

Trial Hearing
Witness: KEN-OTP-P-0789

(Open Session)

ICC-01/09-01/11

1 International Criminal Court
2 Trial Chamber V(a) - Courtroom 1
3 Situation: Republic of Kenya
4 In the case of The Prosecutor v. William Samoei Ruto
5 and Joshua Arap Sang - ICC-01/09-01/11
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera-Carbuccia
7 and Judge Robert Fremr
8 Trial Hearing
9 Friday, 16 January 2015
10 (The hearing starts in open session at 9.33 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 Situation in the Republic of Kenya, in the case of The Prosecutor versus
18 William Samoei Ruto and Joshua Arap Sang, ICC-01/09-01/11.
19 And we are in open session, your Honours.
20 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
21 Did appearances change, Ms Zago?
22 MS ZAGO: Good morning, Mr President. Good morning, your Honours. The
23 only mention is that Mr Steynberg is not in the courtroom today with us. Thank you,
24 Mr President.
25 MR NARANTSETSEG: Good morning, your Honours. The same, thank you.

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

- 1 PRESIDING JUDGE EBOE-OSUJI: Mr Koech?
- 2 MR KOECH: Good morning, Mr President. Our team remains the same, save for
- 3 the absence of Cynthia Bondi and Marie-Ange Ukwigize.
- 4 PRESIDING JUDGE EBOE-OSUJI: All right.
- 5 MR HOOPER: We're constituted in the same way, except Mr Khan's joined us
- 6 today.
- 7 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 8 Mr (Redacted), again I note your appearance.
- 9 MR (Redacted): (Via video link) Thank you, Mr President.
- 10 PRESIDING JUDGE EBOE-OSUJI: Mr Koech, we're in open session. Do you --
- 11 MR KOECH: If we go to private, Mr President.
- 12 PRESIDING JUDGE EBOE-OSUJI: You'll go to private?
- 13 MR KOECH: Yes.
- 14 PRESIDING JUDGE EBOE-OSUJI: We'll go to private session, court officer.
- 15 *(Private session at 9.35 a.m.) Reclassified as Open session
- 16 THE COURT OFFICER: We are in private session, your Honours.
- 17 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 18 And, Mr Koech, you had indicated yesterday that you -- it was your target to finish
- 19 before the lunch-break. That remains the case?
- 20 MR KOECH: We still have the best intentions of finishing at lunch-break, but if we
- 21 spill over, we'll ask for perhaps half an hour after lunch.
- 22 PRESIDING JUDGE EBOE-OSUJI: Proceed.
- 23 WITNESS: KEN-OTP-P-0789 (On former oath)
- 24 (The witness gives evidence via video link)
- 25 QUESTIONED BY MR KOECH: (Continuing)

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 Q. Mr Witness, good morning.

2 A. Good morning to you.

3 Q. Do you recall that yesterday we played to you an audio from the broadcast
4 where Mr Sang interviewed three Kikuyu gentleman?

5 A. Yes, I recall.

6 Q. Those gentlemen were Chris Murungaru, Uhuru Kenyatta and Joseph Kugathi;
7 isn't that right?

8 A. That is right.

9 Q. And you proceeded afterwards to interpret or summarise what had happened
10 in the introduction to that programme; you recall that?

11 A. I recall that, yes.

12 Q. Now, I will proceed to read into the record the substance of what you heard
13 yesterday.

14 PRESIDING JUDGE EBOE-OSUJI: Where is it again in your binder?

15 MR KOECH: Mr President, it's tab number 34, tab number 34. The ERN number is
16 KEN-D11-0015-001.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you. In your second binder, volume 2, is
18 that it?

19 MR KOECH: Yes, indeed.

20 PRESIDING JUDGE EBOE-OSUJI: Thank you.

21 MR KOECH:

22 Q. Now, Mr Witness, I will read the English translation, and it says -- rather Sang
23 said, and I quote, "Welcome listener from wherever you're tuned in. We got a good
24 opportunity and felt as a broadcaster that it is proper to invite these people to come to
25 explain their thoughts and ideals and we - the Kalenjin community get to ask them

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 questions. I know you have many questions and I would like that we all join in this
2 discussion.
3 You have heard their names: Uhuru Kenyatta, Murungaru, and Kaguthi, and
4 perhaps your thoughts are already attuned to the question that it is only Kikuyus in
5 the studio today. It is true that they are from the Kikuyu community. We have
6 invited them for the benefit of the listeners so that we get to know the truth of the
7 matter - in other words let us say - we wish to find out what is the cause of differences
8 between the Kalenjin and the Kikuyu community."

9 Mr Witness, is that what you heard in the broadcast yesterday?

10 A. That is correct, Counsel.

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
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 MR KOECH: Next, Mr President, we will play part of the same audio starting with
6 time stamp 1.41.01 to 1.41.34, the same tab number at page -- the page ending at 0059.
7 If we could have the floor for that purpose.

8 (Playing of the audio excerpt KEN-D11-0011-0030)

9 MR KOECH:

10 Q. Now, Mr Witness, you heard that?

11 A. Yes.

12 Q. It was in Kiswahili language, wasn't it?

13 A. That is correct.

14 Q. And whose voice was that?

15 A. If my memory serves me right, that is Chris Murungaru.

16 Q. Mr Witness, I will read into the record what he said in English and you will
17 confirm whether it's correct or not.

18 Mr Witness, this is what is said in English as translated: "Finally let me say this, it is
19 important as Kalenjin and Kikuyu communities to ask ourselves where we
20 have ..." -- sorry, sorry, I've read the wrong caption. Sorry.

21 He said, "Secondly, let me say this, there is this caller who asked how we end
22 tribalism. I think the best way to end tribalism now is to speak or communicate,
23 like ..." Uhuru -- "... Honourable Uhuru said. What I have noticed is that conflicts
24 among various communities - and not just Kalenjin and Kikuyu -- have been caused
25 by lack of communication. And without communication, hatred starts creeping in."

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 Is that an accurate translation, Mr Witness?

2 A. That is correct, Counsel.

3 MR KOECH: Next, Mr President, we wish to play time stamp 1.44, 1.44.19 to 1.44.49.

4 It is at page ending with the number 0061 in the same binder number 34 -- tab
5 number 34.

6 (Playing of the audio excerpt KEN-D11-0011-0030)

7 MR KOECH:

8 Q. Mr Witness, you followed that?

9 A. Yes, Counsel.

10 Q. Whose voice was that?

11 A. That's Honourable Uhuru Kenyatta.

12 Q. So, Mr Witness, I will read the English translation of what he said and you will
13 confirm whether the translation is correct, and I quote, "As leaders, we are required to
14 sit and look for ways to communicate - dialogue when problems arise, not using
15 problems to incite the people but rather talking with each other not at each other, to
16 resolve those problems so that people can live in peace and in unity. That has been
17 my appeal all long and it will continue to be my appeal."

18 Is that an accurate translation, Mr Witness?

19 A. That's accurate.

20 Q. Thank you.

21 MR KOECH: Next, Mr President, we'll play the final caption of that audio which is
22 at time stamp 1.46.11 to 1.47.11, a minute of it, and it's at page 006 -- the page ending
23 at 0062 to 63.

24 (Playing of the audio excerpt KEN-D11-0011-0030)

25 MR KOECH:

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 Q. Mr Witness, you followed that?

2 A. Yes, Counsel.

3 Q. And it was the voice of Mr Sang, was it?

4 A. That is correct.

5 Q. And just listen to what I'm going to read in English and tell us at the end of it
6 whether it's a fair translation of what you heard in Kiswahili, and I quote: "Thank
7 you so much my listener, I would like just to thank you, I know you have not gotten
8 enough time for you to contribute to the program or ask questions but I hope in our
9 discussion today, that you have benefited in one way or the other. Us ..." as "... a
10 station, we will bring you ... people for the purpose of building our nation and
11 compatibility of our country.

