

Trial Hearing
Witness: KEN-OTP-P-0409

(Open Session)

ICC-01/09-01/11

1 International Criminal Court
2 Trial Chamber V(a) - Courtroom 1
3 Situation: Republic of Kenya
4 In the case of the Prosecutor v. William Samoei Ruto and Joshua Arap
5 Sang - ICC-01/09-01/11
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera Carbuccion and Judge Robert
7 Fremr
8 Trial Hearing
9 Tuesday, 25 February 2014
10 (The hearing starts in private session at 9.34 a.m.) * Reclassified as Open session
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.
15 Court officer, please call the case. I think we should do that in open session and
16 then we can go into private session later.
17 Open session at 9.35 a.m.
18 THE COURT OFFICER: (Interpretation) Thank you. The situation in the Republic
19 of Kenya, in the case of The Prosecutor versus William Samoei Ruto and Joshua
20 Arap Sang, ICC-01/09-01/11. We are in open session, your Honour.
21 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. I see that the
22 appearances remain the same and Mr Kigen-Katwa has rejoined us.
23 MR KIGEN-KATWA: Yes, Mr President.
24 PRESIDING JUDGE EBOE-OSUJI: Thank you. We will leave it at that. Now,
25 Prosecutor, I understand there is some issue you want to discuss in closed session?

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1 MR PUGLIATTI: Mr President.

2 PRESIDING JUDGE EBOE-OSUJI: In private session.

3 MR PUGLIATTI: That's correct, Mr President, private session.

4 PRESIDING JUDGE EBOE-OSUJI: All right, we'll go now into private session.

5 (Private session at 9.37 a.m.) * Reclassified as Open session

6 THE COURT OFFICER: (No interpretation)

7 PRESIDING JUDGE EBOE-OSUJI: Yes, Mr Pugliatti, is that you who will be
8 addressing the issue?

9 MR PUGLIATTI: Mr President, yes, I'll be addressing the issue. I'm grateful once
10 again that the Court granted the request for a brief few moments in the absence of
11 the witness. Again, we submit this is a matter that should be done in the absence of
12 the witness.

13 In sum, and as briefly as I can, we received our disclosure yesterday from the
14 Defence from our learned friends, our learned friends for Mr Ruto, and they contain
15 certain items which have caused us a little bit of concern. Now, at the outset I will
16 stress that we're not in any way seeking to insert ourselves into the
17 cross-examination or limit the cross-examination of our learned friends, but the
18 documents are these.

19 The witness at the end of his testimony yesterday gave evidence as regards his

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted) There are many possible scenarios. We don't want to speculate as to

25 what they may be or what the explanation may be, and once again we stress that this

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1 is a matter that is appropriate for the cross-examination. We're not seeking to limit
2 that.

3 What we are concerned about, and we're mindful of Article 68(1) and the need to
4 protect the psychological well-being and dignity and privacy of victims is that the
5 manner is proceeded with in a cautious way that does respect his well-being and his
6 dignity. We've seen yesterday the potential sensitivity of this witness. And we
7 simply ask that the questioning be done in a manner that is respectful of that.

8 And we're also finally, very briefly, just wondering whether, and of course it's a
9 matter for the Chamber, but wondering whether VWU support staff may need to be
10 on standby during the course of this cross-examination for the same reasons. I'm
11 grateful.

12 PRESIDING JUDGE EBOE-OSUJI: Mr Khan?

13 MR KHAN: Mr President, your Honours, I am grateful to my learned friend. He
14 kindly did me the courtesy of intimating before your Honours walked in that he was
15 minded to make the application.

16 I note at the outset that this comes from the Prosecution. There is no suggestion
17 from VWU that there is any unease or sensibility of the witness that requires special
18 care, but your Honours I will leave it to the Bench. If your Honours think that the
19 witness is going to be traumatised, I'll leave it to the Court.

20 I'm not going to intimate now my cross-examination, but suffice it to say, I've said
21 from the outset, the Prosecution are bringing witnesses to this Court who are out to
22 deceive and I'll say no more than that.

23 But as far as the support person, your Honours, I leave it in the Court's hands
24 bearing in mind the Statute and all the other aspects that require consideration.

25 PRESIDING JUDGE EBOE-OSUJI: Thank you.

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1 Mr Nderitu?

2 MR NDERITU: Thank you, Mr President, your Honours. Of course I do share the
3 concerns that have been raised by the Prosecution, and I share the concerns with
4 regard to Article 68 and ensuring the dignity of the witness that is about to continue
5 today. I will say no more than that also. Thank you.

6 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, do you have any comments on
7 this matter?

8 MR KIGEN-KATWA: None. Nothing, your Honours.

9 PRESIDING JUDGE EBOE-OSUJI: All right. We have been seized of the issue and
10 of course we will, we're on guard about that. We also -- as the Chamber, we have
11 an obligation to ensure that the examinations of witnesses are done in an
12 appropriate manner, and we're also mindful of the injunction that the pursuit of
13 evidential matter must be tempered with considerations of prejudice, whether or not
14 the probative value of the evidence being pursued to be established is outweighed
15 by the prejudice, the prejudicial impact of such manner of proceeding, we're aware
16 of that. So with that in mind, you can now proceed.

17 MR PUGLIATTI: Mr President, there was one additional matter that Mr Steynberg
18 wanted to address the Court on regarding the next witness. As this is a private
19 session, if we may take the opportunity if the Court would hear Mr Steynberg for
20 just a few moments regarding the next witness?

21 PRESIDING JUDGE EBOE-OSUJI: All right.

22 MR STEYNBERG: Thank you, your Honours. I can do this at any stage today, but
23 I think the earlier the Court is informed the better.
24 The good news is that the next witness, who will be P-442, (Redacted)
25 (Redacted). So we do have a witness to

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1 continue with this session.

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 We estimate that the witness preparation because of the length and density of her
6 statement will take more than one day. Now, if we proceed on the normal schedule
7 wherein VWU requires us to do this during working days and working hours, that
8 will mean that the witness may not commence before Wednesday, because the
9 witness preparation would run over until Monday, and the 24-hours injunction
10 would mean that we could only start on Wednesday.

11 We are concerned, because this witness implicates both accused, we expect that there
12 will be cross-examination from both sides, we are concerned that we might not then
13 finish this witness in the remaining time of this session, which it seems presents us
14 with a few alternatives: The one would be possibly to extend this session if it was
15 possible, and I don't know what other obligations the parties and the Chamber itself
16 has.

17 The other would be possibly to ask the Defence and the Chamber if they are
18 prepared to waive the 24-hour rule between preparation and the witness
19 commencing her evidence, which would mean we could start on Tuesday.

20 Alternatively, we would seek the Chamber's assistance to instruct the VWU to allow
21 us to finalise the witness preparation on Saturday. I do understand that they have
22 staffing issues that they normally are not willing to do this on the weekend, but in
23 the circumstances, that might be the most realistic and practical solution. I just
24 thought I would bring those matters to your attention.

25 PRESIDING JUDGE EBOE-OSUJI: Regarding the last option you indicated, have

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1 you explored the matter with the Registrar himself with a view to getting that
2 dispensation of the Registry since as you indicated this may be a matter of staffing?

3 MR STEYNBERG: Yes. I have not yet.

4 PRESIDING JUDGE EBOE-OSUJI: Yes.

5 MR STEYNBERG: In fact, I haven't asked the VWU on this occasion whether they
6 would be prepared to make an exception. They have once before with the first
7 witness made an exception, but since then they have not been willing to assist us for
8 one reason or the other.

9 PRESIDING JUDGE EBOE-OSUJI: At this stage I would suggest that you explore it
10 with Mr von Hebel and report back by the end of the day on what you've been able
11 to achieve.

12 MR STEYNBERG: Very well. I'll make sure that's done. Thank you, your
13 Honours.

14 PRESIDING JUDGE EBOE-OSUJI: I wish to say that I used to be a prosecutor at
15 some point and we did prepare witnesses over the weekend in Arusha routinely.

16 MR STEYNBERG: It's not a problem for us. We have been asking this for some
17 time, and we're happy to do so.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you. We will leave it at that for now and
19 bring in the witness on the stand.

20 (Closed session at 9.46 a.m.) * Reclassified as Open session

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

22 PRESIDING JUDGE EBOE-OSUJI: Thank you.

23 Mr Nderitu, while the witness is taking his seat, how much more time do you need?

24 MR NDERITU: Mr President, your Honours, I think that I should be done by about
25 10.20, which is another half-hour. Yesterday I had indicated that I would need

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- 1 about 20 minutes, but I would respectfully want to revise that to half an hour.
- 2 PRESIDING JUDGE EBOE-OSUJI: Try keeping it to the original estimate, if not
- 3 shorter than the original estimate, all right?
- 4 MR NDERITU: Thank you.
- 5 PRESIDING JUDGE EBOE-OSUJI: So we will expect to try and finish sooner than
- 6 20 minutes. Thank you.
- 7 (The witness enters the courtroom)
- 8 PRESIDING JUDGE EBOE-OSUJI: Witness, welcome back to the stand. Mr
- 9 Nderitu will continue questioning you this morning.
- 10 Mr Nderitu, should we go back to open session? I believe that's where we were
- 11 yesterday, or were we in private? Do we proceed in open then?
- 12 MR NDERITU: I think that in view of the fact that when we were dealing with the
- 13 larger piece of land, we were in private --
- 14 PRESIDING JUDGE EBOE-OSUJI: Yes.
- 15 MR NDERITU: -- then even with the smaller piece of land we could remain in
- 16 private.
- 17 PRESIDING JUDGE EBOE-OSUJI: All right.
- 18 MR NDERITU: For the family, questions relating to the family, I think we need to
- 19 remain in private.
- 20 PRESIDING JUDGE EBOE-OSUJI: Right, private.
- 21 MR NDERITU: So it looks like we may have to be in private all through.
- 22 PRESIDING JUDGE EBOE-OSUJI: Private session then. Private session, court
- 23 officer.
- 24 (Private session at 9.48 a.m.) * Reclassified as Open session
- 25 THE COURT OFFICER: (Interpretation) We are in private session, your Honour.

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- 1 PRESIDING JUDGE EBOE-OSUJI: Thank you. Mr Nderitu, please proceed.
- 2 WITNESS: KEN-OTP-P-0409 (On former oath)
- 3 (The witness speaks Swahili)
- 4 QUESTIONED BY MR NDERITU: (Continuing)
- 5 Q. Yes. Good morning, Mr Witness.
- 6 A. I'm well.
- 7 Q. Mr Witness, I hope you are well rested, and I will continue to ask you more
- 8 questions this morning. And I would want us to now turn to the smaller parcel of
- 9 land that is the parcel of land which you told us yesterday was (Redacted) in size. Do
- 10 you understand me?
- 11 A. Yes, I understand.
- 12 Q. Mr Witness, I would want you to tell the Court what sort of farming you
- 13 undertook on this smaller parcel of land.
- 14 A. On that plot of land, well, that plot of land I was using for farming.
- 15 Q. Mr Witness, my question to you was what were you farming on the piece of
- 16 land?
- 17 A. (Redacted)
- 18 Q. And what acreage was (Redacted)?
- 19 A. The entire plot of land, that entire small plot of land was (Redacted).
- 20 Q. So that we understand each other well, would you confirm whether you had
- 21 any homestead on this parcel of land, and if not, would you confirm where your
- 22 homestead was?
- 23 A. There was no house on that plot of land.
- 24 Q. Thank you, Mr Witness. Now, at the time of the post-election violence, and
- 25 here I'm talking about the period December 2007/January 2008, was there (Redacted) that

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1 was growing on this parcel of land?

2 A. I had already harvested.

3 Q. So am I correct to say that the land was lying fallow at that time?

4 A. Exactly.

5 Q. Mr Witness, you did indicate that you left your habitual residence following
6 the violence. And what I would want to understand is whether you were able to
7 continue farming on either of the two parcels of land following the violence.

8 A. Ever since the post-electoral violence, I have not been able to farm those two
9 plots of land.

10 Q. And have you since the violence resided at only one location or in different
11 locations? Would you kindly just confirm where you have resided after the
12 violence?

13 A. I continued to move house.

14 MR PUGLIATTI: I'm sorry to interject. I would just urge a touch of caution about
15 making sure the witness doesn't say where he currently resides.

16 MR NDERITU: Thank you, Mr Pugliatti. That is perfectly in order. I was of
17 course asking about the period after the violence and before -- or the relationship
18 between the witness and the Court, but that's perfectly in order. Thank you.

19 Q. Mr Witness, immediately after -- sorry. Let me take it back.
20 Immediately before the violence, would you just reconfirm that location where you
21 were residing?

22 A. Before the violence, I was living in Nandi.

23 Q. And what about immediately after the violence, where did you relocate to?

24 A. I can't tell you where I'm living now, but I left the Rift Valley area so that I
25 could save my life.

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1 Q. Thank you, Mr Witness. What I am interested in is not where you are
2 currently residing, but where you moved to immediately following the violence,
3 immediately following the violence.

4 A. I haven't understood. Could you ask your question again?

5 Q. Yes, I will take that again, Mr Witness. In January 2008, after having stayed
6 in Nandi Hills, where did you go to stay?

7 A. I left Nandi, and I went to Osta (phon).

8 Q. And what was the distance between the two locations?

9 PRESIDING JUDGE EBOE-OSUJI: Mr Nderitu, can you assist with the spelling of
10 that word?

11 MR NDERITU:

12 Q. Mr Witness, could you repeat the location that you moved to?

13 A. When I left the Rift Valley area, I went to the Western Province.

14 Q. Thank you, Mr Witness. What particular location within Western Province?

15 A. Well, it would be difficult for me to give you the name of the place. I have a
16 particular reason for not giving you the name of the exact location.

17 PRESIDING JUDGE EBOE-OSUJI: Mr Nderitu, do you need the name of the exact
18 location for the line of -- or for your objective?

19 MR NDERITU: Yes, Mr President, just so that we have the two locations on the
20 record and the distance between the locations. Western Province is obviously a
21 very vast area as is the Rift Valley Province. I wanted to very, very closely bring
22 out the actual locations that the witness resided in.

