

Trial Hearing

(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 Monday, 17 November 2014
10 (The hearing starts in open session at 9.38 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 and welcome back
15 everyone.
16 Court officer, please call the case for the record.
17 THE COURT OFFICER: Thank you, Mr President.
18 The situation in the Republic of Kenya, in the case of The Prosecutor versus William
19 Samoei Ruto and Joshua Arap Sang, ICC-01/09-01/11.
20 We are in open session.
21 PRESIDING JUDGE EBOE-OSUJI: Thank you.
22 Appearances, please?
23 MR STEYNBERG: Good morning, Mr President, your Honours.
24 For the Prosecution this morning: Anton Steynberg; with me, Lara Renton;
25 Regina Weiss; Yulia Nuzban; and Jasmina Suljanovic for our case manager.

1 PRESIDING JUDGE EBOE-OSUJI: Thank you.

2 MR NARANTSETSEG: Good morning, your Honours. My name is

3 Orchlon Narantsetseg. I'm appearing on behalf of Mr Wilfred Nderitu, who is the

4 legal representative of victims in this case. With me, James Mawira.

5 Your Honours, we also would like to introduce you to two new members of our team.

6 These are pro bono members. With me, Ms Amanda Wilmot, also with Ms

7 Charlotte Devinat.

8 Thank you.

9 MR KIGEN-KATWA: Good morning, your Honours.

10 Mr Sang is present for the record and representing him are: Caroline Buisman;

11 Logan Hambrick; Honor Lanham; Marie-Ange; and Cynthia Bondi. Both

12 Marie-Ange and Cynthia Bondi are interns. My name is Katwa Kigen.

13 Thank you, your Honours.

14 MR KHAN: Mr President, your Honours, good morning. Mr Ruto, who is excused,

15 is represented by Ms Grace Sullivan; Mr Andrew Mura; Mr Essa Faal; Mr

16 David Hooper, QC; Dato' Shyamala Alagendra; and myself, Karim Khan.

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

18 MR (Redacted): Mr President, your Honours, good morning. Good morning,

19 everyone.

20 PRESIDING JUDGE EBOE-OSUJI: One second. Excuse me. Mr (Redacted), I

21 note your presence on the record. Let's stop it at that for a minute. There is a

22 reason why we'll proceed in that way. Thank you.

23 Thank you very much. First of all, we will -- before we proceed there are some

24 outstanding matters that the Chamber needs to deal with. We will need to go into

25 private session for that.

Trial Hearing

(Private Session)

ICC-01/09-01/11

1 Private session, please.

2 *(Private session at 9.42 a.m.) Reclassified as Open session

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

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 We first attend to the matter of two rulings.

6 First, the ruling relating to (Redacted)

7 (Redacted)

8 (Redacted)The Chamber will issue a brief ruling on the matter as

9 to the dispositive with reasons to follow.

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted) That is the short

16 ruling as regards that application.

17 The second ruling concerns (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 The reasons will follow shortly. That concludes the ruling of the Chamber on that

24 outstanding matter as well.

25 The Chamber also wishes to note on the record that the (Redacted)

1 (Redacted)

2 MR STEYNBERG: Pardon, your Honours? My headphones were off.

3 PRESIDING JUDGE EBOE-OSUJI: My notes are -- I only have now the

4 (Redacted), which is Witness 800.

5 MR STEYNBERG: Sorry, your Honour, I didn't quite get the question. (Redacted)

6 (Redacted) the present witness is 800.

7 PRESIDING JUDGE EBOE-OSUJI: Yes.

8 MR STEYNBERG: (Redacted)

9 PRESIDING JUDGE EBOE-OSUJI: Are we in public?

10 MR STEYNBERG: We're in private session, I beg your pardon. (Redacted)

11 your Honour.

12 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. I just was scrambling for

13 it. Thank you. So that (Redacted) From now on

14 that is the (Redacted)

15 (Redacted) from now going further. Thank you.

16 (Redacted)

17 (Redacted)

18 MR STEYNBERG: (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 PRESIDING JUDGE EBOE-OSUJI: From the Defence, any views? You will be

1 conducting cross-examinations after all.

2 MR KIGEN-KATWA: On our part, Mr President, we -- at least on the face of the
3 evidence and the material disclosed, we would agree that that is the position and we
4 have no objection to him having counsel.

5 MS ALAGENDRA: We have no objections, your Honour.

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

7 And now, Mr (Redacted), you can introduce yourself.

8 MR (Redacted): Mr President, your Honours, good morning. Good morning,
9 everyone in and around the courtroom. My name is (Redacted). I'm a duty counsel
10 assisting the Witness P-800.