12 We know that we live because it is God who put us in the country of Kenya. That is
13 why we are looking for solutions for things that we see going wrong. That is why
14 these leaders were here today. I hope you have heard ..." the "... way they have
15 talked. It is you who will decide whether to agree with what they have said, if you
16 think it is true or not.

17 But I thank them because they have taken their time to get here today. We have
18 called them so that we can also get to know ..." their "... story. What are their
19 thoughts, what are they saying, we will continue to the last day, when we go to the
20 polls, and we will even proceed after elections to build our country Kenya."

21 Does that fairly reflect what you heard in Kiswahili, Mr Witness?

22 A. Yes, it does.

23 Q. Mr Witness, did you in the course of listening to the Kiswahili version hear
24 Mr Sang at the concluding portion of that audio say he wanted his listeners to hear
25 the other side of the story? Did you hear that?

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 A. Yes, Counsel.

2 Q. And what would you say he meant?

3 A. Well, of course he meant that the guests who have come to the studio have
4 spoken for the other side, so that if there were any differences, the -- the leaders who
5 had come to the studio were able to tell their story and the listeners also had to feel
6 what they had to say.

7 Q. And all these leaders were from the Kikuyu community, isn't it?

8 A. That is correct.

9 MR KOECH: Mr President, we wish to play a further very short caption of the same
10 audio, the very last one, before we go to other things, and it is at time stamp 1.48.09 to
11 1.48.38.

12 Q. Witness, again, listen and then we'll -- I'll ask you questions afterwards.

13 (Playing of the audio excerpt KEN-D11-0011-0030)

14 MR KOECH: Sorry, Mr President, we -- we mis -- I misspoke. The time stamp was
15 not correct and we played the wrong audio. We leave the audio at that for now and
16 we'll go to other issues on the same, same incident.

17 Q. But now, Mr Witness, we'll display a certain picture.

18 Mr President, that's at tab 34A and the ERN number is KEN-D11-0021-0695.

19 Once the witness has seen the -- whatever is displayed, I will then ask the questions.

20 Mr Witness, can you see those pictures?

21 A. I can't see any picture.

22 MR KOECH: Court officer, the ERN number is KEN-D11-0021-0697 and also
23 KEN-D11-0021-0699 and, finally, KEN-D11-0021-0695.

24 THE COURT OFFICER: (Via video link) The document of five pages and the first
25 page is 0695, and I am showing it to the witness right now.

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 MR KOECH:

2 Q. Now, Mr Witness, have you seen those pictures, or which picture have you seen
3 now? Can you see the one with four people in it?

4 A. Yes.

5 Q. And at the left you see Mr Chris Murungaru, isn't it?

6 A. That is correct.

7 Q. And then followed by Mr Sang?

8 A. Yes.

9 Q. Mr Uhuru Kenyatta?

10 A. That is correct.

11 Q. Is that right? And Mr Joseph Kaguthi?

12 A. That is correct.

13 Q. And these are faces that are familiar to you, aren't they?

14 A. Yes.

15 PRESIDING JUDGE EBOE-OSUJI: Mr Koech, you need to note the ERN number of
16 the photo for the record.

17 MR KOECH: This one in particular, Mr President, is KEN-D11-0021-0696 -- 95,
18 sorry.

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(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 Mr President, I would like to ask that the audio, transcript and translation plus the
17 pictures be admitted into evidence.

18 PRESIDING JUDGE EBOE-OSUJI: One by one, Mr Koech.

19 MR KOECH: And I --

20 PRESIDING JUDGE EBOE-OSUJI: One after the other. Let's -- you want the audio
21 and the accompanying transcripts admitted?

22 MR KOECH: Sorry, Mr President. Yes, I want that admitted, the audio being

23 KEN-D11-0011-0030. It has an MFI number, MFI-T-D11-00034.

24 PRESIDING JUDGE EBOE-OSUJI: Witness --

25 THE WITNESS: Yes, Mr President.

Trial Hearing
Witness: KEN-OTP-P-0789

(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 PRESIDING JUDGE EBOE-OSUJI: Prosecutor?

17 MS ZAGO: We do not object to the admission of this document, with the usual
18 caveat concerning translation or transcription as we've seen yesterday with some
19 numbers.

20 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper?

21 MR HOOPER: No objection.

22 PRESIDING JUDGE EBOE-OSUJI: The audio and the transcript -- is there only one
23 transcript, Mr Koech? There is.

24 MR KOECH: It is a transcript and translation in the same document.

25 PRESIDING JUDGE EBOE-OSUJI: In the same document.

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

- 1 MR KOECH: And it is KEN-D11-0015-0001.
- 2 PRESIDING JUDGE EBOE-OSUJI: That transcript is also admitted, together with the
- 3 audio.
- 4 MR KOECH: Mr President, we --
- 5 PRESIDING JUDGE EBOE-OSUJI: One second.
- 6 THE COURT OFFICER: Thank you, Mr President.
- 7 The audio KEN-D11-0011-0030 will bear the following number: EVD-T-D11-00034.
- 8 The transcript and translation KEN-D11-0015-0001 will bear the following number:
- 9 EVD-T-D11-00088.
- 10 Both items will be registered as confidential.
- 11 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 12 MR KOECH: I'm obliged.
- 13 Next, Mr President, I wish to ask that the photos be admitted. They are
- 14 KEN-D11-0021-0695 -- 695. The next would be 696, 697 and 699.
- 15 PRESIDING JUDGE EBOE-OSUJI: Ms Zago?
- 16 MS ZAGO: No objections.
- 17 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper?
- 18 MR HOOPER: No objections, thank you.
- 19 PRESIDING JUDGE EBOE-OSUJI: The photographs are admitted as the next in the
- 20 Sang exhibits.
- 21 THE COURT OFFICER: Thank you, Mr President.
- 22 The photo KEN-D11-0021-0695 will bear the following number: EVD-T-D11-00089.
- 23 The photo KEN-D11-0021-0696 will bear the following number: EVD-T-D11-00090.
- 24 The photo KEN-D11-0021-0697 will bear the following number: EVD-T-D11-00091.
- 25 And finally the photo KEN-D11-0021-0699 will bear the following

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 number: EVD-T-D11-00092.

2 All items will be registered as confidential.

3 PRESIDING JUDGE EBOE-OSUJI: Thank you.

4 Mr Koech, please proceed.

5 MR KOECH: Thank you.

6 Q. Mr Witness, listening to that -- the audio, or parts of it that you heard, would
7 you confirm that as late as October the year 2007 Kass FM, through Mr Joshua Sang,
8 was hosting people who were trying to find solutions to problems that had afflicted
9 the country before?

10 A. I can confirm.

11 Q. And that the subject matter of this -- this particular radio station was to try and
12 find solutions for any tensions between Kikuyus and Kalenjins -- of this audio, sorry?

13 A. That is correct.

14 Q. Thank you, Mr Witness.

15 PRESIDING JUDGE EBOE-OSUJI: Can we go to page 62, native to the transcript.

16 That would be the ERN number ending with 0063. Are we there?

17 Court officer in (Redacted) can you also pull it up for the witness?

18 THE COURT OFFICER: (Via video link) Yes, Mr President. Transcript

19 KEN-D11-0015-0001 at page 0063 is being presented to the witness.

20 PRESIDING JUDGE EBOE-OSUJI: Witness -- and this question arises from the last
21 answer you gave, which was that the effort of Mr Sang was to get people together
22 who would try and find solutions to problems that had afflicted the country in the
23 past.

24 Now let's look at the second paragraph, I think that would be the first paragraph in
25 English, beginning with, "We know that we live because it is God who put us in the

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 country of Kenya."

