

Trial Hearing
Witness: KEN-OTP-P-0800

(Open Session)

ICC-01/09-01/11

1 International Criminal Court
2 Trial Chamber V(a) - Courtroom 1
3 Situation: Republic of Kenya
4 In the case of The Prosecutor v. William Samoei Ruto and Joshua Arap Sang
5 - ICC-01/09-01/11
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera-Carbuccia
7 and Judge Robert Fremr
8 Trial Hearing
9 Friday, 21 November 2014
10 (The hearing starts in open session at 9.39 a.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
15 Court officer, please, the case.
16 THE COURT OFFICER: Good morning.
17 Situation in the Republic of Kenya, in the case of The Prosecutor versus William
18 Samoei Ruto and Joshua Arap Sang, case number ICC-01/09-01/11.
19 And for the record we are in open session.
20 PRESIDING JUDGE EBOE-OSUJI: Thank you.
21 Appearances, please?
22 MR STEYNBERG: Good morning, your Honours. Appearances for the Prosecution
23 are the same as before.
24 MR NARANTSETSEG: Good morning, your Honours. The same, thank you.
25 PRESIDING JUDGE EBOE-OSUJI: Mr (Redacted)?

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- 1 MR (Redacted): Good morning, your Honour. The same also. Thank you.
- 2 MR KIGEN-KATWA: Good morning, your Honours. Mr Sang is present and his
3 team remains the same.
- 4 MS ALAGENDRA: Good morning, Mr President, your Honours. For the Ruto
5 team we remain the same.
- 6 PRESIDING JUDGE EBOE-OSUJI: Witness, welcome back. Ms Alagendra will
7 continue her examination -- cross-examination of you, but before we do that can we
8 go to private session briefly for some very quick housekeeping matters.
- 9 *(Private session at 9.40 a.m.) Reclassified as Open session
- 10 THE COURT OFFICER: We are in private session, Mr President.
- 11 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 12 This housekeeping matter does not concern this particular witness, but we think we
13 can safely discuss it without being too explicit.
- 14 The Chamber made an order that certain disclosure will be made -- sorry, about
15 certain measures concerning the Prosecutor's preparation of the next witness. The
16 Chamber has indicated its ruling preferring the proposals of the Prosecutor on the
17 matter. Now, an issue it seems has arisen concerning the defence of duty counsel on
18 that matter. The Chamber will entertain at 2.30 - 2.30 - a short hearing, a quick
19 hearing, on the matter from both sides and the duty counsel appointed thus far for
20 that witness is invited to that hearing if he can attend.
- 21 So if the Registrar can -- and the CSS can communicate to that duty counsel that there
22 will be a hearing at 2.30, very quick hearing at 2.30, to which he is invited. That is an
23 announcement on that.
- 24 There are two other matters. Although we can do that, take them in the public, we
25 might as well do them now.

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1 On 26 September 2014, there was an exploratory - preliminary, if I may use that
2 alternatively - discussion on the -- concerning Rule 68, whether or not some of the
3 materials or statements of witnesses can commence through Rule 68. There was an
4 exploratory discussion on that, at the end of which the question arose whether there
5 should not be split submissions on the matter: First the legality question to be taken
6 up, discussed and ruled upon, and after that it will be up to the Prosecutor to decide
7 whether to actually make a Rule 68 application. The Chamber said we will think
8 about it and communicate to you our position.
9 Having thought about it the Chamber's position is there will not be a split discussion
10 on the matter, so at the point when the Prosecutor really wants to do that sort of 68
11 application we will take all the submissions, both -- on both the question of the
12 legality of it and the actual admissibility of those sorts of statements at that time.
13 So that is the ruling of the Chamber on that.
14 Finally, the Chamber notes that on 20 October 2014 the parties filed a joint submission
15 on agreed facts. The Chamber notes the submissions, but the Chamber will not be
16 making a ruling ahead of time as to the value of those agreed statements. It will be
17 taken in the context of other facts or evidence in the case.
18 That is the ruling of the Chamber on these matters.
19 We can now go back to the public session.
20 MS ALAGENDRA: Private, your Honour.
21 PRESIDING JUDGE EBOE-OSUJI: We are in private.
22 MS ALAGENDRA: No, I would like to continue in private.
23 PRESIDING JUDGE EBOE-OSUJI: You want to continue in private?
24 MS ALAGENDRA: Yes.
25 PRESIDING JUDGE EBOE-OSUJI: All right, we will stay in private. For how long

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1 do you think?

2 MS ALAGENDRA: I have maybe about one or two minutes in private and then we
3 can go into public for a little while and then back into private, your Honour.

4 PRESIDING JUDGE EBOE-OSUJI: All right.

5 MS ALAGENDRA: Thank you.

6 PRESIDING JUDGE EBOE-OSUJI: Thank you.

7 Witness, I've already said welcome to you. Ms Alagendra will continue her
8 cross-examination. I will advise you to listen carefully to the question, each question
9 at a time, that she asks you and then answer just that question. You're free to think
10 about it, know the answer you want to give and give it briefly and to the point and let
11 her ask you the next question and then we take it from there.

12 Remember the advice about observing the five-second pauses, as well to speak at a
13 moderate pace. Thank you.

14 WITNESS: KEN-OTP-P-0800 (On former oath)

15 THE WITNESS: Thank you, your Honour.

16 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra?

17 MS ALAGENDRA: Thank you, Mr President.

18 QUESTIONED BY MS ALAGENDRA: (Continuing)

19 Q. Good morning, sir.

20 A. Good morning.

21 Q. I hope you rested well.

22 A. Yes.

23 Q. Sir, just to remind you, we left off yesterday where we were in agreement that
24 (Redacted)

25 analysis. You recall that?

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1 A. Yes, I recall.

2 Q. And they were looking into (Redacted)

3 (Redacted)

4 that's correct?

5 A. Not correct. (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 Q. Thank you, sir. That was very clear. And that was the first time that the OTP
12 was (Redacted), correct?

13 A. Yes.

14 Q. And, sir, did you ever hear back from the Prosecution as to the results of their
15 analysis (Redacted)?

16 A. No.

17 Q. Well, sir, the results of the analysis was that (Redacted)
18 (Redacted)

19 MR STEYNBERG: Your Honours, that's not my understanding of this report.

20 MS ALAGENDRA: Perhaps I'll --

21 MR STEYNBERG: The report was, as far as I know, inconclusive.

22 MS ALAGENDRA: Perhaps I will quote from the conclusion of the report.

23 Unfortunately, your Honour, we did not add it into our list of evidence, but it's a
24 document which my learned friend has, so I will just read the conclusion.

25 MR STEYNBERG: Is it not a requirement to confront a witness with a document that

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1 the Defence are supposed to put it on their list? I believe it is.

2 In any event, your Honour, this witness cannot speak to the matter. This is an OTP
3 internal report. It's a matter that can be argued at a later stage.

4 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, I was thinking that, if it is a report
5 done by the OTP and they came to their conclusion, is there any reason why you need
6 to take it to this witness? Is it to ask him whether he is aware of any conclusion or
7 something like that?

8 MS ALAGENDRA: It is relevant, your Honour, and if your Honour will allow me to
9 go through without explaining the relevance, I'd be grateful.

10 PRESIDING JUDGE EBOE-OSUJI: It's not about the -- I'm not saying that it is not
11 relevant. It's just about whether this witness is the best -- is in a position to speak to
12 it. If you think it is, then you can set the stage and let's see. If you think this
13 witness is the appropriate person to deal with that question you have in mind, then
14 you can set the stage, basically the foundation for why it is this witness should take
15 that question, but proceed.

16 MS ALAGENDRA:

17 Q. Sir, just for your information, I will quote to you the conclusion of that report
18 and it says, (Redacted)
19 (Redacted)

20 Are you aware of that conclusion, sir?

21 MR STEYNBERG: May I ask my learned friend, in order to place a complete picture
22 to this witness, to turn to the previous page of the report, the last paragraph, and read
23 the first two sentences of it because there's a qualification for that finding?

24 PRESIDING JUDGE EBOE-OSUJI: Can we see this report, Ms Alagendra? It's not
25 in your binder you say?

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- 1 MS ALAGENDRA: No, your Honours, and I would have no -- probably my learned
2 friend can re-examine on that issue if it's important.
- 3 PRESIDING JUDGE EBOE-OSUJI: But we also would like to see that document --
- 4 MS ALAGENDRA: Certainly, your Honour.
- 5 PRESIDING JUDGE EBOE-OSUJI: -- at any rate.
- 6 MR STEYNBERG: Your Honours, it's not a question of re-examination. It's a
7 question of putting incomplete and inaccurate information to a witness and asking
8 him for an answer based on that and that's my objection.
- 9 PRESIDING JUDGE EBOE-OSUJI: Your objection is fairness of the question really,
10 okay.
- 11 MS ALAGENDRA: Your Honours, during the break I'll be able to get copies for
12 your -- for your Honours and I can revisit the issue again at that point.
- 13 PRESIDING JUDGE EBOE-OSUJI: All right. Why don't you then leave it and
14 revisit when you have all the documents in question.
- 15 MS ALAGENDRA: I'll do so, your Honours.
- 16 THE WITNESS: My Honour, I don't want to -- to give any statement concerning a
17 report that I have not seen because when (Redacted) that matter
18 had not been discussed with me by the -- the -- the investigators or anyone
19 from -- from -- from here since (Redacted)
20 (Redacted)
21 (Redacted)
22 very clear to our subsequent discussions concerning the -- that matter, my Honour.
- 23 PRESIDING JUDGE EBOE-OSUJI: Witness, at this stage Ms Alagendra is
24 suspending her discussion of that matter with you. If she brings it back later, we
25 will take it at that time and then we will hear your answer then, but we've noted what

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1 you've said for now.

