the term "madoadoa" used to your knowledge?

3 A. "Madoadoa" refers to the different ethnic groups, ethnic groups that are
4 different from his own.

5 Q. And is this something you understood when he said it, or did you come later
6 to understand what it meant?

7 A. I understood that word very well, because at the time I was beginning to
8 understand their vocabulary.

9 Q. And what was your reaction? What did you think when you heard Mr Ruto
10 say "madoadoa," "We don't want the madoadoa"?

11 A. I said that the future is uncertain.

12 Q. Uncertain in what way?

13 A. The word he used didn't refer to peace.

14 Q. In that case, what did it refer to?

15 A. That word referred to the other ethnic groups that had to leave.

16 Q. Had you used -- had you heard -- I'm sorry, I'll rephrase and I'll restart.
17 Had you heard this word used in the past before that day?

18 A. No, I hadn't heard that word before.

19 Q. Did you hear it on other occasions or only on that day?

20 A. It was during these rallies that I heard that word being used.

21 Q. Now, Mr Witness, when I asked you what your reaction was to hearing this
22 word, you said you felt the future was uncertain. I now want to ask you from your
23 observation of the crowd, what was the reaction of the crowd in the stadium?

24 A. When he made his speech, people were cheering him.

25 Q. Was it all the people in the stadium?

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1 A. While he was making the speech, people were cheering. But I can't say
2 whether everyone was cheering, but I did see people cheering.

3 Q. The people that you did see cheering, which ethnic group, if you could tell,
4 did they belong to?

5 A. The people who were close to me were Kalenjins.

6 Q. My last question. Are they the ones who you saw cheering?

7 A. Yes. It was them. They were the ones who were cheering.

8 MR KHAN: Mr President, I'll wait for my learned friend to finish. We've got on
9 the transcript the fact that "madoadoa" is a Swahili word. The witness has testified
10 that he heard the words being uttered that "We don't want any madoadoa," that's
11 page 31, line 1. I wonder if we could get clarification as to whether that was all in
12 Kalenjin, apart from the word "madoadoa," or Swahili, and if so, the exact words
13 that were uttered so that that could be -- if it is Kalenjin, once again, it can be put into
14 the transcript. I would be grateful.

15 MR PUGLIATTI: Your Honour, I could certainly do that. We might have just
16 enough time before the break for that to be done.

17 PRESIDING JUDGE EBOE-OSUJI: When you said your last question, do you mean
18 for the witness or before the break?

19 MR PUGLIATTI: Rather on the topic, but perhaps I wasn't clear. But I'm aware of
20 the time. If the Court is minded, that could be my first question in the next session
21 or my last question in this session.

22 PRESIDING JUDGE EBOE-OSUJI: Why don't you ask the question, and we'll see if
23 we need to take it further than that.

24 MR PUGLIATTI:

25 Q. Witness, when I asked you about "madoadoa" and the words Mr Ruto said,

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1 you told the Court, and this is Mr Ruto: "He said 'We don't want any madoadoa.'"

2 Now, we know "madoadoa" is a Swahili word. You've told us that. But what
3 about the rest of his sentence? Was that in Swahili or another language when he
4 said "We don't want any"? Do you understand?

5 A. He used this word in a sentence in Kalenjin.

6 Q. Okay. One at a time again and slowly, please say the Kalenjin words.

7 A. He said as follows (speaks Kalenjin)

8 PRESIDING JUDGE EBOE-OSUJI: Can you again kindly repeat slowly those
9 words. Thank you.

10 THE WITNESS: (Speaks Kalenjin)

11 MR BOSEK: Mr Witness: "Makimache chito netinyei ngoroik aeng."

12 THE WITNESS: (Interpretation) That's correct.

13 MR BOSEK: Mr President, your Honours, "makimache" is M-A-K-I-M-A-C-H-E.

14 "Chito" is C-H-I-T-O. "Netinyei" is N-E-T-I-N-Y-E-I. "Ngoroik" is N-G-O-R-O-I-K.

15 "Aeng", the last word, is A-E-N-G.

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

17 MR BOSEK: Most obliged.

18 PRESIDING JUDGE EBOE-OSUJI: All right. We can take our morning break now.

19 When we come back, you can complete the exercise.

20 MR PUGLIATTI: Very well.

21 PRESIDING JUDGE EBOE-OSUJI: Witness, we will take our morning break for 30

22 minutes, a little less than that now. You will rejoin us at 11.30.

23 Can we bring the blinds down, please, and excuse the witness, court officer.

24 *(Closed session at 11.02 a.m.) (Reclassified as Open session)

25 THE COURT OFFICER: (Interpretation) We're in closed session, your Honour.

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1 PRESIDING JUDGE EBOE-OSUJI: Thank you.

2 (The witness stands down)

3 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

4 (Recess taken at 11.03 a.m.)

5 (Upon resuming in open session at 11.36 a.m.)

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

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

8 Witness, welcome back.

9 Mr Pugliatti, please proceed.

10 MR PUGLIATTI: Thank you, your Honour.

11 Q. So, Witness, before we went on the break, you had repeated to my colleague
12 the Kalenjin that you say you heard spoken by Mr Ruto regarding madoadoa. And
13 I'm just going to repeat those Kalenjin words that you gave the Court, and tell me if
14 these are correct: "Makimache chito netinyei ngoroik aeng." Is that correct?

15 A. That's correct.

16 Q. And just for the record, what does that mean in Swahili?

17 A. In Swahili that means "we don't want people who bring -- we don't want
18 people who are wearing clothes."

19 Q. Did you hear the word "madoadoa"?

20 THE INTERPRETER: "We don't want people wearing any clothes."

21 PRESIDING JUDGE EBOE-OSUJI: Let's not do that. Can you ask the witness to
22 repeat what he said the expression means.

23 MR PUGLIATTI:

24 Q. Witness, just once more for the Court, can you repeat what the expression
25 means.

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1 A. In Swahili what it means "we do not want people wearing two different
2 pieces of clothing."

3 Q. Now, I'd just like to take you back to something you said in the last session.
4 When I asked you if you heard this word on other occasions, you replied "it was
5 during these rallies that I heard that word being used." Do you remember that?

6 A. That's what I stated.

7 Q. Can you just clarify when you say "these rallies" which rallies you are
8 referring to?

9 A. Well, I went to several rallies.

10 Q. Are you referring to the rallies you told the Court you attended?

11 A. Yes. That's correct.

12 MR PUGLIATTI: Your Honour, just a correction to the transcript. At line 10 of the
13 current page 36, the first word we understand should be two as in the number two.

14 Q. Okay, Witness. The rally at Nandi Hills stadium, what time did it finish?

15 A. The rally in Nandi Hills ended at 4 o'clock, 4 o'clock in the afternoon.

16 Q. And what did you do after the rally?

17 A. After the rally, we went home with the same vehicles as the ones that had
18 taken us there.

19 Q. Now, Witness, after the first rally that you attended at Nandi Hills stadium,
20 how would you describe the atmosphere in the Nandi Hills area?

21 A. The situation in Nandi Hills was good.

22 Q. Did you hear anybody discussing the elections?

23 A. Yes. People discussed the elections. They discussed the parties which we
24 had to vote for.

25 MR KHAN: Mr President, I apologise. I'm alerted kindly by Ms Lawrie that at

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1 page 37 there's no answer to the question what time the rally ended. I believe the
2 witness had said at 4 p.m., but it's not recorded I'm told.

3 PRESIDING JUDGE EBOE-OSUJI: I heard 4 p.m. as well.

4 MR PUGLIATTI: 4 p.m.

5 PRESIDING JUDGE EBOE-OSUJI: All right. We all heard 4 p.m. So let's proceed.

6 MR PUGLIATTI:

7 Q. Witness, could you describe from your observations the attitudes of the
8 Kalenjin community after the rally.

9 A. After the meeting -- after the rally, the attitudes of friends had changed.

10 Q. Could you explain what you mean a little more when you say "the attitudes
11 of friends had changed"?

12 A. Since we were born until what we experienced together we were on good
13 terms with each other.

14 THE INTERPRETER: The interpreter points out he didn't hear the last word spoken
15 by the witness.

16 MR PUGLIATTI:

17 Q. Witness, could you just repeat the last part of your answer, please.

18 PRESIDING JUDGE EBOE-OSUJI: The whole thing. Let him repeat the -- you can
19 ask the question again so that he has a frame of reference.

20 MR PUGLIATTI: It's better that way.

21 Q. Witness, I'll repeat the question. Could you explain again to the Court,
22 because we didn't hear your answer, explain again what you mean when you say
23 "the attitudes of friends had changed."

24 A. We had lived together. We had unity and fraternity between us. But at that
25 time during the rally that took place, if somebody went towards his friends, these

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1 friends didn't talk any more. They stopped speaking.