2 Are you there?

3 THE WITNESS: Yes, Mr President.

4 PRESIDING JUDGE EBOE-OSUJI: And then continuing with the quote, "That is
5 why we are looking for solutions for things that we see going wrong. That is why
6 these leaders were here today. I hope you have heard the way they have talked. It
7 is you who will decide whether to agree with what they have said, if you think it is
8 true or not." I stop the quote.

9 From your perspective as a Kenyan, (Redacted) listening to that last sentence
10 what does that do?

11 THE WITNESS: Well, from my own understanding is in Kenya there is sometimes
12 tribal strife, you know, between different communities, and at this point in time is
13 that the leadership of the -- the then leadership was President Kibaki, who of course is
14 a Kikuyu, and other communities sometimes would feel that they did not have maybe
15 equal distribution of resources, there were issues of historical injustices to do with
16 land and there were issues of jobs, sometimes in Kenya certain communities feel that
17 top jobs or government jobs are being given to certain communities, and development
18 opportunities are also preferred to certain regions.

19 So in my -- my understanding is that the complaints of people's feelings about
20 particularly the government of the day, which was Kikuyu, is sidelining other
21 communities and that is my opinion about that.

22 PRESIDING JUDGE EBOE-OSUJI: I'll leave it at that, Mr Koech. You can ask
23 follow-up questions, of course, of the witness.

24 MR KOECH: Yes, indeed, Mr President. I would like in order to ask follow-up
25 questions to call up page KEN-D11-0015-0008, which is page 7 of the document, and

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 then we can have a look at it.

2 THE COURT OFFICER: (Via video link) Page 0008 is being presented to the
3 witness.

4 MR KOECH:

5 Q. And, Mr Witness, I will read the third paragraph -- the fourth paragraph, which
6 could as well be the second paragraph of the English translation, and this is what
7 it -- Mr Sang said and I quote, "There were people who were directors in different
8 departments; they too were shown their way home after this (NARC) government
9 came to power. I would like you, Honourable Murungaru, to explain to us. You
10 were a cabinet minister in this government and specifically in the office of the
11 President, dealing with security issues. The top army leadership from that
12 department of defence or other senior officers in the country were dismissed. Were
13 they sent home because they were Kalenjins? Why were they sent packing?"

14 Mr Witness, you listened to that and you've seen it on the screen, haven't you?

15 A. That is correct.

16 MR KOECH: Next, Mr President, we would wish to also display parts of the next
17 page, which ends with 009, page 8 of the transcript. And I would like to go to the
18 second-last paragraph and go through the text of the English translation.

19 Now, at the top there you can see the name "Murungaru" and then the Kiswahili
20 transcription and the translation, and this is what the translation says, and I quote,
21 "Let me say that it is common practice all over the world that when a new leader
22 comes to power - there must be changes. This is in history since time immemorial.
23 If you go to America; if you go to Europe, in England, anywhere - when a new leader
24 ascends to power, it is like a new landlord taking over a homestead; for the cook, and
25 the steward in charge of livestock whom the new boss will perhaps try to find out if

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 they are not working in a way he/she ..." prefers -- "... (the leader) prefers."

2 Q. Mr Witness, you've seen that?

3 A. That is correct, Counsel.

4 Q. And I put it to you, Mr Witness, that that was an answer to what Mr Sang -- the
5 question that Mr Sang had post and we just read a short while ago; is that correct?

6 A. That is correct.

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 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 MR KOECH: Mr President, we'll move now to the next audio, and we are going
25 back to an audio we used yesterday, which is at tab 40 of your Honours' bundles.

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 The audio itself is KEN-D11-0013-0089. It is in evidence and the evidence number is
2 00041. And the translation is KEN-D11-0014-0294. EVD, because it is in evidence,
3 is 00042. And we just want to play a small caption, time stamp 13.15 to 13.40, which
4 is at page 00299 of the transcript.

5 PRESIDING JUDGE EBOE-OSUJI: Sorry, sorry. Let's go back there. Was that
6 logic you applied there when you say the EVD is 0042? Is that the case? This is
7 Exhibit 41, isn't it?

8 MR KOECH: No, it was not just logic. I think that's the number. The translation
9 is EVD 00042.

10 PRESIDING JUDGE EBOE-OSUJI: The audio itself is 41.

11 MR KOECH: Yes.

12 PRESIDING JUDGE EBOE-OSUJI: I see, okay.

13 MR KOECH: So as I said time stamp that we're playing is 13.15 to 13.40.

14 (Playing of the audio excerpt KEN-D11-0013-0089)

15 MR KOECH:

16 Q. Mr Witness, you -- you followed that audio?

17 A. That is correct.

18 Q. It was in Kalenjin?

19 A. Yes.

20 Q. Was that Mr Sang?

21 A. Yes, Counsel.

22 Q. Now, let me read what has been translated of those words and then we'll ask
23 follow-up questions from there.

24 PRESIDING JUDGE EBOE-OSUJI: What page?

25 MR KOECH: That's page 299, and the page ending with 299, which is page 5 of the

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 translation, not the transcript, but translation. And it is at the top of the page, the
2 first paragraph.

3 Q. And I quote, "Mmmh, as we proceed, dear listeners, because today we ought to
4 really learn; I do know we may not have another Friday - we only have this one and
5 the next one will be the final one. And that is why on this particular Friday (today), I
6 have brought you this programme so that we can educate each other, and by next
7 Friday we shall wind up everything since the voting is on 27th. We will not have
8 another Friday to engage as a community. So this is what I want to say: How will
9 voting be done? What is the voting procedure? I want you to understand this
10 clearly."

11 Was that a fair translation, Mr Witness?

12 A. Yes.

13 MR KOECH: Mr President, we would like to call up KEN-D11-0021-00 -- 07, sorry,
14 0700. That is the ERN number of the document we want to -- we want displayed.

15 PRESIDING JUDGE EBOE-OSUJI: Is it in a tab somewhere here?

16 MR KOECH: Yes, Mr President, tab 61.

17 THE COURT OFFICER: (Via video link) The document is being displayed, one
18 page, year calendar of 2007.

19 MR KOECH: Thank you, Mr Court Officer.

20 Q. Mr Witness, you heard what Mr Sang said, and I will read the second sentence:
21 "And that is why on this particular Friday (today) I have brought you this programme
22 so that we can educate each other, and by next Friday we shall wind up everything
23 since the voting is on 27th."

24 You heard that, didn't you?

25 A. Yes.

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 Q. Please confirm, first of all, in 2007 the date, the poll date was 27 December; is
2 that correct?

3 A. That is correct.

4 Q. So from this audio it is very clear that Sang was talking on 14 December in the
5 year 2007; isn't that correct?

6 A. That is correct.

7 Q. Because there was only one more Friday, which is the 21st, before the next
8 Thursday, which is the D date, the 27th; is that correct?

9 A. That is correct.

10 Q. Thank you, Mr Witness.

11 MR KOECH: Mr President, the translation and the audio are already in evidence,
12 and we would wish to have these admitted as well into evidence and this particular
13 calendar.

14 PRESIDING JUDGE EBOE-OSUJI: Ms Zago?

15 MS ZAGO: No objections, your Honours.

16 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper?

17 MR HOOPER: No objection.

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

19 THE COURT OFFICER: Thank you, Mr President.

20 Document KEN-D11-0021-0700 will bear the following number: EVD-T-D11-00093
21 and will also be referenced as Sang Defence Exhibit Number 93.

22 MR KOECH: Thank you, Mr President. We again wish to go back to an audio we
23 played yesterday, the audio of 20 September 2005, and whose admission was opposed.
24 It is at tab 16, and the audio's ERN is KEN-D11-0014-0187. The translation is
25 KEN-D11-0020 to 0115. And we'll play time stamp 1.01.22 to 1.02.46. And the page

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 in the transcript and translation is 0082 to 0084.