2 Please proceed, Ms Alagendra.

3 MR (Redacted): Your Honour, excuse me. Can my learned colleague provide me
4 also a copy of this document, please? Thank you.

5 MS ALAGENDRA: If the Prosecution doesn't have objections to it, then I'm happy
6 to do so.

7 MR STEYNBERG: No objection.

8 MS ALAGENDRA:

9 Q. Sir, you also testified yesterday that after you met with the OTP on (Redacted), you
10 went back to your lodging and nothing significant happened that evening and you
11 met the OTP again the next day on (Redacted); do you recall that testimony yesterday?

12 A. I recall following dates with you on the screen.

13 Q. But do you recall the testimony? You said after you met with the OTP on
14 (Redacted) you went back to your lodging and nothing else happened that evening,
15 and the next morning you met with the OTP again; you recall that?

16 A. I don't recall.

17 Q. So you don't recall your testimony from yesterday?

18 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, the witness, I think, is saying that
19 and yesterday also at some point he did indicate the greater safety for him -- for him
20 in you taking him through the dates so that he's seeing it on screen, and you did that,
21 so we have to appreciate his position against that background. He's saying that he
22 can't just -- he's not recalling now without the same process occurring.

23 MS ALAGENDRA:

24 Q. Mr Witness, to be clear, I'm talking -- I'm only talking to you about your
25 testimony yesterday and this is what you said. If you don't recall your testimony

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1 that you gave yesterday, I'm happy to read it to you. Do you want me to do that?

2 A. Yes.

3 Q. Sir, I'll come back to that issue as well once I find the transcript, but sitting there
4 today do you recall that day and whether anything happened, or you don't recall?

5 A. I don't recall.

6 MS ALAGENDRA: And for your Honours I'm referring to yesterday's transcripts of
7 page 86, lines 1 to 8.

8 Q. Now, sir, you'll recall that yesterday we discussed your meeting with the
9 Prosecution on (Redacted)

10 (Redacted); do you recall that?

11 A. Yes, that was done, but about the date I don't want to confirm.

12 Q. Sure. And incidentally, sir, at that time how many phones did you have?

13 A. At that time?

14 Q. Yes.

15 A. At that meeting I had that phone (Redacted).

16 Q. But in terms of number of phones that you owned, how many phones did you
17 own?

18 PRESIDING JUDGE EBOE-OSUJI: You mean at that time?

19 MS ALAGENDRA: Yes, your Honour.

20 Q. At that time?

21 A. I don't recall, because I've owned so many phones by today and (Redacted)
22 (Redacted)

23 Q. And do you at least recall how many SIM cards you owned?

24 A. I don't.

25 MS ALAGENDRA: Your Honours, if we can go into a public session please?

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1 PRESIDING JUDGE EBOE-OSUJI: Public session.

2 (Open session at 10.02 a.m.)

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

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 MS ALAGENDRA:

6 Q. Sir, I'm still talking to you now about 9 July 2013. Are you aware, sir, that
7 before the OTP met you on that day they received information from the VWU
8 concerning an SMS that you had sent the VWU? Do you recall that?

9 A. I don't recall.

10 MS ALAGENDRA: Your Honours, I'm looking at tab 77 of the Defence bundle, and
11 for the court officer that is KEN-OTP-0116-0495 and it's confidential, please.

12 MR (Redacted): Your Honour, excuse me. I don't have this document. I don't
13 have the screen here. It doesn't work, so -- thanks.

14 THE COURT OFFICER: For the record, Mr President, that is the redacted version
15 number 2 is being broadcasted only inside the courtroom and not outside.

16 MR STEYNBERG: Your Honours, on this point, and I'm sorry to interrupt my
17 learned friend, but this document as was one yesterday is an investigator's report of
18 the Prosecution. It contains details which really shouldn't be shown to the witness,
19 such as witness codes of other witnesses. It's an internal document and my
20 suggestion, your Honour, is that the propositions should be put to the witness but not
21 the actual document itself.

22 PRESIDING JUDGE EBOE-OSUJI: All right.

23 MS ALAGENDRA: Your Honours, I have no difficulty with that myself.

24 PRESIDING JUDGE EBOE-OSUJI: Yes, why don't we do that.

25 MS ALAGENDRA:

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1 Q. Mr Witness, let me -- let me read to you --

2 MR STEYNBERG: Sorry, your Honours. I see it's still on the screen, so I'm not sure
3 if the witness has access to that screen?

4 THE WITNESS: Yeah, I can see it. It's here.

5 MR STEYNBERG: So my suggestion is for my learned friend that it should be taken
6 off, my learned friend should read it out and then both counsel and the witness will
7 be able to hear.

8 PRESIDING JUDGE EBOE-OSUJI: Yes, let's take it off the screen indeed.

9 MS ALAGENDRA: It is off now the screen now, I believe, your Honour.

10 Q. Is it off the screen, Mr Witness?

11 A. Yes, it is off.

12 Q. Yes, okay. So on 9 July, before the investigators met you, they received
13 information that you had sent the VWU an SMS saying:

14 "This w i wanted to inform you that i was followed by two apple at night around
15 10.30 when i was from supermarket and they attacked me though i was not harmed
16 they took 2000 from me and my 3 phones. Please inform ...", I won't mention that
17 name, "... to get me on this number."

18 Do you recall sending that SMS to the VWU?

19 A. Yes.

20 Q. And I've just quoted your SMS for the record.

21 Sir, do you recall that when you met with the OTP that morning they questioned you
22 about this SMS? Do you recall that?

23 A. Yes, I explained.

24 Q. And this is the explanation you provided and I will read it. Your Honours, it is
25 still the same page:

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1 "When the investigators met ..." you "... at 12.30 p.m., he confirmed what was said in
2 his sms. He said that the night before, he was going a supermarket called ..." dash "...
3 not far from his house. He saw three individuals who were walking in the same
4 direction as him and he was behind them. When he reached their level and wanted
5 to pass them, they said ..." dash "... to him ..." which dash means "stand here."
6 "Then ..." --

7 PRESIDING JUDGE EBOE-OSUJI: "Stand there."

8 MS ALAGENDRA: "Stand there." Thank you, your Honour:

9 "Then the three individuals came to him. They started asking him several questions
10 without giving him the opportunity to answer: Who are you? Where are you
11 going? Then they ordered him to put his hands up. One of them searched him and
12 he took his three phones that he had in his pocket, plus ..." dash. "After taking the
13 money and the phones, they let him go. They did not harm him. At the beginning
14 he thought that they were policemen, but in fact they are not. They did not police
15 uniform." You are not (sic) "... sure that they are ..." dash "... because of the accent of
16 their English."

17 Do you recall, sir, that was the explanation you gave to the OTP when they
18 questioned you?

19 A. Yes.

20 MR STEYNBERG: One correction, your Honour. The last thing is you are -- the
21 witness was sure, not the witness was not sure.

22 PRESIDING JUDGE EBOE-OSUJI: Indeed.

23 MS ALAGENDRA:

24 Q. And then you told -- sorry, sir. Your answer is not on the record. You agree
25 that's what you explained to the Prosecution? Sir, do you agree that was what you

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1 told them?

2 A. Yes, most of the -- most of the words you've read is correct.

3 Q. And then you told the Prosecution that your three phones were lost?

4 A. Yes.

5 Q. And "Two ..." of the "... phones had ..." dash "... SIM cards and one had ..." dash
6 "... SIM ..." card, yes?

7 A. Yes.

8 Q. Sir, the 2,000 shillings that was taken from you, which you told the Prosecution,
9 was that the 2,000 they had given you that day when this incident happened?

10 A. It was money for my shopping.

11 Q. You were going to use it for your shopping, but was the money that you were
12 going to use the money that the OTP gave you?

13 A. Reframe your question, please.

14 PRESIDING JUDGE EBOE-OSUJI: The question is whether the 2,000 shillings was
15 given to you by the OTP?

16 THE WITNESS: All the money I had at that time, either for shopping or airtime, all
17 the money came from the OTP.

18 MS ALAGENDRA: Thank you.

19 Q. Sir, the truth is that such an incident did not happen. Am I correct?

20 A. You're very wrong.

21 Q. And in fact, sir, on that very day the VWU of the ICC they paid you a surprise
22 visit, didn't they, and they caught you red-handed? That happened, didn't it?

23 A. Red-handed?

24 PRESIDING JUDGE EBOE-OSUJI: Indeed. You need to complete the question in
25 what regard.

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1 MS ALAGENDRA:

2 Q. The VWU, Mr Witness, paid you a surprise visit and they discovered there were
3 no phones that were taken from you. Isn't that correct?

4 A. Not correct.

5 MS ALAGENDRA: Your Honours, if I can turn to tab 78, please, of the Defence
6 bundle?

7 PRESIDING JUDGE EBOE-OSUJI: That's another investigator's report?

8 MS ALAGENDRA: Indeed.

9 PRESIDING JUDGE EBOE-OSUJI: OTP document?

10 MS ALAGENDRA: Indeed, your Honour, and I will read the matters that I want to
11 address with the witness. For the record, your Honour, I'm reading from
12 KEN-OTP-0116-0497.

13 PRESIDING JUDGE EBOE-OSUJI: The reason why we did not show the witness and
14 duty counsel the last investigator's report from which you read, Ms Alagendra, was
15 because Mr Steynberg was concerned that the document also concerned other
16 witnesses, but Mr Steynberg do we have the same difficulty with this particular
17 report?

18 MR STEYNBERG: Your Honour, this report only appears to have the witness's own
19 code in it and so from that perspective not, but again it's an internal report which was
20 not completed or -- or confirmed by this witness. So the way we've dealt with it in
21 the past is that the propositions have been put to the witness, not the document.