2 Q. One follow-up. When you say "we had unity and fraternity between us,"
3 who are you referring to?

4 A. At the start when we were living with the Kalenjin we and my friends we
5 were on good terms.

6 Q. Okay. And who is it that you're referring to when you say "we were living
7 with the Kalenjin"? Who is "we"?

8 A. There were lots of ethnic groups living in that place: Kalenjin, Kikuyu,
9 Luhya, Luo and Kisii.

10 Q. Witness, one other thing that you said a moment ago is that after the rally, if
11 somebody went towards their friends, that the friends would stop talking. When
12 you refer to "friends," what ethnicity are you referring to?

13 A. A lot of my friends were Kalenjin.

14 PRESIDING JUDGE EBOE-OSUJI: Witness, what the lawyer's getting at is who
15 stopped talking to whom? You said after the rally people would visit their friends
16 and friends stopped talking. Can you tell us who stopped talking to whom?

17 THE WITNESS: (Interpretation) You could have a case where the Kalenjin were
18 talking to each other. And I, as a Luhya from another ethnic group, when I arrived,
19 they would go quiet. They would stop speaking to each other.

20 MR PUGLIATTI:

21 Q. Now, Witness, to the best of your knowledge, around this time was anything
22 being said by the Kalenjin regarding the non-Kalenjin?

23 A. At that time they weren't saying anything in particular, but if there are people
24 who you go close to them and they're speaking, they went quiet. That means that
25 they were saying something that they didn't want you to find out, something in

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1 secret.

2 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, that last question, so that there's no
3 confusion, were you speaking -- do you mean generally or in the context of people
4 discussing amongst themselves and a third party comes and the conversation
5 ceased? You need to help the witness understand what you were getting at.

6 MR PUGLIATTI: I realise the ambiguity, and I will rephrase the question.

7 Q. Witness, I'm going to ask you a question, and I'm not referring to the groups
8 of Kalenjin speaking that you talked about who would then go quiet. I am talking
9 generally. So generally in the Nandi Hills area around this time do you know if
10 anything was being said by the Kalenjin regarding the non-Kalenjin in the Nandi
11 Hills area?

12 A. No.

13 Q. Did you hear anything else around this time or start to hear anything else
14 around this time?

15 A. After the elections, it was then that I understood the subject of their
16 conversations.

17 Q. And what was that subject?

18 A. Well, war had broken out, and I understood quickly that they had been
19 speaking about the war.

20 Q. Okay, Witness. I will move on. You told the Court yesterday that you also
21 attended a rally at Kapchorwa; is that correct?

22 A. Yes. Yes, I did participate in that.

23 Q. And just clarify for the benefit of the Court. That was the second rally that
24 you said. Is it the second rally that you went to?

25 A. Yes.

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1 Q. Now, where in Kapchorwa was this rally?

2 A. There's a football pitch, and it was there that the rally took place.

3 Q. And how far is this from Nandi Hills Town?

4 A. It's not far. About 2 kilometres away.

5 Q. And how did you learn that this rally was taking place?

6 A. There was a custom at the time that a vehicle would go around and people
7 would make an announcement that there would be a rally, that a rally would be
8 held. They used a PA system in order to do that.

9 Q. And did the announcement say anything else other than a rally would be
10 held?

11 A. They said that our representatives were going to visit us.

12 Q. Now, how long after the rally at Nandi Hills stadium was this rally?

13 A. Well, it didn't take a lot of time.

14 Q. Can you give the Court some idea. It doesn't have to be exact, but can you
15 give the Court some idea of how long after the first rally in Nandi Hills stadium the
16 second rally was?

17 A. I no longer remember. It was a long time ago. But I would estimate it at
18 two weeks later.

19 MR PUGLIATTI: Your Honour, at this stage I'd request private session just for one
20 or two questions, please.

21 PRESIDING JUDGE EBOE-OSUJI: And how long do you think we might be doing
22 that?

23 MR PUGLIATTI: Less than two minutes I'd imagine.

24 PRESIDING JUDGE EBOE-OSUJI: *Private session then. *(Private session at 11.58
25 a.m.) (Reclassified as Open session)

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1 THE COURT OFFICER: (Interpretation) We're in private session, your Honour.

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

3 MR PUGLIATTI:

4 Q. Now, Witness, did you attend the rally alone, or did you go with somebody
5 or other people?

6 A. I went with other people.

7 Q. Were these friends of yours?

8 A. Yes. I went with my friends.

9 Q. And what ethnicity were your friends?

10 A. They were Kalenjin.

11 Q. What were your friend's names?

12 A. There was (Redacted).

13 MR PUGLIATTI: Your Honour, that was all for private session.

14 PRESIDING JUDGE EBOE-OSUJI: Last names?

15 MR PUGLIATTI:

16 Q. Witness, if you know, do you know the last names, the full names of your
17 friends?

18 A. (Redacted).

19 Q. Does that mean, Witness, that you don't know their second names?

20 A. Often I only use their first names in order to identify them.

21 Q. Do you know their second names?

22 A. No, but they were my friends from the Kalenjin ethnic group.

23 MR PUGLIATTI: Your Honour, I think that's answered the question.

24 PRESIDING JUDGE EBOE-OSUJI: Witness, do you know the names of their fathers
25 and mothers?

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1 THE WITNESS: (Interpretation) For example, (Redacted)
2 (phon). (Redacted). As for (Redacted), I did not know his
3 father's name. He arrived and he bought a compound while already grown up, so I
4 did not know his father.

5 PRESIDING JUDGE EBOE-OSUJI: Do you know the name of (Redacted)?

6 THE WITNESS: (Interpretation) No. His mother had been dead for a long time.

7 PRESIDING JUDGE EBOE-OSUJI: All right. What I'm interested in is whether
8 you know the name of the mother. Even though the mother may have died already,
9 do you still know what her name was?

10 THE WITNESS: (Interpretation) No, I did not know her name. That person is
11 older than me, and their mother had died a long time ago.

12 PRESIDING JUDGE EBOE-OSUJI: What about (Redacted)
13 (Redacted)?

14 THE WITNESS: (Interpretation) (Redacted).

15 PRESIDING JUDGE EBOE-OSUJI: (Redacted), would he be the only person around
16 that area known by that name?

17 THE WITNESS: (Interpretation) Perhaps there were other people bearing that
18 name, but this person (Redacted). He came and bought a compound, and I got to
19 know him because we were neighbours.

20 PRESIDING JUDGE EBOE-OSUJI: When you say you were neighbours with (Redacted),
21 can you tell the Court where (Redacted) lived, if you know the name of his village?

22 THE WITNESS: (Interpretation) (Redacted).

23 PRESIDING JUDGE EBOE-OSUJI: What about (Redacted), where did he live at the
24 time?

25 THE WITNESS: (Interpretation) He lived in (Redacted).

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1 PRESIDING JUDGE EBOE-OSUJI: And (Redacted), where did he live?

2 THE WITNESS: (Interpretation) (Redacted).

3 PRESIDING JUDGE EBOE-OSUJI: All right. We will leave it there for now in
4 terms of identifying those persons.

5 Prosecutor, do you wish to further discuss these individuals in the public session, or
6 are you done with the use for them?

7 MR PUGLIATTI: We're done for the moment.

8 PRESIDING JUDGE EBOE-OSUJI: All right. We go back to public session then.
9 (Open session at 12.06 p.m.)

10 THE COURT OFFICER: (Interpretation) Mr President, we are back in open
11 session.

12 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Mr Pugliatti, please
13 proceed.

14 MR PUGLIATTI:

15 Q. Okay, Witness. We're back in public session now, so just a reminder not to
16 discuss anything that we just discussed in the private session.

17 My question, is, without saying where you live, how did you get -- how did you
18 arrive at this rally?

19 A. We were transported in vehicles.

20 Q. What type of vehicles?

21 A. These were lorries.

22 Q. And what time did you arrive at the football field?

23 A. I no longer remember, but it was after noon, going towards 1 p.m.

24 Q. Now, were there many people at this rally?

25 A. Yes, there were many people.

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1 Q. Now, you don't have to be exact, but can you estimate approximately how
2 many people you would say are there?

3 A. There were over hundreds of them, around 1,000 people.

4 Q. And could you tell what ethnicities were in the crowd?

5 A. That region is inhabited by people from many ethnic groups but mainly the
6 Kalenjin.

7 Q. Witness, just a clarification. When you say "mainly the Kalenjin," do you
8 mean it was mainly the Kalenjin at the football field or mainly the Kalenjin in the
9 area?

10 A. What I was saying is that it is an area whose inhabitants are mainly Kalenjin.

11 Q. Okay. My question was which groups did you see at the rally?

12 A. There were Luo, Luhya, Kikuyu, Kisii and Kalenjin.

13 Q. Now, you said this rally was in a field. Was there any kind of stage or
14 platform for the speakers?

15 MR KHAN: Your Honour, can I just ask that my learned friend on all issues just
16 ask the witness to describe what's there rather than asking pointed questions like
17 that. Let's describe the arena. And, of course, it may be that it leads into a
18 platform, but let's not lead it and put it into the mouth of the witness when it hasn't
19 been properly elicited.