2 (Playing of the audio excerpt KEN-D11-0014-0187)

3 PRESIDING JUDGE EBOE-OSUJI: I'm sorry, you said tab 16?

4 MR KOECH: Let me confirm that, Mr President, that it is tab 16. Yes, Mr President,
5 that is the tab.

6 PRESIDING JUDGE EBOE-OSUJI: And you said that you were reading at what
7 page?

8 MR KOECH: Mr President, we are playing at page 00 -- yes, 0082 to 0084.

9 PRESIDING JUDGE EBOE-OSUJI: 0082, I don't seem to have that. The beginning
10 page I have is 0115.

11 MR KOECH: Let's check our records properly for a second, Mr President.

12 Yes, we are reading from the page ending at 0197. May we have the floor for that
13 purpose to play the audio first.

14 (Playing of the audio excerpt KEN-D11-0014-0187)

15 MR KOECH:

16 Q. Mr Witness, you followed the audio, didn't you?

17 A. Yes.

18 Q. You do recall that yesterday we played an audio where two lawyers were at the
19 studio?

20 A. I recall.

21 Q. And those lawyers were Grace Kiptui and Moses Kurgat, isn't it?

22 A. That is correct.

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 Q. Now, Witness, I will read into the transcript the conversation that was going on
3 and then you will confirm whether the translation is proper and it fairly reflects what
4 you heard.

5 And I start -- Mr President, I'm starting at page 0197 where it starts "Caller 2" and
6 going to the next page and subsequent pages.

7 "CALLER 2: I am Kiptindinyo in Nandi Hills eh."

8 "How are you Kiptindinyo?" Sang says.

9 The Caller 2 says, "I'm very fine. I am delighted by the teachings given by our
10 lawyers.

11 SANG: Yes.

12 CALLER 2: I'm delighted by one thing they've said - that the current constitution is
13 not the best, so we want them to be the people who organise us.

14 SANG: Mmmh!"

15 The Caller 2 says, "Because there are some people who came to teach us, maybe they
16 have certain hidden agendas."

17 Sang agrees or nods him on and then the Caller 2 --

18 PRESIDING JUDGE EBOE-OSUJI: Is he agreeing or just --

19 MR KOECH: Nodding him on, "Mmmh!" And let's reflect what -- I was trying to
20 understand what "Mmmh" means.

21 But Caller 2 continues, nevertheless, and says, "It required patience and people who
22 tell the truth so as to tell us the bad side..."

23 Sang again, "Mmmh!"

24 "CALLER 2: ... well and illustrate for us that this is bad and that is good."

25 Sang again, "Mmmh!"

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 Do you see that?

2 PRESIDING JUDGE EBOE-OSUJI: That "Mmmh" there you keep saying, that's why
3 we tell witnesses to say "yes" or "no" because "Mmmh" could mean agreement, it
4 could mean disagreement, m-mh, and other things. So let's -- you can skip those and
5 just focus on the words being said by the people.

6 MR KOECH: Well, Mr President, I was sort of reading it also in Kalenjin
7 unfortunately.

8 Q. So Caller 2, Mr Witness, says: "The one that needs amendment is this, the one
9 that can be passed without amendment is that.

10 And when we will be voting, we will be informed on the direction ..." that "... we
11 decide to take."

12 Then he goes on at the bottom of the -- Sang says, "Thank you" at the ends of the
13 audio.

14 Then the caller again continues: "As soon as we've been told the truth, there's also
15 something I wanted to ask."

16 And on the next page, 0200, he proceeds: "Who elects ... women? Because it has
17 also touched something on women, so who elects the women at the district level or is
18 it just for parliament to decide? That's what I wanted to know."

19 He then continues: "And if it's parliament, is it good to start from a district or
20 national level? Let them answer me."

21 And Sang says, "Thank you."

22 (Microphone not activated)

23 Sorry, Mr President, my microphone was not on.

24 Mr Witness, does that reflect what you heard on the audio?

25 A. That is correct.

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 Q. And you will confirm, Mr Witness, that this was a civic education session and
2 discussion on the question of the -- the constitution, the draft constitution, of that
3 time, 2005?

4 A. Yeah, the proposed constitution.

5 Q. Yes.

6 MR KOECH: Mr President, we also wish to play time stamp 2.17 to -- 2.17.17

7 to 2.17.57. It's at page 0221 of the transcript and translation. May we have the floor
8 for that purpose.

9 (Playing of the audio excerpt KEN-D11-0014-0187)

10 MR KOECH:

11 Q. Mr Witness, you followed that?

12 A. Yes.

13 Q. Whose voice was it?

14 A. It is Arap Sang.

15 Q. Let me read what has been translated into English, then we'll ask any follow-up
16 questions. And I quote him: "As we continue with these law matters brought to
17 you by Kass FM, I want to say that we respect one another, let us do this work right,
18 learnt and do not rush whether NO or YES. Until 26th day when we will know
19 where we are heading to and all the people coming to studio have their own opinion
20 as earlier said by Arap Kurgat. So don't ..." pay "... don't say people are coming to
21 teach the way they want but the way it is, I want us to agree on that because we are
22 teaching the way it is and not the way we want because if ..." you "... go the way you
23 want, then we will do nothing."

24 Is that a fair translation of what you heard in Kalenjin?

25 A. Yeah, that's fair.

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 Q. Mr Witness, would you agree with me that this was a discussion forum for
2 the -- for -- on the merits or demerits of the draft of that particular time, the proposed
3 constitution of that time?

4 A. That is correct.

5 Q. And further that Sang did not say, tell people to support or oppose that
6 particular draft?

7 A. That is correct.

8 Q. And from that caption of the audio that you heard, would you say that Sang
9 was neutral?

10 A. Yes.

11 MR KOECH: Mr President, this is the audio which was -- which we sought to admit
12 yesterday and I'm seek -- I'm making the same application now for admission of the
13 audio, the transcript and translation. We have put in context the matters that
14 Mr President raised as regards whether or not there was a debate going on, and it's
15 clear that there was actually a debate on all the aspects of the constitution and this
16 was just the beginning.

17 PRESIDING JUDGE EBOE-OSUJI: It wasn't clear yesterday when you wanted to put
18 it in.

19 Ms Zago?

20 MS ZAGO: Thank you, Mr President. We maintain our objection as -- as we
21 submitted yesterday. This goes back to the issue of Mr Sang being a civic educator
22 at times. We notice that this falls -- this audio also falls within the scope of that
23 stipulation, if I can call it that way, and we also observe that this was not the
24 Lene Emet programme, that was the evening programme; therefore, the relevance
25 also in this case is less relevant than it would be if it were a Lene Emet segment.

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

- 1 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper?
- 2 MR HOOPER: We strongly support the application.
- 3 (The Trial Chamber confers)
- 4 PRESIDING JUDGE EBOE-OSUJI: The material is admitted onto the record.
- 5 MR KOECH: We are most obliged, Mr President.
- 6 PRESIDING JUDGE EBOE-OSUJI: Wait one second, please.
- 7 THE COURT OFFICER: The audio KEN-D11-0014-0187 will bear the following
- 8 number: EVD-T-D11-00094, and will be referenced as Sang Defence Exhibit 94.
- 9 KEN-D11-0020-0115 will bear the following number: EVD-T-D11-00095 and will be
- 10 referenced as Sang Defence Exhibit Number 95.
- 11 Thank you, Mr President.
- 12 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 13 Mr Koech, please proceed.
- 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
Witness: KEN-OTP-P-0789

(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 MR KOECH: Thank you, Mr President. I'll do just that.

