

Trial Hearing
Witness: KEN-OTP-P-0516

(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 Carbuccia and Judge Robert Fremr
7 Trial Hearing
8 Friday, 12 September 2014
9 (The hearing starts in open session at 9.45 a.m.)
10 THE COURT USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
14 Court officer, the case, please.
15 THE COURT OFFICER: Thank you, Mr President. The situation in the Republic of Kenya
16 in the case of the Prosecutor against William Samoei Ruto and Joshua Arap Sang,
17 ICC-01/09-01/11. We are in open session.
18 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
19 Appearances?
20 MR STEYNBERG: Good morning, your Honours. The Prosecution remains the same.
21 MR NARANTSETSEG: Good morning, your Honours. For the victims our team remains
22 the same. Thank you.
23 MR KIGEN-KATWA: Good morning, your Honours. Mr Sang's team remains the same.
24 MR KHAN: Mr President, your Honours, good morning. Mr Ruto's team remains the
25 same.

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- 1 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. And we're all happy to notice
2 that the video link with Nairobi is restored.
3 Court officer in Nairobi, you can hear us well?
- 4 THE COURT OFFICER (via video link): Good morning, Mr President. Yes, we can hear
5 you and see you very well.
- 6 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. I see you have a witness in there,
7 somebody else.
- 8 THE COURT OFFICER (via video link): Yes, Mr President. Witness P-516, together with
9 his counsel, is present in the transmission room.
- 10 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
11 Witness 516, thank you very much for joining us. Can you hear me?
- 12 THE WITNESS (via video link): Yes, Mr President.
- 13 PRESIDING JUDGE EBOE-OSUJI: Thank you. You have responded as you are required to
14 do by summons. You were summonsed to appear and give testimony in this case. We
15 thank you for coming and for obeying the summons issued to you.
- 16 The thing we need to tell you is that your testimony will not start today, will not start
17 immediately, because of a number of matters. First of all, as a practical matter, there
18 are two other witnesses ahead of you and we will finish those witnesses first.
- 19 And secondly and very, very importantly, there are some procedures that the Court
20 undertakes, that the Registry of the Court undertakes and also possibly the
21 Prosecutor as well -- or not just the Prosecutor, the party that invited a witness to
22 come, there are some things they will need to do with the witness first, or may need
23 to do with the witness first, before the witness can start testifying.
- 24 First of all, what the Registry must do is something we call a familiarisation process.
25 There is an independent, neutral unit of the Court called the Victims and Witnesses

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1 Unit. They are not a part of the Prosecution team, and they're not part of the
2 Defence team. They're an independent unit that helps the Court move these
3 proceedings along from the perspective of witnesses and victims.
4 They will need to meet with you and familiarise you with the processes of the Court
5 and how things work in the courtroom. As well, they will also -- part of that
6 familiarisation process would be to take you through the statement or statements, if
7 you've given more than one statement that you may have given to either party who
8 called you in the case, in this case it would be the Prosecutor.

9 The Victims and Witnesses Unit will need to take you through that statement or those
10 statements as part of the familiarisation process before we can begin.

11 And then when all that is done, we will also need to examine you about your health,
12 psychology and all that. So there are a number of assessments they may need to
13 make, and then they will report back to the Court before we can begin taking your
14 testimony. Do you understand what I'm saying?

15 THE WITNESS (via video link): Yes, sir.

16 PRESIDING JUDGE EBOE-OSUJI: All right. So once all that is done, the Victims and
17 Witnesses Unit, we call them VWU for short, will make a report and tell us that we are ready
18 to start hearing the witness. So in this case they will need to do the same with you. They're
19 there with you, I understand some of their officers are with you, so once we are done in a few
20 minutes they will take over and then give you the briefings and when you need to meet with
21 them and all that.

22 So it is important that you attend the meetings they schedule with you so that all
23 these processes can be done and we can get to your testimony without too much
24 delay after that. Do you understand?

25 THE WITNESS (via video link): Yes, sir.

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

3 *(Private session at 9.51 a.m.) Reclassified as Open session

4 THE COURT OFFICER: We're in private session, Mr President.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. So it is important that you
6 attend the meeting scheduled -- that the VWU will schedule with you.

7 There is one important matter that I will need to bring to your attention as part of the
8 process. Once the VWU starts their familiarisation exercise with you, you will from
9 that point not be free to discuss the case with anybody. The only discussion you will
10 be looking forward to having would be the one you will do when your testimony
11 starts.

12 Now, Prosecutor, do we anticipate Rule 74 issue?

13 MR STEYNBERG: Your Honours, I do not anticipate any possibility of self-incrimination
14 with regard to the actual charges before this Chamber; in other words, the PEV. There is a
15 possibility --

16 PRESIDING JUDGE EBOE-OSUJI: All right. That's all I need to know.

17 MR STEYNBERG: Okay.

18 PRESIDING JUDGE EBOE-OSUJI: All right. Once, as I said, the familiarisation process
19 starts you will not be free to discuss the case with anybody, but if a lawyer has been assigned
20 to assist you in the case on matters pertaining to possibility of self-incrimination, then that
21 lawyer and you may discuss that aspect of the matter where it is anticipated that there may be
22 issues of self-incrimination. So legal advice may be given to you by the lawyer that will be
23 assigned to you, and that lawyer will know the processes, because the lawyer is supposed to
24 know what the Statute of the Court and the Rules of the Court say on that matter so that
25 they're able to advise you. That is why we appoint lawyers.

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1 Now, that brings us now -- before I go to the next point about appointment of lawyers,
2 remember I had also said that it may be the case that the Prosecutor, in this case who
3 has asked you to come to court, who wants you to come to court, is permitted to meet
4 with you and prepare you for your testimony in court. And this is a separate
5 process from the preparation or the familiarisation that the VWU will do with you as
6 a neutral body. The Prosecutor has the right in this case to ask to meet with you so
7 as to prepare you for the real testimony from their perspective.
8 Now, as I say he has a right to ask to meet with you. You are not bound to meet
9 with them if you feel that you don't need to be prepared by the Prosecutor for
10 whatever reason known to you, it's up to you to say, "No, thank you, Prosecutor, I'd
11 rather not meet with you," but if either you and the Prosecutor agree that there is
12 some use in that sort of meeting for your own benefit, then it is up to you and the
13 Prosecutor to agree to meet for that purpose of preparing you for your testimony.
14 But then let's be clear, let's not confuse that, any such meeting you may be having
15 with the Prosecutor, with a meeting that the VWU will need to have with you, those
16 are not the same thing. They're separate matters. Do you understand?
17 THE WITNESS (via video link): Please, Mr President, can I beg that somebody translate me
18 to Kiswahili because there are some things that maybe I don't understand well.
19 PRESIDING JUDGE EBOE-OSUJI: All right. Let's begin with -- are you able to indicate
20 what aspect of what I've explained to you that you did not understand?
21 THE WITNESS (via video link): Like now the process you are saying, we meet -- I don't
22 understand well what you -- you said.
23 PRESIDING JUDGE EBOE-OSUJI: Okay. All right. Let us see what we can do about -- I
24 understand it will be possible for interpretation to be given to you now from here. We do
25 have interpreters who can assist.

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1 THE WITNESS (via video link): Sawa.

2 PRESIDING JUDGE EBOE-OSUJI: All right. Is the Swahili interpretation on for the witness
3 now? Yes, I understand that you now have interpretation. Can you confirm that, witness?
4 The interpreters in the courtroom tell me that they have started interpreting to you, so
5 let's move on.

6 What I was explaining is that there are two separate processes of meetings that may
7 need to happen with you. One of them will need to happen with you, one of those
8 meetings would be a meeting or a series of meetings that the Victims and Witnesses
9 Unit will have with you in order to prepare you or familiarise you, rather, in order to
10 familiarise you with how the Court works as well as to take you through your
11 statement or statements. Do you understand?

12 THE WITNESS (via video link): (Interpretation) Yes, I understand.

13 PRESIDING JUDGE EBOE-OSUJI: I was on the floor channel, and now I'm on the English
14 channel. What did the witness say? I'm not getting --

15 THE INTERPRETER: The witness has said, "Yes, I understand."

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

17 THE INTERPRETER: "Yes, I understand."

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

19 Now, those meetings with the VWU would also include their assessment of you. They will
20 have a psychologist who will meet with you and do an assessment to advise the Chamber
21 about if there is any difficulty that they should bring to our attention about your mental
22 ability to testify. They will tell us that. That's part of their process. Do you understand?

23 THE WITNESS (via video link): (Interpretation) This is what I've understood: So an
24 official of the Court -- a court official that I have met gave me all these explanations
25 previously during a meeting that I had with them.

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1 PRESIDING JUDGE EBOE-OSUJI: All right. Thank you very much. So but the meeting
2 that the Victims and Witnesses Unit or the meetings they will have with you is a separate kind
3 of meeting and process from the meeting that the Prosecutor may want to have with you as
4 well. Do you understand that?

5 THE WITNESS (via video link): Uh-huh.

6 PRESIDING JUDGE EBOE-OSUJI: Okay.

7 The Prosecutor are the ones who want you to come to court and testify, their lawyers will or
8 may want to request to meet with you so that they can prepare you for your testimony. Do
9 you understand?

10 THE WITNESS (via video link): (Interpretation) Yes, I've understood.

11 PRESIDING JUDGE EBOE-OSUJI: Now, but you do not have to meet with the Prosecutor's
12 lawyers if you don't want to. Do you understand that?

13 THE WITNESS (via video link): (Interpretation) Yes, I understand.

14 PRESIDING JUDGE EBOE-OSUJI: All right. But I need to stress it here, the fact that I said
15 you do not have to meet with the Prosecution lawyers does not mean that I'm also saying that
16 you do not have to meet with the VWU. No, you have to meet with the VWU, and that's a
17 different kind of meeting. Do you understand the difference I'm trying to make?

18 THE WITNESS (via video link): (Interpretation) According to what you've said, VWU,
19 that's the section responsible for victims and what? I would like to have an explanation as to
20 what VWU means.

21 PRESIDING JUDGE EBOE-OSUJI: That's a very good question. The VWU is a separate
22 unit in the Court. I want you to imagine that there are three -- let's say you're looking at
23 three pillars: One pillar is the Prosecutor on one side; and there is a middle pillar in the
24 middle, you call that -- those are VWU; and then to your right there is another pillar, we call
25 them the Defence. So you see three separate pillars.

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1 So the VWU are in the middle. Their job is to help everybody. Their job is to help
2 both the Prosecutor and the Defence and the Judges to do the work. So they're not
3 part of the Prosecutor. They're not members of the Prosecution team. So they're an
4 independent, neutral, impartial unit who help the witnesses get ready and know what
5 the process is about and also help the witnesses with examination, mental
6 examination and physical examination when needed.

7 So the VWU, it is important to understand, is an independent unit in the Court that
8 are not affiliated with the Prosecutor. Do you understand that?

9 THE WITNESS (via video link): (Interpretation) Yes, I understand.

10 PRESIDING JUDGE EBOE-OSUJI: So it is --

11 THE WITNESS (via video link): (Interpretation) Can I ask you a question or put a
12 comment to you?

13 PRESIDING JUDGE EBOE-OSUJI: Can you ask a question or comment?

14 THE WITNESS (via video link): (Speaks English) Yes, I've got a question -- an answer to
15 that.

16 (Interpretation) Yes, I've got a question.

17 PRESIDING JUDGE EBOE-OSUJI: All right. Go on.

18 THE WITNESS (via video link): (Interpretation) I accept to meet the officials from the
19 VWU as you've just proposed.

20 PRESIDING JUDGE EBOE-OSUJI: Okay. Thank you. Do you have another question or
21 was that what you wanted to tell me?

22 THE WITNESS (via video link): (Interpretation) No, I have no other questions. I will just
23 wait for questions from you.

24 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Now, once the VWU starts their
25 process, once they start their familiarisation process with you, it is important that you

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1 understand that from that point on you are not to discuss the case with anybody else. Do
2 you understand that?

3 THE WITNESS (via video link): (Interpretation) Yes, I understand you.

4 PRESIDING JUDGE EBOE-OSUJI: All right. Now, the VWU will tell you, once we are
5 done with you, I hope in a matter of a few minutes, they will meet with you and then tell you
6 when you should come or they should come to you, as the case may be, and meet with you
7 and start that familiarisation process. All right?

8 THE WITNESS (via video link): (Interpretation) Yes.

9 PRESIDING JUDGE EBOE-OSUJI: All right. Now, did you say you wanted a lawyer or did
10 I hear that you requested you want a lawyer to be with you?

11 THE WITNESS (via video link): (Interpretation) Yes.

12 PRESIDING JUDGE EBOE-OSUJI: And I do see that there's a gentleman sitting with you.

13 THE WITNESS (via video link): Ndiyo.

14 PRESIDING JUDGE EBOE-OSUJI: Court officer in Nairobi, can hear me?

15 MR KHAN: I think the microphone --

16 MR STEYNBERG: Your Honour, we can't hear you either.

17 PRESIDING JUDGE EBOE-OSUJI: My microphone signals the lights are on, but I can't even
18 hear myself too.

19 THE COURT OFFICER (via video link): Mr President, for the moment I have been --

20 PRESIDING JUDGE EBOE-OSUJI: Is it -- is there any -- no, no movement.

21 Interpreters, you used to help at this point. Can you hear me?

22 THE COURT OFFICER (via video link): Mr President, I now hear you.

23 PRESIDING JUDGE EBOE-OSUJI: Yes, can you say something. I know you're signalling.
24 Can you -- maybe an audible --

25 THE INTERPRETER: Yes, we can hear what you're saying, your Honour.

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1 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Now, yes, somehow when you
2 speak, you unlock something and that works. We don't know why, but you've got the magic
3 touch.

4 All right. So, Witness, I was saying that the -- when the VWU meet with you, they
5 will explain to you the process of when you need to meet with them. But we also
6 understand that you want a lawyer assigned, and I was saying there is a gentleman
7 sitting with you. Would that be the lawyer you possibly are thinking of representing
8 you, if need be?

9 THE WITNESS (via video link): (Interpretation) Yes.

10 PRESIDING JUDGE EBOE-OSUJI: Sir, we're not -- not yet part of the proceeding, I mean the
11 gentleman, can you mention your name on the record so we know who we have with us
12 today.

13 MR KARATHE: Mr President, my full names are Wandugi Kiiru Karathe. I am an
14 advocate of the High Court of Kenya over 20 years standing. Thank you.

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

16 Witness 516, is that the lawyer you have in mind? All right.

17 THE WITNESS (via video link): (Interpretation) Yes, indeed.

18 PRESIDING JUDGE EBOE-OSUJI: Now, there's a process that needs to happen before any
19 lawyer can be assigned to you. That lawyer needs to be on the list of counsel that have been
20 accepted to represent people before the Court. Mr Karathe should know how to apply to put
21 himself on that list; if not, he can make inquiries with the Registry representatives over there
22 in Nairobi on how to do that. And that needs to be done with speed so that there is no delay
23 involved once the VWU signal the witness is ready to start the testimony. So it is important
24 that the process of enlistment on the list of counsel happens without delay.

25 Mr Karathe, do you understand?

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1 MR KARATHE: I do. Thank you.

2 PRESIDING JUDGE EBOE-OSUJI: All right. So that needs to happen. Once enlisting
3 occurs, there are some things that come with it, the ability to be given access to the records as
4 are deemed necessary -- I don't mean records, to the material like witness statements and
5 things like that, to enable you to prepare. So that cannot happen unless you have put
6 yourself on the list of counsel and been appointed to assist the witness. So it is important
7 that that process proceeds without delay. And I'll leave it at that.

8 Now, if that doesn't happen on time, and the VWU signals that the witness is ready to
9 start testimony, then the Court will have to assign some other lawyer on the list
10 to assist the witness in relation to matters of self-incrimination to the extent that it
11 arises.

12 So we will be proceeding with the case when the time comes, with the testimony, whether or
13 not Mr Karathe has been on the list of counsel. It is important to keep that in mind.
14 Now, Witness, back to you. As I said at the beginning, we welcome you. Thank
15 you for joining us. You remain under the summons of the Court until the Chamber
16 says you are released from --

17 THE WITNESS (via video link): (No interpretation)

18 PRESIDING JUDGE EBOE-OSUJI: -- from your summons. Do you understand?

19 THE INTERPRETER: Overlapping speakers, your Honour.

20 THE WITNESS (via video link): (Interpretation) Yes, I understand.

21 THE INTERPRETER: Please, could the five-second rule be respected?

22 THE WITNESS (via video link): (Interpretation) I came here because I had this summons
23 on the 12th.

24 PRESIDING JUDGE EBOE-OSUJI: Thank you. You will remain bound by that summons
25 until the Chamber says, "All right, Witness 516, you've done your work with us. Thank you

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1 very much. You are no longer bound by the summons." So you are bound by it. Keep
2 that in mind. That means when we leave today, when we -- when you leave where you are
3 now and the VWU have taken over and briefed you, they will let you know when you will
4 have to come back to court and start your testimony proper.

