

Trial Hearing
Witness: KEN-OTP-P-0637

(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 Carbuccion
7 and Judge Robert Fremr
8 Trial Hearing
9 Wednesday, 1 October 2014
10 (The hearing starts in open session at 10.18 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, the case please.
16 THE COURT OFFICER: Thank you, Mr President.
17 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're in open session, your Honours.
20 PRESIDING JUDGE EBOE-OSUJI: Thank you.
21 Appearances?
22 MR STEYNBERG: Good morning, Mr President. Good morning, your Honours.
23 For the Prosecution appearances remain the same today.
24 MR NARANTSETSEG: Good morning, your Honours. The victims are
25 represented by myself, Orchlon Narantsetseg, and my colleague James Mawira.

Trial Hearing
Witness: KEN-OTP-P-0637

(Open Session)

ICC-01/09-01/11

1 Thank you.

2 MR KIGEN-KATWA: Good morning, your Honours. Mr Sang's team remains the
3 same and Mr Sang is present.

4 MR FAAL: Mr President, your Honours, Mr William Ruto is represented by
5 Mr Karim Khan, QC; Shalini Jayaraj; Farah Jammal; and myself, Essa Faal.

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

7 And in Nairobi, Mr Mutai, we note your own appearance on the record as well.

8 MR MUTAI (via video link): Thank you, Mr President.

9 PRESIDING JUDGE EBOE-OSUJI: Unfortunately we are having to start later than
10 expected due to unforeseen events in the predisposition of the witness. Of course
11 that is quite inconvenient to our schedule that was already precarious to begin with,
12 but we must do our best still in the circumstances.

13 The VWU remain seized of the situation and is monitoring it and they will update the
14 Chamber as the need arises.

15 In the meantime -- in the meantime, we will continue with other matters in any event
16 that we would have needed to deal with in the absence of the witness at any rate.

17 And, Prosecutor, you say you have an application to make?

18 MS ZAGO: Yes, your Honours, and good morning.

19 On behalf of the Prosecution, I would like to formally request the Chamber to declare
20 this witness, P-637, hostile.

21 Your Honours on 8 September this year set out a series of factors, non-exhaustive but
22 factors, to be considered in the determination of hostility of a witness.

23 We submit today that it is apparent that the witness's evidence so far and the witness
24 himself has deliberately and systematically departed from his previous statements to
25 the Prosecution.

Trial Hearing
Witness: KEN-OTP-P-0637

(Open Session)

ICC-01/09-01/11

1 He has resiled entirely from every incriminating aspect contained in those statements
2 and, in our respectful submissions, the witness has been unable to provide a
3 consistent or credible reason why he has departed from his statement.

4 Additionally, the Prosecution submits that the witness has been evasive in his general
5 demeanour and it has been systematically adverse to the Office of the Prosecutor.

6 The witness has provided and confirmed to have provided an affidavit to the
7 Prosecution recanting his previous evidence.

8 The witness has also made certain allegations against representatives of the Office of
9 the Prosecutor. And for all these reasons the Prosecution believes that this witness
10 should be declared hostile and the Prosecution allowed to cross-examine this witness.

11 I can provide further clarifications on the areas from which the witness departed in
12 his testimony before this Court, but I understand that there is no dispute and both
13 Defence teams do not object to this application by the Prosecution.

14 Therefore, I would like again to respectfully request that the Prosecution be allowed
15 to treat this witness as hostile and cross-examine him.

16 Thank you, your Honours.

17 (Trial Chamber confers)

18 PRESIDING JUDGE EBOE-OSUJI: Ms Zago, notwithstanding that your colleagues
19 on the opposite side may have agreed to your application, for the record we will still
20 require you to put on record some of the details of the factors that you have outlined
21 resiling entirely from every incriminating aspect of the statement the witness has
22 given to you; incriminating of course being incriminating against the accused persons.
23 Also the allegations, as you have highlighted it, made against certain representatives
24 of the Office of the Prosecutor, we will need to have some details of that for the
25 record.

Trial Hearing
Witness: KEN-OTP-P-0637

(Open Session)

ICC-01/09-01/11

1 MS ZAGO: Thank you, your Honours.

2 PRESIDING JUDGE EBOE-OSUJI: Perhaps you may begin with the allegations
3 made against certain representatives of the Office of the Prosecutor. That may be
4 easily done in the public session, but then if -- then you will proceed with the
5 incriminating aspect and consider whether those submissions can also be made in the
6 public session, or some of them in the public session, while others are more
7 appropriately made in private session. You make that assessment as you proceed in
8 your submissions.

