

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

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1 MR KIGEN-KATWA: Good morning, your Honours. Mr Sang is present and
2 representing him is Caroline Buisman; Logan Hambrick; Honor Lanham; and myself,
3 Katwa Kigen. Thank you.

4 MR FAAL: Good morning, your Honours, Mr President. Mr William Ruto is
5 represented by myself, Essa Faal; assisting me is Ms Shalini Jayaraj; Ms Clara Gérard
6 Rodriguez and Ms Farah Jammal. Thank you.

7 PRESIDING JUDGE EBOE-OSUJI: Thank you.

8 And in Nairobi we note the appearance of Mr Mutai.

9 MR MUTAI (via video link): That is so, Mr President.

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

11 Witness, welcome back. Mr Faal will continue his examination -- cross-examination
12 of you.

13 Mr Faal?

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

15 WITNESS: KEN-OTP-P-0637 (On former oath)

16 (The witness speaks Swahili)

17 (The witness gives evidence via video link)

18 QUESTIONED BY MR FAAL: (Continuing)

19 Q. Mr Witness, welcome back.

20 PRESIDING JUDGE EBOE-OSUJI: We are in open session, Mr Faal.

21 MR FAAL: Yes, Mr President. I will just introduce the subject I want to discuss
22 and then I'll move into private session.

23 Q. Mr Witness, on Friday -- on Thursday we ended up talking about the person
24 number 14 and this morning I propose to discuss with you a meeting you said in -- to
25 the investigators occurred on October 2007. Do you remember telling the

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1 investigators about the meeting 14 October 2007?

2 PRESIDING JUDGE EBOE-OSUJI: Can you refresh his memory, Mr Faal. It's been
3 a while.

4 MR FAAL:

5 Q. In your statement, Mr Witness, specifically paragraph 34, you talked about
6 having attended a meeting with several individuals at location 11 on 14 October 2007.
7 Perhaps, Mr President, I should just go into private session so that I could read out
8 exactly what is stated in that paragraph. That would be better, I suppose, under the
9 circumstances. Private session.

10 PRESIDING JUDGE EBOE-OSUJI: Very well. Private session.

11 (Private session at 9.40 a.m.) * Reclassified as Open session

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

13 MR FAAL:

14 Q. (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 A. (Redacted)

19 Q. (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 A. (Redacted)

5 Q. (Redacted)

6 (Redacted)

7 A. (Redacted)

8 MR FAAL: Mr President, perhaps we can go into public session and I will proceed
9 with the rest of the questioning on that subject?

10 PRESIDING JUDGE EBOE-OSUJI: Witness, we are about to go into public session.

11 Again, be mindful of that and do not reveal identifying information.

12 Public session.

13 (Open session at 9.43 a.m.)

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

15 MR FAAL:

16 Q. Mr Witness, we are in open session. Please remember not to mention names
17 and places as that could provide identifying information. Remember to look at the
18 PIS and tell us the corresponding name or the pseudonym for the name of the person
19 or place you may wish to mention. Otherwise, you can stop us and we can go to
20 private session. Do you understand?

21 A. Yes, I understand.

22 Q. Mr Witness, in your recorded interview, that is the interview with the
23 Prosecution, the second interview with the Prosecution --

24 MR FAAL: Mr President, I am looking at tab 3 of the OTP bundle. In particular,
25 KEN-OTP-0085-0103, at 0125, line 720 to 727.

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1 Q. And you were asked what was your relationship with these people? And the
2 interviewer was referring to the people who attended the meeting. And you
3 answered as follows: --

4 PRESIDING JUDGE EBOE-OSUJI: You mean the meeting of the 14th?

5 MR FAAL: Of 14 October. Thank you, Mr President.

6 Q. You answered as follows: "It was ..." person 18 -- look at person 18 in the PIS.
7 "It was ..." person 18 "...normally who connected me to the rest of the people because
8 these people did not like to associate with any other person who was not from the
9 Kipsigis." Do you recall saying that to the investigators?

10 A. That's correct.

11 Q. And, Mr Witness, we know that you identify with another ethnic group; is that
12 right? Don't say the name of the ethnic group; that you identify with a different
13 ethnic group from the Kipsigis?

14 A. Yes, that's correct.

15 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, do you mean identify with an ethnic
16 group that is different from the Kipsigis?

17 MR FAAL: Yes, Mr President. Thank you. Thank you, Mr President.

18 PRESIDING JUDGE EBOE-OSUJI: Witness, did you understand that to be the
19 question, that you identify with an ethnic group that is different from the Kipsigis?
20 Was that your understanding of the question that you answered?

21 THE WITNESS: (Interpretation) Yes, that's how I understood the question.

22 MR FAAL:

23 Q. And, Mr Witness, according to this story that you gave, there were no other
24 people present at this location where the meeting took place; is that right?

25 A. Yes, that's right.

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1 Q. And surely, Mr Witness, you will agree that these Kipsigis people, who will not
2 associate with anybody else who is not Kipsigis, will not allow you to sit just 3 metres
3 away from them while they have a secret meeting planning to eliminate the Kikuyus?
4 Do you agree?

5 A. Yes, I understand.

6 Q. The question is whether you agree that these people, if they were seated
7 together planning to attack the Kikuyus, they would not allow you to sit just 3 metres
8 away from them. Do you agree with that?

9 A. Yes, they weren't going to accept that.

10 Q. Why then did you tell the investigators that this is what happened on
11 14 October; that you sat just 3 metres away from them while they were holding this
12 meeting?

13 A. All that, it's number 19 that prepared that.

14 MR FAAL: And, Mr President, I am looking at tab 52 of the Ruto Defence bundle,
15 particularly document KEN-D09-0041-0177, specifically at page 182 at paragraph 51.

16 Q. And, Mr Witness, we have investigated where person -- person 2 was during
17 the period you have mentioned. We have investigated --

18 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, you've done this before and I said you
19 cannot be giving evidence. This is in the nature of giving evidence.

20 MR FAAL: Mr President, I want to put a proposition to the witness. I am not
21 telling --

22 PRESIDING JUDGE EBOE-OSUJI: You can put a proposition to the witness, but to
23 tell the witness we have investigated --

24 MR FAAL: All right. All right. Okay, Mr President. I withdraw that statement.

25 Q. Mr Witness, I put it to you that person 50 -- person number 2 was not in location

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1 number 4 or at location number 11 on 14 October 2007. What do you say to that?

2 A. I can say that all of that was the plan of number 19.

3 Q. I would now move on, Mr Witness, to discuss the other meeting you said

4 occurred on early November 2007 at location number 10. Please take a look at the

5 PIS for location number 10. And in paragraph 102 of your statement, that is tab 1 of

6 the OTP bundle, you stated as follows: "In early November 2007, Ruto came to ..."

7 location 4 "... after his harambee as promised and the meeting took place at ..."

8 location 10. Do you remember saying that to the investigators?

9 A. Yes. Yes, I told them that.

10 Q. And later on in your recorded interview, I am looking at tab 4, that is

11 KEN-0085-0131, at page 13, paras 419, that is tab 4 of the OTP bundle. Mr Witness,

12 you told the Prosecution at this time that this meeting took place in mid-November.

13 Do you remember that?

14 A. Yes, I said that.

15 Q. And, Mr Witness, you would agree that initially in the statement you said it was

16 early November and in the transcript you said it was mid-November. Do you agree?

17 A. Yes, I agree.

18 Q. I put it to you, Mr Witness, that you changed the date because the story is false

19 and you could not give a consistent account of it; is that right?

20 A. Yes, because these were things that were planned, planned by number 19.

21 MR FAAL: Private session, Mr President.

22 PRESIDING JUDGE EBOE-OSUJI: Private session.

23 (Private session at 9.56 a.m.) * Reclassified as Open session

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

25 MR FAAL: Thank you, Madam Court Officer.

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- 1 Q. (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 A. (Redacted)
- 14 MR FAAL: Mr President, we can go back to public session please.
- 15 PRESIDING JUDGE EBOE-OSUJI: Public session.
- 16 (Open session at 9.58 a.m.)
- 17 THE COURT OFFICER: We are in open session, Mr President.
- 18 MR FAAL: Thank you, Madam Court Officer.
- 19 Q. Mr Witness, we are back in public session and please remember not to mention
- 20 names and locations.
- 21 Even, Mr Witness -- even if we were to assume that Mr Ruto went to location 4 as
- 22 alleged, which we completely deny, according to the story that you gave the
- 23 Prosecution you heard very little of the conversation between him and person
- 24 number 3; is that right?
- 25 A. Yes, that's correct.

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1 Q. And the only thing you claimed to have heard are the following four words,
2 "You have to work." That's what you told the Prosecution?

3 A. Yes.

4 Q. And you also said -- told the Prosecution that you assumed that what Ruto
5 meant was -- or what Ruto was talking about was the training of youths. You
6 assumed that. That's what you told the Prosecution, correct?

7 A. That is correct.

8 Q. And according to your story, Mr Ruto was speaking softly, but until he said
9 they had to do the work, that's when he spoke loudly; is that right?

10 A. Yes, that is correct. That is what I stated.

11 Q. Mr Witness, is this true?

12 A. Could you please repeat your question so that I can grasp it better?

13 Q. Did this event actually take place, Mr Witness?

14 A. That did not occur. That was number 19's plan.

15 Q. In your recorded interview -- I am looking specifically at tab 4 of the OTP
16 bundle, KEN-OTP-0085-0131, at 0151 to 52 -- 152 rather, at line 642 to 680.

17 Mr Witness, you later on expanded this story and said you heard something else, and
18 this is what you said: "I heard him tell ..." person 3 "... that 'You have to do the work'
19 because the tone was high. From that moment, he just gave me ..." the "... envelope
20 and the car turned and he told them I will go there and plan and let you know. And
21 when he said 'there' ... he referred to Nairobi and then he would give them the
22 report."

23 Do you recall saying that?

24 A. I do remember. I did say that.

25 Q. And the first time you ever said that was in the second interview, in the

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1 recorded interview, isn't it?

2 A. That is correct.

3 Q. And according to this second story, the car was moving away and had turned
4 when you heard him say, "I will go there and plan;" that's right, isn't it?

5 A. That is correct.

6 Q. So, Mr Witness, even if we were to assume that this meeting did take place,
7 which we deny completely, it is not clear that you heard clearly what was being said
8 because the car was moving away; is that right?

9 A. That is correct.

10 Q. And, Mr Witness, you added this bit or this bit to this new story about Mr Ruto
11 saying that he would go and plan because you wanted it to be seen that Ruto was
12 responsible for planning the violence, isn't it?

13 A. That is correct.

14 Q. In your recorded interview, you told the investigators that person 3 did not like
15 you and the investigators challenged your account about the two meetings you said
16 you attended by asking whether you were not bothered about being there and being
17 seen with person 18.

18 I am looking at KEN-OTP-0085-0508, tab 17, Mr President, tab 17 of the OTP binder.

19 The investigators asked you whether you were bothered being seen by -- together
20 with person 18 and this is -- this is what you responded. With regards to this first
21 meeting at location 11, you said as follows: "There was a fence on that place" --

22 MS ZAGO: Mr President, might I ask my learned colleague to provide us with a line
23 in the said transcript? Thank you.

24 MR FAAL: It's tab 17 of the binder, lines 958 to 986.

25 Q. And this is what you said, "There was a fence on that place and I was ground as

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1 well and a person could simply stand at that place because I didn't go very close to
2 that place that day as it was during the" ... "meeting" at location 24.

3 "I was standing a little bit far from that place and that's why I was not able to hear
4 some of the things that they were discussing."

5 That is what you told the Prosecution, isn't it?

6 A. That is correct.

7 Q. Again, Mr Witness, here you changed your story from sitting 3 metres away
8 from them to now being a bit far from them because you know you've been caught on
9 a lie by the investigators? I'm referring to location 10, yes -- I'm referring to location
10 11, actually. Sorry. This was the meeting, the first meeting.

11 A. (No audible response).

12 Q. What do you say to that, Mr Witness?

13 A. I would say that this was said by number 19.

14 Q. And, Mr Witness, with regards to the meeting at location 24 -- I'm sorry, let me
15 clarify. And with regards to the meeting at location -- location 10, the investigators
16 also asked you a similar question - and this is the same transcript, lines 1000 to
17 1005 - this is when you allege to have been standing right behind Mr Ruto's car, and
18 this is what you said this time: "At that point also I pretended as if I was about to
19 meet Ruto to ask for money." Do you remember that?

20 A. Yes, I do remember.

21 Q. And the reality, Mr Witness, is that you fabricated this story because you
22 wanted to present evidence of some planning meeting which Mr Ruto was involved
23 in; is that right?

24 A. Yes, these are all people chosen by number 19 who told me this.

25 Q. Mr Witness, I'll now move on and talk about a different topic. When you

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1 testified in-chief, you told the Court that you are (Redacted) and that you attended
2 rallies. Do you recall that?

3 A. Yes.

4 Q. You did not encounter any difficulties attending rallies or campaigns in 2005
5 and 2007, did you?

6 A. I did not have any difficulties taking part in rallies.

7 Q. In fact, Mr Witness, you told the Judges that (Redacted)
8 (Redacted)

9 (Redacted) Do you recall saying that?