23 PRESIDING JUDGE EBOE-OSUJI: Why?

24 MR NDERITU: That is in line with the next set of questions with regard to his
25 displacement.

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1 PRESIDING JUDGE EBOE-OSUJI: But if what you want to establish is
2 displacement, do you need the exact location to which someone has been displaced
3 to establish displacement?

4 MR NDERITU: Very well, Mr President. I will rephrase and still elicit the
5 questions that I would want to get out of the witness. Thank you.

6 PRESIDING JUDGE EBOE-OSUJI: The point is if the witness is sensitive to giving
7 his precise location, you may consider moving on.

8 MR NDERITU: That's appreciated, Mr President.

9 Q. Mr Witness, what was the distance approximately between the two locations,
10 that is, where you lived immediately before the violence and where you went to live
11 immediately after the violence?

12 A. (Redacted)

13 (Redacted)

14 Q. Thank you, Mr Witness. Now, when did you get married? You gave
15 evidence that you have a wife.

16 A. (Redacted)

17 Q. And did you marry her when you were living in Nandi Hills?

18 A. Yes, I got married when I used to live in Nandi Hills.

19 Q. Thank you, Mr Witness. Now I would want you to very briefly give us the
20 ages of your children. And I'm particularly concerned about any children that you
21 may have had that were of a school-going age. So let me ask you the first question:
22 When was your first child born?

23 A. (Redacted)

24 Q. Now, tell us in chronological order about the year of birth of your subsequent
25 children?

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1 A. I cannot be very specific on that point, but I might be able to find my bearings
2 by looking at or thinking about their names or going by the reference of the eldest.

3 Q. Thank you, Mr Witness. Please go ahead just by recalling their names,
4 would you then say that so and so was born in such and such a year and so on and
5 so forth.

6 PRESIDING JUDGE EBOE-OSUJI: Why don't we do it this way. He said in
7 reference to the age of the first child, he's now indicated that the first child was born
8 in (Redacted). Can you ask him how soon after that the next one was born and so on and
9 so forth?

10 MR NDERITU: Thank you, Mr President.

11 Q. Now, after the first one born in (Redacted), when was the next one born, child
12 number two?

13 PRESIDING JUDGE EBOE-OSUJI: How many years is it?

14 MR NDERITU:

15 Q. How many years later?

16 A. I have already said that I do not have a clear recollection. You see, it is my
17 wife who takes care of the birthdays of the children, but there was not a lot of space
18 between the various births (Redacted)
19 (Redacted), so to speak.

20 Q. How many in all were they as at the time that the violence broke out at the
21 end of the year 2007?

22 A. (Redacted)

23 (Redacted)

24 Q. (Redacted)

25 A. (Redacted)

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1 Q. Thank you, Mr Witness. Now, with regard to (Redacted), I would want you to
2 confirm within which locality they went to school immediately before the violence?

3 THE INTERPRETER: They attended a school which the witness has mentioned, but
4 the interpreter did not grasp. Would the witness be kindly requested to repeat the
5 name of the school?

6 MR NDERITU:

7 Q. Mr Witness, would you kindly repeat the name of the school?

8 THE INTERPRETER: (Redacted) (phon) says the witness.

9 PRESIDING JUDGE EBOE-OSUJI: Mr Nderitu, you have another five minutes.

10 While at it, please, what we have on the record, if we can make it count, your
11 question about the children in school was how many of them were in school and
12 then the answer seems to be "(Redacted)" and we seem to have
13 continued asking or getting answers about those who went to school. Can we clean
14 it up, please?

15 MR NDERITU: Thank you, Mr President.

16 Q. Please confirm that out of the (Redacted)
17 (Redacted)?

18 A. That is correct.

19 PRESIDING JUDGE EBOE-OSUJI: The concern for me is whether we are talking
20 about went to school generally as in received education generally, or were you
21 interested about who were in school at a particular time, at a particular point in time,
22 perhaps during the post-election violence? I didn't know what you are pursuing.
23 That's the point I'm making.

24 MR NDERITU: Thank you, Mr President, your Honours. Just by way of general
25 remarks, the elections, it is within my knowledge that the elections were held at a

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1 time when schools were on vacation. So generally speaking, from that perspective,
2 children would not be in school. That's the context within which I had asked the
3 question.

4 PRESIDING JUDGE EBOE-OSUJI: But what are you trying to elicit from the
5 witness? I mean, the number of children who had received education, is that it?

6 MR NDERITU: That were receiving education as of the time the violence occurred.

7 PRESIDING JUDGE EBOE-OSUJI: All right. And that's what I thought you were
8 pursuing, but we moved from there to people who seem to be children who had
9 gone to school. There may be some confusion there. Let the witness understand
10 that you are trying to find out from him those who were in school at the time, maybe
11 not attending school on the day, but receiving education at the time.

12 MR NDERITU: Thank you, Mr President.

13 Q. Mr Witness, would you confirm that (Redacted) that you have talked
14 about were registered in school at the school that you mentioned, and that logically
15 in January 2008 they would have continued with their schooling?

16 A. Yes, they were expected to continue their education.

17 Q. Thank you, Mr Witness. Now, when they -- when you were, when you were
18 displaced, were they too displaced?

19 A. Yes, all the children were displaced. All the children moved.

20 Q. And is it correct to state that you went with them to the other location that
21 you mentioned in Western Province?

22 A. I went with the children, (Redacted).

23 Q. Thank you, Mr Witness. When you say (Redacted) is that (Redacted)
24 that you said yesterday that (Redacted)?

25 A. Yes.

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1 Q. And with regard to the ones that were expected to continue with schooling in
2 January 2008, did they in fact continue with schooling in January 2008?

3 A. No, they did not.

4 Q. Why were they not -- why did they not continue with schooling in January
5 2008?

6 A. I did not have a stable home from which I would have been able to continue
7 to educate them.

8 Q. And for how long were they not able to continue with being in school?

9 A. For more than one year.

10 Q. Did this have any effect on their academic performance and, if it did, what
11 was the effect?

12 A. They were greatly affected and were often ill or unwell. In fact, what I can
13 say is that they were indeed victims.

14 MR NDERITU: Thank you, Mr Witness.

15 That, Mr President, brings me to an end, unless there are other questions for me?

16 PRESIDING JUDGE EBOE-OSUJI: Yes. Can you -- I'm not sure that I recall in the
17 (Redacted)

18 (Redacted)

19 (Redacted)

20 MR NDERITU: Thank you, Mr President, your Honours.

21 Q. Mr Witness, when you started your testimony regarding the children, you
22 indicated that -- I beg your pardon. Let me take that again.

23 When you started your testimony regarding the children, you indicated that you had
24 mentioned (Redacted)

25 (Redacted). Now, I would want you to inform

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1 this Court about that (Redacted). I hope you do

2 understand me clearly.

3 A. (Redacted).

4 Q. Thank you, Mr Witness.

5 PRESIDING JUDGE EBOE-OSUJI: I think that's it.

6 MR NDERITU: That is it. Thank you.

7 JUDGE FREMR: Mr Witness, I would like to ask you, according to your

8 recollection, did Mr Ruto make any promises at the rallies you had attended, I mean

9 that kind of promise like: People, please vote for me or vote for the ODM, and if I

10 win, I will do something for you. Do you recollect any kind of promises?

11 THE WITNESS: (Interpretation) He did not make any promises whatsoever. He

12 simply said vote for people belonging to the ODM political party.

13 MR KHAN: Mr President, your Honours, I do apologise. I wonder if this could be

14 done in public?

15 (Trial Chamber confers)

16 PRESIDING JUDGE EBOE-OSUJI: Public session then.

17 MR KHAN: I'm most grateful.

18 (Open session at 10.23 a.m.)

19 JUDGE FREMR: Mr Witness, did -- I'm sorry.

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

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

22 Judge Fremr has maybe one or two more questions for you. Just be mindful that

23 we're in open session. Thank you.

24 JUDGE FREMR: Mr Witness, if I understood you well, you didn't like speeches

25 made by Mr Kosgey and Mr Ruto during the rally at Nandi Hills, because they were

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1 hostile to people of your ethnicity, am I correct?

2 THE WITNESS: (Interpretation) Yes, that is true.

3 JUDGE FREMR: Then why did you attend for other rallies even if you knew that
4 the same speakers would speak there again?

5 THE WITNESS: (Interpretation) I continued to attend the rallies because --

6 THE INTERPRETER: The Swahili interpreter did not grasp the last part of the
7 witness's answer.

8 PRESIDING JUDGE EBOE-OSUJI: Witness, the interpreters did not understand
9 your answer. Can you repeat your answer to the Judge's question? And his
10 question was: Why did you continue to attend other rallies when you already
11 heard Mr Kosgey's speech, which you said you did not like, because those speeches
12 were hostile to people of your ethnic group?

13 THE WITNESS: (Interpretation) I continued to attend the rallies, because
14 everybody knew that I was born in Nandi, and that I could not go anywhere else.

15 JUDGE FREMR: Okay, and my last question: Mr Witness, have you noticed at any
16 of those rallies you attended any people from media? I mean people with
17 microphones or with cameras or journalists.

18 THE WITNESS: (Interpretation) I was not very interested in looking out for those
19 types of things. However, when they were delivering their speeches, they used
20 sound equipment.

21 JUDGE FREMR: Thank you very much, Mr Witness.

22 PRESIDING JUDGE EBOE-OSUJI: Thank you, Witness. The next person to ask
23 you questions would be Mr Kigen-Katwa or the lawyer for Mr Sang.

24 QUESTIONED BY MR KIGEN-KATWA:

25 Q. Good morning, Mr Witness.

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1 A. (No interpretation)

2 Q. You have explained that you understand Kalenjin, and I want to ask you a
3 few questions related to your claim to understand Kalenjin. Do you understand,
4 Mr Witness?

5 A. I do understand you clearly.

6 MR KIGEN-KATWA: Mr President, I have one question which I must ask in
7 private session.

8 PRESIDING JUDGE EBOE-OSUJI: We go into private session now, is that your
9 request?

10 MR KIGEN-KATWA: Yes, Mr President, for just one question.

11 PRESIDING JUDGE EBOE-OSUJI: All right. We'll go into private session then.

12 (Private session at 10.28 a.m.) * Reclassified as Open session

13 THE COURT OFFICER: (Interpretation) We're in private session, Mr President.

14 MR KIGEN-KATWA: Mr President, I have about four questions - I said one - and
15 instead of having to go in and out, if I could ask all those questions so that when we
16 come out of the private session I don't need to go back unless I must, with your
17 permission?

18 PRESIDING JUDGE EBOE-OSUJI: I'm sorry, you said what?

19 MR KIGEN-KATWA: Mr President, I said I have one question. I would need to go
20 back about four times to private session to ask another set of questions and, if it is
21 okay, I could ask all the questions so that when we come out we don't need to go
22 back into private session again.

23 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

24 MR KIGEN-KATWA:

25 Q. Now, Mr Witness, you please confirm that you said you left the school at an

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1 early age?

2 A. I was not very young. I was about (Redacted), or thereabouts.

3 Q. And, Mr Witness, at what level of school were you at the moment you left
4 school?

5 A. I was in (Redacted).

6 Q. Now I want to ask you a very different question, Mr Witness. You gave us a
7 list of three friends you said accompanied you to all the five rallies. Do you recall
8 that, Mr Witness?

9 PRESIDING JUDGE EBOE-OSUJI: Did he say there were three friends who
10 accompanied him to all five rallies?

11 MR KIGEN-KATWA: Mr President, my recollection, and that is at page 92 of the
12 transcript of 21 February, page 35, line 12, he said in the first rally he was
13 accompanied by three people, and that they accompanied him to the second and the
14 third rally. But if you would rather, Mr President, I could ask the question
15 differently.

16 Q. Mr Witness, I'll ask you the question again. Is it true that there were three
17 particular friends you had who accompanied you to a couple of the five meetings
18 you've mentioned?

19 A. Yes, I remember them.

20 Q. And, Mr Witness, could you confirm that their names are (Redacted)
21 (Redacted)?

22 A. That's them.

23 MR KIGEN-KATWA: I apologise to the translator. Sorry.

24 Q. Now, Mr Witness, if you could confirm to the Court if they accompanied you
25 to each of the following meetings: The first meeting is the meeting of Nandi Hills.

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1 Could you confirm if they did accompany you, the three of them?

2 A. We were going to all the meetings together -- correction -- to all the rallies
3 together.

4 Q. Thank you, Mr Witness. Then I don't need to go through the list. But just so
5 that I'm sure, Mr Witness, you are saying they accompanied you to the rally in
6 Nandi Hills, in Kapchorwa, in Maraba, in Labuiywo and in Meteitei?

7 A. Yes, that's right.

8 Q. And, Mr Witness, the last question I want to ask you related to that item is
9 could you confirm that all these three individuals are not Kalenjins -- sorry, are not
10 Luhyas?

11 A. No, they aren't. They are not from the Luhya ethnic group.

12 Q. And, Mr Witness, did you also say that you were accompanied by one Mr
13 (Redacted)?

14 A. (No interpretation)

15 Q. And this additional individual --

16 A. Yes.

17 Q. I apologise for that. Mr Witness, could you also confirm that (Redacted)
18 was with you in all the five rallies?

19 A. Not all five rallies.

20 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, let's be careful with the
21 transcript, and not in substance. When you apologise, later on somebody reading
22 the transcript may not know that you were apologising because of the overlapping
23 speaking, so that if it is not necessary to interject that sort of thing on the record, it's
24 even better, we understand. Thanks.

25 MR KIGEN-KATWA: I appreciate, Mr President.

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1 Q. Now, Mr Witness, in these rallies, could you confirm that there were other
2 people of Luhya ethnicity attending the five rallies?

3 A. Yes.

4 Q. And not only Luhyas, but also individuals of other tribes other than Kalenjin,
5 including Kikuyu, Luos, Kisiis and Kambas?

6 A. Yes, that's right.

7 Q. Now, Mr Witness, how many meetings did you attend with Mr (Redacted)?

8 A. There was one rally that we went to with him.

9 Q. And the rallies, Mr Witness, just to remind you so that you pick the one that
10 you said you went with him are the rally in Nandi Hills, Kapchorwa, Maraba,
11 Labuiwyo and Meteitei. Which one did you go with him?