19 Q. Mr Witness, do you know someone by the name William Kirwa?

20 A. Yes, I can recall.

21 Q. In which party was he in the year 2007?

22 A. I might not be able to recall.

23 Q. How about Honourable Stephen Tarus?

24 A. Tarus was in PNU.

25 Q. Honourable Musalia Mudavadi?

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

- 1 A. I think he was in ODM.
- 2 Q. Honourable Raila Odinga?
- 3 A. ODM.
- 4 Q. Honourable Uhuru Kenyatta?
- 5 A. PNU.
- 6 Q. Amos Kamunya?
- 7 A. PNU.
- 8 Q. Kipruto Arap Kirwa.
- 9 A. PNU.
- 10 Q. Cyrus Jirongo?
- 11 A. I think he was in ODM, if I'm not mistaken.
- 12 Q. How about Mr Mitei? Paul Mitei?
- 13 A. Paul Mitei was in PNU.
- 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
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 MR KOECH: Now, Mr President, we wish to go to another audio among the final
2 ones on 10 August 2007 and it is -- the audio is KEN-D11-0011-0027. We are playing
3 time stamp 8.11 to 9.25 at page 0136 to 7 of the transcript. If we could have the floor
4 for that purpose, Mr President?

5 MS ZAGO: Mr President.

6 PRESIDING JUDGE EBOE-OSUJI: Yes, Ms Zago.

7 MS ZAGO: Thank you. I apologise to interrupt. Could we have the tab number,
8 please?

9 MR KOECH: Yes, indeed, Mr President, it is binder number 31 -- tab 31 in binder 1.
10 Sorry.

11 (Playing of the audio excerpt KEN-D11-0011-0027)

12 MR KOECH:

13 Q. Now, Witness, whose voices did you hear in that audio?

14 A. The first voice was for Joshua Arap Sang and then he invited Minister Kirwa to
15 also speak.

16 Q. Now, Mr Witness, I will read what has been translated of that audio into the
17 record and you will confirm to us whether it fairly represents what the two gentlemen
18 were saying, and I start: "Greetings dear listener wherever you are this beautiful
19 evening; and am advising you not to move from your radio till guest ..." speakers "...
20 speaker arrives so that we can proceed."

21 Then again going further down the page: "Greetings dear listener wherever you are
22 this evening. On Mondays we usually bring you a program on cleanliness but today,
23 as I had informed you last week, we will be hosting our Minister for Agriculture so
24 that we can learn more about agriculture and he can also inform us of what is
25 happening in the country since he is one of the Kalenjin leaders serving in

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 government, besides serving as the MP for Cherangani.

2 I am happy today to host Kipruto ..." Arap "... Kirwa who is my MP. My names are

3 Joshua Sang and you are all welcome - whether you are in Kenya or abroad. We are

4 also joined by Dr Kipkoech Araap Sambu, and I do hope you are fine abroad so that

5 we can proceed. However I give this chance to honourable Kirwa so that he may

6 introduce himself. Welcome."

7 Then Kirwa: Thank you very much Mr -- "Thank you very much Sang for the

8 opportunity you have given to me. I thank all Kalenjins whenever they may be

9 whether they are in Kenya or any other country."

10 Mr Witness, save for the word "whenever," does that fairly reflect what was said by

11 the two gentlemen?

12 A. That's fair enough.

13 Q. And you confirm, Mr Witness, that indeed Mr Sang acknowledged that

14 Mr Kirwa was his MP for Cherangani?

15 A. Yes.

16 Q. And said he was happy to be hosting his own MP?

17 A. That is correct.

18 Q. And also that he said or acknowledged him as one of the Kalenjin leaders

19 serving in government?

20 A. That is correct.

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0789

(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 MR KOECH: Thank you, Mr Witness.

21 Mr President --

22 PRESIDING JUDGE EBOE-OSUJI: Ms Zago?

23 MS ZAGO: Yes, very briefly. And again I'm sorry to interrupt my learned

24 colleague, I know he has no time left, but I'd like to for the accurateness of the

25 transcript that the question that my learned friend put to the witness at page 47,

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 lines 11 to 13, concerning the reference to the witness telling the Prosecution

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 MR KOECH: Mr President, it is paragraph 64 of the witness's original statement,

6 which has been exhibited by the Prosecution or admitted into evidence, and it's to be

7 found at KEN-OTP-0087-0290 at the top of the page.

8 PRESIDING JUDGE EBOE-OSUJI: What does it say? Can you now that you are

9 there quickly read it on to the record? That's the request of Ms Zago. You can do

10 that or you can leave it up to her to do that during her re-examination, but if you can

11 assist her it might help.

12 MR KOECH: We wish to leave it, Mr President, so that we can make maximum use

13 of the little time remaining.

14 PRESIDING JUDGE EBOE-OSUJI: All right.

15 MR KOECH: Mr President, we wish to tender the audio, (Redacted) the

16 transcript and translation that we've just used in reference to Mr Kirwa.

17 PRESIDING JUDGE EBOE-OSUJI: Your microphone.

18 MR KOECH: Sorry, sorry, Mr President. The audio is KEN-D11-0011-0027 and the

19 translation is KEN-D11-0013-0135.

20 PRESIDING JUDGE EBOE-OSUJI: Ms Zago?

21 MS ZAGO: Thank you, Mr President.

22 With respect to the audios and translations, we do not object to their admission with

23 the usual caveat.

24 However, with respect to (Redacted) we do object to its admission through this

25 witness. Your Honours in the past have laid down specific -- a specific test, or tests,

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 and this Court has adopted certain criteria to the admission of documents into the
2 evidence, the first one being the relation to the witness, the second being relation to
3 this case and the third one is indicia of reliability.

4 In our submission, the first two legs of the test might have been met with this witness.
5 However with respect to the third one, which is probably also the most important one,
6 we believe that this is not the right witness, at least not to our understanding on the
7 basis of the questioning led by my learned colleague.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 Therefore, in our submissions the integrity of this document has not been established.

14 There are not sufficient criteria at this point, to the Prosecution at least, to understand
15 the -- whether this document can be considered as authentic. Therefore, for all these
16 reasons we object to the admission of this document through this witness.

17 Thank you, Mr President.

18 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper?

19 MR HOOPER: Well, we take up time on this issue which is regrettable.

20 I intend, if my friend hasn't done so already - and he very well may not do so - to go
21 through this (Redacted)

22 (Redacted) So if there are matters that my friend is concerned about in relation to

23 (Redacted) which she's just touched upon, certainly I can seek to clear that up.

24 The Prosecution have in fact known of the existence of this particular item since the
25 confirmation. What's that now, three years ago? Four years ago? Have they

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 taken the slightest step to make any investigation in respect of it?

2 It is what it is and, as I say, I'll be taking up time with this witness going through it

3 and looking at (Redacted)

4 PRESIDING JUDGE EBOE-OSUJI: The point being you do not object?

5 MR HOOPER: I certainly do not object, no.

6 PRESIDING JUDGE EBOE-OSUJI: Mr Koech, in this (Redacted) do we see the

7 (Redacted)

8 (Redacted) Do we see that reflected in this (Redacted)

9 MR KOECH: Mr President, I'm informed that there is a particular context to it, to

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 The second issue is that this document has been with the Prosecution since

19 confirmation. If they had any doubts about it, they would have investigated. It is

20 not something new, it's been here all this time, so as to indicia of reliability, at the end

21 of the day, it will be all -- it will all be about the weight that this (Redacted) is given.

22 But their witness has recognized it, he has acknowledged that (Redacted)

23 (Redacted) so it's just a matter of weight in my view and we ask

24 and urge that it be admitted into evidence.