9 MS ZAGO: I'm guided, your Honours. Thank you.

10 With respect to the witness's allegations against representatives of the Office of the
11 Prosecution -- the Prosecutor, I refer your Honours to yesterday's transcript, the yet
12 still unedited version, at page 90, lines 20 to 25. There the witness stated that during
13 his interview with investigators, investigators would suspend the interview, stop the
14 audio-recording machines, go outside of the interview room and come back to the
15 witness and ask him or instruct him that he would have to mention the names of
16 Mr Sang and Mr Ruto whenever the witness was not mentioning those names in his
17 interview.

18 Subsequently, in his affidavit - and I refer to document KEN-OTP-0125-0230, bundle
19 number 2 and tab 18 - at paragraph 10 of that affidavit the witness, and I quote, said,
20 "... before the interviews with the investigators started, I was instructed that in my
21 testimony I would be only mentioning two names - William Ruto and Joshua Arap
22 Sang."

23 PRESIDING JUDGE EBOE-OSUJI: Does that not depend on the context? Did we
24 explore the context of that? One could see where it is of course -- there may be -- it's
25 probably more obvious when an investigator says, "Well, we want you to implicate

Trial Hearing
Witness: KEN-OTP-P-0637

(Open Session)

ICC-01/09-01/11

1 somebody even if you are falsely implicating them." There is mischief in that, an
2 obvious one.

3 But is there mischief if, for instance, an investigator is telling the witness they are
4 interviewing, "We have a case. We have limited time to talk to you, but we do not
5 want to generate a very large transcript, so do not tell us about your dog and your cat
6 and things like that, or your entire life story, but focus on the four corners of the case
7 we have which would be the case concerning accused persons whose case we are
8 investigating." Is there something wrong with that? Need that provoke a finding
9 of adversity or wrong instructions from investigators? Isn't that entirely
10 appropriate?

11 MS ZAGO: This could be entirely appropriate in certain circumstances. However,
12 in the circumstances of this witness, there was ample time set aside for the interview
13 of this witness. The interview span over a period of five days and there was 28
14 audio files from that interview which covered extensively the events the witness had
15 witnessed or told the investigators he had witnessed. Therefore, the allegations that
16 were put forward yesterday by the witness against the investigators, it is unlikely that
17 they were generated or that the witness was under the impression that he was under
18 time pressure to provide specific and targeted evidence with respect to this case.
19 Therefore, our submission is that there is -- there was no such situation where there
20 was a limited time available to the investigators and investigators had to concentrate
21 on certain areas.

22 PRESIDING JUDGE EBOE-OSUJI: It's not necessarily about limited time. I
23 mentioned that as some factor. Maybe I should not have talked about limited time.
24 It's about relevance really. In this case while you have been examining witnesses, as
25 well as Mr Steynberg, and the Defence counsel from time to time they've had to tell

Trial Hearing
Witness: KEN-OTP-P-0637

(Open Session)

ICC-01/09-01/11

1 witnesses, "Let's concentrate and keep the testimony relevant." The Judges have also
2 done that from time to time, tell the witness, "Listen carefully to the question being
3 asked of you and answer that question."
4 And that happens even when the witness has gone through the interview with
5 investigators and come to court to testify. Even after that process, there's still the
6 need to remind witnesses to keep their testimony relevant. Don't we have to
7 consider that it may be that at the intake point, initial meetings between witnesses
8 and investigators, the need for that manner of channelling of focusing the witness's
9 narrative may even more -- may be more at that stage such as may result in the
10 investigator telling the witness, "We're only interested in certain people, not everyone
11 in your locality," and the witness understanding that in a way that they may testify to
12 in the manner that causes you worry?
13 That's the point. It's not about the -- whether or not there is limited time to do the
14 questioning. It's about the need to focus the discussion in an appropriate way.
15 MS ZAGO: Your Honours, in the context of the witness's evidence yesterday, we
16 understand that the allegations, or the references more appropriately, to the two
17 investigators were made by the witness against the back-drop of his evidence about
18 organisation number 19. It was apparent from the narrative of the witness that he
19 was implicating in a similar manner representatives of the Office of the Prosecutor.
20 Additionally, as your Honours indicate, it would be perhaps appropriate or it could
21 be appropriate to remind a witness during an interview the focus of the case and
22 explain the framework of the interview. However, that would be appropriate if
23 done on tape with the witness audio recording the clarifications provided to the
24 witness during the interview because that part -- that forms also part of the interview
25 itself.