5 Do you understand?

6 THE WITNESS (via video link): (Interpretation) I understand.

7 PRESIDING JUDGE EBOE-OSUJI: You will still be bound by the summons up until that
8 time and beyond until we are done with your testimony. All right?

9 THE WITNESS (via video link): (Interpretation) Yes.

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

11 Counsel, Prosecutors, anything else to add?

12 MR STEYNBERG: Thank you, your Honour. I don't believe that the witness has yet
13 indicated whether or not he's prepared to meet with the -- on record, whether or not he's
14 prepared to meet with the Prosecution, but I did receive an email from the VWU this morning
15 indicating that the witness had been asked and had indicated that he would not like to be
16 prepared by the OTP. So I wonder if that might just be confirmed firstly.

17 There are two other matters, but maybe we should take them one at a time.

18 (Trial Chamber confers)

19 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, that matter we will not take up on the
20 record, so it will be between you and the witness with the assistance of the VWU.

21 MR STEYNBERG: As the Court pleases.

22 Two other matters. The first, just a matter of the record, your Honours, I wonder if
23 my learned friend assisting the witness might spell his name for the record. It did
24 not appear from the record.

25 And then finally, I wonder whether it might be prudent for the Chamber to specifically advise

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1 that -- the admonition not to discuss the contents of -- your Honours, I'll withdraw that. Just
2 the spelling, please.

3 PRESIDING JUDGE EBOE-OSUJI: Mr Karathe, the Prosecutor wanted a spelling. I took
4 notes and what I have, confirm if this is correct, would be Wandugi, W-A-N-D-U-G-I.
5 Would that be correct?

6 MR KARATHE: The full name is Wandugi Kiiru Karathe.

7 PRESIDING JUDGE EBOE-OSUJI: All right. Okay, then spell it, please. Spell the name.

8 MR KARATHE: It's W-A-N-D-U -- -D-U-G-I. Kiiru is K -- Kiiru is K-I-I-R-U. Karathe is
9 K-A-R-A-T-H-E. That is it.

10 PRESIDING JUDGE EBOE-OSUJI: Thank you.

11 Mr Steynberg, that's it from you? Mr Steynberg?

12 MR STEYNBERG: I beg your pardon. I didn't have my earphones on.

13 PRESIDING JUDGE EBOE-OSUJI: I said that's it from you?

14 MR STEYNBERG: Yes, I think so, your Honour. Thank you.

15 PRESIDING JUDGE EBOE-OSUJI: Any observations?

16 MR KIGEN-KATWA: On my part none, Mr President.

17 MR KHAN: Mr President, the only thing I would seek clarification on, at page 14, line 20,
18 the transcript has said Wandudugi, W-A-N-D-U-D-U-G-I, and I think the witness -- sorry, the
19 lawyer for the witness, my learned friend, said something different. So if that could just be
20 clarified. Is it the correct spelling in the transcript? W-A-N-D-U-D-U-G-I is in the transcript.
21 Is that correct?

22 PRESIDING JUDGE EBOE-OSUJI: Mr Karathe --

23 MR KHAN: It seems D-U is repeated.

24 PRESIDING JUDGE EBOE-OSUJI: -- do we have D-U too many times?

25 MR KARATHE: Yes, please.

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- 1 PRESIDING JUDGE EBOE-OSUJI: All right. I think it's Wandugi.
- 2 MR KARATHE: That is -- it is Wandugi. On my professional -- it is Wandugi --
- 3 PRESIDING JUDGE EBOE-OSUJI: Right.
- 4 MR KARATHE: -- and it's spelt --
- 5 PRESIDING JUDGE EBOE-OSUJI: That's all right. We can get that.
- 6 MR KARATHE: Yes.
- 7 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 8 MR KARATHE: Thank you.
- 9 PRESIDING JUDGE EBOE-OSUJI: All right. Thank you again, Witness 516, for joining us.
- 10 And now we will have to have the Registry escort you out of the video conference room and
- 11 then hand you over to VWU so that they can start their process if possible, or if not, then tell
- 12 you when they will need to meet with you. You remain, as I say, alert when they signal you
- 13 that we want you back to now start your testimony proper and you will appear at that time.
- 14 Thank you.
- 15 THE WITNESS (via video link): Asante sana.
- 16 THE COURT OFFICER (via video link): Mr President, the witness will be escorted out of the
- 17 transmission room together with his lawyer.
- 18 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 19 (The witness exits the video-link room)
- 20 PRESIDING JUDGE EBOE-OSUJI: The understanding is that due to the logistics of
- 21 movements of witnesses, we'll take 30 minutes for us to have 604 back in the transmission
- 22 room. In the meantime we can attend to housekeeping matters or even matters of record.
- 23 Do you have materials to tender?
- 24 MR FAAL: Yes, Mr President, I have --
- 25 PRESIDING JUDGE EBOE-OSUJI: Or to seek to tender, that is?

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1 MR FAAL: Yes, I have quite a number of materials I would seek to tender, Mr President.

2 And if your Honours would permit me, I will do that one at a time.

3 Mr President, the first document I would seek to tender is KEN-D09-0038-0006. This is
4 contained in tab 6 of your Honours' binders. It is a photograph of Honourable Ruto at
5 location D. Mr President, we would ask that this photograph be admitted in evidence.

6 PRESIDING JUDGE EBOE-OSUJI: Before we start receiving submissions, or observations,
7 let's go back to public session.

8 (Open session at 10.22 a.m.)

9 THE COURT OFFICER: We're in open session, Mr President.

10 PRESIDING JUDGE EBOE-OSUJI: Thank you.

11 Prosecutor?

12 MR STEYNBERG: No objection, your Honour.

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

14 MR KIGEN-KATWA: None, your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: The document comes in as the next in the Ruto Defence
16 exhibits.

17 THE COURT OFFICER: The confidential document KEN-D09-0038-0006 will bear the
18 number EVD-T-D09-00227.

19 PRESIDING JUDGE EBOE-OSUJI: Thank you.

20 MR FAAL: Mr President, the next item we would seek to admit into evidence is
21 KEN-D09-0038-0030. It's also a photograph in tab 6 of the same type as the one that has just
22 been admitted.

23 MR STEYNBERG: No objection, your Honour.

24 MR KIGEN-KATWA: None, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next in the Ruto Defence exhibits.

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1 THE COURT OFFICER: The confidential document KEN-D09-0038-0030 will bear the
2 number EVD-T-D09-00228.

3 MR FAAL: Mr President, the next document we would seek to tender is KEN-D09-0038-0052,
4 also contained in tab 6. It's also a photograph of Honourable Ruto.

5 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg?

6 MR STEYNBERG: No objection.

7 MR KIGEN-KATWA: No objection.

8 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next Ruto exhibit.

9 THE COURT OFFICER: The confidential document KEN-D09-0038-0052 will bear the
10 number EVD-T-D09-00229.

11 MR FAAL: Mr President, the next document we would seek to admit is KEN-D09-0038-0498.
12 This is contained in tab 8A. This is a log-book of location B. Mr President, we believe that
13 this document speaks to the issues that the witness has talked about, and the witness seems to
14 appreciate some of the entries in that log-book because he's familiar with the location and
15 familiar with the personalities and some of the issues recorded therein. As such, we believe
16 that it addresses a matter in contention between the parties. It has sufficient indicia of
17 reliability. We ask that it be admitted in evidence. If there is difficulty in so doing, we ask
18 that as a minimum it be marked for identification. Thank you, Mr President.

19 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg?

20 MR STEYNBERG: Thank you, your Honours. The Prosecution does object to this being
21 given -- admitted into evidence at this stage. The witness has never seen this document
22 before. He purported to identify what it was on the basis of what's written in there, but there
23 is no indication of authenticity of this book and we submit that it should be proved in the
24 ordinary fashion. We have no objection to it being granted an MFI number. Only the
25 persons that entered into this book can speak as to the truth of its contents.

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1 MR FAAL: Mr President, perhaps there is something there in the response given by my
2 learned friends that I should address. The document is replete with stamps by the school
3 authenticating it, and there is also a second part of it which being duly certified by the
4 principal. So for that reason we believe the issue of authentication has been adequately
5 addressed.

6 MR KIGEN-KATWA: For the record, Mr President, we do not object to it being exhibited.

7 PRESIDING JUDGE EBOE-OSUJI: The document will be marked for identification.

8 MR FAAL: As your Honour pleases.

9 THE COURT OFFICER: The confidential document KEN-D09-0038-0498 will bear the
10 number MFI-T-D09-00230.

11 MR FAAL: Mr President, the next document we would seek to be marked for identification
12 is KEN-D09-0038-0685. It is contained in tab B of your Honours' binder or bundle. It is also
13 the second part of the log-book.

14 PRESIDING JUDGE EBOE-OSUJI: Tab 8B?

15 MR FAAL: 8B, Mr President.

16 PRESIDING JUDGE EBOE-OSUJI: Yes. Document will be marked for identification.

17 THE COURT OFFICER: The confidential document KEN-D09-0038-0685 will bear the
18 number MFI-T-D09-00231.

19 MR FAAL: Mr President, we seek to mark for identification document KEN-D09-0038-0277.
20 It is the Visitors Book contained in tab 9 of the bundle.

21 PRESIDING JUDGE EBOE-OSUJI: It will be marked for identification.

22 THE COURT OFFICER: The confidential document KEN-D09-0038-0277 will bear the
23 number MFI-T-D09-00232.

24 MR FAAL: Mr President, we seek to admit into evidence document KEN-D09-0038-0017,
25 also contained in tab 6, is a photograph of Honourable Ruto.

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- 1 MR STEYNBERG: No objection, your Honour.
- 2 MR KIGEN-KATWA: I have no objection, your Honour.
- 3 PRESIDING JUDGE EBOE-OSUJI: It will be admitted as the next Ruto Defence exhibit.
- 4 THE COURT OFFICER: The confidential document KEN-D09-0038-0017 will bear the
- 5 number EVD-T-D09-00233.
- 6 MR FAAL: Mr President, the next item we would seek to admit into evidence is
- 7 KEN-D09-0038-0024, also contained in tab 6, it's a photograph of Honourable William Ruto.
- 8 MR STEYNBERG: Your Honours, I have no objection. I may indicate I have no objection to
- 9 any of the photographs from this tab being admitted.
- 10 MR KIGEN-KATWA: No objection, your Honour.
- 11 MR STEYNBERG: That is photographs that have been put to the witness.
- 12 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next in the Ruto Defence exhibits.
- 13 THE COURT OFFICER: The confidential document KEN-D09-0038-0024 will bear the
- 14 number EVD-T-D09-00234.
- 15 MR FAAL: Mr President, the next item is KEN-D09-0038-0080 contained in tab 11. Mr
- 16 President, this is minutes of a joint BOG and PTA meeting. We ask that it be marked for
- 17 identification.
- 18 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg?
- 19 MR STEYNBERG: No objection to MFI, your Honours.
- 20 MR KIGEN-KATWA: No objection on our part.
- 21 PRESIDING JUDGE EBOE-OSUJI: Marked for identification.
- 22 THE COURT OFFICER: The confidential document KEN-D09-0038-0080 will bear the
- 23 number MFI-T-D09-00235.
- 24 MR FAAL: Mr President, we ask that document KEN-D09-0038-0419 be admitted into
- 25 evidence. This is a news report.

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- 1 PRESIDING JUDGE EBOE-OSUJI: Tab?
- 2 MR FAAL: It's a video, Mr President. It is a news report of --
- 3 PRESIDING JUDGE EBOE-OSUJI: Do we have a transcript of it?
- 4 MR FAAL: Yes, the transcript will come after this.
- 5 PRESIDING JUDGE EBOE-OSUJI: All right.
- 6 MR FAAL: The transcript will be in tab 21, Mr President. This is the video in which
- 7 Honourable Ruto was advocating for adopting the delegate system in determining the
- 8 presidential flag-bearer for the ODM. We ask that the video be admitted into evidence.
- 9 MR KIGEN-KATWA: Your Honour, on our part we have no objection.
- 10 MR STEYNBERG: Your Honours, only to observe that I don't think we wish -- the witness
- 11 was shown the whole report. The Prosecution disputes that it was the same occasion that is
- 12 depicted by the photograph but, other than that, we have no objection to the admission of the
- 13 video.
- 14 PRESIDING JUDGE EBOE-OSUJI: The document will be admitted as the next Ruto Defence
- 15 exhibit.
- 16 THE COURT OFFICER: The public document KEN-D09-0038-0419 will bear the number
- 17 EVD-T-D09-00236.
- 18 MR FAAL: Mr President, just to indicate for the record that we would address the
- 19 observation of my learned friend opposite during submissions at the relevant time.
- 20 PRESIDING JUDGE EBOE-OSUJI: Indeed, that was the point. Now, there is a translation
- 21 of the video?
- 22 MR FAAL: Yes, Mr President. The translation is contained in KEN-D09-0038-00 -- excuse
- 23 me, Mr President. Let me just confirm this -- 0420 in tab 21. We ask that it also be admitted
- 24 into evidence, Mr President.
- 25 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg?

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- 1 MR STEYNBERG: No objection, your Honours, but normal caveat, we don't admit the
2 correctness of the translation at this stage.
- 3 MR KIGEN-KATWA: No objection, your Honour.
- 4 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next in the Ruto Defence exhibits.
- 5 THE COURT OFFICER: The public document KEN-D09-0038-0420 will bear the number
6 EVD-T-D09-00237.
- 7 MR FAAL: Mr President, the next item we would seek to admit into evidence is
8 KEN-D09-0038-0072 contained in tab 8. It's a photograph of William -- Honourable William
9 Ruto.
- 10 MR KIGEN-KATWA: We have no objection, your Honour.
- 11 PRESIDING JUDGE EBOE-OSUJI: In tab what?
- 12 MR FAAL: I beg your pardon, Mr President. Tab 7.
- 13 MR STEYNBERG: No objection, your Honour.
- 14 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next Ruto Defence exhibit.
- 15 THE COURT OFFICER: The confidential document KEN-D09-0038-0072 will bear the
16 number EVD-T-D09-00238.
- 17 MR FAAL: Mr President, we ask that document KEN-D09-0038-0427 contained in tab 16, it's
18 a BOG -- minutes of a BOG meeting. We ask that it be marked for identification.
- 19 PRESIDING JUDGE EBOE-OSUJI: It will be so marked.
- 20 THE COURT OFFICER: The confidential document KEN-D09-0038-0427 will bear the
21 number MFI-T-D09-00239.
- 22 MR FAAL: And the last item, Mr President, is KEN-D09-0038-0418 contained in tab 22.
23 This is a Nation newspaper of 20 November 2007. We ask that it be admitted into evidence,
24 Mr President.
- 25 MR STEYNBERG: No objection, your Honour.

