

Trial Hearing

(Open Session)

ICC-01/09-01/11

1 International Criminal Court
2 Trial Chamber V(a) - Courtroom 1
3 Situation: Republic of Kenya
4 In the case of The Prosecutor v. William Samoei Ruto
5 and Joshua Arap Sang - ICC-01/09-01/11
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera-Carbuccia
7 and Judge Robert Fremr
8 Trial Hearing
9 Friday, 28 November 2014
10 (The hearing starts in open session at 9.42 a.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
15 Court officer, please, the case.
16 THE COURT OFFICER: Thank you, Mr President.
17 The situation in the Republic of Kenya, in the case of The Prosecutor versus
18 William Samoei Ruto and Joshua Arap Sang, ICC-01/09-01/11.
19 We are in open session.
20 PRESIDING JUDGE EBOE-OSUJI: Thank you.
21 Appearances?
22 MR GARCIA: Good morning, your Honours. The same people are present for the
23 Prosecution.
24 MR NDERITU: Good morning. There is no change from our end. Thank you.
25 MS BUISMAN: Good morning, Mr President, your Honours. The team for

1 Mr Sang remains the same and Mr Sang is present. Thank you.

2 MR KHAN: Mr President, your Honours, good morning. The team for Mr Ruto,
3 who is present in court, remains the same. One of my trial support assistants,
4 Mr Andrew Mura, stepped out, but he would be rejoining us in a moment.

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

6 And we are in open session.

7 Mr Khan, as we were rising yesterday, you wanted to raise a matter?

8 MR KHAN: Indeed, Mr President. The issue, if I recall, was the issue of timing of
9 this witness, when my learned friend -- appreciating he's only had half-a-day, when
10 we anticipate the Prosecution will complete examination-in-chief? I'm grateful.

11 PRESIDING JUDGE EBOE-OSUJI: All right. Indeed, Mr Garcia, we'll need that
12 information for planning purposes.

13 MR GARCIA: Yes, your Honours. I intend to be finished by Tuesday morning,
14 first session.

15 PRESIDING JUDGE EBOE-OSUJI: And, Mr Khan, when do you anticipate -- from
16 the materials you have so far, when do you think you might be done with your
17 cross-examination? And the same question of course will go to Ms Buisman.

18 MR KHAN: Mr President, there's two factors. If my learned friend for the legal
19 representative for the victims is given time, I would anticipate starting, having had a
20 conversation with him, starting Wednesday morning, and I would be at the moment
21 as things stand four days. I will try my best to whittle it down, but it looks at the
22 moment approximately four days would be required by the defence for Mr Ruto.

23 PRESIDING JUDGE EBOE-OSUJI: That will take us to the 8th.

24 MR KHAN: That's the difficulty, indeed.

25 PRESIDING JUDGE EBOE-OSUJI: And Ms Buisman?

1 MS BUISMAN: Well, we had anticipated three days. We might be able to use
2 two-and-a-half days, but at the moment, not having heard the Prosecution yet, we
3 envisage it could be up to three days.

4 PRESIDING JUDGE EBOE-OSUJI: It was or remains -- not was. It is the intention of the
5 Chamber to also start and complete the testimony of the next witness, (Redacted) by
6 12 December. What everyone seems to be saying is that that will not happen. Is
7 that it?

8 MR KIGEN-KATWA: Mr President, speaking for Mr Sang, and that next witness
9 touches very much Mr Sang, may I indicate that on our part we would really want to
10 cover his testimony also in this session.

11 Mr President, in view of the substance of the material disclosed to us by the
12 Prosecution, it was our estimation that we would take about four days with that
13 witness in cross-examination. I have consulted with Mr Ruto's team, and
14 considering the nature of his testimony, they will probably need not more than a
15 session, if at all, and so I'm just rising to indicate our anxiety and wish to finish with
16 this -- with that next witness.

17 Mr President, may I indicate that even if it would entail extending sitting hours or
18 extending this session we would on our part be happy to cover the testimony of that
19 witness.

20 On a separate issue --

21 PRESIDING JUDGE EBOE-OSUJI: Before the 12th, that is to start and complete the
22 testimony of that witness by 12 December?

23 MR KIGEN-KATWA: We would very much wish so, Mr President, on our part, but
24 like I said, even if it means extending the session beyond that date, we would be
25 happy to have that testimony completed.

1 PRESIDING JUDGE EBOE-OSUJI: We will not -- let's not count on extending the
2 session beyond that date.

3 MR KHAN: Mr President, I can indicate that my learned friend Mr Hooper will be looking
4 after (Redacted) the Ruto team at
5 all and so we don't anticipate requiring any time, but of course one would always
6 have to wait and see what transpires. But if we are to complete first and foremost
7 the present witness and (Redacted) by the 12th, it seems that the only possible way of doing
8 it is if we have a combination, if the Court is so minded, both to shorten the
9 lunch-breaks and to extend the sitting hours. It would probably require a
10 combination of both, prompt starts, a shorter lunch-break and longer hours, if we're
11 to finish that witness by the next session -- sorry, by the 12th.

12 Your Honour, the other matter is - and in fact my learned friend Mr Steynberg kindly
13 alerted me to one particular fact that I had overlooked, but of course my Kenyan
14 colleague, Mr Kigen-Katwa, was alive to it - on the 12th it is a national holiday in the
15 Republic of Kenya -- a national holiday in the Republic of Kenya, and I'm not sure, it's
16 a matter for the Court Registry, to make sure that in advance there are facilities to
17 make sure that -- any facilities needed in that country that are needed for the next
18 witness are in place so we don't lose the 12th. And I can speak no more on that
19 matter.

20 PRESIDING JUDGE EBOE-OSUJI: All right. We will leave it at that.

21 Mr Steynberg?

22 Hold on. Should we go into private session?

23 MR STEYNBERG: Please, your Honour.

24 PRESIDING JUDGE EBOE-OSUJI: Private session.

25 (Private session at 9.50 a.m.) Reclassified as Open session

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- 1 THE COURT OFFICER: We are in private session, Mr President.
- 2 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, (Redacted)
- 3 (Redacted)
- 4 MR STEYNBERG: Your Honour, (Redacted)
- 5 (Redacted)
- 6 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 7 (Redacted)
- 8 MR KHAN: (Redacted)
- 9 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 10 MR KHAN: (Redacted)
- 11 MR STEYNBERG: (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 On the issue of the timing, however, I do note that if we are to finish by the first
- 15 session of Tuesday, the Prosecution will have taken less than three days. The
- 16 conduct of proceedings does provide that the Defence team is entitled to twice that
- 17 amount, which would be considerably shorter than seven days, so my first
- 18 observation is if we're to fit in the next witness, curtailment of cross-examination
- 19 might be the first -- the first remedy to that.
- 20 The Prosecution is, of course, available and ready and willing to sit whatever hours
- 21 the Court determines, but there are of course limits to that and it's not just the lawyers
- 22 involved and we are alive to that.
- 23 PRESIDING JUDGE EBOE-OSUJI: Not just the Prosecution, it's a difficulty for the
- 24 Court as a whole.
- 25 MR STEYNBERG: That's the point I'm trying to make, your Honours, that there are

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1 other people involved than just lawyers and -- I'll leave it at that.

2 So --

3 PRESIDING JUDGE EBOE-OSUJI: I'm not good at maths, but did you say if you
4 finished by Tuesday you would have taken how many days?

5 MR STEYNBERG: Your Honours, we started midway through the tea-time session
6 yesterday, if I'm not mistaken, with the evidence of this witness, so to midway
7 through the tea-time on Tuesday would be three days, so it will be just short of three
8 days and we will -- we will endeavour to make it even shorter than that, but -- but
9 that is our present estimate.

10 PRESIDING JUDGE EBOE-OSUJI: All right. So now that's clearer. You're not
11 intending to take all of Tuesday?

12 MR STEYNBERG: Certainly not, your Honour.

13 PRESIDING JUDGE EBOE-OSUJI: All right.

14 MR STEYNBERG: Latest would be the tea session on Tuesday, but I did get a
15 notification that we have a late start on Tuesday. I understand we're only starting at
16 10 o'clock.

17 PRESIDING JUDGE EBOE-OSUJI: Yes. There are some complications again next
18 week with both the Appeals Chamber judgment and how that may affect the support
19 resources we need for our own case to sit extended hours.

