

Trial Hearing
Witness: KEN-OTP-P-0405

(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
5 and Joshua Arap Sang - ICC-01/09-01/11
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera Carbuccion
7 and Judge Robert Fremr
8 Trial Hearing
9 Wednesday, 25 June 2014
10 (The hearing starts in open session at 9.34 a.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
15 Court officer, please call the case.
16 THE COURT OFFICER: (Interpretation) Thank you, Mr President. The situation
17 in the Republic of Kenya, in the matter of The Prosecutor versus William Samoei Ruto
18 and Joshua Arap Sang, ICC-01/09-01/11.
19 We are in open session.
20 PRESIDING JUDGE EBOE-OSUJI: Thank you.
21 Any changes in appearances?
22 MR PUGLIATTI: Mr President, your Honours, good morning. No change for the
23 Prosecution.
24 MR NDERITU: Good morning, Mr President, your Honours. No
25 change from us either.

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 MS HAMBRICK: Good morning, your Honours. For the Sang team we remain the
2 same.

3 MR HOOPER: We're the same, that is Ms Jayaraj, Ms Sullivan and Ms Morgan, and
4 we're joined again today by Mr Khan and Ms Alagendra. Thank you.

5 PRESIDING JUDGE EBOE-OSUJI: Witness, welcome back to the stand. We are in
6 open session. Mr Pugliatti will continue his examination-in-chief. May I remind
7 you again of what I told you at the beginning: Listen carefully to the questions and
8 answer just the questions and wait for the next question to be asked of you. Also try
9 your best to observe the five-second pause rule of thumb. Thank you.

10 Mr Pugliatti?

11 MR PUGLIATTI: Thank you, Mr President. I'd like to commence continuing
12 questions this morning in private session, if the Court's minded?

13 PRESIDING JUDGE EBOE-OSUJI: For how long?

14 MR PUGLIATTI: I should say upfront that much of what we intend to ask the
15 witness in this morning's session will be in private session. There are one or two
16 points where we feel we can take the evidence back into public, but much of this
17 morning's session we submit needs to be private. The -- the first private session
18 approximately five minutes, then about five minutes of public and then we would
19 seek to continue in private.

20 PRESIDING JUDGE EBOE-OSUJI: Do your best to minimise the need for private
21 session, especially with the protected information sheet that has been prepared to
22 enable that to be done.

23 We will go into private session now.

24 *(Private session at 9.38 a.m.) Reclassified as open session

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

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti.

2 WITNESS: KEN-OTP-P-0405 (On former oath)

3 QUESTIONED BY MR PUGLIATTI: (Continuing)

4 Q. Mr Witness, good morning.

5 A. Good morning.

6 Q. Do you recall when you were interviewed, when you met with an -- were
7 interviewed by Prosecution investigators in (Redacted) that you were asked to
8 draw a map? Do you recall that?

9 A. I do.

10 MR PUGLIATTI: I'm going to ask Court Management to please place before the
11 witness annex 1 to the witness's statement which can be found at tab 2 of the bundles.
12 For the record this is item KEN-OTP-0078-2242, and with the Court's leave I will also
13 ask the Court Management to place the item on the projector in front of the witness.
14 I should also state this item is classified as confidential.

15 PRESIDING JUDGE EBOE-OSUJI: The item is confidential said Mr Pugliatti.

16 THE COURT OFFICER: (Interpretation) I would like to ask the parties to press on
17 the "DocuCam" button next to them.

18 MR PUGLIATTI:

19 Q. Witness, can you see the sketch in front of you?

20 A. I can.

21 Q. And can you look at the bottom right-hand corner. Is that your name and
22 signature there?

23 A. It is mine.

24 Q. And do you see the date (Redacted)

25 A. Yes.

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 Q. Okay. Can you tell the Court who drew this sketch?

2 A. Myself.

3 Q. And could you tell the Court the occasion that you drew this sketch at?

4 A. Come again?

5 Q. When did you draw this sketch?

6 A. On the dated day.

7 Q. And can you tell the Court what this is a sketch of?

8 A. This is a sketch of a map of Yamumbi -- (Redacted)

9 (Redacted)

10 Q. Now, we can see that there are several locations that have been annotated on
11 this sketch. I'd just like to ask you a few questions about these. First of all, if one
12 looks roughly at the centre of the page, can you tell us what we see there?

13 A. I've circled to indicate that that is (Redacted)

14 (Redacted)

15 PRESIDING JUDGE EBOE-OSUJI: That is the shaded area?

16 THE WITNESS: True.

17 MR PUGLIATTI:

18 Q. Now, if we look above and slightly to the left of that location we can see that it's
19 written (Redacted). Is that the same (Redacted) that you've been referring to in
20 your testimony as location number 8?

21 A. Yes.

22 Q. You've also been referring in your testimony to a location number 9, (Redacted)
23 Is that marked on the map in any way?

24 A. No.

25 Q. Witness, are you in a position, if you had a pen, to make a mark on the map to

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 indicate where (Redacted) is on that map?

2 A. Yes.

3 Q. I believe that the Court Management has a pen to offer you to your left. And

4 could you just with the letter (Redacted) mark where (Redacted) is on this sketch.

5 And, Witness, we can see that slightly above where you've made that marking there's

6 the -- on the road it has written (Redacted) Can you just explain that road, please?

7 A. Yes, that road (Redacted) on one side and (Redacted) on the other

8 side. And down there where I've indicated (Redacted), there's (Redacted) that

9 separates Yamumbi with (Redacted)

10 (Redacted)

11 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, the mark on (Redacted) needs to be

12 better done for purposes of the record so that somebody who's following the

13 proceedings on the transcript and looking at the map can make better sense and

14 connection.

15 MR PUGLIATTI: Perhaps we could also have the witness use the number 9, which

16 was the number -- location number 9 was the PIS number for that location that he

17 referred to, so we could also ask him to use that number.

18 Q. Witness, alongside the letter that you've marked, could you also write number

19 "9"?

20 So just for the record now the annotations show the letter (Redacted) and number "9" in the

21 bottom left corner of the map, which the witness has told the Court indicates the

22 (Redacted) that he's testified about previously.

23 Now, Witness, just above (Redacted) we can see a little square and

24 an annotation (Redacted) Can you confirm that that is the same house as

25 person 10 who you've testified about?

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 A. Yes, I confirm.

2 Q. And now just above and to the right of (Redacted) we see a
3 square, a larger square, and an annotation (Redacted) Can you confirm
4 whether that is (Redacted) of person number 19 who you've testified about?

5 A. I confirm.

6 Q. Just above (Redacted) it says -- (Redacted), it says (Redacted)
7 (Redacted) Can you confirm whether that is location number 7 that you've been
8 testifying about?

9 A. I confirm.

10 Q. Following to the right of (Redacted) we see a smaller box and (Redacted)
11 (Redacted) Can you confirm whether that is the house of person number 13
12 that you've testified about?

13 A. I confirm.

14 Q. And if we look to the far right of the sketch and the top left of the sketch we see
15 (Redacted) is that correct?

16 A. Say it again.

17 PRESIDING JUDGE EBOE-OSUJI: One at a time, Mr Pugliatti.

18 MR PUGLIATTI: Indeed, Mr President.

19 Q. Witness, to the right of (Redacted) we see on the other side of the
20 road an annotation (Redacted) Can you confirm whether that is correct on the
21 map?

22 A. Correct.

23 Q. Now, going to the (Redacted) and above the (Redacted) we also see an
24 annotation that says (Redacted) Do you see that?

25 A. I see.

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 Q. Can you confirm whether that is accurate on the map?

2 A. Accurate.

3 Q. Now, back to (Redacted), and if we look below (Redacted),
4 am I reading the sketch correctly that -- where it says (Redacted) ?

5 A. Yes.

6 Q. And slightly to the right of that there's a box with an annotation, does that say
7 (Redacted) is that correct?

8 A. Correct.

9 Q. And is that the house of person number 14 that you testified about?

10 A. Correct.

11 Q. Now, taking you slightly below that house we see another box, is it correct that
12 it reads (Redacted) there; is that correct?

13 A. Correct.

14 Q. And is that the location number 10 that you testified about yesterday?

15 A. Correct.

16 Q. And finally just below (Redacted), can you tell the Court what is
17 indicated just below (Redacted)

18 A. (Redacted)

19 Q. Thank you very much, Witness.

20 Mr President, at this point I'd move to have this annex tendered into evidence.

21 PRESIDING JUDGE EBOE-OSUJI: Any objection?

22 MS HAMBRICK: None for us.

23 MR HOOPER: No objection.

24 PRESIDING JUDGE EBOE-OSUJI: It will be tendered into the record as a next in the
25 Prosecution exhibits.

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 THE COURT OFFICER: (Interpretation) The annotated version of document
2 KEN-OTP-0078-2242, confidential, will be registered as EVD-T-OTP-00108 or
3 Prosecution Exhibit Number 108.

4 MR PUGLIATTI: Mr President, with the Court's leave we can re-enter public session
5 for a few moments.

6 PRESIDING JUDGE EBOE-OSUJI: We go back to public session.
7 (Open session at 9.50 a.m.)

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

9 PRESIDING JUDGE EBOE-OSUJI: Thank you.
10 Mr Pugliatti.

11 MR PUGLIATTI:

12 Q. Witness, we're back in public session. Where we left off your testimony
13 yesterday you told the Court that on the evening or the night-time of 31 December
14 you'd arrived at location number 17 and you'd met up with persons 24, 25 and 26.
15 Do you recall that?

16 A. I do.

17 Q. And I'd asked you if you'd spent the night there and you said you did?

18 A. Correct.

19 Q. So now I'd like to ask you about the next morning, January the 1st. Use the
20 sheet in front of you if you need to, but did you stay at location number 17, or did you
21 go somewhere else on the morning of January 1st?

22 A. On the morning of January 1st, there were more reports of attacks at an area
23 called -- which is not here, but the area is called Kasarani, and I -- and many other
24 reports of attacks still coming in from the location that I lived.

25 PRESIDING JUDGE EBOE-OSUJI: All right, Witness, let's do this. Just to remind

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 you of the need to listen to the question and just respond to it. The Prosecutor's
2 question was, "... did you go somewhere else on the morning of January 31st?" If
3 you did, it is best to just say that and wait for any more questions for -- from the
4 Prosecutor.

5 The reason I say that is, if you begin to develop your answer before you give it, we
6 run the risk of you slipping in identifying information in there; quite apart from
7 matters that what you may be putting on to the record, maybe something that the
8 Prosecutor doesn't really need for purposes of the job he's doing. Just listen to his
9 question and answer it and he will ask you further question -- follow-up questions if
10 he needs to.

11 So the question is: Did you remain there, or did you go somewhere else?

12 THE WITNESS: I went to -- I went somewhere else. Location 23, to the person
13 of -- to the home of person number 23.

14 MR PUGLIATTI:

15 Q. And where was person number 23's home?

16 A. It was located within location number 13.

17 Q. And what time did you go to person number 23's house?

18 A. I arrived there with person number 24, 25 and 26 at 10.

19 Q. Now, on the way to this person's house, did you see anything on the road?

20 A. Yes, I did.

21 Q. Can you tell the Court what you saw?

22 A. I saw very many people moving, and at one point on the road I happened to see
23 people moving towards the direction which is location 15 - close to location number
24 15 - and when I moved closer I saw some two human heads that had been chopped
25 off from the main body.