10 A. Yes, I did say that.

11 PRESIDING JUDGE EBOE-OSUJI: Private session.

12 MR FAAL: Private session.

13 (Private session at 10.14 a.m.) * Reclassified as Open session

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

15 PRESIDING JUDGE EBOE-OSUJI: Thank you.

16 Mr Faal, was that evidence elicited in public?

17 THE INTERPRETER: Microphone please, Counsel.

18 MR FAAL: Thank you. I did not check that. That's an omission on my part and I
19 apologise for that, but I do not believe that that information would lead to the
20 identification of the witness. I do not. That's why I led it in public, but if it does I
21 tender my apologies, Mr President, and perhaps ask that that information be
22 redacted.

23 PRESIDING JUDGE EBOE-OSUJI: The reference to the witness being (Redacted), as
24 well as the reference to (Redacted) are to be deleted from the
25 delayed broadcast. If you're going to ask any further questions on that we'll do that

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1 in private session now.

2 MR FAAL: All right, Mr President. I'll proceed in private session. Thank you.

3 Q. So, Mr Witness, you -- (Redacted)

4 (Redacted); is that right?

5 A. Yes, it was a type of (Redacted)

6 Q. So, Mr Witness, just to try to understand you, in (Redacted)

7 (Redacted); is that right?

8 A. I did not have any difficulty.

9 Q. Mr Witness, you had an interesting exchange with the OTP investigators. I
10 would like to read it out to you and ask you some questions on that.

11 Mr President, I am referring to tab 27 of the OTP bundle, specifically

12 KEN-OTP-0085-0824 at 834 to 836, lines 322 to 388.

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

14 MR FAAL:

15 Q. Mr Witness, interviewer 1 asked you to show (Redacted) and

16 you provided them. And (Redacted)

17 (Redacted). And then you were asked to explain this to the

18 investigators, and this is what you said, "I became a Muslim. Because of the politics

19 of the time, sometimes I had to dress like a Muslim when the situation was very

20 sensitive. Because there was a time in 2005 when the situation was very tense.

21 Then I had to dress like a Muslim and move around that way. Because when you

22 are dressed in Muslim dressing code somebody cannot identify you. Because when

23 you dress that way, sometimes you cover yourself and you look like a woman. So

24 people can hardly identify you. In 2007 I dressed that way when I was going to one

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 That is what you told the Prosecution, isn't it?

5 A. Yes.

6 Q. This story, Mr Witness, of you wearing Muslim garb or a burka, or whatever
7 you may call it, so that you may look like a woman and so that nobody recognises
8 you is a lie, isn't it?

9 A. This is all a plan prepared by number 19.

10 Q. And further on this same story, you explained this. You tried to describe a
11 journey that you took and you said as follows: "(Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)"

20 Do you recall saying that as well to the investigators?

21 A. Yes, I do recall. I did say that to them.

22 Q. That, too, is false, isn't it, Mr Witness?

23 A. Yes, all of this is a tissue of lies.

24 MR FAAL: I would now move on to a different topic. We can -- let me consult,

25 Mr Witness -- Mr President and resume in a minute.

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1 Q. Mr Witness, in paragraph 57 of your statement you said as follows: "The ODM
2 organised several rallies in ..." location 4 "... but I only attended one of the rallies
3 organised at this time at ..." location 3 and then you stated the date. Do you
4 remember saying that you attended a rally at location 3? Do you recall that?

5 A. Yes, I do recall having said that.

6 MR FAAL: Public session, Mr President.

7 PRESIDING JUDGE EBOE-OSUJI: Public session.

8 (Open session at 10.24 a.m.)

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

10 MR FAAL:

11 Q. And, Mr Witness, when you testified before the Judges, you also discussed this
12 rally that you attended. Do you recall that; this rally at location 3?

13 A. Yes, I do remember.

14 Q. And you said Honourable Ruto or Mr William Ruto used the words
15 "madoadoa" and "makwekwe," meaning that people must vote in three-piece suite.
16 Do you recall that?

17 A. Yes.

18 PRESIDING JUDGE EBOE-OSUJI: Yes, Ms Zago?

19 MS ZAGO: I apologise to interrupt again, but I believe we should bring some clarity
20 to the question or line of questioning because the -- my learned friend prefaced his
21 question before saying to the witness, "When you testify before the Judges" and then
22 he referred to the witness using words "madoadoa" and et cetera, but I believe my
23 learned friend is referring to the witness's statement or interview with the OTP rather
24 than his testimony before the Court, and if this is not the case could he please -- could
25 we please be directed to the specific lines where the witness testified about these

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1 issues? Thank you.

2 MR FAAL: I direct my friend to page 5 of the transcript of 30 September, and I refer
3 specifically to lines 4 to 6. This was in response to a question asked by my friend,
4 and witness said "He asked the population to go and vote as one, and he said that the
5 Christmas festivities should not distract them ..."

6 PRESIDING JUDGE EBOE-OSUJI: I think, Ms Zago, that was clearly led in the
7 evidence and distinctly I am sure you recall it.

8 MR FAAL: Thank you, Mr President.

9 Q. And, Mr Witness, the first time you ever mentioned that honourable -- that
10 Mr William Ruto used the words "madoadoa" and "makwekwe" the first time you
11 ever said that was in court, wasn't it?

12 A. Ndiyo.

13 Q. In 800 pages of transcript, five days of interview and a witness statement you
14 never mentioned that Ruto said this; is that right?

15 A. Na kweli.

16 Q. By the way, Mr Witness, did you watch or listen to any of the proceedings
17 in this case?

18 THE INTERPRETER: From the English booth: Could counsel please wait for the
19 response from the witness before proceeding? Thank you. We do not have time to
20 interpret it. Thank you.

21 MR FAAL: My apologies.

22 THE WITNESS: (No interpretation)

23 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, look at the transcript.

24 THE WITNESS: (Interpretation) This --

25 THE INTERPRETER: Overlapping speakers.

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1 MR FAAL: Mr President, let me ask the question again so that the witness could
2 give an answer which would be recorded.

3 Q. Mr Witness, the question I posed was, in 800 pages of transcript and five days of
4 interview and a witness statement, you never mentioned that Mr William Ruto used
5 the words "madoadoa" and "makwekwe;" is that right?

6 A. Yes, that is correct.

7 Q. By the way, Mr Witness, did you --

8 PRESIDING JUDGE EBOE-OSUJI: One second.

9 MS ZAGO: Mr President, I do apologise again. However I must disagree with my
10 learned friend's propositions to the witness, because in the transcript of the witness --

11 PRESIDING JUDGE EBOE-OSUJI: You will have time to re-examine.

12 MS ZAGO: Thank you, Mr President.

13 MR FAAL: Thank you, Mr President.

14 Q. Mr Witness, did you watch or listen to any of the proceedings of this Court in
15 this case?

16 A. Yes, from time to time.

17 Q. Did you in any of the proceedings hear the words "madoadoa" and
18 "makwekwe" being discussed in the proceedings?

19 A. No.

20 Q. Then where did you get the idea to say these words in court that Mr Ruto used
21 them?

22 A. I heard it in the field.

23 Q. I put it to you, Mr Witness, that you simply made up this story. You never
24 heard William Ruto say "madoadoa" or "makwekwe" in any rally. This is a recent
25 invention by you. What do you say to that?

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1 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, at this stage there comes a point where
2 we strike a balance between fairness of a question to a witness and preventing the
3 opposing counsel from putting into the record at a point in time material that may
4 demonstrate whether or not a particular question has been fair.

5 Ms Zago was beginning to rise and she was beginning to make a suggestion and I
6 told -- stopped her, telling her she would have an opportunity to re-examine, but it
7 looks like you've continued on that line.

8 Ms Zago, what's your point at that point? What point were you getting at?

9 MS ZAGO: I was referring to the specific reference to the transcripts of the witness
10 where the words "madoadoa" were used by the witness himself in the transcript,
11 whereby my learned colleague was proposing to the witness the fact that the witness
12 heard the first time the word "madoadoa" in court. I can give the specific reference if
13 that is of assistance?

14 PRESIDING JUDGE EBOE-OSUJI: So your point was that the witness has indeed
15 used those terminology in a statement before coming to court? Is that it?

16 MS ZAGO: Yes, your Honour.

17 MR FAAL: In respect of Mr William Ruto?

18 MS ZAGO: That is correct. I can give the specific reference.

19 PRESIDING JUDGE EBOE-OSUJI: May we have that reference at this point,
20 Ms Zago?

21 MS ZAGO: Yes, your Honours. It is OTP bundle, number 1, tab 6, ERN number
22 0085-0166. The specific lines I'm referring to are 630 to 634.

23 PRESIDING JUDGE EBOE-OSUJI: Mr Faal?

24 MR FAAL: Mr President, this -- this refers to, if I am right, I think in 2000 -- just a
25 moment. Mr President, I believe this refers to 2005.

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1 MS ZAGO: Yes, that is correct. But my learned friend suggested to the witness that
2 the witness never, ever used that word and the first time he heard the word was in
3 the court. So I wanted to direct my learned friend to the specificity of the question
4 rather than an open-ended question to the witness in this respect.

5 MR FAAL: I take that point and perhaps will rephrase the question to say that with
6 regards to the rally at location 3, the witness never said that Mr Ruto used the words
7 "madoadoa" or "makwekwe."

8 Q. Mr Witness, I'll put this question to you again. With regards to the rally at
9 location 3 in 2007, you never mentioned that Mr Ruto used the words "makwekwe"
10 and "madoadoa;" is that right?

11 A. Yes, that's correct.

12 Q. And the first time --

13 A. I never mentioned that.

14 Q. And the first time you ever said that in relation to Mr Ruto was in court when
15 you gave your evidence in-chief, correct?

16 A. Yes.

17 Q. And I put it to you, Mr Witness, that that's a fabrication. Mr Ruto never used
18 those words in the rally at location 3 in 2007. What do you say to that?

19 A. Yes, he never mentioned them.

20 Q. Why did you say that to the Court in the first place?

21 A. People were speaking about an election in three parts and that was to confuse
22 people so that there would be no mixing -- so that there would be no mixing of it.

23 THE INTERPRETER: Corrects the interpreter.

24 PRESIDING JUDGE EBOE-OSUJI: I do not understand Kiswahili, but I thought I
25 heard the word "three piece" amidst the witness's response in Kiswahili.

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1 MR FAAL: I heard the same, Mr President. Perhaps the witness could answer
2 again?

3 Q. Mr Witness, could you repeat your answer?

4 PRESIDING JUDGE EBOE-OSUJI: I said "three piece," not "three paste."

5 MR FAAL: Then I can proceed, Mr President?

6 PRESIDING JUDGE EBOE-OSUJI: Go on.

7 MR FAAL: Thank you. Thank you, Mr President.

8 Q. And, Mr Witness, in tab 9 of the OTP bundle, KEN-OTP-0085-0256, at 269 to 270,
9 specifically at lines 416 to 450, you said you heard Mr Raila Odinga's speech, and you
10 said that Mr Odinga said that "They are going close to the State House to be prepared
11 to enter the State House." And he said "That State House is already polluting. And
12 Lucy must go out of that place so that they clean the house again. And if Kibaki
13 wants to end up well, he would rather move outside Kenya to Europe. He would
14 rather move from Nairobi to Ophaya" -- meaning Othaya. "Othaya is a place in
15 Nyeri."

16 When Raila said this, "People once again shouted a lot."

17 Do you remember saying that to the investigators?

18 A. Yes.

19 Q. But in your testimony in court, you said that Mr Odinga said that if he does not
20 win the vote there would be a bloodbath. Do you remember that?

21 A. Ndiyo.

22 Q. And again, Mr Witness, I have looked at the transcript. I have not seen you
23 use the word -- you have not said in the transcript that Mr Odinga said there would
24 be a bloodbath if he did not win. What do you say to that?

25 A. I can only tell you what I was a witness to. If that wasn't mentioned in my

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1 statement, that's their fault.

2 Q. You said that the rally took place between 20 and 24 December 2007. Do you
3 recall that? That would be paragraph 57 of the witness's statement. Do you recall
4 saying that the rally took place between 20 and 24 December 2007?

5 A. Yes, I remember saying that.

6 Q. Would you agree with me if I tell you that the date of that rally was
7 21 December 2007 at location 3?

8 A. Yes, I agree with you.

9 Q. I would like to play a video. Court officer, please let it not be broadcast out of
10 the courtroom.

11 I would play this video and thereafter I will ask you a few questions.

12 It's KEN-D09-0038-0449 and it's Exhibit 255 of the Ruto Defence, and the transcript is
13 contained in tab 19, KEN-D09-0038-0463. This is -- the transcript was also exhibited,
14 it's Exhibit 256. Thank you.

15 THE COURT OFFICER: Mr Faal, if you wish the video not being broadcasted
16 outside the courtroom, we will need to go into private session.

17 MR FAAL: Mr President, in that case I ask for private session.

18 PRESIDING JUDGE EBOE-OSUJI: Private session.

19 (Private session at 10.44 a.m.) * Reclassified as Open session

20 THE COURT OFFICER: We are in private session.

21 (Viewing of the video excerpt KEN-D09-0038-0449)

22 MR FAAL:

23 Q. Mr Witness, have you seen the video?

24 A. Yes, I've seen it.

25 Q. (Redacted) is that

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1 right?

2 A. Yes.

3 MR FAAL: Mr President, perhaps we could go to public session for the rest of the
4 questions.

5 PRESIDING JUDGE EBOE-OSUJI: Public session.

6 (Open session at 10.48 a.m.)

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

8 MR FAAL:

9 Q. And, Mr Witness, remember we are in public session. Do not mention the
10 location or the names of certain individuals because we don't want your identity to be
11 known.

12 Mr Witness, you agree with me that in that video there is nothing that is shown which
13 suggests that Mr Odinga said there would be a bloodbath in Kenya if he did not win,
14 correct?