22 PRESIDING JUDGE EBOE-OSUJI: Indeed, but for a better view of the matter it's
23 always better to have someone looking at a text, even though somebody else - a
24 voice-over - is reading the text over to them.

25 MR STEYNBERG: I'm in the Court's hands, your Honour.

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1 PRESIDING JUDGE EBOE-OSUJI: Yes. If there's no sensitivity, or concern, we can
2 put this up on the screen.

3 Is that okay with you, Ms Alagendra?

4 MS ALAGENDRA: I'm fine with it either way, your Honour.

5 PRESIDING JUDGE EBOE-OSUJI: Yes, so that duty counsel can also be looking, but
6 inside the courtroom of course.

7 MS ALAGENDRA:

8 Q. Sir, are you able to read what's on your screen?

9 A. I'm reading.

10 Q. Well I'm going to read it out as well, but I wanted to know if you can see it
11 clearly? And, sir, the part I'm interested in is the report which the VWU provided to
12 the OTP about what they found. After they received your SMS this is what
13 happened, and I'm quoting from the report: "I called ..." X "... to find out about the
14 SMS and he informed me that ..." you were "... the one who sent it to him, that he just
15 forwarded it to me for my information as he is out of office.

16 At around 1100 hours I visited the hotel apartment where ..." dash "... stays to pay the
17 July rent and I found him at the restaurant. He came to the reception and tried to
18 discuss the incident, but I told him to wait until we meet at his apartment.

19 Later I followed him to his apartment, but to my surprise, he had two phones and the
20 tablet phone with him. He narrated his story as it is in his SMS ... I asked him why
21 he went to the supermarket late night. He said that he had gone to buy milk for his
22 breakfast for the next day. I also asked whether he had six phones because I could
23 notice he had two and the tablet one. He said he had six phones. I also noticed that
24 (Redacted). I asked him why he chose to move out
25 of his apartment to the shops without (Redacted)

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1 (Redacted). He said he had to take the three phones because they
2 were near him." End of quote.

3 So that was the report that the VWU provided to the Prosecution.

4 Sir, the next day, on 10 July, you were asked by the OTP about this incident, about the
5 VWU's visit to your hotel. Do you recall that?

6 A. Yes.

7 Q. And what transpired there is at the bottom of the page. Can you see that?

8 And I will read:

9 "The OTP staff on mission ... were also informed of the incident by the field officer.

10 They contacted ..." dash, that is you "... and after questioning him about the three
11 phones in his room he replied that indeed VWU visited him and that he had only one
12 phone, not three. The other two phones the field officer saw were (Redacted)
13 (Redacted)." The witness, you, "... denied being confronted
14 by the VWU about having six phones and said that the field officer told you that such
15 assaults are common ..."

16 Do you recall that was what you told the OTP when they questioned you about the
17 visit by the VWU officer?

18 A. What I've explained here is actually what I had at the time when this officer
19 visited me in my apartment after I had sent an SMS.

20 Q. So you're saying that your account to the Prosecution is true?

21 A. My account that I had one phone, not three, and that I had the -- the (Redacted)
22 (Redacted)

23 Q. And you deny the conversation regarding the six phones, that you did not tell
24 the VWU officer that?

25 A. In fact, we did not discuss with this person who came to pay my rent

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1 about -- about the -- the -- the -- about -- about what he's saying that he had seen.

2 But when I went to this meeting the next days, when I found out that he had given a

3 report because of -- concerning the same matter, and I gave out my side of the story

4 that I had when you were talking with him. And actually the people I met named

5 here are confirmed that and they told me that maybe he thought the (Redacted)

6 (Redacted) were -- were actually -- were actually phones, because he did not even ask

7 to look at the (Redacted) or look at -- or touch anything at the -- at the -- at the table at

8 that time because they were on the -- on the -- on the table and that is how we

9 finished the discussion about -- about -- about this matter and we proceeded.

10 PRESIDING JUDGE EBOE-OSUJI: The question Ms Alagendra asked you was about

11 whether or not you had a discussion with the VWU about six phones and whether

12 you confirmed or denied with the OTP that you had such a discussion with the VWU

13 about six phones?

14 THE WITNESS: I did not.

15 MS ALAGENDRA:

16 Q. Sir, I don't know if the Prosecution believed your story that the information the

17 VWU officer gave them was false, I don't know if they believe it. Let me make

18 something clear, sir, we certainly do not believe that the VWU officer would have lied

19 to the OTP about what happened. Do you understand me?

20 A. Neither would I have lied too.

21 Q. Did you just understand what I said, sir, please?

22 A. I understood.

23 MS ALAGENDRA: Thank you.

24 Your Honours, we can go into private session please.

25 PRESIDING JUDGE EBOE-OSUJI: Private session.

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1 *(Private session at 10.24 a.m.) Reclassified as Open session

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

3 PRESIDING JUDGE EBOE-OSUJI: Witness, let's look at this text again. If you look
4 at that, you see the part appearing in italics, the block quote there? If you counted
5 from the bottom of the italics part five lines from the bottom going up, are you with
6 me?

7 THE WITNESS: Yes.

8 PRESIDING JUDGE EBOE-OSUJI: The line that begins with "day."

9 THE WITNESS: Yes.

10 PRESIDING JUDGE EBOE-OSUJI: The next sentence is "I also asked whether he had
11 six phones because I could notice he had two and the tablet one. He said he had six
12 phone." You're saying -- I'm stopping the quote now. You're saying that
13 conversation did not happen?

14 THE WITNESS: My Honour, on that matter I can't recall every -- every conversation,
15 but about issues that I had lied were not discussed with me with that officer, my
16 Honour.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you.

18 MR STEYNBERG: Perhaps a brief correction. It might not be clear because of
19 redactions, but this person who visited wasn't in fact a VWU member. It was an
20 OTP field staff member.

21 MS ALAGENDRA: Thank you for the clarification.

22 PRESIDING JUDGE EBOE-OSUJI: Does that change --

23 MS ALAGENDRA: No, your Honour.

24 PRESIDING JUDGE EBOE-OSUJI: -- things because if the witness did not discuss
25 the matter with VWU?

Trial Hearing
Witness: KEN-OTP-P-0800

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1 MS ALAGENDRA: Perhaps it does. I will put my proposition again to the witness
2 in the right form.

3 PRESIDING JUDGE EBOE-OSUJI: All right.

4 MS ALAGENDRA:

5 Q. And I'll repeat again, Mr Witness, that we for the Defence do not accept that an
6 OTP staff member would provide false information to their office about what
7 happened. Do you understand me?

8 A. I understand.

9 MR STEYNBERG: I'm afraid I must give a mea culpa. I am wrong. Ms Alagendra
10 was in fact right. It was a VWU field office member.

11 PRESIDING JUDGE EBOE-OSUJI: All right. I think we've spent enough time on
12 the matter, unless Ms Alagendra wants to continue? I'm not stopping you by the
13 way.

14 MS ALAGENDRA: No, your Honour, I think I've covered both --

15 PRESIDING JUDGE EBOE-OSUJI: Yes.

16 MS ALAGENDRA: Both offices.

17 Q. Now, Mr Witness, when you went to meet the Prosecution investigators on the
18 9th, you said they (Redacted); isn't
19 that right?

20 A. I said the phone I had in that meeting.

21 Q. Yes. So you did not go to that meeting with all your phones, yes?

22 A. On most cases because of communication between me and the person and the
23 VWU, I carried a phone that we could communicate with them.

24 Q. Sir, try to listen to my question. When you went to meet the OTP that day, you
25 only went with one phone, not three phones. Am I right?

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1 A. Yes.

2 Q. And, sir, there was something on your phones that you didn't want the OTP to
3 see, isn't it?

4 A. No.

5 Q. You had been in contact with (Redacted) on the side, hadn't you, sir?

6 A. Ask your question again.

7 Q. There was something on your phones you were hiding from the OTP, "Yes" or
8 "No"?

9 A. No.

10 Q. And you had been in contact with (Redacted) on the side without the
11 knowledge of the OTP, yes?

12 A. Before (Redacted) told -- discuss about issues of me recanting, I did not -- I did
13 not report to the OTP.

14 Q. Sir, my questions to you are about that period now, after you've reported to the
15 OTP and they've told you (Redacted), that period, okay.

16 That's what my questions are relating to. And I'll ask you again, sir, you were in
17 contact with (Redacted) on the side without the knowledge of the OTP, weren't you?

18 A. No.

19 Q. And, sir, you were making plans with him which you did not want the OTP to
20 know about; isn't that the truth?

21 A. That is not the truth.

22 Q. The same way, sir, you (Redacted)
23 (Redacted)

24 (Redacted), didn't you?

25 A. Repeat your question.

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1 Q. You (Redacted)

2 (Redacted) You told him that, didn't you?

3 A. I have admitted on several occasions that after being my friend and close ally to
4 me, I discussed with him on (Redacted) and that's when I've
5 made it clear.

6 Q. So you -- so you accept, sir, that you did disclose to (Redacted) that you were
7 (Redacted)

8 A. I don't --

9 Q. -- (Redacted)?

10 A. I don't know that one.

11 Q. So you accept that you disclosed to (Redacted) that you were (Redacted)
12 (Redacted)? You accept that,
13 yes?

14 A. I did not get the last part of your question.

15 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra is -- first of all she asked you
16 whether you accept that you had (Redacted)
17 (Redacted)?

18 THE WITNESS: Yes, I had (Redacted)
19 (Redacted)

20 MS ALAGENDRA:

21 Q. In the same way you (Redacted), didn't you, sir?

22 A. I didn't.

23 Q. When His Honour, the Presiding Judge, asked you a question your response to
24 him was that there was no (Redacted)
25 (Redacted) Do you recall telling His Honour that?