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 Q. And were you able to tell what ethnicity these heads and bodies were?

2 A. The people who were around there were talking and saying -- saying Luo.

3 Q. Now, you said you saw many people on the road. What ethnicity were these
4 people?

5 A. They were a mixture of Kikuyus and Luhyas.

6 Q. And do you know where they came from?

7 A. Most of them came from the location where I lived and the others came from
8 location number 13.

9 Q. And do you know where they were going?

10 A. Yes, all of them were going towards the direction of the police station in location
11 number 13.

12 Q. And why were they going to that police station?

13 A. They were fleeing from the attacks.

14 Q. Did they say who had attacked them?

15 A. Yes. The Kikuyus around location number 15 had -- were saying they were
16 attacked by the Luos, while the rest who came from the farm where I lived had been
17 attacked by the Kalenjins.

18 Q. And you said you arrived at person number 23's house at approximately 10 in
19 the morning; is that correct?

20 A. Correct.

21 MR PUGLIATTI: Mr President, at this point I'd request we go back into private
22 session. I have some follow-up questions on this incident, which would take two or
23 three minutes, and then I'd like to move into a new topic which I estimate will take 10
24 to 15 minutes of questioning, but should be -- but should be hopefully no more than
25 that.

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: Are you moving away from the incident of the
2 decapitated heads, or are you coming back to it?

3 MR PUGLIATTI: I had no more questions on the heads in particular. I had
4 follow-up questions regarding this course of events and the witness's journey at this
5 time.

6 PRESIDING JUDGE EBOE-OSUJI: Witness, you said the people who were with you
7 that say that the decapitated heads were Luo heads --

8 THE WITNESS: True.

9 PRESIDING JUDGE EBOE-OSUJI: -- what were the ethnicities or ethnicity of those
10 with you at the time? Who said that?

11 THE WITNESS: It was said by people in the crowd, and I mentioned that I
12 identified a majority of them to be Kikuyus and Luhyas.

13 PRESIDING JUDGE EBOE-OSUJI: Was there any theory as to what had occurred?

14 THE WITNESS: I have not got that question properly.

15 PRESIDING JUDGE EBOE-OSUJI: When they said that the decapitated heads
16 belonged to Luos, was there any theory as to why two Luos would have been
17 decapitated?

18 THE WITNESS: Yes.

19 PRESIDING JUDGE EBOE-OSUJI: What was that theory?

20 THE WITNESS: That the Luos were the ones who were responsible for breaking into
21 businesses belonging to Kikuyus and looting, and so it was a revenge or -- that is
22 what I would put. That is how I understood. It was a retaliation.

23 PRESIDING JUDGE EBOE-OSUJI: Retaliation meted out by who?

24 THE WITNESS: I did not understand who did that.

25 PRESIDING JUDGE EBOE-OSUJI: Thank you.

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 Prosecutor, you may ask follow-up questions.

2 MR PUGLIATTI: I have none, but thank you, Mr President.

3 PRESIDING JUDGE EBOE-OSUJI: Thank you.

4 MR PUGLIATTI: But I reiterate my request that we enter private session.

5 PRESIDING JUDGE EBOE-OSUJI: Private session then.

6 *(Private session at 10.00 a.m.) Reclassified as open session

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

8 PRESIDING JUDGE EBOE-OSUJI: Proceed.

9 MR PUGLIATTI:

10 Q. Witness, after you arrived at the home of person number 23, did you speak to
11 anybody?

12 A. Yes.

13 Q. Who did you speak to?

14 A. I spoke to person number 28, who was at location number 14, to try and find out
15 the situation in that location.

16 Q. Okay, I'll ask you questions about that in a few moments. Apart from person
17 number 28, did you speak with anybody else that morning at the house that you were
18 at, person number 23?

19 A. Yes, while still there I spoke -- person number 27 called me by phone.

20 Q. And what did you and person number 27 discuss?

21 A. (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

- 1 MR PUGLIATTI: Just before I ask my next question, I'm advised of a transcript
2 correction at page 13, line 9, and that the first reference should be (Redacted), not (Redacted)
3 Q. (Redacted)
4 A. (Redacted)
5 Q. And how did you know this person?
6 A. (Redacted)
7 (Redacted)
8 Q. You said that (Redacted)
9 (Redacted) Do you know where that took place, where
10 they came to (Redacted)
11 A. Yes, it was within a location called (Redacted)
12 Q. And is that (Redacted)
13 A. (Redacted)
14 Q. And did this person tell you (Redacted)
15 (Redacted)
16 A. (Redacted)
17 (Redacted)
18 Q. Can you just expand on that, if you can? What do you mean by, (Redacted)
19 (Redacted)
20 A. (Redacted)
21 Q. (Redacted)
22 A. (Redacted)
23 Q. And do you know if (Redacted)?
24 A. I don't know.
25 MR PUGLIATTI: Mr President, another transcript correction at page 13, line 1. We

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 heard (Redacted)

2 Q. Now, Witness, you said -- sorry, my last question. Approximately what time
3 did this phone call take place?

4 A. (Redacted)

5 Q. So you said a few moments ago that you also telephoned person number 28 to
6 check on the situation; is that correct?

7 A. Yes.

8 Q. And at what time was that phone call?

9 A. It was between (Redacted)

10 Q. And can you tell the Court how you know person number 28?

11 A. He is (Redacted)

12 Q. And in particular what were you telephoning him to check about?

13 A. (Redacted)

14 (Redacted)

15 Q. And just so we're clear, which location are you referring to?

16 A. Number 14.

17 Q. And did you ask (Redacted)

18 A. Yes.

19 Q. And what did person number 28 tell you about (Redacted)

20 A. (Redacted)

21 (Redacted)

22 Q. And did he say why (Redacted)

23 A. Yes.

24 Q. And why was that? What was that?

25 A. (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

- 1 (Redacted)
- 2 (Redacted)
- 3 Q. Did he tell you (Redacted)
- 4 A. No.
- 5 Q. And did he tell you (Redacted)
- 6 A. He told me (Redacted)
- 7 Q. Did you discuss anything (Redacted)
- 8 A. Yeah, (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 Q. Did you speak (Redacted)
- 13 A. (Redacted)
- 14 (Redacted)
- 15 Q. Did you have a chance to (Redacted)
- 16 A. Yes.
- 17 Q. How long (Redacted)
- 18 A. (Redacted)
- 19 Q. And what did you say (Redacted)
- 20 A. (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 Q. Did he say (Redacted)
- 24 A. He talked (Redacted)
- 25 Q. And had he (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

- 1 (Redacted)
- 2 A. Yes, he told me that, (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 Q. Did he say (Redacted)
- 6 A. No.
- 7 Q. Did he say (Redacted)
- 8 A. Yes, he said (Redacted)
- 9 Q. And did he say (Redacted)
- 10 A. (Redacted)
- 11 Q. And you said that he told you that (Redacted)
- 12 (Redacted)
- 13 A. (Redacted)
- 14 Q. And did he say (Redacted)
- 15 A. Yes. (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 Q. And was that (Redacted)
- 19 A. (Redacted)
- 20 Q. So (Redacted)
- 21 A. (Redacted)
- 22 Q. So am I correct that (Redacted)
- 23 (Redacted)
- 24 A. Yes.
- 25 Q. So (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

- 1 A. I -- he told me (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 Q. So (Redacted)
- 8 A. About (Redacted)
- 9 Q. And did person number 28 tell you that (Redacted)
- 10 (Redacted)
- 11 A. Yes, he told me that (Redacted)
- 12 Q. So did you (Redacted)
- 13 A. Yes. From location number -- of the person number 23, (Redacted)
- 14 (Redacted)
- 15 Q. And did you (Redacted)?
- 16 A. Yes.
- 17 Q. And did you (Redacted) --
- 18 A. Yes.
- 19 Q. -- (Redacted)
- 20 A. Yes.
- 21 Q. Now, Witness, is it correct that (Redacted)
- 22 (Redacted)
- 23 A. Yeah, true.
- 24 Q. I don't want to ask you very much, Mr Witness, but is --
- 25 MR HOOPER: Can I say that we fully accept that (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted). My friend, if he wants to, he can -- can be very direct in his questioning.

3 If he wants to put specific facts in respect to this, instead of asking the witness to

4 relate them, I have no objection and I don't think my friend has either.

5 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, Mr Hooper is offering that you can

6 if you need to simply state those facts on the record without asking the witness about

7 them.

8 MR PUGLIATTI: That's very helpful. I'm grateful for that indication and I'll move

9 as quickly as I can through this. So stating these facts on the record - Witness, you

10 don't need to respond to this, these aren't questions - that when the witness (Redacted)

11 (Redacted), as

12 Mr Hooper has said, (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 And further to that we do have some exhibits that we'd like to enter into the record.

18 Our learned friends from both teams have indicated that they won't object to the

19 admission of those items. We're not seeking to place them in front of the witness

20 given that lack objection. We can do that in a few moments. I'll have some

21 questions for the witness now about (Redacted). I understand those

22 to be elicited in the usual manner, but should not be extensive or lengthy.

23 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, you do accept the facts as stated by

24 the Prosecutor as concerns (Redacted) and --

25 MR HOOPER: Oh, yes. There's --

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: -- (Redacted)

2 (Redacted)?

3 MR HOOPER: Yes, there's some (Redacted). And as my

4 friend said, we don't object to those being placed before you and we admit them. So

5 it needn't be done formally through the witness. We fully accept those are

6 (Redacted).

7 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, Ms Hambrick.

8 MS HAMBRICK: Likewise we accept the facts as presented by the Prosecution, and

9 we had indicated we have no objection to the admission of (Redacted)

10 PRESIDING JUDGE EBOE-OSUJI: Thank you.

11 Mr Pugliatti.

12 MR PUGLIATTI:

13 Q. Now, Witness, when you (Redacted)

14 (Redacted)

15 A. Yes, (Redacted)

16 Q. Now, I understand that this is not easy, but could you explain to the Court what

17 (Redacted)

18 A. (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 PRESIDING JUDGE EBOE-OSUJI: Witness, who was (Redacted)

24 THE WITNESS: (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

- 1 PRESIDING JUDGE EBOE-OSUJI: Proceed.
- 2 MR PUGLIATTI:
- 3 Q. (Redacted)?
- 4 A. (Redacted)
- 5 (Redacted)
- 6 Q. And did (Redacted)
- 7 A. (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 Q. And just very briefly, did (Redacted)
- 13 (Redacted)
- 14 A. (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 Q. And I understand that (Redacted)
- 19 A. Yes.
- 20 Q. And in fact you later (Redacted); is that
- 21 correct?
- 22 A. Correct.
- 23 MR PUGLIATTI:
- 24 Q. Mr President, that was all that we had on this topic. Perhaps this is a moment,
- 25 a good moment to enter into the record those (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 So these can be found at tab 5 and the subsequent sub-tabs. It is a (Redacted)
2 (Redacted). I'll go through them one at a time.
3 Tab 5A, it's item KEN-OTP-0078-2248, which (Redacted)
4 (Redacted). And for the record, if it's not there already, that's (Redacted)
5 The second (Redacted) at tab 5B is KEN-OTP-0078-2250, (Redacted)
6 (Redacted)
7 The third item, tab 5C, KEN-OTP-0078-2252, which was also (Redacted)
8 (Redacted)
9 These were (Redacted)
10 Next is tab 5D, KEN-OTP-0078-2254, (Redacted)
11 Following that tab E, KEN-OTP-0078-2256, (Redacted)
12 (Redacted)
13 Tab 5F, KEN-OTP-0078-2258, this time (Redacted)
14 Tab 5G, 0078 -- KEN-OTP-0078-2260, (Redacted)
15 And that's all from the Prosecution for those items.
16 PRESIDING JUDGE EBOE-OSUJI: And the Defence does not object?
17 MR HOOPER: Not at all.
18 MS HAMBRICK: Correct, your Honour.
19 PRESIDING JUDGE EBOE-OSUJI: The (Redacted) are received into the record as
20 the next in the Prosecution exhibits.
21 THE COURT OFFICER: (Interpretation) Mr Pugliatti, are all the documents
22 confidential?
23 MR PUGLIATTI: Yes, I can confirm they're all confidential. Thank you for that.
24 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0078-2248 will be
25 registered as EVD-T-OTP-00109, Exhibit Number 109.

