

Trial Hearing
Witness: KEN-OTP-P-0658

(Open Session)

ICC-01/09-01/11

1 International Criminal Court
2 Trial Chamber V(a) - Courtroom 1
3 Situation: Republic of Kenya
4 In the case of The Prosecutor v. William Samoei Ruto and Joshua Arap Sang
5 - ICC-01/09-01/11
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera-Carbuccia
7 and Judge Robert Fremr
8 Trial Hearing
9 Thursday, 11 December 2014
10 (The hearing starts in open session at 9.36 a.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
15 Court officer, please, the case.
16 THE COURT OFFICER: Thank you, Mr President.
17 The situation in the Republic of Kenya, in the case of The Prosecutor versus William
18 Samoei Ruto and Joshua Arap Sang, ICC-01/09-01/11.
19 We are in open session.
20 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
21 Appearances?
22 MR GARCIA: Good morning, Mr President, your Honours. Appearances are the
23 same for the Prosecution.
24 MR NARANTSETSEG: Good morning, your Honours. The same as before.
25 Thank you.

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1 MR BOURGEOIS: Good morning, Mr President, your Honours. Mr Michel

2 Bourgeois, duty counsel for the witness.

3 MS BUISMAN: Good morning, Mr President. The team for Joshua Arap Sang

4 remains the same.

5 MR KHAN: Good morning, Mr President, your Honours. The team for Mr Ruto

6 remains as yesterday.

7 PRESIDING JUDGE EBOE-OSUJI: Witness, welcome back and Mr Khan will

8 continue his cross-examination.

9 Mr Khan, as indicated, this exercise will have to be completed today with enough
10 time for the Prosecutor to do their re-examination.

11 MR KHAN: I'm most grateful.

12 PRESIDING JUDGE EBOE-OSUJI: Yes.

13 MR KHAN: Mr President, with the Court's leave we could continue in public
14 session.

15 PRESIDING JUDGE EBOE-OSUJI: Proceed.

16 MR KHAN: I'm grateful.

17 WITNESS: KEN OTP-P-0658 (On former oath)

18 QUESTIONED BY MR KHAN: (Continuing)

19 Q. Witness, you will recall yesterday before we adjourned for the day I was asking
20 you questions regarding your account that you gave the Court regarding your
21 movements on 31 December 2007; do you remember that?

22 A. Yes, your Honour.

23 Q. And you will recall that I put it to you that your account was fabricated and you
24 were not in Ziwa; do you remember that?

25 A. I was in Ziwa.

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1 Q. And you will recall that I put it to you that the account of Mr Jackson Kibor
2 giving an envelope and saying it was from Mr Ruto, that's also made up entirely by
3 you; do you remember me saying that to you?

4 A. That is your -- your story, your Honour.

5 MR KHAN: And, Witness, what I want you to look at now, because it's another
6 reason why I say it's as clear as daylight that you're making up the story is what you
7 told CHRD. And, your Honours, I refer to Defence Exhibit EVD-311. It's at
8 KEN-D09-0043-0277.

9 PRESIDING JUDGE EBOE-OSUJI: Is there a tab?

10 MR KHAN: Yes, Mr President. The tab is given yesterday. It is 218. And I'd ask
11 that that be put on screen in the courtroom only and we could go straight to 0280. So
12 just for the courtroom only. Page 0280.

13 Q. And, Mr Witness, I'm just going to read the first paragraph of that document
14 which you agree you wrote and you signed. The first paragraph you say this, and I
15 quote:

16 "On 31st people went to my house, looking for my head lucky enough I was not in the
17 house and I was informed by a phone ... by ..." a "... lady friend who asked me not to
18 step there because a group of armed youths were there looking for me." End quote.

19 Do you remember, Mr Witness, saying that?

20 A. I cannot remember that, your Honour.

21 Q. You see, Witness, I want to be very clear. I am putting to you in very
22 straightforward terms that the narrative you've given the Prosecution and the
23 narrative you've told the Court about going everywhere, all these different places, on
24 31 December 2007 is entirely fictitious; do you understand?

25 A. Not true, your Honour.

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1 MR KHAN: Mr President, I'll move on to another subject, with your leave.

2 PRESIDING JUDGE EBOE-OSUJI: Go on.

3 MR KHAN:

4 Q. And, by the way, Witness, are you aware that Fred Kapondi that you have
5 inserted into that story on 31 December he was actually in Kitale at that time, 57
6 kilometres at least from Ziwa? Are you aware of that?

7 A. That is your creation, your Honour.

8 MR KHAN: And, Mr President, the basis of that is the same -- at the same tab, the
9 telephone records that I referred to yesterday as the foundation.

10 Q. Mr Witness, I'm going to move now to your story about 1 January --

11 MR GARCIA: Just one matter.

12 MR KHAN: -- 2008.

13 MR GARCIA: I'm sorry to intervene at this point. Just so the record can be clear,
14 page 3, and I think this is just an error by Defence counsel, it says, "Mr Witness, I'm
15 just going to read the first paragraph of that document which you agree you wrote."
16 The witness never agreed that he wrote the document. It was written by someone
17 else.

18 MR KHAN: Yes, that's quite right and I'm grateful for that.

19 Q. That's the document you say that you gave to that particular group and the
20 document that you signed. That's right, isn't it, Witness?

21 A. I don't know if they have created or what.

22 Q. Yes. Now, I'm going to move to 1 January 2008 and I'll do this quite quickly.
23 And again, Witness, you gave -- in 2010, 2011, 2012 you spoke to the Prosecution
24 many times, didn't you?

25 A. Yes, your Honour.

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1 Q. And you told the Prosecution and you told the Court that in the morning you
2 went to the mortuary; do you remember saying that?

3 A. I cannot remember that, your Honour.

4 Q. Do you remember a tragic, an awful event, the Kiambaa church burning?

5 A. I just heard. I didn't -- I didn't confirm that I was there.

6 Q. Did you go to the mortuary or you can't remember?

7 A. I go, but that one is -- cannot be clear of it.

8 Q. Did you go on 1 January or can you not remember?

9 A. I go later in the afternoon -- later during the day.

10 Q. What time in the afternoon did you go to the mortuary?

11 A. I can't remember, your Honour.

12 Q. Well, was it 8 p.m., 7 p.m., 4 p.m., noon? What time?

13 A. I can't remember very well.

14 Q. You can't remember, okay. And then you gave the Court a narrative regarding
15 seeing a scene where a lady has been running, a Kikuyu lady, and in a few moments
16 she collapses and delivers birth to a child who is then killed by a group of Kalenjin
17 youths. That's your -- the essence of your story, isn't it?

18 A. That is afternoon, your Honour.

19 Q. Yes, that's -- that's in the afternoon you say. And then you say you go to
20 Langas and you see beheadings?

21 A. That is late in the evening, almost evening.

22 Q. Evening. So you've seen mortuary, dead bodies from Kiambaa, you see a
23 Kikuyu lady killed in cold blood; is that right?

24 A. That's right.

25 Q. Yes. And then a little infant, freshly-born baby, killed, yes?

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1 A. Yes, your Honour.

2 Q. And then you go on further and see beheadings in Langas, the heads on the
3 spike, you see that as well?

4 A. That is later, yeah.

5 Q. Yes. And then you see Luos with the white handkerchiefs very commendably
6 after everything that they had suffered in that area calling for peace; you see that as
7 well?

8 A. That is true.

9 Q. Yes. See, I say again, Witness, that that story is fabricated and you have put
10 yourself forward as a go-everywhere see-everything witness because your primary
11 objective was to get (Redacted)?

12 A. That is not true because I never know about (Redacted) before that.

13 Q. Your primary objective was to get on to what you thought was an ICC gravy
14 train --

15 A. I have --

16 Q. -- to get out of Kenya; isn't that right?

17 A. That was not true, your Honour, because it was not even -- before even that one
18 was there, nobody know that the ICC will be there.

19 Q. And tell me, this terrible scene that you've narrated, a young infant child being
20 killed, it wasn't reported in any newspaper, was it?

21 A. That one is not my duty to look that way, your Honour.

22 Q. And from what you're aware from the public sources, the newspapers, the
23 coverage, there's been nothing recorded about that in any human rights report
24 anywhere right to today; isn't that right?

25 A. I cannot confirm that, your Honour.

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1 Q. You see, Witness, the reason I say it's not reported is because it's a complete
2 fabrication by you?

3 A. It is not true, your Honour.

4 Q. Yes. Witness, you told the Prosecution -- well, you told the Court that you
5 were alone, there was nobody on that PIS form that's in front of you that was there
6 with you at that event; is that right?

7 A. Yes, your Honour.

8 Q. Nobody there that could vouch that what you're saying is the truth; is that your
9 right?

10 A. Yes, your Honour.

11 Q. But you told the Prosecution, didn't you, that you went to that location with
12 person 20?

13 A. But even when we was sitting, staying around that place on our own, but
14 we -- we stay in the house later in the same -- with the same person number 20.

15 Q. And you told the Prosecution in fact, and it's tab 15, OTP binder number 2, at
16 1157, you say the plural, "We went ... there." So you and somebody else went to that
17 scene. Do you remember saying that? You and somebody else went to see that
18 killing of that Kikuyu lady and this newly-born child. Do you remember saying that
19 to the Prosecution --

20 A. I say --

21 Q. -- at 1157?

22 A. I say a group of people, not -- not individual whom I know.

23 Q. Well, Witness, in fact at 1173 of the transcript of the Prosecution's interview to
24 you - and I'll give the ERN in a moment, but it's tab 15, binder 2 of the
25 Prosecution - you say, quote, you went with a friend. Do you remember saying that,

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1 so somebody you knew?

2 A. That is somewhere -- that is where I sit for two days before, after that.

3 MR KHAN: Mr President, the ERN of that transcript for the court record is

4 KEN-OTP-0028-1104, the last reference was at line 1173 and I'll just read it completely
5 into the record.

6 Mr President, just give me a moment please.

7 So at KEN-OTP-0028-1104, at page 1157, you're asked at line 1744: "Okay ..." -- by
8 the investigator, "Ok. Yeah, and what did you see? This ... saw a woman running?"
9 And you say at 1747, "We went near there ..."

10 And then later on, Witness, you say at page 1173, lines 2272 -- well, 2269, you say this
11 and I quote, "I saw a lady running. And then with a ... the friend we went to ... uh ...
12 to her."

13 Do you remember saying that to the Prosecution?

14 A. I cannot remember that, your Honour.

15 Q. Or, Witness, is it the case that you've changed your account because you know
16 nobody else will support a fabricated story and that's why now you're not saying you
17 were with person 20?

18 A. That is not true, your Honour.

19 Q. And tell me, did you see the umbilical cord of the mother being cut?

20 A. I've said that I've just see that and then that's all that I've said the (indiscernible)
21 were, your Honour.

22 Q. And the child was -- how was the child killed?

23 A. The way I have said that he was cut. That's all, your Honour.

24 Q. Where was the child cut, Witness, according to you?

25 A. According to me, it's I think around the neck.

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1 Q. Around the neck. And you also told the Prosecution at one point the child's
2 cut in the neck and later on you told the Prosecution he's cut in the head; isn't that
3 right?

4 A. No, your Honour.

5 Q. Yes. And, Witness, it is right, isn't it, that you didn't mention this terrible
6 incident (Redacted)? Isn't that
7 right? You didn't mention a word of this?

8 A. I didn't mention everything (Redacted), your Honour.

9 Q. Or did you think, Witness, you wanted something particularly dramatic in
10 order to ensure that you would be taken on board by the Prosecution as a witness in
11 this case?

12 A. It's wrong the way you think, your Honour.

13 MR KHAN: Mr President, I'll move to another topic.

14 Q. Now -- and the bodies, the bodies of this child and mother, did you see what
15 happened to them?

16 A. I don't know, your Honour, later.

17 Q. (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 MR GARCIA: Your Honour, I'm sorry. I'm sorry to intervene. Could we go in
22 private session, please?

23 PRESIDING JUDGE EBOE-OSUJI: Private session.

24 *(Private session at 9.53 a.m.) Reclassified as Open session

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

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- 1 MR GARCIA: Your Honour, (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 MR KHAN: (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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1 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 MR KHAN: Mr President, in that case just one more question in private with the
8 Court's leave.

9 Q. Mr Witness, you've told the Court that (Redacted)

10 (Redacted)

11 (Redacted); is that right?

12 A. (Redacted)

13 (Redacted)

14 Q. As (Redacted), correct?

15 A. Not only (Redacted), your Honour. As also (Redacted).

16 Q. At that time, when people were angry with what they viewed as stolen elections,
17 (Redacted); is that right?

18 A. That is one of my testimony, your Honour.

19 Q. And there you are with a -- within sight of a group of Kalenjin youths killing a
20 mother and a child. What were you doing out of (Redacted)?

21 A. It was actually some things which are taking place, your Honour, and we were
22 at the site of -- of Langas where it was actually be -- that area is only dominated by
23 Kikuyus mostly and we are there running up and down. It's not exactly that what
24 we are doing.

25 Q. And, Witness, now we're in private session I'll ask another question. You say

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1 (Redacted) and you've said that you (Redacted). Where are

2 the (Redacted)

3 (Redacted)

4 A. About where? In where? Like where?

5 Q. Where are (Redacted)

6 (Redacted)

7 (Redacted)?

8 A. There were so many things that took place, your Honour. I could not take
9 everything.

10 MR KHAN: And, Mr President, I'm just told, again just for the record, and I'm
11 grateful, that at page 9 on 2 December the incident of the mother and baby was in fact
12 led by my learned friend, Mr Garcia, in public session at lines 9 to 16 and on, but I can
13 move on.

14 Q. So, Witness, (Redacted), correct?

15 A. There was (Redacted), your Honour, at that particular
16 moment.

17 Q. And even after, when (Redacted)
18 (Redacted); is that right?

19 A. There was not anybody who was (Redacted), your Honour.

20 MR KHAN: Mr President, with your leave we can go into public session.

21 PRESIDING JUDGE EBOE-OSUJI: Open session.

22 (Open session at 9.59 a.m.)

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

24 PRESIDING JUDGE EBOE-OSUJI: Thank you.

25 MR GARCIA: I'm sorry to intervene once again. Just for the record to be clear, on

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1 page 6 - and I think it's line 19 - the question by Mr Khan I think is -- actually what it
2 states here is, "Then you go on further and see beheadings." That was not the
3 testimony of the witness. The witness never claimed to have seen the beheadings in
4 Langas.

5 MR KHAN: Yes, Mr President, that's correct. I did clarify it in the next few words.

6 PRESIDING JUDGE EBOE-OSUJI: Yes, move on.

7 MR KHAN: And I talked about heads on sticks.

8 PRESIDING JUDGE EBOE-OSUJI: Move on. Move on.

9 MR KHAN:

10 Q. Witness, now you spoke to the Prosecution, my learned friend Mr Garcia and
11 members of the Prosecution, between 10 November and 20 November of this year.
12 Do you remember that?

13 A. Yes, your Honour.

14 Q. Just before you gave evidence?

15 A. Yes, your Honour.

16 Q. And you went through over those ten days, between 60 to 70 hours, you went
17 through your various transcripts; is that right?

18 A. Yes, your Honour.

19 Q. And at the -- as part of that process over those ten days you clarified certain
20 things; is that right?

21 A. Perfect, your Honour.

22 Q. Yes. And the Prosecution took notes?

23 A. Yes, your Honour.

24 Q. Yes. And it was videoed; is that right?

25 A. Yes, your Honour.

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1 Q. Yes. Now, you told the Prosecution when you were first -- when you first
2 spoke to them in April 2010 that the first meeting you attended where planning
3 meetings were being discussed, planning for violence, was on 2 September 2007. Do
4 you remember saying that?

5 A. I've already declared it was -- I get from source, your Honour.

6 Q. Witness, please, I want you to answer my question. These can be answered
7 "Yes" or "No" and then I will go into it in more detail. Do you understand?

8 A. (No audible response)

9 Q. So you remember telling the Prosecution in your screening interview in
10 April 2010 that you attended a planning meeting, planning for violence, on 2
11 September 2010 that was chaired by the current Minister of Agriculture, Honourable
12 Ruto. Do you remember saying that, "Yes" or "No"?

13 A. I remember saying that.

14 Q. Yes, thank you. And, Witness --

15 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, at line 21 you did say
16 December -- September, right?

17 MR KHAN: Yes, Mr President. I'm most grateful. I did say September. I have
18 Post-its hiding the screen unfortunately. It's my fault.

19 Q. And, Witness, you went on and you said that Mr Ruto was saying it was
20 time -- high time, to unite the Kalenjin community to defend themselves against their
21 enemies the Kikuyus; do you remember saying that?

22 A. I can't remember that, your Honour.

23 Q. You can't remember. And you told the Prosecution that the meeting was
24 announced on Kass by Joshua Sang; do you remember saying that?

25 A. I can't remember that, your Honour. I've already said it was not my testimony.

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1 Q. Well, Witness, you spent about 60 or 70 hours going over your transcript so let
2 me be precise. When you were later interviewed by the Prosecution -- and,
3 your Honours, it's at tab 10 of the first Prosecution binder, KEN-OTP-0028-0776, at
4 page 0802, and I'll read, just cut to the chase, from line 846.

5 You were told by the investigator that the evidence you were giving about that
6 alleged planning meeting was, quote, "very important." Do you remember saying
7 that?

8 A. I've already made it clear, your Honour, that this testimony I will not take it
9 because I just get from source, your Honour.

10 Q. Witness, we'll come to that --

11 A. I --

12 Q. Witness, we'll come to that, but I'm going read to you at line 848 what the
13 investigator says, quote, "This coordination meeting is very important for me."
14 At 854 the investigator says, quote, "... and it is important this is why I'm telling you I
15 am going to ask you some very detailed questions about it."
16 And at 857 the investigator says, and I quote, "And you need to be accurate and
17 precise."

18 Do you remember all of that?

19 A. I can't remember, your Honour.

20 Q. You can't remember?

21 A. Yes.

22 Q. And despite being told how important this planning meeting is, you went on
23 and gave a story that you paid 300 shillings to gain access to the meeting at Sirikwa
24 Hotel on 2 September 2007; do you remember saying that?

25 A. No, your Honour. I've already say it's not so -- a source, your Honour.

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- 1 MR KHAN: Yes. Your Honour, the transcript reference is tab 10 of the
2 Prosecution's binder number 1, KEN-OTP-0028-0776.
- 3 Q. Well, let me go on, Witness, because the investigator asks you a lot of
4 information about that meeting and in fact goes on and talks about it being a secret
5 meeting and at tab 10 of the first Prosecution binder, KEN-OTP-0028-0799, line 740,
6 this is what is said. You say at line 736 that you're going to the meeting "And ..."
7 quote "... we had a prayer ..."
8 738, "... we said a prayer."
9 You're asked at line 740, "Were you at this meeting?"
10 At 745 you say, "The back of the seat."
11 747, "... in the back seat."
12 And then you talk about it at 750, "Yeah ..." it's "... not a ... a ... a big hall."
13 You paint a picture at 752, "And other people ... were standing."
14 753, the investigator says, "OK, you were there is that correct?"
15 And at 757 you say, "Yes ..." I am standing -- "... I was standing at the back." End
16 quote.
- 17 You've heard all of that, haven't you? You've heard that, Witness?
- 18 A. No, your Honour, I've already said that it's not my story, your Honour.
- 19 Q. Witness, I'm coming to that, but that's what you told the Prosecution in the
20 tape-recorded interview, isn't it?
- 21 A. I cannot deny that, your Honour, but I've already said it is not my story.
- 22 Q. And, Witness, you've had those tapes of those recordings for the last four years,
23 haven't you?
- 24 A. Yes, your Honour.
- 25 Q. And that's what you said in August 2010, more than four years ago, and then

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1 you give a story at page 813, at 1228, quote, "... people went in on their own ..." And
2 at 12 --

3 PRESIDING JUDGE EBOE-OSUJI: Sorry, page what? Line or page?

4 MR KHAN: At page 813, at line 1228, the witness is giving, we say, a -- further
5 details to lend plausibility to his account, at 1228, "... people went in on their own ..."
6 At 1230, "... and I went ... I went in on my own and I sat in at the back."
7 1232, "Uninvited."

8 And at 1284 you say, "... people were standing and a lot of people were in front of
9 me."

10 You remember all of that, Witness?

11 A. No, your Honour.

12 Q. You say at 1234, 1234 on page 184, that "I was not invited."

13 At 1250, "I was not an invited guest," and so on and so forth.

14 And, in fact, Witness, at page 0812, lines 1166 to lines 1178, you even offered to draw
15 a sketch of that meeting -- of that secretive meeting, lines 1178, "secretive meeting," for
16 the Prosecution; do you remember that? Do you remember offering to draw it?

17 A. No, your Honour.

18 Q. And you were offering to draw it to lend plausibility to a completely fraudulent
19 account, weren't you? Isn't that right, Witness?

20 A. I've already in -- under oath that I've declared this, your Honour, that it is not a
21 story that I -- I want to stand by it.

22 Q. Yes, Witness, because you waited four years before telling the Prosecution in
23 November of this year, just before you knew you were going to be cross-examined,
24 that that was a lie and you were not at that meeting; isn't that right?

25 A. Not true, your Honour.

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1 Q. Well, did you deny attending that meeting to the Prosecution?

2 A. I've already told them.

3 Q. Witness, if you could answer my question, because the Court, we were not there,
4 so we need to make a record --

5 A. I have already --

6 Q. Witness, please allow me to finish.

7 We need to make a record in the transcript of what is the situation and I'm putting it
8 to you that you told the Prosecution in November that you lied and that you were not
9 at that meeting that you described to the Prosecution in 2010; is that correct or not?

10 A. I didn't say I lied. I said I get from source. There is difference between
11 getting from source and then lying.

12 Q. Witness, do you agree that you were not at that meeting?

13 A. I have already say it's from source. If I say from source it's already clear that I
14 was not there.

15 Q. Yes. So, Witness, there shouldn't be difficulty speaking the truth, should
16 there?

17 A. I've already said the truth even now here.

18 Q. And you told the Prosecution in 2010 and onwards you were there; isn't that
19 right?

20 A. I've already said that it was -- I believe that was there, but I say it was a source,
21 your Honour.

22 Q. You didn't say you believed. You said you were at that meeting.

23 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, do you think you've made your point?

24 MR KHAN: Mr President, I'll -- I'll move on.

25 Q. And, Witness, you knew that statement, that account, was going to be used in

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1 confirmation proceedings by the Prosecution, didn't you? They told you about that?

2 A. I've already say that it was a source, your Honour, and if it is there, then I've
3 already said that it's not perfect, your Honour.

4 Q. Yes, not perfect. In fact -- well, we'll move on because what we say are the lies
5 don't stop there. You gave another account and in your screening to the Prosecution
6 in April 2010 you describe a meeting at Mr William Ruto's home on 2 November 2007;
7 do you remember that?

8 A. Yes, your Honour.

9 Q. And when you were --

10 PRESIDING JUDGE EBOE-OSUJI: So this is a different meeting now --

11 MR KHAN: Yes.

12 PRESIDING JUDGE EBOE-OSUJI: -- Mr Khan?

13 MR KHAN: Yes, the first --

14 PRESIDING JUDGE EBOE-OSUJI: Yes.

15 MR KHAN: -- at Sirikwa --

16 PRESIDING JUDGE EBOE-OSUJI: All right.

17 MR KHAN: -- and this is now at -- allegedly at Mr Ruto's Sugoi home. And the
18 witness stated in the screening that he was there and he stated, quote, "That the
19 purpose of the meeting was to organise the coordinators and discuss how to plan the
20 attacks in the South, Central and Rift Valley."

21 Q. Do you remember telling that to the Prosecution in your phone interview in
22 April 2010, Witness?

23 A. I can't remember that --

24 Q. You can't?

25 A. -- but I still say that it's not my story at all.

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1 Q. Yes.

2 PRESIDING JUDGE EBOE-OSUJI: Have you put the screening note to the witness?

3 MR KHAN: Mr President, I will move on to the interview. In fact, that's where the
4 detail is. We have the screening note as well, but your Honours, in the interest of
5 time, there's so much to deal with, perhaps I go straight to the interviews.