25 PRESIDING JUDGE EBOE-OSUJI: What does the witness say about (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

- 1 (Redacted) Can you explore that? Did you ask him
- 2 questions about that?
- 3 MR KOECH: I can do that now, Mr President.
- 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 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0789

(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 (Trial Chamber confers)
18 PRESIDING JUDGE EBOE-OSUJI: For now this document will not be admitted
19 through this witness. If you wish it marked for identification you can do so. You
20 can make that request.
21 MR KOECH: We can have it marked for identification, Mr President.
22 PRESIDING JUDGE EBOE-OSUJI: It will be marked for identification.
23 THE COURT OFFICER: Thank you, Mr President.
24 The (Redacted) KEN-D11-0002-0001 will bear the following number:
25 MFI-T-D11-00096.

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

- 1 PRESIDING JUDGE EBOE-OSUJI: Proceed, Mr Koech.
- 2 MR KOECH: Mr President, I'd also ask --
- 3 PRESIDING JUDGE EBOE-OSUJI: Go on, Mr Koech.
- 4 MR KOECH: -- that the audio and transcript be admitted into evidence, which Ms
- 5 Zago is not opposed. Maybe those can be given evidence numbers.
- 6 PRESIDING JUDGE EBOE-OSUJI: Indeed, indeed.
- 7 And Mr Hooper did not oppose, I --
- 8 MR HOOPER: No.
- 9 PRESIDING JUDGE EBOE-OSUJI: All right. The document, that material will be
- 10 admitted, the audio and the accompanying transcript.
- 11 THE COURT OFFICER: Thank you, Mr President.
- 12 The audio KEN-D11-0011-0027 will bear the following number: EVD-T-D11-00097.
- 13 The transcript KEN-D11-0013-0135 will bear the following number:
- 14 EVD-T-D11-00098.
- 15 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 16 MR KOECH:
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 MR KOECH:

7 Q. Now, Mr Witness, I want you to cast your memory back to a time in the year
8 2009, and do you recall a rate on Standard -- on The Standard and KTN?

9 A. Yes, I do.

10 MR KOECH: Sorry, Mr President. Let me correct myself.

11 Q. You do recall that rate, don't you?

12 A. Yes, I do.

13 Q. And do you recall that what transpired is that in the dead of the nights, one
14 night, hooded men raided KTN, Kenya Television Network, and The Standard and in
15 fact confiscated some equipment. Do you recall that?

16 A. Yes, I'm aware of that.

17 Q. And in those days the minister for internal security was Mr John Michuki?

18 A. The late, yeah.

19 Q. Yes.

20 A. That's correct.

21 Q. Yes, the late, God bless his soul, John Michuki, isn't it?

22 A. That's correct.

23 Q. And later on in press interviews, he confirmed that it was the government
24 which raided The Standard and KTN; isn't that right?

25 A. He alluded to that, yes.

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 Q. And do you recall that he said if you rattle a snake, be prepared to be bitten by
2 it?

3 A. It's a popular phrase nowadays in Kenya.

4 Q. And a snake in that symbolism was the government, wasn't it?

5 A. Yes.

6 PRESIDING JUDGE EBOE-OSUJI: Witness, you didn't quite answer the question
7 when you say you recall.

8 By the way, Mr Koech, the directive is that you need to open up your questions. We
9 realise you're working against time.

10 Witness, the question was: Do you recall that he said if you rattle a snake, be
11 prepared to be bitten? And you said it's a popular phrase nowadays in Kenya.
12 Can you answer the question?

13 THE WITNESS: Yes, I recall, Mr President. Thank you.

14 MR KOECH:

15 Q. So do you recall the late Michuki saying "If you rattle a snake, be prepared to
16 be bitten by it," do you?

17 A. I recall, Counsel.

18 Q. And what does the snake in that symbolism imply or mean?

19 A. He was referring to -- the snake was the government. That is what they
20 alluded to.

21 Q. And the biting?

22 A. Well, that of course would explain the activities that the hooded men did to
23 KTN.

24 Q. Mr Witness, was the late Mr John Michuki still the minister in the year 2007?

25 A. If my memory serves me right, I think he was -- he was still a minister.

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 Q. Of what ethnicity was Mr Michuki?

2 A. He's a Kikuyu -- or, he was a Kikuyu.

3 Q. Was he in the same side of government as Kibaki?

4 A. Yes, he was a PNU minister.

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 Q. And you agree with me that there are enough Kalenjins or Kalenjin -- people
11 who understand the Kalenjin language in the Government of the Republic of Kenya?

12 PRESIDING JUDGE EBOE-OSUJI: Mr Koech, remember the directive to you.

13 MR KOECH: Sorry, Mr President.

14 PRESIDING JUDGE EBOE-OSUJI: Ms Zago?

15 MS ZAGO: Apologise to interrupt. I also object on the base of the fact that this call
16 -- these last two questions really call for speculations in the answer of the witness.

17 MR KOECH:

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 PRESIDING JUDGE EBOE-OSUJI: Mr Koech, we have to rise.

10 MR KOECH: Mr President, just to backtrace this issue, I wish to display and tender
11 into evidence a document which -- whose ERN number is KEN-D11-0012-0009.

12 PRESIDING JUDGE EBOE-OSUJI: You want to display it?

13 MR KOECH: Maybe we display it after lunch. This could be part of the half hour I
14 asked for. Yeah.

15 PRESIDING JUDGE EBOE-OSUJI: Good.

16 We will rise now and return at the normal time.

17 The Court will rise.

18 THE COURT USHER: All rise.

19 (Recess taken at 1.01 p.m.)

20 (Upon resuming in open session at 2.33 p.m.)

21 THE COURT USHER: All rise.

22 Please be seated.

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

24 Mr Koech, we're in open session. Should we remain in the open or go back into
25 private?

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 MR KOECH: We will have to go back to private, Mr President.

2 PRESIDING JUDGE EBOE-OSUJI: Private session then.

3 *(Private session at 2.33 p.m.) Reclassified as Open session

4 THE COURT OFFICER: We're in private session, your Honours.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 Witness, welcome back. Mr Koech will continue. He has another 30 minutes to
7 round up his cross-examination.

8 Mr Koech.

9 MR KOECH: Thank you, Mr President. Actually, Mr President, we only have two issues to
10 deal with, (Redacted) and one audio, and that is it for us.

11 PRESIDING JUDGE EBOE-OSUJI: That's good to know. Thank you. Proceed.

12 MR KOECH:

13 Q. Good afternoon, Mr Witness.

14 A. I'm good, Mr Koech.

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 ones.

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 MR KOECH: Thank you, Mr Witness.

9 Mr President, we now wish to play the final audio.

10 PRESIDING JUDGE EBOE-OSUJI: Before you do, just to round up the matter,

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 PRESIDING JUDGE EBOE-OSUJI: Thank you.

16 Proceed, Mr Koech.

17 MR KOECH: Thank you, Mr President. We wish to play an audio which is at your tab 32.

18 The ERN number is KEN-D11-0011-0028 and the transcript and translation is

19 KEN-D11-0020-0223. We are going to play time stamps 13.09 to 16.20 and then 2.01.02 to

20 2.03.40. It is at page that ends with 0302 in the transcript. That is the first one.

21 The second one -- sorry, Mr President. The first audio - the first part of the audio - is

22 at page 0225, if we could have the floor for that purpose?

23 (Playing of the audio excerpt KEN-D11-0011-0028)

24 MR KOECH:

25 Q. Mr Witness, you followed that audio?

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 A. Yes.

2 Q. Now, Mr Witness, I will read into the transcript the translation that has been given to it
3 in English and then you'll confirm to us whether it's a fair translation of the same. And it
4 starts, and I quote, "In the studio tonight, I have representatives who will speak ..." -- sorry,
5 sorry, I'll go back.