20 PRESIDING JUDGE EBOE-OSUJI: Describing the arena might be too general. We
21 don't want to go all over the place before getting to the existence of the platform if
22 that is what counsel is interested in.

23 But on the other hand, Counsel, try seeing if you can avoid directly leading
24 questions. If you cannot escape it, then we'll see what we can do about that for
25 now.

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1 MR PUGLIATTI: Your Honour, of course I'm trying to ask questions in a way that
2 the witness will best understand them, but I can rephrase.

3 Q. Witness, were there speakers at this rally?

4 A. There was a vehicle equipped with a public address system, and when they
5 spoke, everyone could hear what they were saying.

6 Q. Perhaps it's a confusion in my English as the word "speaker" might have two
7 meanings. But did you see people giving speeches at this rally?

8 A. Yes. There were people who made speeches.

9 Q. And were you able to see them clearly?

10 A. Yes, I could see them very clearly.

11 Q. And can you explain how it is that you could see them very clearly?

12 A. From where I was standing, it was possible for me to see those who were
13 addressing the public.

14 Q. Were they addressing the public from any particular position?

15 A. Whenever someone was going to speak, he was given the opportunity to
16 make his speech.

17 Q. And the person making the speech, would they stand on the ground or would
18 they stand on something?

19 MR KHAN: Your Honour, I'm not going to belabour the point, but it may be that
20 we get to more critical issues. It's very --

21 PRESIDING JUDGE EBOE-OSUJI: I was getting to that point, whether we need
22 to -- whether there was any issue about the existence of the structure mentioned
23 earlier. If not, I don't see the issue. Can you put the question, Counsel.

24 MR PUGLIATTI: There is an issue because there are issues of identity involved.
25 So we'd like to get a clear picture --

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1 PRESIDING JUDGE EBOE-OSUJI: You want to --

2 MR PUGLIATTI: -- of what the witness was looking at and what he saw.

3 PRESIDING JUDGE EBOE-OSUJI: Fair enough. Then go ahead. But you're the
4 one who mentioned the word in your very first question that led us to this long
5 route. What I'm saying is if you feel you want to bring back that word into the
6 question to direct the path of the questioning, you may do so. But if you feel that
7 it's better for you to go the way you're proceeding, that's up to you.

8 MR PUGLIATTI: I'm grateful for the indication, your Honour. It has been a long
9 route.

10 Q. Witness, when a speech was made, was the speaker standing -- would the
11 speaker be standing on the ground or, alternatively, would they be standing on
12 some sort of stage or structure?

13 MR KHAN: Your Honour, I -- my point was quite specific. It wasn't the route.
14 The proper question, non-leading question is: "Where was the person standing?"
15 and you take it from there. But you don't put a proposition or you paint a scene for
16 the witness to simply endorse. It's leading however one wishes to put it. My
17 friend should simply ask where was the person -- where was the speaker and take it
18 from there. No point now. The horse has bolted. All this talk of platforms. But,
19 your Honour --

20 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

21 MR KHAN: -- it could have been avoided by proper questioning.

22 PRESIDING JUDGE EBOE-OSUJI: The objection was going to be overruled
23 anyway.

24 So proceed, Mr Pugliatti.

25 MR PUGLIATTI:

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1 Q. Witness, I'm going to ask you the same question once more. Please listen
2 carefully. When a speech was made at Kapchorwa rally, would the speaker be
3 standing on the ground or, alternatively, would they be standing on some sort of
4 stage or structure?

5 A. There was no stage.

6 Q. And who were the speakers at this rally?

7 A. There were some people who took the floor that I did not know. However, I
8 recognised Henry Kosgey and Ruto as two of those who made speeches.

9 PRESIDING JUDGE EBOE-OSUJI: One second. For the record, at line 5 where the
10 word "question" appears in the transcript, the proper word I uttered was "objection",
11 not question. I said the objection was going to be overruled. I see the report says --
12 MR PUGLIATTI: I see the word "question" as well.

13 PRESIDING JUDGE EBOE-OSUJI: Yes. I did not say the question was going to be
14 overruled so there's no confusion there. But proceed anyway.

15 MR PUGLIATTI:

16 Q. Witness, just to be clear, are you referring to William Ruto?

17 A. Yes.

18 Q. Did Mr Kosgey and Mr Ruto arrive together?

19 MR PUGLIATTI: I'll take that --

20 MR KHAN: (Microphone not activated)

21 MR PUGLIATTI: I can -- I can ask a question before that.

22 Q. Witness, when you arrived at the rally, was Mr Ruto and Mr Kosgey there
23 already?

24 MR KHAN: Your Honour, I don't want to keep jumping up like a jack-in-the-box,
25 but one way, of course, is just give the witness a statement and we could be done by

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1 it. We're interested in hearing what the witness has to say, and one of the ways for
2 eliciting that and for your Honours to be able to assess it is for my learned friend not
3 to repeatedly lead. Sometimes it's difficult, but with a little bit of thought, it can be
4 done. And I would ask he exercise caution because this is a witness that we take
5 issue with. I'm grateful.

6 PRESIDING JUDGE EBOE-OSUJI: The difficulty, of course -- I can see your
7 concern, Mr Khan, but often it may also be the case that a leading question ends up
8 not being leading after all. It depends on -- but yes, I do see the difficulty.
9 Can you reformulate that question. As you know, we ended up not having a
10 platform after all. That's the point I'm making.

11 MR KHAN: Yes. And, your Honour, whether that's the objection or not is another
12 matter but --

13 MR PUGLIATTI: The only thing I'd note, your Honour, is I don't think this witness
14 has reached the stage yet where his memory needs to be refreshed.

15 PRESIDING JUDGE EBOE-OSUJI: And the point was that the structure of the
16 question was problematic in the sense that it's too closed a question to ask in chief.

17 MR PUGLIATTI:

18 Q. Witness, when you arrived at the rally, were any of the speakers there?

19 A. They arrived at the same time. Their vehicles were in a convoy.

20 Q. Who arrived at the same time?

21 A. Ruto and Kosgey as well as other guests who travelled together.

22 Q. And where were you when they arrived?

23 A. I was in the stadium.

24 Q. Did you see them arriving?

25 A. When they were coming, it was not possible for us to see them because there

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1 were many people around making a lot of noise, but when they actually entered the
2 stadium, it was possible for us to see them.

3 Q. And who gave speeches to the crowd on that day?

4 A. There were some people who took the floor that I did not recognise, but
5 amongst them I recognised Kosgey and Ruto.

6 Q. Now, amongst Mr Kosgey and Mr Ruto, who spoke first?

7 A. Kosgey was the one who spoke first.

8 Q. And what did Mr Kosgey say in his speech?

9 A. He started by talking about the elections which had to take place in an
10 atmosphere of peace and that we had to do that together. He then repeated the
11 same things that he had said in Nandi Hills, and he said those things in the Kalenjin
12 language.

13 Q. Witness, it's very important that you are -- that you can -- can you specify
14 what things he repeated from the Nandi Hills rally?

15 MR KHAN: Your Honour, I would ask again what we're interested in is what is
16 said on that rally, context and everything. So what is -- what the witness can recall
17 would be of assistance.

18 MR PUGLIATTI: Your Honour, it's the same question. It really is. It's two ways
19 of asking the same thing. The witness is --

20 PRESIDING JUDGE EBOE-OSUJI: Proceed, Mr Pugliatti.

21 Mr Khan, what's the problem?

22 MR KHAN: Your Honour, my learned friend -- and I raised it yesterday. The use
23 of "repeat" puts us backward looking to a previous event that has been testified
24 about. This is another meeting that the Prosecution allege gives rise to criminal
25 conduct on the part of Mr William Ruto, and the focus of the questioning should be

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1 what is said at that meeting, not what is said at a previous meeting.

2 So in order to have clarity and not ambiguity and in order to get a clear account from
3 the witness about what he said at this meeting, the word "repeat" is unhelpful and
4 detracts from what we're seeking to elicit.

5 So, your Honour, the question should be quite straightforward in my respectful
6 submission: "What did Mr Kosgey say?"

7 PRESIDING JUDGE EBOE-OSUJI: You would have that complaint, Mr Khan, if all
8 that happened was they repeated and then we move on, but we're not done with the
9 exercise. The witness himself had used the -- from what we heard in interpretation
10 at line 5, see it, "he then repeated the same things that he had said in Nandi Hills."

11 The witness introduced the word "repeated" from what we heard. Counsel's
12 question is quite proper to say: Okay, you say repeated. What is that? And then
13 we take it and do the same exercise. So let's proceed in that way.

14 MR KHAN: So be it. I'm grateful.

15 MR PUGLIATTI:

16 Q. Witness, you said that Mr Kosgey at Kapchorwa repeated the same things
17 that he had said in Nandi Hills. Now, my question is can you specify what things
18 he repeated from Nandi Hills?

19 PRESIDING JUDGE EBOE-OSUJI: Now, here is where counsel's concern comes in,
20 Mr Pugliatti. You can indicate "repeated," but then the second one has to be: What
21 did he say?