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1 A. Yes, and that is my stand that I (Redacted)

2 (Redacted)

3 (Redacted)

4 MS ALAGENDRA: Your Honours, can I take you to tab 25, please, of the

5 Prosecution bundle? And the document is KEN-OTP-0111-0140, and I think this can

6 be shown to the -- to the witness since it is his own statement, and I'm looking at page

7 0144, paragraph 21.

8 Q. Do you see paragraph 21 there, sir?

9 "At some stage during my discussions with" -- I quote from the statement. "At some
10 stage during my discussions with (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted) I later relayed this

14 information to ICC investigators on (Redacted)

15 Do you see that?

16 A. Yes.

17 Q. So you informed the Prosecution of this on (Redacted)

18 A. Yes.

19 Q. Where is the (Redacted) telling you this?

20 A. There is no (Redacted) because I said at some stage I was not sure of what -- of

21 what time I was discussing this with -- with (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0800

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1 Q. So as soon as you receive information you -- you inform the investigators; is that
2 correct?

3 A. Not as soon. When I recalled of information that was -- that I felt was of need
4 to be put on record, then I will not hesitate to inform the investigators.

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0800

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- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 MS ALAGENDRA: Your Honours, we can go to an open session please.
- 17 PRESIDING JUDGE EBOE-OSUJI: Before we do, Witness, you've said that you had
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted); is that your evidence?
- 21 THE WITNESS: Yes.
- 22 PRESIDING JUDGE EBOE-OSUJI: Could you help me understand why you would
- 23 give (Redacted)?
- 24 THE WITNESS: Yes. When I -- when I (Redacted)
- 25 (Redacted)

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Witness: KEN-OTP-P-0800

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1 (Redacted)

2 (Redacted)

3 PRESIDING JUDGE EBOE-OSUJI: Thank you.

4 Ms Alagendra, you can ask follow-up questions. Naturally, Mr Steynberg will
5 consider asking any follow-up questions from mine during his re-examination.

6 Do we go now back to the public?

7 MS ALAGENDRA: Your Honour, if I could just put one proposition and then go to
8 public, please?

9 PRESIDING JUDGE EBOE-OSUJI: Fair enough. Sure.

10 MS ALAGENDRA:

11 Q. And, Witness, to sum up this issue, the reason you came up with this story
12 about your phones being stolen from you is because you were scared, weren't you,
13 that the OTP would see (Redacted), so you came up with that story,
14 didn't you?

15 A. Your Honour, that is wrong. I was not scared of OTP or investigators at any
16 stage. (Redacted)

17 (Redacted)

18 (Redacted)

19 MS ALAGENDRA: Sir, we can go to an open session, please.

20 PRESIDING JUDGE EBOE-OSUJI: Open session.

21 (Open session at 10.44 a.m.)

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

23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 MS ALAGENDRA:

25 Q. Sir, this story about your phones and money being stolen from you, did you

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1 think it had any other benefit?

2 A. I was obliged to inform the VWU on any occurrences when it happens, no
3 matter how small or big it was.

4 Q. But there was nothing done about any three phones that were allegedly stolen
5 from you, was there? There was no report, nothing; am I correct?

6 A. That question I think is not mine, your Honour, it is -- I don't know whether
7 there were reports after that, but I had done my part by informing the VWU.

8 Q. Sir, we haven't received any report, so I will assume there was no report made
9 because there were no phones stolen.

10 MR STEYNBERG: Sorry, can my learned friend just clarify what report she's talking
11 about because the investigator's report that she referred to earlier is in my books a
12 report?

13 MS ALAGENDRA: A police report.

14 Q. Did you make a police report, sir?

15 A. I could not do anything that will identify me at my -- at that location.

16 Q. And, sir, were you also thinking that you would ask for compensation for the
17 three phones and the 2,000 shillings? Were you thinking of asking for that?

18 A. Not. I just informed what had happened.

19 Q. And were you also going to use it to create the impression that you were in
20 danger, even in this protected location in Africa, and use it to get permanent
21 relocation to Europe or America or any other country of your choice? Is that what
22 you were doing?

23 A. No.

24 Q. Sir, have you ever told the OTP that in order for you to testify you wanted
25 permanent relocation and an improved life? Have you ever told them that?

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1 A. Several occasions I've said I will not be safe to be in risk areas as I testify.

2 Q. So you've never asked them for permanent relocation and an improved life?

3 Have you ever asked them for that specifically?

4 A. No, it has never been in my intention to use this case to improve my life or -- or

5 so.

6 MS ALAGENDRA: Your Honours, if I can refer you to tab 79?

7 PRESIDING JUDGE EBOE-OSUJI: The ERN number for better identification of the

8 document on the record?

9 MS ALAGENDRA: Yes, your Honour. It's KEN-OTP-0138-0017 and I'm looking at
10 0022. I think this can be put on the screen, if my learned friend has no objections.

11 PRESIDING JUDGE EBOE-OSUJI: And that is an investigator's report --

12 MS ALAGENDRA: Indeed, your Honour.

13 PRESIDING JUDGE EBOE-OSUJI: -- in the OTP. What paragraph are you
14 interested in?

15 MS ALAGENDRA: I'm looking at page 0022, your Honour, and I'm interested in the
16 third paragraph of what's happening on 6 June of this year.

17 PRESIDING JUDGE EBOE-OSUJI: The large paragraph?

18 MS ALAGENDRA: Indeed, your Honour.

19 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, it seems to me that it should be
20 safe to put up this on the screen inside the courtroom.

21 MR STEYNBERG: Yes, your Honour.

22 PRESIDING JUDGE EBOE-OSUJI: Yes, the document will be uploaded on to the
23 screen for courtroom viewing only.

24 MS ALAGENDRA:

25 Q. Sir, I'm looking specifically at an SMS, I believe, that you sent on 6 June of this

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1 year at 7.26 p.m. Have you found that on the screen? It's on the fifth line down, do

2 you see? "At 19.26 ...", do you see that part?

3 A. No.

4 Q. If you start from the top you see 6 June?

5 A. On 6th, yeah.

6 Q. Yes. And if you go down to the time "19.26," do you see that?

7 PRESIDING JUDGE EBOE-OSUJI: Five lines down, the line that begins with "are

8 available"?

9 THE WITNESS: Yes, yes.

10 MS ALAGENDRA:

11 Q. And I will read it for you. This is the SMS that you sent at 7.26 p.m. and I

12 quote:

13 "Pls call tmoro morning am on my way back to the house ill let you know about her

14 concerns soon ill be there." End of quote.

15 And then at 20.35 you sent another message to the OTP and I quote:

16 "These are the concerns 1. on our well being and that of our children education 2. If

17 life we went through in ..." dash "... will be improved 3. If we are going for

18 parmanent relocation which is our expectation 4. if you shall assist us meet monthly

19 salary for ..." dash "... (Redacted)

20 (Redacted) 5. If you will meet our insurance premiums so

21 that we dont loose what we have paid for the last one year 6. if kindly you will assist

22 our dear parents to visit us where we shall be at least once after three years."

23 And at 21.02 you informed the OTP that:

24 "She is requesting that she needs a swahili translator so that she can express herself

25 well."

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1 By "she" you were referring to your wife, weren't you, sir?

2 A. Yes.

3 Q. She also had some requests she was going to make, didn't she?

4 A. Not requests. She -- if she will be meeting the investigator of OTP, she needed
5 a Swahili interpreter.

6 Q. So, sir, do you remember now this request you sent to the OTP?

7 A. These are not requests, but I'm reporting on concerns that I promised the
8 investigators that I will be conveying the message to them.

9 Q. Conveying the message as to what you wanted; is that right?

10 A. As to concerns, as to these concerns, and I did exactly what I promised them.

11 Q. And have all your concerns been addressed? Are you happy now?

12 A. They are concerns that were for that time and it was not a must that they are
13 met so that I'm here. In fact, none of these that I have spoken here have
14 been -- I don't know actually whether I'm to get (Redacted) or not.

15 Nothing has been paid for my -- for my -- for -- for -- for (Redacted), or insurance,
16 for -- for -- so I'm here simply because I want to give my testimony as a witness.

17 Q. And after your testimony then you will have these discussions with them; is
18 that right?

19 A. I don't know what will happen and I don't want to assume anything.

20 Q. And have you given either the Prosecution or the VWU a proposed business
21 plan as to what you want to do with your life? Was that part of the suggestions as
22 well after you testify?

23 A. I have not given any business plan, but on -- on our discussions at different
24 times a question might be posed and I give my suggestions. If anything I've given
25 suggestions, but we have not sat in a -- in a discussion to discuss what will happen

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1 after my testimony. And that one I know and I believe that the persons concerned
2 will assess and see what is good for me and what is not good for me. They're experts
3 and I believe them. I don't want to doubt them in any way. Whatever we will
4 discuss with them I know will be of material.

5 Q. And these discussions will take place after you testify; is that right?

6 A. I am not sure when; that is if they will want to have a discussion or -- or if there
7 will be an assessment after this. I -- I -- I leave it at that point because I don't know
8 the plans of any party after this.

9 MS ALAGENDRA: That's very clear, sir. Thank you. Your Honours, if I can go
10 into a private session please?

11 PRESIDING JUDGE EBOE-OSUJI: Private session.

12 *(Private session at 10.57 a.m.) Reclassified as Open session

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

14 MS ALAGENDRA:

15 Q. Okay, Mr Witness. Let's go back now again to (Redacted)

16 (Redacted), yes? You recall that?

17 PRESIDING JUDGE EBOE-OSUJI: Is it on the screen?

18 MS ALAGENDRA: No, your Honour, I'm just recapping.

19 PRESIDING JUDGE EBOE-OSUJI: All right.

20 Witness, you don't need to trouble yourself with the screen any more. Just listen to

21 Ms Alagendra's questions, please.

22 Ms Alagendra, can you start again.

23 MS ALAGENDRA:

24 Q. Sir, you recall that now? I'm going back to (Redacted).

25 A. Yes.

Trial Hearing
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(Private Session)

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1 Q. And then you (Redacted)

2 (Redacted), yes?