15 A. Yes, in the part that was shown he didn't speak about that.

16 Q. And I put it to you, Mr Witness, that that was never said at all? If it was, it
17 would be reported.

18 A. Yes, it's true. The journalist would have spoken about it.

19 Q. So you fabricated that story, didn't you?

20 A. These are comments that were shown and shown again, broadcasted again in
21 Kenya.

22 Q. But what I am driving at, Mr Witness, is that on this particular occasion that was
23 never said. What do you say to that?

24 A. I would say that in the speech that you played he didn't speak about it.

25 Q. Mr Witness, there is also a newspaper. Mr President, I am referring to exhibit

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1 257 of Ruto Defence exhibit. Madam Court Officer, if it is displayed on the screen
2 for the witness, would it also be broadcast -- have to be broadcast public or in private?
3 Okay. Okay, then kindly put up the screen exhibit 257. It's the KEN-D09-0038-0440
4 of Ruto Defence exhibit 257.

5 PRESIDING JUDGE EBOE-OSUJI: Is it in your bundle?

6 MR FAAL: No, Mr President, but it is an exhibit. We did not anticipate that this
7 would happen.

8 Would you kindly expand the column to the left? Yes, thank you. The column to
9 the far left.

10 Q. Mr Witness, in the newspaper it was reported that at the stadium at location 3
11 Raila again expressed confidence Kenyans will elect him the fourth president. And
12 the quotation goes as follows: "I have confidence that I will win. There is no doubt
13 about that. My win will be a win for all Kenyans," Raila said. Raila said if elected,
14 his style of leadership would be different from that of President Kibaki 'as day is from
15 night.' I will not recycle old men and install them in senior government positions
16 like Kibaki has done, he said."

17 Kindly move it further down, please.

18 Then "His running mate Mr Musalia Mudavadi, ODM Chairman, Henry Kosgey,
19 Pentagon member, Mr William Ruto, and ..." other people accompanied him.

20 So, Mr Witness, you would agree that this newspaper also does not report that
21 Mr Odinga said that if he did not win there will be a bloodbath in Kenya. What do
22 you say to that?

23 A. It's true. Even in this article there's no question of that. It's not spoken about.

24 Q. And, Mr Witness, I put it to you that the only reason why such an important
25 issue was not reported is because it was never said.

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1 A. (No audible response).

2 Q. Do you have an answer to that, Mr Witness? The only reason why it is not
3 reported either in the video or in the newspaper is because it was never said?

4 A. (No audible response).

5 PRESIDING JUDGE EBOE-OSUJI: Witness, do you agree with that or not? Do you
6 agree that the reason why it was not reported was because it was never said?

7 THE WITNESS: (Interpretation) I see that it wasn't written in this article and it
8 wasn't broadcast or shown, but I can say that I heard the comments. I heard the
9 comments be made.

10 MR FAAL:

11 Q. I'll move on, Mr Witness. You kept a notebook which you provided to the
12 investigators. Do you remember that?

13 A. Yes, I remember the notebook.

14 Q. In the notebook you recorded events about the post-election violence in Kenya;
15 is that right?

16 A. Yes, it's true.

17 Q. And the notebook was a new notebook, wasn't it?

18 A. Yes, it's true. It was a new notebook.

19 Q. And in it you recorded information which you wanted to provide to the
20 investigators about the PEV; is that right?

21 A. Yes, that's right.

22 Q. And in fact, Mr Witness, this story that you recorded in that book - in that
23 notebook - is so similar to this case that it caused the investigators to ask you
24 questions about the source of the information that is contained in the notebook.

25 I am referring, Mr President, to an exchange between the investigators and the

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1 witness at tab 28, KEN-OTP-0085-0861, at 0898 to 0985, specifically at lines 1090 to
2 lines 1130.

3 PRESIDING JUDGE EBOE-OSUJI: Tab 28, whose bundle?

4 MR FAAL: Of the OTP bundle, Mr President. It's tab 894 -- sorry, at page 894 to
5 895.

6 Q. The Prosecution asked you to clarify where the information in the book came
7 from and interviewer 2 stated that on first day witness showed them the notebook.
8 He told them that the information which is in this book comes from various papers
9 which were in his house. And interviewer 2 stated that witness read those papers
10 and he put what was there in his book and then he was asked for a copy of these
11 papers. And the witness said that maybe those papers are still at home and if he
12 goes back he will try to find them. Mr Witness, do you recall that?

13 A. Yes, I do remember.

14 Q. You also told the OTP that the information which is in the book comes from
15 another book which was burned. Do you remember that?

16 A. Yes.

17 Q. And, Mr Witness, your evidence before this Court is that you gathered this
18 information from organisation number 19; is that right?

19 A. Yes, I gleaned all this information from organisation number 19.

20 Q. The bottom line, Mr Witness, is that the story you wrote in your notebook was a
21 false story intended to mislead the Prosecution into believing that Mr William Ruto
22 organised the post-election violence in the Rift Valley; is that right?

23 A. Yes, that is correct.

24 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, we will take our morning break now.

25 MR FAAL: I am much obliged, Mr President, but I think I will need no more than

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- 1 five or ten minutes to wrap it up.
- 2 PRESIDING JUDGE EBOE-OSUJI: That's very good. So you do that when we
- 3 come back.
- 4 MR FAAL: Much obliged, Mr President.
- 5 PRESIDING JUDGE EBOE-OSUJI: Yes.
- 6 The Court will rise.
- 7 THE COURT USHER: All rise.
- 8 (Recess taken at 11.02 a.m.)
- 9 (Upon resuming in open session at 11.33 a.m.)
- 10 THE COURT USHER: All rise.
- 11 Please be seated.
- 12 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 13 Mr Faal, continue please.
- 14 MR FAAL: Thank you, Mr President.
- 15 Mr Witness, welcome back.
- 16 Mr President, may I suggest that we go into a private session for two minutes?
- 17 PRESIDING JUDGE EBOE-OSUJI: Private session.
- 18 (Private session at 11.34 a.m.) * Reclassified as Open session
- 19 THE COURT OFFICER: We are in private session, Mr President.
- 20 MR FAAL: Thank you, Madam Court Officer.
- 21 Q. Mr Witness, do you know this telephone number: (Redacted)?
- 22 A. You read out the number too fast and I couldn't get it.
- 23 Q. I'll read it again. It's (Redacted). I repeat (Redacted).
- 24 A. Yes, I know that number.
- 25 Q. Is it your number?

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1 A. Yes, it is.

2 Q. And you have had it for a long time, haven't you?

3 A. That's correct.

4 Q. It's the number you were using in 2007, isn't it?

5 A. Yes.

6 Q. And you carried this number or this phone with you wherever you went; is that
7 right?

8 A. Yes.

9 Q. At the outbreak of the post-election violence, could you tell the Court where
10 you were?

11 A. I was at location number 2.

12 Q. And were you moving about during the time of the post-election violence, or
13 were you hiding somewhere?

14 A. I moved about.

15 MR FAAL: Mr Witness -- Mr President, I am looking at tab 52, KEN-D09-0041-0177.
16 I'm looking specifically at the last page of the document, that is page 33 or
17 KEN-D09-0041-0210.

18 Q. Mr Witness, could you explain why your telephone was ringing only from one
19 location after the 3rd or from 3 January 2008 all the way to the 14th? Can you
20 explain why your telephone was only ringing at one particular location from
21 3 January to 14 January 2008?

22 A. It is because I lived at one location in town, at location number 2 in the city.

23 Q. Mr Witness, is it true, is it not, that you were (Redacted)
24 (Redacted)?

25 A. While (Redacted), I had a (Redacted) and that is why I

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1 B. remained there.

2 Q. Earlier you said you were at your home and your home would be at (Redacted)

3 (Redacted) isn't it?

4 A. Yes.

5 Q. And (Redacted) in town. Do you agree with me?

6 A. Yes.

7 Q. During the post-election violence, I put it to you, you were (Redacted)

8 (Redacted). You were not moving about at all?

9 A. (No audible response)

10 Q. What's your reaction to that?

11 A. This is what I can say. During the general elections, I was at my place at

12 location number 2. I did not move from that location 'til the month of (Redacted) It

13 is at that time when further violence broke out that I left.

14 Q. The point I am making, Mr Witness, is that during the violence you were not

15 moving about in town. You were (Redacted)

16 (Redacted). What do you say to that?

17 A. I was at my place at location number 2 during the elections and during the

18 violence in the month of January.

19 Q. And you did not move about in town as you told the Prosecution?

20 A. (Redacted)

21 (Redacted)

22 Q. So this story that you gave to the Prosecution that you went around town to

23 various locations was a fabrication, wasn't it?

24 A. These were statements or information that was given to me by number 19.

25 Q. In paragraph 21 of your statement to the Office of the Prosecutor - I'm looking at

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- 1 tab 1 of the Prosecution binder - you said as follows:
- 2 "(Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted) "
- 11 Do you recall saying that to the investigators?
- 12 A. Yes, that's what I said.
- 13 Q. Your source of income in 2007 was (Redacted)
- 14 (Redacted); is that right?
- 15 A. Yes, that's correct.
- 16 Q. You had (Redacted); is that right?
- 17 A. I had (Redacted)
- 18 Q. Help me to try to understand, Mr Witness. You said (Redacted)
- 19 (Redacted) isn't that
- 20 right?
- 21 A. Yes. Yes, (Redacted), but I then (Redacted).
- 22 Q. What (Redacted)?
- 23 A. I (Redacted)
- 24 Q. Now, what I am trying to find out is exactly what (Redacted)
- 25 (Redacted) in 2007?

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1 A. In 2007 I had (Redacted)

2 (Redacted)

3 Q. Mr Witness, the statement you gave to the Prosecution says that in 2005, it says

4 that here, (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 You did not say in this statement that you (Redacted)

9 (Redacted). Why didn't you?

10 A. Maybe they did not take the information down in their notes. During the

11 elections (Redacted)

12 Q. And, Mr Witness, did you own a house? Did you own a house in 2007?

13 A. No. I rented a house.

14 Q. And, Mr Witness, do you recall filling a form that was to be given to the ICC

15 some time after the post-election violence, in (Redacted) to be specific?

16 A. I have not quite understood your question. What form are you talking about?

17 Q. In (Redacted) did you fill in a form for -- asking to be considered as a victim

18 and asking for compensation from the ICC?

19 A. Yes, I remember filling out a form as a victim.

20 MR FAAL: Mr President, I am looking at tab 57 of the Ruto Defence bundle.

21 Court officer, could the document be put up the screen? It is KEN-OTP-0141-0132.

22 Could you kindly put it up the screen for the witness, please, and let it not be

23 broadcast out of the courtroom? Well, we are in private session anyway.

24 THE COURT OFFICER (via video link): The document as referenced by counsel is

25 being shown to the witness.

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1 MR FAAL: Mr President, the document I want is not on my screen. The document
2 I want is KEN-OTP-0141-0132. It's an application form for VPRS.

3 THE COURT OFFICER: I'm sorry, Mr Faal, but it seems that the document is not
4 under eCourt.

5 MR FAAL: My apologies. I understand the document had been sent to the court
6 officer in Nairobi, so may I ask that the court officer in Nairobi show the documents
7 to the witness. My apologies.

8 PRESIDING JUDGE EBOE-OSUJI: Court officer in Nairobi, kindly repeat for the
9 record what document you are showing to the witness.

10 MR FAAL: And the document --

11 THE COURT OFFICER (via video link): Mr President --

12 PRESIDING JUDGE EBOE-OSUJI: Yes, go on please.

13 THE COURT OFFICER: Mr President, I am showing to the witness

14 KEN-OTP-0145-0132, first page, and it's an application form for individuals.

15 MR FAAL: Thank you, Mr Court Officer. Could you allow the witness to go
16 through the document, to skim through the document page-by-page and let him stop
17 at the signature page, which is contained in part H, page 0138 of the document,
18 please?

19 PRESIDING JUDGE EBOE-OSUJI: In the meantime, how is your audio reception,
20 Nairobi, from here to where you are? Is it clear?

21 THE COURT OFFICER (via video link): Yes, Mr President. We can hear you loud
22 and clear.

23 PRESIDING JUDGE EBOE-OSUJI: All right. The reason I ask is when you read
24 back the document you had up on the screen for the witness, there was a part where
25 you didn't come out very clearly, although I heard you. Line 7 should say

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1 "individuals." I heard the court officer say "Application form for individuals." It
2 says "(indiscernible)" at line 7.

3 But please proceed, Mr Faal.

4 MR FAAL: Thank you, Mr President.

5 Q. In part H, Mr Witness, there is a signature within a box and a thumbprint. Do
6 you recognize the signature?

7 A. Yes, I do recognize it.

8 Q. Whose signature is it?

9 A. (No interpretation)

10 PRESIDING JUDGE EBOE-OSUJI: Interpretation, please.

11 THE WITNESS: (Interpretation) It is my signature.

12 MR FAAL:

13 Q. Having gone --

14 PRESIDING JUDGE EBOE-OSUJI: Mr Faal, one second. Can we do this in public
15 session, or is it identifying, your question? You should know.

16 MR FAAL: I can do it in public session, but I'd encourage the witness to be careful
17 as well, but I do not expect that any of my -- the answers that I am seeking will
18 require the witness to identify -- will require the witness to say something identifying
19 to me.

20 PRESIDING JUDGE EBOE-OSUJI: Public session.

21 (Open session at 11.57 a.m.)