22 MR PUGLIATTI:

23 Q. Mr Witness, when Mr Kosgey repeated the things he had said at Nandi Hills,
24 what did he say at Kapchorwa?

25 A. He continued with his speech in the Kalenjin language.

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1 THE INTERPRETER: From the Swahili booth, the witness is speaking in a language
2 that is not Swahili.

3 PRESIDING JUDGE EBOE-OSUJI: Witness, we will -- we've done this before and
4 we will have to do it again, the same process we followed before. You will need to
5 say those words in Kalenjin slowly again. And the reason why I ask you to say it
6 slowly again is because there's a lawyer in the courtroom who has kindly agreed to
7 assist us, so when you're repeating it slowly, he is able to write down what you're
8 saying. And afterwards he will help us put it on record with the spellings.
9 So can you again say slowly one word at a time the words you said you heard said at
10 the second rally.

11 THE WITNESS: (Speaks Kalenjin)

12 MR BOSEK: Witness, confirm that you have said: "Makimache ketit ne kiibu
13 chumbek."

14 THE WITNESS: (Interpretation) That's correct.

15 MR BOSEK: Mr President, your Honours,
16 "makimache" is spelled M-A-K-I-M-A-C-H-E. "Ketit" is K-E-T-I-T. "Ne" is N-E.
17 "Kiibu" is K-I-I-B-U. "Chumbek", the last word, is C-H-U-M-B-E-K.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you, Mr Bosek.

19 MR BOSEK: I'm most obliged, Mr President.

20 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti.

21 MR PUGLIATTI: Thank you, your Honour.

22 Q. Witness, I'm now going to read back to you the Kalenjin words. Please tell
23 me if it's correct and it's what you say you heard. "Makimache ketit ne kiibu
24 chumbek." Is that correct?

25 A. What you said had a few problems. The start of what you said there were a

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1 few problems.

2 PRESIDING JUDGE EBOE-OSUJI: What problem is that?

3 THE WITNESS: (Speaks Kalenjin)

4 THE INTERPRETER: The witness speaks in a language which isn't Swahili.

5 PRESIDING JUDGE EBOE-OSUJI: Can you tell us in Swahili what you say the

6 problem is. You can describe the problem so that the interpreters can tell us. You

7 can tell us in Swahili what you say the problem was with the --

8 THE WITNESS: (Interpretation) Instead of saying "oletai" (phon).

9 PRESIDING JUDGE EBOE-OSUJI: All right. Let me -- Witness, can you assist us.

10 What we heard Mr Bosek spell onto the record is this: "Makimache ketit ne kiibu

11 chumbek."

12 THE WITNESS: (Interpretation) Yes, that's correct, Mr President.

13 PRESIDING JUDGE EBOE-OSUJI: Are those the words you said you heard

14 spoken?

15 THE WITNESS: (Interpretation) Yes, those are the words that I heard that I had

16 spoken.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you.

18 Mr Pugliatti, please proceed.

19 MR PUGLIATTI:

20 Q. And, Witness, what does that mean in Swahili?

21 A. What it means is that "we don't want the trees that were brought by the white

22 people."

23 Q. Did Mr Kosgey say anything else in relation to the trees that had been

24 brought by the white people?

25 A. He spoke about the trees, spoke about trees.

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1 Q. Anything else?

2 A. With regard to the trees, he said that they had to be uprooted.

3 Q. Okay. I'm going to ask you to use the Kalenjin to say that. So please --

4 PRESIDING JUDGE EBOE-OSUJI: If that was said in Kalenjin.

5 MR PUGLIATTI: I'm grateful.

6 Q. Witness, what language was Mr Ruto speaking when he said that they had to
7 be uprooted -- Mr Kosgey. Mr Kosgey, what language was he speaking?

8 A. He was speaking Kalenjin.

9 Q. Okay. Now I'm going to ask you to repeat in Kalenjin what you heard. So
10 please say it slowly and clearly so it can be written down. Thank you.

11 A. (Speaks Kalenjin)

12 PRESIDING JUDGE EBOE-OSUJI: Can you do it once more, please.

13 THE WITNESS: (Speaks Kalenjin)

14 MR BOSEK: Mr Witness, confirm that you have said: "Kimache kesich kelyek ab
15 ketit."

16 THE WITNESS: (No interpretation)

17 MR BOSEK: Mr President, your Honours --

18 PRESIDING JUDGE EBOE-OSUJI: One second. We need to for -- did he confirm
19 that in --

20 MR BOSEK: He did.

21 PRESIDING JUDGE EBOE-OSUJI: -- Kiswahili?

22 MR BOSEK: Yes, by saying "yeah".

23 PRESIDING JUDGE EBOE-OSUJI: Witness, can you confirm that Mr Bosek read
24 out the right words to you -- read back the right words to you?

25 MR BOSEK: Do I say it again, Mr President?

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1 PRESIDING JUDGE EBOE-OSUJI: We would like -- you see, the procedure is this:
2 When you read back and he -- we want him to confirm it in Swahili and then we
3 want to get interpretation of that confirmation in Swahili before we proceed with the
4 spelling.

5 MR BOSEK: Most obliged.

6 PRESIDING JUDGE EBOE-OSUJI: And we don't want a situation where you get
7 into maybe he said that wasn't it, and then we get into a wasted exercise. So can
8 you read back the words again, please, and then once he confirms, the interpreters
9 will tell us that he has confirmed and then we'll take it from there.

10 MR BOSEK: Mr Witness, you have said: "Kimache kesich kelyek ab ketit."

11 THE WITNESS: (No interpretation)

12 MR BOSEK: Okay. Let me say it again. "Kimache kesich kelyek ab ketit."

13 THE WITNESS: (Interpretation) Yes.

14 MR BOSEK: Mr President, your Honours, "kimache" is K-I-M-A-C-H-E. "Kesich"
15 is K-E-S-I-C-H. "Kelyek" is K-E-L-Y-E-K. "Ab" that is A-B. "Ketit" is K-E-T-I-T.

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

17 MR BOSEK: I'm most obliged, Mr President.

18 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, it's over to you.

19 MR PUGLIATTI: Yes.

20 Q. Witness, I'm going to read back those Kalenjin words. Please listen carefully
21 and tell me if they're correct. "Kimache kesich kelyek ab ketit." Is that what you
22 heard Mr Kosgey say?

23 A. Yes, that's correct.

24 Q. And in Swahili, what does that mean?

25 A. In Swahili what it means is "you have to uproot the trees."

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1 Q. Now, did Mr Kosgey say anything else that you recall during his speech?

2 A. No, I don't remember everything he said.

3 Q. I'm not asking if you can remember everything, but do you remember
4 anything else he may have said while speaking in Kalenjin?

5 A. He said that "I want us to be able to vote in a united way, that we have a
6 single vote."

7 Q. What language was Mr Kosgey speaking when he said that he wanted people
8 to vote in a united way?

9 A. He was speaking in Swahili.

10 Q. And what was your reaction? How did you feel listening to Mr Kosgey's
11 speech?

12 A. When he spoke in that way, I thought that something bad was going to
13 happen.

14 Q. Can you just explain yourself a little more.

15 A. Well, what I can say is the following: He spoke about uprooting the trees, to
16 cut down the trees. And at that time I thought, well, there's something that's going
17 to happen, something bad is going to happen before the elections.

18 THE INTERPRETER: "After the elections" corrects the interpreter.

19 MR PUGLIATTI:

20 Q. Now, you said that Mr Ruto also gave a speech after Mr Kosgey. Was it
21 immediately after Mr Kosgey?

22 MR KHAN: Your Honour, a point must come when the concerns of the Defence
23 permeate the resistance of the Prosecution. Once again, this is a leading question.

24 It needn't happen unless there's another intent behind it, and I'm sure that's not the

25 case. So I would ask my friend to ask questions in a well-established manner rather

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1 than seeking to put a scenario in the witness's mouth that has not been elicited in the
2 proper way.

3 PRESIDING JUDGE EBOE-OSUJI: Objection overruled. The question was the
4 order how soon after.

5 Please proceed.

6 MR PUGLIATTI:

7 Q. Witness, you told the Court that Mr Ruto spoke after Mr Kosgey. Were there
8 other speakers in between them or was it immediately after Mr Kosgey?

9 A. I don't remember what it was about. It was among the people who were
10 invited, and Ruto took the floor afterwards.

11 Q. Now, when Mr Ruto started speaking, in what language did he start his
12 speech?

13 A. He spoke in Swahili.

14 Q. And do you recall what he said to the crowd while speaking in Swahili?

15 A. He was asking the Nandi to vote for ODM and to vote with a single heart.

16 Q. Did he say anything else?

17 A. Afterwards, towards the end of his speech, he started to speak about
18 uprooting the trees. And he also spoke about -- he also spoke about grass when he
19 spoke about houses.