3 A. I request that I read that one because (Redacted)

4 (Redacted)

5 (Redacted) Others I will make at

6 different times. So I'll request that, if I'm required to confirm that investigators were

7 there, I need to read from the screen so that I can remember.

8 PRESIDING JUDGE EBOE-OSUJI: And that's in the nick of time. We will take our

9 morning break and Ms Alagendra will consider how she approaches that matter.

10 Witness, we'll take our morning break at this time for 30 minutes and then we will

11 come back at 11.30.

12 Closed session, please.

13 *(Closed session at 10.59 a.m.) Reclassified as Open session

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

15 PRESIDING JUDGE EBOE-OSUJI: Thank you.

16 (The witness stands down)

17 PRESIDING JUDGE EBOE-OSUJI: The Court will rise.

18 THE COURT OFFICER: All rise.

19 (Recess taken at 11.00 a.m.)

20 (Upon resuming in open session at 11.34 a.m.)

21 THE COURT USHER: All rise.

22 Please be seated.

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

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

25 Ms Alagendra, before we continue, how are we doing on time?

Trial Hearing
Witness: KEN-OTP-P-0800

(Open Session)

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1 MS ALAGENDRA: Your Honours, I was hoping to finish by the end of Monday, but
2 I'd request your Honours to allow me 'til Tuesday, by the first session, and at the most
3 a little bit of the second session, your Honour.

4 PRESIDING JUDGE EBOE-OSUJI: And Mr Kigen-Katwa, yours remains your
5 indication of two sessions?

6 MR KIGEN-KATWA: Mr President, when I indicated two sessions, there
7 was -- there was a subsequent segment where testimony against my client was made
8 by the witness. I would request for three sessions to be on the safe side. My
9 expectation is that I can do with two sessions, but just out of an abundance of caution
10 I would request for three sessions.

11 PRESIDING JUDGE EBOE-OSUJI: So if Ms Alagendra finishes by -- did you say the
12 first session on Tuesday?

13 MS ALAGENDRA: And at the most a little bit of the second session, your Honour, if
14 it goes over.

15 PRESIDING JUDGE EBOE-OSUJI: Can you then do the -- use up the rest of that day
16 to complete? I think you should be able to.

17 MR KIGEN-KATWA: Mr President, I promise to make every effort to do that.

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

19 We're in open session.

20 MS ALAGENDRA: May we go into private, please, your Honour.

21 PRESIDING JUDGE EBOE-OSUJI: For how long now?

22 MS ALAGENDRA: I will try to do it in 15 minutes, your Honour, but I won't guess
23 that one.

24 PRESIDING JUDGE EBOE-OSUJI: Fifteen. Private session.

25 *(Private session at 11.37 a.m.) Reclassified as Open session

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(Private Session)

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- 1 THE COURT OFFICER: We are in private session, Mr President.
- 2 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 3 MS ALAGENDRA:
- 4 Q. Mr Witness, before the break I was asking you if you recalled that on (Redacted)
- 5 (Redacted)
- 6 (Redacted) And I don't think there is any dispute on that. It's on the transcripts,
- 7 so I'll proceed.
- 8 And in fact, Mr Witness, you'll recall that my learned friend (Redacted)
- 9 (Redacted)
- 10 And for your Honours it is at tab 24 of the OTP bundle, and perhaps it's
- 11 KEN-OTP-0135-0430 and the page that can be put on the screen will be 0432, please.
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
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- 24 (Redacted)
- 25 (Redacted)

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Witness: KEN-OTP-P-0800

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Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

ICC-01/09-01/11

1 (Redacted)

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3 (Redacted)

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5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 Q. Sir, who were the investigators who were at the location observing and taking
12 photographs?

13 A. I'm not -- I don't remember their names, but the names must be on the -- on the
14 statements that I signed because they also did sign on the -- on the statements the
15 names of the -- of the investigators.

16 Q. Was it the same investigators that were interviewing you at that time?

17 A. As far as I'm concerned, I only knew about them.

18 Q. You don't remember their names?

19 A. Yes, not unless I get back to my statements and see.

20 Q. But they were investigators who had previously interviewed you or they were
21 people you were seeing for the first time from OTP?

22 A. They're investigators.

23 Q. Are they investigators who had --

24 A. Investigators of ICC.

25 Q. Were they investigators who had previously interviewed you, or are they new

Trial Hearing
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(Private Session)

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1 investigators you had never met before?

2 A. I've been interviewed by so many investigators, and I -- I'm -- I'm confirming
3 that the names you are looking for are in the statements that I -- I took and
4 gave and -- and if -- if you want to confirm about the names, we can look at the -- we
5 can look at the -- at -- at the statements and get their names.

6 Q. But sir, you told the Court that the investigators are your friends. You don't
7 remember their names?

8 A. I know them as investigators. And I don't -- I did not see the need of getting
9 names of investigators. Sometimes they use names which -- which -- which -- which
10 does -- which is not theirs for -- which -- which is not on their -- which is not theirs
11 and, therefore, I don't want to -- I know them as investigators. After seeing
12 their -- their identifications from this Court I believe that the investigators and
13 I've -- they interview me and take many -- and take statements, we sign. Wherever
14 there is evidence we put in private bags and so forth. So I know that we were -- we
15 planned this thing that -- about this meeting was well secure, and investigators did
16 everything to make sure that details were really taken on a -- on a good manner and
17 recorded without losing a chance.

18 Q. Sir, I think you've given a very good -- you've given a very complete answer on
19 how well the investigators work and how --

20 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, if we can avoid the editorial
21 commentary. If those are really material to the question you are posing you can put
22 it in the form of a question, but the commentary can be problematic. Thanks.

23 MS ALAGENDRA:

24 Q. Sir, so since you say that I would be able to find the investigators' names on the
25 statements, I will assume that they are the investigators who have interviewed you

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1 who were at the location and taking the photographs, correct?

2 A. Yes.

3 Q. And, sir, do you know whether they were armed with anything other than their
4 cameras?

5 A. I don't know. I didn't conduct any search to know whether they were armed
6 or something. What I know is that I knew photographs were to be taken and a
7 camera is not a weapon.

8 Q. And do you know if there were any police officers that were involved in this
9 operation, qualified professional police officers?

10 A. I don't know the -- the detail of security that -- that courts put in place at such
11 moments. That is a question the -- the -- the investigators can answer. I don't
12 know.

13 Q. Perhaps I'll be clear: Did you know whether there was any local police officers
14 at the scene that were involved in this operation?

15 A. I don't know. I was -- I was -- I was -- I was assured that I'm secure.

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 MS ALAGENDRA: Your Honours, if we can go into open session, please.

5 PRESIDING JUDGE EBOE-OSUJI: Open session.

6 (Open session at 12.46 a.m.)

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

8 PRESIDING JUDGE EBOE-OSUJI: Thank you.

9 MS ALAGENDRA:

10 Q. Mr Witness, we'll go back to using the PIS in front of you, please. We're in
11 public session, so anything you want to refer to we use this document, yes? Do you
12 understand, sir?

13 A. Yes, I'll try.

14 Q. Okay. Sir, are you aware that person number 2 has never met or spoken to
15 Mr William Ruto? Are you aware of that?

16 PRESIDING JUDGE EBOE-OSUJI: Person number 2?

17 MS ALAGENDRA: Twenty-two. I'm sorry, your Honour.

18 Q. Just "Yes" or "No" please, Mr Witness.

19 A. Other questions require an explanation and sometimes I may not answer "yes"
20 or "no".

21 Q. Are you aware that person number 22 has never met or spoken to Mr William
22 Ruto? Yes or no? You can start with that and if you have an explanation you can
23 provide it.

24 A. He told me that he was going to meet Mr William Ruto in our conversations
25 sometimes in the (Redacted).

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1 Q. And in fact, sir, what was happening, as you told the Court yesterday, page 3,
2 line 12, for my learned friend, was person number 22 was trying to make more money
3 for himself. That was what was happening, yes?

4 A. I kindly request you to put again or read the question that was posed before me
5 and that I gave that answer.

6 Q. Sir, it's there on the transcript. And if I'm wrong, my learned friends will
7 correct me, but do you agree with my proposition person 22 was trying to make more
8 money for himself, "Yes" or "No"?

9 A. Of course. By doing all this he was to make more money.

10 Q. And you, Mr Witness, you were doing the same thing, playing all these games
11 to increase your worth to the OTP investigators, to get more money and benefits from
12 the ICC, isn't it?

13 A. You are wrong.

14 Q. And, Mr Witness, the two of you together, you and person number 22, you
15 properly scammed the OTP, didn't you?

16 A. You are wrong.

17 MS ALAGENDRA: Your Honours, if I can go into private session please?

18 PRESIDING JUDGE EBOE-OSUJI: Private session.

19 *(Private session at 12.50 p.m.) Reclassified as Open session

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

21 MS ALAGENDRA:

22 Q. Sir, you testified that when (Redacted) told you that (Redacted),
23 was going to pay you 1.5 million for you to recant, you said you would think about it
24 (Redacted) (Redacted)
25 (Redacted)

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1 A. Yes.

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. And in fact you've given us this explanation a few times in fairness to you, but,
13 sir, let me take you to something.

14 Your Honours, tab 17, paragraph 30 of the OTP bundle, and I'm looking at document
15 KEN-OTP-0103-2473 and I'd like the page 2479 to be put on the screen, please,
16 paragraph 30.