6 Sorry, Mr President, I was actually right. So I'll start again and I quote:

7 "In the studio tonight, I have representatives who will speak on their behalf. They
8 are Kalenjins also. Together, and with you at home, we want to assess why do we
9 have to vote for Kalonzo Musyoka as Kalenjins? Does Kalonzo Musyoka have a
10 vision that will transform this nation and help the Kalenjin community? Does he
11 love the Kalenjins or does he not. It is the same case with Raila Odinga. Does he
12 have the interest of the Kalenjins at heart? Can his agenda help this nation and the
13 Kalenjin ..." -- "... and the Kalenjin people? Is he someone who can be trusted to lead
14 this country? So is the case with ... Mwai Kibaki" -- "... President Mwai Kibaki.
15 Although he is still in power, we ... still have to ask what kind of a person is he.
16 Does he have the interests of our people? Does he have at heart the wishes of our
17 people? And if we add him another five years, what can he do for us as Kalenjins?
18 And so in the studio tonight, I have with me three people who will help us deeply
19 assess these things. And let me say that they are people like you. We just want to
20 help each other, with you at home. And as we discuss, I would like us to highly
21 respect everyone. As we know, you can never know the future. Only Jehovah
22 knows. So as we cross-examine these people, don't be too personal, calling to say so
23 and so should forget about the race. Or that someone is useless. So, let us listen to
24 them - to understand first why they are supporting these candidates, before they tell
25 us we should join them.

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 In the studio tonight, we have Sammy Arap Seronei, who is also running for
2 parliament in Nakuru. We will hear from him shortly."

3 PRESIDING JUDGE EBOE-OSUJI: Spell.

4 MR KOECH: Sammy Seronei is Sammy, as in Sammy, and Seronei is S-E-R-O-N-E-I.

5 Q. Is that right, Mr Witness?

6 A. That is correct.

7 Q. Then: "Thank you. Let me now give an opportunity to Sammy arap Seronei to greet
8 you. Today, he is speaking for Kalonzo Musyoka ..."

9 Then Seronei: "Thank you Arap Sang. I'd like ..." to "... greet you Kalenjin
10 people - men and women."

11 Then Sang: "Thank you Arap Seronei. He hails from Nakuru and he supports
12 Kalonzo Musyoka. We want him to tell us why he thinks the Kalenjin people
13 deserve Kalonzo. We are also here with Councillor Musa Arap Kosgey, who is here
14 to tell us why we should re-elect President Mwai Kibaki for another five years.
15 Musa, welcome."

16 Then Musa: "I would like to greet our Kalenjin people wherever they are. Hello."

17 Then Mr Sang says: "Thank you. Also, we have Jackson Kibor, who is known by
18 the name Kirober. He will tell us why he supports the Hon Raila Amolo Odinga.
19 Welcome."

20 Then Kibor: "Hello Kalenjin people wherever you are. I am now here and you
21 should listen to what I have to say."

22 Then Sang: "Thank you. Now it ..." is "... the time to listen to these people - to
23 really understand why they want us to support they people they want."

24 I'm sure it's supposed to be "the people."

25 Mr Witness, does that fairly reflect what was said in Kalenjin up to that point?

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 A. Fair enough.

2 Q. Thank you, Mr Witness.

3 MR KOECH: Mr President, we are now proceeding with the next audio, the part of the
4 audio which is time stamped 2.01.02 to 2.03.40 at page 0302, if we may have the floor, please
5 for that purpose.

6 (Playing of the audio excerpt KEN-D11-0011-0028)

7 MR KOECH:

8 Q. Mr Witness, I'll proceed to quickly read into the record what has been translated of that
9 audio, and it starts --

10 PRESIDING JUDGE EBOE-OSUJI: Not too quickly.

11 MR KOECH: I was looking at the time, Mr President.

12 PRESIDING JUDGE EBOE-OSUJI: Yes, but still we have to read it the way that the court
13 reporters can record and interpreters interpret. Proceed.

14 MR KOECH: Noted, Mr President.

15 Q. Now, it starts, and I quote, "Thank you. Listeners, we are continuing. I wanted to ask
16 you now that you have people have said many things about Kibaki. They have said he
17 sacked people; that he pushed up the prices of commodities and such like issues. But
18 speaking the truth, Kibor and Arap Seronei, because you too served in past governments,
19 honestly, looking at his work in roads, education (free education) in which enrollment has
20 risen ... Frankly, if you speak with a honest heart, without any specific intention, is there
21 something good that Kibaki has done in the five years?"

22 "I want to say that Kibaki" -- sorry, Mr President.

23 "I want to say there is no good thing" -- Kibor starts: "I want to say that there is no
24 good thing that Kibaki has done at all. What he has done is he has used government
25 money to buy shares for the Kikuyus. There is no other thing this government has

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 done. What I want to ask of the Kalenjin people - from across our land in Turkana
2 all the way to Maasai, near Tanzania, please let us vote for Raila."
3 Then Seronei says: "The only thing Kibaki has done is to burn people's houses.
4 That is a good thing he sees, which I see it as a bad thing. He sacked Kalenjins. He
5 sees all these bad things he has done as good things. As Arap Seronei, I want to tell
6 you that there is no day I will vote for Kibaki. Somebody asked me what will
7 happen if Kalonzo united with Kibaki? My relationship with him will come to an
8 end. There was also a question why can't Raila and Kalonzo unite? I want to say
9 that Kalonzo has repeated three times even after we were done in Kasarani that we
10 still have a room for negotiation. Raila said the doors have closed. Whose mistake
11 is it?"
12 Then Sang says: "Thank you. I want to say it now that you said there is nothing
13 good that Kibaki has done. I wanted to touch on one thing on that issue people have
14 spoken of. I wanted us to speak the truth because if somebody has done something
15 good, then you say it. But if it is not there then it is not. Honestly, we know that
16 KCC that had been shared out among individuals. Kibor, you said that you are
17 among those who bought shares. Are you among those who destroyed the company
18 and bought shares? Because the people who had bought shares were given back the
19 money. The losers were the people who had taken their milk there, without shares.
20 Kibaki has restored KCC."
21 "Meat factory KMC is back up. It had become a shell. But now, livestock are being
22 slaughtered there. He has also tried with the renovation of airports. Nairobi's
23 Kenyatta has been expanded. It is the same case in Mombasa and Wajir. Work is
24 underway at Kisumu airport. Is it really true when you say that there is nothing that
25 he has done for us? Kibor, not even one thing? Unless you have not been

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 travelling around."

2 Mr Witness, does that what I've read reflect what you've heard on the audio?

3 A. Yes.

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. For the record first, Mr Witness, the terms KCC and KMC that are somewhere in the
15 audio, do you know their meanings?

16 A. Yes.

17 Q. KCC first, what they stand for?

18 A. KCC stands for Kenya Cooperative Creameries.

19 Q. KMC?

20 A. Kenya Meat Commission.

21 Q. Now, Mr Witness, did you in the audio --

22 PRESIDING JUDGE EBOE-OSUJI: One second. Kenya Cooperative Creameries, was that
23 the word?

24 MR KOECH: Yes, Mr President. Creameries, cream.

25 Q. So did you hear Mr Sang in the course of that audio putting in a good word for

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 President Kibaki at that time?

2 A. Yes. He was moderating the show by bringing up issues also and putting it to the
3 guests who were in the studio.

4 PRESIDING JUDGE EBOE-OSUJI: Mr Koech, time check.

5 MR KOECH: Just two seconds, Mr President, for -- two minutes for a few questions.

6 Q. Now, Mr Witness, Kibaki was a presidential candidate for which party?

7 A. For PNU.

8 Q. And what is his tribe?

9 A. He's a Kikuyu.

10 Q. And you heard him challenge Kibor. In what party was Kibor?

11 A. ODM.

12 Q. Mr Witness, did you yourself hear this audio when it was -- or this programme when it
13 was aired on KTN -- on Kass FM? Sorry.