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

23 MR FAAL:

24 Q. Mr Witness, do you recognise this document as the document that you made to
25 be given to the victims' unit?

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1 A. Yes, I am the one who signed it, but the form was filled out by someone else
2 other than myself.

3 Q. Don't tell us who filled it, but the person who filled it for you -- or, who
4 provided the information to this person who filled up the form for you? Who
5 provided that information?

6 A. It is number 19 who provided all that information on a piece of paper -- who
7 wrote down all that information on a piece of paper.

8 Q. In part H -- court officer, kindly show him part H of the document, it's page
9 0138. It says here under signature of the victim, "I hereby declare that to the best of
10 my knowledge and belief the information I have given in the present application form
11 is correct. If I have named someone to act on my behalf in question 14 of this form, I
12 hereby give my consent to that person to act on my behalf."

13 So, Mr Witness, you signed this declaration that the information contained in the form
14 is to the best of your knowledge and belief. Do you recall, or are you aware of that?

15 A. Yes.

16 Q. And in part E of the form, under "Reparations" to the question 34 -- or, let me
17 start with question 33 which says, "Would the victim like to apply for reparations?",
18 and then you answered, "Yes." Then the next question, "What would the victim
19 want?" And then you asked for the following: "Compensation and reconstruction
20 of my family business and my residential homes." Do you recall -- do you recall that,
21 Mr Witness?

22 A. Yes, I was talking about business.

23 Q. And, Mr Witness, and your residential homes, correct?

24 A. Yes, I was also talking about my residence.

25 Q. Mr Witness, you did not own the residential home that you lived in, correct?

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1 A. Yes, that is true. It was a rental.

2 Q. And you were fraudulently claiming compensation for a home you did not own,
3 correct?

4 PRESIDING JUDGE EBOE-OSUJI: No, the witness has said that he did not own the
5 residential home. I think he's made it plain.

6 MR FAAL: I leave it at that, Mr President.

7 PRESIDING JUDGE EBOE-OSUJI: Yes.

8 MR FAAL: No further questions for this witness.

9 PRESIDING JUDGE EBOE-OSUJI: You had completed your questioning, Mr Faal?

10 MR FAAL: Yes, Mr President. Considering that question wasn't allowed I rest my
11 case.

12 PRESIDING JUDGE EBOE-OSUJI: Thank you.

13 Witness, Mr Faal, the lawyer for Mr Ruto, has finished asking you questions. Now it
14 is the turn of Mr Kigen-Katwa, the lawyer for Mr Sang.

15 Mr Katwa?

16 MR FAAL: Mr President, perhaps before Mr Kigen takes the floor, I just changed
17 my mind about the VPRS form. I would like to have it exhibited. The witness has
18 confirmed that it is the application he had made to the VPRS. He has confirmed the
19 signature in it. In the application it deals with losses the witness claims to have
20 sustained. We know what he owns and what he did not own and, therefore, this
21 speaks directly to the issues and it's probative to the issues that your Honours would
22 have to consider. On that basis I would ask that it be exhibited. Thank you.

23 PRESIDING JUDGE EBOE-OSUJI: Prosecution?

24 MS ZAGO: No objections, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: Mr Katwa?

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1 MR KIGEN-KATWA: No objections, Mr President.

2 PRESIDING JUDGE EBOE-OSUJI: The document will be exhibited as the next Ruto
3 Defence exhibit.

4 THE COURT OFFICER: The confidential document KEN-OTP-0141-0132 will bear
5 the number EVD-T-D09-00282. The document will be uploaded in eCourt a
6 posteriori.

7 QUESTIONED BY MR KIGEN-KATWA:

8 Q. Good morning, Mr Witness.

9 A. Sijambo.

10 Q. Now, I will --

11 A. (Interpretation) Good morning.

12 PRESIDING JUDGE EBOE-OSUJI: Mr Katwa, the difficulty we have was the same
13 mistake that Mr Faal made. You understand Swahili and you move on with the
14 answer before interpretation occurred. Let's wait for interpretation.

15 MR KIGEN-KATWA: I apologise, Mr President.

16 MR FAAL: Mr President, I don't understand Kiswahili. I can only guess some of
17 the words.

18 PRESIDING JUDGE EBOE-OSUJI: Well, there you go. You guessed, but we will
19 proceed.

20 MR KIGEN-KATWA: Mr President, before I proceed, I already circulated
21 the -- Mr Sang's binders with effect from last Thursday. We will be using the binders
22 that we gave out on Thursday together with our core binders. And we contacted the
23 court officers for purposes of ensuring the core binders are there. The last thing I
24 wish to mention, Mr President, is that there is an audio of 29 February 2008, which we
25 disclosed on time, but the transcription and the translation became available today. I

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1 have very kindly requested the accommodation of the Prosecution and they have
2 very kindly agreed to accommodate me and allow me to make use of that
3 transcription and the translation. And I request for the Court's leave to make
4 reference to those -- the transcription and that translation.

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

6 MR KIGEN-KATWA: I'll request the court officer to give out the transcription and
7 the translation.

8 Q. Now, Mr Witness, I want to start my questions with an interview that you had
9 with the Prosecution in the year 2012. And for the parties in court, that is at tab 25 of
10 the Prosecution's binder, reference KEN-OTP-0085-0773, and I have particular
11 reference to page 0085-0781 to page 0782.

12 Now, Mr Witness, in the interview I am going to read to you, you had explained that
13 you heard something announced by Mr Sang in his radio broadcast. And this is
14 what you had said. I will read it out, then you -- I will ask if you recall having said
15 that and then I will ask you a series of questions. This is -- do you understand me,
16 Mr Witness?

17 A. Yes, I do understand you.

18 PRESIDING JUDGE EBOE-OSUJI: The line --

19 THE INTERPRETER: Message from the English booth: If counsel is going to read
20 from a document, could we please be provided with it?

21 MR KIGEN-KATWA: (Microphones overlapping) to line 298, but only the English
22 version of that statement, Mr President.

23 PRESIDING JUDGE EBOE-OSUJI: There was an overlapping speech. What line
24 did you say?

25 MR KIGEN-KATWA: Line 249 to line 298, but only the English version.

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1 PRESIDING JUDGE EBOE-OSUJI: All right. The other matter is did you provide
2 copies to the interpreters and court reporters?

3 All right. Interpreters, I have been told that the document will be published for you
4 so that you can follow.

5 MR KIGEN-KATWA: Thank you, Mr President.

6 It's a Prosecution document, so we didn't supply it, but I hope the Prosecution -- the
7 interpreters can follow.

8 Q. Mr Witness, this is what you had told the Prosecution, or the investigators
9 rather, "Because I remember in the mid of January between 5 and 6, he announced
10 that there was one elderly person who was killed by the Kikuyu in an area called
11 Molo when he was taking his kid to school."

12 PRESIDING JUDGE EBOE-OSUJI: Pace. Pace, Mr Kigen-Katwa.

13 MR KIGEN-KATWA: Yes, Mr President.

14 I'm going on from line 258.

15 Q. "And he (sic) brought a lot of trouble in town."

16 And then the investigators asked you the question, "What trouble did it bring?"

17 And your answer was, "People now reacted and said we are going to kill all the
18 people at the camp."

19 And you were asked the question, "Which people?"

20 And your answer was, "The Kikuyu and the Kisii ..."

21 And then I move on.

22 PRESIDING JUDGE EBOE-OSUJI: Before you move on, at line 1, page 44, you said
23 "And he brought a lot of trouble in town." Was it "he brought" or "that brought a lot
24 of trouble in town?"

25 MR KIGEN-KATWA: The sentence was, "And that brought a lot of trouble in town."

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- 1 PRESIDING JUDGE EBOE-OSUJI: Yes. Proceed now.
- 2 MR KIGEN-KATWA:
- 3 Q. Witness, then you went on to -- you are then asked the question, "Who?"
- 4 And your answer was -- you are asked "Who?" And then the question again "Who
- 5 was going to kill them?"
- 6 And your answer was, "The Kipsigis warriors."
- 7 And then you are asked question, "When did you hear this?"
- 8 "It was between 5 to 7 January 2008."
- 9 And then you are asked, "Where did you hear this from?"
- 10 "About the killing of this old man or the warriors?"
- 11 "About the killing of this old man; who announced it? Did you hear it on the street
- 12 or did you hear it on Kass FM; where did you hear it?"
- 13 And your answer was, "I heard it from the radio, Kass FM."
- 14 Then you are asked a question, "Who was saying it?"
- 15 And you said, "It was Sang who was announcing that."
- 16 And then you are asked, "... how did you know the reaction of the people?"
- 17 And your answer was, "I phoned people in town."
- 18 Mr Witness, do you recall giving this information to the investigators?
- 19 A. Yes.
- 20 Q. Now, from that information, Mr Witness, it is clear that you were in principle
- 21 saying that there was an old man who was taking his child to school in the general
- 22 area of Molo and he was killed, isn't it?
- 23 A. (No interpretation)
- 24 Q. Now, Mr Witness --
- 25 A. Yes, that is what I said.

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1 MR KIGEN-KATWA: I'm sorry for that overlap.

2 Q. Now, Mr Witness, I would like to show you a news report in the Kenyan media
3 and I would like you to confirm if you are referring to the same thing in this report
4 you gave to the Prosecution.

5 MR KIGEN-KATWA: Your Honours, I am making reference to tab 5 of our bundle,
6 of our bundle of documents, and the reference is KEN-D11-0019-0270 and I request
7 the court officer in Nairobi to please pull it up for the witness.

8 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, I must say I like your bundle
9 with your table of contents and that describes what one's looking at. I thought I
10 should tell you.

11 MR KIGEN-KATWA: We appreciate the compliment, Mr President. When you
12 asked the other parties to do it, we thought you had actually seen ours and was
13 recommending it to the rest.

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

16 MR KIGEN-KATWA: Now, court officer, I very kindly request you to take the
17 witness to page 0271.

18 Q. Now, Witness, I will -- I want to read the first three paragraphs. I will want to
19 request you to confirm if you can see? Can you see the paragraph starting with the
20 words, "Youth struck Molo town and killed a businessman"? Can you see that,
21 Mr Witness?

22 A. Yes.

23 Q. Now, Mr Witness, the heading of that article is "Man killed in protests." And
24 the first three paragraphs say this, "Youths struck Molo town and killed a
25 businessman near Molo academy. Youths sniffing tobacco and chanting war slogans

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1 attacked the man near the school and burned him to death in his car yesterday.

2 They barricaded -- they barricaded all roads leading in and out of Molo town. Local

3 OCPD, Mr Litabalia Achesa, said the youths attacked the man after learning he was

4 from a different community."

5 Mr Witness, you can see those writings, isn't it?

6 A. Yes, I have been able to read it.

7 Q. Now, Mr Witness, could you confirm that your report to the investigators relate

8 to the same issue that is reported in the newspaper, please?

9 A. Yes, these two accounts do bear a resemblance.

10 Q. Mr Witness, I have heard you say they "bear a resemblance." My question is

11 whether it is the same issue that you are referring to in the report you gave the

12 Prosecution?

13 A. You know, it was number 19 who told me this. As I said to the Court, this is

14 the same information that was given to me by number 19.

15 Q. Okay, thank you, Mr Witness. I want to ask you a couple of questions on the

16 details of that report. Could you first of all confirm what newspaper it is that I have

17 just read from?

18 A. It is The Standard newspaper.

19 Q. I request you also to indicate to the Court which date that report was made by

20 the newspaper?

21 A. The newspaper dated 23 January 2008.

22 Q. Now, Mr Witness, I would like you to look at the last line in paragraph 2 which

23 says, or I'll read the whole paragraph 2, it says, "Youths sniffing tobacco and chanting

24 war slogans attacked the man near the school and burned him to death in his car

25 yesterday." Can you see -- and I am putting emphasis on "yesterday." Can you see

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1 that, Mr Witness?

2 A. Yes, I have read that.

3 Q. Now, Mr Witness, you already confirmed to us that you read that this is a news
4 item of 23 January 2008 and the "yesterday" of the 23rd would be 22 January 2008,
5 isn't it?

6 A. Well, it's like this. The day before that was 22 January.

7 Q. Now, Mr Witness, you have told us both in private session and sometimes in
8 the public session that you were very active -- you had an active interest in politics
9 and I'll not give any details of the nature of it. I take it that you would from time to
10 time read newspapers, listen to the radio and watch developments on the TV, isn't it?

11 A. Yes, that is correct.

12 Q. And, Mr Witness, you have a recollection of this story reported by The Standard
13 newspaper on 23 January 2008, isn't it, as a matter of public knowledge?

14 A. On that day, I didn't read the newspaper. It is today that I am reading this in
15 the newspaper.

16 Q. Now, I will take you for one moment to what you said in your statement. You
17 said that, "I remember in mid-January, between 5 and 6 January 2008 ...," you heard
18 this report of an old man killed in Molo and that caused a lot of trouble in town. Do
19 you recall that, Mr Witness?

20 A. Yes, I do remember.

21 Q. I'm sorry. Now you would confirm, Mr Witness, that this event as you told the
22 Prosecution happened 15 days after the date that you said it had happened in your
23 report to the Prosecution, isn't it?

24 A. Yes, that is correct.

25 Q. Now, Mr Witness, in the statement to the Prosecution -- to the investigators you

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1 had said that you heard this report from an announcement made by Mr Sang in Kass
2 FM. You recall saying that in the statement?

3 A. Yes, that is what I said.

4 Q. Did you in fact hear Mr Sang say anything like that on the 5th or the 6th or
5 7 January 2008?

6 A. I did not hear that, nor did I listen to Kass radio broadcasts. This was all
7 information that was given to me by number 19.