12 A. I was with him at a rally. I don't remember very well, but it must have been
13 Labuiywo rally or the one at Meteitei.

14 Q. And, Mr Witness, you confirmed for the record that Mr (Redacted) is also a
15 Kalenjin?

16 A. No, he is (Redacted). He is from (Redacted) ethnic group, even though he
17 does have a Kalenjin name.

18 Q. And Mr -- the name (Redacted) is that his official name, or is that a
19 nickname?

20 A. The name that I know him by -- well, I know that his name is (Redacted) and his
21 father was (Redacted).

22 Q. Mr Witness, just answer the question. Even if you don't know, just say you
23 do not know. Are the names (Redacted) his official names, or they are nicknames,
24 or could it be that you do not know whether they are official?

25 A. It's his official name.

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1 Q. Thank you, Mr Witness. And could you in that case then confirm that in fact
2 the name "(Redacted)" is a Kalenjin name, and that in fact for emphasis, it is not a
3 (Redacted) name?

4 A. Yes, it is a name that comes from the Kalenjin ethnic group.

5 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, can you spell (Redacted)? I
6 think you might have pronounced it differently from -- it doesn't matter anyway.
7 Just the spelling of the word, however it is pronounced.

8 MR KIGEN-KATWA: The spelling of the word (Redacted)

9 PRESIDING JUDGE EBOE-OSUJI: Thank you.

10 MR KIGEN-KATWA:

11 Q. And, Mr Witness, you confirm that (Redacted) is a sub-tribe of the Luhya
12 community, isn't it?

13 A. Yes, that's right.

14 Q. Now, Mr Witness, I want to ask you a question which is not something I've
15 laid basis for but I'll come back to being this, you said you had lived in (Redacted) for
16 how many years?

17 A. I lived there ever since I was a child.

18 Q. Do we know, were you born there and, if not, at what age approximately
19 what age was it that you came there?

20 A. That is where I was born.

21 Q. Now, Mr Witness, you have met -- the issue of your family has come up in the
22 course of this trial, and the issue has been more in terms of your immediate and
23 nuclear family in terms of your wife and children. I want to ask you a different
24 question. Could you tell the Court how many brothers and how many sisters you
25 have and if they were born at (Redacted)?

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1 A. (Redacted).

2 Q. (Redacted)

3 (Redacted)?

4 A. (Redacted).

5 Q. (Redacted)

6 A. (Redacted).

7 Q. (Redacted)

8 A. (Redacted)

9 Q. Now, I know the translation says (Redacted) but I'll ask you, Witness,
10 because I didn't hear you say that, (Redacted)

11 (Redacted)?

12 A. (Redacted)

13 (Redacted).

14 Q. And, Mr Witness, could you confirm that they are still in the neighbourhood
15 of (Redacted) where you used to live?

16 A. No, in actual fact each person lives in his own particular place.

17 Q. Okay. I apologise, Mr Witness, for suggesting that they live in (Redacted).
18 Could I ask you, (Redacted)?

19 A. (Redacted)

20 Q. (Redacted)?

21 A. (Redacted).

22 Q. Then we go back to the first question I asked you, Mr Witness, which was,
23 isn't it true that (Redacted) as we
24 speak now?

25 A. I'm not in a position to know about that. (Redacted)

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1 (Redacted).

2 Q. Mr Witness, just for the record, could you confirm that (Redacted)

3 (Redacted) are in Nandi Hills, former Nandi Hills district and the current Nandi Hills
4 county?

5 A. That's right.

6 Q. Now, Mr Witness, you've told us about (Redacted)

7 (Redacted)?

8 A. I'm not in a position to know that and I really can't confirm whether or not
9 (Redacted)

10 Q. Mr Witness, is it true that you're (Redacted)?

11 A. Yes, that's right. (Redacted)

12 Q. And it is your testimony that notwithstanding being (Redacted), you do not
13 know (Redacted)?

14 A. After the end of the conflict each person went about his or her own particular
15 business.

16 Q. And when you talk of the violence you're talking of the violence in the year
17 2007, which is seven years ago?

18 A. Yes.

19 Q. Lastly on that issue, Mr Witness, could you confirm that in fact you also do
20 not know the whereabouts of your father?

21 A. I do know where my father is, but I can't tell you that.

22 Q. Now, Mr Witness, for the last two questions I want to ask you, the last subject
23 I want to ask you in private session is the issue of your livelihood at (Redacted) when
24 you are there. You said you had two parcels of land in (Redacted), didn't you?

25 A. I said that I had a plot of land in (Redacted)

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1 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, before we pursue the matter
2 of the plots of land, can we clarify why we brought the father in. The witness had
3 said yes, he knows where his father is, but he can't tell you that.

4 I suppose your proposition or the reason you brought in the question would be
5 whether or not the father still lives in or if he ever lived in Nandi Hills. I believe
6 you can pursue that, not in terms of finding out precisely where he lives, but
7 whether or not he lives in the area.

8 MR KIGEN-KATWA: In a certain way which will become apparent later on, Mr
9 President, my question relating to his properties in that neighbourhood are tied with
10 his father in terms of that timeframe.

11 Q. Mr Witness, did you say you had one parcel in (Redacted) and another in
12 (Redacted), or am I mistaken?

13 A. You are correct.

14 Q. Just for the record and particularly for the Prosecution, I'm referring to the
15 transcript of the 21 February at page 39, line 19 to 25.

16 Now, Mr Witness, you said on 21st you had two parcels. This morning I asked you,
17 you said one parcel. Could you tell the Court for proper record how many parcels
18 of land you had, if any?

19 A. To my knowledge, I have two plots of land.

20 Q. And the two plots are one in (Redacted) and one in (Redacted)?

21 A. Yes.

22 Q. And, Mr Witness, could you confirm whether these parcels -- you used the
23 word that they were your farms. Could I just get confirmation from you whether
24 they were in fact yours or they were -- they belonged to somebody else who gave
25 you permission to use them?

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- 1 A. They are my plots of land.
- 2 Q. (Redacted)
- 3 (Redacted)?
- 4 A. (Redacted).
- 5 Q. (Redacted)?
- 6 A. (Redacted).
- 7 Q. (Redacted)?
- 8 A. (Redacted).
- 9 Q. (Redacted)
- 10 (Redacted)
- 11 A. (Redacted).
- 12 Q. (Redacted)
- 13 (Redacted)?
- 14 A. (Redacted)
- 15 (Redacted).
- 16 Q. Mr Witness, just clarify for the Court, you said that it (Redacted)
- 17 (Redacted)?
- 18 A. (Redacted)
- 19 Q. (Redacted)
- 20 A. (Redacted)
- 21 Q. Mr Witness, before we go for break, and I'll come back to the question, the
- 22 answer you have just given, it is true therefore that in the year 2007, your father was
- 23 staying in the (Redacted) area, isn't it?
- 24 A. No.
- 25 Q. Where was your father staying?

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1 A. (Redacted)

2 Q. And (Redacted) is in the same constituency you're in and in the same Nandi
3 county, which was previously Nandi district?

4 A. Yes, that's right.

5 MR KIGEN-KATWA: Mr President, I see the time, but could I just ask one
6 question?

7 Q. Mr Witness, I just want the record to be clear, when I asked you the question
8 as to (Redacted)

9 (Redacted)

10 (Redacted)

11 A. Yes, that's what I said.

12 MR KIGEN-KATWA: Mr President, the translation had said it was given. I just
13 wanted to emphasise the distinction between (Redacted)

14 Q. Mr Witness, one last question on that point, much as you said (Redacted),
15 it is true that your father is still alive, isn't it?

16 A. My father is still alive, (Redacted).

17 MR KIGEN-KATWA: Mr President, I'm in a position to continue subject to, I can
18 see the time.

19 (Trial Chamber confers)

20 PRESIDING JUDGE EBOE-OSUJI: How long do you think -- I've noticed I forgot to
21 switch off my microphone. How long do you think it would take you to finish this
22 line of question?

23 MR KIGEN-KATWA: Mr President, in terms of going to public?

24 PRESIDING JUDGE EBOE-OSUJI: No, no, no. You were asking questions, are you
25 done with the father and where the father was living at the time?

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1 MR KIGEN-KATWA: Yes. I just want to put one proposition to him, and if it's
2 okay with the Court I could put that proposition even now and then close that issue.

3 PRESIDING JUDGE EBOE-OSUJI: Yes. So we just want you to wrap up the
4 question about where the father was living or where the father is living and then we
5 can adjourn, but we don't want to take too much time doing that. Do you think you
6 can wrap it up in the next two/three minutes?

7 MR KIGEN-KATWA: Yes, I could, Mr President.

8 PRESIDING JUDGE EBOE-OSUJI: All right then.

9 MR KIGEN-KATWA:

10 Q. Mr Witness, I want to put it to you that (Redacted)
11 (Redacted) where they were living in in the period of 2007-2008
12 election period, is that true?

13 PRESIDING JUDGE EBOE-OSUJI: Can you rephrase? The word (Redacted) is
14 confusing even for me.

15 MR KIGEN-KATWA:

16 Q. Mr Witness, I put it to you that (Redacted) did not move away from where
17 they were staying in the period 2007-2008 election period?

18 A. I think that I explained to you that each person was trying to save his skin,
19 and each person was trying to find some sort of place to take refuge, a place where
20 they could be safe.

21 Q. I understand that, Mr Witness, but let me put it differently. You wouldn't
22 know whether (Redacted) around the period of elections
23 and the period shortly thereafter, you didn't know (Redacted) would
24 you?

25 A. (Redacted)

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1 (Redacted)

2 Q. (Redacted)

3 (Redacted)

4 (Redacted)

5 A. (Redacted)

6 (Redacted).

7 MR KIGEN-KATWA: I would like to leave those issues there, Mr President.

8 PRESIDING JUDGE EBOE-OSUJI: We will leave it there, and then we will take our
9 morning break now. We will come back at 11.40. We will now bring down the
10 blinds and excuse the witness.

11 (Closed session at 11.07 a.m.) * Reclassified as Open session

12 THE COURT OFFICER: (Interpretation) We are in closed session, your Honour.
13 (The witness stands down)

14 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

15 THE COURT OFFICER: All rise.

16 (Recess taken at 11.07 a.m.)

17 *(Upon resuming in private session at 11.42 a.m.) Reclassified as Open session

18 THE COURT USHER: All rise.

19 Please be seated.

20 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. And, Witness, welcome
21 back.

22 Mr Kigen-Katwa, we are in private session. Should we remain?

23 MR KIGEN-KATWA: Just to explain one thing to the witness, then we can go to the
24 open, Mr President.

25 Q. Mr Witness, we will now go to the open session, and whenever I make

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1 reference to your friends, I want you to understand that the friends I'm referring to
2 are (Redacted). Do you understand?

3 A. Yes, I understand.

4 PRESIDING JUDGE EBOE-OSUJI: And what Mr Kigen-Katwa is telling you is that
5 there is no need for you to mention their names in public, because we're going
6 outside to the public session.

7 MR KIGEN-KATWA: Mr President, I request that we go to public session.

8 PRESIDING JUDGE EBOE-OSUJI: Public session now.

9 (Open session at 11.45 a.m.)

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

11 PRESIDING JUDGE EBOE-OSUJI: Thank you.

12 Mr Kigen-Katwa.

13 MR KIGEN-KATWA:

14 Q. Mr Witness --

15 PRESIDING JUDGE EBOE-OSUJI: Before you continue, how much longer do you
16 expect to remain with the witness? I know you've just started.

17 MR KIGEN-KATWA: Mr President, it is most unlikely that I will go beyond this
18 session. I might even be shorter than that, but at --

19 PRESIDING JUDGE EBOE-OSUJI: All right.

20 MR KIGEN-KATWA: Yes.

21 PRESIDING JUDGE EBOE-OSUJI: Please proceed.

22 MR KIGEN-KATWA:

23 Q. Mr Witness, could you confirm to the Court that your knowledge of Kalenjin
24 is a process that you undertook on your own?

25 A. Yes.

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1 Q. Mr Witness, just for avoidance of any doubt, you did not go to any
2 programme or any training or any learning to know Kalenjin, isn't it?

3 A. No.

4 Q. Mr Witness, you are not the only person who is not a Kalenjin but
5 understands Kalenjin, isn't it?

6 PRESIDING JUDGE EBOE-OSUJI: Counsel, I'm not sure where that sort of
7 question comes in.

8 MR KIGEN-KATWA: Mr President, I can rephrase the question. I appreciate also.

9 Q. Mr Witness, could you confirm that you know other people who whereas
10 they are not Kalenjins do understand Kalenjin in the neighbourhood of where you
11 used to live?

12 A. Yes.

13 Q. Mr Witness, you used five phrases that you said were used variously by
14 Mr Ruto and Mr Kosgey. Could you confirm that in all those rallies there was no
15 prohibition to anybody to attend those rallies?

16 A. Everyone was allowed to attend those rallies.

17 Q. Now, Mr Witness, before I go to the specific phrases used, I want to ask you
18 two related questions. Other than the people who I asked you in private sessions,
19 and whom I don't want you to refer, are you aware of other people who have -- who
20 are -- who belong to different tribes but have married Kalenjins?

21 A. Yes. Such people do exist.

22 Q. Could you also confirm, Mr Witness, that apart from yourself, in the sense
23 that you had friends who were Kalenjins, you know of other people who belong to
24 different tribes but had Kalenjin friends?

25 A. Yes, those people do exist.

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1 Q. Now, Mr Witness, I want to take you to the specific words you said were used
2 in the various rallies. You said words to this effect were used, "Makimache ketit ne
3 kiibu chumbek." Is that what you said, Mr Witness?

4 A. Yes.

5 Q. And for the public you understood that to mean that "We do not want trees
6 brought by white men," isn't it?

7 A. That's right.

8 Q. Now, Mr Witness, you gave us five rallies you said you attended: Nandi
9 Hills, Kapchorwa, Maraba, Labuiywo and Meteitei. Could you confirm if this first
10 phrase was used in virtually all the five rallies?