6 Q. And, Witness, you tell the Prosecution in your first interview that the meeting at
7 Mr Ruto's home is on 2 September 2007, that's your interview of 8 August 2010, and
8 then you correct it in your second interview on 6 June 2011 and you say, actually, the
9 meeting at Mr Ruto's home is on 2 November 2007. You remember that? And you
10 say this at KEN -- do you remember that, Witness?

11 A. I can't remember, but --

12 Q. Yes.

13 A. -- if I recollect it, I'm still saying it was not my story.

14 MR KHAN: Yes. And, Mr President, I refer now to tab 10 of the Prosecution's
15 bundle, KEN-OTP-0028-0713, at page 0751.

16 Q. And, Witness, in time I can't go through all the issues, but let me read some of
17 the detail that you made up we say.

18 At 1251 you say, quote, "Yes, I was ..." --

19 PRESIDING JUDGE EBOE-OSUJI: One second. One second, Mr Khan. What tab
20 did you say?

21 MR KHAN: Mr President, tab 9 of the Prosecution's binder, KEN-OTP-0028-0713,
22 and it's at page 0751.

23 Q. Mr Witness, let me read it at 1251, you say, quote, "Yes, I was present."

24 At 1254, "I was present and I heard what every participant said." End quote.

25 At 1255 the investigator says, "OK. What time did you attend the meeting?" End

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1 quote.

2 And you say at 1258, quote, at 1100 hours, 11:00.

3 PRESIDING JUDGE EBOE-OSUJI: Around.

4 MR KHAN: At "Around 11:00."

5 Q. And at line 1260, line 1260 on that page, 0751, you say, quote, "But ... uh ... if
6 they were so many people, then I came out of the meeting and I went to see my
7 friend."

8 The investigator at 1262 says, "OK. What did you hear?" How long did -- "How
9 long were you at the meeting for?"

10 And you say at 1265, "And I left around 11:00 ..." -- "... around 11:00 and went back ..."
11 at "... around 1:00 till the end of the meeting."

12 1266, the investigator says, "OK."

13 And from 1268 you say, "Because ... from 10 was just ... uh ... prayer ... prayer and
14 rituals."

15 Do you remember saying that, Witness?

16 A. I can't recall, your Honour.

17 Q. You can't recall. So it goes on further, the details, because then at tab 10 of
18 Prosecution binder 1, KEN-OTP-0028-0776, at page 0785, so page 0785, you say at
19 lines 287 that the meeting -- quote, "The meeting finished."

20 At 290, quote, "About 5 ... quarter past 5 ..." End quote.

21 292, "... or so."

22 And you say at 294, quote, "Everyone went back home."

23 And at 297, "I went back to Eldoret town." End quote.

24 So, Witness, that's what you told the Prosecution and you knew -- you've told the

25 Prosecution just a few days ago that you were never at that meeting; isn't that right?

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1 A. Perfect, your Honour.

2 Q. And you're aware, following the confirmation proceedings as you did, that the
3 Pre-Trial Chamber relied upon your evidence of your presence at this meeting, at
4 these two meetings, to confirm the case against Mr William Ruto? You're quite
5 aware of that, aren't you?

6 A. Not really, your Honour.

7 Q. I'm sure you looked at the confirmation decision, paragraph 126 and 133, having
8 such an interest in this case, and you're aware she referred specifically to your
9 presence and your evidence being at these meetings to make sure that the case came
10 here before this Trial Chamber?

11 PRESIDING JUDGE EBOE-OSUJI: Witness, don't answer that question.

12 Mr Khan, you can argue about that when the time comes.

13 MR KHAN: Mr President, I'm grateful. At line -- page 24, line 23, it's written
14 "(inaudible)". I think the witness said "Yes."

15 Q. Witness, in fact, you went so far to give some credibility you hope, to your
16 account, that you drew a sketch of Mr Ruto's house, didn't you? Do you remember?
17 Perhaps it can be put on the screen? It's tab 61 of the Prosecution's folder,
18 KEN-OTP-0036-0096, and it can -- it's got a signature and so it has to be only in this
19 courtroom, please.

20 Q. Witness, you remember drawing a sketch, do you, to the Prosecution?

21 A. I've already say it was from source, your Honour.

22 Q. Witness, did you draw a sketch or did somebody else come in and draw it?

23 A. I remember drawing it.

24 Q. And you drew that sketch because you were trying to give anything you could
25 to make the Prosecution believe that your account was authentic; isn't that right?

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1 Isn't that the case?

2 A. Not true, your Honour.

3 Q. You see what's on the screen, don't you, Witness?

4 A. I can see, your Honour.

5 Q. Yes. That's what you drew, isn't it?

6 A. I can remember, your Honour.

7 Q. You can't?

8 A. I can remember, but --

9 Q. You can remember, yes. And that's what you say is the layout of Mr Ruto's
10 house; is that correct?

11 A. (No audible response)

12 Q. That's what you told the Prosecution, "This is the layout of Mr Ruto's house.
13 Of course I was there. Look, I'll do a drawing for you"? That's what you did, isn't
14 it?

15 A. I have already said that it was actually that way, your Honour.

16 Q. And you told the Prosecution in your witness clarifications that in fact you've
17 never in your life been to Mr Ruto's home; isn't that the case?

18 A. Yes, your Honour.

19 MR KHAN: I would ask to have exhibited both the witness preparation log at tab
20 196 and the witness clarifications at tab 197 and also the sketch of the witness.

21 PRESIDING JUDGE EBOE-OSUJI: One at a time. Let's -- so the first document is
22 what and where did you say it is?

23 MR KHAN: It's Defence tab 196. It's witness clarifications, KEN-OTP-0146-0088.

24 It's a document emanating from the Office of the Prosecutor. The witness has
25 accepted he attended that witness preparation during that period. There cannot be

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- 1 concerns regarding the authenticity of the document and, given the witness's
- 2 evidence, we say it should be exhibited.
- 3 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia?
- 4 MR GARCIA: No objection, your Honour.
- 5 PRESIDING JUDGE EBOE-OSUJI: Ms Buisman?
- 6 MS BUISMAN: No objection.
- 7 PRESIDING JUDGE EBOE-OSUJI: The document is admitted as the next Ruto
- 8 Defence exhibit.
- 9 MR KHAN: I'm grateful, Mr President.
- 10 And then the next is the witness preparation log -- oh, I'm sorry.
- 11 And then the next is the witness clarifications, which have not been exhibited I believe.
- 12 It's KEN-OTP-0146-0088 at tab 197.
- 13 THE COURT OFFICER: Mr Khan, the document at the tab 196 of your bundle is
- 14 ending up with 0083.
- 15 MR KHAN: Yes, I'm grateful.
- 16 Mr President, also the witness preparation log at 196, it's just the time periods and the
- 17 days and time that the witness had to go over his story, and that's at
- 18 KEN-OTP-0146-0083 please.
- 19 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia?
- 20 MR GARCIA: No objection, your Honour.
- 21 PRESIDING JUDGE EBOE-OSUJI: Ms Buisman?
- 22 MS BUISMAN: No objection, Mr President.
- 23 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next Ruto Defence exhibit.
- 24 MR KHAN: I'm grateful.
- 25 THE COURT OFFICER: The confidential document KEN-OTP-0146-0088 will bear

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1 the number EVD-T-D09-00322, and the confidential document KEN-OTP-0146-0083
2 will bear the number EVD-T-D09-00323.

3 MR KHAN: I'm grateful.

4 And, Mr President, the last document in this sequence, the sketch, a map that appears
5 in -- the sketch allegedly of Mr Ruto's home that appears at tab 61 of the Prosecution's
6 bundle. The witness has -- it comes from the Prosecution in fact, it was prepared
7 with the Prosecution and he's accepted under oath that he drew the thing. It's at
8 KEN-OTP-0036-0096.

9 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia?

10 MR GARCIA: No objection, your Honour.

11 PRESIDING JUDGE EBOE-OSUJI: Ms Buisman?

12 MS BUISMAN: No objection.

13 PRESIDING JUDGE EBOE-OSUJI: Document admitted as the next Ruto Defence
14 exhibit.

15 THE COURT OFFICER: The confidential document KEN-OTP-0036-0096 will bear
16 the number EVD-T-D09-00324.

17 MR KHAN: I'm grateful.

18 PRESIDING JUDGE EBOE-OSUJI: Proceed, Mr Khan.

19 MR KHAN:

20 Q. And, Witness, you also went through your -- the affidavit.

21 Mr President, perhaps we can go into private session for a moment?

22 PRESIDING JUDGE EBOE-OSUJI: Private session.

23 *(Private session at 10.23 a.m.) Reclassified as Open session

24 THE COURT OFFICER: We are in private session, Mr President.

25 MR KHAN: I'm grateful.

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1 Q. And, Witness, you went through the affidavit that you gave to the -- you
2 presented to (Redacted) with the Prosecution. Do you remember that?

3 A. Yes, your Honour.

4 MR KHAN: And, your Honours, it's at tab 53 of the Prosecution's bundle.

5 Q. And at paragraph 4, so it is KEN-OTP-0036-0064, you wrote this in your
6 affidavit, and I quote at paragraph 4:

7 (Redacted)

8 (Redacted)

9 (Redacted) ODM leaders held two rallies at Stadium in Eldoret and one ..." in "...
10 Kapsabet ..."

11 And then over the page to 0065 -- in fact, that's the relevant part. Over the page at
12 0065 at paragraph 8 you say this, and I quote:

13 "That on the 14th of December 2007 at 64 Stadium, ODM Pentagon led by the Hon.
14 Raila Odinga led speakers ..." in "... calling for the removal of the Kikuyu from ..." the
15 "... Riftvalley."

16 Do you remember saying that? That's in your affidavit, isn't it?

17 A. I can't remember, your Honour.

18 Q. And you told the Prosecution, just before you came before this Court, that Raila
19 Odinga never called for the removals of Kikuyu and also that's not true. Do you
20 remember saying that?

21 A. At what, your Honour?

22 Q. That Raila Odinga never called for the removals of the Kikuyu? He never led
23 calls that Kikuyus be removed from the North Rift?

24 A. I say he was using parables that the waves will come.

25 Q. Witness, I'll leave reference to the waves or tsunami to one side for the time

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1 being. You told the Prosecution that (Redacted), in which you said he led
2 for calls for the removal of the Kikuyus is not true, that's what you told the
3 Prosecution just a few days ago. Can you remember?

4 A. I can remember, your Honour.

5 MR KHAN: Mr President, we can go into public session, with your leave. Actually,
6 I do apologise, if we can go because -- just to one matter very briefly, at 0067, of the
7 same document, and it can be put on the screen. It is the same affidavit. 0067.

8 Q. Witness, can you see that handwriting, it is at the back of your affidavit to (Redacted)
9 (Redacted). Can you see that?

10 A. Yes.

11 Q. Who wrote that?

12 A. Me, your Honour.

13 Q. You. I've gone through your interviews carefully with the Prosecution and
14 your proofing notes. Were you asked by the Prosecution about who wrote that
15 because I haven't seen it in any question? Can you remember if you were asked at
16 any time about that handwriting that you say is yours? Mr Witness --

17 A. I can't remember.

18 Q. All right. And when did you write it?

19 A. I'm not remembering clear, your Honour.

20 Q. In fact, it is about the -- the two meetings that are untrue, that you've lied about;
21 is that right?

22 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, you will have to lead the witness to put
23 on record what the script says.

24 MR KHAN: Yes, Mr President. I should -- don't want to spend too much time with
25 it, but I've opened it up and so maybe I should just very quickly.

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1 Q. At the top, and I quote:

2 "2.9.2007 - Kalenjin unity subtribe."

3 Underneath that:

4 "2.11.2007 - for military to co-ordinate Cheruiyot, Cherambos, Koech among others
5 former ex soldiers."

6 Underneath that a circle with "5" inside it, then "5.12.2007 Kapsabet Rally. To fight
7 heaven on earth and heaven ..." and then what's written is it looks like K-I-A-J-O-N
8 and then Kitaik K-I-T-A-I-K, and some words in Swahili.

9 You see that, Witness?

10 A. Yes, your Honour.

11 Q. Yes. So you wrote this when?

12 A. I can't remember, your Honour.

13 PRESIDING JUDGE EBOE-OSUJI: But, Witness, what Mr Khan read out is that
14 what's in fact the handwriting says?

15 THE WITNESS: It is, your Honour.

16 MR KHAN: Thank you, Mr President.

17 Q. Did you write it?

18 A. It's my handwriting, your Honour.

19 Q. Did you write it before you met the Prosecution?

20 A. Yes, your Honour.

21 MR KHAN: Yes.

22 Mr President, I'd ask to admit that affidavit - so it is KEN-OTP-0036-0064 - not for the
23 truth of its contents, but in order to follow the evidence of the witness and as an
24 exhibit of inconsistency.

25 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia?

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- 1 MR GARCIA: No objection, your Honour.
- 2 PRESIDING JUDGE EBOE-OSUJI: Ms Buisman?
- 3 MS BUISMAN: No objection, Mr President.
- 4 PRESIDING JUDGE EBOE-OSUJI: The document is admitted as the next Ruto
- 5 Defence exhibit.
- 6 THE COURT OFFICER: The document KEN-OTP-0036-0064 will bear the number
- 7 EVD-T-D09-00325. The document is confidential.
- 8 MR KHAN: Mr President, with your leave, we could go into public session.
- 9 PRESIDING JUDGE EBOE-OSUJI: We will go to open session.
- 10 (Open session at 10.31 a.m.)
- 11 THE COURT OFFICER: We are back in open session, Mr President.
- 12 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 13 MR KHAN: I'm grateful.
- 14 Q. And, Witness, you've told the Court, told the Prosecution that after four years,
- 15 four years after giving your original account, you accepted that you were not at at
- 16 least two meetings that you had told the Prosecution you were at; that's correct, isn't
- 17 it?
- 18 A. Correct, your Honour.
- 19 Q. And that also you had retracted certain other allegations that you had made
- 20 against the Honourable Raila Odinga; that's right, isn't it?
- 21 A. I just say how he was saying. I didn't say -- I didn't mean whatever, but I say
- 22 he was not referring to Kikuyu directly, but he was saying tsunami.
- 23 Q. And after telling all of these matters to the Prosecution, they told you they still
- 24 wanted you to come and be a witness in this courtroom; is that right?
- 25 A. If they prepare me and that they make me to come here, then that is right,

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1 your Honour.

2 MR KHAN: Mr President, we can go on to another subject with the Court's leave.

3 Q. Mr Witness, you gave an account that you attended the funeral of Lucas Sang?

4 A. Yes, your Honour.

5 Q. And where was that funeral?

6 A. Around Kuinet area.

7 Q. Around Kuinet area. Was it in a church or in a field or in ... (Overlapping
8 speakers)

9 A. Homestead.

10 Q. I'm sorry?

11 A. Home area.

12 Q. But where? Can you tell us the physical site of the event?

13 A. What, your Honour?

14 Q. Was it in a church? Was it in a building? Was it in a field? Was it in a
15 cemetery? Where was it?

16 A. Compound, your Honour.

17 Q. What compound?

18 A. Homestead.

19 Q. Who's homestead?

20 A. Lucas' homestead.

21 Q. And why did you go to that memorial event?

22 A. I go there, your Honour, because I wanted to go.

23 Q. But Lucas Sang is -- Lucas Sang (Redacted)

24 (Redacted); isn't that right?

25 A. He was.

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1 Q. And so why did you go to the memorial?

2 A. If I go, I decide to go, your Honour. What's the problem? I don't see any
3 problem, your Honour, by then.

4 Q. Yes. So you told the Prosecution you attended that and you said that various
5 people spoke; do you remember saying that?

6 A. Yes, your Honour.

7 Q. For example, you say that Jackson Kibor spoke. Do you remember saying
8 that?

9 A. Yes, your Honour.

10 Q. You said he was speaking in what -- in an inciteful manner?

11 A. Yes, your Honour.

12 Q. And you say at KEN-OTP-0028-1303, at 1325, and then again at 1327, that -- at
13 line 810, that Mr Jackson Kibor said, "Myself and Subeiya ..." it's spelled
14 S-U-B-E-I-Y-W-A "... we are old people." Do you remember saying that?

15 A. Yes, your Honour.

16 Q. At 812, "So we don't ... uh ... know what will happen ..." Do you remember
17 saying that?

18 A. Yes, your Honour.

19 Q. Sorry, I'll read that again, quote, "So we don't ... uh ... know what will happen ...
20 to us because we are old enough to die."

21 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, did you tell us where this is in the
22 binder and tab?

23 MR KHAN: Mr President, it's at KEN-OTP-0028-1327 to 1330 and I'm going to be
24 reading at lines 799. In fact --

25 PRESIDING JUDGE EBOE-OSUJI: Binder and tab?

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1 MR KHAN: It's Prosecution binder number 2, tab 18. I'm grateful.

2 And, Mr President, I also, just for the record, I also read, but I'm not going to go to it,
3 just for the record, KEN-OTP-0028-1303, at page 1325, at lines 721 to 735, at
4 725 -- sorry, at 730 he's asked by the investigator to recount the bits, quote, "... the bits
5 that you think are inciteful."

6 And then I go over to page 810, which is the extract that I quoted, and perhaps I'll
7 start again if the -- Mr President, you found the portion.

8 PRESIDING JUDGE EBOE-OSUJI: Yes, you better start again because I've lost you.

9 MR KHAN: Yes, 810.

10 So, Mr President, it's at tab 17 of the Prosecution's binder, so it is my mistake, not 18,
11 tab 17. It's -- I do apologise. In fact, it is tab 18. So let me give -- let me start
12 afresh.

13 KEN-OTP-0028-1303 is the first page of tab 18 of that interview, and I'm going to start
14 from page 1328, and at lines 810 -- at 810 the witness says this, and I quote, "Myself
15 and Subeiya ..." S-U-B-E-I-Y-W-A "... we are old people ... so we don't ... know what
16 will happen ..."

17 PRESIDING JUDGE EBOE-OSUJI: And he is quoting, according to you, Mr Jackson
18 Kibor?

19 MR KHAN: Yes. This relates to the witness's account of Jackson Kibor's speech.
20 "So we don't know ... uh ... what will happen ... to us because we are old enough to
21 die." That's at line 814.

22 At line 818, quote, "We have to use this opportunity ... to remove the Kikuyus" at line
23 822.

24 At line 825, quote, "Uh ... they ... they have to go far ... they will have to go far ... even
25 farther than Naivasha." And then it continues.

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1 Q. Witness, you remember saying that, do you?

2 A. Yes, your Honour.

3 Q. And then it continues to line 838, he says, and I quote, "And there was a
4 fundraising that was supposed to assist the family."

5 843, quote -- the witness says, quote, "But for ... insiders, this fundraising ..." "... this
6 fundraising was to buy those items."

7 845, quote, "I mean guns." End quote.

8 And then he's asked by the investigator at 846, "OK. Did he say that? 'To buy
9 guns'?"

10 And at 851 the witness says, quote, "He said that we have to ... uh ... collect things and
11 we have to import ... uh ... these things from ... uh ..."

12 Then at 854, "Lakini ..."

13 858 he's asked by the investigator, quote, "OK. And did he say how they ..." were to
14 "... remove the Kikuyu?"

15 And at 861 the witness says, quote, "He said ... he only said that the Kikuyu have to be
16 removed by force." End quote.

17 Witness, do you remember saying that?

18 A. Yes, your Honour.

19 Q. Yes. And then you also -- so the event really was for fundraising for weapons;
20 is that right, Witness?

21 A. Yes, your Honour.

22 Q. The event was for fundraising for weapons; is that right?

23 A. No. It was a funeral, your Honour.

24 Q. But was it a front for fundraising to buy those items, to buy guns?

25 A. It says "items." I didn't put directly guns.

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- 1 Q. Well, what things did you tell the Prosecution at that time that Mr Kibor wanted
2 imported from Lakini?
- 3 A. If I say things, maybe things to use like guns is okay, your Honour.
- 4 Q. So things to remove the Kikuyus?
- 5 A. Yes, your Honour.
- 6 Q. To remove them violently?
- 7 A. Yes, your Honour.
- 8 Q. By force?
- 9 A. That is it.
- 10 Q. In your understanding by killing them?
- 11 A. If I say by force, it can be either way, your Honour.
- 12 Q. Killing them or beating them up but hurting them; is that right?
- 13 A. It can be that way, your Honour.
- 14 Q. Yes. And that's what you meant when you were speaking to the Prosecution;
15 is that right?
- 16 A. They mean that, your Honour.
- 17 Q. Is that what you meant, Witness?
- 18 A. Not mean, but what I saw I told in this case, but that is how -- if you want to
19 remove people, you can use all available ways, your Honour.
- 20 Q. So what you're telling the Prosecution at this time is that Mr Jackson Kibor is
21 saying that items should be bought to remove Kikuyus by force; is that right?
- 22 A. That is what I could imagine -- that's the (indiscernible) idea -- that's what I --
- 23 Q. And for insiders under cover for this funeral, under cover of that funeral, you're
24 saying the real purpose was fundraising to buy those items; is that right? That's at
25 line 843. Is that right?

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1 A. That's what I could imagine, my --

2 Q. Yes, that's what you could imagine. And I tell move on to what else you say,

3 Witness.

4 And just for the record at line 861 the witness said, quote, "He said ... he only said that
5 the Kikuyu had to be removed by force."

6 Now, Witness, you gave an account that Tabitha Seii gave a speech; do you remember
7 saying that?

8 A. Yes, your Honour.

9 Q. In fact that's Ambassador Tabitha Seii; is that right?

10 A. Yes, your Honour.

11 MR KHAN: Seii is S-E-I-I.

12 Q. And Ambassador Seii in fact was the Kenyan ambassador to the Republic of
13 South Africa between 2002 and July 2007; is that right?

14 A. Yes, your Honour.

15 Q. And in 1997 she was nominated as a member of parliament by His Excellency
16 Mwai Kibaki, the former president of the Republic of Kenya; is that right?

17 A. She was, yes.

18 Q. And also she was the former vice-chairman of the Democratic Party of Kenya; is
19 that right?

20 A. She was.

21 Q. And the head of the Democratic Party of Kenya was President Kibaki; is that
22 right?

23 A. Yes, your Honour.

24 Q. Are you aware, Witness, that her -- well, let me move forward to what you say,
25 in fact.

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1 And, Mr President, I'm referring to KEN-OTP-0028-0 -- sorry, 0028-1303, at page 1333
2 to 1335. And I'm going to read with the Court's leave from lines 981.
3 Now, Mr President, that's page 1333 in the Prosecution tab 18. And, your Honour, it
4 is clear from the preceding page from 973, line 973, that the witness is talking about
5 Tabitha Seii. He says Tabitha Seii, at line 977, "She was really hurt."
6 At 981, quote, "She said that 'I am a woman' ... And ... uh ... because young men are
7 ready I am ... because I am ... uh ... young men are ready, I am also ready to put on ..."
8 And at 989, quote, "Oh ... if young men are not ready, I would ..."
9 At 992, "... I am ready to go to fight."
10 At 994, the witness says, quote, "That was to ... uh ... incite people to go for war."
11 End quote.
12 Do you remember saying that, Witness?
13 A. Yes, your Honour.
14 Q. And at line 1 -- line 997, you say, quote, "When ... uh ... a woman put herself
15 forward to wear ... uh ... uniform and go for war ..."
16 At line 1000, "... but men are supposed to be ... uh ... strong to go to war."
17 At line 1002, quote, "So that's a Kalenjin way to incite people to go to war." End
18 quote.
19 Remember saying all of that?
20 A. Yes, your Honour.
21 Q. And, Mr President, that last quote, "... that's a Kalenjin way to ... go to war" is at
22 line 1002.
23 And if one turns over the page to 1334, at line 1004, you continued, Witness, did you
24 not, quote, "And ... uh ... that is a ... common practice in the past for ... uh ... men ...
25 uh ... to incite men to go to war."

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1 Do you remember saying all of that?

2 A. Yes, your Honour.

3 Q. And I'll go forward to line 1026, again, at page KEN-OTP-0028-1334, at line 1026,
4 you said, "But ... uh ... the ... the addresses were inciteful."

5 Do you remember saying that?

6 A. Yes, your Honour.

7 Q. You meant her address was inciteful; is that right?

8 A. Yes, your Honour.

9 Q. All right. And that the fight was supposed to be against the Kikuyus; is that
10 right?

11 A. Yes, your Honour.

12 Q. And that's line 1032. And that means removing the Kikuyus by force; is that
13 right?

14 A. Yes, your Honour.

15 Q. Yes. So it was a very violent speech; is that right?

16 A. Yes, your Honour.

17 Q. Yes. Are you aware, apart from being appointed by a head of state who
18 happened to be from the Kikuyu community, are you aware that the daughter of
19 Ambassador Tabitha Seii worked and helped Kikuyus at the IDP showground after
20 the post-election violence? Are you aware of that?