17 PRESIDING JUDGE EBOE-OSUJI: That's a witness statement.

18 MS ALAGENDRA: Indeed, your Honour. It can be put on the screen.

19 Q. Sir, I'm only interested in the first sentence and I read paragraph 30, "I refused
20 (Redacted) offer and have not received money or anything else from (Redacted) or
21 any other person regarding my assistance to the ICC." That's correct, isn't it?

22 A. Yes.

23 MS ALAGENDRA: All right.

24 Your Honour, can I now go to tab 21, paragraph 13, that is KEN-OTP-0106-0388, and
25 I'm looking at page 0391, paragraph 13, please?

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1 Q. And let me read:

2 "In my previous statement I advised that (Redacted)

3 (Redacted) with an offer of 1.5 million Kenyan shillings to withdraw myself as

4 an ICC witness which had been approved by Ruto (Redacted)

5 (Redacted)

6 (Redacted)

7 Have I read it correctly, sir?

8 A. Yes.

9 MS ALAGENDRA: Your Honours, can I now move to tab 117 of the Defence bundle
10 and that will be KEN-OTP-0116-0479, and I'm looking at --

11 PRESIDING JUDGE EBOE-OSUJI: This is an investigator's report.

12 MS ALAGENDRA: Indeed, your Honour. And I see there is reference to other
13 witness codes, so perhaps we will not put it up.

14 And I'm looking at the page -- next page, your Honour, which is 0480, and on the first
15 paragraph, your Honours, I'm interested in the last sentence which I will read.

16 Q. Sir, just for your information, I'm reading an investigator's report that was
17 provided to us by the Prosecution, and in relation to this offer of 1.5 million for you to
18 recant this is what the OTP has told us you said:

19 (Redacted) refused ..." --

20 MR (Redacted): Excuse me, your Honour. Can we have it on the screen, please?

21 MS ALAGENDRA: I had just indicated that we won't put it on the screen because it
22 refers to other witness codes. That's why.

23 MR STEYNBERG: Your Honour, perhaps the solution would be for Defence to
24 provide (Redacted) with a copy of their bundle in the next adjournment.

25 MS ALAGENDRA: Your Honour, in fact we did not provide a bundle because it

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1 contains statements of other Prosecution witnesses and I don't think my learned
2 friend would like us to do that either.

3 PRESIDING JUDGE EBOE-OSUJI: It looks to me that that paragraph can be put up
4 on the screen.

5 MS ALAGENDRA: We'll be happy with that, your Honour.

6 PRESIDING JUDGE EBOE-OSUJI: Yes.

7 MS ALAGENDRA:

8 Q. Now, on the paragraph starting with number 4, do you see that, sir, that big
9 long paragraph, the top paragraph? It starts with --

10 A. Oh, yeah. Yeah.

11 Q. So on that paragraph I'm going to be reading the last sentence, yes? It starts

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 Do you see, sir?

16 A. Yes, yes.

17 Q. Yeah, you agree with that?

18 A. Yes.

19 Q. It's correct what you told the Prosecution?

20 A. Very correct.

21 Q. Thank you.

22 PRESIDING JUDGE EBOE-OSUJI: (Redacted)?

23 MS ALAGENDRA: Indeed, your Honour.

24 Q. You see, sir, I have just shown you three occasions when you have actually told
25 the Prosecution that you refused the offer from (Redacted). Do you accept that's

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1 what I've just shown you three times?

2 A. Yes.

3 Q. And you see, sir, that's very different from saying, "I will think about it and I
4 will accept it." Do you agree it's different?

5 A. By think -- by thinking about it, I've not accepted, (Redacted)

6 (Redacted)

7 (Redacted). And that is why I said, "Okay, fine. Then let me think about it."

8 Q. You see, Mr Witness, I put it to you, and you can either agree or disagree, that
9 you have two versions of your responses to (Redacted), one on many occasions where
10 you told the OTP you refused the offer; and you have another version where

11 repeatedly you told the Chamber that you said you'd think about it and you wanted

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted) telling you that anyone on

16 behalf of Mr Ruto wanted you to come back and that there was 1.5 million ready and
17 waiting for you, and continued to say, Mr Witness, that what you have done together
18 with (Redacted) is send the ICC OTP on a wild goose chase (Redacted), isn't

19 it?

20 A. I didn't understand your -- your terminologies. Please phrase it in a way I can
21 understand. The last statement, that I've led --

22 Q. Led them on a wild goose chase?

23 A. Yeah, that one. What is that?

24 Q. You don't understand that?

25 A. Yes.

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1 Q. I'll explain it. Basically you scammed the Prosecution.

2 A. Not at all. And to react on that one, my Honour, your Honour, is that after I

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted) in order to know exactly if (Redacted) was acting on his own behalf or he

7 was acting on behalf of Mr William Ruto and -- and -- and -- and -- and -- and other

8 people. (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted) Thank you, your

12 Honour.

13 Q. Witness, I've put my proposition to you, and I'll leave it at that.

14 And I think your Honours have heard enough on this issue, and perhaps when we

15 come back after the lunch-break I'll move on to a different issue, your Honours.

16 PRESIDING JUDGE EBOE-OSUJI: Thank you. And on that note we will take our

17 lunch-break. We will return at 2.30.

18 Witness, do not as usual discuss, as I've usually advised you, discuss your testimony

19 with anyone during break.

20 The blinds will come down for the witness to be ushered out.

21 *(Closed session at 1.02 p.m.) Reclassified as Open session

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

23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 (The witness stands down)

25 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

1 THE COURT OFFICER: All rise.

2 (Recess taken at 1.03 p.m.)

3 *(Upon resuming in private session at 2.34 p.m.) Reclassified as Open session

4 THE COURT USHER: All rise.

5 Please be seated.

6 THE COURT OFFICER: Mr President, for the record we are in private session.

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

8 We would like to -- we're in the middle of a witness's testimony, and we want to
9 attend to this urgent matter very briefly. We would like to receive the views on the
10 matter within 10 minutes from everyone.

11 First of all, this matter does not concern the witness currently on the stand, but
12 Mr (Redacted), duty counsel for the current witness, we allow you to sit in because it
13 would be awkward to have you excuse yourself and come back later, but we do that
14 on the direction that you are not to think about the proceedings that you're now about
15 to hear beyond just now. So once you -- you're not to think about it or to discuss it
16 with anyone outside this courtroom, including the witness that you are duty counsel
17 for. Do you understand? Thank you.

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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9 (Redacted)

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11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 MR STEYNBERG: Thank you. Your Honour, perhaps before the witness is brought back in,
17 if I may just clarify a matter which my learned friend raised on the record yesterday which I
18 should do in the absence of the witness.

19 It was in regard to the witness -- the present witness's statement that he (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted) I can however refer my learned friends to the investigator's report which

24 my learned friend referred to just before the break, it's at tab 117. The discussion in

25 question I believe is recorded there in point 3, dated (Redacted), which was prior to the

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- 1 witness being handed the (Redacted).
- 2 So I think that hopefully that will clear it up.
- 3 PRESIDING JUDGE EBOE-OSUJI: All right. Thank you very much.
- 4 Closed session so the witness may be brought in for continued cross-examination.
- 5 *(Closed session at 3.15 p.m.) Reclassified as Open session
- 6 THE COURT OFFICER: We are in closed session, Mr President.
- 7 PRESIDING JUDGE EBOE-OSUJI: Thank you. Please bring in the witness.
- 8 (The witness enters the courtroom)
- 9 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 10 Ms Alagendra, do we go back to -- do we go to open or remain in private? We're now in
- 11 closed.
- 12 MS ALAGENDRA: Just two questions in private, please, your Honour.
- 13 PRESIDING JUDGE EBOE-OSUJI: All right. Private session.
- 14 *(Private session at 3.15 p.m.) Reclassified as Open session
- 15 THE COURT OFFICER: We are in private session, Mr President.
- 16 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 17 MS ALAGENDRA: Thank you.
- 18 Q. Sir, we have heard your testimony that you are a (Redacted), correct?
- 19 A. I think I don't -- I don't hear well with the microphone. Some problems with the
- 20 microphone.
- 21 PRESIDING JUDGE EBOE-OSUJI: Can you hear now?
- 22 THE WITNESS: Yes.
- 23 PRESIDING JUDGE EBOE-OSUJI: Can you hear me now, Witness?
- 24 THE WITNESS: Yes.
- 25 PRESIDING JUDGE EBOE-OSUJI: Thank you. Welcome back. Sorry for again delaying

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1 the commencement of your cross-examination. We had to attend to some legal matters that
2 do not concern you mostly.

3 THE WITNESS: Okay, thank you.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 MS ALAGENDRA:

6 Q. Sir, you've testified that you're a (Redacted), correct?

7 A. Yes.

8 Q. And you have been (Redacted)

9 (Redacted), am I right?

10 A. From (Redacted).

11 Q. And in the course of your work, sir, you've (Redacted)

12 (Redacted) in Kenya, would that be right?

13 A. No one is a hundred percent of anything, but I worked -- I have worked (Redacted)

14 (Redacted).

15 Q. So do you consider yourself, having worked so many years in (Redacted)

16 (Redacted) in Kenya?

17 A. I understand (Redacted).

18 Q. So that would mean you for instance understand (Redacted)

19 (Redacted), yes?

20 A. Yes, I had (Redacted).

21 Q. And you would also know a little bit about how (Redacted)

22 (Redacted), not in detail, their general mandate and the way they do things?

23 Would you agree in broad terms?

24 A. I only understand that it is a (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0800

(Private Session)

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1 (Redacted)

2 Q. And you understand for example that the (Redacted) and the (Redacted), the type of
3 work they do, that you know, yes?