Trial Hearing
Witness: KEN-OTP-P-0637

(Open Session)

ICC-01/09-01/11

1 However, the witness was suggesting that all this conversation took place out -- off
2 tape, not on tape, which would also suggest that the witness was suggesting that it
3 was an inappropriate conduct by the investigators who would not put the
4 instructions or the explanations to him on tape, that they had to interrupt, suspend,
5 go outside, return, instruct the witness on what to say and then go on tape.

6 So these are the elements that we have examined and reached the conclusion that
7 those were allegations against the OTP in those circumstances.

8 PRESIDING JUDGE EBOE-OSUJI: Was it that clear in the witness's testimony that
9 what he was saying was that the tapes were stopped and the conversation was had
10 with him off record and then tape started again? So that there was that black hole, as
11 it were, where something happened but the record didn't catch it and it is within that
12 frame that those alleged improprieties occurred; was it that clear in the testimony of
13 the witness?

14 The reason I say this is we have to be fair to the witnesses and it is our job to make
15 sure that we remain fair to what the witness is saying. When the witness is on the
16 stand, we have to get from them what it is they're saying when they're there if we're
17 going to use that as some submissions to be made later on. Was it clear?

18 MS ZAGO: I can read from the transcript again if your Honours believe that would
19 be of assistance. In this context and by the use of verbs that the witness employed
20 yesterday, it would appear that the instruction was that he had to pronounce or state
21 the two names. It is -- I can read it again so that there is understanding. And the
22 witness at again page 90, line 21, said, "... when we started in the matter, if
23 I had ..." -- "... if I made a mistake, if I did not mention the name of Ruto or Sang, they
24 will stop the machine, go out and discuss outside before they will come back and they
25 would say I have to pronounce or state the two names; that is the names of Sang and

Trial Hearing
Witness: KEN-OTP-P-0637

(Open Session)

ICC-01/09-01/11

1 Ruto."

2 Now, I do appreciate that the witness did not repeat or explain that that was off tape,
3 but in our submissions the fact that the witness said, "And they, the investigators,
4 would say, 'I have to pronounce or state the two names,'" it seems to be a specific
5 instruction to implicate, not to clarify, the names of the two accused in an appropriate
6 manner.

7 Therefore, our understanding of this answer is that everything that was
8 discussed -- discussed in an appropriate manner happened off tape.

9 PRESIDING JUDGE EBOE-OSUJI: There's also the matter of interpretation and of
10 course this is not at all to suggest that we don't have good interpretation. We are
11 very able interpreters that are doing their best to assist us. This is not at all to
12 suggest any failings on their side, but it is the matter of -- to keep in mind that there
13 are linguistic infelicities that happen even amongst people whose first language is the
14 English language, or any language at all, and let alone when witnesses are speaking
15 through the filter of interpretation and interpretation that needs to be made on the
16 spur of the moment.

17 So let's just keep these things in mind and take them into account when we make
18 submissions that may have the witness saying certain things in a certain way.

19 Precision -- precise appreciation of those words we may also have to reconsider from
20 time to time.

21 But I'm moving on. Can you then move on to the other matters, please, the other
22 factors you've indicated?

23 MS ZAGO: Yes, your Honours.

24 I believe that the following submissions can be made in public. I will be careful. I
25 will not provide any identifying information.

Trial Hearing
Witness: KEN-OTP-P-0637

(Open Session)