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- 1 MR KIGEN-KATWA: No objection, your Honour.
- 2 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next Ruto Defence exhibit.
- 3 THE COURT OFFICER: The document, the public document KEN-D09-0038-0418 will bear
4 the number EVD-T-D09-00240.
- 5 MR FAAL: Mr President, that was the last item I'm seeking to admit.
- 6 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 7 Mr Faal, we're still waiting for the witness to be brought back in so you may continue
8 your cross-examination. Have you thought about time? I know we have lost time,
9 and that's not your fault, nor anyone's indeed.
- 10 MR FAAL: Indeed.
- 11 PRESIDING JUDGE EBOE-OSUJI: Still --
- 12 MR FAAL: Like I promised, Mr President, I'll endeavour to really reduce the time we
13 intended to use. I just wish to note that the Prosecution had about 10 sessions. I would
14 definitely not take that much time. But perhaps what I ask for should be given, a day and a
15 half, and then I'd be done. But I'll do my utmost to finish earlier. Thank you, Mr President.
- 16 PRESIDING JUDGE EBOE-OSUJI: It's not always a good argument to say somebody had X
17 amount of time, one should be given the same. But if you need to use the time, it may be
18 that the nature of the testimony may require that the cross-exam -- I mean, it takes more time
19 in cross-examination or less time in cross-examination as examine-in-chief. But just as far as
20 you're, you know, keen and alive to the need to do it with speed and efficiency, that will be
21 good enough.
- 22 MR FAAL: I'm well-guided, Mr President.
- 23 MR KHAN: And, Mr President, with your leave, if we have time, one matter that may be of
24 help to the parties? Your Honour, we sent an email to the Chamber yesterday regarding the
25 next court session. And effectively it was an application of all parties. It was initiated by

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1 the Ruto and Sang Defence teams and supported by the Prosecution. Your Honour, I'm not
2 asking for a decision on that now, but I note that we have at least two more witnesses lined up
3 for this session, and it seems to me it would be a good idea to try to finish those.
4 The other matter I just raised, I don't know if it's possible at all, is the possibility of
5 extending the current session to finish the current witnesses. And I'll say no more
6 than that. It's just it would be quite good to finish the current ones that we've
7 prepared for before we move on to others. And one possibility, of course, is
8 bringing them back, any witnesses that are not finished, the next session, the other
9 possibility depending upon other court -- the needs of other cases in this courtroom is
10 to extend the session, and so we finish this block of witnesses in an extended session,
11 and I just raise that as a possibility.

12 PRESIDING JUDGE EBOE-OSUJI: Of course, we're not going to resolve the matter now, but,
13 Mr Steynberg, do you have any observations so far on the matter?

14 MR STEYNBERG: Your Honours, I can confirm that my learned friends discussed with me
15 the scheduling of the next session, and we're quite happy to go along with the Defence on that
16 request.

17 On the extension, I will need to consult and see what other obligations we might have.
18 Normally, because we don't know when the next session is going to be, any plans that
19 need to be made for leave and the such will be done shortly after the termination of
20 the first session. But I can't speak to that immediately. My preference would
21 probably be not to extend if we could help it, unless it's just for one or two days.

22 MR KIGEN-KATWA: Mr President, I confirm that we discussed the issue of the next session.
23 The issue of extending this session was not discussed. Speaking for myself, I would have
24 rather that it is not extended, but probably we'll deal with it when it is firmed up. Yes, thank
25 you.

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- 1 PRESIDING JUDGE EBOE-OSUJI: All right. We're getting an incoming call. So we will
- 2 take up the matter of scheduling in due course so we'll not deal with that today.
- 3 (Pause in proceedings)
- 4 PRESIDING JUDGE EBOE-OSUJI: Well, let's do this, let's take our morning break now and
- 5 come back earlier. We will come back in 20 past 11.
- 6 Court will rise.
- 7 (Recess taken at 10.47 a.m.)
- 8 (Upon resuming in open session at 11.24 a.m.)
- 9 THE COURT USHER: All rise.
- 10 Please be seated.
- 11 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 12 Witness, welcome back. Mr Faal will continue his cross-examination.
- 13 We're in open session.
- 14 MR FAAL: Thank you, Mr President.
- 15 WITNESS: KEN-OTP-P-0604 (On former oath)
- 16 (The witness speaks English)
- 17 (The witness gives evidence via video link)
- 18 QUESTIONED BY MR FAAL: (Continuing)
- 19 Q. Good morning, Mr Witness.
- 20 A. Good morning.
- 21 Q. We ended the session on Wednesday talking about an alleged harambee that took place
- 22 at location D on 19 November 2007. Do you recall that?
- 23 A. Yes, I recall.
- 24 Q. Now, Mr Witness, I want us to discuss some of the other details about this alleged
- 25 harambee which you told the Prosecution. Are we together?

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1 A. Yes.

2 Q. I would like to show you a photograph.

3 MR FAAL: Court officer, kindly put this photograph up the screen and please do not
4 broadcast it outside the courtroom and the transmission room. It is contained in tab
5 19 -- rather, tab 18. It is KEN-D09-0038-0722.

6 THE COURT OFFICER (via video link): The photograph is being shown to the witness.

7 MR FAAL:

8 Q. Yes. Mr Witness, do you know the person shown in this photograph?

9 A. Yes, I know him.

10 Q. And please do not mention his name because we are in public session. Kindly take a
11 look at the PIS that has been provided and tell us whether you see his name on the PIS.

12 A. Yes, I have seen.

13 Q. And what is the pseudonym provided for this name, person what?

14 A. N b-i-s.

15 Q. Yes. For how long have you known this person?

16 A. I have known him for 13 years.

17 Q. How did you come to know him? And please do not reveal any information that
18 would lead to your identification.

19 A. I knew him as a teacher of the location D.

20 Q. Mr Witness, you said in paragraph 37 of your statement, and I quote, "The master of
21 ceremony was the school principal." And then you mentioned the name contained in the PIS
22 as person N. And then you went on to say "He advised people to give with a generous
23 heart."

24 MR FAAL: Mr President, this is contained in the first statement of the witness at page 0025.
25 This is in tab 1. It's Prosecution Exhibit 132. It's KEN-OTP-0109-0019_RO1. I'm referring

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1 specifically at paragraph 37 contained in page 0025.

2 Q. Can you see, Mr Witness?

3 The photograph may be taken off the screen.

4 And, Mr Witness, what I read out is actually correct; and if it is not, the OTP would

5 bring it up. This is -- this is what you said, that "The master of ceremony was the

6 school principal" and you mentioned the name contained in the PIS as person N.

7 And then you went on to say that "He advised people to give with a generous heart."

8 Is that correct, Mr Witness? That's what you told the Prosecution?

9 A. Yes.

10 Q. We note that there is a difference in the name that you have given for -- as the principal,

11 person N. Is person N different from the person you have seen on the photograph?

12 A. No.

13 Q. Are you suggesting that they are one and the same person? This is the person you

14 were referring to in paragraph 37?

15 A. Yes.

16 Q. Are you aware that his correct name is what is stated in the PIS as person N bis? That

17 is the name you pointed out earlier.

18 A. Yes.

19 Q. And, Mr Witness, I would like to examine another document, but before I do that,

20 kindly help the Court understand the titles that are given to heads of secondary schools in

21 Kenya.

22 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, before you move on, are you done with the

23 photo?

24 MR FAAL: Yes, Mr President.

25 PRESIDING JUDGE EBOE-OSUJI: What do you intend to do with it?

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1 MR FAAL: I would seek to admit it into evidence. I wanted to do that as soon as I finished
2 every segment of the -- of the examination, otherwise I can do it as soon as I use the material.

3 PRESIDING JUDGE EBOE-OSUJI: Let us do it that way. Do it as soon as you use the
4 material. Let's avoid piling up.

5 MR FAAL: I am well-guided, Mr President. Mr President, I would just wish to take us
6 back a little bit. I had omitted to ask that a photograph that I had previously shown to the
7 witness be admitted into evidence, and this is KEN-D09 --

8 PRESIDING JUDGE EBOE-OSUJI: Wait, wait, wait. Is this something else?

9 MR FAAL: Yes.

10 PRESIDING JUDGE EBOE-OSUJI: All right. Let's deal with the photo we've just seen now.
11 After that we can take up the other matter.

12 MR FAAL: Thank you very much, Mr President. May I ask that the photograph we've just
13 seen be admitted into evidence. It is KEN-D09-0038-0722 contained in tab 18. This is the
14 photograph of person N bis, teacher at location D. May we ask that it be admitted into
15 evidence, Mr President?

16 MR STEYNBERG: No objection.

17 MR KIGEN-KATWA: No objection.

18 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next Ruto Defence exhibit.

19 MR FAAL: And Mr President --

20 THE COURT OFFICER: The confidential document KEN-D09-0038-0722 will bear the
21 number EVD-T-D09-00241.

22 MR FAAL: And, Mr President, as I intimated a little earlier, I had omitted to ask to put into
23 evidence a photograph that was shown to the witness. It is KEN-D09-0038-0069. It is
24 contained in tab 7 and it's a photograph of Honourable Ruto at a location we had seen. May
25 we ask that it be admitted into evidence, please?

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- 1 MR STEYNBERG: No, objection, your Honours.
- 2 MR KIGEN-KATWA: No objection.
- 3 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next Ruto Defence exhibit.
- 4 THE COURT OFFICER: The confidential document KEN-D09-0038-0069 will bear the
- 5 number EVD-T-D09-00242.
- 6 MR FAAL: Thank you very much.
- 7 Q. Mr Witness, in Kenya, secondary schools in Kenya for that matter --
- 8 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, hold on, please.
- 9 Witness, can you look at paragraph 37 of your statement, your first to the OTP.
- 10 Court officer, it will be the ERN reference would be OTP-0109-0025.
- 11 THE COURT OFFICER (via video link): Yes, Mr President. It's being shown to the witness.
- 12 PRESIDING JUDGE EBOE-OSUJI: All right. Witness, looking at paragraph 37, do you
- 13 know -- you see the spelling of that name that appears there. Do you know anyone else
- 14 whose name is spelled precisely in that manner?
- 15 THE WITNESS: No, Mr President.
- 16 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 17 Proceed.
- 18 MR FAAL: Thank you, Mr President.
- 19 Q. Mr Witness, in secondary schools in Kenya, is there any title that is used
- 20 interchangeably with the title "principal"?
- 21 A. I don't know.
- 22 Q. Do you know the term "headmaster"?
- 23 A. Yes, I know.
- 24 Q. Is that term used interchangeably with "principal" in secondary schools in Kenya?
- 25 A. No.

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1 Q. In second -- it is your testimony that in secondary schools they don't use the term
2 "headteacher" or "headmaster"?

3 A. Yes.

4 Q. I will --

5 PRESIDING JUDGE EBOE-OSUJI: Let him explain the difference as he understands it
6 between the two terminologies, "principal" and "headmaster."

7 MR FAAL: Thank you, Mr President.

8 Q. Mr Witness, can you explain to the Court your understanding of the differences
9 between "principal" and "headmaster"?

10 A. What I understand is that the headteachers of -- of secondary schools in Kenya have the
11 title "principals," yeah. And then some are senior principal. And then for the primary
12 schools we have the headteacher.

13 Q. Do the headteacher and the headmaster -- excuse me, the headmaster and the principal,
14 do they perform the same functions?

15 A. Yes, they perform.

16 Q. Thank you.

17 PRESIDING JUDGE EBOE-OSUJI: Are you saying, Witness, that in primary schools the
18 headteacher is headmaster?

19 THE WITNESS: Yeah, sometimes back that name "headmaster" was used so much,
20 "headmaster" and "headmistress," if she was a lady. But of late what the name that is used
21 mostly is "headteacher."

22 PRESIDING JUDGE EBOE-OSUJI: All right. But at the time when the terminology
23 "headmaster and headmistress" were used, and one can see why it make sense to unify the
24 titles, but at the time when "headmaster and headmistress" were used in what -- at what level
25 of education would the head teacher be described with those titles?

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1 THE WITNESS: The headteacher -- the headmaster or headmistress were those teachers who
2 went to teacher training colleges, they -- they had the certificate for -- of teacher training
3 colleges for primary schools.

4 PRESIDING JUDGE EBOE-OSUJI: For primary schools?

5 THE WITNESS: Yes.

6 MR FAAL: Thank you, Mr President.

7 Q. Mr Witness, I would just like to move forward on this and I would like to show you a
8 document. It is a document we had seen yesterday.

9 It's contained in tab 17 it has been MFI'd. The ERN number is KEN -- KEN-D09-0038-0429
10 contained in tab 17. Just give me a second to provide the MFI number but, in the meantime,
11 could this document be put up the screen for the witness and let it not be broadcast outside.

12 THE COURT OFFICER (via video link): The document is being shown to the witness.

13 THE COURT OFFICER: Mr Faal, are you sure about the ERN number?

14 MR FAAL: It had -- this one had not been used before, so just show the document to the
15 witness. It had not been used before so it doesn't have an MFI number.

16 Q. Can you see the document, Mr Witness?

17 A. Yes, I have seen.

18 Q. And could you -- don't mention the name, okay. Would you agree that it is a
19 document purportedly from the -- from location D?

20 A. Yes.

21 Q. And it is a document dated 29 October 2007, correct?

22 A. Yes.

23 Q. And it is a letter addressed to "The District Education Officer" for Uasin Gishu; is that
24 right?

25 A. Yes, it is right.

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1 Q. And it is talking about nomination of the board of governors; is that right?

2 A. Yes.

3 Q. And if you look at the bottom of the document, you would see a name below the
4 signature. Do you see that?

5 A. Yes, I have seen.

6 Q. And could you confirm that the name -- or, one of the names you have seen below the
7 signature is also the name listed as person P in the PIS? Do you see that, Mr Witness?

8 A. Yes, I have seen.

9 Q. And you have seen that person P signed this letter as principal?

10 A. Yes.

11 Q. Let me take this again. The person who signed -- you see the name of the person who
12 signed this letter, is it the name that is listed as person P in the PIS?

13 A. Yes.

14 Q. So, Mr Witness, we say that person N bis was not principal at location D in 2007. What
15 do you say to that?

16 A. You are correct.

17 Q. I would move on, Mr Witness. I would show you another document.

18 MR FAAL: Before I move away from this perhaps, Mr President, may I ask that this
19 document be marked for identification?

20 PRESIDING JUDGE EBOE-OSUJI: It will be so marked.

21 MR FAAL:

22 Q. Mr Witness -- sorry.

23 THE COURT OFFICER: The confidential document KEN-D09-0038-0429 will bear the
24 number MFI-T-D09-00243.

25 MR FAAL: Mr President, may I ask to go into a private session for two minutes?

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- 1 PRESIDING JUDGE EBOE-OSUJI: Private session.
- 2 *(Private session at 11.45 a.m.) Reclassified as Open session
- 3 THE COURT OFFICER: We are in private session, Mr President.
- 4 MR FAAL:
- 5 Q. Mr Witness, we are in private session so you can mention names freely for now.
- 6 I would like the witness to be showed document contained in tab 12. It is
- 7 KEN-D09-0038-0083. Could you kindly put that document up the screen, please.
- 8 THE COURT OFFICER (via video link): The document is being shown to the witness.
- 9 MR FAAL:
- 10 Q. Mr Witness, you would agree that this is a document from the Ministry of Education,
- 11 particularly the office of the "Provincial Director of Education" in Rift Valley, that's what it
- 12 says, correct?
- 13 A. Yes.
- 14 Q. And you see that the name of the addressee is below the reference. Could you see
- 15 that?
- 16 A. I have seen.
- 17 Q. Did you -- did you see the name below, below the paragraph showing reference
- 18 "TSC/348405/20"? Do you see the name that is written below it?
- 19 A. Yes, I have seen.
- 20 Q. And you would agree that this letter purports to be dated 12 June 2007, correct?
- 21 A. Yes.
- 22 Q. And the name under the reference, could you read it for us, please.
- 23 A. It is (Redacted)
- 24 Q. Mr Witness, do Kalenjins normally have two Christian names?
- 25 A. On rare occasions some may have.

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1 Q. We -- we say that this is a letter that was addressed to (Redacted).

2 MR FAAL: Mr President, we have the original. It could be inspected. There is an
3 explanation for why the K now looks like a P, but we would relate this material with some
4 other material to show that it was indeed a letter addressed to (Redacted).

5 Perhaps I could pass around the original for your Honours to see it and just to see that there's
6 been an alteration in the document. This was contemporaneous with the events, but we have
7 an explanation as to why the alteration.

8 Court officer, could you kindly assist to pass the letter to the Judges? Thank you.

9 Yes, please. Thank you, Mr President.

10 PRESIDING JUDGE EBOE-OSUJI: Also to the Prosecution.

11 MR FAAL: Indeed. Thank you, Mr President.

12 Q. Mr Witness, while the document is being examined by the Prosecution, do you see a
13 stamp at the top middle -- at the centre at the top of the document?

14 A. Yes, I have seen.

15 Q. Could you read the name that is stated inside the stamp, please.

16 A. It reads (Redacted)

17 Q. Was that the school (Redacted) was teaching?

18 A. Yeah, that is the school he was teaching.

19 Q. And what is the date stated inside the stamp?

20 A. 13 June 2007.

21 Q. And there is some writing inside and a little outside the stamp. Can you read it?

22 A. It reads "Received and forwarded. Congratulations."

23 Q. And this letter, there is immediately under Mr (Redacted) name you have the
24 word "Thro," and then an address. To whom is it also addressed?

25 A. It's addressed to "Headteacher, (Redacted)."

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1 Q. It is sent through the headteacher, (Redacted); is that right?