20 MR STEYNBERG: Your Honour --

21 PRESIDING JUDGE EBOE-OSUJI: That may be an issue.

22 MR STEYNBERG: Thank you, your Honours.

23 And as far as (Redacted) is concerned, from the Prosecution's perspective, we don't expect
24 him to be a particularly long witness. I wouldn't expect more than four to five
25 sessions with him, so less than two days from the Prosecution side. So again

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1 estimates of four days cross-examination may have to be rethought in light of the
2 Chamber's conduct of proceedings ruling.

3 (Pause in proceedings)

4 PRESIDING JUDGE EBOE-OSUJI: All right. Mr Katwa Kigen?

5 MR KIGEN-KATWA: Mr President, two things: The first one is --

6 PRESIDING JUDGE EBOE-OSUJI: Can we go back to public or do we need to
7 discuss this in private?

8 MR KIGEN-KATWA: May I raise it in private, Mr President?

9 PRESIDING JUDGE EBOE-OSUJI: All right.

10 MR KIGEN-KATWA: Yesterday the Prosecution indicated that (Redacted) is
11 currently cooperating. I hope (Redacted)

12 (Redacted) And in view of that indication, Mr President, we would have
13 appreciated to know if he will be attending court as opposed to video link. Of
14 course on our part we would prefer that he be here so that the cross-examination is
15 faster if he's cooperating with the Prosecution. That's the first thing.

16 The second and separate issue, Mr President, is we would pray for than indication of
17 the order of witnesses for the next session.

18 PRESIDING JUDGE EBOE-OSUJI: All right. Your concerns have been noted.

19 And, Mr Steynberg, if you can respond now, if you need more time to --

20 MR STEYNBERG: Yes. Firstly, your Honour, if I can just -- (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 As far as the cooperation of this witness is concerned, I think it might be a bit of a

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1 stretch to say he's cooperating with the Prosecution. I understand he's been
2 cooperating with the VWU, but he has agreed to conduct witness preparation with
3 the Prosecution. I understand that he has been requested if he will come and testify
4 here and he's refused to do that. So the position is that he is available, as
5 I understand, to testify from Nairobi.

6 I do -- I am informed, I was informed late last night, that VWU had served the
7 summons on him and that he would be available today, but I've had no further
8 notification this morning. My understanding was he was summonsed to appear
9 today, was he not, the 28th?

10 PRESIDING JUDGE EBOE-OSUJI: Yes. Apparently he's on standby at the location
11 and we will be meeting him in a little while.

12 MR STEYNBERG: Very well.

13 PRESIDING JUDGE EBOE-OSUJI: The one concern here is it looks like we're not
14 able to tell him now that he should be expected back on the stand to start his
15 testimony in earnest any time before 12 December. Is that not the situation,
16 Mr Steynberg, as you see it?

17 MR STEYNBERG: Your Honours, I prefer to err on the side of optimism and my
18 recommendation would be that we stand -- well, if we have to give him a date, if we
19 aim to have this witness start by Monday, that would be Monday, I think, the
20 7th, - 7th, 8th, 9th, 10th - no, or the 8th, 8 December, if we were to start him there,
21 I believe that if we proceeded expeditiously we could finish with that witness in the
22 remaining week even if the last day is not available.

23 PRESIDING JUDGE EBOE-OSUJI: Hold on. On the 8th?

24 MR STEYNBERG: Is that the Monday? Let me check my calendar. Yes.

25 PRESIDING JUDGE EBOE-OSUJI: Is that a realistic prospect? The Defence for

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- 1 Mr Ruto say they will need three days.
- 2 Did you say for the current witness?
- 3 MR KHAN: Mr President, I will do it as quickly as I can, but currently four days.
- 4 PRESIDING JUDGE EBOE-OSUJI: Four days. That literally takes us to the 8th.
- 5 MR STEYNBERG: Your Honours, if the Court is minded to allow the Defence seven
- 6 days collectively to cross-examine this witness, then we will not reach the next
- 7 witness in this session.
- 8 PRESIDING JUDGE EBOE-OSUJI: Even if we shortened it to less than that, to say
- 9 five days, let's say we're able to get the both teams down to five days --
- 10 MR STEYNBERG: Yes, your Honour, I --
- 11 PRESIDING JUDGE EBOE-OSUJI: You see the difficulty with that? And you also
- 12 start your examination-in-chief of that witness and the Defence are expected to do
- 13 that --
- 14 MR STEYNBERG: Yes.
- 15 PRESIDING JUDGE EBOE-OSUJI: -- their own bit.
- 16 MR STEYNBERG: From the Prosecution's perspective, what we would not like is to
- 17 lead the evidence-in-chief of the next witness and have the cross-examination stand
- 18 over to the New Year.
- 19 PRESIDING JUDGE EBOE-OSUJI: Yes, that's the difficulty.
- 20 All right. Let's do this.
- 21 Mr Kigen-Katwa, briefly.
- 22 MR KIGEN-KATWA: Mr President, could we just schedule an appointment with
- 23 him on the 8th for -- and take stock of things on that day, kindly?
- 24 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 25 (Redacted) That's one

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1 consideration. Beyond that (Redacted) if we -- unless
2 there's a realistic prospect of -- having them disrupt their lives to come to court, it's
3 better not to put them through that process because -- simply because we can. We try to
4 avoid that.

5 MR STEYNBERG: Your Honours, perhaps then in all the circumstances the best
6 solution would be to bind the witness over until the next session --

7 PRESIDING JUDGE EBOE-OSUJI: Yes.

8 MR STEYNBERG: -- until 12 January.

9 As for the remaining witnesses of that session, the next witness up would be (Redacted) and
10 I do see that -- well, I have had some indication from the lawyer of Witness (Redacted) that
11 he's prepared to discuss testifying voluntarily again, so I intend to follow that up and I will
12 advise my learned friends and the Chamber as soon as I have some clarity on that. If that is
13 the case, then I would -- I would anticipate that (Redacted) would testify also
14 in that session and those three witnesses I anticipate would probably take us the
15 entire session.

16 PRESIDING JUDGE EBOE-OSUJI: All right. Let's leave it at that for now and bring
17 in the witness and --

18 MR KHAN: Indeed. Mr President, there's a discrete matter. I didn't raise it with
19 my learned friend Mr Steynberg, but it is an application. Mr Ruto of course was
20 required to be here and he came here as required by the -- by the Court.

21 Your Honour, this is a long witness, and as the Court will be aware, there was a tragic
22 execution of 28 Kenyans on Saturday when the president was out of the country and
23 Mr Ruto was in Kenya, and that's part of the Al-Shabaab attack that Kenya is
24 currently confronting. They were taken out of a bus, the Christians amongst them
25 were put on one side and then they were executed in the head. There are security

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1 meetings amongst not just Kenyan security services, with the president and the
2 deputy, but also internationals flying in next week.
3 What I'm asking is if the Court would consider, notwithstanding the ruling, that
4 Mr Ruto be excused Monday and Tuesday of next week. He'll be back by
5 Wednesday. It looks like I'll be starting cross-examination on Wednesday. He will
6 be there then hopefully until the end of the testimony. That way he would have
7 been here for a significant part - more than half - of the chief and for all the
8 cross-examination and I'd ask the Bench to give that consideration.

9 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, any observations?

10 MR STEYNBERG: Your Honours, I leave the matter in the hands of the Court.

11 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, again, you say to be excused Tuesday
12 and Wednesday?

13 MR KHAN: Monday and Tuesday, Mr President.

14 PRESIDING JUDGE EBOE-OSUJI: Sorry, so it's December the 1st --

15 MR KHAN: So to be excused on the 1st and on the 2nd.

16 PRESIDING JUDGE EBOE-OSUJI: -- and the 2nd.

17 MR KHAN: And Mr Ruto would leave on the 2nd and be in court here on the 3rd,
18 God willing, and I anticipate cross-examination for the Defence would be starting on
19 Wednesday.

20 (Trial Chamber confers)

21 PRESIDING JUDGE EBOE-OSUJI: Right. The request is granted.

22 MR KHAN: I'm most grateful, Mr President, your Honours.

23 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 MR KHAN: Mr President, can I just note that your Honour's oral ruling at page 13, line 5, is
3 not recorded in the transcript.

4 PRESIDING JUDGE EBOE-OSUJI: The ruling that your request for Mr Ruto's
5 excusal for 1 and 2 December?

6 MR KHAN: Indeed.

7 PRESIDING JUDGE EBOE-OSUJI: The request was granted.

8 MR KHAN: I'm most grateful.

9 (The witness enters the video-link room)

10 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, while the witness is settling in, do
11 we have a Rule 74 issue?