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

- 1 Document KEN-OTP-0078-2250 will bear the reference EVD-T-OTP-00110, or
- 2 Prosecution Exhibit Number 110.
- 3 Document KEN-OTP-0078-2252 will be registered as EVD-T-OTP-00111, or
- 4 Prosecution Exhibit Number 111.
- 5 Document KEN-OTP-0078-2254 will be registered as EVD-T-OTP-00112, or
- 6 Prosecution Exhibit Number 112.
- 7 Document KEN-OTP-0078-2256 will be registered as EVD-T-OTP-00113, or
- 8 Prosecution Exhibit Number 113.
- 9 Document KEN-OTP-0078-2258 will be registered as EVD-T-OTP-00114, or
- 10 Prosecution Exhibit Number 114.
- 11 And, lastly, document KEN-OTP-0078-2260 will be registered as EVD-T-OTP-00115,
- 12 or Prosecution Exhibit Number 115.
- 13 And all those documents are confidential.
- 14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 15 Mr Pugliatti, please proceed.
- 16 MR PUGLIATTI: Thank you, Mr President.
- 17 Q. Mr Witness, I'm going to move on now, but still (Redacted), it's correct
- 18 that you (Redacted); is that correct?
- 19 A. Yes.
- 20 Q. And did you see anybody from Yamumbi that you knew (Redacted)
- 21 A. Yes, I witness and I talked to person number 30.
- 22 Q. And what ethnicity is person number 30?
- 23 A. Kikuyu.
- 24 Q. How old is person number 30, approximately at the time?
- 25 A. He was (Redacted).

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

- 1 Q. And what did you talk about with this person?
- 2 A. (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 Q. Did you observe any other injuries to this person?
- 7 A. Yes. There were other injuries (Redacted)
- 8 Q. Do you remember the day, what date you spoke to him on?
- 9 A. Either the (Redacted)
- 10 Q. And did this person tell you when he had been attacked?
- 11 A. (Redacted)
- 12 Q. Am I correct (Redacted), just for the record; is that correct?
- 13 A. Correct.
- 14 Q. And did he say (Redacted)
- 15 A. Yes. (Redacted)
- 16 Q. And do you know (Redacted)
- 17 (Redacted)
- 18 A. Yes, (Redacted)
- 19 Q. Now, while you were (Redacted), did you come to learn what had happened,
- 20 if anything, to (Redacted)
- 21 A. Yes. Person number 11 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 Q. So (Redacted)
- 25 A. True.

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

- 1 Q. And what about (Redacted)
- 2 A. (Redacted)
- 3 (Redacted)
- 4 Q. And was (Redacted)
- 5 A. Yes. (Redacted)
- 6 (Redacted)
- 7 Q. And what about (Redacted)
- 8 A. It was (Redacted)
- 9 Q. Now, do you recall the date on which person number 11 (Redacted)
- 10 (Redacted)
- 11 A. Must have been (Redacted)
- 12 Q. You said a moment ago that he (Redacted)
- 13 (Redacted)
- 14 A. Yes, he (Redacted)
- 15 (Redacted).
- 16 Q. And do you know (Redacted)
- 17 A. (Redacted)
- 18 (Redacted). I can remember.
- 19 Q. Now, after you (Redacted)
- 20 (Redacted)
- 21 A. (Redacted).
- 22 Q. On which date did you (Redacted)
- 23 A. I'm not very sure, but must have been around (Redacted).
- 24 Q. And when you (Redacted), can you tell the Court where you went?
- 25 A. I went (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. And (Redacted)

7 (Redacted)

8 A. (Redacted)

9 Q. And what about (Redacted) Yamumbi? Did you visit (Redacted)

10 Yamumbi when you (Redacted) on this date?

11 A. Yes. I went to a home belonging to somebody called (Redacted), another one

12 called (Redacted), and I saw they were burned completely.

13 Q. And these two individuals, what ethnicity were they?

14 A. Kikuyu.

15 Q. Witness, I'd like to show you a couple of photographs now and ask you to

16 comment on them.

17 MR PUGLIATTI: For the benefit of those in the Court, I'd ask that item

18 KEN-OTP-0080-1227 be brought up for the witness, and that's at tab 11B of the

19 bundles.

20 PRESIDING JUDGE EBOE-OSUJI: And what is the classification?

21 MR PUGLIATTI: Confidential, Mr President.

22 MR PUGLIATTI:

23 Q. Witness, do you see that image?

24 A. Yes.

25 Q. Do you recognise where that is?

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

- 1 A. I do.
- 2 Q. Okay. Where is that?
- 3 A. (Redacted)
- 4 Q. Do you know who -- first, can you tell the Court what kind of structure that is?
- 5 A. (Redacted) house that is burned.
- 6 Q. And do you know who that house belonged to at the time?
- 7 A. Yes, (Redacted).
- 8 Q. What ethnicity was (Redacted)
- 9 A. A Kikuyu.
- 10 Q. Now, when you (Redacted) on 31 December, was this building in
- 11 this condition?
- 12 A. No.
- 13 Q. And did you see this building (Redacted) on 4 or
- 14 5 January?
- 15 A. I did.
- 16 Q. And what (Redacted) -- what condition was it in?
- 17 A. It was burned, the way it is appearing here in this photo.
- 18 Q. I'd like to show you another photo.
- 19 This is KEN-OTP-0080-1228, tab C, 11C.
- 20 Witness, do you recognise this location?
- 21 A. I do.
- 22 Q. Can you tell the Court where it is?
- 23 A. (Redacted).
- 24 Q. Can you tell the Court the condition of those buildings?
- 25 A. They are burned.

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 Q. What kind of buildings were these?

2 A. Then it was a (Redacted) house.

3 Q. Do you know who owned these buildings at the time?

4 A. Yes, (Redacted).

5 Q. And what was his ethnicity?

6 A. Kikuyu.

7 Q. Were these buildings in this condition when you (Redacted) on 31

8 December?

9 A. No.

10 Q. Did you see these buildings when you (Redacted) in early

11 January?

12 A. I did.

13 Q. And what condition were they in on that occasion when (Redacted)

14 A. They were burned, as they are appearing on this photo.

15 MR PUGLIATTI: The next photo is KEN-OTP-0080-1229. It's tab 11D.

16 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, before you continue, as regards this

17 photo as with the other one, the previous one as well, have you established on the

18 record that the witness had seen them in the before state and when that was?

19 MR PUGLIATTI: Well, I did ask the witness if they were in this condition when he

20 left (Redacted) on the 31st, but I can put the question in the way framed by

21 your Honour.

22 Q. Witness, I'll take you back to the first photograph I showed you, which was

23 KEN-OTP-0080-1227. Now, I'd asked you earlier if this building was in this

24 condition when you left (Redacted) and you'd said "No." Can you describe

25 what condition this building was in when you left (Redacted) on

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 December 31st?

2 PRESIDING JUDGE EBOE-OSUJI: And if he had actually seen it.

3 MR PUGLIATTI:

4 Q. And had you seen it?

5 A. I had seen it. I (Redacted) –in fact, (Redacted)

6 (Redacted)

7 Q. And I'll ask you the same for the next photograph that was 0080-1228, if that
8 could be brought up again please? You said that this was -- this building was not in
9 this condition when you left on December 31st. What condition was it in and had
10 you seen it when you left; at that time when you left?

11 A. Yes, I had seen it. It was (Redacted).

12 Q. And what condition was it in before you left?

13 A. It was (Redacted)

14 Q. Was it damaged in the way that it's shown in the photograph?

15 A. No.

16 MR PUGLIATTI: The next photo I'd like to show is KEN-OTP-0080-1229. It is
17 sub-tab D.

18 Q. Witness, do you recognise where this is?

19 A. I do. (Redacted)

20 Q. Do you know who owned this property at the time?

21 A. I know. (Redacted)

22 Q. What ethnicity was this person?

23 A. Kikuyu.

24 Q. And what was this building used for?

25 A. It was (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 Q. Now, can you describe the condition of the house in the photograph?

2 A. It is burnt completely.

3 Q. Did you see this house before you left (Redacted) on 31 December?

4 A. Yes.

5 Q. And what condition was it in when you left on December 31st?

6 A. It was standing and people were living inside.

7 Q. And what condition was it in (Redacted) on 4 or 5 January?

8 A. It was burnt, as it is appearing in this photo.

9 MR HOOPER: Just for completeness, do we have a date when these photographs
10 were taken? They seem to form part of a series, so do we have a date for it?

11 MR PUGLIATTI: We're authenticating these videos, Mr President, through the
12 witness and we're asking him to observe on what he saw when he (Redacted)
13 (Redacted). Thus far in response to the questions he's affirmed that he saw these
14 properties in these conditions on 4 or 5 January, and so for those purposes they're
15 dated through the witness.

16 MR HOOPER: Well, it's a simple question. When were the photographs taken?
17 They're your photographs. When were they taken?

18 MR PUGLIATTI: We'll come back on that. We'll look into that.

19 Q. Witness, the next photograph I wanted to show you was KEN-OTP-0080-1230.

20 PRESIDING JUDGE EBOE-OSUJI: Mr Pugliatti, are you going to make it by 11?

21 MR PUGLIATTI: It'll be a squeeze, but we might just make it. I'll keep going and
22 I'll keep going as fast as I can as well.

23 Q. Witness, do you recognise this property?

24 A. Yes, I do.

25 Q. Where is this property?

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

- 1 A. (Redacted)
- 2 Q. Do you know who owned this property at the time?
- 3 A. Yes.
- 4 Q. Who owned this property?
- 5 A. (Redacted)
- 6 (Redacted)
- 7 Q. And what ethnicity was she?
- 8 A. Kikuyu.
- 9 Q. And what was the property used for at the time?
- 10 A. At the time it was (Redacted)
- 11 Q. Now, when you left (Redacted) on December 31st, did you see this
- 12 property?
- 13 A. Yes, I did.
- 14 Q. And what condition was it in?
- 15 A. It was complete.
- 16 Q. And did you (Redacted) and see this property (Redacted)
- 17 (Redacted) --
- 18 A. Yes, I did.
- 19 Q. -- in early January?
- 20 A. Yes.
- 21 Q. What condition was it in (Redacted)
- 22 A. It was destroyed the way it is appearing on this photo.
- 23 MR PUGLIATTI: Just one or two more, Mr President.
- 24 Q. The next photograph, Mr Witness, is KEN-OTP-0080-1231. Do you recognise
- 25 this property?