20 Q. Okay, Witness. Let's take those one at a time. When Mr Ruto spoke about
21 uprooting the trees, in what language was he speaking?

22 A. He spoke in Kalenjin.

23 Q. Okay. So just as before, could you repeat for the Court in Kalenjin -- and
24 right now I'm only asking about the trees, so repeat for the Court in Kalenjin what
25 Mr Ruto said about uprooting the trees.

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1 A. (Speaks Kalenjin)

2 PRESIDING JUDGE EBOE-OSUJI: All right, Witness. I will request you to say it
3 again slowly, same phrase you've just given in evidence. Can you repeat it slowly.

4 THE WITNESS: (Speaks Kalenjin)

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 MR BOSEK: Mr Witness, confirm that you have said the following: "Makimache
7 ketit ne kiibu chumbek."

8 THE WITNESS: (No interpretation)

9 MR BOSEK: "Makimache ketit ne kiibu chumbek."

10 THE WITNESS: (Interpretation) That's correct.

11 MR BOSEK: Mr President, your Honours, "makimache" is M-A-K-I-M-A-C-H-E.

12 "Ketit" is K-E-T-I-T. "Ne" is N-E. "Kiibu" is K-I-I-B-U. "Chumbek" is

13 C-H-U-M-B-E-K.

14 PRESIDING JUDGE EBOE-OSUJI: Thank you, Mr Bosek.

15 MR BOSEK: I'm most obliged, Mr President.

16 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti.

17 MR PUGLIATTI: Thank you.

18 Q. Witness, please listen to me. I'm going to repeat the Kalenjin words. Tell
19 me if they are correct. "Makimache ketit ne kiibu chumbek." Is that correct?

20 A. Please could you ask again.

21 Q. Yes, of course. I will go more slowly. "Makimache ketit ne kiibu chumbek."
22 Is that correct?

23 A. That is correct.

24 Q. And in Swahili, what does that mean?

25 A. What it means is that "we don't want trees which have been brought by the

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1 whites."

2 Q. Now, Witness, you also told the Court that you heard Mr Ruto refer to the
3 grass and the houses. In what language was he speaking when you heard that?

4 A. He was speaking in Kalenjin.

5 Q. Now, I'm going to ask you again to repeat for the Court in Kalenjin slowly
6 and clearly exactly what you remember hearing Mr Ruto say about the grass and the
7 houses.

8 A. (Speaks Kalenjin)

9 PRESIDING JUDGE EBOE-OSUJI: Can you again kindly repeat the phrase slowly
10 one more time.

11 THE WITNESS: (Speaks Kalenjin)

12 MR BOSEK: Witness, could you confirm to this honourable Court that you have
13 said: "Makimache ometai suswek kolanda agoi got."

14 THE WITNESS: (Interpretation) Correct.

15 MR BOSEK: Mr President, your Honours, "makimache" is M-A-K-I-M-A-C-H-E.

16 "Ometai" is O-M-E-T-A-I. "Suswek" is S-U-S-W-E-K. "Kolanda" is

17 K-O-L-A-N-D-A. "Agoi", A-G-O-I. "Got" is G-O-T.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you, Mr Bosek.

19 MR BOSEK: I'm most obliged, Mr President.

20 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti.

21 MR PUGLIATTI:

22 Q. Witness, again I'm going to read back to you the Kalenjin. Please listen
23 carefully and tell me if it's correct. "Makimache ometai suswek kolanda agoi got."
24 Is that correct?

25 A. Yes, that's correct.

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1 Q. And the Swahili?

2 A. In Swahili what it means is "don't let the grass creep up to your house."

3 Q. And on hearing Mr Ruto say this, how did that make you feel?

4 A. Personally, well, I thought there must be something.

5 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, you see the clock. It's time for the
6 luncheon break. Do you want to wrap up this matter, this particular answer and
7 then we'll adjourn for lunch?

8 MR PUGLIATTI: That would be fine, your Honour. Yes.

9 PRESIDING JUDGE EBOE-OSUJI: What I'm asking, do you have any more
10 questions to put on this particular matter? The answer he gave you, are you happy
11 with that?

12 MR PUGLIATTI: In fact, I have follow-up questions to that, but it's not -- it can be
13 done now or it can be done after the adjournment.

14 PRESIDING JUDGE EBOE-OSUJI: Why don't we adjourn now then. We will rise
15 for the luncheon break and come back at 2.30, but first we will let the witness out of
16 the courtroom. The blinds will come down.

17 *(Closed session at 12.59 p.m.) (Reclassified as Open session)

18 THE COURT OFFICER: (Interpretation) We're in closed session, your Honour.

19 PRESIDING JUDGE EBOE-OSUJI: Thank you.

20 (The witness stands down)

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

22 THE COURT OFFICER: All rise.

23 (Recess taken at 1.00 p.m.)

24 (Upon resuming in open session at 2.35 p.m.)

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

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1 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Witness, welcome back.

2 Mr Pugliatti, please proceed.

3 MR PUGLIATTI: Thank you very much.

4 Q. Witness, before we took the break, we were talking about the rally that you
5 attended in Kapchorwa. And you were telling the Court about the speeches that
6 you heard there. I'd just like to take you back to a clarification you made earlier
7 today when you confirmed to me that you had heard the word "madoadoa" at other
8 rallies that you had attended. Now, my question is did you hear the word
9 "madoadoa" at this rally?

10 A. Yes, I heard that word.

11 Q. Do you recall who you heard using that word?

12 A. It was Mr Ruto.

13 MR KHAN: Mr President, can I just -- there is a certain way that things are being
14 conducted. I do for the record just raise my objection to the way that my learned
15 friend is seeking to elicit evidence, and I'll say no more than that. But I want my
16 objection to be part of the record.

17 PRESIDING JUDGE EBOE-OSUJI: You need to specify it in this regard.

18 MR KHAN: Your Honour, it's inappropriate to ask questions in the manner that
19 my friend did in which he says, "Did you hear the word 'madoa' at that rally?" The
20 proper way is to ask, "What did you hear at this rally," and that should be it;
21 otherwise the Prosecution is seeking to paint a narrative itself which does not come
22 from the witness's own lips in court under oath.

23 MR PUGLIATTI: Your Honour, the only narrative is that of the witness. I have
24 the real-time transcript from the court sessions earlier today. I'm referring to page
25 36, lines 11 through 22, where the witness was very carefully asked about where

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1 other occasions that he had heard that word, and he says very clearly that he heard
2 that word used at other rallies that he attended. So in my submission it's very
3 appropriate to ask him if he heard that word at this rally which he attended.

4 PRESIDING JUDGE EBOE-OSUJI: You can proceed. It may also be better if this
5 would be a good time to elicit the other rallies where he would have heard this so
6 that we don't get into this argument later on.

7 Again, I've indicated this before, leading questions, it's not that they may not be
8 asked, it's just that it's a matter of discretion. If it's unfair to ask it, it should not be
9 asked, but if it needs to be done, sobeit.

10 Now that you've brought in this madoadoa, can we now have the witness indicate
11 all the other rallies where he had heard it so we don't quarrel about it down the line
12 again?

13 MR PUGLIATTI: Of course, your Honour.

14 Q. Witness, just so that everybody in the Court is clear, to the best of your
15 recollection, can you give the names of the rallies you attended where you heard the
16 word "madoadoa."

17 A. In almost all the rallies that I attended, this word was used.

18 MR PUGLIATTI: Your Honour, perhaps if I take them one at a time.

19 PRESIDING JUDGE EBOE-OSUJI: Yes, yes.

20 MR PUGLIATTI:

21 Q. Witness, did you hear this word used at the rally at the Nandi Hills stadium?

22 PRESIDING JUDGE EBOE-OSUJI: I think he already testified to that. So we're
23 now at the Kapchorwa. So let's take it from that particular rally, the Kapchorwa
24 rally.

25 MR PUGLIATTI: From the second rally.

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1 Q. Witness, did you hear the word "madoadoa" used at the rally at Kapchorwa?

2 A. Yes, I heard it.

3 Q. Did you hear the word "madoadoa" used at the rally you attended in Maraba?

4 A. Yes, I heard it.

5 Q. Did you hear the word "madoadoa" used at the rally you attended in
6 Lubuiywo?

7 A. Yes, I heard that word. But in that rally, Mr Ruto was not present. There
8 was Mr Kosgey and other guests.

9 Q. And, finally, did you hear the word "madoadoa" used at the rally that you
10 attended at Meteitei?

11 A. Yes, that word was used.

12 Q. Now, you've told the Court that you heard Mr Ruto use that word at
13 Kapchorwa. Can you tell the Court what you heard him say?

14 A. When he was speaking in Swahili, he talked about the conduct of the
15 elections. But towards the end he mentioned that word "madoadoa."

16 Q. What language was Mr Ruto speaking when he mentioned the word
17 "madoadoa"?

18 A. He was speaking in Kalenjin.

19 Q. Okay, Witness, as before, I'm going to ask you to repeat the words in Kalenjin
20 that you heard Mr Ruto say when he spoke of madoadoa. So could you please say
21 those words slowly and clearly for the Court. Thank you.