8 Q. And, Mr Witness, both the party number 19 and the Prosecution could have
9 very easily confirmed the date of these happenings from open source media reports,
10 isn't it?

11 A. Well, it depends. It was number 19 that gave the information and transmitted
12 it to me.

13 Q. Now, Mr Witness, the last thing I wish to ask you about that particular point is
14 do you recall that in the period of January 2008 and owing to violence, the schools in
15 Kenya opened on 14 January 2008?

16 A. Yes.

17 Q. Now, I would like to show you a public document which is found at tab 5 of our
18 core binder and these are the BBC News summaries of their monitoring of Kass FM.
19 MR KIGEN-KATWA: Your Honours, the reference is OTP-0048-0118 and was
20 already made evidence EVD-T-D11-0009. It is in the core binder and the page and
21 the reference is page KEN-OTP-0048-0125.

22 Now, Mr Witness, we have a report of what BBC observed and recorded from the
23 broadcast that was made by Kass FM on 23 January 2008. And the question I
24 wanted to ask you is would you be surprised that in fact in their report they do not
25 mention Mr Sang as having said anything about the death of this old man who was

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1 taking his child to school?

2 A. It is true. They did not make mention of that man.

3 MR KIGEN-KATWA: Mr President, at this point I request to have the newspaper
4 article, Standard Newspaper Report, KEN-D11-0019-0270, at tab 5, admitted as
5 Mr Sang's Defence exhibit.

6 Mr President, we have taken precaution to ensure that the entirety of that
7 article - news article - is in the bundle, or in the exhibit we propose to produce,
8 together with the first page. We pray for its admission as an exhibit. It is directly
9 relevant to the issue and it has the necessary indicia of reliability.

10 PRESIDING JUDGE EBOE-OSUJI: Prosecution?

11 MS ZAGO: We do not object. Thank you.

12 PRESIDING JUDGE EBOE-OSUJI: Mr Faal?

13 MR FAAL: No objection, Mr President.

14 PRESIDING JUDGE EBOE-OSUJI: The document is admitted as the next Sang
15 Defence exhibit.

16 MR KIGEN-KATWA: Now --

17 THE COURT OFFICER: Document KEN-D11-0019-0270 will bear the number
18 EVD-T-D11-00050.

19 MR KIGEN-KATWA:

20 Q. Now, Mr Witness, you said something before I had asked you, and I intended to
21 ask you. I will ask you all the same for the record. Were you listening to Kass FM
22 in the period 20 December 2007 to 20 January 2008?

23 A. I never listened to Kass FM.

24 Q. And, Mr Witness, would you be in a position to recognise Mr Sang's voice?

25 A. I cannot recognise his voice because I never listened to him on radio.

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1 Q. Now, Mr Witness, the scope of your testimony in relation to Mr Sang are things
2 that are -- are things where it is alleged that Mr Sang said some things from
3 20 December 2007 to March 2008. And my question from your immediate previous
4 answer is that all those things you said that you heard Mr Sang say in that period of
5 20 January -- 20 December 2007 to 30 March 2008 are they true?

6 A. All of that information is false. It comes from number 19.

7 Q. So could you confirm all the allegations against Mr Sang in your two statements,
8 your three main statements against Mr Sang, which are to be found at tab 1, tab 25
9 and tab 24, are untrue? In the OTP's bundle.

10 A. I confirm that the information is false. That information was fabricated by
11 number 19.

12 Q. And there is also some notes that were produced by the Prosecution, being
13 notes that are said to have been made by you, and they make reference to Mr Sang.
14 Could you confirm if the references to Mr Sang in those notes are true?

15 A. What are you referring to? Please kindly repeat your question.

16 Q. Mr Witness, when the Prosecution were taking you through your testimony and
17 when my learned friend for Mr Ruto was taking you -- was cross-examining you, you
18 were referred to some handwritten notes of events relating to Mr Ruto and others
19 relating to Mr Sang. Do you recall that? And for the parties in court the reference
20 is KEN-OTP-0086-0302.

21 A. Yes.

22 Q. Now, in those notes, Mr Witness, you dedicated three/four pages to Mr Sang
23 where you said various things about Mr Sang in the period from 27 December 2007 to
24 about 6/7 January 2008, and the question I am asking you: All those allegations
25 against Mr Sang over that period, are they the truth of what you heard Mr Sang say at

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1 the station?

2 A. The information is false. It is information from number 19. I never listened to
3 Kass FM.

4 Q. Now, Mr Witness, I want to go to a different issue. In the paragraphs I read to
5 you of your testimony given to the Prosecution when you were recording your
6 statement, it is said that these are the things you heard in the period of 5, 6 and
7 7 January 2008. I have also read all the three transcripts that attached Mr Sang of
8 your interviews and they range -- some of the allegations are in the period 31 January
9 to 7 -- 31 December 2007 to 7 January 2008. Do you recall saying various things
10 about Mr Sang over that period, Mr Witness?

11 A. Yes, I talked about a number of things which are contrary.

12 MR KIGEN-KATWA: The references of the transcripts are: The first one is at tab 1,
13 KEN-OTP-0072-0397 of the Prosecution's bundle; the second one is
14 KEN-OTP-0085-0735; and tab 25 KEN-OTP-0085-0773.

15 Q. Now, Mr Witness, with particular reference to that period I just invited you to,
16 that is 31 December 2007 to 7 January 2008, do you recall with all the knowledge and
17 your having been in Kenya that there was a certain ban on live media broadcast?

18 A. Yes, I do. At that time there were no live broadcasts.

19 Q. Mr Witness, do you recall who placed the ban?

20 A. It was the government.

21 MR KIGEN-KATWA: Now, Mr Witness, I will request the court officer to take you
22 to what is in tab 1, Ken -- tab 1 of our small binder, reference KEN-D09-0022-0010.
23 Court officer in Nairobi, could you confirm if you have been able to trace it? The
24 reference again is KEN-D09-0022-0010.

25 THE COURT OFFICER (via video link): Counsel, I am looking for that document

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1 and it is not among the ones that I have. Was it in your bundle or in the bundle of
2 other party?

3 MR KIGEN-KATWA: It was in Mr Sang's bundle and I am made to understand that
4 it was emailed.

5 THE COURT OFFICER (via video link): I don't have that document. If you can
6 mail it to me right away I will be able to present it.

7 MR KIGEN-KATWA: I'll go to a different issue, Mr President, and then come back
8 to that issue in the meantime.

9 Q. Now, Mr Witness, I would like you -- I would like to invite you to another piece
10 of information you gave the investigators and this is to be found at tab 24 of the
11 Prosecution's bundle. The reference is KEN-OTP-0085-0735, and I have particular
12 interest in what is contained at paragraph 965.

13 Now, Mr Witness, in that interview this is what you said and I will only read what is
14 in English. I will start --

15 PRESIDING JUDGE EBOE-OSUJI: One minute. Did you say it's where?

16 MR KIGEN-KATWA: Mr President, it is at tab 24 of the Prosecution's bundle.

17 PRESIDING JUDGE EBOE-OSUJI: Oh, you were saying paragraph. You mean line
18 964.

19 MR KIGEN-KATWA: Yes, Mr President. Yes. For context I will read from
20 paragraph 953.

21 Q. Mr Witness, I request you to listen closely. I will read the English version and
22 then I will ask you a few questions. At 953 this is what you are reported as having
23 said:

24 "He was saying that the votes were now being stolen, that ODM votes were stolen
25 and PNU now was gathering more stolen votes. And that continued for a long time.

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1 And then I stopped listening, I was just in town until it came to 29 December. Before
2 we proceed on 28th, 10 p.m. that night, he spoke and he said that people should be
3 prepared for war because PNU had already grabbed the victory from ODM and
4 people should not accept that. And I was afraid, then I slept until the following
5 morning."

6 Mr Witness, you can -- do you recall having given that information to the
7 Prosecution?

8 A. Yes, that is correct.

9 Q. Now, Mr Witness --

10 PRESIDING JUDGE EBOE-OSUJI: And, Mr Kigen-Katwa, the subject there would
11 be Mr Sang, is that it?

12 MR KIGEN-KATWA: Yes, Mr President. At paragraph 950 the --

13 PRESIDING JUDGE EBOE-OSUJI: Line 950.

14 MR KIGEN-KATWA: Yes.

15 PRESIDING JUDGE EBOE-OSUJI: Yes.

16 MR KIGEN-KATWA: The interviewers, the investigators ask him, "So what was" Mr
17 "Sang saying on this particular announcement?"

18 And then he says, "He was saying that the votes were now being stolen." That's line
19 953.

20 PRESIDING JUDGE EBOE-OSUJI: Yes.

21 MR KIGEN-KATWA:

22 Q. Now, Mr Witness, the totality of what I have just read is to the effect that

23 Mr Sang announced on the 28th that ODM had won and that results had been stolen.

24 My question -- though I know I had asked you earlier on, but I will ask you again.

25 My question is: Could you confirm if you heard anything like this said by Mr Sang?

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1 A. No, I did not hear Sang say that and I never -- I never listened to radio Kass FM.

2 Q. I will go on at page -- line 983, and this is what is said -- or, this is what it is said
3 that you had said. The question was put to you, "Did people call on this programme
4 when Sang said this, were there some people who called him to respond to what he
5 was saying?"

6 And then you are reported to say, "When I came to my house around 4 p.m. he was
7 just ... talking and talking, and when he finished talking I fell asleep."

8 Then you are asked, "Did you hear anybody call him?"

9 Your answer was that, "At that time I didn't hear anyone."

10 And then, Mr Witness, you went on to say in the following paragraphs that Mr Sang
11 called people out to come and fight. And I would like to play to you an audio of
12 what Mr Sang said at the station on the said 29 December 2007.

13 Your Honours, I want to play an audio time stamp -- of 29 December 2007 in the
14 morning. The reference is KEN-D11-0006-00 -- or, rather, 0251. The translation is
15 KEN-D11-0008-0001 and the time stamp I wish to play is 53.14 to 53.49.

16 THE COURT OFFICER: Mr Kigen-Katwa, could you please confirm the level of
17 confidentiality of the document.

18 MR KIGEN-KATWA: It's a public document. Thank you.

19 Your Honours, that would be pages 25 to 26 in the pagination of the transcript and
20 the translation. It is at tab 6 of the core binder, the Prosecution binder.

21 Now, Mr Witness, I will play the audio. Please listen to it very closely. It is in
22 Kalenjin, which from what you said you understand.

23 Your Honours, for the record the pages are KEN-D11-0008-0027 to 28 -- sorry, it is
24 only 27, and it's time stamp 53.14 to 53.49.

25 (Playing of the audio excerpt KEN-D11-0006-0251)

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1 MR KIGEN-KATWA:

2 Q. Now, Mr Witness, did you -- were you able to follow what was said by
3 Mr Sang?

4 A. Yes, I did.

5 Q. Now, Mr Witness, in your own words could you give us a very brief summary
6 of what you heard Mr Sang say in that small audio?

7 A. Sang is asking people to vote peacefully and that those who are remaining at
8 home should be serene, that those who go to town should be calm, that no one should
9 burn anybody's car and that no one should do anything evil.

10 Q. Now, witness, I will read an English translation of what we made -- of what
11 Mr Sang said. The translators will translate it to you in Kiswahili. I will request
12 you to confirm if that is a fair translation of what you just heard Mr Sang say on 29
13 December 2007.

14 Mr President, I will read from the second paragraph, at page 0027: "I want to ask each
15 one to remain stationed in one place. Stay wherever you are. And people
16 intending to leave home, please relax at home. If it is not absolutely necessary for
17 you to go to town, stay at home. As for those people who are screaming and setting
18 vehicles on fire in Kericho, no please. Do not set anybody's vehicle on fire. Do not
19 stone vehicles. Kericho people, do not do that. That behaviour does not befit the
20 Kalenjin people. You voted without a hitch and other people respect you for this.
21 You did a good thing. So continue to show respect and not to engage in violence.
22 More so you even elected women, which demonstrated that there was no violence.
23 Why do you now want to engage in violence? People of Langas, eh? Watch out!"
24 That was the end of the audio. Mr Witness, could you confirm if what I have just
25 read is a fair reflection of what you heard Mr Sang say in the audio of 29

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1 December 2007?

2 A. Yes. Yes, that is correct.

3 Q. Now, Mr Witness, and please just limit your answer to the exact question I ask
4 you without explaining anything, could you confirm that from the small excerpt of
5 what I've just taken you through you actually heard Mr Sang make reference to two
6 locations seeking that people keep peace, one was Langas and the other was Kericho?
7 Do you recall having heard Mr Sang plead for peace for those two places?

8 A. Yes, he referred to those two locations.

9 Q. Now, in the statement I took you through, and as it went on, there are instances
10 when it is -- the statement -- your statement goes on to the Prosecution to say that
11 Mr Sang called people to come out and fight. Can you confirm from the audio that
12 you hear Mr Sang saying the exact opposite, saying stay at home unless you must
13 leave, unless it is absolutely necessary?

14 A. Yes, it was absolutely the opposite because what is in my statement came from
15 number 19. Sang talked about peace. He called for people to live in peace and to
16 avoid trouble or disturbances.

17 Q. Lastly from that item, could you confirm that Mr Sang says that as far as he's
18 concerned it is not in the nature and the character of Kalenjin people to be violent and
19 more particularly to stone vehicles and otherwise to set other people's vehicles on
20 fire?

21 A. Yes, I can confirm that this is what he said, and I know that this is correct
22 because it is not in the culture of the Kalenjin people to act that way.