21 A. I'm not aware, your Honour.

22 Q. Are you aware she has a daughter called Jerotitch, J-E-R-O-T-I-T-C-H?

23 A. I'm not aware, your Honour.

24 Q. Are you aware that another daughter of hers is married to a Kikuyu?

25 A. I don't know, your Honour.

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1 Q. Are you aware, in fact, that Ambassador Seii is so liked in the Kikuyu
2 community, in general, and especially in the North Rift that she has a Kikuyu
3 nickname? Are you aware of that?

4 A. No, your Honour.

5 Q. Are you aware, in fact, that her Kikuyu nickname is Waithira,
6 W-A-I-T-H-I-R-A?

7 A. This is the first time to hear.

8 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, what has the work of Ms Tabitha Seii's
9 daughters and the fact that the Kikuyus may have loved her dearly have to do with
10 whether or not she said the things that the witness testified to having put in her
11 mouth?

12 MR KHAN: Mr President, it goes to, hopefully by the end, if not already, the
13 absolute fabrication, implausibility of the witness's account that somebody who has
14 such a history and such links with the Kikuyu community, including her own
15 daughter, who's married to a Kikuyu, and her other daughter who, at the time - at the
16 time - was -- felt safe enough to work and assist Kikuyu IDPs at Eldoret showground
17 would, at that time, 10 January, be telling Kikuyus to get out of the North Rift and
18 they should be removed by force.

19 So, your Honours, it is relevant to that issue, we say.

20 PRESIDING JUDGE EBOE-OSUJI: Well, we've indicated when you must finish your
21 cross-examination. We are not going to extend your time.

22 MR KHAN: I'm grateful, Mr President. I'll move on to another issue.

23 Q. And, Witness, you gave an account that Mr Joshua Sang was there; is that right?

24 A. Yes, your Honour.

25 Q. And he spoke?

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- 1 A. Yes, your Honour.
- 2 Q. And you remember it well?
- 3 A. Yes, your Honour.
- 4 Q. And he spoke before or after Jackson Kibor?
- 5 A. The last one, your Honour.
- 6 Q. The last one. So after Tabitha Seii?
- 7 A. Yes, your Honour.
- 8 Q. He was the very last person to speak?
- 9 A. Yes, your Honour.
- 10 Q. And then the crowd's dispersed?
- 11 A. Then I -- I go myself. I don't know if it is dispersed or not.
- 12 Q. All right. But the last person to speak, what happened -- what made you leave
- 13 after Joshua Sang spoke?
- 14 A. Just leave, your Honour, on my own decision.
- 15 Q. Was the event finishing, is that why?
- 16 A. I left for my known decision, I didn't follow any other thing, your Honour.
- 17 Q. And you tell the Prosecution that Mr Joshua Sang gave the condolences of
- 18 Mr William Ruto; is that right?
- 19 A. Yes, your Honour.
- 20 Q. And did he read out a message from Mr William Ruto?
- 21 A. I heard just -- he was saying just in (indiscernible), your Honour.
- 22 Q. Just what?
- 23 A. He was just speaking.
- 24 Q. And saying what about Mr William Ruto?
- 25 A. He was saying that he has sent out him the condolence.

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1 Q. Did he read a condolence message, or what, from Mr William Ruto? What do
2 you mean precisely?

3 A. I can't remember but he was just talking on PA phone.

4 Q. And apart from him, was any other condolence message read out from
5 Mr William Ruto?

6 A. I can't recall, your Honour.

7 Q. You can't recall. And what languages were people speaking?

8 A. Kalenjin, your Honour.

9 Q. Apart from Kalenjin, any other language?

10 A. Even Swahili sometime.

11 Q. Even Swahili sometimes. And apart from that, is that it?

12 A. I can't remember, your Honour.

13 Q. You can't remember. And anybody else -- did anybody else speak that you
14 know about?

15 A. I can't remember another (indiscernible).

16 MR KHAN: Mr President, I'm told at page 44, at line 15, the full answer is not
17 recorded. What the witness said is "I can't remember", but he was reading -- talking
18 on behalf of him. So, your Honours --

19 Q. Is that right, Witness, that Mr Joshua Sang was speaking and talking on behalf
20 of Mr William Ruto?

21 A. He was just giving his all sympathy and then add from Ruto.

22 Q. Yes. And the first speech you heard was from whom?

23 A. I can't remember, your Honour.

24 Q. So you hear Tabitha Seii; is that right?

25 A. Yes, your Honour.

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- 1 Q. You hear Joshua Sang?
- 2 A. Yes, your Honour.
- 3 Q. Jackson Kibor you said was before that?
- 4 A. Yes, your Honour.
- 5 Q. And before Tabitha Seii other people were speaking?
- 6 A. I can't recall, your Honour.
- 7 Q. Well, how many people had spoken before Tabitha Seii?
- 8 A. I can't remember, your Honour.
- 9 Q. How long had the event taken place before Tabitha Seii started speaking?
- 10 A. I can't recall, that's what I'm saying.
- 11 Q. Were you, in fact, not even there?
- 12 A. I was there, your Honour.
- 13 MR KHAN: Mr President, I'll play with your leave -- well, Mr President, we can
- 14 start now, or it may be a convenient time to break and come back a little bit later so
- 15 we can deal with the video in one session. I'm in the --
- 16 PRESIDING JUDGE EBOE-OSUJI: You mean come back earlier?
- 17 MR KHAN: Yes, please.
- 18 PRESIDING JUDGE EBOE-OSUJI: Yes. We can rise now then.
- 19 Let us go into closed session, usher the witness out.
- 20 We will rise and come back in 30 minutes.
- 21 *(Closed session at 10.54 a.m.) Reclassified as Open session
- 22 THE COURT OFFICER: We are in closed session, Mr President.
- 23 (The witness stands down)
- 24 PRESIDING JUDGE EBOE-OSUJI: The Court will rise.
- 25 THE COURT OFFICER: All rise.

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- 1 (Recess taken at 10.54 a.m.)
- 2 *(Upon resuming in open session at 11.29 a.m.) Reclassified as Open session
- 3 THE COURT USHER: All rise.
- 4 The International Criminal Court is now in session.
- 5 Please be seated.
- 6 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 7 Witness, welcome back.
- 8 Mr Khan?
- 9 MR KHAN: I'm grateful, Mr President, your Honours.
- 10 Q. Witness, you testified before the break about --
- 11 A. Excuse me, your Honour? Can we go into private session first?
- 12 PRESIDING JUDGE EBOE-OSUJI: The witness requests a private session.
- 13 Private session.
- 14 *(Private session at 11.30 a.m.) Reclassified as Open session
- 15 THE COURT OFFICER: We are in private session, Mr President.
- 16 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 17 Witness, yes?
- 18 THE WITNESS: (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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1 (Redacted)
2 (Redacted)
3 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
4 (Redacted)
5 THE WITNESS: (Redacted)
6 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
7 (Redacted)
8 (Redacted)
9 (Redacted)
10 THE WITNESS: (Redacted)
11 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
12 (Redacted)
13 THE WITNESS: (Redacted)
14 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
15 (Redacted)
16 (Redacted)
17 (Redacted)
18 (Redacted)
19 (Redacted)
20 THE WITNESS: (Redacted)
21 (Redacted)
22 (Redacted)
23 (Redacted)
24 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
25 THE WITNESS: (Redacted)

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- 1 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 THE WITNESS: (Redacted)
- 8 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 THE WITNESS: (Redacted)
- 15 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 16 (Redacted)
- 17 THE WITNESS: (Redacted)
- 18 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 19 (Redacted)
- 20 (Open session at 11.34 a.m.)
- 21 THE COURT OFFICER: We are back in open session, Mr President.
- 22 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 23 Mr Khan, please proceed.
- 24 MR KHAN: I'm grateful, Mr President, your Honours.
- 25 Q. Witness, how much money was raised for things to force out the Kikuyus at the

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1 Lucas Sang funeral, do you know?

2 A. I didn't say that I -- I didn't say I -- I know amount, your Honour.

3 Q. Who was collecting the money for the things to kick out the Kikuyus at the

4 Lucas Sang funeral?

5 A. He was just put it in front of there, your Honour.

6 Q. Witness, it was put in front of where?

7 A. The -- the -- the pack which was there, so it's not really -- somebody was

8 standing for it.

9 Q. So there's a bag, or a bowl, or something in front of the -- in front of the coffin; is
10 that right?

11 A. Yes, your Honour.

12 Q. And it's traditional, is it not, that at funerals some money is collected for the
13 deceased's family, for their children who have lost a loved one; is that right or not?

14 A. It can be that way, your Honour, but that particular -- it was like arrangement,
15 your Honour.

16 Q. Yes, okay.

17 So, Mr President, I will with your leave show portions of a video of the Lucas Sang
18 funeral. It is 1 hour and 12 minutes long. Well, it's more than that, in fact, but you
19 have at binder 103 the full transcript and translation of that video. Your Honour,
20 you will see that track 1 and track 2 are missing, go straight to track 3. The full video
21 has been disclosed to the Prosecution. It is in eCourt. Track 1 and track 2 are just
22 blank and so -- it is an internal process, you will see on the original video. And,
23 similarly, at track 6 it's just blank and it moves to track 5. But your Honours, I just
24 say that for the record.

25 And, Mr President, we disclosed this again, for the record, to the Prosecution on

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1 1 December, two days before they started their examination-in-chief with the witness
2 on this particular issue. And I raise that for the record as well. It was disclosed on
3 the 1st.

4 PRESIDING JUDGE EBOE-OSUJI: When you say that the indicated tracks are
5 blank --

6 MR KHAN: Mr President, you have got the full video, but the transcript, you will
7 see, says "track 3," and the full video is there but there is no transcript because it is just
8 blank.

9 PRESIDING JUDGE EBOE-OSUJI: I see. Okay.

10 MR KHAN: That's it. It is nothing. It is just the raw video that we received from
11 the family in fact.

12 PRESIDING JUDGE EBOE-OSUJI: It is unedited.

13 MR KHAN: It is unedited. The full thing has been handed in. And Mr President
14 it can be shown in public, it is a public video. And I will play firstly --

15 PRESIDING JUDGE EBOE-OSUJI: But you are now going to -- you said it is how
16 long?

17 MR KHAN: Mr President, I am going just to extracts --

18 PRESIDING JUDGE EBOE-OSUJI: All right.

19 MR KHAN: -- but I will hope to finish this whole exercise on this video by
20 lunch-time at the latest.

21 PRESIDING JUDGE EBOE-OSUJI: Proceed.

22 MR KHAN: I'm grateful.

23 And, Mr President, I will start with KEN-D09-0043-0564, which is a transcription and
24 translation of the video, and I will play with the assistance of my friend --

25 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, we have received testimony that the

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1 gentleman, Mr Lucas Sang, was a national athletic hero in his own right.

2 MR KHAN: Indeed, he was an Olympian.

3 PRESIDING JUDGE EBOE-OSUJI: Yes. And still do you say that there are no
4 sensitivities to playing the funeral in public?

5 MR KHAN: No, Mr President. It was a large event of a nationally-known figure, in
6 fact internationally-known Olympian athlete. The video has been obtained -- it has
7 been obtained and, your Honours, there is no objection for it to be played in public.

8 PRESIDING JUDGE EBOE-OSUJI: All right. Proceed.

9 MR KHAN: And Mr President, indeed, I think it is only right given the accusations
10 levelled against Mr Sang that the video also be played because the Court will also
11 hear extracts --

12 PRESIDING JUDGE EBOE-OSUJI: That's all right, but you want it played in public?

13 MR KHAN: Publicly.

14 PRESIDING JUDGE EBOE-OSUJI: That is my concern and that is where -- the
15 sensitivity I am worry about. If you're -- you said there are no issues -- you have
16 thought about it and there are no issues in that regard, then let's proceed.

17 MR KHAN: Indeed, Mr President. We have spoken to family and they are happy.
18 The video ERN is KEN-D09-0043-0556. That's the video. And I will play from
19 16 minutes and 5 seconds until 16 minutes and 56 seconds. That's the first extract.

20 PRESIDING JUDGE EBOE-OSUJI: Where do you say the tab is?

21 MR KHAN: Mr President, the tab is at Defence binder number 2 at tab 103. Your
22 Honours will see at tab 101 and 102 is certain other information relating to Mr Lucas
23 Sang, but I don't really have time to go into that and it's not that critical.

24 Yes, binder 2 and at the front 103. I do apologise. I think my binder -- it is binder 1
25 at the end in that case, and I apologise. And, Mr President, I will play the extract just

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1 from page 0565 that continues over to 0566 just to put the event in some context.

2 And if that portion could be played, please.

3 (Viewing of the video excerpt KEN-D09-0043-0556)

4 MR KHAN:

5 Q. Witness, did you see that?

6 A. Yes, your Honour.

7 Q. Yes. And that is the part of the funeral of Mr Lucas Sang; is that right?

8 A. Yes, your Honour.

9 MR KHAN: Mr President, I will read the translation, and starting from 0565, just
10 into the record.

11 Q. And, Witness, you can intervene if you don't agree with anything of the
12 translation.

13 At line 47 the Catholic priest -- that was a Catholic priest speaking; is that right?

14 A. Yes, your Honour.

15 Q. And the Catholic priest said and I quote:

16 "Brothers and relatives who are here, I request that we join together to pray for Lucas
17 Kipkemboi Sang who left the world, so that he is forgiven and his sins are removed."

18 Lines 52 the Catholic priest continues, and I quote:

19 "May God receive him in heaven and enable him rejoice with angels, together with
20 holy ones and relatives who have gone ahead of him, even us when we leave the
21 world we shall meet him there in heaven."

22 And then over the page at 0566, at lines 59, the priest says this, quote:

23 "In an only way, we take this chance to give our condolences to this servant of ours,
24 Lucas Sang. Now we know that at a time like this it is a challenging period, it is a
25 period for mourning, but let us depend on God in all ways."

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1 Witness, did you hear that?

2 A. In the video, yes.

3 Q. Yes. And that is a correct translation as I have read it out; is that right?

4 A. It is, your Honour.

5 Q. Yes.

6 MR KHAN: Mr President, I will move on then to time stamp 40 minutes and

7 52 seconds at page 0577. Yes, and if that can be played please.

8 (Viewing of the video excerpt KEN-D09-0043-0556)

9 MR KHAN:

10 Q. Witness, did you see that?

11 A. This is the church, your Honour.

12 Q. Yes. And at 577 I will read the translation.

13 PRESIDING JUDGE EBOE-OSUJI: Did he say this is the what, church?

14 THE WITNESS: This -- this place I cannot -- I don't even --

15 PRESIDING JUDGE EBOE-OSUJI: What did you just -- what was your last -- what

16 did you last say, Witness? Did you say "judge" or "church"?

17 THE WITNESS: I think here must be somewhere else, your Honour.

18 MR KHAN: Yes.

19 PRESIDING JUDGE EBOE-OSUJI: Proceed.

20 MR KHAN:

21 Q. Witness, let me read out what is said at 0577, at lines 393, and I quote:

22 "May Jehovah help us in this journey and let us continue praying for our land. Let

23 us continue forgiving those who wrong us and we should not condemn them in our

24 hearts. Let us take all things to Jehovah and we should not avenge or revenge, let

25 that be for Jehovah only. Our job is to pray for peace in our land and God help us in

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1 our journey. It is a must we continue with our duties. And we should know also
2 that we need to depend on Jehovah individually. Thank you our people." End
3 quote.

4 Witness, did you hear that?

5 A. Yes, your Honour, but I dispute. Maybe this one was taken in the church
6 somewhere else.

7 Q. Yes. And that's your speculation; is that right?

8 A. I am saying this one is either -- are inside. It is not a public -- outside.

9 Q. And the portion I read is that a correct translation --

10 A. It is your Honour.

11 Q. -- of what was said on the video?

12 A. It is, your Honour.

13 MR KHAN: Yes, I'm grateful.

14 MR GARCIA: I'm sorry, but I am just wondering if that last point could be cleared
15 up with the witness? That's twice already the witness is indicating that that may be
16 somewhere else and my concern is obviously -- I don't want to say too much in front
17 of the witness, but I think that point should be cleared up before we move on.

18 PRESIDING JUDGE EBOE-OSUJI: I had in mind to do that, but I want to wait to see
19 what Mr Khan does. Maybe -- Mr Khan, I did not want to intercede in your
20 questioning on that point, but if you want to take it into account and clear it up in
21 case you didn't plan on doing that already.

22 MR KHAN:

23 Q. Mr Witness, is it normal that when -- in Kenya when people die they are taken
24 to church?

25 A. But I am saying this one is -- maybe it was done on Wednesday.

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1 PRESIDING JUDGE EBOE-OSUJI: Right. See -- one second. You see what's
2 happening, from my own perspective, for the first time -- we realise you are playing
3 excerpts here and there because it is a lengthy video, you said, but you started with a
4 scene outside and we are now inside a place. So we need to -- if you can orientate us,
5 if you can. That's not too much for your question.

6 MR KHAN: Well, Mr President, I will. The whole video is there and of course we
7 have concerns as to whether or not the witness was even at the event.
8 Your Honour, just for the record the video starts in fact with a cortege leaving the
9 mortuary showing the convoy. Your Honour, I don't have time to go through
10 everything. The witness talked about white things being held aloft, but your
11 Honour the whole thing is shown.

12 PRESIDING JUDGE EBOE-OSUJI: But are you in a position to tell us now whether
13 the last scene of someone speaking inside a place is the same venue that we saw
14 earlier in the first footage you played?

15 MR KHAN: Yes.

16 PRESIDING JUDGE EBOE-OSUJI: It is?

17 MR KHAN: Yes. The first is just outside and then they step inside.

18 PRESIDING JUDGE EBOE-OSUJI: All right. Proceed now.

19 MR KHAN:

20 Q. Witness, you've said that the translation I gave is correct and you heard the
21 person speaking, saying to the audience, that we should continue to forgive those
22 who wrong us. You heard that?

23 A. Yes, your Honour.

24 Q. You heard the deacon say, or the person say, that "... we should not condemn
25 them in our hearts." Did you hear that?

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1 A. But my question is why should I see this video where -- which I don't know this
2 place?

3 PRESIDING JUDGE EBOE-OSUJI: Witness, let's stay with the lawyer for now.
4 Listen to his question and respond just to his question.

5 THE WITNESS: Thank you, your Honour.

6 PRESIDING JUDGE EBOE-OSUJI: Yes.

7 MR KHAN: Mr Witness, you heard --

8 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, you inserted "deacon" into your
9 question.

10 MR KHAN: Well, Mr President, let me --

11 Q. Witness, you heard the person speaking state that "... we should not avenge or
12 revenge." Did you hear that?

13 A. Yes, your Honour.

14 MR KHAN: Mr President, the reason I mention "deacon" it can be found at 0573. I
15 don't have time to go through it but, your Honour, I will just quote. It talks about
16 church mass. Quote, "Church Mass ..." would have been conducted by the
17 priest -- "... would have been conducted but the priest has been caught up with some
18 problems similar to this. He has some case so he could not come, but I am informed
19 he will be with us tomorrow." End quote.

20 But your Honours it is incidental perhaps to the main issue as to the words spoken.

21 PRESIDING JUDGE EBOE-OSUJI: But didn't you have us hearing the words of the
22 Catholic priest in your first extract?

23 MR KHAN: Yes, indeed, Mr President, but it's clear from the whole context that
24 person in fact is the deacon standing in for the Catholic priest. So he is acting as the
25 Catholic priest on that event, but the priest himself unfortunately at that time

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1 was -- had other duties of a similar nature.

2 PRESIDING JUDGE EBOE-OSUJI: All right. Now we follow.

3 MR KHAN: I'm grateful. I'm so grateful.

4 PRESIDING JUDGE EBOE-OSUJI: But then still if the description of the speaker is of
5 interest, then you make sure the witness is with you, but if not it's enough to just have
6 the witness react to what the witness sees, unless the witness knows who indeed is
7 speaking.

8 MR KHAN: Yes, I'm grateful. And I will move on with the Court's leave.

9 Q. And, Mr Witness, in fact the body of Lucas Sang was in a very horrific state; is
10 that right?

11 A. I don't know.

12 Q. It was said in fact that because of the way he was killed and burnt that
13 everybody knew the condition of his body. Are you aware of that?

14 A. Yes, your Honour.

15 Q. And it was said in fact that those who have the heart can -- could go forward
16 towards the -- to pay their respects but others of course were free to not do that. Did
17 you hear that?

18 A. Yes, your Honour.

19 MR KHAN: And I'll move on to the next track and it's track 7, which is

20 KEN-D09-0043-0637 is the ERN of the transcript and translation.

21 Q. And at 0645, Witness, you will hear somebody speak and if you can let me
22 know if you remember hearing that person speak on that day.

23 And if we can please play from time stamp 17 minutes and 38 seconds to 22 minutes
24 and 24 seconds. Thank you.

25 (Viewing of the video excerpt KEN-D09-0043-0556)

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1 MR KHAN: We can stop it there for a moment at time stamp 17 minutes and
2 52 seconds.

3 Q. Witness, do you recognize that person?

4 A. Yes, your Honour.

5 Q. Who is that person?

6 A. I think it's Moses Tanui.

7 MR KHAN: Yes, if we can keep playing please.

8 (Viewing of the video excerpt KEN-D09-0043-0556)

9 PRESIDING JUDGE EBOE-OSUJI: Can we pause?

10 MR KHAN: Yes, I'm grateful.

11 Q. Witness, let me -- in fact, Moses Tanui is a very famous athlete in Kenya; is that
12 right?

13 A. Yes, your Honour.

14 Q. In fact, it's fair to say Moses Tanui is a world famous athlete; is that right?

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

16 THE WITNESS: Yes, your Honour.

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

18 Proceed.

19 MR KHAN: Yes. And Tanui, as the President has alerted us, is T-A-N-U-I.

20 Q. That's correct, isn't it -- isn't it, Witness?

21 A. Yes, your Honour.

22 Q. Yes. And I will read from page 0645 of Moses Tanui's eulogy or speech and at
23 line 251, Moses --

24 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, one second. Sorry. That was my
25 fault that I did not activate my microphone.

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1 I was saying that where the word "(indiscernible)" appears at line 61 the word "Tanui"
2 should be in there, but I said it off microphone. Now the correction is made.
3 Proceed.

4 MR KHAN: Yes. I'm most grateful.

5 Q. Mr Witness, I am reading from line 251, and I quote, this is what -- the
6 translation of what Mr Tanui said in the portion you heard. Quote:
7 "Thirdly in honour before I proceed let all the athletes stand up wherever they are so
8 that I mention something. I request ... you give us more time because he was our
9 colleague and this is our day."

10 At lines 258, quote:

11 "This is a dark day to us. I am requesting two things from us athletes. I would like
12 us to fix in the calendar, the day Lucas was killed so that we set a competition race for
13 the remembrance of Lucas. If you are in agreement then tell the congregation which
14 they did by saying ..." and then at line 264 translation, "Saying we accept."

15 You heard that, Witness?

16 A. Yes, your Honour.

17 Q. That's a proper translation, isn't it?

18 A. It is.

19 Q. And so the only thing that's being arranged there, that's being proposed there
20 by Moses Tanui is that there should be a race competition set up to commemorate
21 Mr Lucas Sang; is that right?

22 A. That is according to what I heard, yes.

23 Q. Yes. And now you have watched that portion of the video, do you remember
24 Moses Tanui's speech?

25 A. I can't remember, your Honour.

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1 Q. Okay. So I'll turn over the page to 0646 and I will continue reading at line 269,
2 quote:

3 "Secondly where the body of Lucas was discovered, I went there personally. It was
4 in a vegetable garden. We should try to make a monument with the governments'
5 support because the government is very aware that we the athletes have carried the
6 flag of this country high internationally."

7 Line 277 he said, and I quote:

8 "Be informed that the president and an athlete are the only people for whom the
9 national anthem is played for, when we are out of this country. So if possible let us
10 find that place and we do something for Lucas. If you are in agreement ... (They
11 clapped their hands). Thank you and be seated." Closed bracket -- end of quote.