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

- 1 A. Yes, I do.
- 2 Q. Where is this property?
- 3 A. (Redacted).
- 4 Q. Do you know who owned this property?
- 5 A. Yes, I do.
- 6 Q. Who owned this property at the time?
- 7 A. (Redacted)
- 8 Q. What ethnicity was he?
- 9 A. Kikuyu.
- 10 Q. And at the time what was this property used for?
- 11 A. It was (Redacted)
- 12 Q. Now, did you see this property (Redacted) on
- 13 December 31st?
- 14 A. I did.
- 15 Q. And what condition was it in?
- 16 A. It was complete.
- 17 Q. (Redacted) on 4 or 5 January, did you see this
- 18 property again?
- 19 A. Yes, I did.
- 20 Q. And what condition was it in on that occasion?
- 21 A. It had been destroyed the way it is appearing here.
- 22 Q. Witness, finally I'd like to show you KEN-OTP-0080-1234. For the benefit of
- 23 those with a bundle, it's sub-tab I.
- 24 (Pause in proceedings)
- 25 MR PUGLIATTI: My apologies.

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 Q. Witness, do you recognise this property?

2 A. Yes, I do.

3 Q. And where is this property?

4 A. It's (Redacted)

5 Q. Do you know who owned this property at the time?

6 A. Yes, (Redacted)

7 Q. And what ethnicity was (Redacted)

8 A. Kikuyu.

9 Q. Now, this house, did you see this house at the end of December (Redacted)

10 (Redacted)?

11 A. No, I had seen it earlier.

12 MR PUGLIATTI: I'll leave it with that one. Regarding the dates, we can advise

13 those in the court that (Redacted)

14 (Redacted)

15 (Redacted). Once again I repeat we've situated the dates with these photos (Redacted)

16 (Redacted), as well as the conditions before (Redacted)

17 (Redacted) and their condition (Redacted) on 4 or 5 January.

18 At this point I'd like to seek to tender these into evidence, except for the last one. In

19 each case the witness recognised the location of these photographs as being (Redacted)

20 (Redacted)

21 (Redacted), and he's attested to their condition at the time of (Redacted) the end of

22 December and their burnt or destroyed condition (Redacted) on 4 or 5 January.

23 PRESIDING JUDGE EBOE-OSUJI: Any objections?

24 MR HOOPER: No objections at all. We're just concerned that all the provenance of

25 the photographs is redacted and we'd like to know what the source is because

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 presumably this is a sequence of photographs. I mean, someone's gone round the
2 (Redacted) taking photographs, they all appear to be on the same day, but we
3 don't have a photograph for example of (Redacted). There's no dispute
4 that (Redacted) was damaged and destroyed as he's described, but we'd like to see
5 the sequence really.

6 PRESIDING JUDGE EBOE-OSUJI: So no objection?

7 MR HOOPER: No objection.

8 MS HAMBRICK: We don't object either, but we also find it interesting that the
9 source and the chain of custody are redacted for all of these photos and we don't
10 understand why that's necessary.

11 MR PUGLIATTI: (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 PRESIDING JUDGE EBOE-OSUJI: The photos are admitted as the next in the
19 Prosecution exhibits.

20 And, Mr Pugliatti, do I take it then that you will continue to see if you can discuss
21 with the Defence as to the source, if you're able to answer that question, and the
22 provenance?

23 MR PUGLIATTI: We understand that the application of such redactions are on an
24 ongoing basis, but with periodic review, so we can engage in that exercise and liaison.

25 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0080-1227 will be

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

- 1 given the EVD number T-OTP-00116, or Prosecution Exhibit Number 116.
- 2 Document KEN-OTP-0080-1228 will be given the EVD number T-OTP-00117, or
- 3 Prosecution Exhibit Number 117.
- 4 Document KEN-OTP-0080-1229 will be given the EVD number T-OTP-00118, or
- 5 Prosecution Exhibit Number 118.
- 6 Document KEN-OTP-0080-1230 will be entered as EVD-T-OTP-00119, or Prosecution
- 7 Exhibit Number 119.
- 8 And, finally, document KEN-OTP-0080-1231 will be entered as EVD-T-OTP-00120, or
- 9 Prosecution Exhibit Number 120.
- 10 All these documents are confidential.
- 11 MR PUGLIATTI: And just before I ask that we return to open session, we have a
- 12 spelling correction for the record at page 29, line 3, and the spellings are (Redacted),
- 13 (Redacted), and for (Redacted)
- 14 But with that said, I request that we re-enter open session.
- 15 PRESIDING JUDGE EBOE-OSUJI: We go back to open session now.
- 16 (Open session at 10.53 a.m.)
- 17 THE COURT OFFICER: (Interpretation) We are in open session, Mr President.
- 18 MR PUGLIATTI:
- 19 Q. Witness, we're back in open session now and I just have a last few questions to
- 20 ask you before I finish. We're now in early January 2008. Did you observe
- 21 anything in Eldoret town around early January?
- 22 A. Yes, I observed that there were so many people belonging to the Kikuyu
- 23 community moving out of town in buses and in trucks and some of the trucks were
- 24 being escorted by military personnel.
- 25 Q. Do you know where these Kikuyus were headed?

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 A. Yes, some of them were saying they were headed for the Central Province of
2 Kenya, but most of them were making a stop-over at Nakuru before they decided
3 where to go.

4 Q. And do you know why they were being escorted?

5 A. Yes, I came to understand that the road towards Nakuru, who had the Kalenjin
6 attackers lined along the roads with all manner of weapons, and so it was not safe for
7 the Kikuyus to travel without an escort.

8 Q. And if you can, do you recall approximately what date it was that you saw this?

9 A. It was date beyond 4, 4 January.

10 Q. Approximately how much beyond, if you can?

11 A. It was not at one days off. It was about three days, from 4th, 5th, 6th and 7th.

12 Q. And was anybody saying anything to these people as they were leaving?

13 A. Yes. I remember at one point when I was trying to cross over the main road
14 towards the cathedral church, I stood amongst some three or four Kalenjin, and when
15 the buses were transporting these Kikuyus, I heard them say that "Your last
16 destination should be Othaya."

17 PRESIDING JUDGE EBOE-OSUJI: What was that word, was it "cathedral church"?

18 THE WITNESS: True.

19 PRESIDING JUDGE EBOE-OSUJI: Yes, okay.

20 MR PUGLIATTI:

21 Q. And where is Othaya?

22 A. It is in Central Province of Kenya.

23 Q. And would you have any idea why these Kalenjins said this as the Kikuyus
24 were leaving?

25 A. I understood it to mean that since they were -- they had attacked all Kikuyu

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 farms, they were actually driving them away from their farms so that they could go
2 to -- to live in their -- in those areas. They were going to Central Province.

3 Q. Now, after the violence, the Kikuyus from Yamumbi, did they return to live on
4 their farms?

5 A. They took a lot of time before they came to live in their farms, but that was
6 much later.

7 Q. So where were they living before that?

8 A. Most of them were living in a camp that was located close to Yamumbi and
9 some of them were live -- had rented houses in Kipkaren Estate and some parts of
10 Langas.

11 Q. Now, can you explain, if you know, why it took them a long time to return to
12 live on their farms?

13 A. First, there were no houses to go back to; two, the majority of people did not feel
14 safe to go back.

15 Q. And if you know, why did they not feel safe to go back?

16 A. The general situation was still very tense and so no one really felt secure.

17 Q. What were they afraid would happen?

18 A. That maybe more attacks would happen.

19 Q. And one last question on these attacks: By whom?

20 A. By the Kalenjins.

21 MR PUGLIATTI: Mr President, I have three or four wrap-up questions for this
22 witness which I'd request in private session. It will take two minutes or less.

23 PRESIDING JUDGE EBOE-OSUJI: Private session.

24 *(Private session at 10.57 a.m.) Reclassified as open session

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

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 MR PUGLIATTI:

2 Q. Now, Mr Witness, is it correct that (Redacted)

3 (Redacted)

4 A. True.

5 Q. And then after that (Redacted)

6 is that correct?

7 A. Correct.

8 Q. And then (Redacted); is that correct?

9 A. Yes.

10 Q. And am I correct that (Redacted)

11 A. Correct.

12 Q. Mr Witness, I have no further questions for you this morning. My learned
13 friends from the Defence may have some questions.

14 Mr President, that's all for the Prosecution. Thank you.

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

16 Mr Nderitu, would you still want to ask the witness questions?

17 MR NDERITU: Yes, your Honour, I would want to. I would be having not very
18 many questions, perhaps at most 15 minutes. But I note that it's perhaps an
19 appropriate time also to take the mid-morning break.

20 PRESIDING JUDGE EBOE-OSUJI: Yes, it is, indeed.

21 And Mr Hooper and Ms Hambrick, if Mr Nderitu takes 15 minutes, what does that do
22 to your schedule?

23 MR HOOPER: Yes, I think we can. I hope we can, yes. Yes.

24 PRESIDING JUDGE EBOE-OSUJI: We will take our morning break now. In the
25 meantime, either you, Mr Pugliatti, or Mr Steynberg, you will need to communicate

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 with the Defence counsel about what's happening with the next witness and when
2 that witness is coming. You need not do that on the record. You can discuss that
3 while we're having the break.
4 The blinds will come down and the witness will be ushered out of the courtroom.
5 *(Closed session at 11.00 a.m.) Reclassified as open session
6 THE COURT OFFICER: (Interpretation) We are in closed session, Mr President.
7 (The witness stands down)
8 PRESIDING JUDGE EBOE-OSUJI: The Court will rise.
9 THE COURT OFFICER: All rise.
10 (Recess taken at 11.01 a.m.)
11 (Upon resuming in open session at 11.34 a.m.)
12 THE COURT USHER: All rise.
13 Please be seated.
14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
15 Witness, welcome back.
16 We are now in open session and Mr Hooper will cross-examine, is that it?
17 Sorry, sorry. Just before that, the victims counsel - sorry about that - victims counsel
18 had requested to ask the witness some questions.
19 And Mr Nderitu, you said you have -- you can do it in 15 minutes?
20 MR NDERITU: Yes, Mr President, I hope so. It may perhaps spill over beyond the
21 15, but --
22 PRESIDING JUDGE EBOE-OSUJI: The tendency would be to limit you to
23 10 minutes, not to spill over beyond 15 minutes, so if you can then begin your
24 questions of the witness. Leave is granted.
25 MR NDERITU: Much obliged.

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 QUESTIONED BY MR NDERITU:

2 Q. Mr Witness, good morning.

3 A. Good morning.

4 Q. Now, you testified that you used to live in location number 1 and that on
5 31 December 2007 you went to location number 17, and on 1 January to location -- to
6 the house of person number 23, in the company of three other people?

7 A. True.

8 Q. Very quickly, for what purpose did you go to location number 17 and the
9 residence of person number 23?

10 PRESIDING JUDGE EBOE-OSUJI: Now, we are in public session, I need to remind
11 you.

12 MR NDERITU: Yes, thank you, Mr President.

13 THE WITNESS: I was running away.

14 MR NDERITU:

15 Q. Thank you, Mr Witness. Now, so I take it that you were in fear or some sort of
16 threat; is that correct?

17 A. Correct.

18 Q. And how long had you lived in location number 1 before the post-election
19 violence?

20 A. More than 20 years.

21 Q. Thank you, Mr Witness. Had there been any form of generalised violence
22 before that one that you have testified about in 2007/2008 in your location?