23 Q. Thank you, Mr Witness. Now, in that statement also you said that Mr Sang is a
24 Kipsigis, that Mr Sang used to play Kipsigis songs, that the station Kass FM belongs
25 to a Kipsigis who is resident in USA. Are all those things true, to the best of your

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1 knowledge?

2 A. All that information is false. It comes from number 19. I did not know Sang
3 and I was not in the habit of listening to that radio station.

4 Q. And, Witness, with passage of time and in view of the fact that it was a relevant
5 issue for purposes of your testimony, do you know -- do you now know what
6 subtribe Mr Sang belongs to?

7 A. All I know is that Sang is a Kalenjin.

8 Q. Now, in the -- your statement also you said that Mr Sang in line with the
9 allegation that he was inciting people continued playing music called in your words
10 bado mapambano.

11 MR KIGEN-KATWA: Your Honours, that is at page -- that is between lines 1020 to
12 line 1027, more particularly at line 1025.

13 Q. Now, Mr Witness, my question is is that true that Mr Sang was playing music
14 called bado mapambano with a view to encouraging people to engage in violence?

15 A. No. The mapambano song was a song from one member of parliament whose
16 name was Otieno Kajwang.

17 Q. And could you tell us --

18 PRESIDING JUDGE EBOE-OSUJI: That spelling?

19 MR KIGEN-KATWA:

20 Q. Mr Witness, could you confirm that the spelling I give is correct for Mr
21 Honourable Otieno Kajwang, could you confirm that Otieno is O-T-I-E-N-O and
22 Kajwang is K-A-J-W-A-N-G; is that correct?

23 A. That is correct.

24 PRESIDING JUDGE EBOE-OSUJI: It was really more the song. Would you spell it
25 on the record?

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1 MR KIGEN-KATWA:

2 Q. Could you confirm that the spelling of the song bado mapambano, which is in
3 the transcript of the interview, line 1025, bado is spelled B-A-D-O and mapambano is
4 M-A-P-A-M-B-A-N-O?

5 PRESIDING JUDGE EBOE-OSUJI: He doesn't need to confirm it. If that is the
6 spelling, what you have said, that's enough for us to get the spelling from you.

7 MR KIGEN-KATWA:

8 Q. Now, Mr Witness, could you confirm if Mr Otieno or Honourable Otieno
9 Kajwang is a Kalenjin?

10 A. Otieno Kajwang is a Luo from Nyanza, a native of Nyanza.

11 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, we have to take our lunch
12 break now and we will come back at 2.30. How much more time?

13 MR KIGEN-KATWA: Most likely no more than 40 minutes, probably 30 minutes,
14 Mr President, and the reason is just this one audio, I will play three parts and
15 otherwise I would have been much shorter.

16 PRESIDING JUDGE EBOE-OSUJI: All right.

17 And, Ms Zago, your re-examination time?

18 MS ZAGO: We estimate that if at all, we will re-examine whether it is really
19 necessary over lunchtime, but we do not anticipate that it will last more than five
20 minutes.

21 PRESIDING JUDGE EBOE-OSUJI: Thank you.

22 Witness, we will take our lunch break now and we will see you back in the room
23 at -- in one-and-a-half hour's time.

24 The Court will rise.

25 THE COURT USHER: All rise.

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1 (Recess taken at 1.03 p.m.)

2 (Upon resuming in open session at 2.35 p.m.)

3 THE COURT USHER: All rise.

4 Please be seated.

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

6 And, Witness, welcome back.

7 Mr Kigen-Katwa, please continue. We're in open session.

8 MR KIGEN-KATWA:

9 Q. Good afternoon, Mr Witness.

10 A. Good afternoon.

11 Q. Now, the last thing I wanted to ask you about this issue of the song which in the
12 interview was said to have been played by Mr Sang, about bado mapambano, could
13 you confirm if it is common knowledge in Kenya as to who sang it?

14 A. Here in Kenya it is common knowledge that it is Otieno Kajwang who sang that
15 song.

16 Q. And so, in fact, if the people in number 19 in our list and the Prosecution
17 wanted to confirm it would have been easily available in public sources, isn't it?

18 A. If the organisation at number 19 had contacted the public, they would have had
19 answers to that question.

20 Q. Now, Witness, I want us to go to something different which is captured in an
21 interview you gave. And for the parties in court it is KEN-OTP-0085-0773, and that
22 is at tab 25 of the Prosecution bundle. I would like us to go to paragraph -- line 21.
23 Now, Witness, you recall having explained to the Prosecution in various
24 paragraphs -- Mr President, may I correct myself? It's actually line 341 that I have in
25 mind, line 341 of the transcript in tab 25, and that is at page KEN-OTP-0085-0784.

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1 Now, Mr Witness, this is what you said when you were being interviewed, and
2 starting from line 341 this is what you -- or, 339, this is the question that you were
3 asked:
4 "... is there something else you would like to ask about this?"
5 And then you said, "No, no," and then you go on.
6 "Is there ... did you listen to any other radio station that made similar broadcast
7 during the violence?"
8 "I was also tuning to KBC and they were like telling people to restore peace. And
9 they were telling people to bring peace and not fight. I started tuning to Kass FM. I
10 stopped turning (sic) to Kass FM until 7 January, until 31 January 2008, when a
11 member of parliament of that area died."
12 "Which" -- and then you are asked: "Which area?"
13 You said, "Ainamoi."
14 The spelling of Ainamoi is A-I-N-A-M-O-I.
15 Line 370: "At that time I was also tuning to the radio because I was also tuning to
16 another radio as well, and when it was around 11," or "12 noon I just heard from the
17 people in town that a member of parliament had been killed."
18 And then we go to line 385, which says you said that "... they were saying David
19 Kimutai had been killed."
20 Witness, you recall having given that information to the Prosecution, don't you?
21 A. Yes, I provided that information.
22 Q. Now, I would like us to move on to line 529 of same transcript, the same
23 interview, line 529. At line 529 you said, "... 7 February ... during the burial of David
24 Kimutai, I was told by one person that Sang is in Kericho so I tried to go to ..." Kericho
25 (sic) "... Hotel. I was told by someone that he has gone. I just wanted to go and

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1 meet him, but I couldn't find him."

2 PRESIDING JUDGE EBOE-OSUJI: Let's back up. What hotel?

3 MR KIGEN-KATWA: The hotel is called Tea Hotel.

4 PRESIDING JUDGE EBOE-OSUJI: That is what appears, but you had said
5 something else, but you can continue.

6 MR KIGEN-KATWA: I am sorry, Mr President. I just realised that.

7 Q. Now, Mr Witness, then I want us to move on to line 563, starting with line 560,
8 and this is what you asked:

9 "Who had told you that Sang was at Tea Hotel?"

10 "I found some women close to the county hall because a lot of people were reading
11 newspapers there, so I heard them say that Sang had slept at Mid-West Hotel."

12 You remember having given this information to the Prosecution, Mr Witness?

13 A. (No audible response).

14 PRESIDING JUDGE EBOE-OSUJI: Did we lose connection?

15 Mr Kigen-Katwa, we have lost connection to the remote location.

16 (Pause in proceedings)

17 (Trial Chamber confers)

18 PRESIDING JUDGE EBOE-OSUJI: The report is that the connection is down and
19 they are re-initialising the system.

20 We will rise and come back in 10 minutes.

21 The Court will rise.

22 THE COURT USHER: All rise.

23 (Recess taken at 2.48 p.m.)

24 (Upon resuming in open session at 3.04 p.m.)

25 THE COURT USHER: All rise.

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1 Please be seated.

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

3 I understand the system is back up.

4 Mr Kigen-Katwa, that was a warning to you. Maybe providence is telling you hurry
5 this thing up, we may stay here for another week. It can happen. Go on.

6 MR KIGEN-KATWA: Thank you, Mr President. I will hurry.

7 Q. Now, Mr Witness, the first question I want to ask you is in the information you
8 gave the investigators you said you were told about Mr Sang's attendance in Kericho
9 and more specifically the funeral of David Kimutai. May I ask you were you
10 actually told that Mr Sang had come for that funeral?

11 A. Yes, the staff of organisation 19 told me.

12 Q. Now, apart from organisation number 19, was there anybody else who told you
13 that Mr Sang had attended that funeral and burial for Mr David Kimutai over the
14 period you have referred to?

15 A. Nobody else.

16 Q. Now, did you go to Tea Hotel as is shown in the interview that you went to Tea
17 Hotel trying to meet Mr Sang?

18 A. No, I didn't go.

19 Q. Did you go to Mid-West Hotel where it was said Mr Sang had slept?

20 A. No, I didn't go there and I don't know the name of Sang.

21 Q. Lastly on that issue, Mr Witness, would you be surprised that Mr Sang did not
22 in fact attend that burial?

23 A. No, I don't want to be surprised understanding that, that's something that came
24 from number 19.

25 Q. And would you be surprised that in fact Mr Sang did not sleep at Mid-West

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1 Hotel in the period you have referred to and has never been to that hotel?

2 A. Those were the comments of number 19.

3 Q. Now, I want us to go back to the issue of the ban on live broadcast. This
4 morning when I was asking you questions you confirmed that you are aware that
5 there was a ban imposed by Kenya government to live broadcast. Do you recall
6 that?

7 A. Ndiyo.

8 MR KIGEN-KATWA: Now, I would request the court officer in Nairobi to pull up
9 for the witness document KEN -- which is at tab 1, KEN-D09-0022-0010. It is tab 1 in
10 the small green binder.

11 THE COURT OFFICER: Mr Kigen-Katwa, could you please confirm the level of
12 confidentiality of the document?

13 MR KIGEN-KATWA: It's public, please.

14 THE COURT OFFICER (via video link): The document is being presented to the
15 witness.

16 MR KIGEN-KATWA:

17 Q. Now, Witness, are you in a position to inform the Court, on the top-left side,
18 where that report is sourced from?

19 A. From the Kenyan Government.

20 Q. Now, Mr Witness, could you confirm that, looking at the face of the document,
21 it is indicated "Reporters sans frontières (Paris)" and the heading is "Kenya:
22 Government Imposes 'Dangerous And Counter-Productive' News Blackout" and then
23 it has the date "31 December 2007." Can you see that, Mr Witness?

24 A. Yes, I can see that.

25 Q. Now, Witness, I will read a few paragraphs for the record about particulars of

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1 this ban, and this is what it says in the first paragraph:
2 "Warning the government of the dangers of the ban on live radio and TV news
3 reports that it announced yesterday, Reporters Without Borders today condemned
4 the climate of fear imposed on the privately-owned media in the wake of Kenya's
5 disputed presidential election.
6 'The news blackout could result in the streets being ruled by rumour and
7 disinformation,' the press freedom organisation said. 'This decision is therefore
8 counter-productive, inasmuch as it constitutes a de facto ban on all news programmes,
9 it imposes a climate of intimidation and plunges the country into confusion. We call
10 on the government to talk to media executives and editors and to let them work freely
11 so that the public is properly informed.'
12 Internal security minister John Michuki announced the live broadcast ban shortly
13 after President Mwai Kibaki was proclaimed winner of the controversial election.
14 The information and communication minister said the 'suspension of live broadcasts'
15 had been ordered 'in the in the interest of public safety and tranquillity.' A
16 government press release said: 'In the prevailing environment, some people are
17 using the media to call for violence and to incite members of the public to engage in
18 violence.'
19 Most of the broadcast media suspended all their news programmes, effectively
20 plunging Kenya into a news blackout."
21 And then I will read the last paragraph, Mr Witness:
22 "The situation is tense, with deadly clashes being reported in Nairobi and several
23 provincial cities. Local journalists said news was now circulating mainly by means
24 of SMS messages. Kiss FM host Caroline Mutoko asked listeners not to cite Kiss ... as
25 the source of reports in their SMS messages because it was not true and because it

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1 could result in the station being closed.

2 Radio Lake Victoria, a station based in the western city of Kisumu that openly
3 supported opposition candidate Raila Odinga, has been forced off the air as a result of
4 what deputy station manager Seth Oloo called government 'sabotage.'"

5 Mr Witness, you can see that what I have just read, isn't it?

6 A. Yes, I see that.

7 MR KIGEN-KATWA: The spelling of Caroline Mutoko. Caroline is as usual.

8 Mutoko is M-U-T-O-K-O.

9 Q. Now, Witness, paragraph 4 -- in paragraph 4 there is a sentence to this effect,
10 "Local broadcast journalists said they were afraid the police could raid their stations
11 and order them to close." Can you see that, Mr Witness?

12 A. Yes, I see that.

13 Q. Now, Witness, as a general question, as a general proposition, do you recall if
14 any of the media houses had suffered that fate, being specifically that the government
15 caused a raid and a closure of their station?

16 A. Yes, but I no longer remember which station it was.

17 Q. Or do you recall if I mention that it was Kenya Television Network, KTN?

18 A. Yes.

19 Q. Now, at paragraph 3, the last sentence, Witness, it says this, "A government
20 press release said: 'In the prevailing environment, some people were (sic) using the
21 media to call for violence and to incite members of public to engage in violence."

22 Mr Witness, could you confirm that from that statement from government the
23 purpose of banning live broadcast - live news broadcast - was specifically to make
24 sure that nobody was inciting violence as is alleged in your statement to the
25 Prosecution?

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1 A. The government was trying to prevent violence which was underway.

2 Q. And which is exactly what mister -- what is alleged Mr Sang was doing in your
3 statement to the Prosecution, isn't it?