12 Witness, did you hear Mr Moses Tanui say that?

13 A. I hear that, your Honour.

14 Q. And that's a correct translation of what he said?

15 A. Yes, your Honour.

16 Q. Thank you. And at line 286 Mr Moses Tanui said, and I continue, quote:

17 "My heart is heavy with grief because I do not know who will keep me company.
18 Lucas in those days when passports were kept in custody because we were soldiers,
19 when they took our passports, we came together and sat down and wanted to find a
20 way that athletes could be freed from this. Lucas suggested that we look for friends
21 abroad to help us."

22 Witness, you heard that?

23 A. Yes, your Honour.

24 Q. And that's a true translation of what was said before --

25 A. Yes, your Honour.

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1 Q. -- in Kalenjin?

2 Now, over the page at 0647, Mr Moses Tanui says this and I quote:

3 "We found one person called John Michael and our passports were opened for
4 travelling and nobody confiscated them again. This was Luca's initiative with his
5 group, when I was a member. Lastly all the athletes should know that he was a
6 foresighted man and all of us should remember that."

7 At 303 Mr Tanui continued and I quote:

8 "When practising as an athlete, you use your own strength, I want you to know this
9 today that we struggled with Lucas for 20 years. We need to complete what he had
10 started."

11 And at line 310 he continued, quote:

12 "I remember when the election was being held in 2004. He was the one who broke
13 the door of AK offices. Kindly remember and let us be united because I am feeling
14 pain, you athletes come out, because this country is ours." End quote.

15 Did you hear that, Witness?

16 A. Yes, your Honour.

17 Q. And that's a proper translation of what you heard on the video?

18 A. Yes, your Honour.

19 Q. And AK offices you understood -- understand to be the offices of Athletics
20 Kenya; is that right?

21 A. Yes, your Honour.

22 Q. And seeing this, does it help refresh your memory that you heard Moses Tanui,
23 this famous Olympian, speak at that event?

24 A. (No audible response)

25 PRESIDING JUDGE EBOE-OSUJI: Witness, he is waiting for your answer. He's

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1 saying that seeing Mr Tanui speak on video now and the words counsel has read out
2 as the words of Mr Tanui, he's asking you whether this refreshes your memory that
3 you saw him, Mr Tanui, speak during the event?

4 THE WITNESS: I can't remember, your Honour.

5 PRESIDING JUDGE EBOE-OSUJI: All right.

6 MR KHAN:

7 Q. Witness, just to clarify, you can't remember his speech or you can't remember
8 that Moses Tanui, a good friend of Lucas Sang, spoke?

9 A. I can't remember when he was speaking and I can't remember even seeing him,
10 but I know he must be there because he is a friend.

11 MR KHAN: Right. And, Mr President, I will move on to time stamp 25 minutes
12 and 56 seconds to 32 minutes and 29 seconds.

13 Q. And before I do that, Witness, did anybody else speak that you can remember
14 that you haven't mentioned?

15 A. Where?

16 Q. Just think, just cast your mind back just before Tabitha Seii spoke. Well, how
17 long -- how long before Tabitha Seii spoke did you arrive?

18 A. I can't remember, your Honour.

19 Q. Ten minutes, half-an-hour, one hour, three hours, what?

20 A. Let me not guess the time.

21 Q. Approximately?

22 A. I can't remember. I can't -- let me not guess, your Honour.

23 Q. All right. Well, let's play a video and you can -- I'll ask you some questions.

24 If we can play after time stamp 25 minutes and 56 seconds and you can let the Court
25 know if you recognize this gentleman.

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- 1 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, try not to make the thing too long.
- 2 MR KHAN: Yes.
- 3 Q. Witness, do you know this person at 25 minutes and 55 seconds?
- 4 A. No, your Honour.
- 5 MR KHAN: Let's play and see if that helps refresh your memory.
- 6 If you can play it, please?
- 7 (Viewing of the video excerpt KEN-D09-0043-0556)
- 8 THE WITNESS: Okay, okay. I know him.
- 9 MR KHAN: So it's paused at 26 minutes and 04.
- 10 Q. And, Witness, I think you wanted to say something? Do you recognize that
- 11 person?
- 12 A. I know him.
- 13 Q. And who is it?
- 14 A. It's Mr Katwa Kigen.
- 15 MR KHAN: Sorry, I didn't get that answer actually. Yes, thank you. If we can
- 16 keep playing, please?
- 17 (Viewing of the video excerpt KEN-D09-0043-0556)
- 18 PRESIDING JUDGE EBOE-OSUJI: Sorry, what was the answer? What was the
- 19 witness's answer?
- 20 MR KHAN:
- 21 Q. Witness, did you say "Mr Katwa Kigen"?
- 22 A. Yes, your Honour.
- 23 MR KHAN: Yes, thank you. Thank you, your Honour.
- 24 (Viewing of the video excerpt KEN-D09-0043-0556)
- 25 MR KHAN: Yes, I'm grateful.

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1 Q. And, Witness, let me go through so far and I've stopped it at 28 minutes and
2 32 seconds and let me read the translation of what Mr Katwa Kigen has said starting
3 at 0649. So 0043-0649 and at line 380 the translation of what Mr Katwa Kigen said is,
4 and I quote:

5 "I greet you in the name of Jesus Christ, how are you? On my behalf and the entire
6 family I would like say sorry to Pamela and to Sang's family. I came to know Sang
7 first as a client and later we became close friends together with Moses." End quote.
8 Witness, did you hear that?

9 A. Yes, your Honour.

10 Q. And that's a proper translation of what Mr Katwa Kigen said?

11 A. Yes, your Honour.

12 Q. And of course Mr Katwa Kigen is currently the lawyer for Mr Joshua Sang, isn't
13 he?

14 A. Yes, your Honour.

15 Q. And then if we just turn over the page to 0650, he continued at line 386, and I
16 quote:

17 "I have visited this home many times and we have been the board members of Kuinet
18 Secondary School. I am really grieved because of his death and I want to say very
19 sorry."

20 Witness, that's a proper translation of what you heard, isn't it?

21 A. It is.

22 Q. Yes. And so it's very clear from this video from what Mr Katwa Kigen says
23 that I have been to this home many times that it's at Kuinet; is that right?

24 A. Yes. Yes.

25 Q. And that's the home of Lucas Sang; is that right?

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1 A. Yes, your Honour.

2 Q. Yes. And watching this video now, do you recall seeing Mr Katwa Kigen
3 speak?

4 A. I can't recall, your Honour.

5 Q. You can't recall, yes. And he continued at line 393, and I quote:

6 "Many have said the reason why Mr Sang has been desiring for justice and his last
7 task was to see, as Moses was putting it, was to see that there is truth in A.K.
8 (Athletics Kenya)."

9 And at 27 minutes and 4 seconds on the video Mr Katwa Kigen starts speaking in
10 English at line 397, and he says this, quote:

11 "We would rather acknowledge that some of the things we are saying here were
12 personal. I must state that it is true that when Lucas was around one of the biggest
13 causes he was pursuing was to see or to procure a situation where AK and all the
14 benefits that come from AK and the cause of AK would directly benefit all the
15 existing athletics [unintelligible] and those people who wish to be athletes."

16 At line 403 Mr Kigen says this, quote:

17 "I was acting for him and I wish to say that it is very regrettable that he has passed on
18 before that wish is accomplished. I am not necessarily attacking anybody when I say
19 that and I hope I am understood in that sense."

20 And at 407 he says:

21 "I ... have given condolences from two other people who I must mention, the first is
22 one from a gentleman by the name of Paul Gicheru and with whom we acted on
23 behalf of Paul Sang and my senior, Mr Wilson Kalya he partly on account of that case,
24 he has told me to indicate that he is deeply sorry and he wishes that the family do
25 obtain the peace that only God can give." End quote.

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1 Did you hear that, Witness?

2 A. Yes, your Honour.

3 Q. Yes. Now I will play a little bit more from what Mr Katwa Kigen says, but do
4 you remember now who spoke after Katwa Kigen, Mr Katwa Kigen?

5 A. I can't remember, your Honour.

6 Q. You can't remember. Do you remember if Mr Katwa Kigen read out any
7 messages?

8 A. I can't remember.

9 MR KHAN: Okay, let's continue and if we can continue playing the section from
10 28 minutes and 32 seconds of the video.

11 (Viewing of the video excerpt KEN-D09-0043-0556)

12 MR KHAN: Just pause it there for a moment at time stamp 29 minutes and
13 9 seconds.

14 Q. Witness, now you've heard again some more video, do you recall that -- if
15 Mr Katwa Kigen read out a statement on behalf of the Honourable William Ruto?

16 A. I didn't say that. I have never -- I didn't see even.

17 MR KHAN: Yes, you didn't see.

18 Okay, let's continue.

19 (Viewing of the video excerpt KEN-D09-0043-0556)

20 MR KHAN:

21 Q. Yes, Witness, you heard that?

22 A. Yes, your Honour.

23 Q. And Mr Katwa Kigen said at page 0650, and I'm reading the English directly,
24 the words that he spoke, quote:

25 "I also have a wish of condolences from Lorna Kiplagat and her husband Peter

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1 Langerhorst ..." Langerhorst is L-A-N-G-E-R-H-O-R-S-T "... who said due to inevitable
2 circumstances they couldn't attend but they wish to express their deep sorrow.

3 Lastly and with the permission of the programmer, I have a written statement from
4 the area MP Hon. Wilson eh, Hon. William Ruto and with his permission may I read
5 the statement."

6 You heard that, Witness?

7 A. (No audible response)

8 Q. Could you give that answer, please, into the microphone?

9 A. Yes, your Honour.

10 Q. Thank you so much. And he continued at line 419, Mr Kigen continued, quote:
11 "The statement is in English and one of the reasons why it is in English as opposed to
12 being in Kalenjin which would have been the appropriate, the preferable choice is ...
13 that nobody would say I was misquoted. Or that he is not misquoted for that matter.
14 This is the statement." End quote.

15 Witness, you heard that?

16 A. Yes, in the -- when he was talking, yes.

17 Q. Yes. So he is saying it's going to be in English because he doesn't want to be
18 misquoted. That's correct, isn't it?

19 A. Yes, your Honour.

20 Q. And then the statement is read and I will start reading the transcript of the
21 statement starting at line 424.

22 Mr President, I will read as corrected annex at tab 227. We have put in a
23 corrigendum with some -- correcting some typographical errors, but your Honours, I
24 will just read with those corrections incorporated. Quote:

25 "It is with great sorrow that I take this opportunity on my own behalf on behalf of my

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1 family on behalf of the constituents of Eldoret North, on behalf of Hon. Raila Odinga
2 on behalf of ODM fraternity to send this message of condolences to Mrs Pamela sang,
3 his children, his relatives, his fellow athletes, his friends, his neighbours at this
4 occasion of interring a husband a father a great sports icon, a farmer and a friend."

5 At line 430, the statement of Mr William Ruto that's read by Mr Katwa Kigen
6 continues. Quote:

7 "Mr Lucas Sang was my friend and I am familiar with his sterling sports career that
8 put Kenya on the world map and on many occasions his sense of discipline, focus,
9 diligence, humility, sense of duty and justice and his other occupation as an
10 individual farmer. That I join you at this moment of grief, difficulty and emotional
11 turbulence to mourn his demise."

12 You heard that, Witness?

13 A. Yet, your Honour.

14 Q. And that's what was said on the video you watched; is that right?

15 A. Yes, your Honour.

16 Q. And the statement continues at line 435, quote:

17 "I pray that God may grant you fortitude of strength, courage, emotional calmness
18 and peace during these trying moments. I pray that God in abundance of his grace
19 shall give all of us, especially Mrs Pamela Sang and his children peace of heart that
20 surpasses human understanding as he promised in the Bible, John 14.25. That peace
21 is what I give you. It is my own peace that I give you, I do not give as the world
22 does. Do not be worried or upset, do not be afraid, be strong of faith, diligent of
23 effort and seek God's grace and guidance at all times and he shall not fail you."

24 Did you hear that, Witness?

25 A. Yes, your Honour.

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1 Q. And that's an accurate transcription of what Mr William Ruto's statement said;
2 is that right?

3 A. Yes, your Honour.

4 Q. And then it continues, the statement continues at line 443, quote:

5 "Mr Lucas Sang was ..." intelligible -- unintelligible "... Kenyan, a role model, an
6 aspiration to many athletes, a great sportsman who harnessed his talent well and he
7 has left us the challenge to perpetuate his spirit and legacy by optimising our talents,
8 serving our country with patriotism and selfless support for others."

9 And then we go over the page to 0652 and the statement of Mr William Ruto
10 continues, quote, at line 448, quote:

11 "We thank God for having given us the opportunity to know Lucas Sang, to live with
12 him, to share and fellowship with him, and thereby learn from him and he from us.
13 We pray to God that Lucas Sang's soul shall rest in glory and in peace. He fought a
14 good fight, he finished the race, he kept the faith in God's hands. May he rest and
15 may he always live in our hearts."

16 You heard that, didn't you, Witness?

17 A. Yes, your Honour.

18 Q. None of that inciting language, is it?

19 A. Yes, your Honour.

20 Q. You agree it is just a condolence message.

21 A. Purely a condolence message.

22 Q. And you are familiar, regarding "fight the good fight," you're familiar with the 2
23 Timothy, chapter 4 to 6, that phrase, "he fought a good fight," comes from the Bible?
24 Are you aware of that?

25 A. Yes, your Honour.

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1 Q. In fact the Bible states, "I fought the good fight, I have finished the race, I have
2 kept the faith. Now there is in store for me a crown of righteousness ..." That's
3 where it comes from; is that right?

4 A. Yes, your Honour.

5 Q. And then he continues at line 453, quote:

6 "I invite all of us to stand with Mrs Sang's family in this trying moments. I assure
7 Sang's wife and children that I will keep my doors open and ... will be forthcoming to
8 give any help or assistance or support that I can. I wish Sang's wife and all of us the
9 abundance of God's guidance, grace, blessings and justice in this year 2008.

10 On his behalf also I wish to express his regret ..." -- sorry, and then -- I should have
11 stopped there.

12 From line 458 you recall that Mr Katwa Kigen then again spoke in his own right and I
13 quote the words of Mr Katwa Kigen in his own right:

14 "On his behalf also I wish to express his regret that he wouldn't have been able to
15 attend to today's function and the circumstances of his inability to attend today have
16 been the subject of many people's comments here. He is engaged in some, what has
17 generally been referred to as mediation in respect of what Mr Daniel Kommen ..."

18 K-O-M-M-E-N "... has said is an issue which is obvious even to a standard 3 kid.

19 Thank you so much and poleni."

20 Did you hear that, Witness?

21 A. Yes, your Honour.

22 Q. So now having -- poleni is P-O-L-E-N-I; is that right?

23 A. Yes, your Honour.

24 Q. And poleni means sorry; is that right?

25 A. Yes, your Honour.

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1 Q. So having now seen the video of Mr Katwa Kigen's speech and Mr Katwa Kigen
2 reading a statement on behalf of Mr William Ruto, does that help refresh your
3 memory that -- of the event on 10 January 2008?

4 A. No, your Honour.

5 Q. I see. And, Witness, I do put it to you that you were not even there because
6 straight after Mr Katwa Kigen -- immediately after Mr Katwa Kigen spoke
7 Ms Ambassador Tabitha Seii took the microphone, didn't she?

8 A. (No audible response)

9 MR KHAN: Well, let's play on from time stamp 33 minutes and 1 second.

10 And before I do that, that -- you haven't seen Mr Joshua Sang yet, have you, on the --

11 PRESIDING JUDGE EBOE-OSUJI: Wait, wait, wait. Don't scroll forwards. If it is
12 your contention that Ambassador Tabitha Seii spoke immediately after
13 Mr Kigen-Katwa, let's see that transition.

14 MR KHAN: Yes. Can we just play it, please?

15 (Viewing of the video excerpt KEN-D09-0043-0556)

16 MR KHAN: Mr President, I will note there's clearly a cut in that, but that can be
17 established by other evidence if necessary.

18 Q. Witness, now we have stopped it at 33 minutes and 5 seconds, do you recognize
19 that person?

20 A. Aya (phon).

21 MR KHAN: Yes. And let's play with the Court's leave --

22 Q. And who is that person?

23 A. Honourable Tabitha Seii.

24 Q. Tabitha Seii; is that right? T-A-B-I-T-H-A?

25 A. Yes, your Honour.

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1 MR KHAN: Yes, I'm grateful. And with that we can play the video, please.

2 (Viewing of the video excerpt KEN-D09-0043-0556)

3 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, can you pause. Can we pause --

4 MR KHAN: Yes, of course.

5 PRESIDING JUDGE EBOE-OSUJI: -- and note on the record.

6 MR KHAN: And it's paused at 14 minutes and -- sorry, 34 minutes and 25 seconds.

7 PRESIDING JUDGE EBOE-OSUJI: Yes. Maybe when we go back we will look at

8 Mr Tanui's speech and we will also look at Mr Kigen-Katwa's speech to see if the cuts

9 that we have now seen twice in Ms Tabitha Seii's speech also occur in those because

10 we need to know why we have those editing.

11 MR KHAN: Yes, of course. Thank you.

12 PRESIDING JUDGE EBOE-OSUJI: Yes.

13 (Viewing of the video excerpt KEN-D09-0043-0556)

14 MR KHAN:

15 Q. Witness --

16 PRESIDING JUDGE EBOE-OSUJI: Is that the end of the speech?

17 MR KHAN: It is, but I think we stopped it a bit early.

18 PRESIDING JUDGE EBOE-OSUJI: We would like to see the whole speech.

19 MR KHAN: Yes, I have asked Ms Sullivan to do that.

20 (Viewing of the video excerpt KEN-D09-0043-0556)

21 MR KHAN: That bit is the 31.12 when it stopped -- no, 37 -- 37.55 when it stops

22 abruptly and the microphone is given to man in a red -- with a red microphone.

23 MR GARCIA: Your Honour, can we have that played back again? I think I saw

24 another edit at that point where there is supposedly a transition.

25 MR KHAN: Mr President, I just said it stops abruptly so I can accept that.

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1 PRESIDING JUDGE EBOE-OSUJI: Indeed there was an edit. That's --

2 MR KHAN: And, Mr President, that's why --

3 PRESIDING JUDGE EBOE-OSUJI: (Overlapping speakers) -- Mr Khan
4 acknowledges that.

5 MR KHAN: And that's --

6 MR GARCIA: I just want it to be clear on the record.

7 MR KHAN: And that's why, in fact, before even the Court's intervention I asked
8 Ms Sullivan to play it again.

9 I'm going to 0649. No, I'm going to -- yes, I'm going to 0652 and I'll read the
10 translation of what's on the video.

11 PRESIDING JUDGE EBOE-OSUJI: Let's not do that, Mr Khan. We want the whole
12 speech of Ms Seii because we don't want to go through that exercise twice. The
13 speech has at least three edits or edits in three places a least. There's no point
14 reading the text of what was said when those bits are missing. So we don't waste
15 our time.

16 MR KHAN: Well, Mr President, I can move on, but in our respectful submission, of
17 course we get the evidence we can obtain from -- from the family or from other
18 sources, but the context of what he said, the calls of Tabitha Seii for peace, the
19 mention that, "Is any life expendable?", all of that is relevant context. So even if the
20 cameraman stopped the video and restarted it, or even if there was some editing that
21 the Defence are not aware of, your Honour, it's relevant to the contention that she is
22 calling for the use of force to kick out Kikuyus because the --

23 PRESIDING JUDGE EBOE-OSUJI: That is true and that is for that reason that the
24 whole speech needs to be, since you have already opened the door of the speech from
25 the ambassador and that contention has been made that she said certain things. We

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1 can't have then a speech that is edited in three places and we sit here and you read the
2 bits of it that you want.

3 MR KHAN: Well, Mr President, there is no evidence of editing. There's the best
4 evidence rule. It's like if a document has been damaged in a fire, it's not
5 inadmissible. Your Honour, it's a matter for argument at a later stage.

6 Your Honours, we have played and we have given the full video that we have
7 obtained from the original source, i.e. the family, and your Honour it's a matter of
8 argument later on. There could be, for example if we ever get God forbid to a
9 Defence case, evidence can be called regarding chain of custody and even the
10 cameraman.

11 But, your Honour, the evidence and the context of what is available as the best
12 evidence is relevant because one can see the way in which Ambassador Tabitha Seii is
13 speaking and it is in a very different way to the contention of the witness that she is
14 speaking in an inciteful manner, inciting people to war, because even in the bits that
15 we have and the portions on the video, even if it is established that there is not a
16 continuity in text as opposed to breaks in the video, even if all that is accepted, what
17 she is saying repeatedly is she wants to ask leaders of this country, "Is any life
18 expendable? Is any life expendable?" So it's very clear what her message is is every
19 life has worth.

20 And, your Honour, I will go over the page --

21 PRESIDING JUDGE EBOE-OSUJI: Does the transcript you have reflect the places
22 where we have abrupt cuttings?

23 MR KHAN: Mr President, no, the transcript has to be true to the video. So what it
24 is is the way it's been prepared is simply following the time stamps and the text as
25 with the video. So your Honours will be free to assess it in any way you want, and

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- 1 of course if there's concerns less weight.
- 2 Mr President, just one point with your leave.
- 3 PRESIDING JUDGE EBOE-OSUJI: Wait, wait, wait, wait.
- 4 (Trail Chamber confers)
- 5 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, what you -- what we can allow you to
- 6 do is introduce the transcript, but let's not sit here and read it on to the record.
- 7 Introduce it as evidence in the case with the video.
- 8 MR KHAN: Yes, I am grateful.
- 9 PRESIDING JUDGE EBOE-OSUJI: We at the time will make the arguments.
- 10 MR KHAN: I'm grateful.
- 11 And, your Honours, I'll read what's been played and then move on. What is in the
- 12 transcript starting at page 0652 at line 465 -- sorry, 469, Tabitha Seii is recorded as
- 13 saying quote:
- 14 "So that whenever we go we have direction. The first thing I want to say is very
- 15 sorry because we have lost a person who was our ambassador for Kenya. He was
- 16 among the first athletes who put Kenya in the limelight and showed the world that
- 17 there is a tribe called Kalenjin."
- 18 And then over the page at 653, at line 478, it continues quote:
- 19 "The only thing that the Kalenjins are identified for is athletics. I remember one time
- 20 when I was in South Africa. When one person said that ..." everything "... he/she was
- 21 practising, he would say to himself that I am a Kalenjin ..." - "I am a Kalenjin" - "... and
- 22 said that every time she/he said this he would get new strength to an extent ..." -- "...
- 23 to an extend of almost winning a race."
- 24 PRESIDING JUDGE EBOE-OSUJI: Right, let's stop it there.
- 25 Mr Khan, did you -- are you reading those for purposes of posing specific questions to

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1 the witness, or just to read the transcript? We say we don't want you reading the
2 transcript on to the record. You can introduce it as evidence.

3 MR KHAN: Ah, right.

4 PRESIDING JUDGE EBOE-OSUJI: And you can make arguments when the time
5 comes --

6 MR KHAN: Yes. Right, I understand. I'm grateful.

7 PRESIDING JUDGE EBOE-OSUJI: -- in the absence of the fuller text or the fuller
8 video of the complete speech --

9 MR KHAN: Yes.

10 PRESIDING JUDGE EBOE-OSUJI: -- of the ambassador.

11 MR KHAN:

12 Q. Witness, did you hear in Kalenjin Tabitha Seii asking the leaders of this country,
13 "Is there any life that is expendable?"? Did you hear that?

14 A. I can say that this story actually I may have heard it, but actually it's not in
15 whole that I heard, your Honour.

16 Q. Witness, the Judges will assess that in due course, but did you hear from the
17 portion I have just read and the portion you saw on the video that Tabitha Seii says at
18 line 496 of the translation, "Is there ..." any "... life that is expendable? Those that are
19 allowed to be killed without them making any mistake?"? Did you hear that?

20 A. No, your Honour.

21 MR GARCIA: Your Honour, I'm objecting to this, to the line of questioning on the
22 transcript as it now stands before the Court. I understand that the Chamber's
23 already taken the decision that Defence counsel can introduce the transcript as it is,
24 but the fact of the matter is that it's an incomplete transcript and, since it's incomplete,
25 it's unfair to ask the witness questions which tend to direct the witness into one

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1 direction when we have no idea what else is in the transcript. It's unfair to the
2 witness.