12 MR STEYNBERG: Your Honours, as presently advised we see no Rule 74 issue for
13 this witness.

14 PRESIDING JUDGE EBOE-OSUJI: So there is no need to direct for counsel to be
15 appointed for him?

16 MR STEYNBERG: No, your Honours, not as far as the Prosecution knows.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you.

18 Hello (Redacted) Are you with us? Can you hear me?

19 REGISTRY REPRESENTATIVE: Yes, we are. We can hear you, my Lord.

20 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. We say "your Honour,"
21 not "Lord."

22 REGISTRY REPRESENTATIVE: Yes, your Honour.

23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 Witness, thank you very much for joining us. (Redacted)

25 (Redacted) to describe you, and I want to let you know that we are in private

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1 session. That means members of the public are not hearing the proceedings.

2 Do you understand?

3 THE WITNESS: Yeah, yeah.

4 PRESIDING JUDGE EBOE-OSUJI: All right. I will request you to say "Yes" or "No"
5 to questions so that it is clear on the record. Responses like "Yeah," things like that,
6 do not reflect well on the record.

7 THE WITNESS: Okay, yes.

8 PRESIDING JUDGE EBOE-OSUJI: Okay. Can you please state your name for the
9 record?

10 THE WITNESS: My name is (Redacted)

11 PRESIDING JUDGE EBOE-OSUJI: Thank you very much, Witness, for joining us and
12 helping us to -- to search for the truth about what happened with the post-election violence
13 and who may or may not have been responsible for it.

14 You are appearing before the Chamber because of the subpoena, or summons, that
15 was served on you. We thank you for responding to the summons.

16 Please note that you will remain bound over by the summons until the Court
17 discharges you. That means you continue to be under the force of the summons to
18 appear until the Chamber makes an order saying you are released from the summons.
19 Do you understand?

20 THE WITNESS: Yes, your Honour.

21 PRESIDING JUDGE EBOE-OSUJI: Your testimony will not be starting today, we are
22 in the middle of another witness, and we will not -- we are not expecting to finish the
23 testimony of that witness in enough time this year for yours to start. So we will be
24 expecting you to join us next year, (Redacted)
25 but what will happen is that the court officers, the members of the Victims and

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1 Witnesses Unit will let you know when you are to come back and start your
2 testimony.

3 Do you understand?

4 THE WITNESS: Yes, your Honour.

5 PRESIDING JUDGE EBOE-OSUJI: All right.

6 There are two -- at least two types of meetings that will be -- that may involve you, or
7 that you will -- separate offices in the Court will require you to attend or expect you
8 to attend.

9 One of them is a meeting with the OTP, the Office of the Prosecutor. They are
10 entitled, or the Court has given them permission, to meet with witnesses they are
11 calling so that they can prepare that witness for his or her testimony, so they may be
12 expecting to have that kind of meeting with you; that is meetings with members of or
13 the lawyers in the Office of the Prosecutor.

14 I want to inform you that you are not obligated - the law does not compel you - to
15 attend the meetings with the OTP. It is up to you if you want to attend, but then
16 they will tell you that it is in your interest for you to attend the meetings with them so
17 that they can prepare you for what to expect in the course of your testimony. But
18 you're not required to attend. That's up to you.

19 There's another body, the Victims and Witnesses Unit, whose meetings we will ask
20 you to attend. The Victims and Witnesses Unit are not the same office as the
21 Prosecutor's office. The Victims and Witnesses Unit are an independent, neutral
22 office in the Court. They are part of the Registry. Their job is to take care of
23 witnesses who appear before the Court and to familiarise them with the process from
24 their own perspective and also be on hand for any medical or psychological assistance
25 that the witness may require. That generally is part of their work and we will ask

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1 you to make every effort to attend meetings with the VWU; their familiarisation

2 meetings.

3 Do you understand?

4 THE WITNESS: Yes, your Honour.

5 PRESIDING JUDGE EBOE-OSUJI: All right.

6 We will not take up too much of your time for now, except to tell you to be on

7 standby for the Victims and Witnesses Unit coming back to let you know when you

8 are to return to Court and start your testimony, all right?

9 THE WITNESS: Yes, your Honour.

10 PRESIDING JUDGE EBOE-OSUJI: Counsel, any more to be said?

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 PRESIDING JUDGE EBOE-OSUJI: That's something you can take up with him later.

19 MR STEYNBERG: As the Court pleases.

20 PRESIDING JUDGE EBOE-OSUJI: Yes.

21 Defence?

22 MR KHAN: Your Honours, no observations. I'm grateful.

23 MR KIGEN-KATWA: We have none on our part, Mr President.

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Open session at 10.15 a.m.)

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

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

19 We've now finished our housekeeping matters and we will need to bring in the

20 witness currently on the stand for Mr Garcia to continue his examination-in-chief.

21 For that purpose, we'll need to go into closed session to usher the witness into the

22 courtroom.

23 (Closed session at 10.16 a.m.) Reclassified as Open session

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

25 PRESIDING JUDGE EBOE-OSUJI: Thank you.

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1 Please bring in the witness.

2 (The witness enters the courtroom)

3 PRESIDING JUDGE EBOE-OSUJI: Public session.

4 (Open session at 10.17 a.m.)

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

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

7 Witness 658, welcome back to the Court. We started a little late this morning

8 because there was another witness we needed to bring in and introduce to the Court.

9 Mr Garcia will continue his examination-in-chief of you. Thank you.

10 WITNESS: KEN-OTP-P-0658 (On former oath)

11 QUESTIONED BY MR GARCIA: (Continuing)

12 Q. Good morning, Mr Witness.

13 A. Morning.

14 Q. Now, Mr Witness, when we left off yesterday you were speaking to us about the

15 events that occurred at the Eldoret police station, and I'd just like to ask a couple of

16 more questions regarding that topic, and then we'll move on to another subject.

17 Now, you stated yesterday during your testimony that the vehicle was searched, the

18 Mololine, the Mololine vehicle, is that correct?

19 A. Yes.

20 Q. Now, was that the only place that was searched on that day?

21 A. Yes, that is the place where the Mololine vehicle was there and then another

22 event took place again after that.

23 Q. But I'm speaking more about the Eldoret police station. Was the Mololine

24 vehicle the only place that was searched?

25 A. Yes.

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1 Q. Now, what else happened at the Eldoret police station before you left?

2 A. Anyway, after the two MPs came back to inform the public that there was
3 nothing in the vehicle, and then they decide to go to another place.

4 Q. You mentioned at one point yesterday in your testimony that the OCPD -- you
5 mentioned the OCPD. Was he there as well at this point?

6 A. Yes, he was there.

7 Q. Just remind you, Mr Witness, of the five seconds after my question and your
8 response.

9 What was the OCP doing -- OCPD doing during all of this time?

10 A. In fact, he was doing a lot of work as the head of the station. He could -- no,
11 division of headquarters, so he's having -- or a preparation of as a head of the police
12 station.

13 Q. Maybe I need to be just a bit more clear. But while these councillors were
14 speaking and then Mr Ruto, Mr Kosgey, what was the OCPD doing at that point?

15 A. They led them to the -- where to inspect the car together and come back later
16 together again to where the public were.

17 Q. And what was the reaction of the public to what the -- when these people came
18 back and said that there was nothing?

19 A. Okay, they were not convinced that there was nothing in the vehicle, but they
20 had to accept, but because there was nothing there.

21 Q. And you say they were not convinced. What were they doing exactly?

22 A. They were reacting that that's ni wongo, that's -- it was a lie. It's maybe they
23 have hidden somewhere the -- the -- the -- the fake ballot papers.

24 Q. Now, you also testified yesterday that they moved on to another location?

25 A. Yeah.

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1 Q. Can you explain that to us?

2 And just remember after I ask you a question, take a couple of seconds and then
3 answer as full and as complete as you can.

4 A. Mmm-hmm.

5 Q. All right?

6 A. Yeah, after that they march towards the -- another about 2 kilometres away
7 from the police station. They marched through the roads of Uganda and then
8 through Kenyatta Streets to Nandi, the road, and then Kapsabet Road, and then to a
9 milk processing company of Brookside where also they allege that maybe ballot
10 papers is being hidden there.