22 A. He said in Kalenjin: (Speaks Kalenjin)

23 PRESIDING JUDGE EBOE-OSUJI: Can we have that again, please.

24 THE WITNESS: (Interpretation) Yes, I'll repeat. (Speaks Kalenjin)

25 MR BOSEK: Witness, kindly confirm to this Honourable Court that this is what you

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1 have said. "Makimache bik cheilochei ngoroik aeng."

2 THE INTERPRETER: "That is correct," says the witness.

3 MR BOSEK: Mr President, your Honours, he has confirmed that that is what he

4 said. Makimache is M-A-K-I-M-A-C-H-E. Bik is B-I-K. Cheilochei is

5 C-H-E-I-L-O-C-H-E-I. Ngoroik is N-G-O-R-O-I-K. Aeng is A-E-N-G.

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

7 MR BOSEK: I'm much obliged, Mr President.

8 MR PUGLIATTI:

9 Q. Witness, I'm going to repeat those words to you now. Please listen carefully
10 and tell me if this is what you heard: "Makimache bik cheilochei ngoroik aeng," is
11 that correct?

12 A. Yes, that is correct.

13 Q. Now, in Swahili can you tell the Court what that means?

14 A. In Swahili that means: We do not want people who are wearing two clothes,
15 two pieces of clothing.

16 Q. Thank you. Now, do you recall if Mr Ruto said anything else at Kapchorwa?

17 A. He said: We are going to do the work together and in the same way.

18 Q. What language was he speaking when he said that?

19 A. He said that in Kalenjin.

20 Q. So please repeat for the Court the Kalenjin words that Mr Ruto used?

21 A. (Speaks Kalenjin)

22 PRESIDING JUDGE EBOE-OSUJI: I will ask you again, Witness, to repeat again
23 slowly so that Mr Bosek can note it.

24 THE WITNESS: (Speaks Kalenjin)

25 MR BOSEK: Witness, confirm to this Honourable Court that you said the following:

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1 "Amache aoi kasit ne kiagonin."

2 THE INTERPRETER: He said, "That is correct."

3 MR BOSEK: Mr President, your Honours, amache is A-M-A-C-H-E. Oai is O-A-I.

4 Kasit is K-A-S-I-T. Ne is N-E. Kiagonin is K-I-A-G-O-N-I-A -- N-I-N. Sorry.

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

6 MR BOSEK: Most obliged.

7 MR PUGLIATTI:

8 Q. Witness, I'm going to repeat the Kalenjin. Please listen: "Amache oai kasit
9 ne kiagonin." Is that what you heard?

10 A. That is correct.

11 Q. And in Swahili, what does that mean?

12 A. That means: Do the job that has been asked of you.

13 Q. So what time did this rally at Kapchorwa finish, Witness?

14 A. The rally ended towards the evening at around 5 p.m.

15 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, what time would your own
16 cross-examination end?

17 MR PUGLIATTI: Your Honour, our --

18 PRESIDING JUDGE EBOE-OSUJI: Examination in chief.

19 MR PUGLIATTI: I understood. Unfortunately I will not finish today. So with the
20 Court's indulgence we'll continue on Monday. But since we finalized the process
21 and procedure for eliciting the evidence, we have made progress, and that's
22 reassuring to an extent. But, of course, we've just come to the end of rally number
23 two, and there are more. But we are confident that we would finish on Monday
24 and tentatively confident that it would be by the lunch break.

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

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1 MR PUGLIATTI:

2 Q. Witness, I'd like to move on now and ask you about another rally that you say
3 you attended, this time in Maraba. When you told the Chamber the rallies you
4 attended, this came after Kapchorwa, is that correct?

5 A. Yes.

6 Q. And if you can, how long after the Kapchorwa rally did you attend the rally
7 at Maraba?

8 A. There was a gap of a few weeks.

9 Q. And are you able to say how long before the election it was?

10 A. I would say that this was one month before the elections.

11 Q. And how did you hear about this rally?

12 A. As usual, the announcements were made by vehicles which were circulating
13 with loud speakers.

14 Q. And what did those loud speakers say?

15 A. People were being asked to go and attend that rally in Maraba.

16 Q. Did the announcements say if anyone would be present at the rally?

17 A. The person making the announcement explained that there were people going
18 to come and talk to the public about the electoral procedures and how we were
19 going to vote.

20 MR PUGLIATTI: Your Honours, at this juncture I'd ask to go into private session
21 for just a couple of questions, please.

22 PRESIDING JUDGE EBOE-OSUJI: For how long?

23 MR PUGLIATTI: I envisage it will be shorter than the last private session. It is
24 only one or two questions.

25 PRESIDING JUDGE EBOE-OSUJI: All right. So approximately 2 or 3 minutes.

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- 1 We will go into private session then.
- 2 *(Private session at 3.00 p.m.) (Reclassified as Open session)
- 3 THE COURT OFFICER: (Interpretation) We're in private session, your Honour.
- 4 PRESIDING JUDGE EBOE-OSUJI: Please proceed, Mr Pugliatti.
- 5 Q. Witness, do you know in which district Maraba is?
- 6 A. Maraba is in the district of Tinderet, Tinderet.
- 7 Q. (Redacted)
- 8 A. (Redacted)
- 9 Q. (Redacted)
- 10 A. (Redacted)
- 11 MR PUGLIATTI: Your Honour, we can return to public session.
- 12 PRESIDING JUDGE EBOE-OSUJI: We can go back to public session.
- 13 (Open session at 3.02 p.m.)
- 14 THE COURT OFFICER: (Interpretation) We're in open session, your Honour.
- 15 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, proceed, please.
- 16 MR PUGLIATTI:
- 17 Q. Witness, we're back in open session now, public session. I'd like to ask you,
- 18 could you just describe where in Maraba this rally was taking place?
- 19 A. The rally took place in a compound near the area where there were shops.
- 20 Q. And how many people approximately attended this rally?
- 21 A. A number of individuals attended. There were more than 400 people.
- 22 Q. So would it be correct to say that it was smaller than the rally at Kapchorwa?
- 23 A. Yes, it was different.
- 24 Q. And where were you in the crowd?
- 25 A. I was in the middle of the crowd.

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1 Q. And from your observations from what you saw, what ethnic groups were in
2 the crowd?

3 A. They were -- there were many Kalenjins.

4 Q. Now, do you recall who gave any speeches at this rally?

5 A. There were a number of guests who spoke. Henry Kosgey also spoke during
6 that rally.

7 Q. I'll ask you about that in a moment. I just want to ask you what time did the
8 rally start?

9 A. I can't tell you exactly, but it was during the day.

10 Q. Would you say it was before lunch or after lunch?

11 A. Usually when this kind of rally was convened, we would leave around 9
12 o'clock in the morning or 11 o'clock in the morning. But I don't remember exactly
13 when they arrived. But it was during the day.

14 Q. Now, you told the Court that Henry Kosgey spoke at this rally.

15 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, let's not leave the answer at
16 usually. We want to know what happened on this occasion if the witness can
17 remember.

18 MR PUGLIATTI: Of course, your Honour.

19 Q. Witness, you said that usually you would leave around 9 or 11 o'clock to
20 attend such a rally. Are you able to recall in this instance what time you left to
21 attend this rally?

22 A. Myself, I went, I left at 10 o'clock.

23 MR PUGLIATTI: Just for the transcript, I know it's at line 4 of page 74, what I heard
24 was "Let's not leave the answer," L-E-A-V-E.

25 PRESIDING JUDGE EBOE-OSUJI: Indeed. You're talking about what I said. Yes.

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1 MR PUGLIATTI: Thank you, your Honour.

2 Q. So, Witness, I had asked you about Henry Kosgey speaking at this rally.

3 Were you there when his speech began?

4 A. Yes, I was there.

5 Q. And were you present for Mr Kosgey's entire speech?

6 A. Yes, I was there when he began until he finished. I was still there when he
7 finished.

8 Q. When he began speaking, could you hear him?

9 A. Yes, yes, I heard him speak.

10 Q. Could you hear him well?

11 A. Yes, I heard very well.

12 Q. Could you just explain to the Court how it is that you heard him very well?

13 A. I heard him very well, because he was my MP, and every time he organized a
14 rally, we were there. And we were all pleased. He began speaking. He talked
15 about development.

16 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, next time, let's not ask a witness
17 whether he heard a speaker very well. That's very leading. That sort of question
18 needs to be more open than that.

19 MR PUGLIATTI: Very well.

20 Q. Witness, how far away from Mr Kosgey were you when he was speaking?

21 A. He was not far during this rally. There weren't that many people in
22 attendance.

23 Q. If you can, are you able to estimate approximately how far away from you he
24 was?

25 A. Well, I was about 55 yards, I would say.

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1 Q. Now, when Mr Kosgey started his speech, in which language was he
2 speaking?