3 So I understand the Chamber's made that decision already to at least have it
4 evidenced for the moment, but I submit that any questions to the witness in this
5 regard are inappropriate at this point since they would be unfair to him. We have no
6 idea of what the rest of the transcript says.

7 MR KHAN: Mr President --

8 PRESIDING JUDGE EBOE-OSUJI: Defence counsel can ask discrete questions to the
9 witness while he's on the stand and we can make the arguments later on, Mr Garcia,
10 but while the witness is on the stand now Mr Khan, if he has any specific questions to
11 the witness, he can put those questions -- he can put those questions.

12 Proceed, Mr Khan.

13 MR KHAN: I'm grateful.

14 Q. Witness, did you hear Tabitha Seii - Ambassador Tabitha Seii - say in the
15 Kalenjin video you have just seen and heard that she said, quote, "I want to ask the
16 leaders of this country, is there a life that is expendable? Those that are allowed to
17 be killed without them making any mistakes? I would like to tell the leader of this
18 country Hon. Mwai Kibaki that the evil that has befallen this country requires him to
19 do some soul searching"? End quote. Did you hear that?

20 A. That is what I can see it here.

21 Q. And by, "Is there any life expendable?", is it correct that what is meant is every
22 life has value? No life can be lost? Is that right?

23 PRESIDING JUDGE EBOE-OSUJI: Objection -- sorry, question is overruled.

24 Proceed.

25 MR KHAN: Yes.

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1 Q. Did you hear, Witness -- and, Mr President, I am looking at 0654. Did you hear
2 Ambassador Seii state that, "Let us stay in peace"? Did you hear that?

3 A. No, your Honour.

4 Q. You didn't hear. You didn't hear that on the video?

5 A. Even if I hear, I could not remember if it's said during that time.

6 Q. Yes. Let me read a larger bit of it and maybe it will help you from line
7 518 -- 519, quote:

8 "As to what I have said I will not say I was misquoted. Let us stay in peace knowing
9 that God gives a life and takes it. We want to thank him for Lucas Sang. I am sure
10 he is in the arms of God the one we loved." Did you hear that?

11 A. In the video.

12 Q. Yes. Did you hear that, sir?

13 A. In the video, yes, your Honour.

14 Q. Yes, okay. Thank you. And once again at the bottom of 0654 did you
15 hear -- at line 534 did you hear Ambassador Seii once again, quote:

16 "We must all understand that there is no life that is expendable. If there was a better
17 terminology to explain it in Kalenjin language, to say you did not care. But God
18 created all of us and blessed us. Sorry to the friends of Lucas Sang"?
19 Did you hear that?

20 A. No, your Honour.

21 MR KHAN: No, you didn't hear it.

22 Well, Mr President, I'm in the Court's hands, but it is my respectful submission that
23 what may be appropriate is to play the whole thing again simply because the witness
24 so far says that he was there when Ambassador Tabitha Seii spoke and yet he's not
25 able to recall any part of the portions that I've played as being said by Tabitha Seii on

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1 that day.

2 So, your Honours, I know there are those difficulties regarding the breaks - the clear
3 breaks - in the video footage, and of course parties can make submissions at an
4 appropriate stage. I can only make do with what I've got. But the witness has
5 given a narrative that he heard Tabitha Seii and yet at least for these minutes that
6 we've listened to, about four minutes, he hasn't been able to state that anything he
7 recalls.

8 PRESIDING JUDGE EBOE-OSUJI: The thing is this. Isn't it the case that at least
9 one big value you would have for playing the speech of Ms Seii is to tell the witness
10 that Ms Seii didn't say what the witness said she had said on the occasion. Isn't that
11 the case?

12 MR KHAN: Yes. Yes, of course it is, and unfortunately if issues are raised, as
13 clearly they are, it's a matter for argument, but your Honour clearly --

14 PRESIDING JUDGE EBOE-OSUJI: But you see my point?

15 MR KHAN: Yes.

16 PRESIDING JUDGE EBOE-OSUJI: So can you fairly do that to a witness if you
17 haven't played the whole speech from beginning to the end so that it is apparent to
18 him and to everyone else that the witness was wrong in what he said the ambassador
19 had said in her speech?

20 MR KHAN: Well, Mr President, the first thing is I have disputed and questioned
21 whether or not the witness was ever there, and so what I can do at least is show --

22 PRESIDING JUDGE EBOE-OSUJI: But that's a different -- that's a different
23 proposition, isn't it --

24 MR KHAN: Yes.

25 PRESIDING JUDGE EBOE-OSUJI: -- whether or not he's there?

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1 MR KHAN: Your Honours, it's linked to the credibility of his account. So the first
2 step I take issue -- we have raised issues about Joshua Sang. I will come to that.

3 Mr Ruto's speech, didn't know about that. Didn't know about Katwa Kigen being
4 present and -- important issues.

5 And so, your Honours, what I was doing also with Ambassador Seii - of course the
6 secondary function, I accept that, but one of the functions in seeking to play it - is
7 even if bits are missing, even if it's been edited, even if videos have been turned on
8 and off by a cameraman, whatever it is the text of what is there should have been able
9 to refresh the witness's memory as to what Tabitha Seii said on that event, and yet the
10 witness has said he can't remember anything so far that's been played.

11 PRESIDING JUDGE EBOE-OSUJI: One thing that we all must keep in mind in this
12 exercise is we are here to conduct an inquiry into what happened in the post-election
13 violence. There's a certain obligation to do that and, if part of what happened during
14 the post-election violence was that some people were making inciting speeches,
15 assuming that is the case, that is a matter of interest to the Chamber and the witness
16 has given testimony to the effect that Ms Seii did that. Wasn't that the essence of his
17 testimony?

18 MR KHAN: Yes, I'm grateful.

19 Mr President, in that case and given the time and the constraints, let me just move on
20 to another portion of the tape, and again if these issues arise of course the Prosecution
21 are free at any point to raise concerns about the fullness of the video. All I can say
22 and undertake is the full video we received from the source, from the family, has been
23 given in its entirety to the Court without any editing at all whatsoever in any way by
24 the Defence.

25 PRESIDING JUDGE EBOE-OSUJI: Yes, proceed.

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1 MR GARCIA: Just on that matter, your Honour, just so it can be clear for the record,
2 in the metadata we see on the chain of custody that Mr Isaac Maiyo has been involved
3 as well in transferring that -- this video to the Defence.

4 MR KHAN: Yes.

5 Mr President, if we can move on to another section.

6 PRESIDING JUDGE EBOE-OSUJI: Proceed then.

7 MR KHAN: I will come back to another one, but the last section - and I will come
8 back to one after lunch - is track 8, 15.41, sorry, at 15 minutes and 41 seconds to
9 22 minutes and 09 seconds and it's at tab -- yes, it's the last -- it's tab 8 at page 0686
10 until the end and I'm playing it -- really it's the words of an "Unidentified speaker
11 (priest)."

12 And, your Honours, I'm playing it because, in my respectful submission, it's relevant
13 to the witness's account that one of the themes of the funeral, one of the
14 undercurrents, was that it was to raise funds to force Kikuyus out of the Rift and that
15 it was really an opportunity for real incitement in a wide-spread manner.

16 But, your Honours, I would seek to play from page 0686 from time stamp 15 minutes
17 and 41 seconds.

18 PRESIDING JUDGE EBOE-OSUJI: What tab did you say it is at, the transcript?

19 MR KHAN: And the transcript portion that I will read is tab 103,

20 KEN-D09-0043-0681.

21 (Viewing of the video excerpt KEN-D09-0043-0556)

22 MR KHAN: Mr President, I will just read with the Court's leave very briefly a little
23 bit into the transcript. I'm not going to play all of it because it's too much, but the
24 extract --

25 PRESIDING JUDGE EBOE-OSUJI: And who is that? Do we know?

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1 MR KHAN: Mr President, no. What we have in the transcript because of the attire
2 is "Unidentified speaker (priest)," but the name of the individual we don't have. We
3 have the video --

4 PRESIDING JUDGE EBOE-OSUJI: You have a witness on the stand.

5 MR KHAN:

6 Q. Witness, do you recognize the name of that gentleman?

7 A. No, your Honour.

8 Q. Can I ask, do you recognize any of the priests that we've seen?

9 A. I don't know the name of the priest, your Honour.

10 Q. But any of them? There were quite a few there, weren't there?

11 A. No, I don't know the names of the priests.

12 MR KHAN: Mr President, could I just go into private session for a -- well, your
13 Honours, could I have put on the screen -- just one second.

14 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, we have to leave it there for now. We
15 are having a shortened lunch-break.

16 MR KHAN: Indeed, I'm grateful.

17 PRESIDING JUDGE EBOE-OSUJI: So we will come back at 2. We will now rise.

18 We will first go into closed session to usher the witness out of the courtroom. Then
19 we will rise.

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

21 THE COURT OFFICER: We are in closed session, Mr President.

22 (The witness stands down)

23 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

24 THE COURT OFFICER: All rise.

25 (Recess taken at 1.01 p.m.)

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- 1 (Upon resuming in open session at 2.05 p.m.)
- 2 THE COURT USHER: All rise.
- 3 Please be seated.
- 4 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 5 Witness, welcome back.
- 6 Mr Khan, so you will be stopping at 3.30.
- 7 MR KHAN: Yes. I am grateful, Mr President.
- 8 PRESIDING JUDGE EBOE-OSUJI: Yes.
- 9 MR KHAN: Mr President, just one question to the witness, and then I will address the
- 10 Chamber with your leave.
- 11 Q. Witness, were you ever asked by the Prosecution for a copy of the video of the Lucas
- 12 Sang funeral? Did they ever ask you about that?
- 13 A. No, your Honour.
- 14 Q. Did they ever ask you to try and find it?
- 15 A. No, your Honour. I could not find it when I'm already in the outside.
- 16 Q. Did they ever ask you about any priests that were in attendance, the names of any
- 17 priests --
- 18 A. No, your Honour.
- 19 Q. -- that were in attendance?
- 20 MR KHAN: Mr President, I was using this video really for credibility issues to impugn the
- 21 credibility -- further impugn the credibility of the witness. The date 10 March of course is
- 22 outside the time period.
- 23 Your Honours, I've handed it to the Bench and to the Prosecution just over lunch, we've gone
- 24 through at least two tracks of the transcripts, track 5 and track 7, and I'd wanted to play the
- 25 Katwa-Kigen-point extract, Tabitha Seii extract and also an extract, a portion from Jackson

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1 Kibor. Throughout the video, not just those portions, but throughout the video there are
2 numerous cuts.

3 Your Honours, in a Defence case of course chain of custody and provenance can be
4 established. In cross-examination it's very difficult. In light of that, your Honours, I'm not
5 going to seek to rely upon the video further and I will move with the Court's leave to another
6 topic.

7 PRESIDING JUDGE EBOE-OSUJI: Move on.

8 Are you saying you will not be playing the part dealing with Mr Kibor's speech?

9 MR KHAN: Well, Mr President, I was intending to -- I was intending to deal with that
10 because, as I was going to put to the witness, it's our case that what Jackson Kibor is talking
11 about is a social boycott, not using arms against the Kikuyus, but looking at that extract as
12 well over the break, there are cuts. So it's going to have very limited forensic utility at the
13 end of the day. The burden of proof of course is on the Prosecution. We try in good faith
14 whatever evidence we can get that may be germane bring it forward, but of course in
15 cross-examination', when it's the Prosecution's case, not ours, it's somewhat difficult to
16 explain every single aspect of information. So in light of that, your Honours, I'm not going
17 to --

18 PRESIDING JUDGE EBOE-OSUJI: Yes, Mr Khan, but you're the cross-examiner. It's up to
19 you the scope you want to draw in your examination. If you open it up, then we have to
20 look at what you opened up. You know what I'm talking about.

21 MR KHAN: Yes, indeed, Mr President.

22 PRESIDING JUDGE EBOE-OSUJI: Yes.

23 MR KHAN: I can keep dealing with it, but I think in light of the fact that there are further
24 cuts throughout the video, and I've handed, for the record, for example, just --

25 PRESIDING JUDGE EBOE-OSUJI: No, I'm not saying you have to play something you don't

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1 want to play. I was only saying when you say it is the case for the Prosecution, they have to
2 make their case, I'm saying you are quite right.

3 MR KHAN: Yes.

4 PRESIDING JUDGE EBOE-OSUJI: But once you start cross-examining and you go a certain
5 way, then you just can't close that door as you wish.

6 MR KHAN: No, of course not, Mr President.

7 PRESIDING JUDGE EBOE-OSUJI: Yes, yes.

8 MR KHAN: And for the record, I've handed to the Bench, just as an example, samples of
9 cuts in the video footage. Your Honours, of course, in the Defence case it's difficult, we don't
10 have the cameraman, we can't lead evidence regarding the professionalism, or otherwise of
11 that, to explain the format of the video it's in. But just for the Bench's record we've given
12 examples of cuts that are in other parts of the video, you know, throughout the video from
13 what we've seen over the lunch period. Your Honour, I've handed that up. And I would
14 seek then to move into private session into another topic.

15 MR GARCIA: Unless I'm mistaken, your Honour, I don't think the Prosecution has received
16 a copy of that.

17 MR KHAN: It's with the court officer. And these are not definitive. They're not
18 comprehensive. They're just select examples, a total of ten, five from each, track 5 and track
19 7 of breaks when it seems the video was turned off and turned on, but in any event breaks.
20 And Mr President, at page 90, at line 15, the date is written as 10th of March. And
21 I'd meant, if I hadn't said it, it's 10th of course of January 2008.

22 Mr President, if we could go into private session I'll deal with another matter.

23 PRESIDING JUDGE EBOE-OSUJI: Private session.

24 *(Private session at 2.10 p.m.) Reclassified as Open session

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

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1 MR KHAN:

2 Q. Mr Witness, do you recall when (Redacted)

3 (Redacted)?

4 A. I can't recall, your Honour.

5 Q. And you know the reason (Redacted)?

6 A. According to what I heard is that (Redacted), your

7 Honour.

8 Q. What was the issue?

9 A. I understand that -- I think -- I don't know exactly what happened, because it is -- it
10 was -- it was happening (Redacted) at that particular
11 moment, your Honour.

12 Q. Yes. You were visiting (Redacted), weren't you?

13 A. As I've agreed, your Honour, immediately after (Redacted)
14 (Redacted). And later on -- it
15 was difficult for the first time (Redacted) because I had not have a -- a document, but after
16 some times -- after some times I get a document which (Redacted). Otherwise it
17 was difficult in the first place. You cannot (Redacted), your
18 Honour.

19 Q. Yes. Witness, you say you don't know why (Redacted) was (Redacted); is that
20 what you are saying?

21 A. I've already indicated that it was an issue with a -- (Redacted), your Honour.

22 Q. In fact, you know full well he wanted (Redacted), don't you?

23 A. I cannot put it in that way that (Redacted). That one is not my answer, your
24 Honour. I don't know what happened.

25 MR KHAN: Mr President, I refer the Bench to tab 54 of the bundle, KEN-OTP-0139-0546.

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1 Q. Witness, what did (Redacted) do to that (Redacted)?

2 A. I don't know, your Honour, because I was not there.

3 Q. He didn't tell you what he did to that (Redacted)?

4 A. He didn't. But -- he didn't tell me exactly what happened, your Honour.

5 Q. He didn't tell you exactly. What did he tell you about his -- the (Redacted)
6 (Redacted)?

7 A. I cannot say something he didn't tell me, your Honour, but I know there was something
8 he was telling me, something happened.

9 Q. Yes.

10 A. It was like a -- yeah.

11 Q. It's the "something" I'm interested in, Witness. What is the "something" he told you
12 about?

13 A. Your Honour, it is him who could -- I know you know the details about it because
14 he's -- another witness who cannot discuss more about him, your Honour.

15 Q. Well, the President of this Trial Chamber and their Honours will tell us what is
16 permitted or not.

17 You know full well that he wanted (Redacted)

18 A. I cannot confirm that side you're -- you're talking about, your Honour. I don't know.

19 Q. Let me read what (Redacted) told the Prosecution?

20 MR GARCIA: I object, your Honour, on the basis of relevance regarding the witness's
21 testimony and what his narration of the events he saw was. I don't see how this has any
22 bearing on that.

23 MR KHAN: Mr President, it goes -- it may refresh the witness's memory. It's

24 KEN-OTP-0139-0546.

25 The witness has given an account of great familiarity with this particular witness. Went to

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1 his house. He looked after his son. He (Redacted). And, your Honours, reading
2 what (Redacted) himself told the Prosecution, that his (Redacted)
3 (Redacted), it may help jog the witness's memory.

4 PRESIDING JUDGE EBOE-OSUJI: And the Prosecutor is saying what has that got to do with
5 this witness?

6 MR KHAN: Mr President, that will become apparent in my next question. Your Honour, I
7 can tell the Bench that that relates to tab 47 of the bundle.

8 PRESIDING JUDGE EBOE-OSUJI: Whose bundle?

9 MR KHAN: Of our Defence bundle.

10 Mr President, may I proceed? Mr President, I would ask the Bench, I don't want to
11 say more in the presence of the witness, it's --

12 PRESIDING JUDGE EBOE-OSUJI: That's why I want to see.

13 MR KHAN: Indeed. It's KEN-OTP-0090-0199. And your Honour will see firstly number
14 four, the fourth date down, 22 November 2011, what is written there in relation to (Redacted)
15 (Redacted).

16 And then if one turns over the page, and indeed, 15 March, what's said about (Redacted), and
17 that same issue.

18 And then one can read 30 March, it's quite important, 30 March, that entry is quite
19 important.

20 And if we turn over the page, if we turn over the page, the paragraph at the top is
21 relevant. So, your Honours, we say the joint endeavours of these individuals, the
22 joint objective of these individuals may be a matter of relevance to the Trial Chamber
23 regarding issues relevant in this case both to credibility and also relevant in particular
24 to the lengths they will go to if --

25 PRESIDING JUDGE EBOE-OSUJI: One second.

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1 Mr Garcia?

2 MR GARCIA: Your Honour, I think we need to take these -- this investigator report in
3 portions and regarding specific witnesses.

4 The Prosecution has objected to questions regarding (Redacted) because
5 it feels that there is no relation with this witness's testimony.

6 And if you look at the nature of (Redacted), I understand Defence counsel is
7 saying that it relates to maybe his credibility, but there is no link between that neither.
8 So on the basis of that, that's why we're objecting to any information regarding
9 (Redacted).

10 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, do you see the point of the Prosecutor?

11 MR KHAN: Unfortunately --

12 PRESIDING JUDGE EBOE-OSUJI: When you move from --

13 MR KHAN: Yes.

14 PRESIDING JUDGE EBOE-OSUJI: -- when you move over a page, 1099 to 1100 --

15 MR KHAN: Yes.

16 PRESIDING JUDGE EBOE-OSUJI: -- Mr Garcia is saying one thing necessarily has nothing
17 to do with the other.

18 MR KHAN: Well, Mr President, that's really a matter that the witness may be able to assist.
19 The second portion of that paragraph at the top of 1100, "he believed that," may well be
20 relevant when you put it together, "he believed that."

21 PRESIDING JUDGE EBOE-OSUJI: All right. Go on. But let's not overdo it.

22 MR KHAN: Yes. I'm grateful.

23 Q. Witness, I'll read to you what (Redacted) told the Prosecution in essence, and I'm
24 reading from an investigator's report filed on 10 September 2014, but dated 8
25 September -- sorry, an entry of 8 September 2014, KEN-OTP-0139-0546. And it states that,

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1 quote:

2 "In brief, the witness ..." that's (Redacted) "... stated in relation (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)." Unquote.

6 Were you aware in fact from your discussions with (Redacted) that that actually

7 was his intention? His intention was (Redacted)

8 (Redacted)?

9 A. I'm not aware, your Honour.

10 MR KHAN: And, Mr President, going to tab 47, KEN-OTP-0090-0199, and I'm reading

11 from --

12 PRESIDING JUDGE EBOE-OSUJI: You mean 1099?

13 MR KHAN: 1099. And I'm reading from a "Summary Of PEXO In ICC Investigator

14 Notes/Report/Correspondence" dated 13 April 2012. And in relation to an entry dated 22

15 November 2011, it said that (Redacted)... appeared to express

16 (Redacted)

17 And then there's another entry, "(Redacted)" that's (Redacted) "... is

18 implicated in (Redacted)."

19 And then down below "(Redacted) stated ... he felt like ..." -- "... he felt

20 like(Redacted) - he wanted to (Redacted)."

21 And then on 30 March 2012, just two weeks later, (Redacted) quote: "... 'you

22 must remove ... (Redacted)... from dealing (Redacted)

23 (Redacted).' He was asked to elaborate and he stated something

24 (Redacted)."

25 Below that, quote, "you must stop ... (Redacted)

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- 1 (Redacted)
- 2 Below that, quote, (Redacted)
- 3 (Redacted)."
- 4 And then over the page at 1100, he states, quote, (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 It continues, quote, that "He believed ..." that's (Redacted) believed "... that (Redacted)
- 8 (Redacted) ..." redacted or "... (Redacted)
- 9 (Redacted)
- 10 Do you know who (Redacted) is that he's talking about?
- 11 A. I don't know, your Honour.
- 12 Q. Did you discuss with (Redacted) a plan that you wanted (Redacted)
- 13 (Redacted)?
- 14 A. No, your Honour.
- 15 Q. Is there (Redacted) that (Redacted)?
- 16 A. No, your Honour.
- 17 Q. Is there a (Redacted) that you've expressed (Redacted)?
- 18 A. No, your Honour.
- 19 Q. Is it not true that in fact you and (Redacted) and (Redacted)
- 20 (Redacted)?
- 21 A. No at all, your Honour.
- 22 MR KHAN: Mr President, I would seek to exhibit those two documents. They've come
- 23 from the Prosecution.
- 24 THE WITNESS: Before I -- we -- you exhibit, your Honour, this case I came here, and I -- I
- 25 stated clear to the -- to the VWU and OTP and I cannot see that part where actually

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1 have -- because (Redacted). I have never (Redacted).

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 PRESIDING JUDGE EBOE-OSUJI: Well, we've heard you on the record. Mr Khan,
7 proceed.

8 MR KHAN: Mr President, I'm moving to another topic. Before I do that, I'd ask for those
9 two documents to be exhibited with the Court's leave. The provenance is the Prosecution's
10 office itself. It's that they relate to conversations. I'm seeking to exhibit them for the context
11 of the case. And, your Honours, in my respectful submission the Bench is well placed to
12 decide what if any weight is accorded to them. But there's clearly --

13 PRESIDING JUDGE EBOE-OSUJI: Context is -- what context is that, Mr Khan?

14 MR KHAN: Mr President, there is a link on the face of the Prosecution's own disclosure
15 (Redacted)

16 (Redacted). We have (Redacted). We have (Redacted) disclosure that his intention was to
17 (Redacted). We have (Redacted) in another redacted summary stating that

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 PRESIDING JUDGE EBOE-OSUJI: This is -- I'm trying to understand, Mr Khan. I'm not
22 trying to give you a hard time, but I'm trying to understand the correctness of using this
23 document in the cross-examination of this witness to the point of putting it on record. Let
24 me -- so help me to understand.

25 Here we have what -- looking for example at the entry indicated for 30 March 2012, "(Redacted)

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1 stated," and we have bullet points of what (Redacted) stated, the last bullet point of which is,
2 quote, (Redacted) and
3 so on and so forth, unquote.

4 So we have (Redacted) saying that. Why should it be something that -- of the material that should
5 be admitted against this witness's testimony, as part of this witness's testimony?

6 MR KHAN: Mr President, in that case I can seek to -- with the Court's leave to have them
7 MFI'd, but of course we're limited to the information that we're given summaries of. And
8 what we thought was relevant is the evidence of the Prosecution, it's their Witness (Redacted), they
9 say is (Redacted).

10 (Redacted), according to their own evidence, intended to (Redacted) and (Redacted), who
11 was implicated in the attack against (Redacted), is also implicating (Redacted) in that attack. And,
12 your Honour, we say it provides evidence of -- and why was (Redacted)
13 (Redacted)? From the disclosure it's because they were not -- because of (Redacted)
14 (Redacted). So it shows the lengths, we say, that
15 (Redacted).