11 A. Yes.

12 Q. Mr Witness, the second phrase that you said was used was kimache kesich
13 ketit -- "kesich ketit tugul ne kiibu chumbek." Is that what you said?

14 A. Repeat your question.

15 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, the Kalenjin phrase, you
16 might want to take them slowly. I know that a number of them have already been
17 spelled repeatedly thanks to Mr Bosek who assisted us and by now the court
18 reporters would have created their dictionaries for them, but it will still assist for
19 you to go slow with those phrases so that the court reporters can also pull them up.
20 If there is any difficulty with the spelling, then you may have to respell.

21 MR KIGEN-KATWA: Mr President, I will assume I don't need to spell unless I'm
22 told to spell, but I will say them slowly, as you say.

23 Q. Now, Mr Witness, I was telling you that the second phrase that was
24 said -- that you said was used were to this effect, "Kimache kesich ketit tugul ne
25 kiibu chumbek."

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1 MR KIGEN-KATWA: And that is in transcript 91 of 20 February 2014 at page 68 to
2 71.

3 Q. Are those are the words that you said were used, Mr Witness?

4 PRESIDING JUDGE EBOE-OSUJI: I think the word -- you might have uttered a
5 new one. I don't recall the "tugul". I don't know if that's of significance to your
6 questioning, and if you see there's a gap in the transcript and that's where my own
7 gap comes in as well in my notes. You might have put in a new word.

8 MR KIGEN-KATWA: Mr President, well, it is in the transcript, but I can -- I
9 can -- may I explain that some of these phrases are not exactly in each of the rallies,
10 according to the witness, but I'm giving the general statement that he gave. I can
11 put the question to him excluding the word that has been implicated.

12 PRESIDING JUDGE EBOE-OSUJI: There was a reason why we went through the
13 laborious process of getting all the words repeatedly every time without
14 abbreviating that process, if you'll recall, because Mr Khan has insisted we need to
15 get the exact words. So if we went through that process of getting the exact words,
16 we don't now -- we do not want to paraphrase. We want to use the exact words all
17 through.

18 MR PUGLIATTI: Mr President, I'm sorry to rise. If I could also just make a kind
19 request then when references are given, transcript references, we're told not just a
20 page or a set of pages but the page and the line and, in addition, whether it's the
21 real-time or the edited because these all assist us and others in the court, I believe.

22 PRESIDING JUDGE EBOE-OSUJI: Please keep that in mind, Mr Kigen-Katwa, if
23 you can that is.

24 MR KIGEN-KATWA:

25 Q. Mr Witness, I will read the words again.

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1 MR KIGEN-KATWA: And for the rest of the Court it is transcript 91 of 20 February
2 2014 at page 68 to 71.

3 Q. Mr Witness, I will read what it is captured as being what you said, "Kimache
4 kesich ketit ne kiibu chumbek." Is that what you said, Mr Witness?

5 A. That's right.

6 Q. And, Mr Witness, you explained that what that meant to you was that "We
7 should remove all trees that were brought by white people"?

8 A. That's what you say in Kalenjin, but your translation is different.

9 Q. Mr Witness, did you explain to us what you understood those words to
10 mean?

11 A. What you said in Kalenjin is correct, but the translation that you've given is
12 different.

13 Q. Mr Witness, let me give you the opportunity to restate what you had said
14 when you were explaining your understanding of that phrase. Please tell us
15 how -- what you understood.

16 A. You -- what you said was correct, but when you put the question to me, you
17 said "cut down the trees." That's different. In Kalenjin it is something different.

18 PRESIDING JUDGE EBOE-OSUJI: Can you tell us what it is?

19 THE WITNESS: (Interpretation) Yes, in Swahili that sentence means that "We are
20 going to uproot the trees."

21 MR KIGEN-KATWA:

22 Q. Thank you, Mr Witness. The third expression that you said was used in
23 these meetings is --

24 PRESIDING JUDGE EBOE-OSUJI: Before you proceed, please. Mr Kigen-Katwa,
25 one second.

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1 Witness, are you saying that your evidence is not that the words mean "cut down the
2 trees"? What it means, rather, is "uproot the trees"?

3 THE WITNESS: (Interpretation) That's right.

4 PRESIDING JUDGE EBOE-OSUJI: Please proceed, Mr Kigen-Katwa.

5 MR KIGEN-KATWA:

6 Q. And, Mr Witness, would you confirm that this expression was used in all the
7 five rallies at Nandi Hills, Kapchorwa, Maraba, Labuiywo and Meteitei?

8 A. Yes, those words were used at all the meetings -- all the rallies.

9 Q. Mr Witness, the third expression that you used is, "Ometai suswek kolanda
10 agoi got." Is that correct, Mr Witness?

11 A. (No interpretation)

12 MR KIGEN-KATWA: For my learned colleagues at the Prosecution it is transcript
13 91 of 20 February 2014, page 71 to 73.

14 Q. And, Mr Witness, did you explain that you understood it to mean that "You
15 should not allow grass to grow into your houses"?

16 MR PUGLIATTI: I'm sorry to interrupt. Just in terms of making sure that the
17 record is correct, if it's the real-time, or rather the edited version, the witness's
18 answer in the Swahili to that Kalenjin phrase was a little bit different --

19 PRESIDING JUDGE EBOE-OSUJI: Okay. Wait, wait. Let's --

20 MR PUGLIATTI: -- than what was put to the witness.

21 PRESIDING JUDGE EBOE-OSUJI: Yes. Let's have him -- we don't want you
22 giving him what he said. Let's have him do it. If there's difficulty, then we will try
23 and resolve it.

24 My worry was whether the words in the phrase are complete.

25 MR KIGEN-KATWA: And, Mr President, I am not using verbatim the way it's

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1 captured in the transcript as his translation for his understanding of it. I'm just
2 rephrasing them and it is open for him to either confirm or adjust it as he wishes.
3 PRESIDING JUDGE EBOE-OSUJI: Let's use the verbatim phrase that he used as he
4 used them. Again, we spelled I think at least ten times, maybe that's an
5 exaggeration, but something close to it, for the five rallies. I think about ten times.
6 So let us use the precise phrase we already have on the transcript. You can ask him
7 questions about interpretation or his understanding of what they mean.
8 MR KIGEN-KATWA: Mr President, that's exactly what I'm doing. In terms of the
9 Kalenjin words I'm sticking to what is there, but in terms of interpretation I'm
10 rephrasing them.
11 MR PUGLIATTI: Mr President, if I may, there's a step that comes in between the
12 Kalenjin words and the interpretation -- the witness's interpretation and that's what
13 the Swahili record states.
14 Now, if my learned friend is going to put what the witness said in the
15 examination-in-chief what that meant in Swahili, we would request that what is
16 captured in the official court records is what is put to the witness.
17 We're at page 71 -- 72 I believe now of the transcript, and what my learned friend
18 said to the witness that he said was the Swahili meaning of this phrase is slightly
19 different, and we'd like it to be what's recorded.
20 PRESIDING JUDGE EBOE-OSUJI: Let's proceed this way: Let's get the precise
21 words first. And I believe, Mr Kigen-Katwa, there's another word that's missing. I
22 don't think the phrase began with "ometai". There might have been "makimache"
23 there and then the entire phrase comes in, because the witness repeated I believe the
24 same phrase.
25 Now, Mr Pugliatti, counsel is free to ask the witness afresh for his understanding of

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1 it.

2 MR PUGLIATTI: Your Honour, there's no dispute to that whatsoever. It's just, for
3 the record, when matters are put to what the witness -- when counsel says, "You said
4 X, Y, Z," that it's correct vis-à-vis the Swahili.

5 PRESIDING JUDGE EBOE-OSUJI: It's a matter of, Mr Kigen-Katwa, how you
6 phrase your question about interpretation. You're free to ask him, "What do you
7 understand it means?", or "What do you say it means?" Mr Pugliatti is saying if
8 you're going to say, "You said it means X," then you need to put "X" precisely as he
9 had said it on the record. And that's the question separate from you asking him
10 afresh, asking afresh what he understood the phrase to mean.

11 MR KIGEN-KATWA: Mr President, of course I think one of the things we must
12 acknowledge is that the words used in the various places are not exactly the same,
13 but when I am quoting him, I will quote him with reference to the transcript exactly
14 what he said.

15 PRESIDING JUDGE EBOE-OSUJI: All right.

16 MR KIGEN-KATWA: And I would like to put the question again to the witness.

17 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

18 MR KIGEN-KATWA: I would like to use the words he used in transcript 92 of 21
19 February 2014, lines 62 to 63. Sorry, I will say that again. Transcript 92 of 21
20 February 2014, page 62, line 4 to page 63, line 6.

21 Q. And, Mr Witness, this is what I heard you to have said, "Makimache ometai
22 suswek kolanda agoi got." Is that right, Mr Witness?

23 A. That is correct.

24 Q. And, Mr Witness, I understood you to have explained that to the effect that
25 "You should not allow grass to creep up to your house." Is that what you said?

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1 A. Yes.

2 Q. And, Mr Witness, could you confirm if this phrase was used in all the five
3 rallies?

4 A. Yes, that sentence was used in all the rallies.

5 Q. My question, Mr Witness, is not whether it was used in all the rallies.
6 Rather, it was whether it was used in all the five rallies that you attended. Your
7 answer is that it was used in all the five rallies that you attended, Mr Witness, isn't
8 it?

9 A. Yes.

10 Q. Mr Witness, the fourth expression that you said was used was, "Kimache oai
11 kazit ne kiagonin." Is that correct?

12 A. Can you repeat, please.

13 MR KIGEN-KATWA: Your Honours and the Prosecution, that is at transcript 92 of
14 21 February 2014, page 26, line 12 to page 29, line 18.

15 Q. And, Mr Witness, this is what I understood you to have said, "Kimache oai
16 kazit komye ne kiagonin."

17 A. That is correct.

18 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, I will ask you to spell those
19 phrases or the words in the phrase.

20 MR KIGEN-KATWA: Mr President, the first word "kimache" is

21 K -- K-I-M-A-C-H-E. The second word is O-A-I. The third word is K-A-Z-I-T.

22 The next word is K-O-M-Y-E. The next is N-E. And the last one is

23 K-I-A-G-O-N-I-N.

24 PRESIDING JUDGE EBOE-OSUJI: Thank you.

25 MR KIGEN-KATWA:

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1 Q. Mr Witness, you explained that to mean that you were being asked -- or the
2 audience were being asked to do the work according to the instructions given to
3 them?

4 MR PUGLIATTI: I'm sorry. I'm rising again about the way that's been put. I
5 have the transcript that my learned friend is referring to, which is page 28 of the
6 real-time transcript for 21 February, T-92, and it's lines 18 to 20 where the witness is
7 asked that question and his answer to what that means in Swahili is fundamentally
8 not what my learned friend has just put to the witness as what he said.

9 PRESIDING JUDGE EBOE-OSUJI: All right. Mr Kigen-Katwa, can you ask him
10 what he says the phrase means.

11 MR KIGEN-KATWA: I will ask him that way, Mr President, but I was very careful
12 with my question. I asked him, "You explained that to mean you are being
13 asked -- or the audience were being asked to do the work according to instructions
14 given to them?"

15 PRESIDING JUDGE EBOE-OSUJI: You can ask him -- put it with that is what it
16 means, whether or not he said that before. You can ask him does this -- "According
17 to your understanding, does it mean this?"

18 MR KIGEN-KATWA: Of course, Mr President. The next line of my
19 cross-examination would be based on the explanation he gave to the Prosecution
20 with liberty to him -- with liberty for him to change what he had said, and so -- well,
21 I can put it the way your Honours are suggesting.

22 Q. Mr Witness, I put it to you that according to you, that meant that the audience
23 were being to do some work they had been given according to instructions?

24 A. I cannot say that it was all those in attendance who were concerned with this
25 who were involved in this. Part of -- some of the members of the public were not

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1 involved or concerned by that statement.

2 Q. By those -- for those who were involved, Mr Witness, it meant that they were
3 being asked to do the work that they had been given according to the instructions
4 given to them, isn't it?

5 A. Yes.

6 Q. And, Mr Witness, this statement was used in all the five rallies also?

7 A. Yes.

8 Q. Mr Witness, the last phrase that you said was used is found in transcript 92 of
9 21 February 2014, page 30, line 20 to page 36, line 9. And according to my
10 recollection, Mr Witness, this is what you said, "Makimache chito netinyei ngoroik
11 aeng."

12 A. That is correct.

13 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, can you spell?

14 MR KIGEN-KATWA: Yes, Mr President. The first word is M-A-K-I-M-A-C-H-E.
15 The next word is C-H-I-T-O. The next word is N-E-T-I-N-Y-E-I, then
16 N-G-O-R-O-I-K and then A-E-N-G.

17 Q. Mr Witness, you -- did you say that that meant that "We do not want
18 madoadoa"?

19 A. That is correct.

20 Q. You also said that it meant that we do not want people wearing two different
21 pieces of clothes?

22 A. Correct.

23 Q. Mr Witness, was this expression used in all the five rallies you attended?

24 A. Yes, that sentence was used.

25 Q. Now, Mr Witness, I have taken you through the five expressions used which

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1 you said were used in all the five rallies. The first question I want to ask you is are
2 those the exact words that were used or have you rearranged the order of the words?

3 A. This is how the words were used.

4 Q. My emphasis, Mr Witness, is whether those are the words -- the exact words
5 used or could it be that, using your recollection, you have attempted to reconstruct
6 them?

7 A. Those were the words that were used.

8 Q. Just for emphasis, Mr Witness, I want you to remember that you are talking of
9 what happened in the year 2007 and you are testifying now approximately seven
10 years down the line. It remains your testimony that those were the exact words
11 used seven years ago?

12 A. Those were the words that were used because they stuck in my mind.

13 Q. Mr Witness, I will try to rephrase what you've just -- your answer, then you
14 confirm if that's how -- if I understood you correct.

15 You are saying those are the exact words that were used seven years ago, and you
16 remember them because they were very significant and stuck in your mind?

17 A. That is what I said.

18 Q. And in all the five instances, Mr Witness, the arrangement was that Mr Henry
19 Kosgey would say them and then Mr Ruto would come thereafter and say them
20 exactly the same way in all the five rallies?