4 A. No, that wasn't like that. I didn't know Mr Sang. I didn't even know the
5 radio station in question.

6 Q. Thank you, Mr Witness. Now, I want us to move on to something else. Now,
7 in your statement you had said that at a certain point -- and we are looking at
8 transcript KEN-OTP-0085-0773, which is at tab 24 of the Prosecution tab. Let me just
9 confirm, Mr President. That is tab 25, sorry, of the Prosecution bundle, paragraph
10 406 -- sorry, I should have said line 406 which is at page KEN-OTP-0085-0786. And
11 this is how the interview went from line 406:

12 "OK. Anything else that you would like to add to clarify on this issue?"

13 "I remember on 1 March 2008 I tuned to Kass FM, this is when Sang was quoted as
14 saying "That the peace accord between Raila and Kibaki had offended Ruto."

15 And then you are asked, "Who said this?"

16 And you said at 426, "Sang said that."

17 And then you're asked, "What time was this?"

18 And you said, "It was in the afternoon, I don't remember the time."

19 And then you are asked, "What else did he say?"

20 And you said, "... he said that, 'You wait for ... Ruto to tell us the stand.'"

21 Paragraph 436, "... after he said that, on 28, (Redacted), when the peace
22 accord was signed, people were so happy moving in town, celebrating but on the
23 following day, around 4 p.m., people changed their gang ..." and then it says
24 something wrong there. "They say that Raila is just like a woman. How did he
25 accept to ... let leadership go? Just a point of clarification."

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- 1 You are asked, "Just a point of clarification" and then "the witness mentioned a date
2 but did not specify the month, he said 28 ..."
3 "... when did this happen?"
4 "This issue of ... signing accord, when did it take place?" You were being asked that.
5 And then you said, "Maybe you take note of that."
6 And then you said, "28 February ... 2008." That goes all way to line 473.
7 Witness, do you remember saying that?
8 A. Yes, I remember saying that.
9 Q. Now, Witness, the general effect of what was being said there was that people
10 were happy with the signing of the peace accord, but when Mr Sang said that Ruto
11 was offended then people became hostile to that peace agreement. That's what you
12 are trying to say in that statement, isn't it?
13 A. Yes, it is.
14 Q. Now, is it true that you heard Sang say these things that he said the agreement
15 had offended Ruto and that people should wait for what Mr Ruto would tell them
16 about what to do with the signed peace accord? Did you hear that?
17 A. All that was a plan made by number 19. I didn't know Mr Sang.
18 Q. Now, Mr Witness, I would like to play you -- I would like to play out an audio
19 of what Mr Sang said about the peace accord and this is what he said on 29
20 February 2008. The audio's reference is KEN-D11-0014-0118, and the translation and
21 transcription which was availed this morning has been assigned -- has been assigned
22 ERN numbers KEN-D11-0020-001 (sic) and I -- we are in the process of doing the ERN.
23 I request to play time stamp 7.11 to 7.1 -- 7.30.
24 (Playing of the audio excerpt KEN-D11-0104-0118)
25 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, you might want to check for

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1 the correct ERN number. You indicated on the record, is it 0118 or 0188?

2 MR KIGEN-KATWA: Your Honour, the audio's ERN is KEN-D11-0014-0188 and the
3 ERN assigned to the first transcript and translation is KEN-D11-0020-001.

4 Q. Now, Witness, a short part of that audio has been played. Could you confirm
5 if you heard Mr Sang mention the date? And if you weren't able to, I will have it
6 played again. Did you hear the date?

7 A. Yes, I heard people speak about the date of 26 February.

8 MR KIGEN-KATWA: Mr President, I will ask the question again. I thought I heard
9 the witness say 29th, but the translation says 26th. I will ask the witness.

10 Q. Do you recall the date, Mr Witness? I could play the audio again if you need to
11 countercheck.

12 PRESIDING JUDGE EBOE-OSUJI: Why don't you play it again.

13 MR KIGEN-KATWA:

14 Q. Witness, I will play again the audio and then you will let us know if you can
15 pick out the date.

16 And that is for the rest of the members of the Court, it is at page 1, paragraph 3,
17 starting with, "Greetings, Kalenjin listeners."

18 Witness, please listen closely.

19 (Playing of the audio excerpt KEN-D11-0104-0188)

20 MR KIGEN-KATWA:

21 Q. Witness, did you hear the date and the day of the week?

22 A. It was 29 February.

23 Q. And did you hear that it is Friday, the last day of the month?

24 A. Yes. Yes, I heard that it was a Friday.

25 Q. Now, Witness, Mr Sang says it is 29 February 2007. It is our position that that

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1 was a mistake in what he said. It should be 2008, but we will deal with that later on.

2 Now, I would like to play the next time stamp, which is 11.58 to 14.05.

3 MR KIGEN-KATWA: And, your Honours, that is at page 3 of the transcript and
4 translation.

5 (Playing of the audio excerpt KEN-D11-0104-0188)

6 MR KIGEN-KATWA: Mr President, may I apologise. The time stamp that had
7 been played was irrelevant. It should be time stamp 12.58 to 14.05 and, with your
8 permission, I'll play that now.

9 Q. Mr Witness, please listen closely.

10 MR KIGEN-KATWA: 12.58. Your Honours and the people in court, that is visible
11 from the transcript of the translation. There is a time stamp 12.58 and 14.05 on top of
12 page 4.

13 (Playing of the audio excerpt KEN-D11-0104-0188)

14 MR KIGEN-KATWA: Witness -- Mr President, could I read the translation and ask
15 the witness, or should I ask him to summarise first?

16 PRESIDING JUDGE EBOE-OSUJI: See if he can give us the gist of it.

17 MR KIGEN-KATWA:

18 Q. Mr Witness, I request you to give us a summary of what you heard, a brief
19 summary?

20 A. (No interpretation)

21 THE INTERPRETER: Sorry, from the English booth. Would the witness be kindly
22 requested to repeat his answer so that we can interpret? Thank you.

23 MR KIGEN-KATWA:

24 Q. Witness, the translators were not able to translate what you said. I request you
25 again to summarise what you heard Mr Sang say briefly, please.

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1 A. The announcer or presenter said that he was happy with the agreement that had
2 been made the day before between Raila and Kibaki and congratulated the fact that
3 the members of parliament agreed with those agreements and that this was an
4 opportunity for the country to move forward.

5 Q. Mr Witness, before I read what -- how we have translated what was said and so
6 as to avoid doubt, could you confirm whether Mr Sang is congratulating members of
7 parliament or he was urging them to do something else?

8 A. He asked them to come to agreement so that there could be peace, which would
9 enable the country to develop. He was satisfied with the agreement between Raila
10 and Kibaki and he welcomed the agreement.

11 Q. Now, Witness, I will read in English what -- how that audio was translated and
12 then you will please confirm if it is a fair translation of what you heard.

13 MR KIGEN-KATWA: Mr President, I am reading from the first -- the English
14 translation from the line marked at 12.58, Joshua Sang, and this is what it says:
15 "And now let us turn to the major national issue that relates to 27 December election.
16 Today, three months since the general elections in Kenya, we rejoice in the agreement
17 that the two parties fairly reached - ODM and PNU. They have agreed to share
18 power so that the nation may heal from the violence.
19 We were talking yesterday about the important step made by Nairobi City Council.
20 The whole nation has followed ... their footsteps. And you too had said we are
21 requesting Raila and Kibaki to come to an agreement. They have agreed. It is well.
22 Now all we can say is thank you. The remaining important task is for the members
23 of parliament. MPs, when you resume on 6th, you must pass these issues into law.
24 We will be asking anyone who does not vote to ratify these issues into constitution
25 who are they? Are you more important than ..." the -- "...than President Kibaki?

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1 Are you more important than Raila Odinga? Are you more important than Annan?
2 Are you more important than Kikwete, the president of Tanzania? Are you more
3 important than Graca Machel, the wife of two former presidents, and who is now the
4 wife of a retired South African President? Are you more important than those
5 people?"

6 Witness, is that a fair translation of what you heard in Kalenjin?

7 A. Yes, that is the translation.

8 Q. Now, Witness --

9 MR KIGEN-KATWA: I'm sure the translators will be able to do the spellings, Mr
10 President, these personalities, just to save time.

11 PRESIDING JUDGE EBOE-OSUJI: That's why it is so important to give the
12 interpreters and court reporters these things ahead of time so that they can follow and
13 interpret.

14 MR KIGEN-KATWA: I must apologise. On this one I should have, Mr President.
15 We would normally do it. I am sorry about this.

16 PRESIDING JUDGE EBOE-OSUJI: Yes, you can assist them later with the
17 corrections.

18 MR KIGEN-KATWA: Thank you very much, Mr President.

19 Q. Mr Witness, my question therefore is, in the statement you were reported as
20 saying that Mr Sang was not happy with the peace accord. Could you confirm that
21 from the audio the opposite is true?

22 A. He was happy and he welcomed the agreement, but again everything I said I
23 was asked to do so by number 19.

24 Q. And from that excerpt could you confirm that Mr Sang is urging members of
25 parliament to support the agreement - the peace agreement - otherwise Kenyans

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1 would be very unhappy with them?

2 PRESIDING JUDGE EBOE-OSUJI: Is he really in a position to confirm that is what
3 Mr Sang has said? So far from the testimony of this witness, can he really confirm
4 that? Did he not say he does not recognise Mr Sang's voice? Has he now agreed
5 that it is Mr Sang that is speaking?

6 MR KIGEN-KATWA: Let me rephrase the question, Mr President. The point
7 occurred to me. My question is more whether what was said in the audio is to that
8 effect. The question of whether it is Mr Sang's voice is an issue we can deal with on
9 another occasion.

10 Q. Mr Witness, I would -- do you recognise Mr Sang's voice?

11 A. (No interpretation).

12 Q. And so --

13 MS ZAGO: Your Honours, I believe that the English booth is trying to say
14 something to us.

15 PRESIDING JUDGE EBOE-OSUJI: They have a way of telling us.

16 MS ZAGO: I see the interpreters in the English booth waving at me, so I am trying
17 to telegraph the information to someone in the courtroom.

18 PRESIDING JUDGE EBOE-OSUJI: Or maybe they're waving to --

19 THE INTERPRETER: Mr President, we were just attempting to communicate with
20 the other booth. The fact is that we didn't get the feed from the witness,
21 Mr President.

22 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, we have to do it again.

23 MR KIGEN-KATWA:

24 Q. Mr Witness, what you said was it wasn't possible to translate. I will ask you to
25 answer that question again, and the question I had put to you is whether you are in a

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1 position to recognise Mr Sang's voice?

2 A. I am not in a position to know whether it is Sang's voice, but following what I
3 heard in the excerpt he mentioned his name and I heard what he said.

4 Q. And so, Mr Witness, all the questions I have asked you about Mr Sang, your
5 confirmation is what you heard on the audio as opposed to the question of whether it
6 was Mr Sang or somebody else, isn't it?

7 A. It is here and now that I have just heard it through the audio cassette that was
8 broadcast or played.

9 MR KIGEN-KATWA:

10 Q. Now, Mr Witness, I'll play you two last portions of that audio and then we leave
11 that issue.

12 The next time stamp I wish to play is time stamp 14.51 to 16.37. That is page 4 into
13 page 5 of the translation and transcription.

14 (Playing of the audio excerpt KEN-D11-0104-0188)

15 MR KIGEN-KATWA:

16 Q. Witness, I will read out to you the English translation of what we just heard. If
17 you could kindly confirm if it is a fair translation of what you heard. This is what
18 the person who was speaking said:

19 "So we say thank you to all those who participated. Annan. We first ... thank you
20 to Annan for his perseverance. I know you have been mocked and ridiculed but you
21 ignored it all so you may save the people of Kenya. Thank you brother. Stay with
22 us. And be at peace. Kofi Annan. I don't know what name you have been given?
23 You know the Kalenjin are famed for christening guests. They assign names. What
24 have we christened him? I am sure someone is just about to call about that name.

25 Anyway, we say thank you. Thank you, Mkapa. Thank you, Machel. Thank you,

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1 President Kikwete, the chair of African Union, who arrived yesterday. He is also our
2 neighbour. We also thank President Kibaki because he acknowledged that the
3 country's bigger than any individual." Raila also agreed.

4 "Thank you very much to Honourable Raila. You did something very important.
5 This is what we wish for this country because it is futile if you want the power and
6 the people don't want you. You would rather share power, so that if one side does
7 not like you, the other supports you. We stay in peace as a nation. We thank you.
8 We thank you to them, Raila and Kibaki."

9 Mr Witness, is that a fair translation of what you heard?

10 A. Yes, I have just heard what has been said. Sang was congratulating a number
11 of people regarding what had just happened and he thanked all those who had
12 participated in it. He also thanked all those who were part of it.

13 Q. Thank you, Witness. And the last part of it is --

14 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, before you get to the last part
15 of it, we have 15 minutes to adjournment and the Prosecution would need --

16 MS ZAGO: I can advise that the Prosecution has no further question for this witness,
17 unless something comes up in the next seven to 10 minutes. Thank you.

18 PRESIDING JUDGE EBOE-OSUJI: All right. Still, let's play it safe.

19 MR KIGEN-KATWA: Nothing is likely to come out of it. It will be the same.

20 Q. Now, Witness, he additionally said this, "We also thank the people from both
21 parties who took part in the talks, representatives of PNU lead by Martha Karua,
22 Mutula Kilonzo, Sam Ongeru ... we say ... and Wetangula, Moses. Have they not
23 done a good job? And their people, their secretaries? On the other side, there is
24 Dr Sally Kosgey and ..."