16 PRESIDING JUDGE EBOE-OSUJI: But what I'm saying here is we have Witness 658 on the
17 stand. Why do we have to use this document and introduce it as evidence that goes to his
18 own credibility. That's what I'm trying to understand.

19 MR KHAN: Yes, Mr President. In that case I think I will stand by the guidance of the
20 Bench and I will simply ask for those two documents --

21 PRESIDING JUDGE EBOE-OSUJI: It's not guidance. I asked you a question so I could
22 understand.

23 MR KHAN: Your Honour, in my respectful submission, the disclosure provided by the
24 Prosecution relating to their own witnesses, the question of authenticity doesn't arise. The
25 provenance doesn't arise. It's simply a matter of weight to give --

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- 1 PRESIDING JUDGE EBOE-OSUJI: I could see that -- if you had Witness (Redacted) on the stand, I
2 can see how one can -- this document may well have a different value, but for this witness?
- 3 MR KHAN: Mr President, I take the point, and I don't have a convincing answer to that
4 particular observation and so I'd ask for them just to be MFI'd and withdraw the request to
5 have them --
- 6 PRESIDING JUDGE EBOE-OSUJI: The document --
- 7 MR KHAN: -- exhibited.
- 8 PRESIDING JUDGE EBOE-OSUJI: -- will be MFI'd.
- 9 MR KHAN: Thank you.
- 10 THE COURT OFFICER: The document KEN-OTP-0139-0546 will bear the number
11 MFI-T-D09-00326.
- 12 The document KEN-OTP-0090-1099_R02 will bear the number MFI-T-D09-00327.
- 13 Both documents are confidential.
- 14 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 15 Mr Khan, proceed.
- 16 MR KHAN: I'd ask for a picture to be put on the screen just for inside the courtroom. It's at
17 tab 176, KEN-D09-0043-0438. It is in the second Defence binder. If that could be put on the
18 screen, I would be grateful.
- 19 Q. Witness, can you see that photograph?
- 20 A. Yes, your Honour.
- 21 Q. And if it could be moved, please, to the right-hand side a little bit so that the gentleman
22 on the left can appear on the screen. Witness, can you see all three people on that screen?
- 23 A. Yes, your Honour.
- 24 Q. Yes. So can you see yourself?
- 25 A. I can see.

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- 1 Q. Where are you sitting, sir?
- 2 A. I don't know this place. I can't remember.
- 3 Q. I'm sorry, is that you in the dark navy suit?
- 4 A. Yes. I can -- I -- I don't know if it is suit.
- 5 Q. Sorry. Sorry. On the right-hand side, on the extreme right-hand side in the dark navy
- 6 suit with a blue shirt and tie that's (Redacted), isn't it?
- 7 A. Yes, he is.
- 8 Q. Then in the middle, in a brown or grey, perhaps a grey shirt and grey jacket, in the
- 9 middle of the photograph, is (Redacted); is that right?
- 10 A. Yes, he is.
- 11 Q. And then with hands held together in the -- on the extreme left of the screen in a
- 12 light-looking jacket is yourself; is that right?
- 13 A. Yes, your Honour.
- 14 Q. And that's, do you remember having that photograph taken when you were at the
- 15 (Redacted) in (Redacted) perhaps in 2005?
- 16 A. I can't remember the function, but I can remember this -- this picture I don't -- I can't
- 17 remember very well, but I can know that it is somewhere.
- 18 MR KHAN: Yes. Mr President, I'd ask that to be given an exhibit number, please.
- 19 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia?
- 20 MR GARCIA: No objection, your Honour.
- 21 MS BUISMAN: We have no objection.
- 22 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next Ruto Defence exhibit.
- 23 THE COURT OFFICER: Confidential document KEN-D09-0043-0438 will bear the number
- 24 EVD-T-D09-00328.
- 25 MR KHAN: I'm grateful.

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1 And if another photograph could be put up, it's at tab 175, KEN-D09-0043-0437.

2 Q. Witness, while it's being done, it's a photograph we say of you, and (Redacted) and
3 (Redacted) taken at around the time of (Redacted) in 2008 at the time of (Redacted)
4 (Redacted). So if you could have a look at that and let me know if you can confirm you're
5 in it and if you can confirm that it was taken then.

6 A. (Redacted)

7 Q. Just pause for a moment. I was using the time and I'll put the question again, sir. So
8 can you see that photograph?

9 A. I can see.

10 Q. And you're on the extreme left of the photograph, correct?

11 A. Yes. Yes, your Honour.

12 Q. Mr (Redacted) again in the middle?

13 A. Yes, your Honour.

14 Q. Mr (Redacted) on the right-hand side --

15 A. Yes, your Honour.

16 Q. -- with the red-striped pocket handkerchief?

17 A. Yes, your Honour.

18 Q. Right. And do you remember that photograph was taken in 2008?

19 A. I can't remember the date, but I remember this photograph. It was different for other
20 meetings. I don't know what.

21 Q. Yes. And in what year was it taken?

22 A. I can't remember, your Honour.

23 Q. All right. But at around the time (Redacted) was doing its work or not?

24 A. But it's nothing to do with (Redacted).

25 Q. Yes. I can accept it's nothing to do with the (Redacted).

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- 1 A. You know, I have been --
- 2 Q. It -- it was taken --
- 3 A. I have been coming --
- 4 PRESIDING JUDGE EBOE-OSUJI: Witness, wait, wait, wait. Remember the five-seconds
- 5 pause.
- 6 Mr Khan, can you finish.
- 7 MR KHAN: Yes, I'm grateful.
- 8 Q. Witness, I accept it is nothing to do with (Redacted), but can you remember it
- 9 was taken in Nairobi?
- 10 A. Yes, I have been in Nairobi all the times.
- 11 MR KHAN: Okay, thank you. And I'll move on.
- 12 Mr President, if this can also be exhibited please.
- 13 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia?
- 14 MR GARCIA: No objection.
- 15 MS BUISMAN: No objection.
- 16 PRESIDING JUDGE EBOE-OSUJI: Admitted as the next Ruto Defence exhibit.
- 17 THE COURT OFFICER: The confidential document KEN-D09-0043-0437_R01 will bear the
- 18 number EVD-T-D09-00329.
- 19 MR KHAN:
- 20 Q. And, Witness, I'm just going to ask you some questions.
- 21 And Mr President, I'm going to rely upon -- base it upon tab 109 of the Defence bundle. It's
- 22 KEN-OTP-0105-0039, tab 109.
- 23 Q. And, Witness, I'm just going to read something to you and then -- I'm going to read
- 24 something to you and then ask you a question. Witness, it's said here that KEN-OTP -- let
- 25 me put it in simple terms. It says here - Mr President, it's page 0040 - that (Redacted) "...

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1 explains also that KEN-OTP-WWWW-(Redacted) (KEN-OTP-WWWW-(Redacted)) and
2 (Redacted) (KEN-OTP-WWWW-(Redacted)) used at one point to (Redacted)
3 (Redacted). This (Redacted)
4 (Redacted)."

5 And this is what (Redacted) told the Prosecution in July 2010. You knew about
6 that, didn't you?

7 A. Am I among the -- this list because I cannot see myself?

8 PRESIDING JUDGE EBOE-OSUJI: What are you asking him what he knows?

9 MR KHAN: Yes.

10 Q. Witness, you're aware that (Redacted) used to receive
11 (Redacted)?

12 A. Perfectly I cannot and I've never heard about it, your Honour.

13 Q. You've never of that. It's news to you?

14 A. It's news to me. (Redacted)
15 (Redacted)

16 MR KHAN: Right.

17 Mr President, I would then go to tab 110 which is KEN-OTP-0012-0745. Once again it's a
18 Prosecution disclosure and it's dated Monday, April the 12th, 2010, and it's an email from
19 (Redacted) to (Redacted) a of the OTP and I'm reading the second main paragraph in
20 the document starting at number 2.

21 Q. And, Mr Witness, as you are reading this please understand that the
22 Prosecution have told us that number 2 is (Redacted). And I quote: "So
23 (Redacted) ...", quote. "... (Redacted)
24 (Redacted)
25 (Redacted).

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- 1 Most of his colleagues indicate that he is still (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 "Number 2..." that's (Redacted), quote "... (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 The next paragraph it says, quote, (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 You can see all of that, Witness?
- 18 A. I see.
- 19 Q. Yes. Are you aware in fact that's precisely what (Redacted) was doing?
- 20 MR GARCIA: Objection on relevance, your Honour.
- 21 MR KHAN: Mr President, I think -- I'm sure my learned friend by now knows the relevance
- 22 but, your Honours, I can't say more in the presence of the witness. But your Honours, I
- 23 talked earlier about the genesis of this case and how we say from the beginnings Mr Ruto was
- 24 implicated, not because he did anything wrong, but because of other interest, and a
- 25 convergence of interests both political and individuals who really didn't have any

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1 qualifications or jobs and were looking for a way out for economic betterment. And your
2 Honour, this is relevant to that very issue.

3 MR GARCIA: Your Honour, Mr Khan used the same basis for other questions before
4 regarding this same witness. And in the end of the day, I don't think a demonstration was
5 made of that before the Court and the documents in question were MFI'd. Once again, it's
6 the same basis. I don't see it. I mean, if Defence counsel can put all sorts of allegations, but
7 I don't see the direct relation to this witness. This witness came through to the OTP through
8 a certain process, that's already been explained by the witness, and (Redacted) does not
9 figure within this.

10 MR KHAN: Mr President, that's a matter for argument. But my learned friend stood up
11 and objected when I was talking about (Redacted). And in my respectful submission I
12 showed, although the Bench will decide the relevance, the link between (Redacted)
13 (Redacted), the Prosecution and the witness's appearance.

14 And your Honour, this is another aspect of it that he's really exceptionally important.
15 We've shown the (Redacted) aspect. And, your Honour, this bit shows the involvement
16 of (Redacted) in paying witnesses and having witnesses work
17 as their informants.

18 So your Honours, I don't want to say more but the questioning clearly in our respectful
19 submission is very relevant.

20 PRESIDING JUDGE EBOE-OSUJI: You can have limited leeway. Let's not again -- let's see
21 where you are going with this. Proceed for now.

22 MR KHAN: Mr President, while that's being done, I'd ask to MFI the last two documents
23 that I've put to the witness; so KEN-OTP-0105-0039 and then the second document 0112-0745
24 to be MFI'd please.

25 PRESIDING JUDGE EBOE-OSUJI: They will be marked as MFI.

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1 MR KHAN: And Mr President --

2 THE COURT OFFICER: The document KEN-OTP-0112-0745 will bear the number

3 MFI-T-D09-00330.

4 The document KEN-OTP-0105-0039 will bear the number MFI-T-D09-00331.

5 Both documents are confidential.

6 MR KHAN: I'm grateful.

7 And I'm reading now KEN-OTP-0103-3162 at tab 107. It's relating to an investigator's report

8 relating to a meeting on 21 July 2010. It gives the participants at that meeting, (Redacted)

9 (Redacted) and individuals including (Redacted) and others.

10 And, Mr President, I'll go straight over the page to page 3163 and it said, and I quote:

11 "At the time, there were leaders heading each group of 3 to 4 witnesses. Then, (Redacted)

12 (Redacted) was their team leader in a group made up of (Redacted) himself ..." it continues "...

13 (Redacted) ..." -- (Redacted) which is (Redacted) ... and (Redacted),

14 (Redacted) ... At one point, this programme was discontinued by ... (Redacted) on the basis they

15 disrespected security rules and restrictions such as use of phones, contacts and movement

16 outside restricted areas."

17 Witness, you were one of the three to four witnesses that's mentioned here, aren't

18 you?

19 A. I have no -- I'm not aware about it, because this one is something dealing with OTP,

20 (Redacted) and I have never been connected with that such a kind, your Honour.

21 Q. Not mentioned but one of the three to four witnesses referred to.

22 And the next paragraph it goes that (Redacted), quote: "... explains that

23 after the discontinuation of the programme by the (Redacted) introduced

24 them to (Redacted)."

25 (Redacted) "As a result of this, (Redacted) asked both the (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Are you aware of that?

6 A. I'm not aware, your Honour, because I don't know any official even (Redacted) and (Redacted)
7 ever.

8 Q. So Witness, have you ever met Mr (Redacted)?

9 A. I've never meet him even one day, your Honour.

10 Q. Have you met -- ever met (Redacted)?

11 A. I've never met him even one day, your Honour.

12 Q. Have you ever met (Redacted)?

13 A. I don't know even her. Maybe (Redacted) I can know because of his status in -- in media or
14 whatever, but (Redacted), I don't know her.

15 Q. So this whole issue of these people being (Redacted) and working with (Redacted)
16 and getting paid by (Redacted) and others, you know nothing about?

17 A. I know nothing because I was not part of it, your Honour.

18 Q. Yes, okay. We'll move on.

19 Witness, I want you to look at another document and it's at tab 120. And you told the
20 Court -- and it can be put on the screen, KEN-D09-0043-0260.

21 PRESIDING JUDGE EBOE-OSUJI: Do we remain in private --

22 MR KHAN: Yes.

23 PRESIDING JUDGE EBOE-OSUJI: -- session?

24 MR KHAN: Yes, please, Mr President.

25 Q. And at 1 -- tab 120, 0260, yes, you told the Court yesterday or the day before that you

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1 had --

2 PRESIDING JUDGE EBOE-OSUJI: 0266 or 0260?

3 MR KHAN: 026 -- sorry, one moment.

4 PRESIDING JUDGE EBOE-OSUJI: What is the full reference? I do have 0266 at tab 120,
5 your second --

6 MR KHAN: Yes, I'm grateful.

7 PRESIDING JUDGE EBOE-OSUJI: Your second bundle.

8 MR KHAN: Yes, I'm grateful. And thank you for the time. Mr President, if you could go
9 to tab 118 in fact. Yes, the document KEN-D09-0043-0260, if that can be put on the screen for
10 the witness.

11 Q. Now, Witness, you told the Court that your (Redacted) account is (Redacted), didn't
12 you?

13 A. Yes, your Honour.

14 Q. So I want you to have a look at this, if it can be made enlarged actually.

15 And it's a post by (Redacted) dated April the 3rd, 2013 at 9.55 a.m., and it's a response, it's
16 a comment on an article of (Redacted). And you say this and I
17 quote:

18 (Redacted)

19 (Redacted)

20 So, Witness, you see the first part. (Redacted) can you see that?

21 A. I don't know what is kind of a -- these things, your Honour.

22 Q. Yes. You posted this, didn't you?

23 A. Yes, depending of what -- what I could -- what I could have see in the -- the other side I
24 could not confirm this, your Honour.

25 Q. Yes. But you've confirmed you posted it and so what I want to know is when you say,

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- 1 (Redacted)
- 2 (Redacted)? Is that what you
- 3 mean? "... these witnesses were (Redacted) before icc who paid..." "...
- 4 before icc ..."
- 5 Can you see that?
- 6 A. I see that but --
- 7 Q. Yes. Are you actually saying, your comment to this is: (Redacted)
- 8 (Redacted)
- 9 Is that what you're saying actually?
- 10 A. I cannot remember what I was really referring about it, but if it is these things about
- 11 (Redacted) or whatever is that when (Redacted) was (Redacted), he was talking about (Redacted), but I
- 12 don't know much about it.
- 13 Q. And so this other sentence of this post of yours, the other comment at this post of yours
- 14 which is --
- 15 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, why don't you do this, show the witness what
- 16 he was -- what the supposed response is in relation to.
- 17 MR KHAN: Yes.
- 18 PRESIDING JUDGE EBOE-OSUJI: There is the -- seems to be a posting that started the
- 19 thread. Let's begin with that, be fair to the witness, let him see it, and then whether that can
- 20 refresh his memory to tell us what it is he's saying if that is him.
- 21 MR KHAN: I think, and I'll be corrected on (Redacted) usage, but I think I'm right.
- 22 Q. At the top, Witness, can you see (Redacted)? And then it
- 23 says:
- 24 (Redacted)
- 25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 Can you see that?

5 A. Yes.

6 Q. All right. And then the (Redacted) comment that is on this page that I can see is (Redacted). Can
7 you see that?

8 A. Yes, your Honour.

9 Q. And it is (Redacted) Can you see that?

10 A. Mm-hmm.

11 Q. And that's in reference to the allegation (Redacted).

12 Can you see that?

13 A. Yes, your Honour.

14 Q. And you're saying, are you not, that (Redacted)

15 (Redacted) Isn't that what you're

16 saying?

17 A. Maybe to start with, but this was not because I knew about it --

18 Q. Yes.

19 A. -- but because while we are (Redacted) sometimes say I was having some friendship
20 with (Redacted) and so that's could -- what I could -- but I don't know from far behind.

21 Q. Yes. And so what you're saying here is in your post, (Redacted),

22 (Redacted) and (Redacted) --

23 A. But it is not information that I have originally.

24 Q. Yes, but something you heard about you say?

25 A. Just as something, but I don't have real information that while even (Redacted) I was

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1 never know about this.

2 Q. And then you say this, that they, (Redacted), they should be prosecuted for
3 fixing innocent if it's true somebody was paid to do so. Is that what you're trying to say, that
4 if anybody's fixed anybody, if it's true somebody is being paid, (Redacted) and (Redacted)
5 should be prosecuted for fixing innocents if it's true somebody paid to do so? Is that what
6 you are trying to --

7 A. No.

8 Q. -- convey in that post?

9 A. I was just meaning if these witnesses who were claiming they were paid to fix
10 somebody should be prosecuted, not really (Redacted), whatever. I was meaning maybe
11 witness who were just at this particular -- at that certain stage could need for themselves that
12 they were paid to fix somebody innocent.

13 Q. So you accept you heard about a relationship between (Redacted) and (Redacted) and
14 (Redacted)? You heard about that with him?

15 A. I just can confirm that he was talking about (Redacted) not (Redacted) really.

16 Q. Yes.

17 A. But I don't confirm that I have original reasons to understand --

18 Q. Yes.

19 A. -- how was their relationship, how were they working, I don't know.

20 Q. Yes. Now, I'll go to tab 122 of the Defence bundle and it's KEN-D09-0043-0471 and it's
21 the Internet version of Capital FM. The first page is headed (Redacted)
22 (Redacted).

23 And if you turn the page and look at page 3 in the bundle, which is --

24 PRESIDING JUDGE EBOE-OSUJI: I think witness is in singular there, isn't it?

25 MR KHAN: Yes. "(Redacted) ..." I'm grateful "... (Redacted) ..." And if

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1 we turn to page 3 of that which is 0473, and it can be put on the screen, there are several posts
2 in relation to that article. The Court has got that.

3 Q. What I'm interested in, Witness, is a post (Redacted), and it says this, quote:

4 (Redacted)

5 (Redacted)

6 (Redacted) is that right?

7 A. Yes, your Honour.

8 Q. (Redacted)

9 (Redacted) Can you see that?

10 A. Yes, your Honour.

11 Q. Yes. And in fact, you were visiting these locations where these witnesses like

12 (Redacted) and others were being housed in Kenya, weren't you?

13 A. No, your Honour. I've never visit (Redacted). I've never visit -- maybe police during

14 whatever, but (Redacted) okay.

15 Q. Yes.

16 A. But I was not referring myself here. I was regarding somebody who have admitted

17 that he was paid.

18 Q. You see, Witness, what I'm saying is you visited -- you visited the places these witnesses

19 were staying knowing that the rent -- their rent was being paid for by (Redacted)?

20 A. I've never been live in a place of where (Redacted) was paying.

21 Q. Yes.

22 A. I don't know if the (Redacted) were paid by (Redacted), then I don't know if

23 it is.

24 Q. Yes. Well, Mr President, I'll go to tab 199, which is - we're in private session - a copy of

25 your (Redacted). It's KEN-OTP-0145-0138, and you say this and I

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1 quote:
2 (Redacted) -- sorry, you say this. There's a conversation about ICC proceedings,
3 which is relevant, and then quote:
4 "(Redacted) talk about what they have seen in the news about ICC proceedings.
5 (Redacted) says (Redacted) and (Redacted) were called to give evidence. (Redacted) pictures that he
6 took with (Redacted)
7 were displayed. (Redacted) said that these are the pictures (Redacted) used to get
8 money and that the evidence presented suggests that the speakers received money,
9 but that is not true. (Redacted) says (Redacted) got 20,000 US Dollars (Redacted)
10 (Redacted) for protection. They say that the pictures show an office that was burnt
11 down; those are the pictures (Redacted) used to get money. They say that (Redacted)
12 (Redacted) and (Redacted) were also mentioned in the proceedings. (Redacted) says that the
13 proceedings accuse them of falsely claiming that they are in danger. But (Redacted)
14 (Redacted) believe that they are in danger. They say that there was ... money received
15 by people (Redacted) and that (Redacted) and (Redacted) were
16 distributing the money. They say that many people are in a fix because they
17 received a lot of money from both sides. They say that (Redacted) has been helping the
18 prosecution since 2010. (Redacted) says that the lady from Turbo says (Redacted)
19 helped witnesses and ... she is privy to a lot of information, but nobody knows who
20 she is.
21 (Redacted) discuss how this lady knows a lot of things that happened and, in
22 particular, they wonder how she knows that between 2009 and 2010 (Redacted) was
23 (Redacted) agent. They say that (Redacted) was also mentioned in the proceedings. (Redacted)
24 (Redacted) were also implied to have benefited in some way."
25 Can you see that?

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1 A. I can see.

2 Q. Now, Witness, (Redacted), did you, with (Redacted) about the role of

3 (Redacted) and (Redacted) and (Redacted)?

4 A. Who is it saying that? If they say that also (Redacted) and (Redacted) were implicated, that one
5 doesn't mean that I know.

6 Q. (Redacted)

7 A. No, if it (Redacted) I didn't say that I know. It says "implicated." I didn't say that I
8 know what they were.

9 Q. You see, Witness, I've shown you (Redacted) where you talk about (Redacted) and
10 (Redacted) and about, if anybody is being fixed, it's the (Redacted) and (Redacted) and (Redacted)
11 that should face justice. And here there's a (Redacted) again where you're talking
12 about (Redacted) and (Redacted) and implying that you've benefited, and that you wonder
13 (Redacted). Doesn't this
14 suggest in fact you knew full well that (Redacted)
15 (Redacted)?

16 A. No, I've never been with that -- in that list, your Honour.

17 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, 25 more minutes.

18 MR KHAN:

19 Q. You know that (Redacted) was also an (Redacted), don't you?

20 A. I never know, your Honour. (Redacted)
21 (Redacted)

22 Q. You used to receive money from (Redacted), didn't you?

23 A. Who, me?

24 Q. You received money from (Redacted)?

25 A. I have never received any money from him.

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1 Q. Never, okay.

2 A. But if I receive it's during (Redacted) and whatever, but he's never giving
3 me money just to have to state it's for this.

4 Q. Yes. And in fact you've been to (Redacted), haven't you?

5 A. No, your Honour.

6 Q. And when you gave your statement to (Redacted), when you went to (Redacted) to give your
7 statement to (Redacted) were in (Redacted), weren't they?

8 A. I don't know, but I was alone in the (Redacted) and it was an afternoon. I never meet with
9 them. If they was there, yes, (Redacted) -- always we have been going to (Redacted) all the time,
10 some time.

11 Q. And you used to stay with (Redacted) at his home in -- at his place in (Redacted), didn't
12 you?

13 A. That was a time when we have some (Redacted) in the site of (Redacted) and
14 stuff.

15 Q. Yes.

16 A. That is nothing to do with any -- this case, your Honour.

17 Q. Yes. And that was between August 2008 and April 2009 when you were doing
18 business with him; is that right?

19 A. That is the time, yes.

20 Q. Yes.

21 A. Yeah, I can remember, but that is nothing to do with this case, your Honour.

22 Q. And you received money from (Redacted) in 2009, didn't you?

23 A. For what, your Honour? I don't remember for what. I can (Redacted) could not give me
24 any money. If he give me any money it's as a friend, but he has never give me money for
25 any purpose, your Honour.

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1 Q. Well, for example, I'll go to tab 177 and at page 0517. It can be put on the screen,
2 briefly. And under the -- just one moment. Under the tab's page 0517, for example - and it
3 can be enlarged a little bit on the screen, please - you'll see that on 8 March 2009 you received
4 1,000 shillings from (Redacted). That's right, isn't it?

5 A. Yes, I've said even I've received any money from (Redacted) because he was somebody I
6 know, that was nothing to do with this case, your Honour.