21 PRESIDING JUDGE EBOE-OSUJI: He didn't say Mr Ruto was in all the five rallies,
22 did he?

23 MR PUGLIATTI: Not -- not by a long way, your Honour.

24 MR KIGEN-KATWA:

25 Q. Mr Witness --

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1 MR KIGEN-KATWA: It was three rallies, Mr President. I will put the question
2 again.

3 Q. Mr Witness, in the three rallies that you said Mr Ruto attended, it is your
4 testimony that in each of those instances Mr Kosgey would take the initiative of
5 saying them and Mr Ruto would come back and say them exactly the same way?

6 A. Yes, because whenever Kosgey attended a rally, he spoke about that. He did
7 not miss any rally because he was the secretary-general of the party.

8 Q. Now, Mr Witness, I want to make reference to the third phrase that we've
9 gone through, being this, "Makimache ometai suswek kolanda agoi got."

10 A. That is correct.

11 Q. Mr Witness, the word you have used from Kalenjin is "suswek", isn't it?

12 A. Yes.

13 Q. Or more specifically, Mr Witness, it is your testimony that what you heard at
14 those meetings was "suswek"? S-U-S-W-E-K, isn't it?

15 A. Yes.

16 Q. Mr Witness, to the extent to which you say you understand Kalenjin, could
17 you confirm that that word "suswek" means "grass"?

18 A. Yes, it means grass.

19 PRESIDING JUDGE EBOE-OSUJI: In contrast to what it does not mean,

20 Mr Kigen-Katwa? So that we --

21 MR KIGEN-KATWA: I'm alive to that, Mr President. I was wrestling with the
22 question. I'll put it -- I'll ask another question before I come to the one you've just --

23 Q. Mr Witness, does suswek mean anything else other than grass?

24 A. In the Kalenjin language "suswek" means grass. That is as far as I know.

25 Q. Just so that I finish this question, Mr Witness, could you confirm it means

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1 grass only?

2 A. To my knowledge it means grass, but you as a Kalenjin, you can tell us
3 whether that word has another meaning.

4 MR KIGEN-KATWA: Mr President, I do not wish to ask the contrast unless the
5 Chamber feels I must ask.

6 PRESIDING JUDGE EBOE-OSUJI: You should, and the reason is the witness is
7 giving evidence and the transcript of the evidence is being created in English
8 through the process of interpretation. As far as it is possible to use question and
9 answers of the witness to reduce the possibility of arguments down the line when
10 the witness is not here about what the witness may have said, we should ask those
11 questions.

12 We know that another word -- in fact, two other words had been used in this place in
13 the past. Possibility, again, interpretation we received. If you're going to make an
14 issue as to the meaning of the word as something else, we need to also address those
15 two other possibilities as to whether or not the witness's understanding is on those.

16 MR KIGEN-KATWA: Mr President, in that case you will allow me to go the long
17 route to come to that.

18 Q. Mr Witness, I would like to ask you do you understand any English at all?

19 A. I do not know English.

20 Q. Mr Witness, I want to give you a particular word and I want you to try to
21 remember if you have -- if you understand its meaning. Do you know the meaning
22 of the word "weed"?

23 A. I do not know that word.

24 PRESIDING JUDGE EBOE-OSUJI: In Swahili -- and I do not understand it. I
25 probably know no more than ten words in Kiswahili, but in Kiswahili is it possible

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1 that "weed" and "grass" have different words and mean different things? And, as
2 well, we also heard the word "herbs", or herbs some people might pronounce it, also
3 used as a third possibility.

4 So if it is possible to explain and eliminate what can be eliminated as to the correct
5 meaning of the word while the witness is here, let's do that.

6 MR KIGEN-KATWA:

7 Q. Mr Witness -- Mr Witness, could you confirm that the word "suswek" in
8 Kiswahili means "nyasi"?

9 A. Yes.

10 MR KIGEN-KATWA: And translation of "nyasi" into English is "grass".

11 PRESIDING JUDGE EBOE-OSUJI: All right. What is the Kiswahili word for
12 "weed"?

13 MR KIGEN-KATWA: If you could let me see if the witness could even recognise
14 the word "grass", Mr President. Just in case, Mr President -- I know he generally
15 says he doesn't know English, but it's possible he knows one or two words.

16 MR PUGLIATTI: I think the witness has answered that question.

17 MR KIGEN-KATWA:

18 Q. Mr Witness, I want to ask you, and I'm being very respectful to you, do you
19 know the word "grass" in English?

20 A. No.

21 Q. Now, Mr Witness, I want to ask you something else in Kiswahili. Do you
22 know the word "magugu", M-A-G-U-G-U?

23 A. Yes.

24 Q. To the best of your knowledge --

25 A. I know that word.

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1 Q. To the best of your ability, Mr Witness, could you explain what "magugu," a
2 Kiswahili word, means?

3 A. In Swahili the word "magugu" means a collection of different -- many
4 different types of grass.

5 Q. So is it your testimony, Mr Witness, that "magugu" and "nyasi" are one and
6 the same word?

7 A. No, these are two different words.

8 PRESIDING JUDGE EBOE-OSUJI: Let me try. Witness, let's say I have a garden --

9 MR KIGEN-KATWA: Mr President --

10 PRESIDING JUDGE EBOE-OSUJI: I want to get this thing because we're going on a
11 long way. Can I --

12 MR KIGEN-KATWA: Could I ask one before you ask, Mr President?

13 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

14 MR KIGEN-KATWA:

15 Q. Mr Witness, could you confirm that -- whether "magugu" means grass
16 exclusively, or it would include things other than grass?

17 A. The meaning of the word "magugu" is different; different than "nyasi".

18 MR KIGEN-KATWA: Mr President.

19 PRESIDING JUDGE EBOE-OSUJI: Yes. Mr Witness, I need -- we want to
20 understand the difference between "nyasi" and "magugu." Now, let's say I have a
21 garden at my house, and I cleaned it up and I planted rose flower, and that is the
22 only thing I want to be in my garden, rose flower and nothing else. And then I
23 wake up one morning and there's something else growing there and it's not rose
24 flower, some wild plant growing there. What would you call that wild plant that is
25 growing in my rose garden? What would you call it in Swahili?

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1 THE WITNESS: (Interpretation) In that case in Swahili I would call those plants
2 "magugu."

3 PRESIDING JUDGE EBOE-OSUJI: Now, can you tell us the word "suswek", do you
4 understand it to mean "magugu"?

5 THE WITNESS: (Interpretation) Yes, "suswek" means "magugu".

6 PRESIDING JUDGE EBOE-OSUJI: Do you understand it to mean "nyasi," the word
7 "suswek"?

8 THE WITNESS: (Interpretation) Yes.

9 PRESIDING JUDGE EBOE-OSUJI: Are you telling us that the word "magugu" and
10 the word "nyasi" mean the same thing?

11 THE WITNESS: (Interpretation) I'm not saying that those two words have the
12 same meaning, because magugu are -- you see, they're plants that grow up within
13 the nyasi.

14 PRESIDING JUDGE EBOE-OSUJI: Then what do you understand the word
15 "suswek" to mean in the context of the expression we have been using all along?

16 THE WITNESS: (Interpretation) I'd like to explain -- well, I'd like to ask for some
17 time to explain the difference between magugu and nyasi.

18 PRESIDING JUDGE EBOE-OSUJI: I would allow you to explain, but what we're
19 now -- as you can see, it appears to be important to the lawyers in this case what you
20 understand the word "suswek" to mean.

21 Now, we've established what "nyasi" means and what "magugu" means. Are you
22 able to tell us, using the expression "nyasi" or "magugu", what you understood the
23 word "suswek" to mean?

24 THE WITNESS: (Interpretation) "Suswek" means "nyasi".

25 PRESIDING JUDGE EBOE-OSUJI: Now, you can explain to us what you mean to

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1 explain as the differences between nyasi and magugu.

2 THE WITNESS: (Interpretation) In actual fact, when the nyasi grows there is
3 magugu as well that grows. The magugu grow in the nyasi, but they are all the
4 same. But you don't plant the nyasi. It's the magugu that grow up within the
5 nyasi. You do not plant magugu. The magugu grow up amongst the nyasi.

6 PRESIDING JUDGE EBOE-OSUJI: Does it mean you plant the nyasi?

7 THE WITNESS: (Interpretation) Yes.

8 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, you can take it from there.

9 MR KIGEN-KATWA: Yes, Mr President, and I will request for your patience.

10 Q. Mr Witness, it is your testimony that magugu are the things that grow in
11 between grass, or inside grass where grass is, isn't it?

12 A. That's right.

13 Q. Mr Witness, it is true that cows eat suswek, as you call it, isn't it?

14 A. That's right.

15 Q. Would cows also eat magugu?

16 A. Some kinds of magugu cannot be digested by cows, cannot be grazed by
17 cows.

18 MR KIGEN-KATWA: Mr President, I would like to leave that issue there and go to
19 something different.

20 Q. Now, Mr Witness, the other expression I would like us to discuss is the
21 second expression in the order in which we presented, being this expression,
22 "Kimache kesich ketit ne kiibu chumbek." Did you say that was said by Henry
23 Kosgey and copied by William Ruto?

24 A. He said it.

25 Q. Now, to the best of your knowledge, Mr Witness, how would you say it in

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1 Kalenjin, which you say you understand, if a child is born?

2 A. In Kalenjin "kesich" means a child has just been born, and it corresponds to
3 the word that I uttered.

4 Q. So it can go on record that it is your testimony that the word "kesich" means
5 to be born or to produce, isn't it?

6 MR PUGLIATTI: Can we ask for the spelling of that word? I'm grateful.

7 PRESIDING JUDGE EBOE-OSUJI: "Kesich," or something else?

8 MR PUGLIATTI: The word relating to a child being born.

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

10 MR KIGEN-KATWA: Sorry, Mr President. I was listening to Kalenjin -- to the
11 Swahili translation. Mr President, the only word I was dealing with was "kesich",
12 and the spelling for the comfort of my colleague is K-E-S-I-C-H.

13 MR KHAN: Mr President, could I just clarify? Page 57, line 21, it wasn't my
14 interjection.

15 PRESIDING JUDGE EBOE-OSUJI: Yes, Mr Khan has never interjected.

16 MR KIGEN-KATWA:

17 Q. Mr Witness, the question was, could you confirm -- did you say to get a child
18 you would say "kesich", isn't it?

19 A. Yes, I said that.

20 Q. Mr Witness, just for the completeness of the record, and considering that you
21 understand Kalenjin, could you just explain to the -- could you say in Kalenjin how
22 you would say that a child has been born?

23 A. A child has just been born, in Kalenjin it can be said differently.

24 PRESIDING JUDGE EBOE-OSUJI: How would you say it in Kalenjin?

25 Did he already say it in Kalenjin?

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1 MR KIGEN-KATWA: Yes, and I was going to give you the spelling, Mr President,
2 but I can put it to him so that he confirms first of all.

3 Q. Yes.. Mr Witness, could you confirm that according to you, if somebody was
4 explaining that a child has been born, you would say "ke kesich lakwet"?

5 A. That is correct.

6 MR KIGEN-KATWA: The spelling would be K-E, then K-E-S-I-C-H, which is the
7 word we are dealing with, and then L-A-K-W-A-T -- lakwet, sorry. Sorry, Mr
8 President. I'll spell again. L-A-K-W-E-T, lakwet.

9 Q. Mr Witness, so that the words can be separated, could you confirm --

10 PRESIDING JUDGE EBOE-OSUJI: Let me do this, Mr Kigen-Katwa. Let me
11 confirm it to the witness.

12 Witness, the word that the lawyer has put to you, the words, "ke kesich lakwet," was
13 that what you said means a child has been born?

14 THE WITNESS: (Interpretation) Yes, it means that a child has been born.

15 PRESIDING JUDGE EBOE-OSUJI: All right, thank you.

16 MR KIGEN-KATWA:

17 Q. And so that words can be distinguished, Mr Witness, "lakwet" is the
18 corresponding word for "a child", isn't it?

19 A. Yes.

20 Q. And so, Mr Witness, the word "kesich", to the best of your knowledge of
21 Kalenjin, means "to be born" or "to produce", isn't it?

22 A. That's what I said, but a Kalenjin can say "kesich" and another one would say
23 "ketuk" (phon).

24 PRESIDING JUDGE EBOE-OSUJI: Witness, what we are trying to understand now
25 is the meaning of the word "kesich." The lawyer has asked you the question

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1 whether it means to be born or to produce and you said, yes, it means to be born or
2 to produce a child. And I ask you the word "kesich", as far as you know, can it
3 mean anything else other than a child being born?

4 THE WITNESS: (Interpretation) Yes, it can mean other things.

5 PRESIDING JUDGE EBOE-OSUJI: What else can it mean, according to your
6 understanding of Kalenjin and in different contexts?

7 THE WITNESS: (Interpretation) It can also mean "to produce" or "to grow".

8 PRESIDING JUDGE EBOE-OSUJI: It can also mean "to produce" or "to grow".

9 Mr Kigen-Katwa, continue.

10 MR KIGEN-KATWA: I would like to move to a different phrase now,
11 Mr President.

12 Q. Mr Witness, the fifth expression that we were dealing with you said words to
13 this effect, "Makimache chito netinyei ngoroik aeng."

14 MR KIGEN-KATWA: And that is transcript 92 of 21 February 2014, page 30, line 20
15 to page 36, line 9.

16 Q. Mr Witness, is that what you heard Mr Henry Kosgey say and Mr Ruto copy
17 word for word?

18 A. Yes.

19 Q. Now, Mr Witness, I would like to take you through each of the words.
20 Could you confirm the first word "makimache" means "we don't want"?

21 A. That's right.

22 Q. Could you confirm the second word "chito" means "a person"?

23 A. Yes.

24 Q. The third word, Mr Witness, is "netinyei". Could you confirm that means
25 "who has"?

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1 A. I can confirm that.