11 Q. Now, you yourself, where were you at this point while you say that these
12 people were going over to Brookside?

13 A. Because it was a march in the streets, we were going together, following them
14 together from behind.

15 Q. And who exactly were you following there?

16 A. The crowd and also the two MPs who were present.

17 Q. And where were the two MPs in respect to the crowd? Just take a couple --

18 A. Yeah.

19 Q. The two MPs, Mr -- you mentioned Mr Ruto, Mr Kosgey.

20 A. Yes.

21 Q. You said there was a crowd going --

22 A. Yes.

23 Q. -- in the direction of Brookside?

24 A. Yeah.

25 Q. Take your time. Where were they in respect of the crowd? Take a couple of

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1 seconds after I finish and then answer.

2 A. They were ahead of them with the folk in front of them.

3 Q. What about the councillors you mentioned yesterday, where were they in
4 respect of the crowd? Remember the five-second rule.

5 A. Yeah, they were together.

6 Q. And just explain to us why were they going in that direction of Brookside?

7 A. Because mostly there was allegations that maybe these things is being hidden in
8 the Brookside company, belonged to a Kikuyu who is current president of the
9 Republic of Kenya, Honourable Uhuru Kenyatta.

10 Q. And where you're mentioning "these things" as being hidden, what are you
11 speaking about?

12 A. Ballot papers, fake anyway.

13 Q. And you say that there were allegations that these things were being hidden.
14 Where were these allegations coming from or from whom?

15 A. The group of the people were saying that. Yeah, the same group.

16 Q. And by "the same group" you're mentioning, who? Do you know -- can you
17 give us names?

18 A. I cannot mention the group of people. Thousands of people. I cannot mention
19 names.

20 Q. Do you know, Mr Witness, if there were any people of Kikuyu ethnicity
21 amongst this group of people?

22 A. I cannot confirm that.

23 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, sorry to pull you back, but if you look
24 at line 21, that answer appears incomplete. We need to clear it up. I thought I
25 heard that -- something about being led to where the car was to inspect the car

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1 together.

2 MR GARCIA: Your Honour, I'm looking at page 22, line -- (microphone not
3 activated) What page?

4 PRESIDING JUDGE EBOE-OSUJI: I'm sorry, page 20.

5 MR GARCIA: Thank you, your Honour.

6 PRESIDING JUDGE EBOE-OSUJI: Sorry, sorry. Page 20, line 21. They inspect the
7 car together. And I thought there was -- the answer was that there had been a
8 leading of -- that OPCD might have led them to where the car was to inspect. Can
9 you clear it up, please?

10 MR GARCIA: Certainly, your Honour.

11 Q. Now, Mr Witness, I asked you just a couple of minutes ago what was the OCPD
12 doing at the time when the councillors were speaking and Mr Ruto and Mr Kosgey,
13 and you said, "They inspect the car together and later came back to where the public
14 were." Can you tell us what the OCPD did exactly in respect to the inspection of the
15 car?

16 A. He was opening the car, seeing inside the car and could not confirm for the
17 crowd to confirm that if it's any ballot paper inside the car.

18 PRESIDING JUDGE EBOE-OSUJI: That's good enough. Proceed.

19 MR GARCIA:

20 Q. Thank you, Mr Witness, for that clarification.

21 Now, did they eventually arrive at Brookside, the crowd of people that you are a part
22 of?

23 A. Yes.

24 Q. Can you tell us what happened at Brookside?

25 A. Some few people entered in and tried pouring down their milk from the milk

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1 tin and searching the ballot papers, of which they took about some minutes before
2 they confirm that there is nothing there also.

3 Q. Now, you say that some people -- and we didn't catch that. Some few
4 people -- and I imagine it is in the crowd tried powering down the milk.

5 A. Yes.

6 PRESIDING JUDGE EBOE-OSUJI: Pouring down.

7 MR GARCIA:

8 Q. Pouring down. Sorry.

9 A. Yeah.

10 Q. Now, the few people in the crowd, are you able to identify these people?

11 A. They are councillors. In fact, Councillor Farouk was the leader who was doing
12 this. You know, this kind of man is always ahead of many things.

13 Q. Okay. So just to be clear, I want to know specifically in regards to this instance.
14 You say it's that Councillor Mr Farouk Kibet, is that correct?

15 A. Yes, yes.

16 PRESIDING JUDGE EBOE-OSUJI: Witness, Witness, remember the five-seconds
17 pause. It causes difficulty when you don't let him finish and you wait for five
18 seconds, because we want to capture everything you say on the record, but when that
19 happens, when you cut him off before he had finished his questions, we run the risk
20 that what you had started saying at the time he was still talking will not appear on the
21 record, on the transcript of the proceedings. So please do take care to observe the
22 five-seconds pause. Thank you.

23 THE WITNESS: Thank you, your Honour.

24 MR GARCIA:

25 Q. Now, Mr Witness, just on that point, you can always look at my microphone.

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1 There is a red light. Once that red light is off, once I turn it off, you count a couple of
2 seconds, five seconds, and then respond.

3 Now, you said that Mr Farouk was the leader. What was he doing exactly?

4 A. Yeah, pouring -- pouring milk down, searching the ballot papers from inside the
5 Brookside.

6 Q. Now, you say he was the leader. Was he leading anyone on that particular
7 day?

8 A. No. He was inside -- inside a group of the people.

9 Q. How did he gain -- were you there to observe how he gained access to the
10 Brookside?

11 A. Because I was just behind, I later see when it's already in the hand. So I could
12 not just -- I will not confirm that, how they handed the first place.

13 Q. Okay. So from the position that you were in, what did you see exactly?

14 A. I later saw them pouring the milk down, and that is what I saw, and searching
15 the whole site of the Brookside.

16 Q. And you say that you later saw them pouring down the milk. Apart from
17 Mr Kibet, were you able to identify other people who were doing this?

18 A. There are some youths. I cannot know their names.

19 Q. And while this was going on, that the milk was being poured, were you able to
20 observe where the MPs were or Mr Ruto or Mr Kosgey were at this point?

21 A. They were just -- okay, they were just standing around there. There was
22 not -- they were not doing anything, yeah.

23 Q. You also mentioned that there was a vehicle at the Eldoret police station.
24 Where was that? Did you observe that vehicle later on at Brookside or not?

25 A. Yes, it was there. It was there driven by the same person.

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1 Q. Now, you said you observed Mr Kibet and some youth pouring down the milk.

2 What else did you observe at that place at Brookside?

3 A. There was a lot of noise, and people were complaining a lot. They want to
4 know exactly where these ballot papers were. But there was nothing else, but only
5 to search.

6 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, one second.

7 Witness, you said pouring down the milk --

8 THE WITNESS: Yes.

9 PRESIDING JUDGE EBOE-OSUJI: -- at Brookside.

10 THE WITNESS: Yes.

11 PRESIDING JUDGE EBOE-OSUJI: Were you about, at some point, to tell us why, in
12 your view, the milk was being spilt in that way? Do you know?

13 THE WITNESS: I cannot confirm exactly what they were pouring down, but they
14 were searching for the ballot papers inside. Maybe they were thinking they must
15 have dropped inside the tin of the milk, inside it or -- I cannot confirm why they were
16 doing this.

17 PRESIDING JUDGE EBOE-OSUJI: You thought it could be they thought the ballot
18 boxes were inside the milk containers?

19 THE WITNESS: Yes.

20 PRESIDING JUDGE EBOE-OSUJI: That's what you thought?

21 THE WITNESS: Yes.

22 PRESIDING JUDGE EBOE-OSUJI: All right, thank you.

23 MR GARCIA:

24 Q. Now, can you tell us approximately how many people were gathered there at
25 Brookside on that particular day when they were pouring down the milk?

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1 A. I cannot tell the number.

2 Q. Just to give us an idea, is it more or less than 500 people?

3 A. Outside were so many people, but inside cannot hold more than 500 people of
4 course.

5 Q. And when you're saying about inside, you're speaking about inside, you're
6 speaking about the Brookside, is that it, just to be clear?

7 Just remember the five seconds, Mr Witness. I know you're eager to respond, but
8 take the time, look at the red light, when it's off, count the seconds and then respond.

9 So my question was when you're speaking about "inside," you're speaking about
10 inside Brookside; is that correct?

11 A. Yeah, compound of -- of Brookside.

12 Q. You're saying there was a compound and you also mentioned that there was a
13 search. Were you able to see anything in this regard?

14 A. Apart from that incident of pouring down the milk, I could not confirm any
15 other thing.

16 Q. You also say that the people were complaining. What were you able to hear
17 from your position?

18 A. The same area.

19 Q. My question was: What were you able to hear? What were the people saying?
20 You said that they were complaining.

21 A. They were complaining about they've not yet got what they wanted and that's
22 why they were not satisfied that they will do whatever they want because they have
23 not yet get what they want, ballot papers, fake ballot papers.