2 A. Yes.

3 Q. And what is the subject of -- yes, just to take that again, take that up again: It was sent
4 through, through the headteacher, not -- not to the headteacher; is that right? It's written
5 T-H-R-O. Do you agree with that, Mr Witness?

6 A. Yes, I agree.

7 MR STEYNBERG: Sorry to interrupt, your Honours. It's up to my learned friend obviously
8 how to use the time allocated to him, but I don't see the point in asking the witness to confirm
9 what we can all read in this document. It really doesn't seem to be taking the case any
10 further. What -- what stands on the face of the document we can all read. Perhaps what
11 my learned friend should be asking him is whether he's ever seen this document before.

12 MR FAAL: Mr President, it is quite obvious that the witness has never seen this document.
13 What I'm trying to do is to put in the record what is contained in the document, and that is
14 important for us.

15 PRESIDING JUDGE EBOE-OSUJI: Proceed.

16 MR FAAL: Much obliged, Mr President.

17 Q. Mr Witness, the subject of this letter is "Deployment of Headteachers," isn't it?

18 A. Yes, it is.

19 Q. And you would agree that in the first paragraph it states as follows, and I read, "It has
20 been decided that you be appointed Headteacher and transferred from (Redacted)
21 (Redacted) to (Redacted) with immediate effect." Did I read that correct?

22 A. Yes, you have read it correct.

23 Q. And the letter claims to be signed by the provincial director of education for Rift Valley,
24 correct?

25 PRESIDING JUDGE EBOE-OSUJI: Mr --

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1 THE WITNESS: Yes, it has been signed.

2 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, are you going to also put the second paragraph
3 on the record?

4 MR FAAL: I will do so, Mr President.

5 Q. And the second paragraph says, "By a copy of this letter, the DEO Uasin Gishu is
6 requested to supervise the hand"[or] "take over exercise and inform the Teachers Service
7 Commission and this office when it is finalized."

8 And then the last paragraph, "May I wish you success in your new appointment."

9 Did I read that correctly, Mr Witness?

10 A. Yes.

11 Q. Mr Witness, what have you learned from this letter?

12 A. Okay, I have learned that on -- on 12 June 2007 (Redacted) was transferred from
13 (Redacted) to go and be a headteacher of (Redacted).

14 MR STEYNBERG: Your Honours, at this point I must object again. The Chamber has
15 consistently refused to admit this sort of evidence and rather to mark it for identification
16 subject to subsequent proof at the proper time during the Defence case.

17 By reading the entire document into the record and having this witness purport to
18 confirm a document which he obviously has no knowledge of, my learned friend is
19 simply circumventing the -- the justified reluctance of the Chamber to admit this sort
20 of evidence without proof of authenticity and the correctness of its contents.

21 This witness has not given any evidence to suggest that he can confirm one way or
22 another whether anything contained in this document is correct or not. So my
23 submission is at best the Defence should be allowed to show the document and ask
24 the witness if he can comment on it, MFI it and then prove it in the normal way.

25 Thank you.

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1 MR FAAL: Well, Mr President, we intend to MFI the document. We're not asking that it be
2 admitted into evidence at this stage. But if what is contained in the document is not in the
3 record, it will just cause undue difficulties at a later stage. And it is important for us at this
4 time to have the content of the document discussed, otherwise it will not be of any utility.
5 The witness will not be able to help the Court understand the events that occurred at the time.
6 So that is why we are doing it in this way. It is absolutely important that what the document
7 talks about we put on the record.
8 Thank you, Mr President.

9 PRESIDING JUDGE EBOE-OSUJI: The objection is overruled.
10 Proceed.

11 MR FAAL: Thank you, Mr President. At this stage, Mr President, may I ask that this
12 document be marked for identification. It is KEN-D09-0038-0083.

13 PRESIDING JUDGE EBOE-OSUJI: We'll mark it for identification.

14 THE COURT OFFICER: The confidential document KEN-D09-0038-0083 will bear the
15 number MFI-T-D09-00244.

16 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, so it is clear, the reason for overruling the
17 objection was that the document had been discussed and the first paragraph up until then had
18 been read onto the record without objection, and it was important that all of it then come in so
19 that the record makes sense at that point. The arguments will be made at the right time.

20 MR FAAL: Well-guided, Mr President.

21 PRESIDING JUDGE EBOE-OSUJI: That is not, of course, to say that there is some unbridled
22 licence to be putting somebody else's words in through a witness on the stand.

23 MR FAAL: Well-guided, Mr President.

24 Mr President, perhaps at this stage we could go back to public session.

25 PRESIDING JUDGE EBOE-OSUJI: Public session.

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(Open Session)

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1 (Open session at 11.59 a.m.)

2 THE COURT OFFICER: We are in open session, Mr President.

3 MR FAAL:

4 Q. Mr Witness, I would like to show you another document. We had seen this document
5 before. It is the log-book contained in tab 8. It is KEN-D09-0038. It is Ruto Defence MFI
6 230.

7 And specifically we want to see page 049 -- excuse me, 0669. If you could kindly put
8 that page up the screen, please?

9 THE COURT OFFICER (via video link): Could you please repeat the first page of the
10 document, the ERN number of the first page of the document, the last four digits?

11 MR FAAL: 0498, and specifically at page 0669.

12 PRESIDING JUDGE EBOE-OSUJI: What tab? Did you already indicate the tab, 8, you say?

13 MR FAAL: Yes, Mr President.

14 Could you enlarge the entry dated 14 June 2007, 14/06/07, please.

15 Q. Mr Witness, do you see that entry in the log-book?

16 A. Yes, I have seen.

17 Q. You would agree with me that it is an entry of 14 June '07; is that right?

18 A. Yes.

19 Q. And, Mr Witness, you would agree that it states, "Received a letter of
20 deploy ..." -- something --

21 PRESIDING JUDGE EBOE-OSUJI: Again, we're in public session; you know that?

22 MR FAAL: Yes, Mr President. That's why I opted to read it myself.

23 Q. "Received a letter of deploy ..." -- something missing. " of the D/HT Mr ..." -- and that
24 name would be the name we say in person -- the name of person N bis -- "... who has been
25 deployed to head the school ..." at location E. Is that right, Mr Witness?

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1 A. Yes, it is right.

2 MR FAAL: Court officer -- excuse me, before I go there.

3 Q. You'd agree, Mr Witness, that this is the same school to which the letter we have just
4 seen to which the person concerned has been transferred to as indicated in the letter we have
5 just seen?

6 A. Yes.

7 MR FAAL: Court officer, could you show the witness the next page, please. It's page 0670.

8 THE COURT OFFICER (via video link): The page is being shown to the witness.

9 MR FAAL: Thank you, court officer. Can you kindly expand the entry of the 18 June '07?

10 Q. And, Mr Witness, you agree that this indicates an entry of 18 June 2007; is that right?

11 A. Yes.

12 Q. And the entry reads as follows: "A meeting by the executive BOG ..." then "... Mr ..." a
13 person we list as person Q, PIS person Q "... has been appointed to act as a deputy after the
14 transfer of ..." person N bis. Did you see that?

15 A. Yes, I have seen.

16 Q. Mr Witness, why did you tell the Office of the Prosecutor that person N bis was
17 principal at location D when you gave them your statement?

18 A. I had told them he was the deputy principal. But it seemed when he was writing, he
19 never indicated that he was the deputy principal.

20 Q. Mr Witness, what I am trying to drive at is that as at June 2007, person N bis was no
21 longer working at location D at all. Did you, in fact, know when you spoke to the Office of
22 the Prosecutor that person N bis was no longer working at location D as at November of 2007?

23 A. I didn't know.

24 Q. Mr Witness, in your statement you also mentioned other individuals, person L and
25 person M, as being chairman and vice-chairman of the location of the BOG of location D. Do

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1 you remember that? I am referring specifically to paragraph 135 of your statement -- sorry,
2 paragraph 35 of your statement. Person L and person M as being chairman and
3 vice-chairman respectively of the BOG of location D.

4 A. Yes, I have seen.

5 Q. I would now like you to take a look at a document.

6 MR FAAL: It's contained, Mr President, in tab 13. It is KEN-D09-0038-0422.

7 Kindly put it up the screen for the witness, please.

8 THE COURT OFFICER (via video link): The witness is being shown the document.

9 MR FAAL:

10 Q. Mr Witness, you agree that this letter purports to be from the Ministry of Education,
11 correct?

12 A. Yes, it is correct.

13 Q. And it is dated 9 July 2004; is that right?

14 A. Yes.

15 Q. And it is a letter addressed to the district education officer of Uasin Gishu district, right?

16 A. Yes.

17 Q. And the subject is Board of Governors members for location D; is that right?

18 A. Yes.

19 Q. And the letter claims to be a letter which is forwarding the appointment letters of ten
20 members of the board of governors of location D; is that right?

21 A. Yes.

22 Q. And please take a look at the document. It's dated 9 July 2004. Do you see in this list
23 of names the name of person M, person M? Please take a look at the PIS. Did you see the
24 name of person M in this document?

25 A. It is not there.

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1 Q. Take a look at the names listed under section 44(2)(c). I note that the third name -- that
2 third name, is it the same as you referred to as person L?

3 A. No.

4 Q. Could you tell the Court what is the difference?

5 PRESIDING JUDGE EBOE-OSUJI: Now we're in open session.

6 MR FAAL: Yes, Mr President. Thanks for that reminder.

7 Q. Who you kindly tell the Court what is the difference? Is there any gender difference in
8 these names?

9 A. Yes. The -- the one in this letter is a female.

10 Q. And the one you referred to in your statement?

11 A. It's a male.

12 Q. Thank you very much, Mr Witness.

13 MR FAAL: Mr President, may I ask that this document be marked for identification.

14 PRESIDING JUDGE EBOE-OSUJI: It will be so marked.

15 THE COURT OFFICER: The confidential document KEN-D09-0038-0422 will bear the
16 number MFI-T-D09-00245.

17 MR FAAL: Court officer, may I ask that document contained in tab 16, KEN-D09-0038-0427,
18 be showed to the witness, please.

19 THE COURT OFFICER (via video link): The document was shown to the witness.

20 MR FAAL: May the document also be put up the screen, please. Okay, thank you very
21 much. Thank you very much, court officer.

22 Q. Mr Witness, do you agree that the heading of the document claims to be from location
23 D?

24 PRESIDING JUDGE EBOE-OSUJI: Now, let's correct something on the record. So the -- it
25 should be that the document is being shown to the witness; is that it, court officer, as we

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1 speak?

2 THE COURT OFFICER (via video link): Yes, Mr President, he's being shown the document
3 together also with the PIS.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

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

6 Q. Mr Witness, the document purports to be from location D; is that right?

7 A. Yes.

8 Q. And it is dated 21 September 2007, correct?

9 A. Correct.

10 Q. And it claims to be "Executive B.O.G. Meeting on 21/09/07 in the Library," correct?

11 A. Yes.

12 Q. Please take a look at the PIS and tell us who in this document is stated as chairman of
13 the BOG. Please refer to the PIS.

14 A. Yes, the one indicated by letter O.

15 Q. So this document states that person O was the chairman of the BOG that held its
16 meeting on 21 September 2007. That's what you see here, correct?

17 A. Yes.

18 Q. Are you familiar with the names of the other people listed in this document?

19 A. Yes.

20 MR FAAL: Mr President, may I ask that this document -- I think we had seen this document
21 before. I would supply the MFI number in a minute. It is MFI 239 for the record.

22 May I ask that another document be showed to the witness. It's in tab 17 dated -- it is ERN
23 number KEN-D09-0038-0429, tab 17.

24 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, what were you about to do with this document,
25 the last one we saw when you -- I notice at line 18 you were beginning to ask something.

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- 1 Were you --
- 2 MR FAAL: I changed my mind.
- 3 PRESIDING JUDGE EBOE-OSUJI: You changed your mind.
- 4 MR FAAL: I realised it was already MFI'd.
- 5 PRESIDING JUDGE EBOE-OSUJI: Okay, you were going to ask for MFI but then you
- 6 realised it was already MFI'd?
- 7 MR FAAL: Yes, Mr President. Thank you very --
- 8 PRESIDING JUDGE EBOE-OSUJI: Okay. We just want to be clear on the record.
- 9 MR FAAL: Thank you very much, Mr President.
- 10 THE COURT OFFICER (via video link): The document KEN-D09-0038-0429 is being shown
- 11 to the witness.
- 12 MR FAAL:
- 13 Q. Mr Witness, we had seen this document before, it is MFI 243, and you would agree,
- 14 Mr Witness, that this document claims or purports to come from the principal of location D; is
- 15 that right?
- 16 A. Yes.
- 17 Q. And you would agree that it states that "The term" of the BOG "of the present B.O.G.
- 18 expired and would request your Office to send an official on Tuesday, [1]6/11/2007 to come
- 19 and nominate a new B.O.G. body to serve in the next term." Did I read the contents
- 20 correctly?
- 21 MR STEYNBERG: Your Honours, I believe --
- 22 THE WITNESS: Is it --
- 23 MR STEYNBERG: -- it's the 6th.
- 24 MR FAAL:
- 25 Q. 6 November 2007 it says, and "... to come and nominate a new B.O.G. body to serve in

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1 the next term." Did I read it correctly.

2 A. Yes.

3 Q. Thank you, Mr Witness. And finally, on this topic, I would like to show you one last
4 document that is contained in KEN-D09-0038-0435 in tab 20.

5 Kindly put it up the screen, please.

6 THE COURT OFFICER (via video link): The document is being shown to the witness.

7 MR FAAL:

8 Q. And, Mr Witness, you will agree that this letter purports to be from the Ministry of
9 Education, correct?

10 A. Correct.

11 Q. And it is dated July 29, 2008, correct?

12 A. Yes.

13 Q. And it is addressed to "The District Education Officer" for Uasin Gishu; is that right?

14 A. Yes.

15 Q. And, Mr Witness, you agree that the heading or the subject states "Board of Governors
16 Membership" location D; is that right?

17 A. Yes.

18 Q. And it reads, "Enclosed herewith, please find the appointment letters of ten" ...
19 "members of the Board of Governors of ..." location D "... for your information, forwarding
20 and further necessary action. These appointments by the Minister for Education are effective
21 from 1st April, 2008 and have been made in accordance with Education Act. Cap.211 Section
22 10." Did I read that correctly, Mr Witness?

23 A. Yes.

24 Q. And take a look at the appointments under section 4(2)(b). Do you see that the name of
25 person M listed in those names, person M?

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1 A. Yes, I have seen.

2 Q. Take a look at the appointments under section 4(2)(c). Do you see the name of person
3 L listed amongst those names?

4 A. Yes.

5 Q. And, Mr Witness, this letter claims to be appointing these -- these people to the new
6 board effective from 21 -- from 1 April 2008; is that right?

7 A. Yes.

8 Q. Mr Witness, why then did you tell the Office of the Prosecutor that person L and person
9 M were chairman and vice-chairman of the board during the harambee on
10 19 November 2007?

11 A. I wasn't sure of the members of the board of governors of the school.

12 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, what paragraph?

13 MR FAAL: Para 35, Mr President, page 0025 or page 7 of the statement -- of the first
14 statement.

15 It reads "The Harambee was organised by the Board of Governance, the chairman of which
16 was ..." person L "... and the vice-chairman was ..." person M. And then he later attributed to
17 certain activities to these two individuals.

18 PRESIDING JUDGE EBOE-OSUJI: Proceed.

19 MR FAAL: Mr President, may I ask that this document be marked for identification, please?

20 PRESIDING JUDGE EBOE-OSUJI: It will be so marked.

21 THE COURT OFFICER: The confidential document KEN-D09-0038-0435 will bear the
22 number MFI-T-D09-00246.

23 MR FAAL:

24 Q. Mr Witness, just before I leave this point, you told the Court that you weren't sure
25 of -- of their positions in the board. Is that what you said?

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1 A. Yes.

2 Q. Essentially, Mr Witness, you cooked it up, didn't you?

3 A. Yes.

4 Q. I would now move on to another topic. You told the OTP in your diary that "At
5 3 December 2007 in my 2007 Diary, I have entered 'youth rally at Ruto's home - nomination
6 papers.' In my" -- 208 diary -- "2008 diary, I have entered 'youth rally at Ruto's home.' This is
7 my handwriting in both entries. I wrote the entry in my 2007 diary that day. I wrote the
8 entry in the 2008 diary at a later date but I [did] not remember when. I have no explanation
9 for why I left out 'Nomination papers' from the 2008 diary."