ICC-01/09-01/11

1 The witness has departed entirely, in our submissions, from the incriminating
2 information that he originally provided the Office of the Prosecutor with during his
3 interview with respect to meetings he knew about concerning the planning of the
4 violence in his own region, meetings at which prominent Kalenjin representatives
5 would have attended, during which a plan was devised, specific instructions or
6 divisions/allocations of functions and roles within that plan was decided, during
7 which also funding for the violence was discussed.
8 More importantly, at least one meeting at which Mr Ruto would have participated, at
9 which the witness was present. The involvement of specific individuals in the
10 execution of the violence in the region. With respect to Mr Sang, the fact that the
11 witness would have heard him - him being Mr Sang - during one of his programmes
12 on Kass FM radio using inciting language, or providing specific information about, as
13 the witness referred to, "the war" during the period from the announcement of the
14 electoral results on 30 December 2007 onwards during the post-election violence in
15 the end of December and beginning of January.
16 He also departed from information concerning rallies at which Mr Ruto would have
17 attended and used a certain language to incite the population against the Kikuyu
18 civilians, both in 2007 and during the 2005 referendum campaign, during which rally
19 in 2005 in particular according to the evidence of the witness to the Prosecutor
20 Mr Ruto would have used the word "madoadoa" in 2005 not in connection with the
21 2007 elections, but in 2005, and generally the witness's knowledge - personal
22 knowledge - of the individuals or certain individuals involved in the planning and
23 the witness's own involvement in the planning with specific instructions that he
24 would have received and executed.
25 So, in sum, this is the crux of the witness's evidence in terms of incriminating factors.

Trial Hearing
Witness: KEN-OTP-P-0637

(Open Session)

ICC-01/09-01/11

1 The witness do provide an exhaustive interview amounting to 800 pages of
2 transcripts. However, I believe I have summarised the most salient portions of his
3 incriminating evidence.
4 He also provided extensive information about the violence in his area, the acts of
5 violence, specific acts of violence that he would have witnessed, individuals who
6 would have led the attackers from Kalenjin areas against the Kikuyu population in his
7 area and other details that are not necessarily relevant to the -- to this case.
8 If your Honours allow me to go back briefly to the allegations or the Prosecution
9 submissions or allegations against members of the OTP, I would like to also direct the
10 Chamber's attention to another portion in his affidavit, (Redacted)
11 (Redacted)
12 (Redacted)
13 (Redacted)
14 So in -- against all these factors, the Prosecution concluded that the allegations made
15 yesterday against the investigators were allegations of inappropriate conduct.
16 Thank you.
17 PRESIDING JUDGE EBOE-OSUJI: Is this affidavit -- has it been exhibited? It is
18 part of our record now?
19 MS ZAGO: The witness confirmed his affidavit yesterday, but the document has not
20 yet been exhibited, but we intended to do -- to do it at the end of our
21 examination-in-chief.
22 PRESIDING JUDGE EBOE-OSUJI: You see, that's why I've always said when you
23 treat a document, tender it into the evidence if you want to do so right then and not
24 wait until the end because all kinds of difficulties may arise. You can do so now, we
25 are still in the case, if your colleagues do not object.

Trial Hearing
Witness: KEN-OTP-P-0637

(Open Session)

ICC-01/09-01/11

1 MS ZAGO: If I may respond to your Honours? The reason why the Prosecution
2 didn't request for the affidavit to be exhibited yesterday was because the affidavit was
3 to be used for purposes of impeachment only and the reason -- and we are at this
4 point now, but we were not at this point yesterday yet.

5 PRESIDING JUDGE EBOE-OSUJI: The suggestion is do you want to tender it? You
6 can do so -- you can seek to do so now.

7 MS ZAGO: Yes, I wish to tender the document now into evidence.

8 PRESIDING JUDGE EBOE-OSUJI: Any objection?

9 MR FAAL: Mr President, we have some concerns regarding this affidavit. Even
10 though the witness had confirmed that the signature on the document is his, it had
11 not been fully established by the Prosecution that indeed the witness made the
12 contents in this affidavit and, Mr President, we notice that the witness did say that he
13 cannot read and write well in English.

14 He gave his evidence in Kiswahili, and Mr President it is quite clear that this affidavit
15 is in English and there is no paragraph in this affidavit suggesting that the contents
16 had been read to the witness in a language in which he understands.

17 So it cannot be established that the witness knows exactly what are the contents of
18 this affidavit. It is not clear whether the information conveyed by the witness to his
19 lawyer have been adequately or correctly captured in this affidavit.

20 And, Mr President, it's quite normal in many jurisdictions - at least in common law
21 jurisdictions - that an affidavit, if prepared for or in favour of a person who does not
22 understand the language in which the affidavit is written, at least there should be
23 inserted a clause showing that the affidavit had been read out to the person - to the
24 deponent - in a language in which he or she understands because the content of the
25 affidavit would have been attributed to the deponent.