24 Q. And can you tell the Court in what language they were speaking or
25 complaining, the people that you heard?

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1 A. Swahili and Kalenjin.

2 Q. Now, this whole incident that you've just related to the Court of going in and
3 searching and the milk being poured, how much time did this take in all,
4 approximately?

5 A. I'm not sure of the time, but maybe more than 20 minutes.

6 Q. Now, what happened afterwards, after the incident at Brookside?

7 A. They decided to march back to the city centre again.

8 Q. And where did you go?

9 A. Just come also with the group coming toward town again.

10 PRESIDING JUDGE EBOE-OSUJI: Are we moving away from Brookside now,
11 Mr Garcia?

12 MR GARCIA: Yes, your Honour. For the moment, yes.

13 PRESIDING JUDGE EBOE-OSUJI: Was anything found? One can interpret the
14 transcript or the testimony thus far, but can we have some clarity whether anything
15 was found?

16 MR GARCIA: Certainly, your Honour.

17 Q. Now, Mr Witness, to your knowledge was anything found at Brookside at that
18 day?

19 A. No.

20 PRESIDING JUDGE EBOE-OSUJI: By that you mean no fake ballot papers were
21 found at Brookside; is that what you're saying?

22 THE WITNESS: That one, yes.

23 MR GARCIA:

24 Q. Now, Mr Witness, you say that you returned towards the city centre; is that
25 correct, afterwards?

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1 A. Yes.

2 Q. And what did you do afterwards? Where did you go?

3 A. Along -- before reach the city centre there was a -- before the bridge -- after the
4 bridge, that's Sosiani river, and there was a big crowd again there and they stand
5 there and then there is also -- Mheshimiwa started talking to the people again,
6 addressing them.

7 Q. So we'll get to that in a minute. I just want to be sure about
8 how -- how this -- how this worked out on that day. You were at Brookside and
9 from where -- where did -- where did the crowd go including yourself?

10 A. Toward -- toward the centre town, the city centre, yeah, around the centre of the
11 town following Kapsabet-Kisumu Road towards the town.

12 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, one second. I want to clear up the
13 picture at Brookside.

14 You mentioned earlier that the two MPs at the police station had spoken to the people
15 at the police station after the search of the Mololine vehicle. That was your
16 testimony that the two MPs, that's Mr Ruto and Mr Kosgey --

17 THE WITNESS: Yes.

18 PRESIDING JUDGE EBOE-OSUJI: -- spoke to the people after the search of the
19 vehicle at the police station; is that correct?

20 THE WITNESS: Yes.

21 PRESIDING JUDGE EBOE-OSUJI: Now, at Brookside was there any speech made
22 by any of these two gentlemen after the search of Brookside produced no fake ballot
23 papers?

24 THE WITNESS: I can't recall.

25 PRESIDING JUDGE EBOE-OSUJI: Thank you.

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1 MR GARCIA:

2 Q. Now, Mr Witness, you said that eventually you ended up at Sosiani river; that's
3 correct?

4 A. Yes.

5 Q. Do you remember who was directing or was there anyone leading the crowd to
6 Sosiani river?

7 A. No. There was no specific leader, they were just going in the -- and along the
8 road.

9 Q. Now, just so that we can have a clear picture of this, where were you in the
10 crowd? Were --

11 A. In the middle of the crowd.

12 Q. And do you recall who was leading the crowd towards Sosiani River?

13 MR KHAN: Your Honour, I object. Your Honour, the witness has given a clear
14 answer about leading. It is the second time my learned friend has tried to lead and
15 the witness said very clearly no one was leading and for -- to put a question on the
16 same issue after a clear answer is inappropriate. I object.

17 MR GARCIA: Your Honour, I don't see how that's leading. I'm asking a question
18 so that the witness can be able to clarify the whole matter for -- for us. I mean who
19 was at the -- I could actually ask the witness who was at the head of the crowd or who
20 was at the front of the crowd. I don't see where the -- the leading is.

21 PRESIDING JUDGE EBOE-OSUJI: The objection was that the question was asked
22 and answered. Do you accept that the question was asked before by you and the
23 witness answered it?

24 MR GARCIA: The question that I asked was who was leading the crowd. And
25 I can reformulate and ask who was at the front of the crowd.

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1 PRESIDING JUDGE EBOE-OSUJI: Proceed.

2 MR GARCIA:

3 Q. Now, Mr Witness, who was at the front of the crowd from your recollection of
4 that day?

5 A. As I tell you, it's a group of people so I cannot say who was ahead or behind
6 because if many people are ahead you cannot say somebody was leading or not
7 because a group of people ahead of them.

8 Q. Do you remember, Mr Witness, while you're heading towards the city centre
9 and towards Sosiani river where the -- where the councillors were?

10 A. Because I was in the middle of the -- of the crowd, but there was not -- they
11 were not far from -- ahead or behind, they were just mixing with the people, they
12 were not actually leading or whatever, they were just mixing with the people, going
13 together.

14 Q. Would you be able to tell us where the MPs were while the crowd --

15 A. They were also --

16 Q. Just --

17 A. -- almost --

18 Q. Just wait. Wait. Just wait a couple of seconds actually, if not it's not going to
19 be transcribed. Do you remember where the MPs were while the crowd was
20 heading towards the centre and then towards Sosiani?

21 A. Yeah, they were merely ahead of -- in front or -- not in -- really in front of them,
22 but in the -- mixed. Just a few -- 1 metre away from the head of the people and then
23 they were there.

24 Q. Now, you also said that you saw the car, that car with the loud speakers,
25 I believe, at -- at Brookside. Do -- do you -- do you recall what happened to that car

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1 afterwards once you left in the direction of the city centre and Sosiani river?

2 A. Also it was driven back toward the -- the city, the centre of the town.

3 Q. Now, do you recall where that car was in regards to the crowd?

4 A. It was in the middle of the -- of the people.

5 MR KHAN: Mr President, can I clarify is this a car, or is this the Nissan
6 patrol mentioned earlier?

7 MR GARCIA:

8 Q. Now, Mr Witness, I did mention that it's the car with the loud speakers.

9 I understand that your -- it was your testimony that this was a Nissan patrol; is that
10 correct? Just wait, wait a couple of seconds.

11 A. It is the same car.

12 Q. Now, were you able to observe who was in this car while you were heading
13 towards city centre, Sosiani?

14 A. I can't remember but the same persons which I said it they were there from the
15 beginning, but I can't remember if there was a -- new people inside.

16 Q. Now, do you know why you were -- or, why the crowd was heading towards
17 Sosiani River? Just wait. Wait a couple of seconds.

18 A. They were going towards the town because they didn't find what they want in
19 the Brookside.

20 Q. But why Sosiani river? What was there?

21 A. Sosiani river is still along the road. It's not specifically Sosiani River. They
22 were not going to Sosiani River, but they were on the way going to the town.

23 Q. Now, what happened at Sosiani?

24 A. The -- these vehicles stopped there and then there was a large crowd which was
25 coming from the other direction of town, then they -- there was -- and then

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1 the -- Mheshimiwa addressed them on that particular -- that site of the Sosiani river.

2 Q. Now, at this specific moment when Mheshimiwa addresses the crowd, how
3 many people are gathered there at this point? Can you give us an estimate?

4 A. No, it's large crowd. You cannot even -- I cannot even say how -- no, it was
5 large crowd anyway. I cannot con -- confirm the number.

6 Q. Just so we can get an idea, was it more or less than a thousand people? Just
7 wait a second.

8 A. As I have said it's not possible to -- to say estimation because it was a large
9 crowd from the -- both sides of the road and even to -- yeah, about 50 metres and they
10 are very, yeah, large crowd. I cannot say that, how many people were there.

11 Q. I perfectly understand that, Mr Witness, but just so we can get a general idea,
12 my question is was there more or less than a thousand people?

13 MR KHAN: Your Honours, I -- I object. My learned friend has previously
14 mentioned 500, a thousand. It's quite a -- a clever way of leading, but the witness,
15 even when that's put, has given a very clear answer that he's not able to give. If my
16 friend wishes to give more details, of course it can be done without suggesting a
17 number. The number should come from the witness if at all.

18 PRESIDING JUDGE EBOE-OSUJI: Witness, are you in a position to give an estimate
19 in terms of numbers, the amount of people there?

20 THE WITNESS: No.

21 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia.