10 Do you recall saying that to the Prosecution?

11 A. Yes.

12 Q. Mr Witness, I just want us to examine the details of what you have told the Prosecution
13 and then I would ask you questions on this. You went on to say that "The youth" --

14 MR FAAL: That is the next paragraph. It's tab 2, Mr President. It's the Prosecution
15 Exhibit 133.

16 Q. And in paragraph 24 you went on to say, "The youth had assembled in a place called
17 Maili tisa outside Eldoret, in order to escort Ruto who was delivering his nomination papers
18 to Electoral Commission of Kenya (ECK). The youth were travelling in matatus and lorries.
19 After Ruto had presented his papers, there was a lunch held for the youth in Ruto's home in
20 Sugoi. I saw this convoy at around 2 p.m. at Turbo trading centre travelling to Ruto's home.
21 I could hear the youth singing a song called 'Vijana Musilale Bado Mapambano,' which means
22 'Youth don't sleep the struggle continues.' This was a popular ODM song used in this
23 period."

24 That's what you said, Mr Witness?

25 A. Yes.

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- 1 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, just for the record, is it the case then that the
2 previous --
- 3 MR FAAL: Quote or excerpt I read?
- 4 PRESIDING JUDGE EBOE-OSUJI: Yes.
- 5 MR FAAL: From the same document, Mr President, from the same page.
- 6 PRESIDING JUDGE EBOE-OSUJI: So that will be at paragraph 23?
- 7 MR FAAL: Yes, Mr President.
- 8 PRESIDING JUDGE EBOE-OSUJI: All right.
- 9 MR FAAL: Thank you very much, Mr President.
- 10 Q. Mr Witness, I'll say it from the beginning. We agree that there was a youth rally
11 organised by Honourable Ruto in 2007. Now I want to show you a video and then I would
12 ask some questions. And please watch it carefully. It's KEN-D09-0018-0098, track 1, please.
13 (Viewing of the video excerpt KEN-D09-0018-0098)
- 14 MR FAAL: Would you kindly move it to, just to save time, time stamp 05.40 and play it to
15 7.41.
- 16 Mr President, the transcript is contained in KEN-D09-0038-0695. And the portion we
17 are going to play now would be at 0699, specifically at lines 114 to line 117. It's at tab
18 23. Thank you.
- 19 THE COURT OFFICER: Mr Essa Faal, could you please confirm the level of confidentiality
20 of the video?
- 21 MR FAAL: It's a public document.
- 22 THE COURT OFFICER: Thank you.
- 23 PRESIDING JUDGE EBOE-OSUJI: Now, can you take that again. We -- it will be more
24 helpful for you to take us to the tab first so we're there and then to make sure we're there
25 before telling the precise place. If you do it the other way around you have to repeat it.

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- 1 MR FAAL: Thank you very much, Mr President. I am well-guided.
- 2 PRESIDING JUDGE EBOE-OSUJI: So what precise --
- 3 MR FAAL: It's tab 23, Mr President.
- 4 PRESIDING JUDGE EBOE-OSUJI: Yes, we've got tab 23, but what precise point?
- 5 MR FAAL: It's time stamp 05.40. We are going to play it to 7.41. But look at
- 6 specifically lines 114 to line 117.
- 7 PRESIDING JUDGE EBOE-OSUJI: Yes.
- 8 (Viewing of the video excerpt KEN-D09-0018-0098)
- 9 MR FAAL:
- 10 Q. Mr Witness, are you familiar with Sugoi?
- 11 A. Yes.
- 12 Q. The image is stopped at this particular point. Could you -- at 06.58 seconds, could you
- 13 tell us what you see here?
- 14 A. Yes.
- 15 Q. What --
- 16 A. I am seeing a huge crowd of people and behind it I am seeing tiled houses.
- 17 Q. Are you familiar with this house? Do you know this house?
- 18 A. No, I don't know.
- 19 Q. Have you ever been there?
- 20 A. I don't know the house, so I think I have not gone there.
- 21 Q. We say, Mr Witness, that it's Honourable Ruto's home in Sugoi. What do you say to
- 22 that?
- 23 A. I am not sure.
- 24 Q. Thank you, Mr Witness. Before we leave this, I will just want to read out from the
- 25 transcript what we think we heard and ask you whether that is also what you heard. Did

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1 you hear the speaker -- in fact, Mr Witness, who was the speaker in this clip?

2 A. It was Mr Ruto.

3 Q. And the clothing you see him wear, did it have any political significance in 2007?

4 A. Yes.

5 Q. Could you tell the Court what significance?

6 A. It was used by those people supporting the ODM.

7 Q. Thank you very much, Mr Witness. And I just want to read out from the transcript
8 what we say we heard and you'll confirm to the Court whether that also -- that's also what
9 you heard. Are we together?

10 A. Yes.

11 Q. Whether it's a true record of what you heard. Are we together?

12 A. Yes.

13 MR FAAL: And I'm reading from lines 114 of the transcript, Mr President. And it said
14 William Ruto speaking.

15 PRESIDING JUDGE EBOE-OSUJI: One second. Can you ask him to summarise it and if he
16 can get the main points of what he just said.

17 MR FAAL: Thank you, Mr President.

18 Q. You would agree, Mr Witness, that he was talking about -- Mr Witness, could you
19 summarise what you heard the speaker say?

20 A. Sorry?

21 PRESIDING JUDGE EBOE-OSUJI: Let's play the clip again for the witness.

22 MR FAAL: Thank you, Mr President.

23 PRESIDING JUDGE EBOE-OSUJI: What part of the video again where the speech you are
24 interested in is?

25 MR FAAL: 05.40, please, to 07.41. Two minutes of it.

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1 (Viewing of the video excerpt KEN-D09-0018-0098)

2 MR FAAL: Could you stop it there, please. Could you stop it there.

3 Q. Mr Witness, could you tell the Court what you just heard?

4 A. Yes. I have heard the speaker who is Mr Ruto talking about ethnicity, that to be born in
5 a certain tribe is not a mistake, but it will be a mistake if now people divide themselves on
6 tribal lines.

7 Q. Thank you, Mr Witness. We stopped it at time stamp 06.4.

8 PRESIDING JUDGE EBOE-OSUJI: You can now read in the record what you have in your
9 translation.

10 MR FAAL: Yes, yes, thank you. 06.14, that's where we stopped it.

11 Q. This is the translation of what we have: "We have said we do not want tribalism. Is it
12 true or not true? Listen Keenly. If someone is born in a particular tribe it is not his mistake,
13 it is God's will. Is it true or not true? But we do not want leadership where you take issues
14 of God, distort them and come and lie to us Kenyans. Mr Kibaki is not fit to lead anything.
15 And all those joining hands with Kibaki are like him." And then applause from the crowd.
16 Mr Witness, does that accord with what you heard?

17 A. Yes.

18 MR FAAL: Mr President, we are going to play another segment of this same video. Just
19 give me a second. Let me confer with my colleague. Yes, I just wish to play another
20 segment of the video. Kindly move it to 7 minutes 41 seconds, and I'll be interested in lines
21 141 to 143 of the transcript.

22 (Viewing of the video excerpt KEN-D09-0018-0098)

23 MR FAAL: Okay, stop it there, please.

24 Q. Mr Witness, could you help us tell the Court what you have just heard?

25 A. Yes, I have heard Mr Ruto pleading with the youth that he was seeking re-election as the

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1 MP for Eldoret North.

2 Q. And which year was this from your knowledge of Kenyan politics?

3 A. The elections of the 2007.

4 Q. Thank you very much, Mr Witness.

5 MR FAAL: Could you kindly continue playing the video, please.

6 (Viewing of the video excerpt KEN-D09-0018-0098)

7 MR FAAL: Kindly stop it there, please.

8 Q. And, Mr Witness, could you tell the Court what you heard him say. I'm looking at the
9 transcript from 145 to 147.

10 A. I've heard him talking about -- or asking about people to vote and then he was also
11 talking about the anomalies that happened during the nomination -- the primaries of the party
12 that some materials came late.

13 Q. And for which party was he soliciting for votes?

14 A. ODM.

15 MR FAAL: Thank you very much, Mr President. And for the record we played the video
16 up to 8 minutes 41 seconds.

17 And now may I ask that track 2 be played, please. And Mr President, track 2 is contained in
18 KEN-D09-0018-0098 and the transcript, it is in tab -- tab 24, the transcript is in tab 24,
19 KEN-D09-0027-0006 at page 007. It's the translation of the transcript and I am particularly
20 interested in lines 13 and 14.

21 Kindly play it, please.

22 (Viewing of the video excerpt KEN-D09-0018-0098)

23 MR FAAL: Stop it there, please.

24 Q. Mr Witness, could you tell us what you've just heard him say?

25 A. Yes, I have heard Mr Ruto talking about opinion polls that were released during that

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1 year and he is saying that their plans by a certain people which is doing the opinion polls, that
2 before the elections they will show President Kibaki leading among the opinion polls from
3 the voters.

4 Q. Do you recall the name of the polling agency that he mentioned?

5 A. Yes. He's talking about Ipsos Synovate.

6 Q. Mr Witness, perhaps we should -- we should play it again so you could listen carefully.
7 Please listen again. There were several polling houses at the time, but listen carefully.

8 (Viewing of the video excerpt KEN-D09-0018-0098)

9 MR FAAL: Stop it there.

10 Q. Did you hear him mention a name at this stage?

11 A. Yes, he mentioned Steadman.

12 Q. Was Steadman a polling house, a polling agency at the time?

13 A. Yes, it used to conduct opinion polls.

14 MR FAAL: And please continue playing to time stamp 8.39, please.

15 Mr President, refer to lines 48 to 53 of the same transcript. From 8.39 to 10.51, please.

16 (Viewing of the video excerpt KEN-D09-0018-0098)

17 MR FAAL: Stop it there, please.

18 Q. Mr Witness, could you tell the Court what you've just heard?

19 A. Yes, I have heard Mr Ruto talking about elections and he was saying that in that
20 elections there were going to be changes that the government should be devolved when -- that
21 the government shall be -- should be brought closer to the people.

22 Q. Did you hear him at the beginning mention a particular location?

23 A. Yes, he mentioned a place called Maili Nne.

24 Q. Do you know this place?

25 A. Yes, I know it.

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- 1 Q. Mr Witness, in your statement, paragraph 24, the second statement, you said a
2 group -- the group of youths -- okay, rather, let me just read it exactly as is it stated here.
3 "The youth had assembled in a place called Maili tisa outside Eldoret, in order to escort Ruto
4 who was delivering his nomination papers to the Electoral Commission Kenya (ECK)." Do
5 you remember saying that?
- 6 A. Yes.
- 7 Q. Coming from Sugoi going to Eldoret, could you tell us the villages that are next to Maili
8 Tisa?
- 9 A. Yes. We have Jua Kali and then we have Sigowet, we have Leseru.
- 10 Q. Do you have Maili Nne?
- 11 A. It is not so near. You have to go some -- a bit more kilometres.
- 12 Q. From Sugoi going to Eldoret do you have to pass through Maili Nne?
- 13 A. Yes.
- 14 Q. And how far is Maili Nne from Maili Tisa?
- 15 A. It is roughly, approximately 7 kilometres.
- 16 Q. What does Maili Nne mean in Kiswahili?
- 17 A. It means four miles.
- 18 Q. And Maili Tisa?
- 19 A. It means nine miles.
- 20 Q. How did these two villages come to acquire their names?
- 21 A. I just found them being -- being called that way. I don't know surely how those names
22 came to be.
- 23 Q. Well, Mr Witness, you know Kenya certainly much more than we do, but the story is
24 that Maili Tisa is given that name because it is 9 miles from Eldoret; is that right?
- 25 A. I don't know.

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1 Q. And Maili Nne is also given its name because it's about 4 miles from Eldoret; is that
2 right?

3 A. I believe so.

4 Q. And you would agree that going to Eldoret from Sugoi when you pass Maili Tisa, you
5 would eventually have to pass Maili Nne before you get to Eldoret; is that right?

6 A. Yes, that is right.

7 Q. Thank you very much, Mr Witness. Mr Witness, you told -- Mr Witness, you told the
8 Prosecution that the youth escorted Honourable Ruto Eldoret to deliver his nomination
9 papers. Do you recall that?

10 A. Yes.

11 Q. I want you to pay attention to what we have just seen, the images we have just seen.

12 I would also play the rest of the video and then I would ask you questions.

13 Perhaps maybe I'll just skip the rest of this video because of -- in view of time and go to track

14 3, please. Track 3 is contained in KEN-D09-0018-0098 and it is contained in tab 24, the

15 transcript, and the document reference is KEN-D09-0027-0010. In tab 24, Mr President, we

16 have two documents. The second document would be the one we are referring to. From

17 1.55 to 3.58, please.

18 (Viewing of the video excerpt KEN-D09-0018-0098)

19 MR FAAL: Could you stop it there, please.

20 Q. Mr Witness, could you tell the Court what you have just seen in this video?

21 A. Yes, I have seen Mr Ruto being asked some questions before he was cleared to run for
22 the MP Eldoret North I believe by the officials of the Electoral Commission of Kenya.

23 Q. Are you familiar with this type of process?

24 A. Yes.

25 Q. Thank you very much, Mr Witness. When you spoke to the Prosecution and told them

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1 in paragraph 24 of that state -- of the second statement that the youth were escorting Ruto to
2 Eldoret for him to deliver his nomination papers, was this event the event you were talking
3 about, the event you have just seen in the video?

4 A. Yes.

5 MR FAAL: Continue playing the video, please, from where it is, from where it stopped.

6 (Viewing of the video excerpt KEN-D09-0018-0098)

7 MR FAAL: Could we stop it there, please.

8 Mr President, what Honourable Ruto just said is in English and it is contained in lines 26 to 28
9 of the second document in tab 24, and for the record, perhaps I should read it out.

10 The time stamp is 03.21 to 4 minutes and it says, "...cooperation from the constituents of
11 Eldoret North. I think I can speak on their behalf. We want, as the people of Eldoret North, a
12 peaceful election because we believe in an open contest and we believe in fairness and I am
13 looking forward to a very good ..." and then the rest of it is unintelligible.

14 Q. Mr Witness, was that what you heard?

15 A. Yes.

16 Q. Thank you very much. Let's continue to play the video say play from time stamp 7.59,
17 please.

18 (Viewing of the video excerpt KEN-D09-0018-0098)

19 MR FAAL: Could we stop it there, please.

20 Q. Mr Witness, do you recognise where -- do you recognise the place that is being depicted
21 in this video?

22 A. No.

23 MR FAAL: Could you start it again please from 7.59.

24 And please just look very keenly.

25 (Viewing of the video excerpt KEN-D09-0018-0098)

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- 1 MR FAAL:
- 2 Q. Do you recognise this place now?
- 3 A. Yes.
- 4 Q. Where is it?
- 5 A. It is in Eldoret town.
- 6 Q. Do you know exactly where in Eldoret town?
- 7 A. No.
- 8 Q. But how do you know it's in Eldoret town?
- 9 A. I have seen some buildings there.
- 10 Q. And where in Eldoret town are those buildings?
- 11 MR FAAL: Mr President, in view of the time, perhaps I can leave it at that until we resume
- 12 this afternoon.
- 13 PRESIDING JUDGE EBOE-OSUJI: Can he at least answer the last question.
- 14 MR FAAL: Could you -- perhaps he should be given a chance to see more of the video and
- 15 then answer the question.
- 16 Please play it again. Thank you.
- 17 (Viewing of the video excerpt KEN-D09-0018-0098)
- 18 MR FAAL: Stop it there, please.
- 19 Q. And, Mr Witness, do you recognise this place?
- 20 A. Surely I don't recognise the exact place.
- 21 Q. Okay. All right. Thank you very much.
- 22 PRESIDING JUDGE EBOE-OSUJI: Okay. We will take our lunch-break now and we'll
- 23 come back at 2.30.
- 24 Court will rise.
- 25 THE COURT USHER: All rise.

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1 (Recess taken at 13.00 p.m.)

2 (Upon resuming in open session at 2.36 p.m.)

3 THE COURT USHER: All rise.

4 Please be seated.

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

6 Mr Faal.

7 MR FAAL: Yes, Mr President.

8 PRESIDING JUDGE EBOE-OSUJI: Yes, please, proceed.

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

10 Q. Mr Witness, good afternoon.

11 A. Good afternoon, Mr Faal.

12 Q. Before we left, Mr Witness, we were looking at a video which you identified as
13 containing images of the event that you talked about in your diary, that is the event in
14 which Honourable Ruto went to submit his nomination papers; do you recall that?