14 A. Yeah, I remember.

15 Q. You remember it?

16 A. Yes.

17 MR KOECH: Now, Mr President, I wish to tender the audio, the transcript and the
18 translation into evidence. The audio is KEN-D11-0011-0028 and the transcript and
19 translation is KEN-D11-0020-0223.

20 PRESIDING JUDGE EBOE-OSUJI: Ms Zago?

21 MS ZAGO: Thank you, Mr President. We do not object to the admission of this document
22 with the usual caveat concerning the accuracy of the translation. However, I do note that we
23 wish to note that the witness was not asked to recognize the voices of the speakers in this
24 audio. Thank you.

25 MR KOECH: I could clarify with the witness.

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 Q. Mr Witness, you followed the entire audio. Could you recognize the voices of the
2 participants in the audio or in the caption?

3 A. Yes, I remember. I could recognize, yes.

4 MR KOECH: Thank you, Mr President.

5 Q. And Mr Witness, Mr Witness, I thank you for --

6 PRESIDING JUDGE EBOE-OSUJI: One second. Let's finish.

7 Mr Hooper, do you object?

8 MR HOOPER: No objection.

9 PRESIDING JUDGE EBOE-OSUJI: The audio and the transcript are admitted.

10 THE COURT OFFICER: Thank you, Mr President.

11 The audio KEN-D11-0011-0028 will bear the following number: EVD-T-D11-00101.

12 The transcript KEN-D11-0020-0223 will bear the following number:

13 EVD-T-D11-00102.

14 PRESIDING JUDGE EBOE-OSUJI: Thank you.

15 Mr Koech.

16 MR KOECH: Mr President, that marks the end of my cross-examination, and I wish to thank
17 the witness for answering all my questions.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you, Mr Koech.

19 Witness, the counsel for Mr Sang has completed his cross-examination. It is now the
20 turn of Mr Ruto's lawyer, Mr Hooper, to cross-examine you.

21 Mr Hooper, do you have questions, and how long would it take for you to do your
22 job of cross-examining?

23 MR HOOPER: I hope I can conclude within the next 25 minutes.

24 PRESIDING JUDGE EBOE-OSUJI: Ms Zago, do you have re-examination needs?

25 MS ZAGO: Only a matter of clarification as discussed in the previous session concerning a

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 paragraph which was put to the witness by my learned friend, Mr Koech.

2 PRESIDING JUDGE EBOE-OSUJI: So we can do that in less than 5 minutes?

3 MS ZAGO: Yes, your Honour.

4 PRESIDING JUDGE EBOE-OSUJI: All right. Mr Hooper, try and do this in 25 minutes.

5 MR HOOPER: I'm confident I can.

6 QUESTIONED BY MR HOOPER:

7 Q. Well, first of all, good afternoon, Mr Witness.

8 A. Good afternoon. Thank you.

9 Q. I've only got two brief matters to deal with, and they each involve returning to a
10 document, or documents, that you've already been shown and have discussed. I just want to
11 deal with some additional points in respect of each of them.

12 And the first document I'd like you to be shown so that we can discuss it is the
13 document that is on the Sang Defence folder's volume 2, at tab 62, which we will
14 doubtless all recall is (Redacted)

15 And so if you can be shown that please, Mr Witness.

16 THE COURT OFFICER: (Via video link) Can you please recall the ERN number, Counsel?
17 Thank you.

18 MR HOOPER: It's at tab 62.

19 THE COURT OFFICER: (Via video link) Unfortunately, I don't have the tabs.

20 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, you have to give the ERN number.

21 MR HOOPER: And the ERN number is KEN-D11-0021-0701.

22 Q. Let me know when you've got it.

23 THE COURT OFFICER: (Via video link) The document is being presented to the witness at
24 the first page.

25 MR HOOPER:

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 Q. Right, you've got that. Have you got a hard copy of that in front of you to make it
2 easier, or are you only looking at it on a screen?

3 THE COURT OFFICER: (Via video link) The copy being shown to the witness is an
4 electronic copy.

5 MR HOOPER: All right. Well, we'll deal with it like that.

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 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(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 PRESIDING JUDGE EBOE-OSUJI: All right. Thank you.

20 Mr Hooper, proceed.

21 MR HOOPER: Thank you very much.

22 Q. So we can put that issue away as it were, and can I come to the remaining

23 matter, which is again in relation to a document you saw earlier, (Redacted)

24 (Redacted)

25 And I have not been presented with the original document, so I'm dealing with that document

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

- 1 or copies of it that I have in formulating my questions.
- 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 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page redacted

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 I'm not going to take you, Mr Witness, to all those matters, I think they'll be subject of
3 general submissions in due course.

4 Unless your Honour has any particular objection to the way in which I'm dealing with
5 that, and those are all my questions. Thank you.

6 Thank you, Mr Witness.

7 THE WITNESS: Thank you.

8 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, you do realise that that document is not part
9 of the evidence? You know that?

10 MR HOOPER: Well, the document --

11 PRESIDING JUDGE EBOE-OSUJI: The reason I say that is that this witness has said
12 that he had answered the question before that (Redacted)

13 (Redacted) So what you've just

14 done doesn't take the exercise beyond that answer, you realise that?

15 MR HOOPER: Yes.

16 PRESIDING JUDGE EBOE-OSUJI: Yes.

17 MR HOOPER: Well, what I would do is invite the Prosecution to admit that those entries in
18 (Redacted)

19 (Redacted) and we can take the matter further in due course. So I
20 invite the Prosecution to make that admission now to save, perhaps save time.

21 PRESIDING JUDGE EBOE-OSUJI: It is something you and the Prosecutor can discuss. The
22 Prosecutor had objected to this document coming in, and unless --

23 MR HOOPER: Well, your Honour, may I ask that the particular pages (Redacted)
24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: Ms Zago?

2 MS ZAGO: We do maintain the objection to the admission of this document or in its entirety,
3 including its submission in separate sheets or with respect to the separate pages that
4 Mr Hooper referred to for the same reasons that we submitted before.

5 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, the matter remains where it was before.

6 The document is not admitted onto the record at this time either in whole or in part. And
7 that completes your cross-examination.

8 Witness, Mr Hooper has finished cross-examining you, and the Prosecutor has one
9 thing or two to clear up and then that will be it for you.

10 Ms Zago.

11 MS ZAGO: Thank you, Mr President. I will be very brief. Before at page 47, lines 1117 of
12 the transcripts, Mr Koech suggested to the witness that he had told the investigators during
13 his first interview that (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
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 So our intention was to put the record clear so that the Chamber was not later misled.

4 Thank you, Mr President. This concludes the re-examination.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 MR KOECH: Mr President, one observation. Ms Zago talked about -- misread the
7 paragraph, that it says "Sometime in 2005 ..." but in fact said "Sometime in 2006 ..."

8 MS ZAGO: Absolutely correct. I apologise for my own oversight. Thank you.

9 PRESIDING JUDGE EBOE-OSUJI: On that note we return to the witness.

10 Witness, thank you very much. That concludes the examinations and questions
11 from the lawyers. There is no question from the Bench to you beyond the ones
12 already asked from the Bench.

13 And we thank you very much for coming. We wish you good luck. You are
14 discharged from your summons and from your duties as a witness for the time being.
15 Thank you.

16 THE WITNESS: Thank you, Mr President.

17 (The witness is excused)

18 PRESIDING JUDGE EBOE-OSUJI: And, Mr (Redacted), thank you very much as
19 well for your presence and for assisting the witness.

20 MR (Redacted): (Via video link) Thank you, Mr President.

21 PRESIDING JUDGE EBOE-OSUJI: The proceedings are brought to an end for today. The
22 Court will adjourn.

23 THE COURT USHER: All rise.

24 *(The hearing ends in private session at 3.37 p.m.) Reclassified as open session

25 RECLASSIFICATION REPORT

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

ICC-01/09-01/11

- 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.