22 MR GARCIA: Your Honour, I can -- I can start out with 500. I mean, I think these
23 are legitimate answers. The witness is saying -- questions -- the witness is saying
24 that he can't specifically give us a number and I just want to ascertain, give us a
25 general picture, of how many people were there. I understand Defence counsel's

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1 concerns and I'll put the question to the witness and we'll get at an estimate hopefully.

2 So I can start with 500 if Defence counsel is worried that I am leading with the 1,000,

3 but I think the witness is saying there were many people there.

4 PRESIDING JUDGE EBOE-OSUJI: Objection is sustained. The reason being there

5 comes a point where an estimate might be problematic, Mr Garcia, if the witness is

6 not in a position at least at this point -- he has seen the trend of your enquiry and he

7 still says he's not in a position to give an estimate in terms of the numbers. We also

8 need to take that in the context of the time of the events. Are people always in a

9 position to estimate numbers of crowds? I don't know, but if you have some other

10 enquiry you make in that regard, a way to get around it, go ahead, but to start giving

11 numbers from you might appear leading at this stage.

12 MR GARCIA:

13 Q. Now, Mr Witness, just so I can get a clearer picture of this, you said that -- you

14 referred to Mheshimiwa. Who is this person, Mheshimiwa, just so it could be clear

15 on the record?

16 A. Mheshimiwa William Ruto.

17 Q. Now, you said that he addressed the crowd. Now the place where he

18 addressed the crowd, can you tell us where this was exactly?

19 A. Just after the bridge in Sosiani.

20 Q. Now can you describe that area for us, just briefly?

21 A. Just along the road and opposite is a hotel called Shakers and the other side is

22 open space and, yeah, that's how I can describe.

23 Q. Now when you say --

24 PRESIDING JUDGE EBOE-OSUJI: Please, please, one second. At line 3, I did not

25 say "People are always in a position ..." I had asked the question, "Are people always

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1 in a position ..."

2 Please proceed, Mr Garcia.

3 MR GARCIA: And just one more correction. At page 36, line 20, I think the other
4 side is an "open space," not "session."

5 Q. I believe you said -- did you say an "open space," Mr Witness?

6 A. Yeah, that's -- yeah, space a little bit, but not a large space, but along the road
7 anyway. It is Kapsabet Road.

8 MR GARCIA: And line 14, at page 36, is William Ruto, your Honours, just for the
9 transcript.

10 PRESIDING JUDGE EBOE-OSUJI: Yes.

11 MR GARCIA:

12 Q. Now, you say it's not a large space. What was there in that -- what is the space?
13 Can you tell us -- give us the dimensions approximately?

14 A. It is not really a space, but where people were standing along the road. But
15 aside the road, the other side of the road, is more spacious where people can stand a
16 lot, a crowd - like crowd - than this side where it was a hotel, Shakers Hotel.

17 Q. So on the road itself, can you tell us an idea of how large the crowd was?

18 A. A large crowd were there. I cannot put estimations. The road is like this
19 court, from the other side, but you cannot even count people. It's a large group,
20 yeah.

21 Q. And just for the record I think you indicated, correct me if I'm wrong, that the
22 width of the road is the same width as this courtroom?

23 A. I think so.

24 Q. Is that it?

25 A. Yeah.

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1 Q. Okay. And --

2 PRESIDING JUDGE EBOE-OSUJI: From what point to what point in the courtroom?

3 The dimensions?

4 THE WITNESS: Where I am maybe to where you are. I think the road is that size.

5 PRESIDING JUDGE EBOE-OSUJI: Can we estimate anywhere from 10 to 12 metres,

6 Mr Garcia?

7 MR GARCIA: I think that would be fine. 10 metres, yes.

8 PRESIDING JUDGE EBOE-OSUJI: From where he is sitting to where I'm sitting,

9 approximately. Yes.

10 MR GARCIA: Your Honours, the fact is that we received information from the

11 Registrar and I think that the width - the official width - is 7-and-a-half metres; the

12 width of this courtroom. I can get back on that, your Honour. I think for the

13 moment we can -- I think it's on the record that the witness has stated it's the width of

14 this courtroom. We can get back on that just to clear up that matter.

15 MR KHAN: Mr President, for the record, what the witness said, not that it's the

16 width of the courtroom. He said the distance is approximately from where the

17 Presiding Judge is to where the witness is sitting. Your Honour, perhaps the record

18 can be left as it is and later on I'm sure we can agree any figures given from the

19 Registry regarding the internal dimensions, including from the seat of the President to

20 where the witness is sitting.

21 PRESIDING JUDGE EBOE-OSUJI: Thank you.

22 Proceed.

23 MR GARCIA:

24 Q. Now, Mr Witness, so you're saying the width -- we're not going to get into that

25 matter again, the exact dimensions, but can you tell us where was Mr Ruto when he

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1 was addressing the crowd in respect to the street?

2 A. It is not a street. It's a road from Kapsabet to (indiscernible), past just after the
3 bridge.

4 Q. Now, was Mr Ruto on the road itself?

5 A. Yes.

6 Q. And where were the people that were listening to him?

7 A. In the same area. The crowd were just around the road and even to the far end,
8 next -- not far. About 500 metres next to - no, to the water down. So there were a
9 large group, not specifically in that side.

10 Q. All right. So from your indications, and I noticed your hands, you were
11 saying -- you were indicating a circular pattern?

12 A. Yes.

13 Q. The furthest people from Mr Ruto were what distance approximately?

14 A. Maybe 500 or less.

15 Q. When you're mentioning "500," we're speaking about what?

16 A. Metres.

17 Q. So just for it can be clear on the record, Mr Ruto is speaking, people are
18 surrounding him and the furthest from Mr Ruto are 500 metres away from him. Is
19 that --

20 A. The whole group -- yeah, a large group from that side. Yeah.

21 Q. And where were you in the -- at this point when Mr Ruto addresses the crowd?

22 A. I was still not yet crossed the river, but next to that side.

23 Q. Do you recall where the vehicle was, the vehicle with the loud speakers, at this
24 point when Mr Ruto is addressing the crowd? Wait a couple of seconds.

25 A. He used the same car. He used the same loudspeaker in the same car.

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1 Q. Okay, you're saying he used the same loudspeaker?

2 A. Yeah.

3 Q. Can you explain that to us?

4 A. Yes.

5 Q. Who used the load -- the same loudspeaker?

6 A. Mheshimiwa.

7 Q. Okay. And when you're speaking about "Mheshimiwa" you're speaking about
8 Mr Ruto. You're saying he used the same loudspeaker in that car?

9 A. Yes.

10 Q. Now when Mheshimiwa started addressing the crowd, where were you in
11 respect of Mr -- Mr Ruto?

12 A. Just before the -- I was not yet crossed the bridge, but at least the -- perhaps 2
13 metres away from the bridge before I crossed the bridge to the other side, yes.

14 Q. Now from the position you were in, can you tell us -- what can you tell us about
15 what you could hear; what you could hear Mr Ruto say?

16 A. He was talking in Swahili that, "Few days to come we shall be in State House
17 with our president, and that is Honourable Raila Odinga, and you know whole tribes
18 support Raila Odinga, but you know one community which are not supporting Raila."
19 And he asked questions and then the people could answer back "Kikuyu."

20 Q. What questions would he ask -- was he asking that the people would answer,
21 "Kikuyu"?

22 A. (Overlapping speakers)

23 Q. Just wait a couple of seconds and then answer. What questions was Mr Ruto
24 asking the crowd that the people would respond, "Kikuyu"?

25 A. First of all -- okay, first of all he was saying that, "You know in the few days to

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1 come we shall be at State House with our president, the Honourable Raila Odinga,
2 and you know all communities of Kenya support him to State House, but only one
3 community is not."" And he asked them, the people, "Do you know that?" And
4 then the people would respond back, "Kikuyu."

5 Q. Did Mr Ruto say anything else?

6 A. Then he said, "You know them and all of them we shall put them in one pick-up
7 now, the Kikuyus, and send them to ..." -- and then he said a one -- a short word
8 "Othaya, Kikuyu", and then he said it in a short way and then the people fill it,
9 "Othaya."

10 Q. Can you spell Othaya for us?

11 A. O-T-H-A-Y-A.

12 Q. And can you tell the Court what Othaya is?

13 A. It is the place - home place - of former president, Kibaki.

14 Q. And what ethnicity is his home place?

15 A. Kikuyu.

16 Q. Do you recall in what language he said this?

17 A. In Swahili.

18 Q. And you as a -- as a Kalenjin, how did you -- how did you understand this?

19 A. It was a clear message that Kikuyus should go back to Othaya, but I cannot say
20 it was said exactly -- (indiscernible) explains that the word itself say exactly what he
21 was saying. I can say -- I cannot change the meaning to mean what he was not
22 saying -- what he was saying.