15 A. Yes.

16 Q. I would want to play more images of this video so as to give you a chance to see
17 whether you can identify -- or, you recognise some of the areas that have been shown
18 in the video. Are we together?

19 A. Yes.

20 MR FAAL: Could you kindly play the video starting from minute 6 and 32 seconds,
21 please.

22 (Viewing of the video excerpt KEN-D09-0018-0098)

23 MR FAAL: Stop it there, please.

24 Q. Mr Witness, there is this building that we just saw, Bismillahi Hotel. Does this
25 ring a bell to you?

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1 Kindly please move it a little backwards, please.

2 Belgut Bismillahi hotel, something like that? I think it's Lengut. Yes, play it from
3 there. Lengut Bismillahi Hotel.

4 (Viewing of the video excerpt KEN-D09-0018-0098)

5 MR FAAL:

6 Q. Could you see it?

7 A. Yes, I have seen.

8 Q. Do you -- are you familiar with this building, Mr Witness?

9 A. Yes, I'm familiar.

10 Q. Do you know where this building is located?

11 A. Yes, I know.

12 Q. Could you kindly tell the Court, please.

13 A. Yes, this -- this Bismillahi Lengut Hotel is in Eldoret town.

14 Q. Thank you, Mr Witness. The time stamp is 07 minutes and 5 seconds. And
15 Bismillahi B-I-S-M-I-L-L-A-H-I, Lengut, L-E-N-G-U-T, and hotel, H-O-T-E-L.

16 Bismillahi Lengut Hotel.

17 Please, move on, please.

18 (Viewing of the video excerpt KEN-D09-0018-0098)

19 MR FAAL:

20 Q. And, Mr Witness, there is this tall white building at the background. Do you
21 recognise this building?

22 A. No.

23 Q. All right. We will proceed.

24 (Viewing of the video excerpt KEN-D09-0018-0098)

25 MR FAAL:

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1 Q. Mr Witness, there is a building being showed to the top right of the screen with
2 colours white, maroon and green. Do you recognise this building?

3 A. No.

4 Q. Do you know the Standard Chartered Bank building in Eldoret?

5 A. Yes, I know.

6 Q. Does this building remind you of the Standard Chartered Bank building in
7 Eldoret?

8 A. Yes, indeed.

9 Q. The time stamp is 07.25 minutes. And perhaps this is a video we would have
10 to use again later, so I will not show any more images of it, but you agree that this is
11 in Eldoret town; is this right, Mr Witness?

12 A. Yes.

13 Q. And is this the nomination convoy you said you saw on the day this event took
14 place; is that right?

15 A. Yes.

16 Q. Thank you, Mr Witness.

17 MR FAAL: Mr President, before I move away from these videos, may I ask that they
18 be put into evidence, and the first item is KEN-D09-0018-0098, that is the video
19 contained in track 1 which we have showed earlier. We ask that it be put into
20 evidence.

21 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg?

22 MR STEYNBERG: Your Honours, I have a couple of observations: The first is that
23 the provenance of this video is unclear. It doesn't appear from the video to be a
24 news report or certainly doesn't contain any stamp like that. It seems to be undated,
25 there's no indication of it of the date, but I do note that the witness has identified

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1 certain locations on the video. So to that extent, to the extent that the witness has
2 identified locations that are shown on the video, the Prosecution has no objection to it
3 going in.

4 MR KIGEN-KATWA: We have no objection on our part, Mr President.

5 MR FAAL: And, Mr President, I think the witness has gone beyond recognising
6 certain locations, he did say that this is the convoy that he saw, and that is the convoy
7 that he described in his statement wherein Honourable Ruto was being escorted by
8 youths to go and present his nomination papers, so the witness did actually see this
9 event taking place and that is what he's claimed to have described in his statement.

10 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, it is one thing to see a video of Mr Ruto
11 in a certain room with certain presumably officials having an exchange, whether or
12 not it is the nomination filing -- paper filing process is something else, but at least it's
13 one thing to see him there in that contained environment and the witness speaking to
14 it, but to show him a crowd in another image in a video and tell him, "Well, is this the
15 convoy?" and he says "Yes", what are we supposed to make of that? How have we
16 established a realistic link, you know, with the witness's knowledge and the crowd as
17 the convoy of the nomination?

18 MR FAAL: Mr President, I really do not wish to belabour the point. I see where
19 your Honour is coming from, but there are lots of other elements that need to be
20 taken into account. You will recall, Mr President, the witness's testimony is that
21 there was a youth rally and then the youth escorted Honourable Ruto to go and
22 present his papers. This is one video we have showed broken down into several
23 excerpts just to ease the presentation.
24 We first show the youth rally at Honourable Ruto's home, and I have drawn
25 your Honour's attention to certain segments of the -- of the transcripts wherein he is

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1 saying "My fellow youth, give me your vote."

2 We have also seen that, according to the witness, the youth were guarded at a

3 particular location, Maili Tisa, escorting Honourable Ruto to Eldoret. We have

4 showed in the video that he stopped at Maili Nne and he say, "People of Maili Nne, I

5 am here going to present my papers." We've seen --

6 PRESIDING JUDGE EBOE-OSUJI: All right. Let me stop you there.

7 MR FAAL: Yes.

8 PRESIDING JUDGE EBOE-OSUJI: The point I make is this: The Prosecution have

9 given you -- I do not want to use the word "leeway" because it's not about leeway, but

10 he has said -- well, he's prepared to allow -- to not object to the video to the extent that

11 the witness has clearly identified certain locations to him. Isn't the rest a matter of

12 argument for you when the time comes for you to argue that beyond those images

13 there should be something else? Do we have to accept your intended use for it in all

14 its elements before the video can come in?

15 MR FAAL: No, Mr President.

16 PRESIDING JUDGE EBOE-OSUJI: Yes, that's the point.

17 MR FAAL: In that case I withdraw all the arguments and just ask that the document

18 be admitted into evidence. Thank you, Mr President.

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

20 MR KIGEN-KATWA: I already indicated, Mr President, that we have no objection.

21 PRESIDING JUDGE EBOE-OSUJI: The video comes in as the next in the Ruto

22 Defence exhibits.

23 THE COURT OFFICER: The public document KEN-D09-0018-0098 will bear the

24 number EVD-T-D09-00247.

25 MR FAAL: Thank you.

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1 May I ask that the corresponding transcript, KEN-D09-0038-0695, be also admitted
2 into evidence.

3 PRESIDING JUDGE EBOE-OSUJI: Where is that tab again?

4 MR FAAL: It's tab 23, Mr President.

5 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg?

6 MR STEYNBERG: Your Honours, I noted when my learned friends were referring
7 to -- my learned friend was referring to this transcription or translation from lines 114
8 onwards that there seems to be an inconsistency in the way that this document is
9 dealt with. For much of the document we have a -- what appears to be either Swahili
10 or Kalenjin - I can't tell the difference to be frank - transcript, followed by a translation,
11 but then for the page he referred to we have only the translation without the original
12 language. I'm not sure if that's an omission from the document, but that's my
13 observation as to possible issues with the completeness or correctness. But subject to
14 the normal caveat that we don't admit the correctness, we have no objection to it
15 going in at this stage.

16 MR KIGEN-KATWA: We have no objection, Mr President.

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

19 THE COURT OFFICER: The public document KEN-D09-0038-0695 will bear the
20 number EVD-T-D09-00248.

21 MR FAAL: Mr President, we ask that transcript contained in KEN-D09-0027-0006
22 contained in tab 24 be admitted into evidence.

23 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg?

24 MR STEYNBERG: Your Honours, just the observation, again, that this is only the
25 translation without a transcript, but subject to the normal caveat, we have no

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1 objection.

2 MR KIGEN-KATWA: We have absolutely no objection, Mr President.

3 PRESIDING JUDGE EBOE-OSUJI: The document is admitted as the next Ruto

4 Defence exhibit.

5 THE COURT OFFICER: The public document KEN-D09-0027-0006 will bear the

6 number EVD-T-D09-00249.

7 MR FAAL: Mr President, and the last item we would ask to be admitted is

8 KEN-D09-0027-0010. It's the second document in tab 24. Thank you, Mr President.

9 MR STEYNBERG: Same situation from the Prosecution, your Honour.

10 MR KIGEN-KATWA: We similarly do not object, Mr President.

11 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next Ruto Defence exhibit.

12 THE COURT OFFICER: The public document KEN-D09-0027-0010 will bear the

13 number EVD-T-D09-00250.

14 MR FAAL: And, Mr President, I played three tracks of the same video. So the

15 document has one ERN number because it is one video. I just thought I needed to

16 clarify that. Thank you. Thank you, Mr President.

17 Q. Mr Witness, in your statement you told the Prosecution that you came across

18 this convoy while you were at a particular town in Eldoret, location C -- excuse

19 me -- when you were in location C, not in Eldoret, in location C. Do you remember

20 that?

21 A. Yes.

22 Q. And, Mr Witness, you told the Office of the Prosecutor that this event took place

23 on 3 December. Do you remember that?

24 A. Yes.

25 Q. I would now wish to show you a newspaper, it is the Standard Newspaper,

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1 Saturday edition, it is contained in tab 25, and the reference number is

2 KEN-D09-0038-0436.

3 Court officer, kindly put it up the screen, please.

4 THE COURT OFFICER (via video link): The document is being shown to the
5 witness.

6 MR FAAL: Court officer, kindly expand it, please. Thank you.

7 Q. Mr Witness, would you agree that this is the Standard -- the Saturday Standard
8 newspaper of 24 November 2007? Look at the date. It is on the top-left corner.

9 A. Yes.

10 Q. And I will read out some few paragraphs for you and then ask you questions.

11 On the left-hand corner, the fourth paragraph, I will read it out for all to hear. It says,
12 "Raila, the Orange Democratic Movement candidate, presented his papers in Kibera.
13 Kibaki and Kalonzo have a date with the returning officers of their constituencies
14 today."

15 Do you see that?

16 A. Yes, I have seen.

17 Q. I would now read out the last paragraph on the -- contained in the same column
18 as the one I had just read. It is the column to the far left of the document, and it
19 reads as follows: "Speaking after presenting his nomination certificate in Sabatia, his
20 running mate, Mr Musalia Mudavadi, said "The red flag is up and it is time for us to
21 go full blast in our campaigns."

22 Did you see that?

23 A. Yes.

24 Q. I now take you to the next column, the fourth paragraph, and it reads as follows:

25 "In Eldoret another Pentagon member, an outgoing Eldoret North MP, Mr William

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1 Ruto, addressed a rally at Eldoret Municipal Park and dismissed yesterday's

2 Steadman's poll as a 'plot' against the Orange party."

3 Did you see that?

4 A. Yes.

5 Q. And in the middle of the paper you have this headline "Livondo now under

6 probe over papers."

7 Did you see that?

8 A. Yes.

9 Q. And the first paragraph under that headline reads as follows: "PNU Ling'ata

10 parliamentary aspirant, Mr Stanley Livondo, could be headed for trouble a few hours

11 after being cleared by the Electoral Commission of Kenya. It emerged yesterday that

12 the candidate might have used forged documents in the electoral process."

13 Did you see that, Mr Witness?

14 A. Yes.

15 Q. And this paper is dated when? Take a look at the top-left corner.

16 A. November 24th, 2007.

17 MR FAAL: Mr President, at this stage may I ask that this document be admitted into

18 evidence. It is KEN-D09-0038-0436.

19 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg.

20 MR STEYNBERG: Your Honours, I'm constrained to make the same observation

21 with one of the previous documents, that is, it appears to be a continuation from page

22 1 of an -- of an article, so it does not appear to be complete and for that basis I request

23 that it be MFI'd until it can be properly established.

24 MR FAAL: I think, Mr President, the purpose for which we are using this document

25 is to show that the nomination exercise took place on 23 November. And it is quite

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1 clear in here that certain individuals presented their nomination papers and were
2 cleared on the 23rd. In fact, Mr President, I have just emphasised on that when I
3 looked at the presentation of papers by Mr Livondo. And here it said quite clearly,
4 "It emerged yesterday that the candidate might have used forged papers in the
5 electoral process."

6 We've also seen that Mr Mudavadi also presented his nomination papers as well as
7 Honourable Odinga the day before."

8 So, Mr President, this objection is definitely not well-founded. This document clearly
9 shows that this event occurred on the 24th and it is on that basis that we seek its
10 admission. Thank you.

11 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, are you -- he's explained why he's
12 using the material.

13 MR STEYNBERG: Your Honours, my only observation is that in order to rely on the
14 contents of the material, it must be reliable and authentic and, I submit, also complete.
15 I stand by my earlier submissions.

16 PRESIDING JUDGE EBOE-OSUJI: What did we do the last time? I forget now.

17 MR STEYNBERG: The last time we MFI'd it, your Honours.

18 MR FAAL: Mr President, that one it was understandable because the article started
19 from the previous page and then continued on to the other page. On this particular
20 occasions, the information that is needed to assess the date the event occurred is all
21 contained on this page. It's not necessary to waste time by MFling it and subject the
22 Defence to having to bring the other pages. This is enough for a determination about
23 what is being reported, Mr President.

24 PRESIDING JUDGE EBOE-OSUJI: Is it too complicated to get the first page?

25 MR FAAL: No, absolutely not, Mr President. If it is required, we can even bring

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1 the original of the entire document. But considering that the Court uses an
2 electronic system, it makes matters even more complicated, we say, Mr President.
3 This is a newspaper of 24th reporting the events of 23rd November. That is
4 indisputable.

5 PRESIDING JUDGE EBOE-OSUJI: Will it be your argument that the Livondo
6 insert -- inset is complete in its own?

7 MR FAAL: Mr President, you have to juxtapose it with other things that are
8 mentioned in the article. So the answer is yes in that respect.

9 (Trial Chamber confers)

10 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, at this stage we will MFI this document.

11 MR FAAL: As your Honours please.

12 PRESIDING JUDGE EBOE-OSUJI: Yes. So the document will be marked for
13 identification.

14 MR FAAL: Mr President --

15 PRESIDING JUDGE EBOE-OSUJI: Subject, of course, to the -- page 1?

16 MR FAAL: Yes.

17 PRESIDING JUDGE EBOE-OSUJI: Yes.

18 MR FAAL: We'll just produce the entire document.

19 PRESIDING JUDGE EBOE-OSUJI: Yes.

20 MR FAAL: Thank you, Mr President.

21 THE COURT OFFICER: The document KEN-D09-0038-0436 will bear the number
22 MFI-T-D09-00251.

23 MR FAAL: Mr President, may I at this stage ask that we play track 4 of the video
24 that we had just played for the witness and play specifically from time stamp 5
25 minutes 43 seconds to save in minutes 54 seconds. The transcript should be

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1 contained in tab 26. And specifically I'll be referring to line 63, Mr President.

2 (Viewing of the video excerpt KEN-D09-0018-0098)

3 MR FAAL: Thank you. Thank you.

4 Q. Mr Witness, did you hear what Honourable Ruto said in that clip?

5 A. Yes.

6 Q. Could you give the Court a summary of what you heard?

7 A. Yes. I heard him talking about the opinion polls, that the polls was favouring
8 the PNU side. And he was saying that -- he was telling the people not to mind about
9 the opinion polls but what will come out during voting.

10 Q. Thank you, Mr Witness. In this video, would you say that he's wearing the
11 same clothes as the ones you saw him wear when he presented his papers, his
12 nomination papers? I beg your pardon.

13 A. Yes.

14 MR FAAL: I would now like to play another video, and this is KEN --

15 PRESIDING JUDGE EBOE-OSUJI: Before you do, can you -- what did we do with
16 the transcript we have?

17 MR FAAL: I would wish to put it into evidence, but I was going to come back to it
18 anyway, but thank you for -- for the guidance, Mr President. I will now ask that the
19 transcript be admitted --

20 PRESIDING JUDGE EBOE-OSUJI: No, no, no. Let's have the witness -- can you
21 put back the transcript to see whether that -- if you can read back the transcript to the
22 witness, because he's given us the gist of --

23 MR FAAL: I know.

24 PRESIDING JUDGE EBOE-OSUJI: -- what he's understood that.

25 Why don't you do this: Let's play that again for him.

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1 MR FAAL: Thank you, Mr President.