7 Q. Yes. And if you look at the top of the page while we're there, so I can move on quickly,
8 30 March you also received money from (Redacted)?

9 A. 30 March which year?

10 Q. 30 March 2009?

11 A. Yes.

12 Q. Do you remember receiving that money, 1,000 shillings?

13 A. I cannot remember because (Redacted) was -- we have been together some time. Yes, your
14 Honour.

15 Q. Yes, you've been together. In fact he (Redacted)
16 (Redacted), didn't he?

17 A. That is nothing to do with politics, your Honour. This -- it was just a friend and I know
18 him.

19 Q. Yes.

20 A. He was (Redacted).

21 Q. Yes, but you accept you received that money?

22 A. I cannot refuse that I get any money (Redacted), your Honour.

23 Q. And if we go to 0508, you received 5,100 shillings from (Redacted) on 3
24 September 2009. Can you see that? So you're receiving money from him, weren't you?

25 A. 5,000? When? I cannot see that.

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- 1 Q. Look at 3 September 2009, at 11.40, 5,100 shillings. Can you see that?
- 2 A. I can see that.
- 3 Q. Yes.
- 4 A. From -- this is from --
- 5 Q. From (Redacted).
- 6 A. No, it's not. Is it from -- from (Redacted), yes, I can see.
- 7 Q. Yes. So that's correct, isn't it?
- 8 A. Yes, your Honour.
- 9 Q. Yes. And so you remember receiving that money?
- 10 A. I cannot remember.
- 11 Q. Yes. And you received a lot of money from -- on many occasions from
- 12 (Redacted), didn't you?
- 13 A. No, we have been working -- I've been working in the -- in his -- so (Redacted) is my close
- 14 friends. He can (indiscernible) me. I cannot even -- even the money from this one, I can
- 15 confirm that he has been even giving me any money.
- 16 Q. Yes, so --
- 17 A. Even -- (Redacted), if you go even to Ruto's home you can get 500, 1,000. That
- 18 doesn't mean for anything, your Honour.
- 19 Q. So --
- 20 A. This is just as a friend.
- 21 Q. Yes. So as a friend, and there's numerous examples --
- 22 A. Even one -- one --
- 23 Q. Witness, sorry. Allow me to finish, please.
- 24 A. Even --
- 25 Q. Witness, please allow me to finish. For example, you received from (Redacted)

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- 1 6,500 shillings on 22 August 2009, is that about right?
- 2 A. I think that --
- 3 Q. Page 0510?
- 4 A. I think that was during the time when I was in working for his --
- 5 Q. Yes.
- 6 A. For his company.
- 7 Q. Yes. And I think --
- 8 A. It's not -- that was not even my money. It was for his workers.
- 9 Q. And you weren't working for him for example at -- if we go to page 0523, you received
- 10 2,000 shillings from (Redacted) on 4 August 2008. Do you remember that?
- 11 A. I'm telling you even the money I've been not even recorded here.
- 12 Q. Yes.
- 13 A. (Redacted), he's been my friend.
- 14 Q. Yes.
- 15 A. Even (Redacted), he has been giving me something some time.
- 16 Q. Yes.
- 17 A. So it's not an issue here.
- 18 Q. Yes. And at 0523 you've received 2,000 shillings from (Redacted)?
- 19 A. I cannot -- I am not objecting to (Redacted) -- getting money from (Redacted), your Honour. He
- 20 has been close friend of mine.
- 21 Q. And, for example, again (Redacted) you've accepted. Now tell me, this (Redacted)
- 22 (Redacted) we see for example at page 0503, that's a relation of (Redacted), isn't it?
- 23 A. They are brothers.
- 24 Q. Yes, but --
- 25 A. That's why he was the one who was sending me money while I was in (Redacted).

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- 1 Q. And, for example, at page 0501 we see 26,200 shillings received from (Redacted)?
- 2 A. That is for the work in (Redacted), your Honour. There's nobody hold the
- 3 records.
- 4 Q. Yes.
- 5 A. This is some money I was using for his work I was working for.
- 6 Q. Yes. And --
- 7 A. So I was giving (Redacted).
- 8 Q. Yes. But these entries we've got in August, September and July from (Redacted),
- 9 that's money received in 2008. That's money received within the period of the (Redacted)
- 10 (Redacted), isn't it?
- 11 A. Yes, and it (Redacted), your Honour.
- 12 Q. Do you remember staying at (Redacted)?
- 13 A. Where?
- 14 Q. (Redacted) in (Redacted)?
- 15 A. Which side?
- 16 Q. Do you remember staying in (Redacted)?
- 17 PRESIDING JUDGE EBOE-OSUJI: Can you spell?
- 18 MR KHAN: (Redacted).
- 19 THE WITNESS: I cannot remember, but if it during that time I was wanted to give my
- 20 testimony, I stayed there about two days.
- 21 MR KHAN:
- 22 Q. Yes. And when you stayed there, in fact also (Redacted), Mr (Redacted)
- 23 (Redacted) and Mr (Redacted) were also housed there, weren't they?
- 24 A. I didn't see them.
- 25 Q. Yes.

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1 A. I didn't see them. Maybe they were -- I understand they were there previously, but I
2 didn't see them.

3 Q. Yes. And in fact you also went to (Redacted) in (Redacted)
4 (Redacted) in (Redacted); isn't that right?

5 A. Not right. (Redacted) is a -- but that's a -- where you can sleep. I don't think it is
6 one -- it was paid by anybody.

7 Q. You stayed there, didn't you?

8 A. I don't remember that. That is where we are being is paying for ourself. It's not
9 something you cannot -- I sleep several hotel in (Redacted).

10 Q. Yes. And sometimes in fact, Witness, you used to share a room with sometimes
11 (Redacted), sometimes (Redacted), didn't you, in that hotel?

12 A. (Redacted)

13 (Redacted)

14 (Redacted)

15 Q. Please --

16 A. And this testimony you are using against me I don't know them, because they are
17 having their personal reasons why they are using these words.

18 Q. Witness, please don't trouble yourself to speculate too much.

19 A. No, I'm speculating --

20 Q. Witness -- sorry, Witness --

21 A. -- because (Redacted), your Honour.

22 Q. Yes. Witness, my question was quite straightforward. You stayed and shared rooms
23 in that period in (Redacted)

24 (Redacted); isn't that right?

25 A. No.

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1 Q. And with (Redacted); isn't that right?

2 A. No.

3 MR KHAN: Mr President, I'd ask to then read a letter. It's KEN-OTP-0036-0068, and it is in
4 the Prosecution bundle at tab 67. Yes, I'll read it. It's a letter from (Redacted)

5 (Redacted)

6 (Redacted).

7 1. (Redacted) - ID number (Redacted) ..."

8 And, Witness, it says and I quote:

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 And it goes on and so forth.

22 Witness, you're aware, aren't you, that (Redacted) referred (Redacted)

23 (Redacted), that he wrote about you to the (Redacted)?

24 A. Yes, your Honour.

25 Q. And in fact, it's (Redacted) that referred you and (Redacted) to (Redacted);

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1 isn't that right?

2 A. Not really, your Honour.

3 Q. Not really but true in what respect, Witness?

4 A. It's not true because I didn't meet (Redacted) anyway.

5 Q. Yes. Witness, you remember going -- and, your Honour, I'm referring to tab 127 of the
6 Defence binder.

7 Witness, you remember a time when you met with the chief investigator (Redacted)

8 (Redacted) - the person in charge of the Kenya situation (Redacted) - along with (Redacted)

9 (Redacted) and your lawyer. Do you remember, (Redacted)?

10 A. When?

11 Q. You remember meeting them -- well, do you remember -- how many times have you
12 met along with (Redacted), (Redacted) and the lawyer?

13 A. I can't remember the date but it was time we met because of -- I think it was the time to
14 disclose our -- our testimony to the Defence, and he was going to inform us because -- in front
15 of our lawyer.

16 MR KHAN: Yes, and I think I have given the ERN number, it is KEN-OTP-0104-0464.

17 Q. And is it the case in fact you both, both you two witnesses, both you two Prosecution
18 witnesses, sat together in the same room with the chief Prosecution investigator, and you
19 were basically talking about the guarantees that you wanted regarding your security and your
20 welfare, your families, payments for their upkeep? That's what you were discussing, wasn't
21 it?

22 A. I cannot answer that, your Honour.

23 Q. Well, what I am putting to you is there you are, a Prosecution witness, and you're in the
24 same room with another Prosecution witness and you're there with the chief investigator in
25 this case with a lawyer and you're basically negotiating about what your terms are; is that

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1 right?

2 A. I cannot answer that, your Honour.

3 Q. Why can't you?

4 A. I cannot answer that.

5 Q. Why can't you answer that, Witness?

6 PRESIDING JUDGE EBOE-OSUJI: One second.

7 Witness, what's the difficulty with answering that question?

8 THE WITNESS: Because I think in the position the lawyer or even professor could answer
9 that himself and the reason why we were there. And if even the investigator could come to
10 visit us that is -- could be in the position, your Honour, to answer that.

11 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, what is your question? What is the point?

12 Are you interested in legal advice or you're interested in the presence?

13 MR KHAN: No.

14 Q. Yes, Mr Witness, I'm not interested in the legal advice. I'm interested in what was
15 going on there. You've got two Prosecution witnesses in the same room, you and (Redacted)
16 (Redacted).

17 PRESIDING JUDGE EBOE-OSUJI: So your point is that this witness was in the same room
18 with another Prosecution witness?

19 MR KHAN: Yes.

20 Q. And you're basically setting out your terms --

21 PRESIDING JUDGE EBOE-OSUJI: Let's take it one at a time because we -- before we --

22 MR KHAN: Indeed.

23 Q. Mr Witness --

24 PRESIDING JUDGE EBOE-OSUJI: -- get twisted up.

25 MR KHAN: I'm grateful, Mr President.

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1 Q. Mr Witness, you agree you were in the same room with (Redacted)?

2 PRESIDING JUDGE EBOE-OSUJI: Witness, you can answer that.

3 THE WITNESS: I can agree.

4 MR KHAN:

5 Q. On 4 January of -- in January or so of last year. And you're there with (Redacted)

6 (Redacted), correct? He's also there?

7 A. I cannot remember, but actually it was about to disclose our names to the Defence, and
8 that was the reason why we were there, your Honour.

9 Q. Yes. And, in fact, you had a long stream of communication with the Prosecution and
10 the VWU saying you would only give evidence (Redacted); is
11 that right?

12 A. I cannot talk about (Redacted), your Honour. That is -- (Redacted).

13 PRESIDING JUDGE EBOE-OSUJI: Witness, you can answer the question whether you said
14 to the Prosecution that you will only give evidence (Redacted). You can
15 answer that question, whether that's what happened.

16 THE WITNESS: Base -- that was only on basing of security of -- of my future, your Honour.
17 It doesn't matter, whatever, it was just to be sure of the future, whether it was given by
18 anybody, but just assurance, because actually you don't know, even by admission by the
19 Prosecutor, always saying that some other witness have been killed, so that is obviously to
20 give me a worry.

21 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, have you not covered this before?

22 MR KHAN: Mr President, no, not this issue of this meeting. What I'm -- we've seen
23 previously that the witness has put in numerous demands regarding (Redacted) and
24 also --

25 Q. Witness, it's correct, is it not, that you've also insistently said that your (Redacted)

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1 (Redacted) must be approved before you give evidence? You've also said that, haven't you?

2 A. No. I was saying that (Redacted) should be taken care of because (Redacted)

3 (Redacted)

4 (Redacted).

5 Q. And you're both there with mister -- with (Redacted), and you're both together

6 in the same room putting forward your security concerns and the guarantees you want for

7 your family, for your security, and those type of matters; isn't that right?

8 A. It is mainly on security, your Honour. And that is basically any right of any person,

9 even for Defence witness, or whatever, can have such a right at a particular time.

10 Q. Yes. And at page 0465, in fact particularly it's clear from the note at 0465, you wanted

11 guarantees regarding protection, welfare for the long term; isn't that right? Long term

12 benefits that you were interested in?

13 A. It is nothing like long term benefit, your Honour.

14 Q. Yes.

15 A. Even I am -- even if I -- I know how many benefit you can get even from (Redacted).

16 It's -- if -- if I -- if my security could not be given it could be good, your Honour, I could even

17 like (Redacted).

18 MR KHAN: Mr President, I've got just a few minutes left.

19 At tab 158. I'll read an investigator's report, dated 16 October -- filed on 16 October 2014,

20 KEN-OTP-0142-0126.

21 Q. And, Witness, you told the Prosecution this, that you, quote, "... complained about the

22 fact that..." your "... (Redacted)

23 (Redacted)

24 (Redacted)

25 And you stated that, quote -- you said that you had been told "... (Redacted)

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1 (Redacted)

2 And also at 0142-0128, just at tab 159, you say in your meeting with the Prosecution,

3 you -- and I'll read it. (Redacted), which is (Redacted):

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 So, Witness, all along, from the beginning of this case, what's been uppermost in your

19 mind has been to get some benefits, (Redacted), get (Redacted); hasn't

20 that been your motivating factor?

21 A. No, your Honour.

22 Q. And Witness, can I --

23 MR STEYNBERG: Your Honour, I beg your pardon to interrupt from the back-bench, but I

24 just want to clarify for the record that (Redacted) is in fact not (Redacted) but Anton Steynberg,

25 myself. I was at that meeting.

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1 MR KHAN: Mr President, the reason I also was a little bit confused, and I'm grateful as
2 always to my friend, it simply states at the beginning "Prepared by: (Redacted) ..." So I
3 stand corrected.

4 PRESIDING JUDGE EBOE-OSUJI: I can see the confusion --

5 MR KHAN: Yes, yes. I'm grateful.

6 PRESIDING JUDGE EBOE-OSUJI: -- and "Prepared by: (Redacted)..." on the top. Yes,
7 proceed.

8 MR KHAN: Yes, I'm grateful.

9 Q. So, Witness, that's your motivating factor, isn't it?

10 A. No, your Honour.

11 Q. As long as you get (Redacted) you're willing to do anything?

12 A. That is security, your Honour. It's nothing to do with getting whatever. Even if I
13 get -- I could (Redacted) I could be assured of that, your Honour.

14 Q. And, Witness, the Prosecution have told us that after you saw mister -- that after you
15 heard the ICC's press spokesman, Mr Fadi El Abdallah, say that people may be prosecuted for
16 Article 70 perjury, you decided finally, just on the eve of testimony, to admit that you lied to
17 the Prosecution four years ago; isn't that right? That's why you admitted that those parts
18 were untruths?

19 A. It is not true, your Honour. I've -- I've just -- you want me to accept things you say.

20 Q. Yes.

21 A. It's not -- I've already authenticated here that some of the information that I left, it's a -- I
22 get through source, your Honour.

23 Q. Yes.

24 A. And that is the -- to rely on that -- I have -- I -- when I was making this, I don't
25 remember even leading -- reading the article that you are referring. That is only you are

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1 reminding me, your Honour.

2 Q. Yes.

3 MR GARCIA: Your Honour, just -- just, for the record, I'd like to be sure of what Mr Khan
4 has asked there. I think he's putting to the witness that Mr Abdul has -- that the witness
5 would have decided to testify as a result of someone speaking, and that hasn't been captured
6 and I'm not sure where that information comes from.

7 MR KHAN: Mr President, I'll move forward. There's Prosecution disclosure that we can
8 give the reference a little bit later, but there's Prosecution disclosure that this witness stated to
9 the Prosecution that he heard Mr Abdallah state that people could be prosecuted for Article 70.
10 I'll give the reference later, but I'll move on.

11 Q. See, Witness, what I'm putting to you is that you're trying to have your cake and eat it?

12 A. No.

13 Q. You're concerned -- let me just put it, Witness: You decided to admit you told some
14 lies when you met the Prosecution last week, but you don't want to come clean and tell the
15 full truth because you're concerned that (Redacted)
16 (Redacted); isn't that right?

17 A. That is not even, your Honour. Anything to do with (Redacted)
18 (Redacted). It is not related to this, your Honour.

19 Q. And you mentioned Mr Ruto in your (Redacted), did you?

20 A. I cannot discuss that, your Honour. That is even -- I cannot answer that. I will stand
21 by that.

22 Q. And you mentioned in (Redacted)--

23 A. And --

24 Q. -- about your account regarding the post-election violence; is that right?

25 A. If -- that one you can apply that (Redacted), then he can tell

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1 you that. I will not answer that, your Honour.

2 Q. You refuse to answer that question; is that right?

3 A. I will not answer that, your Honour. It is -- it is touching on my personal future
4 security, your Honour.

5 MR KHAN: Mr President, I have no further questions.

6 PRESIDING JUDGE EBOE-OSUJI: Good, because that's where we were going to stop it.

7 Witness, that concludes the cross-examination of Mr Khan.

8 Mr Garcia, you say you have re-examination?

9 MR GARCIA: Yes, indeed, your Honour, I do. I imagine it will take --

10 PRESIDING JUDGE EBOE-OSUJI: You have 30 minutes. We're in private session.

11 MR GARCIA: Thank you, your Honour.

12 QUESTIONED BY MR GARCIA:

13 Q. Now, Mr Witness, during your cross-examination you mentioned an event, an incident
14 that happened with (Redacted). And you say, and I quote you, that a person called
15 (Redacted) and he was with (Redacted), that he confronted you, and that he was the one
16 who wanted to mess up with this.

17 Can you -- can you explain to the Court, just clarify what happened with (Redacted)
18 (Redacted). What was this incident about?

19 A. It was somewhere in (Redacted) around area of (Redacted).

20 PRESIDING JUDGE EBOE-OSUJI: Can you come closer to the microphone.

21 THE WITNESS: Around (Redacted). And then I was just entering the entrance of the
22 (Redacted) and (Redacted) was with some (Redacted). And then (Redacted) almost
23 grab me and tell me, (Redacted)
24 (Redacted) So he wanted to beat me up and then I was actually very threatened
25 by -- that that happened. And --

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1 Q. All right. Now I want to understand, when you say that he was with a group of
2 persons, (Redacted), he grabbed you, and then he said that (Redacted)
3 (Redacted), can you explain to the Court what he meant
4 by that? What did (Redacted) mean by that?

5 A. He was meaning actually this -- the -- the really -- maybe the (Redacted),
6 something to do with messing against him.

7 Q. What about the (Redacted)? Just take your time and explain that to us.
8 Remember the five seconds.

9 A. The (Redacted) is that maybe (Redacted)
10 (Redacted)

11 (Redacted), that is allegations that he was trying to -- to put on me.

12 MR KHAN: Mr President, can I just say for the record we don't have any disclosure from the
13 Prosecution regarding the (Redacted), testimony from this witness
14 (Redacted), nothing at all.

15 MR GARCIA:

16 Q. Now, Mr Witness, when you say that (Redacted) told you that he had -- that you
17 (Redacted), and this is your terms, (Redacted) who was he referring to?
18 Who is the "us"?

19 A. He was talking about him including Mheshimiwa Ruto.

20 PRESIDING JUDGE EBOE-OSUJI: Did he mention Mr Ruto by name on that occasion?

21 THE WITNESS: Yes, he was saying "Mheshimiwa. "

22 PRESIDING JUDGE EBOE-OSUJI: Okay.

23 MR GARCIA:

24 Q. Can you just tell us exactly what he said in relation to Mheshimiwa?

25 A. He was telling me that you (Redacted)-- but

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1 he was talking in -- he was so angry about that that particular moment.

2 Q. And you say that it was regarding the (Redacted). Can you
3 explain that further? Had you --

4 A. I cannot explain further because he didn't talk much because he was referring just only
5 that I have (Redacted).

6 Q. And were you injured during that incident?

7 A. Because he grabbed me on the back, but I didn't -- I was not injured, but I started
8 shouting immediately. And for the record even (Redacted). I
9 think these people, they have your -- (Redacted). I (Redacted)
10 (Redacted)

11 Q. What did he say?

12 A. Just not -- he tell me -- put me off. And (Redacted).

13 Q. (Redacted)

14 A. (Redacted) I cannot remember the number, but I remember the (Redacted)
15 who was -- (Redacted), if I can still
16 remember.

17 Q. Can you spell that name for us please?

18 A. It is (Redacted) and then I cannot remember another name, but (Redacted) I think
19 (Redacted)-- I don't know if it is (Redacted) or (Redacted), but (Redacted), yeah, (Redacted).

20 Q. Now you say that this incident happened in (Redacted). What was your status at
21 that point? What were you doing?

22 A. Actually I was already being threatened, and I was moving up and down, and I was
23 already in a few days, I was actually worried about it.

24 MR KHAN: Mr President, I do object. This has been asked and answered. The witness
25 has already said during this period his own sworn testimony is that he was already under a

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1 (Redacted).

2 MR GARCIA:

3 Q. Mr Witness, can you tell us who -- if (Redacted) were present when this occurred
4 with (Redacted)?

5 A. You say what?

6 Q. You mentioned that (Redacted) was with (Redacted). Were they present when this
7 incident happened?

8 A. They were present, but I don't think they'll accept what happened. But I cannot
9 remember their names, but I can remember one of them was from (Redacted) called (Redacted).

10 Q. Can you spell that for us, please?

11 A. (Redacted)

12 Q. And you say he's (Redacted)?

13 A. (Redacted), your Honour.

14 Q. Can you tell us the specific place he's (Redacted) from or he was at the time?

15 A. I can remember (Redacted).

16 Q. Now, this (Redacted), did it result in anything? What
17 happened with that?

18 A. No, your Honour. After that (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 Q. So what happened to (Redacted) in the end?

24 A. It --

25 MR KHAN: Mr President, can I just say I've sat while this re-examination is being conducted

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1 and it's correct that -- in fact in perhaps a non-responsive the witness went on this diversion,
2 but your Honours, even if it came out during cross-examination, what is the relevance in
3 relation to the case that we're facing, the meetings that have been alleged and the case that the
4 Prosecution have brought against Mr Ruto?

5 MR GARCIA: Your Honour, you have an allegation made by the witness that one of the
6 alleged (Redacted) is coming over to see him and stating that (Redacted)
7 (Redacted). Mr Ruto happens to be one of the co-accused here. So it's
8 extremely relevant.

9 MR KHAN: Mr President, can I also say about (Redacted)

10 PRESIDING JUDGE EBOE-OSUJI: One second, Mr Khan. You also had cross-examined
11 this witness quite extensively about witness protection issues. Your objection is overruled.

12 MR GARCIA:

13 Q. So what happened, Mr Witness, with (Redacted)?

14 A. (Redacted) need somebody whom we might be together and then I didn't go ahead
15 with it because I was not having anybody else because I was alone.

16 Q. I want to change the subject now, Mr Witness. I want to ask you just a couple of
17 questions on this Koitalel memorial event that occurred on 19 October 2005. Do you recall,
18 can you recall today how much time that lasted? How much time in all did the people speak
19 and what have you?

20 A. It was -- I cannot remember the time, but it was long time, your Honour.

21 MR KHAN: I'm sorry, Mr President, perhaps this can go in public.

22 MR GARCIA: Yes, it can, your Honour.

23 PRESIDING JUDGE EBOE-OSUJI: Open session.

24 (Open session at 3.40 p.m.)

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

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1 MR GARCIA:

2 Q. Mr Witness, can you recall how much time it lasted this whole Koitalel commemoration
3 or memorial event?

4 A. I think it was -- I can't remember exact time, but it started as early as in the morning all
5 through to later in the afternoon.

6 Q. How many hours approximately?

7 A. I can't remember, your Honour, but it can be four or five.

8 Q. Now, more specifically in your examination-in-chief, actually in your cross-examination,
9 you mentioned that Mr Ruto spoke during this memorial event. Do you recall now how
10 much time he spoke for approximately?

11 A. I can't remember, but it can be less than maybe 20 or 15, like that, your Honour.

12 Q. Are we speaking about minutes?

13 A. Yes, your Honour. I cannot remember exact time, your Honour.

14 Q. Now, I understand that you say that the event itself lasted approximately four hours.

15 How much time did the people speak for, the people that were there gathered there? Do you
16 remember the duration of that?

17 A. I cannot remember, your Honour. It was sometimes for entertainment.

18 Q. Just so the record can be clear, are you saying there was sometimes entertainment
19 between the speeches of the people?