11 I would like to say something. On Thursday - last Thursday - at 7 p.m. I was
12 contacted by the CSS asking about my availability starting Friday and on Friday I
13 came to the ICC to see the file and I did the same thing on Saturday and on Sunday,
14 but the bad news are that I couldn't read the whole file. I think that I need one full
15 day to finish about 13 other documents, so I think that I'm not ready now to assist my
16 client and it will be unprofessional and it would be unfair with what I have now with
17 reading, let's say, about three-quarters of the file.

18 So the matter is in your hands, your Honour.

19 PRESIDING JUDGE EBOE-OSUJI: You say you need another full day to read 13
20 documents?

21 MR (Redacted): Yes, indeed, your Honour.

22 PRESIDING JUDGE EBOE-OSUJI: Do we have the CSS representatives in the
23 courtroom?

24 Thank you very much.

25 All right, because the idea of losing a whole day of testimony is not something that

1 the Chamber is particularly happy with and we want to find out why it took until
2 Thursday to appoint counsel, but we don't need to delay matters now. We can hear
3 from the CSS representative later, either in writing or otherwise.

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted) So we'll do that

8 and we will also take submissions on -- after the ruling, on witness protection,

9 in-court witness protection measures, and any other housekeeping matters that may

10 be pending.

11 MR STEYNBERG: As the Court pleases, your Honours.

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)

Trial Hearing

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

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

16 MR STEYNBERG: Your Honours, sorry. I beg your pardon. I also meant to add
17 that for what it's worth, (Redacted)

18 (Redacted) as well as the warnings to tell the truth in terms of Article 70 during
19 the witness preparation session.

20 PRESIDING JUDGE EBOE-OSUJI: So you have had your preparation session with
21 the witness?

22 MR STEYNBERG: We did last week, your Honours.

23 PRESIDING JUDGE EBOE-OSUJI: Yes. And this witness is prepared to testify this
24 morning subject to any requests or the pending requests from Mr (Redacted)?

25 MR STEYNBERG: Indeed, your Honour. As presently advised, that is the case.

1 PRESIDING JUDGE EBOE-OSUJI: Thank you. We will reserve our ruling. We
2 will come back to issue that ruling this morning, but I understand that there are some
3 other matters that are outstanding to be dealt with; is that the case?

4 MR KHAN: Mr President, yes. I'm grateful for that. I had indicated to my
5 learned friend for the Prosecution, Mr Steynberg, and also the court officer, that there
6 is a matter that I wish to raise. It probably should be raised in the -- it's not relating
7 to this witness, it's dealing with the next witness, but it's an important matter and
8 perhaps my learned friend for Witness 800 could be excused. Your Honours, I'll
9 leave it to the Court regarding the logistics and the management. I understand a
10 30-minute break is needed to change the tape. I'm grateful.

11 PRESIDING JUDGE EBOE-OSUJI: That is indeed the case and also we will come
12 back and -- we will retire, consider our ruling on the Rule -- indeed, sorry, we will
13 retire, (Redacted) and we -- but before we do that,
14 we will take submissions on the protective measures so that we can issue both rulings
15 at the same time when we come back, after which counsel for -- duty counsel for the
16 witness will be excused so he can go and attend to the matters he needs to attend to,
17 including advise the witness of the ruling of the Chamber and the undertakings of the
18 Prosecutor, and then we will attend to your matter after that time.

19 MR KHAN: I'm most grateful, Mr President. Dato' Shyamala will deal with the
20 response to the protective measures application, but your Honours, just one
21 suggestion, I don't know if it finds favour with the Bench, of course I'm alive to the
22 difficulties of my learned friend, I'm not seeking to -- to restrict him in any way, but
23 one possibility that the Bench may wish to consider, and it requires of course the
24 agreement of the Prosecution, is that it may be possible to start the evidence today not
25 dealing with anything that gives rise to Article 70 until tomorrow, and that would

1 give my learned friend time after 4 o'clock today to read any matters that could
2 possibly (Redacted)
3 There's a large amount of testimony and if the Prosecution could manage their
4 examination-in-chief in such a way as to deal with those matters tomorrow, maybe
5 we can make some headway today. It's just a small suggestion that may be of
6 interest.

7 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg?