2 Could you take it back to time stamp 5.43, please, and play it all the way to time
3 stamp 7.10.

4 PRESIDING JUDGE EBOE-OSUJI: Witness, listen carefully to the -- to the speech
5 and tell us if you've got more details of what is being said, people are being
6 mentioned and that sort of thing.

7 (Viewing of video excerpt KEN-D09-0018-0098)

8 MR FAAL: Please, stop it there. Thank you very much.

9 Q. Mr Witness, I will read out from this transcript.

10 PRESIDING JUDGE EBOE-OSUJI: No. Wait, wait.

11 Witness, can you tell us again from your own -- in your own words whether some
12 people were mentioned in that short speech and what the mentioning of those names
13 say. Did you hear that?

14 THE WITNESS: Yes, Mr President. Thank you.

15 So it seems Ruto was -- was summarising the meeting and he was saying that there is
16 that company calling itself Steadman which normally do the opinion polls and it
17 belongs to somebody called Wanjui and that Wanjui is a Mungiki and Mr Ruto was
18 telling them they should be told that they are going to meet in the ballot, not -- not the
19 opinion polls.

20 PRESIDING JUDGE EBOE-OSUJI: Thank you.

21 MR FAAL: Thank you, Mr President.

22 Mr President, would you require me to read the -- yes, thank you.

23 Q. Mr Witness, this is the transcript we have and tell us whether it coincides with
24 your understanding of what you've just heard. And it is as follows.

25 I am reading specifically from line 63, Mr President, to line 67. And this is what it

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1 says: "We have said that this year they will see ..." and then the rest of the words are
2 unintelligible. And then he goes on to say, "... is a company belonging to a man
3 called Wanjui; Wanjui is a Mungiki. And they are planning that the opinion poll
4 that will follow will show that Kibaki will be leading Agwambo. Is that possible?
5 We are telling them, Mungiki and that Wanjui, together with that Steadman, let us
6 meet at the ballot. Are we together? The citizens of Kenya have decided to change
7 the leadership of Kenya and how Kenya is led. Is it true or not true?"
8 Did I read that out clearly, Mr Witness?

9 A. Yes.

10 Q. Does that coincide with your understanding of what you heard?

11 A. Exactly.

12 Q. Mr Witness, do you know who was referred to Agwambo in 2007 elections?

13 A. Yes, I know.

14 Q. And who is that person, if it is a person at all?

15 A. It is Raila Amolo Odinga who was the presidential candidate for ODM.

16 Q. Thank you, Mr -- thank you, Mr Witness.

17 MR FAAL: Mr President, before I move on, let me ask that this transcript be
18 admitted into evidence. It is KEN-D09-0018-0129. It is contained in tab 26,
19 Mr President.

20 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg?

21 MR STEYNBERG: Subject to the normal caveat, no objection, your Honour.

22 MR KIGEN-KATWA: No objection, Mr President.

23 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next Ruto Defence exhibit.

24 MR FAAL: Mr President, for the record --

25 THE COURT OFFICER: Thank you, Mr Faal.

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1 The document KEN-D09-0018-0129 will bear the document EVD-T-D09-00252.

2 MR FAAL: Thank you.

3 Mr President, for the record I would like to spell Agwambo. It's A-G-W-A-M-B-O,

4 Agwambo. Thank you.

5 Q. Mr Witness, we had seen this newspaper, the newspaper of the 24th. Just give

6 me a second. It is KEN-D09-0038-0436. It was MFI'd.

7 Mr President, it's MFI-251, and it is tab -- tab 25 it was.

8 Do you recall that I read out a paragraph of what was attributed to Ruto, and it says,

9 "In Eldoret another Pentagon member ... William Ruto, addressed a rally at the

10 Eldoret Municipal ... park and dismissed yesterday's Steadman poll as a 'plot' against

11 the [ODM] party." Do you see that?

12 A. Yes.

13 Q. Would you agree, Mr Witness, that that is what you also saw on that video?

14 A. Yes.

15 Q. Thank you, Mr Witness.

16 MR FAAL:

17 May I now ask that this video be played, KEN-D09-0027-0016. The transcript is

18 contained in tab 27, KEN-D09-0036-0010.

19 (Viewing of video excerpt KEN-D09-0027-0016)

20 MR FAAL:

21 Q. Mr Witness, did you see that video?

22 A. Yes, I have seen.

23 Q. You would agree that this video talked about Raila Odinga having presented

24 his papers at Lang'ata.

25 A. Yes.

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1 Q. You agree also that the newspaper that we saw of 24 November also said that
2 Raila Odinga presented his papers in Lang'ata?

3 A. Yes.

4 Q. You would also agree that the video talks about Eldoret North MP, William
5 Ruto, have been cleared to battled with KANU's Jonathan Bii. Do you recall that?

6 A. Yes.

7 Q. You would also recall that it talks about Stanley Livondo having presented his
8 papers, right?

9 A. Yes.

10 Q. The newspaper also talked about Livondo being in trouble because of the
11 papers he presented. Do you recall that?

12 A. Yes.

13 Q. Do you also recall that the paper talks about -- or, rather, the video talks about
14 other candidates like Murungaru having presented their papers; right?

15 A. Yes.

16 Q. And the video also talked about Musalia Mudavadi having presented his
17 papers; is that right?

18 A. Yes.

19 Q. That, too, is reported in the newspaper that we -- that we looked at, the
20 Saturday Standard of 24 November; do you recall that?

21 A. Yes.

22 Q. And, Mr Witness, all these were reported on the newspaper of 24
23 November 2007, right?

24 A. Yes.

25 Q. And, Mr Witness, the point I am making to you is that the nomination exercise

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- 1 took place on 23 November 2007, Honourable Ruto presented his nomination papers
2 on 23 November 2007. What do you say to that?
- 3 A. I agree.
- 4 Q. Why, Mr Witness, did you tell the Prosecution that you saw Honourable Ruto
5 escorted by youth to go to Eldoret to present his papers on 3 December 2007?
- 6 A. It is because I was not sure of the date. I just guessed.
- 7 Q. You made it up?
- 8 A. Yes.
- 9 Q. You cooked it up, just to repeat your own words?
- 10 A. Yes.
- 11 Q. Thank you, Mr Witness. Before I leave that point, you made up the
12 information that is contained in your diary, correct?
- 13 A. Sorry?
- 14 Q. You made up the information that you recorded in your diary, correct?
- 15 A. Yes.
- 16 Q. Wherever that diary was made, the entries were not contemporaneous with the
17 events. What do you say?
- 18 A. Maybe you can put it in a language I can understand well.
- 19 Q. The entries were not made on the date the events occurred. What do you say?
- 20 A. It is true.
- 21 Q. In fact, all those entries were made on the same day. What do you say?
- 22 A. You are true.
- 23 Q. And before I leave this point, the youth rally -- the rally took place before
24 Honourable Ruto was escorted to Eldoret to file his papers. What do you say?
- 25 A. I don't know that one.

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1 Q. Well, you lied in your statement, Mr Witness, when you said that you saw the
2 convoy at 2 p.m., Honourable Ruto, being -- going, rather, with the group to his home
3 in Sugoi for lunch after the nomination. That is what you said; isn't it correct?

4 A. Yes.

5 Q. That also is wrong, Mr Witness. What do you say?

6 A. Yes, it is wrong.

7 Q. You lied about it, that's the -- that's the -- that's the truth, isn't it?

8 A. Yes.

9 MR FAAL: Mr President, before I leave this, I would ask that these documents be
10 admitted into evidence: KEN-D09-0027-0016, that's the video we saw. It is a news
11 report about submission of nomination papers. Thank you, Mr President.

12 PRESIDING JUDGE EBOE-OSUJI: Prosecutor.

13 MR STEYNBERG: This is the reason why we should probably do this at the time.
14 I can no longer recall whether this document had a banner of a news report on it.
15 But subject to that, I have no objection.

16 MR KIGEN-KATWA: We do not object on our part, Mr President.

17 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next in the Ruto Defence
18 exhibits.

19 THE COURT OFFICER: The document KEN-D09-0027-0016 will bear the document
20 EVD-T-D09-00253.

21 MR FAAL: Thank you, Mr President.

22 And the transcript for the video is contained in KEN -- it is tab 27, Mr President.
23 KEN-D09-0036-0009.

24 MR STEYNBERG: No objection, your Honour.

25 MR KIGEN-KATWA: No objection.

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1 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next in the Ruto Defence
2 exhibits.

3 THE COURT OFFICER: The document KEN-D09-0036-0009 will bear the number
4 EVD-T-D09-00254.

5 MR FAAL: Thank you very much.

6 Q. Mr Witness, earlier on I showed you one of the videos, that was track 1, and
7 asked you whether you recognise the building that was shown there. Do you recall?

8 A. Yes.

9 Q. And the building I showed you was, we say, Honourable Ruto's house. Do
10 you remember me saying that?

11 A. Yes, I remember.

12 Q. And you told the Court that you do not recognise that building. Do you recall?

13 A. Yes.

14 Q. In fact, Mr Witness, you said "those buildings." Do you recall that?

15 A. Yes.

16 Q. And when I asked you further you said you've never been to that particular
17 place. Do you recall?

18 A. Yes.

19 Q. When you spoke to the Prosecution, you told them that you attended a meeting
20 at Honourable Ruto's house. This is contained in paragraph 64 -- 64 of your
21 statement. You said you attended a meeting at Honourable Ruto's house on 13
22 December 2007. In your statement it is mid-December. In your diary you said 13
23 December. Do you remember that?

24 A. Yes.

25 Q. And you said -- you told the Prosecution that you attended that meeting with

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1 the persons listed in the Defence PIS, person A to H and person R and S. Do you
2 recall telling the Prosecution that? Please take a look at the PIS, take a moment to
3 look at the PIS. It is person A, person B, person C, person D, person E, person F,
4 person G, person H, person R and person S. Do you recall telling the Prosecution?

5 A. Yes.

6 Q. Mr Witness, we --

7 PRESIDING JUDGE EBOE-OSUJI: Person R and S?

8 MR FAAL: Yes, Mr President.

9 PRESIDING JUDGE EBOE-OSUJI: Do you have two PISes?

10 MR FAAL: We had a revised one, Mr President. My apologies if it hasn't reached
11 you.

12 Q. Do you recall saying that to the Prosecution that you attended this rally at -- or,
13 rather, this meeting at Honourable Ruto's home on 13 December 2007, together with
14 all these people I have mentioned?

15 A. Yes.

16 Q. And in your statement to the Prosecution, Honourable Ruto arrived at the
17 meeting at 10.30 and the meeting continued until 1.30 p.m. Do you remember that?

18 A. Yes.

19 Q. Mr Witness, we have obtained the telephone numbers of some of the people you
20 have mentioned and asked an expert to obtain their call records from Safaricom and
21 have them analysed. And, Mr Witness, would it surprise you to note --

22 MR FAAL: Mr President, the report is contained in tab 98. We are not seeking to
23 admit that report. I just put it in to allow -- give me a reasonable basis to put my
24 propositions to the witness. This is not a document we are asking to put in evidence
25 at this stage.

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1 MR STEYNBERG: Yes, your Honours, my objection is not to the admission of the
2 document. We'll object to that too. But your Honours' previous rulings has been
3 that the Defence counsel may put the fact that they seek to establish, but they should
4 not refer to an expert report, which gives extra weight to that fact until that has been
5 established.

6 MR FAAL: Mr President, what goes for the goose also goes for the gander.
7 Learned counsel opposite did earlier indicate or flag to the witness that they did
8 intercepts, and on the basis of that he put his question. They did intercepts.

9 PRESIDING JUDGE EBOE-OSUJI: Did you object at the time?

10 MR FAAL: I did not object, Mr President, because I believe it was permissible under
11 the circumstances.

12 PRESIDING JUDGE EBOE-OSUJI: Objection is sustained to the extent that the
13 Prosecutor is saying you may not put that question after you've already flagged the
14 fact of expert report.

15 MR FAAL: Mr President, I'll -- I'll try as much as possible to comply with the ruling.
16 I would put my question, and if it falls afoul of your Honours' ruling, please indicate
17 and I'll withdraw it. Thank you, Mr President.

18 PRESIDING JUDGE EBOE-OSUJI: At this stage what you do is move away to
19 something else and if you want -- deem it necessary to return to this without drawing
20 attention to it.

21 MR FAAL: Yes, I would -- I would do just that, Mr President.

22 Q. Mr Witness, you have told this Court that you do not recognise the building in
23 the video I had showed you. Do you remember that?

24 A. Yes.

25 Q. Well, Mr Witness, we say that that is where Mr -- that is Mr Ruto's house in

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1 Sugoi. What do you say to that?

2 A. Maybe I may request that you play it again so that I may view it closely.

3 Q. Mr Witness, earlier on you said you've never seen it, you've never been there.

4 Do you recall that?

5 A. Yes.

6 Q. So, Mr Witness, what does that-- what does that say about your statement to the

7 Prosecution that you went to Honourable Ruto's house on 13 December 2007 in Sugoi?

8 What does that say to the evidence you gave to the Prosecution?

9 A. That I've not gone to --

10 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, you have to live with that. There is

11 something called one question too many. The witness wants to see the video, the

12 witness needs to see the video. You're the one who brought it in, so --

13 MR FAAL: Mr President, I stand guided by your Honour's direction. Thank you

14 very much.

15 Could you kindly play the video again, track 1. It should be from 5 minutes plus.

16 Q. Mr Witness, this is the image we showed you before. Do you recognise this

17 building?

18 A. Yes, I recognise it now.

19 Q. How do you recognise it?

20 A. Yeah, this is Honourable Ruto's home.

21 Q. How do you know that, Mr Witness? You told the Court you've never been

22 there. How do you know it is Honourable Ruto's home?

23 A. I've been there, but some times back, the year 2004.

24 Q. Oh, now you've been there in year 2004. Did you go there in 2007?

25 A. No.

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1 Q. Mr Witness, we investigated -- why did you go there in 2004?

2 A. There was a homecoming party for Mr Ruto. In fact, it is 2003, not 2004, 2003,
3 June. Mr Ruto had won the 2002 elections for Turbo, therefore, Eldoret constituency.
4 So he was an MP. He had a home-coming party.

5 Q. And Mr Ruto's home, the main building, was it one building or many
6 buildings?

7 A. I don't remember.

8 Q. And when you first saw this photograph, you said there were many buildings.
9 Do you now change your view about that?

10 A. I -- I saw it first, it looked as if there were many buildings.

11 Q. We have examined the telephone records of some of the people you named to
12 have been present at the meeting at Honourable Ruto's house on 13 December 2007.
13 Would it surprise you, Mr Witness, to note that the telephone that is attributed to
14 person C -- please take a look at the PIS, person C.

15 MR STEYNBERG: Your Honours, are we not on the same subject that we had
16 disposed of earlier referring to --

17 PRESIDING JUDGE EBOE-OSUJI: One second.

18 MR FAAL: Thank you, Mr President.

19 Q. Would it surprise you that the telephone attributed to person C was not in
20 Sugoi, as you claim, but was in Kipkaren, between the times 10 minutes past 10 in the
21 morning and 20 minutes to 2 in the afternoon? What do you say to that?

22 A. I accept.

23 Q. Why do you accept?

24 A. Because I never attended that meeting and I -- I -- I am sure that meeting never
25 took place.

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1 Q. And, Mr Witness, the telephone number attributed to person C, we have also
2 examined that, and it reveals that -- person D, rather - please take a look at the
3 PIS - and person D was in Turbo from 13 minutes past 1 to 25 minutes to 2 p.m. on
4 that day. What do you say to that?

5 A. I accept.

6 Q. But why do you accept?

7 A. I accept because I know there was no such a meeting at Ruto's home.

8 Q. We have also examined the telephone of -- the telephone attributed to person R
9 and the results show that from quarter to 12 to 5 minutes past 1 p.m. on that day he
10 was in Eldoret and not in Sugoi. What do you say to that?

11 A. Still the same; I accept.

12 Q. Why do you accept, Mr Witness?

13 A. The same reason that that meeting never took place.

14 Q. We have also looked at the telephone attributed to person S and the results
15 revealed that from 10.48 to 11.48 on 13 December 2007, he was also in Eldoret and not
16 in Sugoi. What do you say to that?

17 A. I still accept.

18 Q. Why do you accept that, Mr Witness?

19 A. For the same reason that that meeting was not there.

20 Q. Mr Witness, why then did you tell the Prosecution that you attended a meeting
21 at Honourable Ruto's house on 13 December 2007?