4 A. Yes, I understand generally that it's (Redacted).

5 Q. And you also have an understanding of what (Redacted), yes?

6 A. Yes, and I know about (Redacted).

7 Q. And you also understand how (Redacted) work, correct?

8 A. I understand how it worked (Redacted)

9 (Redacted)

10 Q. Okay, sir. We're going to go into an open session, and it's against (Redacted)

11 (Redacted)

12 (Redacted) That would be the basis of my questions and I request

13 that when answering my questions you do not say anything which may identify you, and in

14 the event that there is something which does identify you I ask you please not to say, "The

15 answer will identify me." Instead just put your hand up and we'll take it as an indication

16 that we go into private. Can you do that?

17 A. If you'll talk about (Redacted)

18 (Redacted) and I request that we remain in private session.

19 Q. If there is anything that will identify you, sir -- (Redacted)

20 (Redacted) If there's something which you think may identify you, a particular work,

21 particular information, then you can let us know, and on my side I will also be very careful

22 that in my questions I will not ask you anything where you'll have to put yourself in the

23 picture. Is that okay?

24 A. Okay, then.

25 MS ALAGENDRA: Your Honours, if we can go into a public session please?

Trial Hearing
Witness: KEN-OTP-P-0800

(Open Session)

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1 PRESIDING JUDGE EBOE-OSUJI: Open session.

2 THE WITNESS: I don't have my papers here.

3 (Open session at 3.22 p.m.)

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

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 Ms Alagendra, please.

7 MS ALAGENDRA:

8 Q. Sir, in the 2005 referendum which side were you supporting, Banana or Orange?

9 A. None.

10 Q. And the 2005 referendum it was between the "Yes" and the "No" campaigns, yes?

11 A. Yes.

12 Q. And the banana symbol that was given to the Kibaki side by Mr Samuel Kivuitu, yes?

13 A. Yes, I know it was banana.

14 Q. It was given by Samuel Kivuitu, do you know that?

15 A. I don't know.

16 Q. Sir, are you able to tell the Court who were some of the prominent leaders of the "No"
17 campaign? Sir, you can answer that question without looking at the list. I don't think you'll
18 find the answer on the list.

19 PRESIDING JUDGE EBOE-OSUJI: Can you hold that question?

20 What do you -- what do you mean, Counsel, when you -- with a proposition that the
21 banana symbol was given by Samuel Kivuitu? Perhaps that might assist the witness,
22 and me indeed, to understand what was meant.

23 MS ALAGENDRA: What I meant, your Honours and Mr Witness, is it was Mr Samuel
24 Kivuitu that decided the symbol for the "Yes" campaign would be a banana.

25 Q. Is that correct?

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Witness: KEN-OTP-P-0800

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1 A. I hesitate to answer the question, because according to my understanding I think that
2 the group of Mr Kibaki will give different -- will choose for their -- for their own on different
3 symbols and forward for -- and also the other group and later on a decision is given. So the
4 person who is initiating that this is banana and this is orange is not the person, the later
5 person, but the group actually from the beginning. I think they -- they should have given
6 their opinion before it is eventually given a go ahead to use that symbol in the -- in -- in
7 elections. That was why I had -- I thought maybe the initial person who give that symbol
8 should be a group of persons of that party -- of that -- who are in that -- who are in a certain
9 party and then it is forwarded to the Electoral Commission for further decisions. So I'm not
10 quite very sure. That's why I said I don't know.

11 Q. Sir, it's quite widely known that there was an incident where a radio presenter, he
12 protested to the chairman, Samuel Kivuitu, about his choice of banana as one of the
13 referendum's symbols. Do -- do you recall that incident? Did you read it in the news?

14 A. I don't remember.

15 Q. And maybe this may help you remember. And Mr Kivuitu's response to him is that, if
16 he thought the banana symbol would infringe on his intellectual property rights because he
17 had written a song about bananas, then what this person should do is then write a song about
18 oranges. Do you remember that story?

19 A. No, not unless I have the paper to see, but I don't remember. I don't remember that. I
20 didn't -- I didn't take it important on my side.

21 Q. So, sir, can you now tell the Court who were some of the prominent leaders of the "No"
22 campaign in 2005?

23 A. I know in Rift Valley we had William Ruto. We had also -- in other parts we had -- we
24 had Raila Odinga and other three, who formed a group which they called Pentagon, and that
25 is my understanding of that team.

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1 Q. Sir, the Pentagon came now much later. I'm talking about 2005.

2 PRESIDING JUDGE EBOE-OSUJI: Do you think you can put the propositions to him by way
3 of leading questions so he doesn't -- unless you want to proceed this way, so he doesn't keep
4 searching for it.

5 MS ALAGENDRA: Indeed. Also, your Honour, the witness's knowledge on matters is
6 something which is relevant to the Defence on how much he knows.

7 PRESIDING JUDGE EBOE-OSUJI: That's -- that's why I said, unless --

8 MS ALAGENDRA: Indeed.

9 PRESIDING JUDGE EBOE-OSUJI: -- you're proceeding in that way for a specific reason, but
10 when you can just give him the direct closed question on the matter. It might move things
11 faster.

12 MS ALAGENDRA:

13 Q. Sir, is there any other prominent leader that you recall that was part of the Orange
14 campaign? If you don't, just say you don't remember and I will take it from there.

15 A. I remember the two.

16 Q. Sir, do you recall that Uhuru Kenyatta was part of the "No" campaign?

17 A. Yes, I remember he dropped after some time from that team.

18 Q. So he was part of the "No" campaign, yes?

19 A. I'm not quite sure.

20 Q. What about Bishop Margaret Wanjiru? She's a Kikuyu. She was part of the "No"
21 campaign, wasn't she?

22 A. I don't know.

23 Q. And Mr Najib Balala from the Coast, he was part of the "No" campaign, wasn't he?

24 A. I'm not certain, but I know there were leaders also from Coast.

25 Q. And Mr Joe Nyaga from Central Province, he was part of the "No" campaign, wasn't he?

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1 A. I think.

2 Q. Mr Mudavadi, he was part of the "No" campaign?

3 A. I'm not sure.

4 Q. And Mr Charles Njonjo, your former Attorney-General and Minister of Justice, a Kikuyu,
5 he was part of the "No" campaign, wasn't he?

6 A. I'm not sure.

7 Q. Kalonzo Musyoka Kamba, he was part of the "No" campaign?

8 A. I'm not sure.

9 Q. What about --

10 PRESIDING JUDGE EBOE-OSUJI: What's the spellings from line 5, 9 and so on?

11 MS ALAGENDRA: Mr Charles Njonjo. Njonjo is N-J-O-N-J-O. And Kalonzo Musyoka,
12 K-A-L-O-N-Z-O M-U-S-Y-O-K-A.

13 Q. What about Mumbi Ngaru, a Kikuyu, first female mayor of Thika town. I'm sure you
14 recall she was part of the "No" campaign?

15 A. I'm not sure.

16 MS ALAGENDRA: Mumbi Ngaru is M-U-M-B-I, Ngaru N-G-A-R-U.

17 Q. Sir, what about Mungiki group, have you heard of them?

18 A. Yes, I've heard of Mungiki.

19 Q. And you've heard of their leader, Maina Njenga?

20 A. Yes, I've heard of Maina Njenga.

21 Q. And you agree that -- we have information from the Prosecution, sir, that the group
22 exceeded more than 500,000 members. Would you agree with that?

23 A. I don't know about their membership.

24 Q. How large a group were they?

25 A. I don't know.

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1 Q. And we have been provided with information from the Prosecution.

2 And for your Honours the basis of my proposition is at tab 1.

3 Q. That the Mungiki leader, Maina Njenga, and his youths were supporting the "No"
4 campaign in the 2005 referendum. Would you agree with that?

5 A. I don't know.

6 Q. Sir, will you agree with me that the 2005 referendum was not about Kikuyus versus
7 Kalenjins, do you agree?

8 A. I agree it was not about the Kalenjin and Kikuyu but about the constitution.

9 Q. And, sir, you told the Court that you attended an ODM rally in the Eldoret 64 Stadium
10 in 2007. Now, I'm sure you would have either attended or at least heard about the "No" rally
11 at the Eldoret 64 Stadium in 2005, did you?

12 A. Repeat your question, please.

13 Q. You attended an ODM rally in Eldoret 64 Stadium in 2007, yes? That's what you say?

14 A. Yes.

15 Q. And I'm sure you would have either attended or you would have heard about the "No"
16 campaign rally in that same Eldoret 64 Stadium that took place in 2005, did you?

17 A. No.

18 Q. Sir, I'm going to play you a video and --

19 MR STEYNBERG: Sorry. I'm sorry to interrupt, your Honours, but there were multiple
20 propositions put to the witness in that last question. We have an answer "No." I don't
21 know whether the answer is did he not attend it, did he not know about it. So I've noticed
22 that on several occasions there have been compound questions put to the witness and I think
23 this is an occasion where the record is unclear as to his answer.

24 MS ALAGENDRA: I'll take the guidance from my learned senior.

25 Q. Mr Witness, let me try this again. Did you attend any "No" rally at the Eldoret 64

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1 Stadium in 2005?

2 A. I don't remember. What I recalled -- what I recall is a rally that I gave and spoke about
3 in this Court.

4 PRESIDING JUDGE EBOE-OSUJI: You mean a rally you gave evidence of in this Court?

5 THE WITNESS: Yes.

6 PRESIDING JUDGE EBOE-OSUJI: Thanks.

7 MS ALAGENDRA:

8 Q. And that was a rally you told the Court took place in 2007 at the Eldoret 64 Stadium,
9 yes?

10 A. Yes.

11 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, I don't like to correct the record, but often
12 times I feel I must. When -- I did not say "... the rally you gave evidence of ..." I meant -- I
13 said "... a rally you gave evidence of ..." just to make sure we understood what the witness
14 meant when he said "I gave ..." and then he continued to say something else. Let's not dwell
15 on that. Please proceed.