8 MR STEYNBERG: Your Honours, I would be able to manage my evidence in that
9 manner. I do intend to cover as the first item matters relating to events in 2007
10 and 2008 which I do not expect (Redacted)
11 (Redacted)

12 PRESIDING JUDGE EBOE-OSUJI: Mr (Redacted)?

13 MR (Redacted): Your Honour, I don't know if it will be fair for my client because
14 I don't know what is the content of the ten last statements or documents of this file
15 provided by the Prosecution, so maybe the last document will be related to the first
16 one. So I have no idea, so I cannot take this risk. I prefer to read all the file and
17 then the witness can be in court and I can do my job in a professional way.
18 Thank you.

19 PRESIDING JUDGE EBOE-OSUJI: All right. We've heard your position. You do
20 not want to consent to that arrangement. Of course, if the Chamber wants to
21 proceed in that way, that would have been the decision the Chamber would have
22 imposed upon you and not that you consented on it to do it, so we understand that,
23 but be prepared. The Chamber will deliberate on the proposal and see whether we
24 will rule according to the suggestion made by Mr Khan, to which the Prosecutor
25 thinks is a feasible idea.

1 But for now let us take submissions on the protective measures.

2 Mr Steynberg?

3 MR STEYNBERG: Thank you, your Honours.

4 The Prosecution's position is set out fairly fully in filing number 1650, confidential,
5 redacted would be the version my learned friends have access to.

6 In addition to that, the Prosecution notes that the requested measures are supported
7 by the Victims and Witnesses Unit.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 So in that respect, your Honours, unless there is any other matter which the Chamber
13 wishes to hear me on, I rest on those submissions.

14 PRESIDING JUDGE EBOE-OSUJI: Thank you.

15 MR KIGEN-KATWA: Mr President, on our part we have seen the filing and we
16 have no objection to that proposal on the part of the Prosecution.

17 MS ALAGENDRA: Your Honours, on our part, your Honours, we do object to this

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (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 And for that reason, your Honour, we don't think that the requested measures are
17 necessary for this particular witness and --

18 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

19 (Redacted)

20 MS ALAGENDRA: (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 Your Honour, we do have an interest that proceedings are made public and

1 particularly with this witness, your Honour. The character and the credibility and
2 the behaviour of this witness I think is very important for the Kenyan public to see.
3 The kind of witnesses the OTP uses not only to come and provide evidence which we
4 say is false, but also (Redacted)
5 (Redacted) is all very relevant and it's very important
6 that the public hears these things, your Honour.
7 So in our respectful submission, your Honour, we ask that this witness be made to
8 testify publicly, and areas which may touch on (Redacted) for those sessions he
9 can go into closed sessions and we can use the -- the PIS forms to protect the identities
10 of any other third parties whose identities that we need to protect for their sake.
11 Thank you, your Honours.

12 MR NARANTSETSEG: Your Honours, on behalf of the victims, we support the
13 Prosecution's application. The use of those usual in-court protective measures were
14 recommended also by the Victims and Witnesses Unit. In our view, we would also
15 respectfully submit that those measure are justified and proportionate and at the
16 same time necessary.
17 Thank you.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you.

19 Mr Steynberg?

20 MR STEYNBERG: Thank you, your Honours.

21 May I just respond to my learned friend, Ms Alagendra's, submissions which are
22 unfortunately not entirely factually correct. (Redacted)
23 (Redacted)
24 (Redacted)
25 (Redacted) he was urged to recant and return to Kenya in return

1 for an offer of 1.5 million Kenyan shillings.

2 (Redacted)

3 (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 (Redacted)

19 (Redacted)

20 The fact is that the threat existed and the threat still exists, and in that respect,

21 your Honours, I think those are the important facts which the Chamber needs to bear

22 in mind.

23 PRESIDING JUDGE EBOE-OSUJI: So that it is clear and I understand it, the extent

24 of the protective measures you seek - in-court protective measures - do they go as far

25 as an entire blanket testimony; in other words he testifies entirely in private session?

1 MR STEYNBERG: Absolutely not, your Honours. I hope that most of his evidence
2 on the main subjects certainly will be able to be given in public session. I believe
3 even that a portion of his evidence on (Redacted) will be able to be given in
4 public, (Redacted) I will do my utmost
5 to keep as much as possible of the evidence in public.

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

7 We will end the submissions there. We will reserve our ruling. We will be issuing
8 the ruling when we come back after a brief adjournment, but in the meantime some
9 housekeeping matters; further housekeeping matters.

10 The scheduling. We had directed that Witness (Redacted)
11 (Redacted) the new direction from the Chamber is that this witness
12 will be put over to the session beginning in 2015.