22 A. It was to make my statement more reliable.

23 Q. I would now move on to another topic.

24 You did tell the Prosecution that there was a rally at location C on 21 December 2007,
25 and this is contained in tab 2, that is your diary, at page 0071.

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1 Tab 2, Mr President. That is Exhibit 133.

2 And this is what you said, paragraph 28: "At 21 December 2007, I have entered in
3 my [diary] ..." -- "... in my 2007 diary 'ODM Rally - ..." location C "... and in my 2008
4 diary I have entered "ODM Rally ..." location C and H. "This is my handwriting and
5 I made the entry in my 2008 diary in the evening of the same day." Do you remember
6 saying that to the Prosecution?

7 A. Yes.

8 Q. And you went on to say that this is the rally you referred to previously in your
9 statement at paragraph 45. Do you recall that?

10 A. Yes.

11 MR FAAL: Mr President, I would direct your attention to paragraph 45 of the
12 statement, that is in tab 1, page 8, specifically at 0026.

13 Q. And, Mr Witness, at para 49 -- excuse me, at para 55, this is what you said, "At
14 around 2 p.m. Ruto arrived by car from the direction of Eldoret. He came with a red
15 Toyota Prado. He was travelling in a convoy of maybe 15 cars. The cars all parked
16 in a row and Ruto's car parked in the middle. I saw Ruto get out of his car." Do
17 you remember that that is what you told the Prosecution?

18 A. Yes.

19 Q. Mr Witness, do you know that there was a rally at Huruma on 20
20 December 2007? Are you aware of that?

21 A. I'm not aware.

22 Q. And Huruma, would it be in the same constituency as location C?

23 A. Yes.

24 Q. And the -- both locations were in Eldoret North represented by
25 Honourable Ruto, correct?

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1 A. Correct.

2 Q. I would now wish to show you a short video. I would like to play

3 KEN-D09-0021-0041. This is a document which had already been given an EVD
4 number, it's been exhibited. It is EVD-T-D09-00062.

5 And, Mr President, the transcript is contained in tab 30, KEN-D09-0021-0042. That,
6 too, is EVD-T-D09-00063.

7 (Viewing of the video excerpt KEN-D09-0021-0041)

8 MR FAAL: Pause it there.

9 Mr President, just to flag that the portion playing is the last segment in the transcript,
10 at page -- I'm sorry, the stamp is not very clear, but it's the last segment in the
11 transcript that I had just referred to on page 0045.

12 Could you continue playing it, please.

13 PRESIDING JUDGE EBOE-OSUJI: Before you continue playing it, Mr Faal, you say
14 this is now evidence in the case, isn't it? Has it already been admitted?

15 MR FAAL: Yes, Mr President.

16 PRESIDING JUDGE EBOE-OSUJI: And we've seen this before at least once or twice.

17 MR FAAL: Yes, in the context of the madoadoa issue.

18 PRESIDING JUDGE EBOE-OSUJI: Yes.

19 MR FAAL: Don't vote --

20 PRESIDING JUDGE EBOE-OSUJI: Yes. And what I'm trying to find out from you
21 is does this video have any close bearing to the testimony of this particular witness on
22 the stand?

23 MR FAAL: Yes, Mr President, it -- it contradicts the witness in a --

24 PRESIDING JUDGE EBOE-OSUJI: All right.

25 MR FAAL: -- fundamental way.

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- 1 PRESIDING JUDGE EBOE-OSUJI: Then go on.
- 2 MR FAAL: Thank you.
- 3 (Viewing of video excerpt KEN-D09-0021-0041)
- 4 MR FAAL: Yes, end it there.
- 5 Q. And, Mr Witness, you agree that Honourable Ruto was saying that they want to
- 6 steal the votes, they planned to steal the votes, but that would not happen because
- 7 they are alert. Is that what you heard?
- 8 A. Yes, I heard.
- 9 Q. Who said that, Mr Witness?
- 10 A. Mr Ruto.
- 11 Q. And, Mr Witness, at the beginning of the video you heard the announcer said
- 12 "seven days before the election." Did you hear that?
- 13 A. Yes.
- 14 PRESIDING JUDGE EBOE-OSUJI: Where did you say the transcript is?
- 15 MR FAAL: Tab three-zero, Mr President.
- 16 PRESIDING JUDGE EBOE-OSUJI: The thing is, one difficulty I have with the
- 17 EVD -- sorry, the ERN numbers in a lot of your documents is that the terminal
- 18 numbers tend not to appear because of photocopying and that sort of thing.
- 19 MR FAAL: My apologies for that, Mr President. If it is necessary --
- 20 PRESIDING JUDGE EBOE-OSUJI: So let's then -- okay, at tab 30, the first page,
- 21 according to the ERN number ends with 0042; is that correct?
- 22 MR FAAL: Yes, Mr President.
- 23 PRESIDING JUDGE EBOE-OSUJI: All right. Now, let's look at the native
- 24 pagination of that document, forgetting the ERN because that doesn't help me.
- 25 Where -- what native pagination are we looking at? As in page 1, 2, 3 and all that.

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1 MR FAAL: The last page seems to put a question mark. That should be the third
2 page, Mr President. And, in fact, the numbering is not sequential. The first page
3 shows "1", the second page also shows "1", then you have "2", then the question mark.
4 I must apologise, Mr President.

5 PRESIDING JUDGE EBOE-OSUJI: Well, you need to be careful about this thing.
6 This is your case, so if you're producing documents that are confusing to follow.

7 MR FAAL: Mr President, I do believe that the contents are correct, besides the
8 pagination, but like I said, I apologise for -- for this and we'll be more careful with this
9 next time.

10 PRESIDING JUDGE EBOE-OSUJI: So the last page of that transcript, something
11 about an announcer in English, 00:02:14, is that it?

12 MR FAAL: Yes, Mr President.

13 PRESIDING JUDGE EBOE-OSUJI: All right. So where are we looking at?

14 MR FAAL: We were looking at the last translation of Honourable Ruto's speech
15 before "Kosgey: Youths, all of them, let's vote 100%."

16 PRESIDING JUDGE EBOE-OSUJI: Yes.

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

18 May I now ask to show this -- the witness the newspaper contained in

19 KEN -- contained in EVD-T-D09-00080. It's already an exhibit, Mr President. And
20 it is contained in tab 31, Mr President.

21 MR STEYNBERG: Your Honours, may I ask my learned friend to establish the basis
22 for putting this to the witness, what is the connection with this witness? I'm still at a
23 loss as to why the last document was shown to the witness.

24 MR FAAL: Mr President --

25 PRESIDING JUDGE EBOE-OSUJI: You mean the transcript?

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1 MR STEYNBERG: I'm referring to the transcript and -- and this tab as well. The
2 witness has not said he was at that meeting. And if my learned friend is simply
3 putting pieces of -- of Defence evidence, miscellaneous Defence evidence for this
4 witness to confirm, the Prosecution will object to that.

5 MR FAAL: Mr President, we have a reason for doing this: The witness has
6 indicated that there was a rally at a particular location, location C, on 21 December.
7 Location C is very close to Huruma grounds. It is very unlikely that the ODM
8 would have held a rally --

9 PRESIDING JUDGE EBOE-OSUJI: Let's not argue the --

10 MR FAAL: Exactly. Thank you, Mr President.

11 PRESIDING JUDGE EBOE-OSUJI: -- the matter now.

12 Mr Steynberg, I remember I had asked Mr Faal where he was going and he said there
13 is something he's driving at. Let's see what it is he is driving at.

14 MR STEYNBERG: Well, your Honours, I think he's just told us. The evidence is
15 already in record which -- on the record which tends to support, if it's correct, that
16 there was a rally at the location he -- he's mentioning, is the unlikelihood of another
17 rally taking place in the same area not a matter we should be dealing with in
18 argument rather than through this witness.

19 PRESIDING JUDGE EBOE-OSUJI: Proceed, Mr Faal.

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

21 Q. Mr Witness --

22 Court officer, kindly put up the screen this document: KEN-D09-0023-0031. Court
23 officer, kindly enlarge the -- the writing under the picture in the middle of the
24 document, please.

25 Q. Mr Witness, this is the Standard newspaper of Friday, 21 December. And look

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1 at the middle picture and the writings under it. It says, "ODM supporters cheer
2 speakers during a campaign rally in Eldoret, yesterday." Do you see that? Do you
3 see that, Mr Witness?

4 A. No.

5 THE COURT OFFICER (via video link): Mr President, Counsel, I do not have that
6 document available. I am showing it to the witness through E-Court but the image
7 is very small. I'm trying to zoom it. If it is a public document could it be displayed.
8 Yes.

9 MR FAAL: Yes, it is a public document. Please.

10 THE COURT OFFICER: The document is displayed, Mr President.

11 MR FAAL:

12 Q. Mr Witness, immediately below the middle picture do you see the writings
13 ODM supporters -- "ODM supporters cheer speakers during a campaign rally in
14 Eldoret, yesterday."?

15 A. Yes, I have seen.

16 Q. And yesterday, according to this paper, would have been 20 December 2007,
17 you agree?

18 A. Yes.

19 Q. I would also read one paragraph immediately below the picture, the last
20 paragraph just before Honourable Ruto's photograph and it says, "Speaking during
21 campaign rallies held at Konoin, Bureti and Ainamoi constituencies on Wednesday,
22 Ruto exuded confidence that the region would overwhelmingly vote for ODM." Do
23 you see that?

24 A. Yes.

25 Q. And Wednesday, according to this paper, would have been 19 December 2007,

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1 correct?

2 A. Yes.

3 MR FAAL: Konoin is spelt K-O-N-O-I-N; Bureti is spelt B-U-R-E-T-I; and Ainamoi is
4 spelt A-I-N-A-M-O-I.

5 Q. So, Mr Witness, this paper effectively establishes that Honourable Ruto was in a
6 rally on 19 November in Ainamoi area in Eldoret on 20 December. Do you agree
7 with that?

8 A. Yes.

9 Q. Thank you. I would now play a video for you and it is contained in
10 KEN-D09-0038-0449, please. The translation is contained in tab 32, 0038-0463.
11 (Viewing of video excerpt KEN-D09-0038-0449)

12 MR FAAL: Could you start it again, please. Could you start it again, please.
13 (Viewing of video excerpt KEN-D09-0038-0449)

14 MR FAAL: Stop it there, please.

15 Q. Mr Witness, this video shows that there was a rally at Kapkatet stadium, does it
16 not?

17 A. It does.

18 Q. And the reporter stated at the outset of the video that "Raila Odinga stepped
19 in[to] Kapkatet at 2 p.m. to meet with thousands of ODM supporters." Did you hear
20 that?

21 A. Yes, I heard.

22 Q. Mr President, I would need just five minutes to close on this topic. Would you
23 kindly grant me -- kindly indulge me to proceed, just five minutes or even less?
24 (Trial Chamber confers)

25 PRESIDING JUDGE EBOE-OSUJI: Yes, proceed.

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

2 I would now wish to show the witness a newspaper. For the record, Mr President,
3 Kapkatet is spelt K-A-P-K-A-T-E-T.

4 Kindly show the witness newspaper KEN-D09-0038-0440. It is contained in tab 33,
5 Mr President.

6 THE COURT OFFICER (via video link): The witness is being shown the document.

7 MR FAAL: Could you kindly highlight the date at the top left-hand corner of the
8 document, please.

9 Q. Mr Witness, can you see that it is written "The Saturday Standard, December 22,
10 2007." Could you see that?

11 A. Yes, I have seen.

12 Q. I want to read a -- two, three paragraphs on the -- the column on the left-hand
13 side, it starts with "At Kapkatet Stadium," and this is what it says: "At Kapkatet
14 Stadium, Raila again expressed confidence Kenyans will elect him the fourth
15 President." Do you seen that?

16 A. Yes, I have seen.

17 Q. Okay. Let's scroll down a little bit to the last paragraph in that column, just
18 above the headlines "Police to beef up security on polling day, says Ali." Just above
19 that it says, "... running mate, Mr Musalia Mudavadi, ODM chairman, Mr Henry
20 Kosgey, Pentagon member" ... "William Ruto, and former MPs, Mr Kipkalya Kones
21 and Mr Isaac Ruto and Mr Charles Keter, accompanied him." Did you see that?

22 A. Yes, I have seen.

23 Q. And, Mr Witness, it would mean that Honourable Ruto accompanied
24 Honourable Odinga to the Kapkatet rally on 21 December 2007. Would you agree?

25 A. Yes, I agree.

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1 Q. And, Mr Witness, just back to the transcript that we -- or, back to the video, you
2 recall at the outset the speaker said "Raila Odinga arrived at 2 p.m." Do you recall
3 that?

4 A. Yes.

5 Q. Mr Witness, Honourable Ruto was at a rally in Kapkatet on 21 December 2007
6 in the afternoon at 2 p.m. having accompanied Honourable Odinga. What do you
7 say to that having seen the video and this newspaper?

8 A. I agree.

9 Q. Why then did you tell the Prosecution that Honourable Ruto held a rally at
10 location C on 21 December 2007 and arrived at about -- around 2 p.m.? Why did you
11 say that to the Prosecution?

12 A. It was my own version.

13 Q. What do you mean by that?

14 A. That it was my own story, cook up.

15 Q. You lied about it, didn't you?

16 A. Yes.

17 MR FAAL: Mr President, at this stage, I would ask to put into evidence the video
18 that I have just used, it is KEN-D09-0038-0449.

19 PRESIDING JUDGE EBOE-OSUJI: Prosecutor.

20 MR STEYNBERG: No objection, your Honour.

21 MR KIGEN-KATWA: No objection, your Honour.

22 PRESIDING JUDGE EBOE-OSUJI: The video will be marked as the next Ruto
23 Defence exhibit.

24 THE COURT OFFICER: The document KEN-D09-0038-0449, public, will bear the
25 number EVD-T-D09-00255.

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- 1 MR FAAL: Mr President, I would ask that the transcript contained in
- 2 KEN-D09-0038-0463, contained in tab 32, be admitted into evidence.
- 3 MR STEYNBERG: No objection, your Honours, with the normal caveat.
- 4 MR KIGEN-KATWA: We have no objection, Mr President.
- 5 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next Ruto Defence exhibit.
- 6 THE COURT OFFICER: The public document KEN-D09-0038-0463 will bear the
- 7 number EVD-T-D09-00256.
- 8 MR FAAL: And that last item I used, Mr President, is KEN-D09-0038-0440,
- 9 contained in tab 33, newspaper of the Kapkatet rally. Thank you, Mr President.
- 10 MR STEYNBERG: No objection, your Honour.
- 11 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa?
- 12 MR KIGEN-KATWA: No objection, your Honour.
- 13 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next Ruto Defence exhibit.
- 14 THE COURT OFFICER: The public document KEN-D09-0038-0440 will bear the
- 15 number EVD-T-D09-00257.
- 16 MR FAAL: Mr President, I have a few more topics I would wish to explore with the
- 17 witness, and I crave your Honours' indulgence to give me the morning session of
- 18 Monday to wrap up with this witness. Thank you.
- 19 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, you still say you need one
- 20 session; is that it?
- 21 MR KIGEN-KATWA: Yeah, I think that would be adequate, Mr President, for me.
- 22 PRESIDING JUDGE EBOE-OSUJI: All right. Prosecutor, are you in a position to
- 23 inform on the line-up for the next?
- 24 MR STEYNBERG: I'm not sure what you mean by "the line-up," your Honours.
- 25 PRESIDING JUDGE EBOE-OSUJI: The next witness after this.

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1 MR STEYNBERG: Your Honours, I understand the next witness will be Witness 495.

2 We'll be ready to proceed on Monday with him.

3 PRESIDING JUDGE EBOE-OSUJI: All right.

4 Witness, thank you very much for your patience. We will need you to come back on

5 Monday and we hope to be done with your testimony by then, assuming there are no

6 unusual developments that will get in the way of doing that. As you know we lost a

7 day yesterday due to various reasons, including difficulty with establishing a video

8 link. So let's hope none of those things happen again. In the meantime, we hope to

9 see you on Monday at the same time.

10 THE WITNESS: Thank you, Mr President.

11 PRESIDING JUDGE EBOE-OSUJI: All right.

12 The Court will adjourn.

13 THE COURT USHER: All rise.

14 (The hearing ends in open session at 4.10 p.m.)

15 RECLASSIFICATION REPORT

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

17 2013, and the instructions in the email dated 8 January 2015, the version of the

18 transcript with its redactions becomes Public.