3 A. He began his speech in Swahili.

4 Q. And what did he say when he was speaking in Swahili?

5 A. He spoke about development. He said he was going to continue launching
6 his development projects. He had just had a hospital built by the government. He
7 said he was going to come and enlargen this hospital. And he encouraged us to
8 vote all together.

9 Q. Now, was Swahili the only language that Mr Kosgey used in his speech?

10 A. Very often he would finish his words in Kalenjin.

11 Q. Can you tell the Court what you heard Mr Kosgey say when he spoke in
12 Kalenjin?

13 A. He repeated the same statements about the roots and the trees, and that we
14 shouldn't allow the grass to grow into our houses. Those were the statements he
15 would make to conclude his speech.

16 Q. All right. Witness, let's take those one at a time. In Kalenjin, slowly, can
17 you tell the Court first what Mr Kosgey, what you heard Mr Kosgey say about the
18 trees?

19 A. He said: (Speaks Kalenjin)

20 PRESIDING JUDGE EBOE-OSUJI: Can you do it again? I'm sorry about that.

21 THE WITNESS: (Speaks Kalenjin)

22 MR BOSEK: Witness, confirm to this Honourable Court that you have said:

23 "Makimache ketit ne kiibu chumbek."

24 THE WITNESS: (No interpretation)

25 MR BOSEK: Mr President, your Honours --

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1 THE INTERPRETER: "That's correct," says the witness.

2 MR BOSEK: -- he has confirmed Makimache is M-A-K-I-M-A-C-H-E. Ketit is

3 K-E-T-I-T. Ne is N-E. Kiibu is K-I-I-B-U. Chumbek, C-H-U-M-B-E-K.

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

5 MR BOSEK: I'm most obliged, Mr President.

6 MR PUGLIATTI:

7 Q. Witness, as before I will repeat the Kalenjin words. Please listen to me and

8 tell me if those are the correct words. "Makimache ketit ne kiibu chumbek"?

9 A. That's correct.

10 Q. And can you tell the Court what that means in Swahili?

11 A. It means: We do not want the trees that were brought by the white men.

12 Q. Now, Witness, you also said that Mr Kosgey spoke about roots. Again in

13 Kalenjin, please say the words that you heard Mr Kosgey say regarding the roots?

14 A. He used the Kalenjin language.

15 Q. Yes. Can you repeat in Kalenjin what you heard Mr Kosgey say about roots?

16 A. (Speaks Kalenjin)

17 PRESIDING JUDGE EBOE-OSUJI: Witness, I'll request you again to repeat that

18 slowly. Thank you.

19 THE WITNESS: (Speaks Kalenjin)

20 MR BOSEK: Witness, confirm to the Honourable Court that you have said

21 "Kimache kesich kelyek ab ketit."

22 THE WITNESS: (Interpretation) That's correct.

23 MR BOSEK: He said it's correct. Kimache is K-I-M-A-C-H-E. Kesich is

24 K-E-S-I-C-H. Kelyek is K-E-L-Y-E-K. Ab, A-B. Ketit is K-E-T-I-T.

25 PRESIDING JUDGE EBOE-OSUJI: Thank you.

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1 MR BOSEK: I'm much obliged, Mr President.

2 MR PUGLIATTI:

3 Q. Witness, please listen to me repeat those words. "Kimache kesich kelyek ab
4 ketit," is that correct?

5 A. That's correct.

6 Q. And the Swahili meaning is?

7 A. It means: To uproot the trees or to remove the roots of the trees.

8 PRESIDING JUDGE EBOE-OSUJI: Can you repeat that question, Mr Pugliatti?

9 MR PUGLIATTI:

10 Q. Witness, I'm going to ask the question once more.

11 PRESIDING JUDGE EBOE-OSUJI: It gives the sense, it appears to be an infinitive
12 verb. But we want a sentence.

13 MR PUGLIATTI:

14 Q. Witness, can you give the Court the Swahili translation of what you heard?

15 A. It means: He wanted us to remove the roots of those trees.

16 Q. You also told the Court a moment ago, a few moments ago that you heard Mr
17 Kosgey say that "We shouldn't allow the grass to grow into our houses." Just to be
18 clear, was he speaking Kalenjin when he said that?

19 A. Yes, he spoke in the Kalenjin language.

20 Q. So, once again, please repeat the Kalenjin words that you heard Mr Kosgey
21 say slowly and clearly?

22 A. (Speaks Kalenjin)

23 Q. Perhaps just once more so everyone in the courtroom is clear?

24 A. (Speaks Kalenjin)

25 PRESIDING JUDGE EBOE-OSUJI: Mr Bosek.

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1 MR BOSEK: Most obliged.

2 Mr Witness, confirm to this Honourable Court that you have said: "Makimache
3 ometai suswek kolanda agoi got."

4 THE WITNESS: (Interpretation) That's correct.

5 MR BOSEK: Mr President, your Honours, Makimache is M-A-K-I-M-A-C-H-E.

6 Ometai is O-M-E-T-A-I. Suswek, S-U-S-W-E-K. Kolanda, K-O-L-A-N-D-A. Agoi,
7 A-G-O-I. Got, G-O-T.

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

9 MR BOSEK: I'm most obliged, Mr President.

10 MR PUGLIATTI:

11 Q. Witness, I will repeat those Kalenjin words. Please listen carefully.

12 "Makimache Ometai suswek Kolanda agoi got," is that correct?

13 A. That's correct.

14 Q. What does that mean in Swahili?

15 A. Do not let the grass creep into your houses.

16 Q. Okay. So we've spoken about trees, roots, and grass. And you told the
17 Court in your answer a few moments ago that these were the statements that Mr
18 Kosgey would conclude his speech with. Do you recall any other things that Mr
19 Kosgey would have said during his speech?

20 A. After his speech, when he was about to leave, he told us that we should line
21 up, and he was going to give us milk.

22 Q. Did he say anything more in that regard?

23 A. Can you kindly repeat please? I didn't quite understand.

24 Q. When Mr Kosgey told you that he should -- that people should line up, and
25 he was going to give milk, let me ask you first, what language was he speaking?

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- 1 A. He was speaking in Kiswahili.
- 2 Q. Did he say anything further about the milk?
- 3 A. He asked us to vote in uniform.
- 4 Q. And what did you understand that to mean, to vote in uniform, I mean?
- 5 A. Personally I understood that he meant for us to vote in the same way.
- 6 Q. And which way was that?
- 7 A. According to the language they were using, voting in the same way meant
- 8 that since certain duties had been assigned to certain people, he was asking them to
- 9 carry them out in the same way.
- 10 Q. Do you know what those duties were?
- 11 A. At that time I do not know -- I did not know what those tasks or duties were,
- 12 but I ended up realising what they meant later.
- 13 Q. And to be clear so we all understand, what did you end up realising later?
- 14 A. I understood afterwards that this meant driving out the other ethnic groups.
- 15 Q. And which other ethnic groups are you referring to?
- 16 A. The Kisii, the Luo, the Luhya, and the Kikuyu.
- 17 Q. Now, the tasks that had been assigned, who had they been assigned to in
- 18 your understanding?
- 19 A. He was referring to people of the Kalenjin ethnic group.
- 20 Q. Now, this milk, did Mr Kosgey give milk to anybody?
- 21 A. Yes, he gave that milk.
- 22 Q. Now, Witness, did you recognise any other speakers at this rally at Maraba?
- 23 A. There were some of them who made speeches, but I did not recognise them.
- 24 These were guests who had come with him, but I did not know them.
- 25 Q. And just so the Court is clear, was Mr Ruto present at the Maraba rally?

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1 A. Ruto was not there.

2 Q. And, finally, what time did this rally finish?

3 A. I cannot be certain about the time, but it was around 3 p.m.

4 Q. Witness, I'd now like to move to a new topic and talk to you about the rally
5 that you told the Court you attended in Lubuiywo. Was this before or after the
6 rally in Maraba?

7 A. That rally took place after the one in Maraba.

8 Q. If you can, approximately how long after Maraba did the rally at Lubuiywo
9 take place?

10 A. I no longer remember very well, but I know that it was in December.

11 Q. Can you describe for the Court where in Lubuiywo the rally took place?

12 A. There is a field which is surrounded by the shops quite close to the road.

13 Q. And approximately how many people attended this rally?

14 A. There were not many people at that rally. There were about 300 people
15 there.

16 Q. What time did the rally start?

17 A. The rally started during the day, but it did not last as long as the other rallies.
18 It ended at about 12 noon.

19 Q. So would it be fair to say it started in the morning?

20 A. Yes, it was in the morning, because it was not yet midday.

21 Q. And you said it was not very long. Approximately how long did it last?

22 A. About one hour or one and a half hours.

23 Q. And how did you hear that this rally would be taking place?

24 A. As usual, there were announcements.

25 Q. Announcements through what?

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1 A. There were vehicles circulating with a public address system. They made the
2 announcements inviting people to attend the rally.