2 Q. The next word, Mr Witness, is "ngoroik". Could you confirm the meaning of
3 that word is "clothes"?

4 A. Yes.

5 Q. And the last word, Mr Witness, is "aeng". Could you confirm it means
6 "two"?

7 A. Yes.

8 Q. Now, Mr Witness, the first person to use these words was Mr Henry Kosgey,
9 according to you, isn't it?

10 A. Yes.

11 Q. And it remains your testimony that those are the exact words he used, isn't it?

12 A. Yes.

13 Q. And according to you, Mr Ruto used the same words exactly, isn't it?

14 A. Yes, that's right.

15 Q. Now, before I ask you the next question, Mr Witness, could you confirm if it
16 is possible that any other words other than the words I have read, "makimache chito
17 netinyei ngoroik aeng", if any other words other than those ones were used at all?

18 A. Could you please repeat your question?

19 Q. Mr Witness, what I'm asking you is that could any other words have been
20 used by Henry Kosgey and William Ruto other than the words that I have just read
21 to you and explained to you?

22 A. Yes, there are.

23 Q. And what are those, Mr Witness, related to this issue of wearing two clothes?

24 A. He spoke in Swahili encouraging us to vote for the ODM massively.

25 Q. Now, Mr Witness, you said that this meant "We don't want any madoadoa."

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1 Did you say that, Mr Witness?

2 A. Yes. And I said that giving the example of -- of the clothing.

3 Q. So then, Mr Witness, we can have the record that your testimony is that the
4 words that were used is "makimache chito netinyei ngoroik aeng," and you yourself
5 understood it to mean "we don't want madoadoa." Is that right, Mr Witness?

6 A. Yes.

7 Q. Mr Witness, you will confirm that neither Mr Ruto nor Mr Kosgey, according
8 to you, used the word "madoadoa"?

9 A. They used an expression when -- they were using a figurative expression
10 when they spoke about clothing.

11 Q. Thank you, Mr Witness. What I want you to confirm is whether the word
12 "madoadoa" came out of the mouths of Mr Henry Kosgey and Mr William Ruto.
13 Did either of them use the word "madoadoa"?

14 A. No. I didn't hear them using the word "madoadoa" in Swahili.

15 Q. Now, Mr Witness, according to you, all these five expressions were used in
16 the first meeting and were subsequently used in the next five rallies. Is that true,
17 Mr Witness?

18 A. Yes.

19 Q. And according to you, this rally was attended by, amongst other people,
20 people who do not -- who are not Kalenjins but who understand Kalenjin language,
21 isn't it?

22 A. Yes.

23 Q. Now, Mr Witness, sometime early this morning I had discussed with you
24 your four friends, and I don't want you to mention their names. Could you confirm
25 that your understanding of the five expressions were explained to you by your five

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1 friends -- sorry, four friends?

2 A. No, that's not so.

3 Q. Did you discuss these expressions at all with your friends, Mr Witness?

4 A. No, I never talked to my friends about those expressions.

5 Q. Now, you -- I assume you have friends who are not necessarily Kalenjins,

6 Mr Witness, isn't it? And I don't want any names.

7 A. Yes. I had some.

8 Q. Now, if you felt threatened, it would also apply to them. Did you discuss

9 with any of those others that are not Kalenjins?

10 A. I wasn't talking to them about those things.

11 MR KIGEN-KATWA: Mr President, I have one last issue which should take me

12 about ten minutes. I could either do it now or after the break, but it should be very

13 brief. And, Mr President, if the Chamber -- if your Honours really need to know the

14 topic, I could indicate what it is.

15 PRESIDING JUDGE EBOE-OSUJI: We will rise now. You can have the ten

16 minutes, but no more than ten minutes when we return.

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

18 PRESIDING JUDGE EBOE-OSUJI: Ten minutes only.

19 MR KIGEN-KATWA: Yes, Mr President.

20 PRESIDING JUDGE EBOE-OSUJI: We will rise now and reconvene at 2.30.

21 Witness, we've come to the end of our session for the morning. We will take a

22 break now for lunch and then you will rejoin us at 2.30. Thank you. The blinds

23 will be brought down and you will escorted from the courtroom.

24 (Closed session at 1.01 p.m.) * Reclassified as Open session

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

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1 (The witness stands down)

2 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

3 THE COURT OFFICER: All rise.

4 (Recess taken at 1.01 p.m.)

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

6 THE COURT USHER: All rise.

7 Please be seated.

8 MR PUGLIATTI: Mr President, the Prosecution would just like the record to reflect
9 that Mr Steynberg is not present.

10 PRESIDING JUDGE EBOE-OSUJI: Noted.

11 Witness, welcome back. Mr Kigen-Katwa will continue asking you questions.

12 Mr Kigen-Katwa, your ten minutes.

13 MR KIGEN-KATWA:

14 Q. Mr Witness, you said that non-Kalenjins were allowed to attend the five
15 rallies that you said you attended and heard these expressions, isn't it?

16 A. Yes.

17 Q. Could you also confirm that you said for each of those rallies transport was
18 provided for?

19 A. Yes.

20 Q. And could you confirm that to the best of your knowledge that transport
21 according to you was provided for by the people who subsequently addressed at
22 those rallies?

23 A. That is correct.

24 Q. And, Mr Witness, wherever they were going to pick people, they were not
25 selecting between Kalenjins and non-Kalenjins, were they?

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1 A. Yes.

2 Q. Now, Mr Witness, I wanted to discuss the fourth expression that you said, the
3 fourth expression that you said was used in all the rallies being this, "Kimache oai
4 kazit komye ne kigonin." Do you remember that, Mr Witness?

5 A. Yes, I remember.

6 Q. And, Mr Witness, you said that it meant that, "When the day comes, do the
7 work according to our instructions."

8 MR PUGLIATTI: Can my learned friend please specify the transcript reference?

9 MR KIGEN-KATWA: That is transcript 92 of 21 February 2014, page 26, line 12 to
10 page 29, line 18.

11 Q. Mr Witness, do you recall that?

12 A. Yes, I do remember.

13 Q. Now, Mr Witness, what is the equivalent of "work" in the expression that you
14 said was used by the two individuals, Kosgey and Ruto?

15 A. I did not know which work it was.

16 Q. That's not my question, Mr Witness. I want the exact Kalenjin word for
17 "work" in Kalenjin.

18 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, can you spell the expression
19 you used before we -- I'm not stopping you from asking the question, but let's put it
20 on the record.

21 MR KIGEN-KATWA: I'm missing the English word.

22 PRESIDING JUDGE EBOE-OSUJI: No, no, the Kalenjin expression.

23 MR KIGEN-KATWA: I want it from the witness, Mr President.

24 PRESIDING JUDGE EBOE-OSUJI: If you go to page 66, line 2 and 3, you used a
25 certain expression.

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1 MR KIGEN-KATWA: Yes, I can do that.

2 PRESIDING JUDGE EBOE-OSUJI: Can we do that?

3 MR KIGEN-KATWA:

4 Q. Mr Witness, you said in the order -- we had used the fourth expression that
5 the two individuals used was, "Kimache oai kazit komye ne kigonin." Can you
6 confirm that's what according to you was said, Mr Witness?

7 A. Yes, those were the words used.

8 MR KIGEN-KATWA: Mr President, do I need to spell it? The spelling of the first
9 word is K-I-M-A-C-H-E. The second one is O-A-I. The third one is K-A-Z-I-T.
10 The next word is K-O-M-Y-E. Next is N-E and then K-I-G-O-N-I-N.

11 Q. Now, Mr Witness, my question is what is the equivalent of the word "work"
12 in Kalenjin?

13 A. Kazit.

14 PRESIDING JUDGE EBOE-OSUJI: Interpretation?

15 THE INTERPRETER: From the Swahili booth, the witness said a word in Kalenjin.

16 PRESIDING JUDGE EBOE-OSUJI: The witness said a word in Kalenjin, but we've
17 all been using certain expressions repeatedly. If the witness said it, the
18 interpretation booth should be able to pick up that word. Can you ask the question
19 again, please?

20 MR KIGEN-KATWA:

21 Q. Mr Witness, did you say the equivalent for "work" is "kazit"?

22 A. (No interpretation)

23 MR KIGEN-KATWA: The spelling for that is K-A-Z-I-T.

24 PRESIDING JUDGE EBOE-OSUJI: And the witness responded saying something
25 before you spelled.

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1 MR KIGEN-KATWA:

2 Q. Mr Witness, let me ask you again, did you say that the equivalent for the
3 word "work" in Kalenjin is "kazit"?

4 A. You are pronouncing it too fast.

5 PRESIDING JUDGE EBOE-OSUJI: All right. Witness, the word "kazit," does it
6 mean "work"?

7 THE WITNESS: (Interpretation) Yes.

8 MR KIGEN-KATWA:

9 Q. And, Mr Witness, it is your testimony that that word is a Kalenjin word,
10 "kazit"?

11 A. Yes, indeed, it is a Kalenjin word.

12 Q. If I prompted you, Mr Witness, that it is actually a Kiswahili word, what
13 would you say?

14 A. I understood that it is Kalenjin.

15 Q. Mr Witness, could you give us the Kiswahili word for "work"?

16 A. Kazi.

17 Q. And "kazi" is K-A-Z-I. Mr Witness, could you say you are proficient in
18 Swahili -- in Kalenjin? Sorry.

19 A. I understand it.

20 Q. Can you write in Kalenjin, Mr Witness?

21 A. I cannot write in Kalenjin.

22 Q. Can you read in Kalenjin, Mr Witness?

23 A. I am not able to read.

24 Q. And, Mr Witness, if you were in a situation where people were talking in
25 Kalenjin, would you admit that you would miss out the meanings of some words

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1 and some expressions?

2 A. If you speak Kalenjin, I would understand. I understand that language.

3 Q. Lastly, on that point, Mr Witness, you have no idea of any other word that is
4 equivalent to "work" in English in Kalenjin other than "kazit"?

5 PRESIDING JUDGE EBOE-OSUJI: Can you rephrase that question?

6 MR KIGEN-KATWA:

7 Q. Mr Witness, I'd asked you the equivalent of the word "work" in Kalenjin and
8 you said "kazit." Now, my question, Mr Witness, is could you confirm if you're
9 aware of any other word that is equivalent to "work" in Kalenjin?

10 A. I can say it, "boisyet."

11 MR KIGEN-KATWA: Do you want me to spell that, Mr President? That is
12 B-O-I-S-Y-E-T.

13 Q. Mr Witness, just so that you confirm on record, did you say "boisyet"?

14 A. "Boisyet."

15 PRESIDING JUDGE EBOE-OSUJI: I heard "boisyet." I did not hear the "T" at the
16 end of it, but --

17 MR KIGEN-KATWA: I also heard the witness not to seem to have the "T" at the
18 end. I can leave that issue there.

19 PRESIDING JUDGE EBOE-OSUJI: We can leave that issue, but to round up that,
20 you have to put to him, do you not, that the word "kazit" does not mean "work" in
21 Kalenjin. Are you going to put that question to him?

22 MR KIGEN-KATWA:

23 Q. Mr Witness, I put it to you that "kazit" is Kiswahili and not Kalenjin.

24 A. I know that it is a Kalenjin word.

25 MR KIGEN-KATWA: Mr President, I've exhausted what I wanted on that issue,

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1 unless the Chamber wants to --

2 PRESIDING JUDGE EBOE-OSUJI: No, I'll leave it up to you. It's your
3 cross-examination.

4 MR KIGEN-KATWA:

5 Q. Now, Mr Witness, I want to ask you something completely different. You
6 said that you --

7 MR KIGEN-KATWA: Mr President, I'm not sure if this question was raised in open
8 session. I would like to go into private session, yes.

9 PRESIDING JUDGE EBOE-OSUJI: And you've exceeded your ten minutes, you
10 know.

11 MR KIGEN-KATWA: Your indulgence, my Lord. I should ask only three
12 questions on a different subject and then I'm done, please.

13 PRESIDING JUDGE EBOE-OSUJI: And you want to do that in private session?

14 MR KIGEN-KATWA: I would rather, because I'm not sure that the issue was raised
15 in open session.

16 PRESIDING JUDGE EBOE-OSUJI: All right. Let's go to private session.

17 (Private session at 2.50 p.m.) * Reclassified as Open session

18 THE COURT OFFICER: (Interpretation) We're in private session, Mr President.

19 MR KIGEN-KATWA:

20 Q. Mr Witness, did you say (Redacted) was circumcised in August?

21 A. That is not what I said.

22 Q. You didn't say (Redacted) was circumcised in August at all?

23 A. I did not say that.

24 MR KIGEN-KATWA: Mr President, I am referring to the transcript of the 24
25 February 2014, page 43, line 16 to 25, and page 59, line 4 to 19.

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1 PRESIDING JUDGE EBOE-OSUJI: Can you read back exactly what the witness is
2 reported to have said?

3 MR KIGEN-KATWA: Yes, Mr President.

4 Q. Mr Witness, this is what is recorded as you having said, "At that time young
5 people went to perform circumcision to those initiation rites during the holidays.
6 Everybody knew elections would take place in December, and, therefore, the
7 circumcision of the young people would not take place at the same time."
8 Did you say that, Mr Witness?

9 A. I did say that, but I did not say that (Redacted) participated in that ceremony.

10 Q. I'll ask you something different as I come back to that, Mr Witness, as I look at
11 the page.

12 MR KIGEN-KATWA: Mr President, I would like to ask the last question, the last
13 two questions in the open. I just wanted to take care of the issue of the (Redacted) in a
14 closed session.

15 PRESIDING JUDGE EBOE-OSUJI: (Microphone not activated)

16 MR KIGEN-KATWA: To open, please.

17 PRESIDING JUDGE EBOE-OSUJI: We are not returning to (Redacted) in open
18 session.

19 MR KIGEN-KATWA: Mr President, I would like to leave that issue, yes.

20 PRESIDING JUDGE EBOE-OSUJI: We'll go back to open session.

21 (Open session at 2.54 p.m.)

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

23 MR KIGEN-KATWA:

24 Q. Now, Mr Witness, is it your testimony that -- is it your testimony that in the
25 year 2007 in your neighbourhood, the Kalenjin circumcision was done in August?

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1 A. Yes, the circumcision was done in August.