23 MR GARCIA: I see the time, your Honours.

24 PRESIDING JUDGE EBOE-OSUJI: Yes, and also look at what the transcript says at
25 lines 24 to 25, whether that is the testimony.

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- 1 MR GARCIA: I can clarify that after the break, your Honours.
- 2 PRESIDING JUDGE EBOE-OSUJI: Yes, we will do that.
- 3 MR GARCIA: Of page 41, yes.
- 4 PRESIDING JUDGE EBOE-OSUJI: All right, we will take our morning break now
- 5 and the witness will -- you will come back to the court in 30 minutes.
- 6 We will go to closed session and usher the witness out of the courtroom and then we
- 7 will rise.
- 8 (Closed session at 11.01 a.m.) Reclassified as Open session
- 9 THE COURT OFFICER: We are in closed session, Mr President.
- 10 (The witness stands down)
- 11 PRESIDING JUDGE EBOE-OSUJI: The Court will rise.
- 12 THE COURT OFFICER: All rise.
- 13 (Recess taken at 11.01 a.m.)
- 14 (Upon resuming in open session at 11.38 a.m.)
- 15 THE COURT USHER: All rise.
- 16 Please be seated.
- 17 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 18 Witness, welcome back.
- 19 And Mr Garcia will continue.
- 20 MR GARCIA:
- 21 Q. Now, Mr Witness, I would just like to come back on one of your responses that
- 22 you gave before the break. I asked you if Mr Ruto had said anything else, and you
- 23 said, and I'm reading from page 41, lines 22 to 25, you said, "Then he said 'You know
- 24 them. And all of them, we shall put them in one pick-up now, the Kikuyus, and
- 25 send them to and initiate a short word."

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1 And you said something in Swahili and then "Odaha," spelled O-D-A-H-A, "And then
2 he said in a short way, and then the people fill it Odaha."

3 Can you explain that to us? Just wait for five seconds and just take your time and
4 explain to us exactly what he was saying.

5 A. I've just said it exactly what he was saying, that the people who are not
6 supporting Raila or Kikuyus will be driven to where the president come from, that is
7 Othaya.

8 Q. You just mentioned people were not supporting Kikuyus. Is that correct?

9 A. Were not supporting Raila or Kikuyus in particular, yes.

10 Q. And in that response that you gave to the Court you said "And to send them to
11 and initiate a short word," and you said something in Swahili. What was this word?

12 A. Othaya, he was just talking in short, and then the people will fill it Othaya.
13 Othaya is the place where Kibaki come from.

14 PRESIDING JUDGE EBOE-OSUJI: Can the witness --

15 MR GARCIA: Yes.

16 PRESIDING JUDGE EBOE-OSUJI: -- demonstrate what happened between -- yes.

17 MR GARCIA:

18 Q. Now, Mr Witness, just so we get a clear picture, what would Mr Ruto say and
19 what would the crowd say? Take your time.

20 A. I'm -- it was just in the beginning. It was just his -- he started by talking that
21 people were eagerly wait -- wait -- waiting to hear what he was saying, but he started
22 by saying now "In a few days to come" --

23 The people were saying "Yes."

24 "We shall be in the State House. It's our president, Honourable Raila Odinga."

25 And the people were saying "Yes."

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1 And then -- and then he has question that "You know one community which are not
2 supporting our candidate."

3 And then the people say -- and then they say, people will say "Yes." And then they
4 say -- and then the people respond back "Kikuyu."

5 And then from that side and then they went ahead and say "Okay, then we shall put
6 them all these in one pick-up and send them back to Othaya."

7 That is demonstration to show that sending the Kikuyus in one pick-up to Othaya,
8 and then the people say "Othaya," the place of Honourable Mwai Kibaki.

9 Q. Thank you. And just to be clear, when you say "a pick-up," what do you
10 mean?

11 A. Just a car which is -- have an open behind. And then we can -- a small car, a
12 pick-up.

13 Q. Now, to your understanding, how is it that they would be put in a pick-up?
14 How did you understand that, what Mr Ruto was saying?

15 A. I cannot explain, because that is putting one pick-up. He cannot just -- it's just I
16 put it the way it was said. And then it's not that they have be put back -- sent back to
17 their home. He didn't say in which way. But that is how I can explain directly.
18 I cannot say what it might have meaning but exactly what he said.

19 Q. And can you tell us how the crowd reacted to this when Mr --

20 A. Yes, they were supporting the --

21 Q. Mr Witness, just always wait, always wait. I know you're eager to give us a
22 response, but I ask my question, when you see the red light is off, wait five seconds
23 and then respond.

24 So how did the crowd that was there present react to Mr Ruto saying these things?

25 A. They were supporting the idea because they were actually overjoyed by hearing

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1 that word. They were excited that Kikuyus must go.

2 Q. How did they demonstrate this excitement?

3 A. They were just shouting out, high voice, yeah, that they must go. But that is
4 only the supporters. I cannot talk much beyond that point.

5 Q. And in what language were they saying, giving their --

6 A. It was in Swahili.

7 Q. Wait for the five seconds.

8 And in what language were they voicing their support?

9 A. Swahili.

10 Q. Now, Mr Witness, I understand that you've testified that you were part of the
11 crowd when this was being said. Were you able to see anyone of Kikuyu ethnicity in
12 the surroundings or within the crowd?

13 A. Yes.

14 Q. And what was the effect of these words on the crowd that was present, words
15 pronounced by Mr Ruto?

16 A. I have already indicated that the people were excited about his information, but
17 nothing else happened from that time, so I cannot say any other comment from that
18 what I have said.

19 Q. Now, to your understanding, did you know why Mr Ruto was speaking about
20 putting the Kikuyu in a pick-up and having them go to Othaya? What was -- did
21 you understand why he was saying that?

22 A. By then I could not explain why, because one of the reasons he said, because
23 they are not voting with the other group of the people, that to vote one tribes, which
24 are for Raila, and these Kikuyus are like have to be taken away from that side of the
25 region.

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1 Q. Okay. When you say that they were not voting or they were not supporting,
2 who are you speaking about?

3 A. They were not supporting the candidates popularly, that was Raila Odinga, and
4 actually they are not with the entire Kenyans who were supporting Raila Odinga by
5 then.

6 Q. Okay. And just to be clear when you are saying that "they were not supporting
7 Raila Odinga," what ethnic group are you speaking about?

8 A. Kikuyus.

9 Q. You also said that they, "They like have to be taken away from that side of the
10 region." From what region are you speaking about?

11 A. North Rift, or Kalenjin lands.

12 Q. And what are the Kalenjin lands?

13 A. Initially it's the region where around Eldoret and same all other areas like in Rift
14 Valley, yeah.

15 PRESIDING JUDGE EBOE-OSUJI: It was North - North Rift - at line 8, I'm talking
16 about.

17 Proceed, Mr Garcia.

18 MR GARCIA: Indeed. I'm grateful, your Honour.

19 Q. And why do you say, Mr Witness, that this is Kalenjin lands?

20 A. According to historical, that is they believe that those areas are their ancestral
21 lands, and like Kikuyus they have to be in central part of Kenya.

22 Q. Now, apart from what you've told us, did Mr Ruto say anything else to the
23 crowd on that day?

24 A. No.

25 Q. What happened afterwards, after Mr Ruto addressed the crowd? And wait

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1 until I close my microphone and wait five seconds.

2 A. And then the people marched towards the town, and then after that Honourable
3 Ruto and the leaders just -- I don't know where they go from that side. I didn't know
4 the whole day where -- where he was.

5 Q. Now you yourself, where did you go?

6 A. Just stay around in restaurants around that -- in the city; in the town.

7 Q. And after this was said at Sosiani, or near Sosiani, what was the atmosphere like
8 in Eldoret centre; Eldoret town?

9 A. It was tense.

10 Q. Take -- take five seconds.

11 A. It was tense and the people were still blocking some streets, roads, all the whole
12 day running up and down with police. They didn't stop from there. They just
13 continue the whole day.