20 A. No. People sing. There is this -- there was live band for -- from somebody, some
21 youths who were singing this Lene Emet. And they were singing, it was light band who
22 were singing in that way. That's why I was telling you Lene Emet, was singing Kimi Bek
23 Kwenet, not Lene Emet, Kimi Bek Kwenet, it was -- there was live band music about those
24 music that particular day.

25 MR GARCIA: Your Honour, I'd like to go into private session.

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1 PRESIDING JUDGE EBOE-OSUJI: Private session.

2 *(Private session at 3.43 p.m.) Reclassified as Open session

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

4 MR GARCIA:

5 Q. Now, Mr Witness, I need to touch upon one other subject actually. This is -- and
6 afterwards I'll have another series of questions, but just one subject in particular, and it's
7 regarding this testimony that you told the Defence in cross-examination about these meetings
8 that you didn't attend on 2 September 2007 and 2 November 2007.

9 Now, when Mr Khan was asking you questions in regards to the meeting of 2
10 September 2007, now, we all understand that you didn't attend that meeting, you
11 mentioned on a couple of times, "I've already declared that I get from a source."

12 Now, I'd like you to explain to us what you mean by that. Just take your time and
13 explain what do you mean that you got that from a source?

14 A. During that period, your Honour, if there was any meeting if could happen, there could
15 be a lot of speculation about the meeting to happen. So like the meeting which took place at
16 home, I heard some information (Redacted), but because I take it as real
17 information because of actually the message from the people (Redacted)
18 (Redacted).

19 Q. Okay. I just want to make sure for the record. Are you saying this in reference to this
20 meeting of 2 September 2007? Did you hear?

21 A. Yes. I heard just a lot of speculation about the meeting.

22 Q. When you say that you heard a lot of speculation, what do you mean by that?

23 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, no. The point, the circumstances in which
24 that matter arose in cross-examination was about the witness's presence at a meeting. That
25 shouldn't allow you to open up the question and start bringing in speculation about the

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1 source.

2 If your re-examination on the matter addresses the matter of this witness's presence,
3 then we can take it, but if not, you have to move on.

4 MR GARCIA: Your Honour, just to clarify, the purpose of my questions, and it's limited to
5 that, is to clarify what the witness says when he means "source of the information," if this is
6 something that he just invented or if it's something that he had heard at the time. That's all I
7 want to establish with the witness. I don't want to establish or bring into the dossier any
8 hearsay evidence or any information of that nature. That's all.

9 PRESIDING JUDGE EBOE-OSUJI: It has to deal with his presence. Is there any doubt
10 about that that needs to be cleared up in re-examination?

11 MR GARCIA: Your Honours, if the re-examination is going to be limited to that matter, then
12 I don't have any questions on that matter specifically.

13 PRESIDING JUDGE EBOE-OSUJI: Yes. Let's move on.

14 MR GARCIA: Now, Mr Witness, I just have a last series of questions for you.

15 And, your Honours, they're based on the document, the transcript that was -- I'm not
16 sure what it's status is for the moment, I think it's MFI, but I'm not sure about that.

17 It's KEN-D09-0043-0637. It's on the basis of I think a video KEN-D09-0043-0556, and
18 this is track 7. I understand Defence counsel played certain portions of this video to
19 the witness, had the witness or had the witness confirm certain parts of the transcript.
20 But this hasn't been put to him, and I just want to ask him certain questions on what is
21 stated in the transcript.

22 PRESIDING JUDGE EBOE-OSUJI: What video is this?

23 MR GARCIA: This is the video, the portion that I want to ask him questions is about what
24 Mr Jackson Kibor would have stated. And this is at the Sang funeral.

25 MR KHAN: Mr President, I, in fact, didn't ask questions about Mr Jackson Kibor at all. I

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1 didn't even get there. So it doesn't arise from cross-examination. I stopped after I realised
2 over the lunch-break, in fact because of the Trial Chamber's noticing it, the breaks in the video.
3 And we went through as much as we could do in the video and saw that there were a number
4 of breaks, and that's why I said I wasn't relying upon it. But I didn't go at all into what
5 Jackson Kibor said at that event.

6 PRESIDING JUDGE EBOE-OSUJI: And, Mr Garcia, you also led him in examination-in-chief
7 about whether or not Mr Kibor spoke, didn't you?

8 MR GARCIA: That's correct, your Honour. But this whole video was unknown, and the
9 transcript was unknown to the Prosecution at the time that we did ask some questions.
10 Now we have a transcript before us, and we would like to have some clarifications on
11 some of the things that it is alleged that Mr Kibor would have stated at the time.

12 PRESIDING JUDGE EBOE-OSUJI: But Mr Khan didn't go that far, did he?

13 MR GARCIA: Your Honour, I think that simply saying that Mr Khan didn't go into
14 Mr Kibor's speech, I think that the real question is did he or not open up a new subject or
15 new -- did he or not tender in a new piece of evidence, which the Prosecution had no
16 knowledge of and which the Prosecution could legitimately ask questions of.

17 PRESIDING JUDGE EBOE-OSUJI: The objection is sustained.

18 MR KHAN: Mr President, can I just say also --

19 PRESIDING JUDGE EBOE-OSUJI: If you want to ask him questions about the bit of the
20 video we saw and the transcripts that so far has been put on to the record, you can do that.
21 But if it is something that has not -- that the Defence decided to abandon, we will leave it at
22 that.

23 MR KHAN: Mr President, can I just --

24 MR GARCIA: Following that, your Honour, the Prosecution has no other questions for the
25 witness on the bits that were played to him.

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1 MR KHAN: Mr President, can I just for the record state that -- I think we should be accurate.
2 I gave this disclosure, we gave all the disclosure, including the transcripts and the video to the
3 Prosecution two days before the Prosecution broached the subject with the witness, your
4 Honour, just to be clear on that point.

5 PRESIDING JUDGE EBOE-OSUJI: If you are going later on to rely on Jackson Kibor part of
6 the video and transcript, then Mr Garcia gets to ask questions about that.

7 MR KHAN: No, Mr President, it's just in relation to the accuracy of the submission about
8 notice. Mr President if, God forbid, we have a Defence case, of course, these issues can be
9 cleared up. But I'm not relying upon the video.

10 PRESIDING JUDGE EBOE-OSUJI: You keep saying, God forbid, if you have a Defence
11 case --

12 MR KHAN: Yes, because we hope --

13 PRESIDING JUDGE EBOE-OSUJI: -- as if that's a tragedy.

14 MR KHAN: It will be a tragedy --

15 PRESIDING JUDGE EBOE-OSUJI: For you.

16 MR KHAN: Yes, and for justice, we say. But we'll leave it to the Bench to decide in its
17 wisdom.

18 PRESIDING JUDGE EBOE-OSUJI: Yes. We will follow the evidence that has been led in
19 the case. That's what directs where the case goes.

20 Mr Garcia.

21 MR GARCIA: Just one concern, your Honour, following the Chamber's question is that if
22 indeed the Defence is going to or intends to rely on the video at one point, then obviously we
23 have the witness here right now, and I think this would be the appropriate moment to do so,
24 to ask questions of him so we don't have to call him back and see what his interpretation of
25 certain things are.

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- 1 I just remind Mr Khan that he said, he stated already on the record that his
2 interpretation of what was stated by Mr Kibor that's on this transcript is something
3 about a social boycott. This is the thing I wanted to clarify with the witness while
4 he's here. It could be a simple exercise of just simply reading to him things which
5 were allegedly stated by Mr Kibor and asking him what his interpretation of that is.
6 PRESIDING JUDGE EBOE-OSUJI: Re-examination is re-examination. Mr Garcia, you
7 know the rules.
8 MR GARCIA: I'm guided by the Court. So, your Honour, given the Chamber's ruling, I
9 have no further questions for this witness.
10 PRESIDING JUDGE EBOE-OSUJI: Thank you.
11 Let's go back to the open.
12 (Open session at 3.51 p.m.)
13 THE COURT OFFICER: We're back in open session, Mr President.
14 PRESIDING JUDGE EBOE-OSUJI: Witness, thank you very much for coming. The lawyers
15 in this case are finished asking you their questions. We thank you for coming. The Court
16 discharges you for now. If there is a need in the future to recall you, if there is such a need,
17 you will know, but for now you are discharged as a witness in the case. Do you understand?
18 THE WITNESS: Yes, your Honour.
19 PRESIDING JUDGE EBOE-OSUJI: Thank you.
20 That concludes our proceedings.
21 MR KHAN: Mr President, I apologise.
22 PRESIDING JUDGE EBOE-OSUJI: Yes.
23 MR KHAN: There are a few matters, exhibits and MFIs that I haven't gone through. If we
24 could do it now, or otherwise tomorrow morning at the Court's --
25 PRESIDING JUDGE EBOE-OSUJI: Let us do it now.

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- 1 MR KHAN: Yes.
- 2 PRESIDING JUDGE EBOE-OSUJI: We have some time.
- 3 MR KHAN: Mr President, I would seek to MFI the following documents: At tab 107,
- 4 KEN-OTP-0103-0162, it's an investigator's report.
- 5 PRESIDING JUDGE EBOE-OSUJI: It will be marked so.
- 6 MR KHAN: Secondly, at KEN-OTP-0104-0464, it's another report, investigator's report.
- 7 PRESIDING JUDGE EBOE-OSUJI: To be marked MFI.
- 8 MR KHAN: That was at tab 127.
- 9 PRESIDING JUDGE EBOE-OSUJI: Yes.
- 10 MR KHAN: At tab 158, KEN-OTP-0142-0126_R01, that's another investigator's report.
- 11 PRESIDING JUDGE EBOE-OSUJI: It will be marked MFI.
- 12 MR KHAN: I'm grateful. Then another investigator's report at tab 159,
- 13 KEN-OTP-0142-0128_R01.
- 14 PRESIDING JUDGE EBOE-OSUJI: Also marked MFI.
- 15 MR KHAN: Then, Mr President, there is at tab 118 and also 122, your Honours, I won't say
- 16 the nature of the document, but it's KEN-D09-0043-0260 at tab 118 and also 122, they're the
- 17 documents we showed from a certain course.
- 18 PRESIDING JUDGE EBOE-OSUJI: Yes, I see it. I'm looking at that.
- 19 MR KHAN: Yes.
- 20 PRESIDING JUDGE EBOE-OSUJI: And the prosecutor sees that. Yes, do you say MFI or
- 21 EVD?
- 22 MR KHAN: Exhibited. The witness accepted it's his.
- 23 PRESIDING JUDGE EBOE-OSUJI: Yes. Mr Garcia?
- 24 MR GARCIA: No objection, your Honour?
- 25 PRESIDING JUDGE EBOE-OSUJI: Ms Buisman?

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- 1 MS BUISMAN: We have no objection.
- 2 PRESIDING JUDGE EBOE-OSUJI: The document appearing as
- 3 KEN-D09-0043-0260 -- Mr Khan, that's it?
- 4 MR KHAN: Mr President, one other.
- 5 PRESIDING JUDGE EBOE-OSUJI: -- will be admitted as the next in the Ruto Defence
- 6 exhibits.
- 7 MR KHAN: I'm most grateful. Then there is a similar type of document at tab 122, which is
- 8 KEN-D09-0043-0471. And, again, the witness --
- 9 PRESIDING JUDGE EBOE-OSUJI: Yes. Mr Garcia?
- 10 MR GARCIA: No objection, your Honour.
- 11 MS BUISMAN: And we have no objection either.
- 12 PRESIDING JUDGE EBOE-OSUJI: Yes. Mr Khan, you said 04771. There is only one 7.
- 13 MR KHAN: Let me just check. 0471. It's my error. 0471. I'm grateful.
- 14 PRESIDING JUDGE EBOE-OSUJI: Yes.
- 15 MR KHAN: Then there is two --
- 16 PRESIDING JUDGE EBOE-OSUJI: One second. That document will come in as a Ruto
- 17 Defence exhibit.
- 18 MR KHAN: I'm grateful. And then at tab 199, there is another document of a certain
- 19 nature that we dealt with at the first part of the hearing in private session pursuant to the
- 20 order of the Court, that's KEN-OTP-0145-0138_R01. The provider of that document is the
- 21 Office of the Prosecution. It's been put to the witness. Given the source, origin and basis of
- 22 it, we say it should be exhibited at this stage.
- 23 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia?
- 24 MR GARCIA: No objection.
- 25 PRESIDING JUDGE EBOE-OSUJI: Ms Buisman?

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- 1 MS BUISMAN: No objection, Mr President.
- 2 PRESIDING JUDGE EBOE-OSUJI: Document admitted as the next Ruto Defence exhibit.
- 3 MR KHAN: I'm grateful. And then at tab 67, KEN-OTP-0036-0068. It's a letter. And,
- 4 again, it came from the witness to the Prosecution and then it came as disclosure to the
- 5 Defence. Given that source, we say it should be given an exhibit number.
- 6 PRESIDING JUDGE EBOE-OSUJI: Tab what? Of whose bundle?
- 7 MR KHAN: Sorry, it's my fault. Tab 67 of the Prosecution's bundle, in fact.
- 8 PRESIDING JUDGE EBOE-OSUJI: Yes. What do you want done with this?
- 9 MR KHAN: For that to be exhibited, please.
- 10 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia?
- 11 MR GARCIA: No objection.
- 12 PRESIDING JUDGE EBOE-OSUJI: Ms Buisman?
- 13 MS BUISMAN: No objection.
- 14 PRESIDING JUDGE EBOE-OSUJI: Document admitted.
- 15 MR KHAN: I'm grateful. And, Mr President, then there is one, two, three, four, five, six
- 16 photographs that were shown to the witness at tab 189. The witness accepted in the early
- 17 questions he could recognize the photographs as to Ziwa, but the witness later on had some
- 18 difficulties orientating himself in relation to other offices, cafés and the AP lines. But, your
- 19 Honours, he recognized the place, and I'd say that those documents at tab 89,
- 20 KEN-D09-0043-0534, KEN-D09-0043-0535, KEN-D09-0043-0532 --
- 21 PRESIDING JUDGE EBOE-OSUJI: Were they not given the treatment at the time?
- 22 MR KHAN: No, they weren't. I should have done so, and I apologise, but I think I was not
- 23 as vigilant as I should have been. I'm told we didn't deal with them at the time. But I stand
- 24 to be corrected by the court officer or the Court.
- 25 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia?

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- 1 MR GARCIA: I'm not sure either, your Honour. But I just want to make sure from Defence
2 counsel that indeed all of these were shown to the witness at the time. I know some of them
3 were, and I have a memory of them, but --
- 4 MR KHAN: Yes, I think they were all shown. Some were on the screen and others were
5 given to him.
- 6 PRESIDING JUDGE EBOE-OSUJI: All right. Let's look at them. Where are the tabs?
- 7 MR KHAN: At tab 189.
- 8 PRESIDING JUDGE EBOE-OSUJI: Of your bundle?
- 9 MR KHAN: Of our second bundle, Mr President.
- 10 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, what did we do with the --
- 11 MR KHAN: Yes?
- 12 PRESIDING JUDGE EBOE-OSUJI: -- with the video and transcript of the funeral?
- 13 MR KHAN: Mr President, we did nothing with it, in fact, until I could --
- 14 PRESIDING JUDGE EBOE-OSUJI: They should come in.
- 15 MR KHAN: We can MFI them, please.
- 16 PRESIDING JUDGE EBOE-OSUJI: Yes. Not even MFI. They should come in as exhibits.
17 We know that we -- not all of it -- not all of the materials were shown him, but on the record
18 the video was played up to a point, and the Bench made observations about editing.
- 19 MR KHAN: I'm grateful.
- 20 PRESIDING JUDGE EBOE-OSUJI: So at least that much needs to.
- 21 MR KHAN: Thank you.
- 22 MR GARCIA: Your Honour, our position of the Prosecution was, given the problems
23 regarding the authenticity of this video, that it should be just given an MFI until Defence
24 counsel can bring the evidence perhaps in this case demonstrating the authenticity of this.
- 25 PRESIDING JUDGE EBOE-OSUJI: Mr Khan?

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- 1 MR KHAN: Well, Mr President, I am content with that. As I said at the outset, I was using
2 it for a limited purpose and I can't really say more. I can't give evidence.
- 3 PRESIDING JUDGE EBOE-OSUJI: All right. All right.
- 4 MR KHAN: So it can be MFI'd.
- 5 PRESIDING JUDGE EBOE-OSUJI: Let's mark it MFI then.
- 6 MR KHAN: Thank you.
- 7 PRESIDING JUDGE EBOE-OSUJI: MFI.
- 8 MR KHAN: And --
- 9 PRESIDING JUDGE EBOE-OSUJI: One second. Just if you can give Ms Bossette the
10 reference numbers for those?
- 11 MR KHAN: Yes, that was --
- 12 PRESIDING JUDGE EBOE-OSUJI: All right. The videos, if you can give the reference of
13 the video and the transcript?
- 14 MR KHAN: Yes. The video was KEN-D09-0043-0556 and then the translations and
15 transcriptions have five ERN numbers. I think that they're the different portions. And
16 track 3 is KEN-D09-0043-0564, the next was KEN-D09 -- just one moment,
17 please. Mr President, in fact I showed track -- the ones that were shown in court:
18 KEN-D09-0043-0564, which is track 3; track 7, KEN-D09-0043-0637; and then there was track 8,
19 KEN-D09-0043-0681. So I'd ask for those to be MFI'd, please.
- 20 PRESIDING JUDGE EBOE-OSUJI: They will be marked for identification.
- 21 MR KHAN: And, Mr President, there's another matter that we have --
- 22 PRESIDING JUDGE EBOE-OSUJI: You were heading towards tab 89, wasn't it?
- 23 MR KHAN: Yes, Mr President. They're the photographs.
- 24 PRESIDING JUDGE EBOE-OSUJI: And then the photographs, yes.
- 25 MR KHAN: Indeed. So the photographs at tab 89, the first was KEN-D09-0043-0534. That

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- 1 was the first photograph I believe that was shown, but I'll check.
- 2 PRESIDING JUDGE EBOE-OSUJI: Hold on. There was a number of documents you were
- 3 going to deal with, where AP line and all that were shown to the witness. Let's get to those.
- 4 MR KHAN: A sketch?
- 5 PRESIDING JUDGE EBOE-OSUJI: The sketch, that's correct.
- 6 MR KHAN: Yes.
- 7 PRESIDING JUDGE EBOE-OSUJI: Where are they?
- 8 MR KHAN: That's already been done, Mr President.
- 9 PRESIDING JUDGE EBOE-OSUJI: Okay.
- 10 MR KHAN: Is that right?
- 11 PRESIDING JUDGE EBOE-OSUJI: No, I don't think so. No.
- 12 MR KHAN: That's already been exhibited in fact.
- 13 PRESIDING JUDGE EBOE-OSUJI: They have been exhibited?
- 14 MR KHAN: Yes. I think, yes.
- 15 PRESIDING JUDGE EBOE-OSUJI: That's what I was asking you.
- 16 MR KHAN: Yes, you're right. Indeed.
- 17 PRESIDING JUDGE EBOE-OSUJI: I thought they were at the time.
- 18 MR KHAN: And your Honour made a ruling regarding testimonial and the other aspects of
- 19 the objections.
- 20 PRESIDING JUDGE EBOE-OSUJI: Yes, I thought so.
- 21 MR KHAN: Yes, I'm grateful.
- 22 PRESIDING JUDGE EBOE-OSUJI: All right. So those have been done, so that confusion is
- 23 cleared out.
- 24 MR KHAN: Yes.
- 25 PRESIDING JUDGE EBOE-OSUJI: Now, what remains is what?

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1 MR KHAN: One, two, three, four, five photographs out of the bundle at 189 that was shown
2 to the witness. And the first photograph that was put is at page 0534, in the order that they
3 were shown, and the witness accepted that that was Ziwa in testimony. So that's 0534.

4 PRESIDING JUDGE EBOE-OSUJI: Tab 189, you say?

5 MR KHAN: 189.

6 PRESIDING JUDGE EBOE-OSUJI: 189.

7 MR KHAN: Yes.

8 PRESIDING JUDGE EBOE-OSUJI: All right, Mr Khan, the photos at tab 189?

9 MR KHAN: Yes, Mr President. And the first one that was shown to the witness was the
10 third photograph in fact in the bundle at 0534, and it's a photograph of Ziwa including the
11 Ziwa Road towards the front of the photograph and the witness recognized that as being
12 Ziwa.

13 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia?

14 MR GARCIA: No objection to the photos, your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: Ms Buisman?

16 MS BUISMAN: We have no objection.

17 PRESIDING JUDGE EBOE-OSUJI: The photo is admitted at 0534.

18 MR KHAN: I'm grateful. And the next photograph shown was at 0535. It's really quite
19 similar in fact.

20 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, I take it you have no objection?

21 MR GARCIA: Correct. I've indicated for the record we have no objection to the photos that
22 were shown to the witness, or that he saw on the stand, being admitted into evidence.

23 PRESIDING JUDGE EBOE-OSUJI: All right.

24 And, Ms Buisman, that's the same with you?

25 MS BUISMAN: Same position for us, Mr President.

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- 1 PRESIDING JUDGE EBOE-OSUJI: Yes.
- 2 Now, Mr Khan, we have 0535. What's the next one?
- 3 MR KHAN: The next one was 0532.
- 4 PRESIDING JUDGE EBOE-OSUJI: 0532 admitted.
- 5 MR KHAN: I'm grateful.
- 6 And the next was 0539.
- 7 PRESIDING JUDGE EBOE-OSUJI: 0539 admitted.
- 8 MR KHAN: And the last one that was shown to the witness was 0541.
- 9 PRESIDING JUDGE EBOE-OSUJI: 0541 admitted.
- 10 MR KHAN: Mr President, and then the last item I'd seek to be exhibited is the document
- 11 exhibited by the Prosecution originally, the map that the witness we had some difficulty, if the
- 12 President will remember, with putting numbers on it.
- 13 Your Honours, we've had printed out -- I don't know the best way of doing it. We
- 14 can have the copy given by the court officer just signed by the witness and tendered
- 15 as a real exhibit. That may be the easiest way of doing it.
- 16 PRESIDING JUDGE EBOE-OSUJI: Can you show it to the Prosecution so that they --
- 17 MR KHAN: Yes, with the assistance of the court officer.
- 18 PRESIDING JUDGE EBOE-OSUJI: The court usher can assist.
- 19 MR KHAN: The court officer has kindly prepared copies, so they can be given to the
- 20 Prosecution for their records.
- 21 MR GARCIA: No objection from the Prosecution. I understand that this is what was put
- 22 on the ELMO.
- 23 PRESIDING JUDGE EBOE-OSUJI: All right.
- 24 Ms Buisman, no objection?
- 25 MS BUISMAN: None.

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- 1 PRESIDING JUDGE EBOE-OSUJI: The annotated photo is admitted as the next Ruto
2 Defence exhibit.
3 Mr Khan, we have to stop.
4 MR KHAN: I'm most grateful, Mr President, and that is all the exhibits and documents.
5 Thank you so much.
6 MR GARCIA: One last item, your Honour. The PIS which has been used by Prosecution
7 and Defence counsel I think, CMS must still have it. That's the last item that should be
8 admitted into evidence.
9 PRESIDING JUDGE EBOE-OSUJI: Did the Defence use their PIS?
10 MR KHAN: No, we didn't use ours. No, Mr President. Thank you.
11 PRESIDING JUDGE EBOE-OSUJI: Yes, the Prosecution PIS is admitted.
12 THE COURT OFFICER: The confidential Prosecution PIS related to Witness
13 KEN-OTP-P0658 will bear the number KEN-PIS-0001-0106.
14 PRESIDING JUDGE EBOE-OSUJI: Thank you.
15 We will have to stop now because we are out of the backup tape. There's no room
16 on it any more. We will adjourn now. Tomorrow we will reconvene at 9.30 for a
17 status conference since -- to see what we're doing next year.
18 We will first go into closed session now to usher the witness out of the courtroom.
19 *(Closed session at 4.10 p.m.) Reclassified as Open session
20 THE COURT OFFICER: We're in closed session, Mr President.
21 (The witness is excused)
22 PRESIDING JUDGE EBOE-OSUJI: The Court will rise.
23 THE COURT OFFICER: All rise.
24 (The hearing ends in closed session at 4.11 p.m.)
25 RECLASSIFICATION REPORT

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- 1 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
- 2 2013, the version of the transcript with its redactions becomes Public.