2 Q. And we are talking of the Nandis area?

3 A. Yes.

4 Q. And the last question I want to ask you, Mr Witness, is did you say Henry
5 Kosgey was the secretary-general of ODM?

6 A. Yes, he was the leader of the ODM party.

7 Q. Mr Witness, I am being very specific, and I'm referring to page 50, line 10 to
8 12 of today's transcript where you said "Henry Kosgey attended all the meetings
9 because he was the secretary-general." Could you confirm that it remains your
10 position that Henry Kosgey was the secretary-general of ODM?

11 A. Yes.

12 Q. Mr Witness, I put it to you that you are lying in saying that the Kalenjin
13 circumcision was in August, that, in fact, the circumcision ceremonies were in
14 December. What do you have to say on that?

15 A. I do not agree with what you say.

16 PRESIDING JUDGE EBOE-OSUJI: Does it have to -- are you interested in whether
17 or not it's a lie, or would "mistake" be sufficient for your purposes, Mr Kigen-Katwa?

18 MR KIGEN-KATWA: I am more interested in, without being disrespectful to him,
19 to say that he's not saying the truth and that it's deliberate, it's not a mistake.

20 Q. Mr Witness, it is true that the circumcisions that are done in August are
21 actually Luhya circumcisions, isn't it, if you know?

22 A. I do not agree with that. In Rift Valley, during the school holidays, the
23 young children undergo the circumcision rites.

24 Q. And, Mr Witness, I put it to you that you are lying in saying positively that
25 you know that Henry Kosgey was the secretary-general.

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1 A. I know that he was a senior official. He was a high-ranking official in the
2 ODM party.

3 MR KIGEN-KATWA: Mr President, I would like to leave my cross-examination at
4 that point. Thank you very much, your Honours.

5 PRESIDING JUDGE EBOE-OSUJI: You're welcome.

6 Witness, that is the end of questions from Mr Kigen-Katwa, lawyer for Mr Sang.

7 The next lawyer to ask you questions now would be Mr Khan, who is the lawyer for
8 Mr Ruto.

9 Mr Khan.

10 MR KHAN: I'm grateful, Mr President, your Honours.

11 Q. Mr Witness, good afternoon.

12 A. Good afternoon.

13 Q. We have about an hour left this afternoon and I want to ask you some
14 background matters, but before I do that I want to offer my condolences on the fact
15 that you --

16 PRESIDING JUDGE EBOE-OSUJI: We're in public session.

17 MR KHAN: Your Honour, I'm aware.

18 Q. My condolences on the fact that you lost some family members in the past.
19 Do you understand that?

20 A. Please can you repeat what you just said?

21 Q. I wanted to extend my condolences on the fact that you unfortunately lost in
22 the past some members of your family. Do you follow?

23 A. No.

24 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, we can move on. I think it's the
25 thought that counts from time to time, yes.

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1 MR KHAN: Your Honour, I'd ask to go into private session please.

2 PRESIDING JUDGE EBOE-OSUJI: Yes, we'll go into private session.

3 PRESIDING JUDGE EBOE-OSUJI: For how long?

4 MR KHAN: Mr President, I think probably four/five minutes or thereabouts.

5 (Private session at 3.01 p.m.) * Reclassified as Open session

6 THE COURT OFFICER: (Interpretation) We're in private session, Mr President.

7 MR KHAN:

8 Q. Witness, do you recall that when you came to The Hague, you met with some
9 members of the Court's Victim and Witness Unit? Do you remember that? It was
10 on 18 February, if that helps?

11 A. Are you saying that I met with them here at the court?

12 Q. In The Hague, Mr Witness, here in the Netherlands.

13 A. I met some of them.

14 MR KHAN: Your Honour, before I go on, perhaps I can distribute binders that
15 have been prepared with the assistance of the Court, I should please. I'm grateful.
16 And, your Honour, the very brief questions I'm going to put relate to tab 127, tab
17 127. I think it's the last tab perhaps, and for the transcript it's KEN-D09-0030-0428.
18 Your Honour, have you got that in hand, your Honour, Mr President? At tab 127.

19 Q. Mr Witness, just a few questions. Do you remember being asked some
20 questions by the Court Victim and Witness Unit regarding (Redacted)
21 (Redacted) Do you remember that conversation that you had
22 with the VWU?

23 A. Yes, I do.

24 Q. And I just wanted to clarify and get so that it's on the court record what you
25 told the VWU, and please tell me if it's correct. You told the VWU that you didn't

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1 know if (Redacted)

2 (Redacted) Do you remember saying that, sir?

3 A. What I said is that (Redacted).

4 Q. Did you tell the VWU, did you deny knowing anything about (Redacted)

5 (Redacted)

6 (Redacted)? I'm reading from a VWU document, a document from

7 the Victim and Witness Unit. So please let the Court know is it correct or not?

8 A. What I said is that (Redacted)

9 (Redacted)

10 Q. (Redacted)

11 (Redacted)

12 A. (Redacted)

13 Q. Did you tell, Mr Witness, the Court VWU, the Court Victim and Witness Unit

14 that you didn't know, you did not know whether (Redacted)

15 (Redacted) Do you

16 remember telling that to the VWU?

17 A. Yes, that was the explanation I provided.

18 Q. Thank you, Witness.

19 Did you tell them also that you didn't know what (Redacted)

20 (Redacted)? You didn't know

21 the substance of what was said. Did you tell them that?

22 A. Yes.

23 Q. Yes, I'm grateful. And were you asked if you knew anything about (Redacted)

24 (Redacted)? And you said quite clearly you didn't know (Redacted)

25 (Redacted). Did you also tell that to the Court Victim and Witness Unit?

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1 A. Yes, that is what happened.

2 Q. I'm most grateful. And the last question on this topic, sir, is that you also

3 said that you had never told the Prosecution that (Redacted)

4 (Redacted) Is that also correct as they record?

5 A. No, I did not say that (Redacted)

6 (Redacted). No such thing happened.

7 Q. Just to be clear, Witness, and you've been quite clear, but just to be cautious,

8 it's correct that you never told anybody from the Prosecution or anybody else that

9 (Redacted)

10 (Redacted), you never said that, did you, sir?

11 A. No, I never made such a statement.

12 Q. Yes, I'm grateful. You've been very clear.

13 MR KHAN: Your Honour, with your leave, if we could go into public session.

14 PRESIDING JUDGE EBOE-OSUJI: Public session.

15 (Open session at 3.10 p.m.)

16 THE COURT OFFICER: (Interpretation) Mr President, we're in public session.

17 MR KHAN:

18 Q. Mr Witness, a few questions now regarding your support for the ODM. It's

19 correct, is it not, that in 2007 you were an ODM supporter?

20 A. Yes.

21 Q. And you remained a supporter of the ODM until 2008; is that correct?

22 A. I have not understood your question.

23 Q. Well, let me put it in a different way. It must be my fault. You told the

24 Prosecution, and it's at paragraph 27 of your statement, that you were a member of

25 the Orange Democratic Movement in 2007; is that right?

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1 A. Yes.

2 Q. And you supported that political party until 2008, is that also correct, sir?

3 A. No.

4 Q. Did a time come when you stopped being a member of the ODM?

5 A. I supported the ODM during the campaigns, but currently I have no reason to
6 continue to support any party whatsoever.

7 Q. Witness, let me read something to you, and you tell me if it's correct or not.

8 And again, it's paragraph 27 of the Prosecution -- the statement you gave the

9 Prosecution. And you say this, "I became a member of the ODM in 2007. I stopped
10 being a member at the beginning of 2008, because I had not seen any benefit." Is
11 that correct, sir?

12 A. That is correct.

13 Q. And the reason you joined the ODM is that you were attracted to the
14 manifesto and the policies that the ODM -- that the ODM were speaking about; is
15 that right?

16 A. Yes.

17 Q. They were speaking about a government for all Kenyans; is that right?

18 A. That is correct.

19 Q. A government for everybody irrespective of their ethnic origin; is that right?

20 A. Yes, it was so.

21 Q. And one of their keynote messages was that wealth should be equally
22 distributed throughout the country of Kenya; is that right?

23 A. Yes.

24 Q. A country where irrespective of background, everybody had equal
25 opportunities to work hard and advance in society, that's one of their core messages,

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1 was it not?

2 A. Yes.

3 Q. And it's correct, is it not, that despite the economic progress that had been
4 made during the tenure of the Honourable, His Excellency Mwai Kibaki, his
5 government was accused from many sides of being overly tribalistic favouring one
6 community over the others; is that right?

7 A. Yes.

8 Q. And those broad principles resonated with you. You supported those
9 principles, and that's why you supported the ODM during the 2007 election
10 campaign. Do you agree with that, sir?

11 A. Yes. We wanted change.

12 Q. You wanted change, that's correct.

13 And you'd also agree with me that one of the key messages that the ODM party
14 wished to project was that it was inclusive, it wasn't excluding anybody from the
15 umbrella of that party; is that right?

16 A. Yes.

17 Q. You know, of course, sir, that the leader of that party, the presidential
18 candidate was the Honourable Raila Odinga, who was a Luhya; you're aware of that,
19 aren't you, sir?

20 A. No.

21 Q. A Luo, L-U-O, a Luo for the transcript.

22 A. Well, that's correct now.

23 Q. Forgive me, it's my terrible pronunciation. I'll try to be more careful.

24 And, Witness, you're aware that the deputy presidential candidate --

25 PRESIDING JUDGE EBOE-OSUJI: Can you clean it up,

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1 Mr Khan?

2 MR KHAN: Yes, of course, Mr President.

3 PRESIDING JUDGE EBOE-OSUJI: The transcript is muddled up on that issue. We
4 don't know what the witness was responding to, to Mr Odinga or to the ethnic
5 group.

6 MR KHAN:

7 Q. The Honourable Raila Odinga is a member of the Luo community; is that
8 right?

9 A. Yes.

10 Q. And his running mate, the Honourable Musalia --

11 PRESIDING JUDGE EBOE-OSUJI: No, no, no, the leadership part of Mr Odinga.

12 MR KHAN:

13 Q. The Honourable Raila Odinga was the presidential candidate and leader of
14 the ODM; is that right?

15 A. Yes.

16 Q. I'm obliged. And his running mate was the Honourable Musalia Mudavadi,
17 who was a Luhya? That's correct, is it not?

18 A. Yes, Mudavadi is Luhya indeed.

19 Q. And another --

20 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, let's do this. Why don't you -- let's go
21 back to the basic rule of one proposition per question. There's too many
22 propositions in one question.

23 MR KHAN: Your Honour, I'll be so guided.

24 Q. The running mate of the Honourable Raila Odinga was the Honourable
25 Musalia Mudavadi; is that correct?

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1 A. Well, personally I was only interested in those who held the highest office. I
2 wasn't interested in the others.

3 Q. Have you heard the name Musalia Mudavadi?

4 A. Yes, I have heard that name.

5 Q. The gentleman is a member of the Luhya community in Kenya; is that right?

6 A. Yes.

7 Q. And being a supporter of the ODM, you were aware that he was running in
8 2007 to be the deputy president of the Republic of Kenya; is that right?

9 A. Well, politics is something that I do not master and I dare not make any
10 statements about it.

11 Q. Witness, I'm not asking you to master any topic. It's a very simple question,
12 and please tell the Court if you agree or you disagree. Being a supporter of the
13 ODM in 2007 and going, you say, to many rallies, were you aware that the
14 gentleman running as deputy president on the ODM ticket was the Honourable
15 Musalia Mudavadi?

16 A. What I can say is that I heard mention of that name.

17 Q. Perhaps I was inaccurate in my question. In fact, he was running as
18 vice-president of the republic. Does that help clarify matters? In 2007 he was
19 running to be vice-president in the 2007 presidential elections?

20 A. Yes.

21 Q. And perhaps you'd also heard that he was a member of the so-called
22 Pentagon, the leadership of the ODM political party. You'd heard that, had you
23 not?

24 A. Yes, I heard of that.

25 Q. We'll move now to Mr -- the Honourable Najib Balala. You've heard of that

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1 person, have you not?

2 A. All those names were being mentioned.

3 Q. And when those names were being mentioned, were you aware that the
4 Honourable Najib Balala came from the Coast region of the Republic of Kenya?

5 A. Yes. I know that he comes from the Coast Province, the province that is
6 along the coast in Kenya.

7 Q. Who else from the Pentagon can you name to the Court, from the ODM
8 Pentagon? Can you give the Court some other names, please?

9 A. I'm not able to mention their names, because I was really not interested in
10 politics.

11 Q. Attending you say five different rallies as part of the 2007 election campaign,
12 can you mention the names of any other people that were spoken about on the ODM
13 side in those campaign meetings?

14 A. I am not able to mention any other names, but allow me to repeat that I
15 supported the ODM party.

16 Q. But, Witness, you said a moment ago that you're not -- you were not
17 interested in politics, but you woke up quite early and travelled to different political
18 campaigns. Why on earth would you do that if you were not interested in politics?

19 A. I attended the rallies in order to listen to what our leaders were saying about
20 the direction in which to go and in order to know who we were expected to vote for.

21 Q. So you were keen on knowing -- you were keen on receiving information that
22 would help you decide how to cast your vote; is that right?

23 A. Yes.

24 Q. Who were the -- who was the ODM candidate where -- just one moment.

25 MR KHAN: Your Honour, I believe I can ask this in public because it's a wide area,

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1 but if there is any difficulty before the witness answers, I can ask him to stop.

2 Q. Witness, who were the candidates --

3 PRESIDING JUDGE EBOE-OSUJI: Wait, wait, wait. Let's go to private session for
4 a brief moment.

5 (Private session at 3.31 p.m.) * Reclassified as Open session

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

7 PRESIDING JUDGE EBOE-OSUJI: Can you complete the question.

8 MR KHAN: Yes, indeed.

9 PRESIDING JUDGE EBOE-OSUJI: Let's see what it looks like.

10 MR KHAN:

11 Q. Mr Witness, who was the ODM candidate where you were planning to vote?

12 A. I do not know, because my idea was that I was going to vote for Kosgey and
13 then vote for Raila. That is why I was interested in the elections.

14 Q. Witness, if you knew you were going to vote for Honourable Kosgey and
15 Honourable Raila in advance, why did you need to attend rallies and listen to
16 anybody say anything?