13 The Chamber also indicated in writing to the parties the tentative hearing schedule
14 for the first months of 2015. The announcement is that the first session tentatively
15 put will be from 12 January 2015 to 6 February 2015, and the second session from then,
16 again tentatively put, will be from 23 February 2015 to 13 March 2015.

17 Further housekeeping matters: Reminders again to the parties about the logistics of
18 having an accurate record and making life easy for those who assist us with our work,
19 the interpreters and court reporters.

20 They continue to stress the need to speak slowly and to observe the five-second rule
21 at all costs to avoid overlapping speakers. They also request that the five-second
22 rule should also apply where counsel read out passages in texts. When putting
23 those passages to the witnesses, the five-second rule should be observed around the
24 passages.

25 It is critical in helping them do their work better, that is the court reporters and the

1 interpreters, for there to be clear markers when counsel are quoting texts being put to
2 the witness in particular, or to the Bench, so that there is a clear delineation between
3 when counsel is speaking naturally and when counsel is quoting text and unquoting,
4 to mark them quote and unquote, and preferably again bracketed by the five-second
5 rule.

6 Of course it will not always be easy to observe these things, but the Chamber stresses
7 the importance of making every effort to observe them.

8 We will adjourn now briefly and we will -- one second.

9 (Trial Chamber confers)

10 PRESIDING JUDGE EBOE-OSUJI: We will adjourn now and come back in 15
11 minutes.

12 The Court will rise.

13 THE COURT OFFICER: All rise.

14 (Recess taken at 10.13 a.m.)

15 (Upon resuming in private session at 10.30 a.m.) Reclassified as Open session

16 THE COURT USHER: All rise.

17 Please be seated.

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

19 We remain in private session.

20 First, the mini schedule for the day in light of the matters raised so far. (Redacted)

21 (Redacted)we also render our ruling on the protective measures

22 application and then we will break for 30 minutes, come back at that time and take

23 Mr Khan's submissions on the matter he said he wanted to raise. At that point, we

24 will adjourn and come back at 2.30 to start the testimony of the witness on the basis of

25 the proposal by Mr Khan and agreed to by the Prosecutor that the Prosecutor can

1 manage his questioning for the remainder of the day in a way (Redacted)

2 (Redacted)

3 In the meantime, Mr (Redacted) that gives you additional time. It does not give you
4 the whole day, but that gives you more time to work with. So between -- until 2.30
5 you've got some more time to work and after the day you also have more time to
6 work upon adjournment.

7 All right. So we will then proceed in that way.

8 Now, (Redacted)

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 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing

(Private Session)

ICC-01/09-01/11

- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 One second.
- 11 (Trial Chamber confers)
- 12 PRESIDING JUDGE EBOE-OSUJI: (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)

Trial Hearing

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (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 (Redacted)

19 (Redacted)

20 Now, I pause to ask Mr (Redacted) whether you have any questions from the ruling
21 rendered so far?

22 MR (Redacted): Thank you, your Honour. It's very clear.

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

24 We will now render our ruling on the matter of the application for protective
25 measures in the courtroom.

1 The Chamber has heard the submissions of the parties and read the filings of both the
2 Prosecution and the VWU on this matter.

3 As usual, the menu of protective measures requested by the Prosecutor include or are:
4 (1) image and voice distortion; (2) the use of pseudonyms during testimony; (3)
5 sessions in camera; and (4) redactions to the public records where necessary to
6 prevent identification.

7 The VWU in their filing gave its assessment to the Court and submitted that the
8 witness is currently under protection, and in order to protect the efficiency of existing
9 protective measures and in view of the current security situation, the VWU supports
10 the protective measures sought by the Prosecution. Of course it is also to be noted
11 that to this witness applies (Redacted)

12 Having considered the request of the Prosecution and the assessment of the VWU,
13 and having heard the submissions of the parties and the victims' counsel, the
14 Chamber grants the protective measures as requested.

15 This concludes the Chamber's ruling at this time.

16 We will now adjourn for 30 minutes and we will come back and hear Mr Khan.

17 In the meantime, Mr (Redacted), you're excused. You can attend to the matters you
18 indicated you needed to attend to give your client the advice he needs (Redacted)
19 (Redacted)

20 the in-court protective measures.

21 The Court will rise.

22 THE COURT USHER: All rise.

23 (The hearing ends in private session at 10.45 a.m.) Reclassified as Open session

24 RECLASSIFICATION REPORT

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

Trial Hearing

(Private Session)

ICC-01/09-01/11

1 2013, the version of the transcript with its redactions becomes Public.