Trial Hearing
Witness: KEN-OTP-P-0637

(Open Session)

ICC-01/09-01/11

1 So, in view of the deficiency in this affidavit, we submit that it is perhaps premature
2 for the Prosecution to attempt to put this affidavit in evidence because the necessary
3 foundation has not been completely laid.

4 On that basis, Mr President, we ask that the application be rejected, or that the
5 Prosecution satisfy the necessary requirements by laying a proper foundation for the
6 admission of the document.

7 Thank you, Mr President.

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

9 MR KIGEN-KATWA: Mr President, we take the same position and we are prepared
10 to reconsider our position after the witness has confirmed that the contents of the
11 affidavit reflect what he intended to communicate to his advocate.

12 PRESIDING JUDGE EBOE-OSUJI: Ms Zago, we have to mark this for identification.

13 MS ZAGO: As the Court pleases.

14 PRESIDING JUDGE EBOE-OSUJI: The affidavit will be marked as the next
15 document for identification on the part of the Office of the Prosecutor.

16 THE COURT OFFICER: Thank you, Mr President.

17 Could Ms Zago please give me the ERN number of the document?

18 MS ZAGO: Yes, the ERN number is KEN-OTP-0125-0230.

19 THE COURT OFFICER: Thank you.

20 Document KEN-OTP-0125-0230 will bear the following number, MFI-T-OTP-P-00178,
21 and it will be registered as a confidential document.

22 PRESIDING JUDGE EBOE-OSUJI: Thank you.

23 Ms Zago, have you finished your application?

24 MS ZAGO: Yes, your Honour, unless you have additional questions? I'm ready to
25 answer.

Trial Hearing
Witness: KEN-OTP-P-0637

(Private Session)

ICC-01/09-01/11

- 1 PRESIDING JUDGE EBOE-OSUJI: No more questions from me.
- 2 MR FAAL: Well, Mr President --
- 3 PRESIDING JUDGE EBOE-OSUJI: In private session for a minute.
- 4 *(Private session at 10.59 a.m.) Reclassified as Open session
- 5 THE COURT OFFICER: We're in private session, your Honours.
- 6 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 7 For counsel in the case, the update is -- we have been receiving updates on the
- 8 situation of the witness. (Redacted)
- 9 (Redacted), so we will be
- 10 hoping to restart or continue his testimony at 12 o'clock.
- 11 We'll go back to public.
- 12 (Open session at 11.00 a.m.)
- 13 THE COURT OFFICER: We're in open session, your Honours.
- 14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 15 Mr Faal, you were beginning to submit. Now, when Ms Zago started she had
- 16 indicated earlier that it is with the agreement of both parties that -- her understanding
- 17 was that the Defence agreed to the application and that there will be no opposition to
- 18 it.
- 19 MR FAAL: Indeed.
- 20 PRESIDING JUDGE EBOE-OSUJI: And you had also if I recall indicated that
- 21 yesterday, but we wanted her to put the matter on the record notwithstanding any
- 22 agreement between the parties.
- 23 So can you proceed now.
- 24 MR FAAL: Thank you, Mr President. Indeed, my friend's submissions on our
- 25 position is correct. We do not oppose the application. However, we wish to

Trial Hearing
Witness: KEN-OTP-P-0637

(Open Session)

ICC-01/09-01/11

1 register the fact that we are only accepting that in the present circumstances this
2 witness may be declared hostile only because - only because - he has significantly
3 departed from the previous information or evidence that he provided to the
4 Prosecution.

5 We do not necessarily subscribe to some of the other views expressed by the
6 Prosecution, in particular the views that the witness had made adverse imputations
7 against the conduct of Prosecution staff. We do not think that what the witness has
8 said is sufficient to warrant an interpretation that he had imputed bad faith or
9 inappropriate conduct on the part of OTP staff.

10 And on the issue of benefits, I mean we know it's his interpretation of what he was to
11 be given. Every witness will receive something by reason of his or her interaction
12 with the Court. That is normal. So his interpretation is -- well, these are benefits, so
13 I do not think that that also should be taken to mean improper conduct on the part of
14 court staff.

15 But to the extent that the witness has significantly departed from his previous
16 evidence, the information provided to the Prosecution, we agree that he could be
17 declared hostile. We do not oppose the application.