25 PRESIDING JUDGE EBOE-OSUJI: Pace, pace, pace.

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1 MR KIGEN-KATWA: "... there is Dr Sally Kosgey and William Samoei Arap Ruto,
2 Kipchirchir, together with Orengo and Musalia Mudavadi. They call him deputy
3 captain. We also say thank you for the work you have done. We are grateful that
4 you completed the task. We continue to pray that all be well."

5 Q. Witness, you confirm that's also a fair translation of what was said?

6 A. Yes, that is correct.

7 Q. Now, Witness, in that paragraph 406, it is said that you said, "I remember on
8 1 March I tuned to Kass FM. This is when Sang was quoted as saying that the peace
9 accord between Raila and Kibaki had offended Ruto."

10 Mr Witness, do you recall saying that that on 1 March 2008 Sang broadcasted a
11 position to the effect that the peace accord had offended Ruto?

12 A. Yes.

13 Q. Now I would like to take you to another part of the transcript so as to answer
14 the question of the circumstances of Mr Sang on 1 March.

15 Mr President, I am referring to the second transcript and translation, part 2. The
16 reference is KEN-D11-0020-0026, at page 32 and, with your permission, your Honour,
17 I'll play.

18 Witness, kindly listen closely. It is in reference to the same audio
19 KEN-D11-0014-0189.

20 (Playing of the audio excerpt KEN-D11-0014-0189)

21 MR KIGEN-KATWA:

22 Q. Now, Witness, I would like you to your own words to give us a very brief
23 summary about what Mr Sang said in reference to coming week?

24 A. They said -- he said that there was need for prayers, there was need for peace,
25 need for prayers for different people. So in fact it was a meeting that focused on

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1 prayer.

2 MR KIGEN-KATWA: Mr President, I think the translator missed out "Eldoret"
3 which the witness said, but let me take the witness directly to what I am interested in
4 because of time.

5 Q. Witness, do you recall having heard Mr Sang say, "Thank you, may God bless
6 you and lead you. This is Joshua Arap Sang, telling you that I will not be around in
7 the coming week. I am also going to rest shortly then I come we proceed."
8 Do you remember hearing Mr Sang say that, Mr Witness, in Kalenjin?

9 A. Yes, he said so. He said that.

10 Q. And, Mr Witness, you recall that this is an audio of 29th and the coming week
11 incorporated 1 March 2008 when, according to the statement you gave Prosecution,
12 Mr Sang had said the peace accord had offended Mr Ruto?

13 A. Yes, that is correct.

14 MR KIGEN-KATWA: Your Honour, I have a few last questions which I must ask in
15 private session please.

16 PRESIDING JUDGE EBOE-OSUJI: Private session.

17 (Private session at 3.53 p.m.) * Reclassified as Open session

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

19 MR KIGEN-KATWA:

20 Q. Now, Mr Witness, you remember Ruto's Defence asking you questions in
21 respect to an application form for individuals for compensation. Do you remember
22 questions being asked about that?

23 A. Yes, I do remember that such questions were put to me.

24 MR KIGEN-KATWA: The ERN of the form is KEN-OTP-0141-0132.

25 Q. Now, Witness, was it your testimony then that it was not filled by yourself, but

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1 by somebody else?

2 A. Yes, someone else filled out the form.

3 Q. Mr Witness, are you in a position to tell the Court the name of the person who
4 filled the form?

5 A. The name is (Redacted)

6 Q. Would you kindly confirm to the Court the spelling of (Redacted) is (Redacted)
7 (Redacted)

8 A. Yes, that is correct.

9 Q. And could you confirm that his full names are actually (Redacted)?

10 A. Yes, his first name is (Redacted) and his surname is (Redacted).

11 Q. Now, Witness, could you tell us, first of all, what was (Redacted)
12 (Redacted) in the period of 2007 elections?

13 A. He was (Redacted).

14 Q. And, Witness, could you confirm if he is the one who introduced you to
15 organisation 19?

16 A. Well, you may not be able to fully understand (Redacted). You see, he used to
17 (Redacted). You could have met him at number 4. He
18 is the one who (Redacted). He appeared to
19 be the (Redacted).

20 Q. And to the best of your knowledge, did he ever work with organisation 19,
21 (Redacted)

22 A. Yes. Yes, he used to work with them. He used to work at number 19 and at
23 (Redacted).

24 Q. And to the best of your knowledge in transacting with him, did he know some
25 of the Prosecution's witnesses in this case?

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1 A. To the best of my knowledge, he did not even know that I was a witness. If he
2 knew, or if he had known, he didn't tell me that he knew.

3 Q. The second last question I wanted to ask you, Witness, did the Prosecution ask
4 you for any audios in support of the things you said Sang had said in the period
5 27 December 2007 all the way to 30 March 2008? Did they ask you for any audios?

6 A. The Prosecutor asked me for audio cassettes? Where would we have been?
7 Please can you put your question again? I did not quite understand it.

8 Q. Witness, you had various interviews with the Prosecution and in those
9 interviews you mentioned what according to you was said by Mr Sang on various
10 days between 20 December 2007 to 30 March 2008. Do you recall a series of
11 discussions to that effect?

12 A. Yes, I do remember. I remember the questions they asked me and the answers
13 I provided.

14 MR KIGEN-KATWA: Mr President, I am just on my last question, but I would
15 request to go to public session.

16 PRESIDING JUDGE EBOE-OSUJI: Public session.

17 (Open session at 4.01 p.m.)

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

19 MR KIGEN-KATWA:

20 Q. Now, Witness, I have asked you and you have confirmed that you gave
21 information to the Prosecution of certain things you -- that were allegedly said by
22 Mr Sang in the period 20 December 20007 to 30 March 2008 and my question is: Did
23 the Prosecution ask you to avail them a copy of -- copies of the audios of what had
24 been said Mr Sang said over that period?

25 A. They asked me for the audio extracts and I said I didn't have them.

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1 MR KIGEN-KATWA: Mr Witness, thank you so much for your time and for
2 answering my questions.

3 Thank you very much.

4 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, do you have material to
5 tender?

6 MR KIGEN-KATWA: Yes, Mr President. I wanted to request to tender two -- three
7 items. The first one is a media report from reporters sans frontières. The second
8 one is the audio of 29 February 2008 and that that item is the translation and
9 transcription of that audio.

10 May I make my first application in respect to the media report? It is KEN -- it is tab 1
11 of our small binder. The reference is KEN-D09-0022-0010. It is a report by
12 reporters sans frontières. It relates to a period directly relevant to this case, being the
13 period of 31 December 2007 onwards and reports that there was a media -- there was
14 a ban on live media coverage by radio and television stations, privately owned. This
15 is an issue that has been severally discussed in this court and I am sure the
16 Prosecution have investigated. We pray that it be admitted, your Honour.

17 PRESIDING JUDGE EBOE-OSUJI: Ms Zago?

18 MS ZAGO: We have no objection to this specific item. I will make submission on
19 the next ones.

20 MR FAAL: No objection from the Ruto Defence.

21 PRESIDING JUDGE EBOE-OSUJI: The document is admitted as the next in the Sang
22 Defence exhibits.

23 THE COURT OFFICER: The document KEN-D09-0022-0010 will bear the number
24 EVD-T-D11-00051.

25 MR KIGEN-KATWA: The second one, Mr President, relates to the audio, reference

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1 KEN-D11-0019-0 -- may I say that again? It is an audio, KEN-D11-0014-0188. It is
2 in two parts and the translation and transcription of the first part, the morning part, is
3 KEN-D11-0020-001. The second ERN is KEN-D11-0020-0026 and its audio for the
4 second part is KEN-D11-0014-0189.

5 THE COURT OFFICER: Mr Kigen-Katwa, the second number, the transcript of the
6 audio is not the correct ERN number. I am sorry.

7 MR KIGEN-KATWA: Mr President, we had explained that the ERNs we are reading
8 in respect to the translation and transcription is the ERNs that have been assigned,
9 but they have not yet been placed in the eCourt system. And the proposed ERN
10 numbers are KEN-D11-0020-0001 and for the second part it is KEN-D11-0020-0026.
11 We apologise that we weren't able to do the ERN earlier. As explained earlier, the
12 audio became available to us this morning. We apologise for that, that we had to
13 introduce it this late in the day.

14 PRESIDING JUDGE EBOE-OSUJI: Did you say the audio became available this
15 morning or the transcript became available this morning?

16 MR KIGEN-KATWA: It the transcript and the translation that became available this
17 morning. I apologise if I misspoke. The audio became -- we already disclosed the
18 audio on Thursday last week.

19 PRESIDING JUDGE EBOE-OSUJI: Depending on the ruling or the objections to be
20 made, if any, then the ERN can be sorted out later. Is it possible? Okay. I see the
21 court officer nodding all right then.

22 Ms Zago?

23 MS ZAGO: Thank you, Mr President. We do object to the tendering of those two
24 items into the record of the case at this point. The witness has not provided any
25 evidence with respect to authenticity or reliability. What the witness has been able

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1 to do is confirm the words that he listened to in the courtroom. There's no
2 information available to the Chamber to appreciate the provenance of these
3 videos -- sorry, this translation and these transcripts or the audio files.
4 I do note that on previous occasions similar material was introduced into the record
5 based on an affidavit provided by a certain representative of the Kass FM. If I'm not
6 mistaken, that affidavit does not cover these two specific items. So even provided
7 that the admission of those documents could be vehicles or channelled through the
8 affidavit of that specific individual, these two items, and I stand to be guided, are not
9 covered by that affidavit. Asides from that, there's no again evidence of reliability or
10 authenticity and the Prosecution objects to their admission into evidence at this point.
11 Thank you.

12 PRESIDING JUDGE EBOE-OSUJI: Mr Faal?

13 MR FAAL: No objection from the Ruto Defence.

14 PRESIDING JUDGE EBOE-OSUJI: All right.

15 MR KIGEN-KATWA: Mr President, may I go on record first of all on the issue of the
16 affidavit? I confirm that in fact this audio was not part of what was captured in the
17 affidavit of Mr Lamaon, and the explanation is that it is an issue that falls outside the
18 period that is in the document containing charges.

19 Mr President, we would still pray that consideration be given to allowing it as an
20 exhibit on two grounds: The first one is that we disclosed it to the Prosecution and
21 they had an opportunity to authenticate it if they were concerned about its
22 authenticity.

23 The second one, Mr President, is - as is evident from the evidence we have
24 adduced - these are the audios for the direct periods that the Prosecution were
25 intending to allege that Mr Sang made the comments that he is said to have made,

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1 and for us in the Defence there was absolutely no way other than bringing the audios
2 of that period to answer the question as to whether Mr Sang said what the
3 Prosecution say or he actually said what the Defence say.
4 And so these audios are very directly relevant to the issues raised by the Prosecution
5 and are very directly on the specific dates. These are not ambiguous dates. These
6 are very specific dates that the Prosecution say constitute the period when Mr Sang
7 made some inciting comments.
8 For all those reasons and all the circumstances that relate to it, Mr President, we very
9 much pray that this audio, together with the transcripts and the translation, be
10 admitted as an exhibit in Mr Sang's Defence.
11 PRESIDING JUDGE EBOE-OSUJI: The two difficulties are these. First of all they
12 are not covered by the affidavit of Mr Lamaon, which you yourself acknowledge, and
13 secondly on the previous occasions, if I recall, the witnesses would have testified to
14 recognizing the voice of Mr Sang. That is not the case with this witness. On both
15 bases, the document will not be admitted on to the record.
16 Do you want to mark it for identification?
17 MR KIGEN-KATWA: Yes, Mr President. I pray that it be marked for identification.
18 And, Mr President, we will endeavour to get a supplementary affidavit and consult
19 with the Prosecution on that issue.
20 PRESIDING JUDGE EBOE-OSUJI: The document, or the materials, will be marked
21 for identification for the Sang Defence case.
22 THE COURT OFFICER: The first audio document, bearing number
23 KEN-D11-0014-0188, will bear the number MFI-T-D11-00052.
24 The transcript of this first audio, bearing number KEN-D11-0020-001, with the ERN
25 number to be confirmed a posteriori, will bear the number MFI-T-D11-00053.

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1 The translation of the transcript, bearing number KEN-D11-0020-0026, will bear the
2 number MFI-T-D11-00054.

3 The second audio, bearing number KEN-D11-0014-0189, will bear the number
4 MFI-T-D11-00055.

5 All of those documents are public.

6 MR FAAL: Mr President, with your accommodation, may I ask that the Ruto
7 Defence PIS also be put on the record? Thank you, Mr President.

8 PRESIDING JUDGE EBOE-OSUJI: It will be admitted as the next Protected
9 Information Sheet for the Ruto Defence.

10 THE COURT OFFICER: The PIS provided by the Defence for Mr Ruto related to
11 Witness KEN-OTP-P-0637 will bear the number KEN-PIS-0001-0097.

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

13 And, Witness, we have -- Ms Zago, you say there are no questions?

14 MS ZAGO: That is correct. We have no questions, thank you.

15 PRESIDING JUDGE EBOE-OSUJI: Witness, we have come to the end of your
16 testimony in this case. I thank you very much for coming. You are discharged as a
17 witness and you are also discharged from the summons served upon you to testify.
18 Thank you.

19 And that concludes our sitting for this session. Court will rise.

20 THE COURT USHER: All rise.

21 (The hearing ends in open session at 4.14 p.m.)

22 RECLASSIFICATION REPORT

23 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
24 2013, the version of the transcript with its redactions becomes Public.