23 A. Yes, there was; in 1992 and again in 1997.

24 Q. Thank you, Mr Witness. Was this violence between communities; and if it was,
25 which communities was it between?

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

- 1 A. Yes, it was between communities; Kikuyu and Kalenjin.
- 2 Q. Thank you, Mr Witness.
- 3 Now, I ask for leave to go into private session.
- 4 PRESIDING JUDGE EBOE-OSUJI: Private session. For how long?
- 5 MR NDERITU: For about five minutes.
- 6 PRESIDING JUDGE EBOE-OSUJI: We will go into private session.
- 7 *(Private session at 11.39 a.m.) Reclassified as open session
- 8 THE COURT OFFICER: (Interpretation) We are in private session, Mr President.
- 9 MR NDERITU: Thank you.
- 10 Q. Mr Witness, you informed the Court that at the time of the post-election
- 11 violence you were (Redacted)
- 12 (Redacted); is that correct?
- 13 A. (Redacted) at that
- 14 time.
- 15 Q. I beg your pardon. (Redacted). Now, (Redacted)
- 16 (Redacted) immediately before the violence?
- 17 A. (Redacted) location number 14 during the violence, before -- (Redacted)
- 18 (Redacted)
- 19 Q. Thank you, Mr Witness. I suppose I did not make myself abundantly clear.
- 20 During the year 2007 and the years before, (Redacted)?
- 21 A. Yes.
- 22 Q. Now, (Redacted) at that time?
- 23 A. (Redacted), number 4.
- 24 Q. Thank you, Mr Witness. Now, you did testify that you received information
- 25 from (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 (Redacted). Now, without going into too much detail, what was your reaction
2 to this information?

3 A. (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. Thank you, Mr Witness. I suppose that the news of breaking -- the breaking of
7 the news about (Redacted), but I would
8 want you to just explain again very quickly how you did that.

9 A. As I was talking to person number 28, (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. Thank you, Mr Witness. You testified that (Redacted)

17 (Redacted)

18 (Redacted)

19 A. (Redacted)

20 Q. And, Mr Witness, what was the effect of (Redacted)

21 (Redacted)?

22 A. To be honest, (Redacted)

23 Q. And what was the effect of (Redacted)

24 (Redacted)?

25 A. (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. Mr Witness, did you (Redacted)

6 (Redacted)

7 A. Yes, I (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 PRESIDING JUDGE EBOE-OSUJI: What did you say the name of (Redacted)

12 was?

13 THE WITNESS: (Redacted).

14 PRESIDING JUDGE EBOE-OSUJI: (Redacted).

15 THE WITNESS: Yes.

16 PRESIDING JUDGE EBOE-OSUJI: Okay. Thanks.

17 MR NDERITU:

18 Q. Thank you, Mr Witness. Very quickly, if you could inform the Court when this

19 (Redacted)

20 (Redacted), during which year, which month?

21 A. (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 Q. Now, when you say (Redacted), you mean of which year?

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 A. (Redacted)

2 Q. And is (Redacted), Mr Witness, (Redacted)

3 (Redacted)

4 A. No.

5 Q. When was it (Redacted)?

6 A. (Redacted)

7 (Redacted)

8 (Redacted)

9 Q. Thank you, Mr Witness. Now, you also testified that you received information
10 from person number 11 that (Redacted)

11 A. True.

12 Q. And that (Redacted)

13 A. True.

14 Q. That (Redacted)

15 A. True.

16 Q. Now, exactly what was (Redacted)?

17 A. (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 Q. Thank you, Mr Witness. Are you in a position to put any estimate of monetary

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 value to whatever was burned or looted?

2 A. At that time I approximated it to be around Kenya shillings (Redacted), close to
3 Kenya shillings (Redacted).

4 Q. Thank you, Mr Witness. Now, in your personal identification sheet you
5 indicated that (Redacted)
6 (Redacted)?

7 A. (Redacted).

8 Q. And did you manage to (Redacted)

9 A. No.

10 Q. Mr Witness, how did you manage to (Redacted)
11 (Redacted)

12 A. (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. Thank you. Now, as a person who had previously been (Redacted)
17 (Redacted), did this make you feel any different?

18 A. To be honest I felt very bad, because suddenly (Redacted)
19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 Q. Thank you, Mr Witness. To what extent would you say you have managed to
24 rebuild your life or recovered from the loss that you suffered during the violence?

25 A. I have not recovered.

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 Q. And, Mr Witness, to what extent would you say (Redacted) -- and in this
2 particular case I'm talking about (Redacted). To
3 what extent would you say (Redacted)?

4 A. (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 Q. Thank you, Mr Witness. So what would you like the Court to take into
9 consideration as a result of the harm you suffered in order to enable you to rebuild
10 your life again; (Redacted)?

11 A. I would like them to consider a compensation for (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 PRESIDING JUDGE EBOE-OSUJI: Mr Nderitu, it's now 20 minutes.

17 MR NDERITU: Yes, thank you, Mr Witness. Those are all the questions I have for
18 the witness. Thank you.

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

20 Witness, Mr Nderitu, victims' counsel, has finished asking you questions. Now we
21 will be inviting Mr Hooper to do his own cross-examination.

22 Mr Hooper, it is now five-minutes-to-12 and we're in private session.

23 MR HOOPER: Yes, thank you. I -- yes, can we go into public session?

24 PRESIDING JUDGE EBOE-OSUJI: We go to public session.

25 (Open session at 11.55 a.m.)

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

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

2 QUESTIONED BY MR HOOPER:

3 Q. Good morning, Mr Witness.

4 A. Good morning.

5 Q. First of all, thank you for the clarity with which you have given your evidence.

6 It leaves me in the happy position of not needing very much time this morning with

7 you. Please bear in mind when I'm asking questions that you are a protected witness

8 and, if you do think that anything - any answer - that you may give me may identify

9 you, then please let us know and we can go into private or closed session.

10 Now I'd like to start, if I may, with your evidence relating to that event in

11 mid-2006 - in fact we know that it was 4 June 2006 - at the Eldoret Sports Club, when

12 Mr Ruto was made as it was called quote "a Kalenjin elder" unquote. Now, first of

13 all I think you would probably agree with me that your own knowledge of Kalenjin

14 culture is necessarily very limited. Do you agree with that?

15 A. Yes.

16 Q. And this event which you attended at the sports club, and of which we've seen a

17 video and of which we have a transcript, would you agree that it was very much a

18 political event rather than a cultural event? Would you agree with that?

19 A. I wouldn't entirely agree with that.

20 Q. Now, as far as Kalenjin - the word "Kalenjin" - is concerned, do you recognise

21 that it's a relatively recent name assigned to a group or grouping of Nilotic peoples,

22 the Nandi, the Tugen, the Pogot, Keiyo, I won't list them all, but various particular

23 ethnic tribal groups to which the word "Kalenjin" has been more recently invoked as

24 an umbrella name? Are you aware of that?

25 A. I am aware.

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 MR HOOPER: Indeed I just said it was 4 June. It's 3 June, of course, the Eldoret
2 Sports Club event, so let me correct what I said about that.

3 Q. So you do agree with that. Now, each group, let's take the Nandi for example.
4 The Nandi have their own elders; do you understand that to be correct?

5 A. Yes.

6 Q. As do the Pogot, or the Keiyo. They have their own elders, their own tribal
7 system; is that correct?

8 A. Yes.

9 Q. And to be made as it were a Kalenjin elder would you agree is a bit of an
10 artificial nomination?

11 A. I wouldn't, because you're becoming a leader of the different sub-ethnic groups
12 within the Kalenjin that you have just mentioned.

13 Q. Are you aware that there was no Kalenjin council of elders until after 2008?
14 Are you aware of that?

15 A. I'm not aware.

16 Q. Were you aware at one time -- for example, Mr Ruto was made an elder of the
17 Sabaots, one of the tribes within the Kalenjin grouping? Were you aware of his
18 undergoing that particular ceremony? That's Sabaot, S-A-B-A-O-T. Do you
19 remember that?

20 A. I'm not aware.

21 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, watch the transcript. Some of the
22 terminology you've been using is not being spelt, including Nilotic and other phrases.
23 The ethnic names you mentioned as well I don't think have been spelt, so keep an eye
24 out for that.

25 MR HOOPER: Okay, I will. Nandi, N-A-N-D-I; Tugen, T-U-G-E-N; Pogot,

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 P-O-G-O-T; Keiyo, K-E-I-Y-O. I haven't mentioned them all. Nilotic is spelt
2 N-I-L-O-T-I-C.

3 Q. Are you familiar with a man called Nicholas Biwott?

4 A. Yes.

5 Q. Do you remember in August of 2009 that there was a degree of controversy
6 related in the media about his appointment as a Nandi elder? Do you remember
7 that incident?

8 A. I don't remember.

9 MR HOOPER: Let me -- it's N-A-N-D-I.

10 Q. Let me try and jog your memory, if I may. The controversy was that he'd been
11 made an elder and there were those who said, "Well, why should he be made an elder
12 when William Ruto, who's done more for our community, has not been made a Nandi
13 elder?", and there was quite a lot of discussion about that in the papers; this in 2009.
14 Does it jog your memory at all?

15 A. No.

16 Q. In fact that event which you attended or at least partially attended in June 2006
17 was clearly, was it not, an event that had as its primary purpose a political motive and
18 in particular that it was a launch pad for William Ruto to be nominated for the post of
19 President of Kenya. That's what it was about, wasn't it?

20 A. (Redacted)

21 (Redacted) it was going to be a cultural affair to install Ruto to become
22 the Kalenjin elder and that is as far as I know.

23 Q. Did you see signs during that meeting you attended, "Ruto for President"?

24 A. No, I can't remember.

25 Q. I think we saw some in the video. Do you remember seeing them in the video?

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 A. I can't remember.

2 Q. Well, I'm not going to take time up going to that. We can revisit it on another
3 occasion. And this wasn't an entirely Kalenjin affair, was it? There were politicians
4 for example from other ethnic communities, as has already been stated? That's right,
5 isn't it?

6 A. Yes, there were others.

7 Q. And they had nothing to do with Kalenjin or Kalenjin sub-tribes, did they?

8 A. I guess so. They were not Kalenjin.

9 Q. Najib Balala - N-A-J-I-B and Balala B-A-L-A-L-A - what is he and where's he
10 from?

11 A. I understand him to come from the Coast region of Kenya and he is of Arab
12 origin.

13 Q. What was he doing at a Kalenjin function, do you know?

14 A. I assume he was an invited leader, because I also saw him make a speech and it
15 was a political speech.

16 Q. All the speeches were political speeches, weren't they?

17 A. Yes.

18 Q. So I'm just seeing if that -- if your answer came up. I've lost my transcript.

19 PRESIDING JUDGE EBOE-OSUJI: Witness, did you say "yes" to that question?

20 THE WITNESS: Yes, sir.

21 PRESIDING JUDGE EBOE-OSUJI: A brief moment in private session.

22 *(Private session at 12.07 p.m.) Reclassified as open session

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

24 PRESIDING JUDGE EBOE-OSUJI: Thank you.

25 Prosecution, you are keeping the watch of redactions for delayed broadcast, right?

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 MR PUGLIATTI: If I'm not mistaken, there's a request that's either already with the
2 Court or it's on its way. But if -- now that we're in private session, if the witness
3 could be reminded to keep to himself (Redacted), that would be of
4 assistance to keep it in public.