18 Thank you.

19 PRESIDING JUDGE EBOE-OSUJI: Thank you.

20 Mr Kigen-Katwa?

21 MR KIGEN-KATWA: Your Honours, we confirm that on our part we had agreed
22 with the Prosecution that we would not oppose an application for hostility. We
23 were also very specific that our agreement is based on the fact that the witness had
24 departed from his original statement. That is the extent of our agreement.

25 Your Honours, in respect to Mr Sang and very specifically with regard to what my

Trial Hearing
Witness: KEN-OTP-P-0637

(Open Session)

ICC-01/09-01/11

1 colleague has said, she has said that the witness has failed to adduce evidence that
2 was expected of him over what Mr Sang had said over the radio, being calling for war
3 and incitement.

4 We would like to go on record as saying that no audio was -- the witness was not
5 invited to confirm or ascertain if any audio or if Mr Sang had said anything to that
6 effect on the radio, that he had called for war or incitement.

7 We also would like to go on record as saying that no audio has been disclosed to us
8 where Mr Sang is alleged to have made these comments, and we are talking of a very
9 specific and narrow period of 30 December and, in the words of Prosecution, "... to
10 early January."

11 And, your Honours, we keep labouring under the disadvantage of the Prosecution
12 not discharging their burden of proof to show Mr Sang's culpability and instead being
13 placed in a situation where we are supposed to demonstrate his innocence, and we
14 would like to go on record as lamenting about that issue.

15 PRESIDING JUDGE EBOE-OSUJI: That is not something experienced counsel
16 should lament. You know that, Mr Kigen-Katwa.

17 MR KIGEN-KATWA: Well, I don't know why it is necessary to say an experienced
18 counsel should not say that. Your Honour, we --

19 PRESIDING JUDGE EBOE-OSUJI: No, no. No, no. It is necessary to say that, to
20 not say that, "I have been put in the position of proving the innocence of my client."
21 That's what I meant, not the content of what you said.

22 MR KIGEN-KATWA: May I say, your Honour - I'll go back to the substance of what
23 I was submitting on - that, your Honour, we have drawn the Prosecution's attention
24 to the fact that the period they are very specifically referring to in respect to this
25 witness, being the immediate period after the announcements of the result - and that

Trial Hearing
Witness: KEN-OTP-P-0637

(Open Session)

ICC-01/09-01/11

1 is the period the Prosecution very specifically referred to, the period immediately
2 after the announcement of the results to the early January - is a period when there
3 was in fact a ban on live broadcast in Kenya.

4 We would have expected at the very least that the Prosecution would give attention
5 to that issue and investigate it and determine whether, as we have maintained, it is
6 true and in fact whether the evidence they expect from this witness - and I'm being
7 very specific about the evidence from this witness - is tenable in view of the fact that
8 our position is that there was no live broadcast and so these contentions, these
9 allegations, of calling for war and incitement neither happened nor could have
10 happened. That's all I wish to say, your Honour.

11 Of course I must say I am aggrieved at the observation that has been made.

12 PRESIDING JUDGE EBOE-OSUJI: You need not be aggrieved. You are a very
13 experienced counsel, that's the point, and the point was I was surprised to hear that
14 from you. It is not that you're not. That's the point.

15 Let's stop it there in terms of submissions. So there is no opposition to the
16 application coming from the Defence. They have limit -- they have clearly indicated
17 that they do consider that there has been significant departure from the statement or
18 statements given to the Prosecution and, on that basis, they feel that the declaration of
19 hostility is warranted.

20 So let's not canvass that. If you feel a need to return to the remainder of it, it's up to
21 you, but we can leave it at that otherwise and the Judges will go and consider the
22 ruling.

23 MS ZAGO: We can deal with this as final arguments. Thank you, your Honours.

24 PRESIDING JUDGE EBOE-OSUJI: Thank you.

25 We will rise and we will come back at 12 at which time we hope that the situation

Trial Hearing
Witness: KEN-OTP-P-0637

(Open Session)

ICC-01/09-01/11

- 1 would have been resolved. Thank you.
- 2 Court will rise.
- 3 THE COURT USHER: All rise.
- 4 (Recess taken at 11.08 a.m.)
- 5 (The hearing was later adjourned for the day at 2.59 p.m.)
- 6 RECLASSIFICATION REPORT
- 7 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
- 8 2013, the version of the transcript with its redactions becomes Public.