17 A. I wanted to hear my leader Kosgey speak.

18 PRESIDING JUDGE EBOE-OSUJI: Can we go to public session now --

19 MR KHAN: One more question.

20 PRESIDING JUDGE EBOE-OSUJI: -- or is it safer --

21 MR KHAN: Your Honour, in my view we can go publicly, but I don't want to be
22 criticised later.

23 Q. Witness, who did you vote for?

24 A. I voted for Kosgey and Raila.

25 Q. And who did you vote for as councillor?

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1 A. I did not take part in the council elections.

2 MR KHAN: Your Honour, we can go into public. With your leave, I would like to
3 repeat the witness's answers in public, just summarise it, your Honour, just
4 summarise who he voted for. He voted for Honourable Raila as president and
5 Honourable Kosgey.

6 PRESIDING JUDGE EBOE-OSUJI: Instead of making it so deliberate, is it
7 something that could be a stepping stone to other questions you may have?

8 MR KHAN: Well, your Honours, perhaps what I can do is I wanted it to be part of
9 the record. It's pertinent obviously. And I was just going to simply say: You've
10 accepted that you voted for or you've stated you voted for ODM and the principal
11 candidates were Honourable Raila Odinga and Honourable Kosgey.

12 PRESIDING JUDGE EBOE-OSUJI: Fair enough. What I'm trying to avoid is a
13 precedent where in future it's as if we must every time we have to repeat something
14 in public that was heard in private because a party is interested in doing that. Say if
15 you have other questions that are related to this --

16 MR KHAN: Yes, I'm grateful.

17 PRESIDING JUDGE EBOE-OSUJI: -- you can formulate the --

18 MR KHAN: And do it in public --

19 PRESIDING JUDGE EBOE-OSUJI: -- proposition (overlapping speakers) --

20 MR KHAN: -- all of it. I'm grateful.

21 PRESIDING JUDGE EBOE-OSUJI: -- and move on from there.

22 MR KHAN: I'm most grateful for guidance. Your Honour, with your leave we
23 could go to public session.

24 PRESIDING JUDGE EBOE-OSUJI: Let's go to public then.

25 (Open session at 3.36 p.m.)

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

2 PRESIDING JUDGE EBOE-OSUJI: Yes, we're in open session. Again, the point is
3 if you want to indicate that the witness had testified that he voted for Mr Kosgey
4 and Mr Odinga, he can say that, but try and use it as a stepping stone to some other
5 questions, if possible.

6 MR KHAN:

7 Q. Mr Witness, you voted for the Honourable Raila Odinga as the president of
8 Kenya in 2007; is that right?

9 A. That is correct.

10 Q. And you voted for the Honourable Henry Kosgey as the parliamentary
11 candidate in 2007. That's also correct, isn't it?

12 A. That is correct.

13 Q. Now, who was the Honourable Henry Kosgey's PNU challenger for the
14 Tinderet seat in 2007?

15 A. On that day it was difficult. They did not want anyone from a different
16 political party in that Tinderet area, and if there was anyone else, then I do not know
17 who it was.

18 Q. Do you know if Henry -- the Honourable Henry Kosgey was challenged by
19 anybody in 2007 in the parliamentary elections?

20 A. There were people, but in our region, they did not want anyone who
21 belonged to a different political party.

22 Q. Have you heard of Benjamin Bett, Mr Witness? Mr Benjamin Bett?

23 A. I've heard that name, but I wouldn't be able to recognise him.

24 Q. Did you hear anything about him in 2007 during the election campaigns?

25 A. I heard that name, but personally I could not vote for anyone else.

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1 Q. In what context did you hear the name Benjamin Bett?

2 A. I heard people talking about him.

3 Q. Who was the ODM-K candidate in Tinderet in 2007, Mr Witness?

4 A. I know that it was Henry Kosgey.

5 Q. Have you heard of the Honourable Musyoka Kalonzo, Kalonzo,

6 K-A-L-O-N-Z-A (sic)?

7 A. Yes, I have heard of that name.

8 Q. You've heard of the ODM-K party, ODM Kenya, ODM-K?

9 A. Yes, I heard about Kalonzo, but I do not know whether he was a member of
10 that political party or not.

11 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, your spelling of Kalonzo, I've been
12 hearing the witness say Kalonzo, but then you spelled it Kalonza.

13 MR KHAN: It's my mistake, it's K-A-L-O-N-Z-O. It's completely my mistake.

14 Q. So, Witness, you don't know if the ODM-K, the party of the Honourable
15 Kalonzo, field a candidate in the parliamentary elections of 2007 for the seat of
16 Tinderet?

17 A. No.

18 Q. Okay. We can move on to something else. Is it correct attending all these
19 rallies, you say, five different rallies, that the ODM was quite -- the mood in the
20 ODM party, the mood in the rallies was quite upbeat, they were quite confident of
21 success; is that right?

22 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, you will pursue this line of question,
23 but before you move too far away from it I need to clear something up with the
24 witness. Would you mind?

25 MR KHAN: No, of course. I'm grateful.

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1 PRESIDING JUDGE EBOE-OSUJI: Witness, when Mr Khan was asking you
2 questions and he mentioned the name of Mr Benjamin Bett, you said you had heard
3 the name, but you said personally you could not vote for anyone else. Why was
4 that that you could not vote for anyone else?

5 THE WITNESS: (Interpretation) Personally, I wanted to vote for someone from a
6 different ethnic group.

7 PRESIDING JUDGE EBOE-OSUJI: Thank you.
8 Mr Khan, please proceed.

9 MR KHAN: I'm most grateful, Mr President.

10 Q. Witness, the ODM was quite confident that they would prevail, that they
11 would win in the 2007 presidential elections; is that correct?

12 A. That is correct.

13 Q. And one of the reasons they were confident that they would win is because
14 their leadership represented all different parts of Kenya; is that right?

15 A. That is true.

16 Q. And the leadership came from many different ethnic groups, not from one; is
17 that right?

18 A. Yes.

19 Q. I'm grateful.

20 MR KHAN: Your Honour, if we could go into private session I would be grateful.

21 PRESIDING JUDGE EBOE-OSUJI: Private session.

22 (Private session at 3.47 p.m.) * Reclassified as Open session

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

24 MR KHAN:

25 Q. Witness, I'm going to ask you a couple of questions or a few questions

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1 regarding your employment. You've told the Court that you were a -- you helped
2 your father farming the land. That's correct, is it not?

3 A. Yes, that is true.

4 Q. And you said that you worked at (Redacted). Do you
5 remember telling that to the Prosecution?

6 A. Yes, I remember.

7 Q. And also you were employed by (Redacted). Do you
8 remember saying that, Witness?

9 A. Yes, I remember.

10 Q. Now, you've given evidence over a few days, Mr Witness, regarding the
11 election of 2007. In 2007, were you -- besides farming, did you also work for the
12 (Redacted)

13 A. I had resigned.

14 Q. How long before the elections had you resigned, sir? How long before the
15 2007 elections had you resigned?

16 A. It had been a long time since I had left that job.

17 Q. Months or years?

18 A. Years.

19 Q. And were you working for (Redacted) in 2007?

20 A. I had left that job.

21 Q. How long before the 2007 elections had you left your job at the (Redacted)
22 (Redacted)?

23 A. Many years.

24 Q. How many years before 2007? Can you help us? Was it one year, two
25 years, a decade? How long, sir?

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1 A. Just over ten years.

2 MR KHAN: I'm grateful, Mr Witness.

3 Now, your Honours, we can go back with your leave to public session for the last
4 few minutes.

5 PRESIDING JUDGE EBOE-OSUJI: Back to public session and you have seven
6 minutes.

7 (Open session at 3.53 p.m.)

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

9 MR KHAN:

10 Q. Witness, I'm going to cover questions regarding the campaign, just three more
11 questions. Attending these different campaign rallies in 2007, were you aware that
12 in fact the Orange Democratic Movement was campaigning throughout the country
13 of Kenya?

14 A. Yes, I knew that.

15 Q. It wasn't a battle. It wasn't an election for the Rift Valley. It was an election
16 campaign for the Republic of Kenya at presidential level; is that correct?

17 A. That is correct.

18 Q. And you are aware, are you not, that the ODM leadership divided themselves
19 up so that they could cover as much territory as possible during the campaign
20 period? You're aware of that?

21 A. I knew that.

22 Q. And it's correct, is it not, that you went to the Nandi Hills stadium rally.
23 You've given evidence about that; is that right?

24 A. That is true.

25 Q. And that was a very large rally, you say, correct?

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1 A. That is true.

2 Q. Thousands of people, would that be a fair reflection of attendance?

3 A. Yes.

4 Q. And that was the only rally -- the only ODM rally that took place at Nandi
5 Hills stadium in 2007 in the election period; is that right?

6 A. It is the rally that I attended. I do not know whether there were any others.

7 Q. But being keen on knowing who to vote for and being a member of the ODM
8 and going to five rallies that you've spoken about, had you heard of another rally,
9 another ODM rally at Nandi Hills stadium during the 2007 election campaign, or
10 was that the only one?

11 A. I'm only aware of that one.

12 Q. So just to be clear, Witness, you hadn't -- you didn't hear of any other ODM
13 rally taking place in Nandi Hills stadium during the 2007 election campaign besides
14 the one that you've spoken about; is that right?

15 A. I did not understand.

16 Q. Let me try again, Mr Witness.

17 A. I didn't hear of any other.

18 Q. Yes. I'm grateful. And you've given evidence about attending a rally at
19 Kapchorwa at a football field. Do you remember saying that?

20 A. Yes.

21 Q. And in fact, that was at the Majani Chai Estate, M-A-J-A-N-I, Chai, C-H-A-I.
22 That was at the Majani Chai Estate; correct?

23 A. That is correct.

24 Q. I'm grateful. And, Witness, you didn't hear of any other rally at the
25 Kapchorwa football field in 2007 besides the one that you've spoken about; is that

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1 right? No other ODM rally besides the one you've told the Judges about?

2 A. I never -- I never heard of any other rally.

3 MR KHAN: I'm grateful. And, your Honour, with your leave, that may be an
4 appropriate time. I'm grateful.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you. Witness, we've now come to the
6 end of our sitting for today. You will now be excused from the stand, but you will
7 join us again tomorrow at 9.30. You will please not discuss your testimony with
8 anybody while you are not in court, okay?

9 THE WITNESS: (No interpretation)

10 PRESIDING JUDGE EBOE-OSUJI: Court officer, please bring down the blinds and
11 usher the witness out of the courtroom.

12 (Closed session at 4.01 p.m.) * Reclassified as Open session

13 THE COURT OFFICER: (Interpretation) We are in closed session, Mr President.
14 (The witness stands down)

15 MR PUGLIATTI: Mr President, your Honours, just as the witness is being taken
16 out, I can pass on a message that has made its way to us from upstairs, that the next
17 witness would be available, that the path has been cleared for the witness to be
18 prepared over the weekend, and, therefore, that witness we anticipate will be ready
19 to start on Tuesday.

20 PRESIDING JUDGE EBOE-OSUJI: Why not Monday?

21 MR PUGLIATTI: I believe because there's a day required for familiarisation to take
22 place. The message I had was Tuesday.

23 PRESIDING JUDGE EBOE-OSUJI: All right. So we will -- there is no risk of
24 spilling over or getting compressed towards the end of this segment?

25 MR PUGLIATTI: Conservatively estimating seven days I'm told, it should not be

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1 necessary to use the buffer day.

2 PRESIDING JUDGE EBOE-OSUJI: All right. Mr Khan, how much longer are you
3 staying with the witness?

4 MR KHAN: Your Honour, I'll go as quickly as I can. Probably Thursday. I will
5 try to be as quick as I can. I'll have a better idea tomorrow probably by the first
6 session, but definitely by the end of Thursday. But I will try to be significantly
7 shorter than that.

8 PRESIDING JUDGE EBOE-OSUJI: That would be greatly appreciated if you can
9 shorten it before Thursday.

10 MR KHAN: I'm grateful.

11 PRESIDING JUDGE EBOE-OSUJI: Thank you. Court will rise.

12 One second. Mr Kigen-Katwa, you're on your feet.

13 MR KIGEN-KATWA: Yes, Mr President. I was wondering whether -- on our part
14 we are willing to make compromises so that we can start with that witness on
15 Monday. So if the Prosecution could attempt to prepare him so that he's ready on
16 Monday as opposed to Tuesday, the next witness.

17 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, do you join in that sentiment?

18 MR KHAN: Yes, your Honour. And by way of assisting, I think what my learned
19 friend was alluding to was that we will not insist upon, so to speak, the 24-hour rule,
20 that proofing should not take place in the 24-hour cordon sanitaire period before
21 testimony. So we won't raise that objection if it means we can start on Monday and
22 that way hopefully we'll ensure that the witness is finished by the end of the session.

23 PRESIDING JUDGE EBOE-OSUJI: Yes. As you can see, that was also the
24 sentiment of the Chamber.

25 But, Mr Pugliatti, can you get back to us on that tomorrow?

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1 MR PUGLIATTI: We can, but we imagine it's a VWU issue rather than a
2 willingness on the part of the Prosecution. I imagine it -- I imagine it wouldn't be a
3 problem for us there, but there are procedures that the VWU need to perform with
4 the witness as well.

5 PRESIDING JUDGE EBOE-OSUJI: Yes, but explore it. Now, you've heard the
6 Defence and the Chamber has also -- our preference is to start sooner than later but --

7 MR PUGLIATTI: We will explore that.

8 PRESIDING JUDGE EBOE-OSUJI: Yes.

9 MR PUGLIATTI: And convey that.

10 PRESIDING JUDGE EBOE-OSUJI: Yes.

11 Mr Nderitu, is this a witness of interest to you in terms of your retainer?

12 MR NDERITU: No, Mr President, the next witness is not. Thank you.

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

14 *(The hearing ends in closed session at 4.04 p.m.) Reclassified as Open session

15 RECLASSIFICATION REPORT

16 Pursuant Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
17 2013, and the instructions in the email dated 14 August 2014, the version of the
18 transcript with its redactions becomes Public.