5 PRESIDING JUDGE EBOE-OSUJI: Yes. I just wanted to know that you are the
6 ones keeping the watch and --

7 MR PUGLIATTI: We -- we remain watching.

8 PRESIDING JUDGE EBOE-OSUJI: Thank you.

9 MR HOOPER: I would have thought that reference was so general that there's no
10 possible identification in just what was said.

11 PRESIDING JUDGE EBOE-OSUJI: You mean the one about --

12 MR HOOPER: Because there are thousands there, and indeed it's our case there
13 were many Kikuyus there and other groups.

14 PRESIDING JUDGE EBOE-OSUJI: Still, we will -- it's better to err --

15 MR HOOPER: Yes.

16 PRESIDING JUDGE EBOE-OSUJI: -- on the side of caution in these things, so the
17 Prosecution will -- it wasn't -- there was no admonition of your cross-examination, of
18 course, just --

19 MR HOOPER: No. I understand, and I hope so, but --

20 PRESIDING JUDGE EBOE-OSUJI: We will go back to public session.

21 MR HOOPER: So proceeding with proper caution.

22 (Open session at 12.08 p.m.)

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

24 MR HOOPER:

25 Q. So I think the last point we'd reached was that you were agreeing that the

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 political -- the speeches that you remained there to hear were all political speeches; is
2 that correct?

3 A. Correct.

4 Q. And I suggest that there were, in fact, Kikuyu directly involved in organising
5 that function, and I'm going to see if you can agree with some names I put to you.

6 First of all, Rose Kisama, Kikuyu and Maasai parentage, but she was in charge of the
7 venue and in making all the arrangements for that venue for that particular meeting.
8 Are you aware of that and her position, her role in doing that?

9 A. I'm not privy to that information.

10 Q. All right. The gentleman who was in charge of the catering was an Eldoret
11 hotelier well-known by the name of Mr Wainaina, M-A-I-N-A-I-N-A (sic). Were you
12 aware of that or of him?

13 A. I know him, but I'm not aware he was involved in that ceremony.

14 Q. Mr Chomba, C-H-O-M-B-A, Kikuyu again, as was Mr Wainaina, and he was in
15 charge of the electrics and the public address system that was put up and, of course,
16 present during the time of the speeches and his equipment were being used. Are
17 you aware of that?

18 A. Yes, I remember it was said so in the meeting.

19 Q. And as you've told us, the media were present and, indeed, this particular event
20 received media coverage in the press and on television; is that right?

21 A. I did not see the event in either television or heard on radio, but there were
22 cameras and I assumed those are media people.

23 Q. And Joseph Nyagah, were you aware that he was there? That's N-Y-A-G-A-H,
24 Nyagah.

25 A. No.

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 Q. And do you know who he is?

2 A. No.

3 Q. Do you --

4 PRESIDING JUDGE EBOE-OSUJI: Joseph Nyagah?

5 THE WITNESS: That, I know.

6 PRESIDING JUDGE EBOE-OSUJI: You know him?

7 THE WITNESS: Yes.

8 MR HOOPER: Well, if I can mispronounce a name, I will.

9 Q. So we are talking about the same person. So who is he, or at that time perhaps
10 more importantly was he?

11 A. Yes. If my memory serves me right, he was a nominated member of
12 parliament by ODM. And he comes from Embu, a constituency in the lower part
13 I think - I don't know - in Embu.

14 Q. And what's his ethnicity?

15 A. Embu.

16 Q. We'll clarify that at another time.

17 And obviously you didn't stay for the main event, Mr Ruto's speech. You'd left by
18 then. You can't tell us about that. Did your friends or anyone discuss or did
19 anyone later, you know, tell you anything about it?

20 A. That question is not -- I have not understood it well.

21 Q. Well, afterwards, did -- did anyone tell you what Mr Ruto had said?

22 A. No.

23 Q. Were you interested to find out?

24 A. I wasn't interested because in the first place I did not go there because I wanted,
25 it's because they kept asking me to go.

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 Q. Okay. Well, we have that transcript. And do you have that transcript in front
2 of you? If not, can you be provided, please, with the transcript in English that you
3 had yesterday. I just want to take you just to a few parts of this which is a -- as we
4 know, it is a prepared -- helpfully prepared by the Prosecution, and there's no central
5 disagreement with its contents. And we have had a look at it on a previous occasion
6 and I'd like you to look at it again today. If you don't have a copy, perhaps the
7 Prosecution --

8 MR PUGLIATTI: We have -- we have a spare clean copy we can provide.

9 MR HOOPER: Yes. Yes, please. Thank you very much.

10 Q. You've got it. Thank you very much.

11 A. Page?

12 Q. It's page 27 of that bundle, and it's the bit where Musalia Mudavadi is talking.
13 Now, just so that we're clear, where is Musalia Mudavadi from and who was he at the
14 time that you remember?

15 A. He was from -- he is from the western part of Kenya, a Luhya-dominated region.
16 And I do not remember whether he was a member of parliament, but I know
17 previously he had been a member of parliament.

18 Q. And he came to stand as vice-president, is that right, under the ODM ticket?

19 A. Yes.

20 Q. That is in the contested 2007 election, of course.

21 And he's speaking here, and you may remember because I commented on it yesterday,
22 that the Prosecution ended there at the bottom of the page with "They wanted to
23 mutilate the ODM. We said," quote, "If they sharpen their knives, then we'll
24 sharpen ours," unquote.

25 Now I'd like you to turn over the page and see immediately what follows at line 951,

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 where he's saying, quote, "If it's a political battle, fine, let's fight each other
2 politically." And he goes on to talk about coalitions.
3 And at -- just drop your eye down to line 962, or pick it up there, I won't read it all
4 because it will take time, but he's saying here, quote, "So in order for us to unite as
5 citizens of Kenya, I'd like to ask you not to play around the ODM wings. Let's stand
6 united as one and respect each other."
7 And, again, dropping your eye towards the end of the page we can see at the bottom
8 of the page he's talking of -- right at the bottom --
9 PRESIDING JUDGE EBOE-OSUJI: What line?
10 MR HOOPER: Line 990.
11 Q. He's saying, "They want freedom, not freedom to go to another country, but
12 freedom to be able to tell the leaders of the past that now also give us space,
13 democratic space to also move."
14 And then there's another speaker that takes over from him.
15 Now, I appreciate that you then left, but I'd like you to turn with me, please, to page
16 40 where William Ruto has -- is addressing people and I just want to pick up on a few
17 parts of his statements here to get a flavour of what this meeting was. And at line
18 1409, you see "WR," William Ruto, and he's saying this, quote:
19 "I want to say that I'm grateful to my colleagues, those from the Rift Valley and those
20 who are not from the Rift Valley who have come from the nation of Kenya. I thank
21 you for you've come here for one reason, to support me, because the people of the
22 Rift Valley have said that I should run for the position of president of Kenya."
23 So you see that and what is being said. And he goes on, you can see dropping your
24 eye down that subsequent passage, "I'm declaring myself as candidate," he says.
25 And then he goes into a speech at line 1419 and he says, quote, "I'd like to say the

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

- 1 following, I have two things to say: First, there is poverty in our country Kenya, and
2 there are great differences between those who are wealthy and those who are poor.
3 As leaders of our country Kenya, we have to start thinking how are we going to
4 remove the differences between the poor people and the wealthy people?" And he
5 continues talking -- talking about that.
6 And then at line 1440, he says this, quote: "So fellow leaders, let's be truthful, let's
7 not deceive each other. Finally I would like to say that as people of the Rift Valley,
8 we are here today and we want to assure our fellow Kenyans that we are ready to
9 work with other Kenyans to build our nation and make it a country that benefits us
10 all," unquote.
11 Now, you weren't there for that speech and you didn't learn about it later,
12 I understand that, but I thought it helpful to refer you to that passage.
13 Incidentally, a small point, but you noticed, didn't you, that the cloak that Mr Ruto
14 had to wear was made of cow-skin? Remember you said that yesterday? You
15 noticed that correctly. I am not saying you're wrong.
16 A. Yeah.
17 Q. You noticed he was wearing what appeared to be a cow-skin; is that right?
18 A. Right.
19 Q. Are you aware that, in fact, Kalenjin elders have a practice of -- on nomination
20 of, in fact, wearing a special kind of skin, of a monkey skin. I can't remember the
21 name. It's not -- it's the rather nice monkey with the white bits. Some people say it
22 looks like a vice-chancellor, but I can't remember the name of it.
23 But are you aware of that, there is a special skin from a particular monkey which is
24 used to cloak the nominated elder?
25 A. Yes, I am.

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 Q. Pardon?

2 A. I am aware.

3 Q. And so this cow-skin was a bit -- is almost a bit of dressing up really, wasn't it,
4 that day?

5 A. It was.

6 PRESIDING JUDGE EBOE-OSUJI: Would the word you're looking for, Colobus?

7 MR HOOPER: That's the word. I should have remembered it. It was a
8 well-known place in Arusha, I remember as well, but it was some time ago.

9 Q. Can I take you now to a map.

10 Can I call for a map to be brought up, it's a Prosecution map. We mentioned it
11 yesterday that we'd use it, and I'd just like to share it with you, Mr Witness. It's
12 KEN-OTP-0041-0419.

13 Oh, I'm sorry. Can I just be -- while that's being done, Mr Witness, it hasn't appeared
14 on the transcript -- oh, it has appeared on the transcript. Sorry. We've got a sort of
15 staggering of the transcript at the moment. So don't worry about that, Mr Witness,
16 the transcript's fine.

17 So coming back to this plan, it's a public document and it can be shown.

18 It is up there, is it? It doesn't show up very well, and it doesn't print out very well,
19 but it does show up on other screens that I've used as a clearer -- well, while I'm
20 looking at this, can I -- can I pass up a printout. In fact, I think we might have
21 a -- I've got a hard copy here for the witness and sufficient numbers for both the
22 Bench and one or two for the others. And if it's not clear, it's -- it's clearer I think
23 possibly on the printout.

24 So, Mr Witness, while that's being distributed, if you can just look at that. I know it's
25 not the clearest, but if you look you'll see it's a map of Eldoret. Remember we're in

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 public session, by the way, but I want to draw your attention to two places there, one
2 is Langas and the other is Yamumbi, and how they're depicted on this plan.

3 And if we look at the main road going down as we can see it at Eldoret International
4 Airport, from the centre of Eldoret, halfway almost from Eldoret on the left of that
5 road we have Langas Catholic church, or cathedral, in fact, I think it is, and the
6 Catholic university is there on the left as well. We can see that. These are marked
7 on the map.

8 And then if we look on the other side of the road, we have an area marked "Langas."
9 Do you see that?

10 A. Yes.

11 Q. And, indeed, on this map, it may be a bit faint, but we can see that the map
12 attempts to show streets, a criss-cross network of streets. So just pausing there,
13 Langas is very much a town, houses cluster together -- well, let's compare it to
14 Yamumbi. We come to Yamumbi which is the next area along, and you can see that.
15 So in comparing and contrasting these two areas, Yamumbi is a far more open area,
16 isn't it, with scattered farms? Do you agree?