16 MS ALAGENDRA:

17 Q. Now that's 2007. I'm now talking about 2005, sir, during the referendum campaigns,
18 did you attend a "No" rally at that same stadium in 2005?

19 A. I don't remember.

20 Q. Perhaps let me play you a video and see if that helps you remember?

21 MS ALAGENDRA: Your Honours, for the record, we'll be playing the video

22 KEN-D09-0042-0553, and the transcripts your Honour is at tab 3 of the Defence bundle, and
23 that is KEN-D09-0042-0554.

24 (Viewing of the video excerpt KEN-D09-0042-0553)

25 MS ALAGENDRA:

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1 Q. Sir, do you agree with me that is Eldoret, heading towards the stadium?

2 A. Can I see it again?

3 Q. I'll keep playing.

4 (Viewing of the video excerpt KEN-D09-0042-0553)

5 MS ALAGENDRA: I stopped at time stamp 01.02.

6 Q. Sir, do you recognise the place?

7 A. No. I've just seen many trees that I didn't recognise.

8 Q. Okay. Sir, what do you see there, the carrying of branches and trees like this, what
9 does it symbolise in Kenya for our understanding?

10 A. Peaceful demonstration.

11 Q. And I'm going to go now to time stamp 4.23.

12 MR STEYNBERG: Sorry, your Honour, before we go on, can the -- counsel please clarify line
13 number 4. That's not what I heard the witness say.

14 MS ALAGENDRA: What I heard the witness say is that it's for peaceful demonstration.

15 PRESIDING JUDGE EBOE-OSUJI: Yes.

16 MR STEYNBERG: The word "peaceful" is missing from the record.

17 MS ALAGENDRA: I thank my learned friend.

18 (Viewing of the video excerpt KEN-D09-0042-0553)

19 MS ALAGENDRA: And I've stopped the video at 4.42.

20 Q. Sir, you will confirm what you just saw was Mr William Ruto, he was followed by
21 Mr Raila Odinga and then Mr Uhuru Kenyatta, correct?

22 A. Yes, I've seen Uhuru Kenyatta.

23 Q. And you saw Mr Raila Odinga?

24 A. I didn't.

25 MS ALAGENDRA: Can we play it again?

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1 (Viewing of the video excerpt KEN-D09-0042-0553)

2 MS ALAGENDRA:

3 Q. Who is that, sir?

4 A. Even though he's looking at the other side, I think this is William Ruto.

5 MS ALAGENDRA: It is at time stamp 04.26.

6 (Viewing of the video excerpt KEN-D09-0042-0553)

7 MS ALAGENDRA:

8 Q. This person in the yellow, sir, can you see him?

9 (Viewing of the video excerpt KEN-D09-0042-0553)

10 THE WITNESS: Raila Odinga.

11 MS ALAGENDRA: I'm now going to move to time stamp 6.50.

12 (Viewing of the video excerpt KEN-D09-0042-0553)

13 MS ALAGENDRA:

14 Q. Sir, do you recognise this location?

15 A. No.

16 MS ALAGENDRA: And for the record we've stopped the video at 07.28 minutes.

17 Q. Sir, you will confirm what you saw there was Mr Ruto, Mr Odinga and Mr Uhuru
18 Kenyatta arriving at a stadium, which you don't know the name of, yes?

19 A. I've seen the three on that demonstration.

20 Q. And you'll confirm you saw the crowds cheering and welcoming Mr Kenyatta, yes?

21 A. Yes, I've seen the crowd cheering.

22 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, so that the record is clear, for those who
23 may not be looking at the video at the same time as reading the transcript later, your
24 suggestion is not, or is it, that the three men you have mentioned have been seen together in
25 one shot, in one screen shot as it were in the video so far?

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1 MS ALAGENDRA: No, your Honour. To be clear, they have been entering one at a time
2 into the location.

3 And can I just clarify something --

4 MR STEYNBERG: I beg your pardon, your Honour, also for the record my learned friend
5 has put the proposition to him that the video has shown these three individuals arriving at a
6 stadium. It's at least not clear to me that this is in fact a stadium. I see a large crowd. I see
7 a wall. It may well be a stadium, but I can't see from what I see.

8 PRESIDING JUDGE EBOE-OSUJI: Unless that is something you want to particularly pursue,
9 we can note that for the record and move on and leave the rest to the argument, but if you
10 want to pursue it because it's important to you, please proceed.

11 MS ALAGENDRA: I will leave it at that, your Honour. I won't pursue that point.

12 And can I just clarify something, whether the witness is looking at the right screen when the
13 video is being shown.

14 Q. Sir, are you looking at this screen or on --

15 A. This one. This one is empty. I'm looking at this one, your Honour.

16 MS ALAGENDRA: Is that where he should be looking?

17 THE WITNESS: The video.

18 MS ALAGENDRA:

19 Q. Sir, do you want to take a few seconds to look at the location? Do you recognise it?

20 A. I don't recognise it. I only see trees, many people. It's not written on the -- on the
21 walls that -- so I can't confirm where this one is, but unless I hear people talk and say welcome
22 to this place or something like that, but just blank like this, I can't confirm where this one is.

23 MS ALAGENDRA: We'll now go to time stamp 9 minutes and 55, please.

24 (Viewing of the video excerpt KEN-D09-0042-0553)

25 MS ALAGENDRA: Your Honours, just to assist the Chamber, I'm in fact at page 0559. And

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1 it starts from line 1 to 1, your Honour.

2 Can I ask that a copy of the transcript also be given to the witness so he can follow it.

3 MR (Redacted): Your Honour, please, to me also.

4 MS ALAGENDRA:

5 Q. Sir, please listen to Mr Ruto's speech and you can also look at the transcript, and I'll be
6 asking you some questions about it, but you can occasionally also look between the screen
7 and the transcript, please.

8 (Viewing of the video excerpt KEN-D09-0042-0553)

9 MS ALAGENDRA: I've stopped the video at 12 minutes and 47 seconds.

10 Q. Sir, you followed the speech of Mr William Ruto?

11 A. Yes.

12 Q. Now let me take you to lines 167, and you will confirm that this is what Mr Ruto was
13 saying. This is at ERN 0560, lines 167. Mr Ruto is saying: "We should focus on what is
14 there now and on the future. We are shocked that in ..." their "... constitution we are being
15 accused that us people" --

16 PRESIDING JUDGE EBOE-OSUJI: "This constitution."

17 MS ALAGENDRA:

18 Q. "... in this constitution, we are being accused that us people from Uasin Gishu we have
19 been fighting other people. Is that what we want here in Uasin Gishu or do we want to
20 co-exist peacefully with others? Do we want to co-exist with others or do we want cases?"
21 That's correct, you heard him say that, didn't you?

22 A. I heard.

23 Q. And the next page, lines 173, Mr Ruto says, "To co-exist with others."

24 Line 176 he goes on to say, "Those ones who would like us to live with others let's
25 raise up our hands."

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1 And 178, the crowds are raising up their hands.

2 Then I move down to line 186 where Mr Ruto is saying, "That is okay. This is

3 because we would like to live together as brothers and sisters without discriminating

4 whether you are tall, what your age is, what your tribe is or what your religion is.

5 As Uasin Gishu people we would like to live harmoniously as brothers and sisters

6 from Kenya, and we do not want laws that will come to divide us so that we go to the

7 courts to accuse each other. Have we understood each other? And that is why I am

8 requesting people from Uasin Gishu and my fellow Kenyans; what are we going to

9 say on 21st?"

10 And the crowd says, "No."

11 Will you confirm, sir, that is what Mr Ruto was saying on the video?

12 A. Yes, I've said -- I've -- I've heard him say this.

13 MS ALAGENDRA: I will now move on to play minutes 13 -- at 13 minutes and 21 seconds.

14 (Viewing of the video excerpt KEN-D09-0042-0553)

15 MS ALAGENDRA:

16 Q. Sir, do you recognise the location now, or still no? "Yes" or "No"?

17 A. It's in a stadium and most stadiums in Kenya do have the same tent.

18 (Viewing of the video excerpt KEN-D09-0042-0553)

19 MS ALAGENDRA: Your Honours, for the record I apologise, I should have done that before,

20 I'm looking at page 0563 and from lines 231 onwards.

21 (Viewing of the video excerpt KEN-D09-0042-0553)

22 MS ALAGENDRA: We've stopped at 14.45.

23 Q. And, Mr Witness, could you look at lines 241 of the transcript? Mr Kenyatta -- if I

24 could just finish this, your Honour. And Mr Kenyatta says, "This Kenya belongs to many

25 tribes and especially you as residents of Eldoret North you are a mixture of different tribes.

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1 Many tribes. Will you agree to be given a constitution that is going to divide you and make
2 you fight each other?" And the crowd says "No."

3 Am I correct, sir, you heard Mr Kenyatta saying that?

4 A. Yes.

5 MS ALAGENDRA: Your Honour, we can leave there.

6 PRESIDING JUDGE EBOE-OSUJI: We will leave it there for now and return on Monday at
7 9.30.

8 Witness, we will take our -- we will rise for the weekend. You'll rejoin us on

9 Monday. Do not discuss your testimony while you're outside of the courtroom. Do
10 you understand?

11 THE WITNESS: Yes, your Honour.

12 PRESIDING JUDGE EBOE-OSUJI: Thank you.

13 Closed session, please.

14 *(Closed session at 4.02 p.m.) Reclassified as Open session

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

16 (The witness stands down)

17 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

18 THE COURT OFFICER: All rise.

19 *(The hearing ends in closed session at 4.03 p.m.) Reclassified as Open session

20 RECLASSIFICATION REPORT

21 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
22 2013, the version of the transcript with its redactions becomes Public.