3 MR PUGLIATTI: Your Honour, request a private session for again just a couple of
4 minutes.

5 PRESIDING JUDGE EBOE-OSUJI: How long? A couple?

6 MR PUGLIATTI: Just a couple of minutes.

7 PRESIDING JUDGE EBOE-OSUJI: All right. A couple, two, three minutes. We
8 will go into private session.

9 *(Private session at 3.44 p.m.) (Reclassified as Open session)

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

11 PRESIDING JUDGE EBOE-OSUJI: Thank you.

12 MR PUGLIATTI:

13 Q. Witness, the Lubuiywo rally, did you go alone or did you go with anybody
14 else?

15 A. I was there with other people.

16 Q. Can you tell the names of the other -- can you tell the Court the names of the
17 other people?

18 A. As usual, I went there with my friends. I was with an old man called (Redacted)
19 (Redacted) as well as my friend (Redacted).

20 Q. Just to be clear, is this the (Redacted) that you spoke about earlier?

21 A. He was a friend. We were always together wherever we went.

22 PRESIDING JUDGE EBOE-OSUJI: Is it the same (Redacted) you went to the
23 Kapchorwa, Kapchorwa rally with you told us about earlier? Is that the same
24 (Redacted)?

25 THE WITNESS: (Interpretation) That is correct.

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1 MR PUGLIATTI:

2 Q. Now, Witness, your friend (Redacted), what is his ethnicity?

3 A. He is a Kalenjin.

4 Q. And what is his occupation?

5 A. He is (Redacted).

6 Q. And how old is (Redacted)?

7 A. He's (Redacted). He's not more than (Redacted).

8 MR PUGLIATTI: Your Honour, that was all I had for the private session.

9 PRESIDING JUDGE EBOE-OSUJI: Where did he live, (Redacted)?

10 THE WITNESS: (Interpretation) He lived in (Redacted).

11 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. We'll go back to public
12 session.

13 (Open session at 3.49 p.m.)

14 THE COURT OFFICER: (Interpretation) Your Honour, we are in open session.

15 PRESIDING JUDGE EBOE-OSUJI: Thank you. Mr Pugliatti, please proceed.

16 MR PUGLIATTI:

17 Q. Now, Witness, were there speeches at the rally at Lubuiywo?

18 A. Yes, there were speeches.

19 Q. And can you recall who gave speeches?

20 A. There were people who addressed the members of the public including our
21 member of parliament.

22 Q. Can you just be specific about who you are referring to as your member of
23 Parliament?

24 A. It was Henry Kosgey.

25 PRESIDING JUDGE EBOE-OSUJI: You mean is that Kosgey was one of the

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1 speakers or he was a member of the public?

2 MR PUGLIATTI:

3 Q. Witness, when you refer to Henry Kosgey, do you mean he was one of the
4 speakers at the rally, or that he was your member of parliament as well as a speaker
5 at the rally?

6 A. He made a speech, because he could not have been present there and not
7 address the members of the public.

8 Q. Now I'm going to ask you in a moment what you heard Mr Kosgey say in his
9 speech, but before I do, is there anybody else you know who gave a speech at this
10 rally?

11 A. (No interpretation)

12 Q. Witness, don't answer that question. And I will rephrase it.
13 Did anybody else give a speech at that rally?

14 A. Yes.

15 MR PUGLIATTI: Your Honours, perhaps private session would be --

16 PRESIDING JUDGE EBOE-OSUJI: Yes, I was going to say that. Private session.

17 *(Private session at 3.53 p.m.) (Reclassified as Open session)

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

19 PRESIDING JUDGE EBOE-OSUJI: Interpreters, the witness had already said
20 something in Kiswahili. Can you please tell us what he had said before Mr Pugliatti
21 intervened to stop it? We want to know whether to instruct that something not be
22 broadcast to the public.

23 THE INTERPRETER: From the Kiswahili booth, maybe the question should be put
24 again to the witness, because the Swahili booth does not remember what the witness
25 said.

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1 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, you have a Swahili interpreter
2 behind you. Can you tell us if there was something the witness has said?

3 MR PUGLIATTI: I will make a quick inquiry if I may turn back.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 MR PUGLIATTI: Alas, no recollection either.

6 MR KIGEN-KATWA: Mr President, I have a recollection myself. The witness
7 started by saying that because the meeting was not widely announced, and then Mr
8 Pugliatti stopped him.

9 PRESIDING JUDGE EBOE-OSUJI: Right. So there was no identifying information
10 was indicated?

11 MR KIGEN-KATWA: None.

12 PRESIDING JUDGE EBOE-OSUJI: All right.

13 MR PUGLIATTI: I'm grateful to my learned friend for that clarification.

14 Q. Witness, I'm going to ask you the question now in private session. (Redacted)
15 (Redacted)

16 A. (Redacted)
17 (Redacted).

18 Q. Do you recall who opened the ceremony -- the rally? I correct myself.

19 A. When they started speaking, sometimes those who had -- those who were
20 taking the floor were stopped. In the final analysis, I do not know where these
21 people came from.

22 MR KIGEN-KATWA: Mr President, could I request that I draw my colleague's
23 attention to line 18 to 19 where it is transcribed that the witness said that (Redacted)
24 (Redacted).

25 Mr President, my understanding is that the witness had said "(Redacted)."

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1 And there is a difference between the use of the word (Redacted) and the description
2 as (Redacted) I would rather that is captured.

3 PRESIDING JUDGE EBOE-OSUJI: All right. Let's repeat the question, yes. Can
4 you?

5 MR PUGLIATTI:

6 Q. Witness, I will repeat the question I just asked. Do you recall who opened
7 the rally?

8 PRESIDING JUDGE EBOE-OSUJI: All right. Let's do it this way. Witness, I want
9 you to think about what you said about (Redacted) when you gave your last answer.
10 What did you -- who did you say he was? The last time you spoke about (Redacted)
11 just a few minutes ago, what did you say (Redacted) was or who did you say he was?

12 THE WITNESS: (Interpretation) He was (Redacted), and he is the (Redacted)
13 (Redacted).

14 PRESIDING JUDGE EBOE-OSUJI: Did you tell us the last time that (Redacted) was
15 an (Redacted)?

16 THE WITNESS: (Interpretation) The person who has spoken -- who had spoken
17 before was (Redacted).

18 PRESIDING JUDGE EBOE-OSUJI: All right. What I want to find out is whether
19 you had called (Redacted) an assistant chief the first time you mentioned his name in
20 this courtroom.

21 THE WITNESS: (Interpretation) (Redacted) is not the assistant chief. He is a
22 (Redacted)

23 PRESIDING JUDGE EBOE-OSUJI: That, we already have. But (Redacted) is the
24 person we are talking about. The first time you mentioned his name in court, did
25 you call him an (Redacted) during that time? We want to make sure we record

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1 correctly what you said.

2 THE WITNESS: (Interpretation) At that time?

3 PRESIDING JUDGE EBOE-OSUJI: The first time you mentioned his name, did you
4 call him an (Redacted) the first time you mentioned his name to us now in court?

5 THE WITNESS: (Interpretation) Yes, I mentioned (Redacted) and said that he was
6 the (Redacted).

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

8 Mr Pugliatti, please proceed.

9 MR PUGLIATTI: Your Honour, I fear if I were to start asking further questions
10 about speeches --

11 PRESIDING JUDGE EBOE-OSUJI: You were going to draw my attention to the
12 clock.

13 MR PUGLIATTI: -- that we might well go past 4 o'clock.

14 PRESIDING JUDGE EBOE-OSUJI: Yes, yes. All right. We will leave it there for
15 today and return on Monday. So you do say you should be done by lunchtime on
16 Monday?

17 MR PUGLIATTI: That's our hope, two sessions.

18 PRESIDING JUDGE EBOE-OSUJI: All right. We will adjourn for the day.

19 Witness, thank you very much. You are still on the stand. We have not finished
20 asking you questions. So on Monday you will come back at 9.30. Mr Pugliatti will
21 finish asking you questions, and then the other lawyers will take their turns asking
22 you questions. So that means you will be still here in The Hague through the
23 weekend. Please do not discuss your testimony with anybody during the weekend.
24 All right?

25 THE WITNESS: (No interpretation)

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- 1 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. We will bring the
- 2 blinds down and escort --
- 3 THE WITNESS: (Interpretation) That's correct.
- 4 PRESIDING JUDGE EBOE-OSUJI: -- and escort the witness from the courtroom.
- 5 *(Closed session at 4.02 p.m.) (Reclassified as Open session)
- 6 THE COURT OFFICER: (Interpretation) We're in closed session, your Honour.
- 7 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 8 (The witness stands down)
- 9 PRESIDING JUDGE EBOE-OSUJI: Court will rise.
- 10 THE COURT OFFICER: All rise.
- 11 (The hearing ends in closed session at 4.03 p.m.)
- 12 RECLASSIFICATION REPORT
- 13 Pursuant Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
- 14 2013, and the instructions in the email dated 14 August 2014, the version of the
- 15 transcript with its redactions becomes Public.