17 A. Agree.

18 Q. I'm sorry, do you agree for the transcript?

19 A. I agree.

20 Q. You do. Thank you. And Langas is more of a townscape; is that right?

21 A. Right.

22 Q. And then looking at our plan, we can see the areas around it starting with
23 Kapseret, K-A-P-S-E-R-E-T, going towards the airport that is, we can see Lemook,
24 Simat, Kapsaos.

25 And I'm sorry, I haven't got a hard copy for those upstairs.

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 So we can see the area we're in and we can even see Kiambaa which is marked to the
2 right, bottom right of this -- of this plan. Now, people living in Langas, quite a
3 number of them have farms in Yamumbi; is that right?

4 A. Right.

5 Q. And, indeed, Langas and Yamumbi are generally regarded very much as being
6 together, not as two very separate places, but as a place where one community lives,
7 Kikuyus essentially; is that right?

8 A. No. Langas is multi-ethnic.

9 Q. But the vast majority of people in Langas are of what ethnicity?

10 A. Kikuyu.

11 Q. And the next grouping ethnicity there, would that be Luo?

12 A. Come up again?

13 Q. After the Kikuyu, is the next grouping, largest grouping, the Luo?

14 A. That is contestable. Either Luo or Luhya.

15 Q. Right. Now, you -- there's a place there called Kisumu Ndogo, is that right?

16 Which is small Kisumu; it's Swahili for saying small Kisumu. Of course Kisumu is
17 the Luo capital in western; that's right, isn't it?

18 A. I cannot see it from the map here.

19 Q. Yeah, it's not marked, but I think we've touched on it that there is a place where
20 Luos live and it is called, because so many Luos live there, Kisumu Ndogo and it's
21 part of -- and it's found within Langas; that's right, isn't it?

22 A. Right.

23 Q. Okay. All right, thank you. So there's our -- our geography, as it were.

24 27 December voting takes place and 30 December, after the results, the

25 deeply-contested results are announced, you witness the areas that you've mentioned

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 earlier erupt and the violence started, the burnings and the violence started; that's
2 right, isn't it?

3 A. Right.

4 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, are you done with the map?

5 MR HOOPER: Yes, I -- yes, I have.

6 PRESIDING JUDGE EBOE-OSUJI: This will be a place to put it in if that's your
7 intention.

8 MR HOOPER: Yes. Yes, please. And can I just spell Lemook, L-E-M-O-O-K, and
9 Kisumu, K-I-S-U-M-U for the record as well. So can that be exhibited, please. A
10 public document.

11 PRESIDING JUDGE EBOE-OSUJI: I'll be asking the Prosecution for any objection.

12 MR PUGLIATTI: There's no objection.

13 PRESIDING JUDGE EBOE-OSUJI: The document is admitted as the next in the Ruto
14 Defence exhibits.

15 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0041-0419 will be
16 entered at EVD-T-D09-00218, or Defence exhibit for Mr Ruto number 21. It is a
17 public document.

18 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, I notice that the - I see a "Lemok" on
19 the map that's spelled with only one "O."

20 MR HOOPER: I think your Honour's correct, and that is the correct spelling,
21 L-E-M-O-K.

22 PRESIDING JUDGE EBOE-OSUJI: Okay.

23 MR HOOPER: Thank you.

24 Q. And we're still in public session, Mr Witness. And let me distract you from the
25 map. So 30 December, as you've told us, burnings and violence erupted and you

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 were in a particular area and you related to us what you witnessed that -- that
2 evening and over to the next day, the 31st. And as we understand your evidence
3 and as you've told us, come the 31st -- basically, after the 31st you'd moved away
4 from that -- from that area and you were elsewhere; that's essentially correct, isn't it?

5 A. Correct.

6 Q. Now, on 30 December, after those results were announced and violence broke
7 out that you witnessed, were you aware that violence also broke out elsewhere in
8 Kenya?

9 A. Yes, I'm -- I'm aware.

10 Q. And even more extensive or striking violence, for example, in Kisumu, did
11 you -- did you hear about that?

12 A. I heard there were violence in Kisumu.

13 Q. In Mombasa too; is that right?

14 A. Right.

15 Q. In Nairobi, as we know, very extensive violence --

16 A. Right.

17 Q. -- is that right? So what was happening in Eldoret was happening in very
18 disparate parts of Kenya; is that right?

19 A. The nature of the violence was different between that that happened in Eldoret
20 and other parts of Kenya.

21 Q. I concede that there were different features. Do you want to tell us in what
22 way it was different?

23 A. The difference is in Eldoret the violence appeared to have been planned and
24 co-ordinated, while in other places it was just haphazard.

25 Q. And indeed you told us yesterday how -- how it was that sudden fires occurred

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 in many places at once, and that was one of the reasons for that conclusion of yours,
2 was it not?

3 A. I have not gotten your statement correct.

4 Q. You were telling us yesterday how you noticed that these fires broke out not in
5 one place but in many places at once, which led you to the conclusion that it appeared
6 to have been organised; is that right?

7 A. Right.

8 Q. Now, you told us of voting and then you were moved by the Prosecution's
9 questions to 30 December, but I want to stop on another day which you weren't asked
10 about and that's the day before the election results, 29 December. Were -- is it
11 right -- and I have the advantage of seeing what you've said before in your statement
12 at paragraph 37. Is it right that on that day you learnt that there were riots in Langa,
13 that is the day before the results?

14 A. That's right.

15 Q. And who -- who was confronting whom in those riots?

16 A. There was a Kikuyu involved and a Luo involved; two people. Those are the
17 people that sparked off the violence.

18 Q. All right. But this was not violence, a fight between two people, was it? This
19 was inter-communal violence that broke out on the -- on the 29th; is that right?

20 A. Yes, started between two people.

21 Q. And, again, bearing in mind that we are still in public, is it right that, in fact,
22 someone came and suggested that the people where you were -- don't go into it any
23 further than that. The people where you were should go and help the Kikuyus
24 and -- because the Kikuyus were being overwhelmed by the Luos; is that correct?

25 A. Correct.

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 Q. And that violence continued over much of the day of the 29th; is that right?

2 A. Right.

3 Q. And indeed people were killed; is that right?

4 A. Right.

5 Q. In fact Luos were killed; is that right?

6 A. And a Kikuyu.

7 Q. And a Kikuyu?

8 A. Yeah.

9 Q. So that's the 29th and it was -- and so come the 30th, come these election results
10 in the Langas area, there'd already been dramatic events? That's right, isn't it?

11 A. Right.

12 Q. And people went to help and the result was that there was a stand-off between
13 the communities on 30 December; is that right?

14 A. Right.

15 Q. And then with the results it kicked off again, if I can put it like that; is that right?

16 A. I have not gotten that question well.

17 Q. Well, on 30 December there was a stand-off, but then after the election results
18 violence restarted; is that right?

19 A. Yes.

20 Q. And we've heard of houses being burnt, and indeed at that time is it right that
21 some Kalenjin milk sellers were killed in Langas?

22 A. I am not aware of that.

23 Q. Now you told us yesterday of person 19, do you remember, coming with 20?

24 A. Right.

25 MR HOOPER: And as we're getting into a detail perhaps we better go into closed

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

- 1 session, if we may?
- 2 PRESIDING JUDGE EBOE-OSUJI: Private session.
- 3 MR HOOPER: Private session.
- 4 *(Private session at 12.39 p.m.) Reclassified as open session
- 5 THE COURT OFFICER: (Interpretation) We are in private session, Mr President.
- 6 MR HOOPER: Correction: It was not desperate, but disparate at page 69, line 23.
- 7 D-I-S-P-A-R-A-T-E.
- 8 Q. Just a correction, Mr Witness.
- 9 Right, thank you. So we're now in private session, so we can be less guarded
- 10 obviously in what we say. Now, you told us about -- just one moment. Sorry, I was
- 11 over cautious. (Redacted). And (Redacted)
- 12 (Redacted)
- 13 (Redacted)? I think you told us yesterday. Can you remind us, please?
- 14 A. It's about (Redacted).
- 15 Q. All right. And were there other -- is he in -- are there (Redacted)
- 16 (Redacted)?
- 17 A. There are.
- 18 Q. All right. Now, we know that you told us how (Redacted). Now,
- 19 (Redacted) lived in that house, you told us, (Redacted); is that right?
- 20 A. Right.
- 21 Q. And there came a time when he (Redacted)
- 22 (Redacted); is that right?
- 23 A. Right.
- 24 Q. And he said words, as you told us yesterday - it's page 87 on the
- 25 transcript - (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

- 1 (Redacted), as it were, (Redacted)
- 2 (Redacted) the line as it were, you know, (Redacted) That's right, essentially?
- 3 That's what he was saying, wasn't it?
- 4 A. Yes.
- 5 Q. And again I have the advantage of your statements - previous statements - and
- 6 (Redacted) said something like, (Redacted)
- 7 (Redacted); is that right?
- 8 A. Right.
- 9 Q. And (Redacted) who you'd spoken
- 10 about and they (Redacted)? They (Redacted); is that right?
- 11 A. Right.
- 12 Q. And then (Redacted)
- 13 (Redacted); is that right?
- 14 A. Right.
- 15 Q. And (Redacted)
- 16 (Redacted)
- 17 is that right?
- 18 A. (Redacted)
- 19 (Redacted)
- 20 Q. Very well, but there were (Redacted)
- 21 (Redacted) is that right?
- 22 A. Yes.
- 23 Q. All right. And after that there was (Redacted)
- 24 (Redacted) is
- 25 that right?

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 A. Right.

2 Q. And then there was the night when there were the -- well, you saw the next day
3 there'd been beheadings, hadn't there?

4 A. In which location?

5 Q. Well, you went (Redacted) and you found that there had been Luos
6 beheaded in or around Kisumu Ndogo; is that right?

7 A. Right.

8 Q. And again I have the advantage of your -- your statement, and you saw two
9 heads - two decapitated heads - yourself, but you also heard and were told that there
10 were another three heads of Luos on other roads leading to the junction there. So
11 five heads in all; is that right?

12 A. Right.

13 Q. All of them you understood to be Luos, right?

14 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper --

15 THE WITNESS: Yes.

16 PRESIDING JUDGE EBOE-OSUJI: Sorry to have interrupted the witness. You said
17 "Yes"?

18 THE WITNESS: I was told the two belonged to the Luos, but the others I didn't
19 know they belonged to which community.

20 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, do we need to remain in private
21 session?

22 MR HOOPER: No, we can go into open session. Thank you for reminding me.
23 And we are well on course, Mr Witness and your Honour, for finishing by the
24 luncheon.

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

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 (Open session at 12.45 p.m.)

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

3 MR HOOPER:

4 Q. So essentially, coming back to the position, on the night -- you learnt on 1
5 January that on the -- during the night or prior to 1 January that Luos had been
6 beheaded in or around Kisumu Ndogo; is that right.

7 A. Right.

8 Q. And you saw two of these heads yourself. And let me ask you again, in your
9 statement you say, "The people also told me ..." -- quote, this is your statement, "The
10 people also told me that there were another three heads of Luo men in the other roads
11 leading to the junction;" is that right?

12 A. I hadn't remembered that, but that probably is what I was told.

13 Q. All right. So you agree that we now have five heads of Luo men. Now, the
14 heads you saw were they on posts? Were they stuck on posts?

15 A. Not the two -- sorry, on the road.

16 Q. Did you see any decapitated bodies?

17 A. Not that day, but later when I visited the morgue.

18 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, hold it. I think the witness's answer
19 at line 14 was, "No, the two were on the road."

20 Was that your answer?

21 THE WITNESS: Yes.

22 PRESIDING JUDGE EBOE-OSUJI: Yes.

23 MR HOOPER:

24 Q. So you didn't see any bodies until later when you happened to visit the morgue.
25 Well, very well. So these heads had been -- these people had had their -- been killed,

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 or been killed by decapitation. Their bodies weren't there. Someone had taken

2 these heads and planted them in roads around that junction and that would seem to

3 be a very purposeful and shocking act. Why do you think that was done?

4 MR PUGLIATTI: I'm sorry, I don't terribly see the question that -- in that when there

5 was evidence given it seems from counsel preceding it.

6 MR HOOPER: Well --

7 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper --

8 MR HOOPER: Yes.

9 PRESIDING JUDGE EBOE-OSUJI: -- maybe you should break down the questions --

10 MR HOOPER: Very well.

11 PRESIDING JUDGE EBOE-OSUJI: -- instead of roll them all into one.

12 MR HOOPER: Yes, very well.

13 Q. Why do you think such a shocking thing was done?

14 A. As I've said, I saw two heads on the road. I didn't see these are the ones that

15 you are saying were planted on some posts.

16 Q. Well, you heard that there were another three. A quote from your statement,

17 "People also told me that there were another three heads of Luo men in the other

18 roads leading to the junction." Right, so let's assume that that's correct, what you

19 were told. What was the purpose of heads; no bodies, just heads? What was the

20 purpose of that, do you think?

21 A. At that time I understood it to mean that it was to warn the Luos that if they

22 continued looting and destroying property belonging to Kikuyu that is what would

23 happen to them.

24 Q. Well, the effect I suggest was this in any event: That from the 31st the violence

25 in Langas, Yamumbi, ended on the 31st. So, for example, business premises had

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 been burnt on the 31st at the centre for example, houses had been burnt, but
2 essentially from the 31st and certainly by 1 January that the violence in that area
3 stopped in Langas and Yamumbi. Do you agree with that?

4 A. I don't quite remember whether the violence stopped in that time you're talking
5 about.

6 Q. Well, that's -- that's the position. And where there were premises burnt, it's
7 our position they were burnt on the 31st, you see? And you don't know when your
8 premises was burnt; that's right, isn't it? You'd left them on the 31st, people had left
9 Yamumbi on the 31st and for all you know it might have been then that the buildings
10 were set fire to and destroyed, do you agree?

11 A. I said my premises was burned on 2 January, as informed --

12 PRESIDING JUDGE EBOE-OSUJI: All right, wait. Don't tell us who informed you,
13 we're in public session.

14 MR HOOPER:

15 Q. Well, whatever you were told you don't know for sure, that's right, isn't it, it
16 could have been the 31st? Whenever you were told, it could have been the 31st?

17 A. I don't want to commit myself to that.

18 Q. All right. Very well. Now, just coming back to these -- these heads. Of
19 course the relatives of those men would not only have to deal with a dead relative,
20 but a mutilated and decapitated relative. What do you know of Mungiki activity in
21 that area of Langas at that time?

22 A. I don't know anything.

23 Q. Have you ever heard it said that Mungiki were active in Langas, in Eldoret, at
24 that time of the post-election violence?

25 A. Yes, I heard.

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 Q. A decapitated head is -- some people associate as being a Mungiki calling card,
2 don't they?

3 A. I do not know whether it is them who -- who did that.

4 Q. But would you agree that that was the message it gave off, those decapitations,
5 it said and spoke, look, we're Mungiki here, perhaps to protect our community, but
6 we're Mungiki and we're here?

7 A. The people I heard speaking about those decapitated heads just say that it was a
8 retaliation, but never mentioned who might have done it.

9 Q. Did you ever ask who had done such a thing?

10 A. Yes, I did, that's when I got that answer.

11 Q. Did you -- did you find out who'd done it?

12 A. No.

13 Q. Those are all my questions. Thank you very much, Mr Witness, (Redacted)
14 (Redacted) and thank you very
15 much for your assistance.

16 PRESIDING JUDGE EBOE-OSUJI: Before I sign off on Mr Hooper's
17 cross-examination, there are -- there is a question I have arising from his
18 cross-examination: You had testified that the nature of the violence in Eldoret
19 appeared to you to be different than those occurring elsewhere, in Kenya at the time
20 because, in your own view, the nature of the violence in Eldoret appeared to have
21 been planned and co-ordinated, that was your testimony.

22 THE WITNESS: Yes.

23 PRESIDING JUDGE EBOE-OSUJI: And the suggestion was put to you, and you
24 agreed, that the reason for your coming to that view was because of, shall I say,
25 simultaneous break out of arsons at the same time in Eldoret, burning of homes and

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 property?

2 THE WITNESS: Not only that.

3 PRESIDING JUDGE EBOE-OSUJI: Okay, that's what I'm coming to. And are there
4 any other reasons why you thought that the violence in Eldoret might have been
5 planned and/or co-ordinated?

6 THE WITNESS: Yes. The first reason was that when the violence happened,
7 although it happened at once, but it also ended at almost the same time all over. By
8 midnight of 30th, there was no more burning of the houses, so it appears
9 they -- attackers received orders to retreat. That is according to my understanding.
10 And then on the 31st, at around 11, the attacks again happened almost at the same
11 time so, in my mind, I made up that the attackers also received orders to now swing
12 into action. That is why I made up that conclusion.

13 PRESIDING JUDGE EBOE-OSUJI: Private session for my next question.

14 *(Private session at 12.56 p.m.) Reclassified as open session

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

16 PRESIDING JUDGE EBOE-OSUJI: Did you form any views of any significance, if
17 any significance to the event you testified to having observed where you said some
18 Kalenjin youth were (Redacted)
19 (Redacted)?

20 THE WITNESS: Yes. My view was that they were going there to prepare to
21 attack -- to assemble themselves and then to attack.

22 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
23 We can go back into public session.

24 MR HOOPER: Can I just have one question arising out of that before we go into
25 private -- into public, just in case that we're -- we're dealing -- it's just on that last

Trial Hearing
Witness: KEN-OTP-P-0405

(Private Session)

ICC-01/09-01/11

1 question by his Honour and what you saw.

2 Q. The sequence of events is, whatever you saw, thought you saw in terms of
3 youths (Redacted), in fact it was then that (Redacted)
4 (Redacted) with the results that we've discussed
5 already; that's right, isn't it?

6 A. Yes.

7 Q. All right. Those are my -- thank you.

8 Thank you, Your Honour.

9 PRESIDING JUDGE EBOE-OSUJI: No further questions arising from mine?

10 MR HOOPER: No, your Honour, thank you. Thank you.

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

13 (Open session at 12.59 p.m.)

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

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

16 Witness, Mr Hooper has concluded his cross-examination. Ms Hambrick, are you
17 where you were yesterday?

18 MS HAMBRICK: Your Honours, thank you, we have no questions for this witness.

19 PRESIDING JUDGE EBOE-OSUJI: Thank you.

20 Mr Pugliatti, any re-examination?

21 MR PUGLIATTI: There's no re-examination from the Prosecution.

22 PRESIDING JUDGE EBOE-OSUJI: Thank you very much, Witness. We have come
23 to the end of your testimony. We -- we heard testimony that all parties agreed it
24 must have been a difficult experience for you, and thank you for telling us what you
25 observed and we wish you a safe trip back.

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 THE WITNESS: Thank you.

2 PRESIDING JUDGE EBOE-OSUJI: You are discharged.

3 The blinds will come down so that the witness may be ushered out of the courtroom.

4 And we will remain for a quick round-up of what's happening next in housekeeping,

5 or, perhaps, why don't we do this: Ms Bossette, let's not bring down the blinds.

6 Witness, we would be asking you no further questions, but you can sit there for a

7 minute so we can finish things.

8 Mr Steynberg.

9 MR STEYNBERG: Your Honours.

10 PRESIDING JUDGE EBOE-OSUJI: Where are we?

11 MR STEYNBERG: Your Honours, as indicated earlier we have one further witness

12 for this session. The witness has been referred to VWU who are busy making the

13 necessary arrangements for his transportation to the Court. I'm just checking we are

14 in private -- in public session. I can advise that the witness is experiencing certain

15 health problems which are complicating his travel to the Court and he will not be able

16 to travel to the Court before 5 July.

17 VWU have informed us that they anticipate and they are aiming to have him ready to

18 testify by 10 July. We believe that that will provide sufficient time to finish with this

19 witness prior to the end of the session on the 16th.

20 Apart from that, we have no further witnesses to call at this time. The remaining

21 witnesses are all subject of litigation before your Chamber -- before your Honours.

22 PRESIDING JUDGE EBOE-OSUJI: So the -- the point is that no other witnesses are

23 there for the Prosecution to call apart from the witnesses that we're waiting to hear

24 from the Appeals Chamber; is that it?

25 MR STEYNBERG: Your Honours, apart from those witnesses there are a further two

Trial Hearing
Witness: KEN-OTP-P-0405

(Open Session)

ICC-01/09-01/11

1 witnesses I've mentioned earlier that there is a pending ex parte filing before the
2 Chamber and we do hope to submit a confidential filing as -- as soon as we get the
3 necessary indication from the Chamber.

4 PRESIDING JUDGE EBOE-OSUJI: Of course, the Appeals Chamber had turned
5 down the requests for suspensive effect to -- arrangements were then made for the
6 rest, as it were.

7 MR STEYNBERG: Your Honours, as -- as I'm informed the Registry, in consultation
8 with the Prosecution, is in the process of making those arrangements and will, in fact
9 today, inform the Chamber of -- of those proposals.

10 PRESIDING JUDGE EBOE-OSUJI: Any observation from the Defence? None.

11 MR KHAN: No, your Honour. I'm grateful.

12 MR KIGEN-KATWA: Your Honours, the position that has been explained had been
13 indicated to us. We had, in view of the -- in view of the arrival of that witness on
14 10th and the very close date by which this session is supposed to end, we had
15 suggested to the Prosecution if they could give us an indication of the documents they
16 intend to ascribe to that witness so that we can take a stock of the situation and
17 probably hasten the hearing when we resume.

18 PRESIDING JUDGE EBOE-OSUJI: That is a matter between the parties, right? Yes.
19 All right, we will end it there.

20 Witness, again, thank you for bearing with us.

21 That concludes our proceedings for today. We will remain advised of when the next
22 witness is coming. The blinds will be brought down and the witness is to be ushered
23 out of the courtroom. Thanks.

24 *(Closed session at 13.04 p.m.) Reclassified as open session

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

Trial Hearing
Witness: KEN-OTP-P-0405

(Closed Session)

ICC-01/09-01/11

- 1 (The witness is excused)
- 2 PRESIDING JUDGE EBOE-OSUJI: The Court will rise.
- 3 THE COURT OFFICER: All rise.
- 4 *(The hearing ends in closed session at 1.05 p.m.) Reclassified as open session
- 5 RECLASSIFICATION REPORT
- 6 Pursuant Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
- 7 2013, and the instructions in the email dated 18 August 2014, the version of the
- 8 transcript with its redactions becomes Public.