14 Q. When you say "It was tense," can you explain to that further? What exactly --

15 A. There was a lot of --

16 Q. Remember -- Mr Witness, remember the five seconds. I'm sorry to have to
17 remind you.

18 A. There were a lot of excited and people were still blocking the roads. It's like
19 tensions, like people were expecting something else would happen. It was not like
20 any good environment for the election to come the following day, because already it
21 tell us that something else is going on. That the rigging of election is still -- it already
22 will happen. So people were so angry in the streets and they were demonstrating,
23 they were blocking roads and doing many things along the streets of town. Eldoret
24 town.

25 MR KHAN: Mr President, I wonder if there could be a clarification to line 20,

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1 whether or not the witness said, "There was a lot of exciting people ...", with an "e", or
2 "inciting" with an "i"?

3 MR GARCIA:

4 Q. Now, Mr Witness, maybe you can help with that. Did you say "inciting
5 people" or "excited," or "people that were excited"?

6 A. Excited, because they were really excited and want to know exactly if the
7 election will be rigged, or -- they are already convinced that the election will be rigged
8 now because they have gathered information.

9 Q. You say that people were angry in the streets?

10 A. Yes.

11 Q. And they were blocking the roads?

12 A. Yes.

13 Q. Now in regards to blocking the roads, who were these people that were
14 blocking the roads?

15 A. Majority of the youths who were coming there -- the youths, anyway. The
16 youths from the towns. I cannot say which, who, but majority of youths were there.
17 But by then the leaders were not yet -- were not there, but only youths were just
18 running from another street to another with the police.

19 Q. And to your knowledge, what ethnicity were these youths?

20 A. As I have said, youth from largely ethnicity from Luos and Kalenjin.

21 Q. And you said they were blocking the roads. How were they doing that?

22 A. Using burning tyres and stones and many other things, but for a few seconds
23 then the police arrived there and then they dispersed them.

24 Q. You said they were also doing something else. What else were they doing?

25 A. No, I'm saying blocking the roads and then singing along the roads,

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1 swinging -- singing "Bato mapabano" in the streets, running up and down, yes, as if
2 something else will happen. They were just demanding their rights, yeah.

3 Q. Now, you said they were singing in the streets and you mentioned something
4 I think in Swahili. Is that possible?

5 A. That is the song, yeah.

6 Q. Can you -- can you tell us exactly what the translation of the song is that they
7 were singing in the streets?

8 A. The song itself is "Mapabano," still -- which means they'll still fight. "We need
9 not rest and then we get what we want." They say, "Youths be ready. All people be
10 ready." Yeah, "Bato mapabano."

11 Q. And just to be clear, this was in what language that the singing was being done?

12 A. Swahili.

13 Q. Now you yourself, did you see any Kikuyu in the vicinity when all of this was
14 going on? People of Kikuyu ethnicity?

15 PRESIDING JUDGE EBOE-OSUJI: Let us get that text on the record. I think we've
16 heard it before, haven't we? "Badu mapabano," you said?

17 THE WITNESS: Yes.

18 MR GARCIA: We can either have the witness spell it, or write it on a paper and it
19 could be put on the projector for everyone to look at.

20 PRESIDING JUDGE EBOE-OSUJI: All right. Let's try. I think we've had that.

21 "Badu," would it be B-A-D-U?

22 THE WITNESS: "Bato" is B-A-T-O. "Bato."

23 PRESIDING JUDGE EBOE-OSUJI: B-A-T-O?

24 THE WITNESS: Yes.

25 PRESIDING JUDGE EBOE-OSUJI: Okay. And "mapabano," can you now spell

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1 that?

2 THE WITNESS: M-A --

3 PRESIDING JUDGE EBOE-OSUJI: M-A, you say?

4 THE WITNESS: "Mapabano." M-A-P-A-B-A and then N-O.

5 PRESIDING JUDGE EBOE-OSUJI: That's M-A-P-A-B-A-N-O, you say?

6 THE WITNESS: Yes.

7 PRESIDING JUDGE EBOE-OSUJI: All right. I think that's good enough.

8 MR GARCIA:

9 Q. Now my question, Mr Witness, I'm going to reformulate. Now, I understand
10 that you were there present in Eldoret centre. Did you happen to see -- after the
11 speech in Sosiani, did you happen to see in the vicinity any Kikuyus in the centre;
12 people of Kikuyu ethnicity?

13 A. Yes. And even in the morning when -- around 11, when the booths of the
14 telephone of Safaricom of the Kikuyu ladies were destroyed by the youths actually
15 because it was belonged to the Kikuyus.

16 Q. When did that happen, the destruction of these Safaricom booths? And wait
17 for the five seconds, Mr Witness.

18 A. After the police station incident, and late around after they come back to town
19 from Brookside, I saw one of them, yeah, being pulled down.

20 Q. I just want to be sure. You yourself witnessed this? Did you see this?

21 A. Yes, I saw. Especially I saw that in the police station exactly myself, but the
22 other one I just see it later. I didn't see exactly who did it.

23 Q. Now just to be clear, this is -- you're speaking about Safaricom. Are they
24 booths? What are they exactly?

25 A. Yes, it's a small structure where used to sell or making phones inside.

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1 Q. And do you know why they were -- these booths were targeted?

2 A. Because the ladies who were selling, or who were operating, were Kikuyus.

3 Q. And in regards to the incident that you would have seen, what did you see
4 exactly? What happened?

5 A. I saw that they were being pushed down, one of the booth, and then -- when the
6 lady is inside, but she managed to escape from that side. And from that time I think
7 they wanted to loot, but they didn't do anything beyond that point.

8 Q. Would you be able to tell us of what ethnicity the people were who were
9 pushing down or who -- pushing down this booth?

10 A. I've already indicated majority of youths were in large number Kalenjin and
11 Luos.

12 Q. I understand you're saying "Kalenjin and Luos." Which was the predominant
13 tribe - the predominant ethnic group - that was there of the youths?

14 MR KHAN: Your Honours, if there was a predominant group.

15 THE WITNESS: I've already indicate that the two tribes who were supporting
16 Lee (phon) then ODM is Kikuyus -- no, Kalenjins and Luos. And actually I can say,
17 okay, both of them - both the youths - were -- I cannot say which was prevalent, but
18 the two communities.

19 MR GARCIA:

20 Q. Would you be able to tell us how many of these booths were targeted?

21 A. It was not -- anyway, I saw about three of them being already targeted, but I
22 didn't confirm the others if there was.

23 Q. You've spoken to us about one of them. What happened to the two other
24 booths?

25 A. No, after it was pushed down and then the lady was inside, just run from that

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1 side and then they just leave it and then they continue with their demonstrations.

2 Q. And as for the time when this would have happened, when you would have
3 seen this, when was it?

4 A. At around police station, it's between -- I think it was before 12.

5 Q. Just to be sure, was this before or after the Brookside?

6 A. Before.

7 Q. Now, I understand that you remained in Eldoret centre after that?

8 A. Yes.

9 MR GARCIA: Your Honours, I need to go into a private session for five minutes.

10 PRESIDING JUDGE EBOE-OSUJI: Private session.

11 (Private session at 12.00 p.m.) Reclassified as Open session

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

13 MR GARCIA:

14 Q. Now, Mr Witness, while you were there you've spoken to us about the incident
15 at Eldoret police station. Were you there alone, or were you there with anyone else?

16 A. Number --

17 MR KHAN: If it assists the witness, we're in private session.

18 PRESIDING JUDGE EBOE-OSUJI: It's all right, Mr Khan. Let him get used to
19 using the PIS.

20 Proceed, Witness.

21 THE WITNESS: I was with number 17.

22 MR GARCIA:

23 Q. Anyone else from -- apart from person number 17?

24 A. Also number 14, number 3, number 2. Yeah, that -- that is I can remember.

25 Q. Now, just so we can get a clear picture, (Redacted)

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- 1 (Redacted)
- 2 A. (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 Q. (Redacted)
- 6 A. (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 Q. (Redacted)
- 10 A. (Redacted)
- 11 (Redacted)
- 12 Q. (Redacted)
- 13 A. (Redacted)
- 14 Q. (Redacted)
- 15 A. (Redacted)
- 16 Q. (Redacted)
- 17 A. (Redacted)
- 18 Q. (Redacted)
- 19 A. (Redacted)
- 20 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, let's -- let me do something here for
- 21 the record.
- 22 Witness, you are in closed -- in private session, so it was a --
- 23 THE WITNESS: Yeah.
- 24 PRESIDING JUDGE EBOE-OSUJI: -- what you did was correct that you referred to
- 25 the persons by numbers, even in private session. Keep that practice, but for now let

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1 me put the names on the record at this time. You've mentioned --

2 THE WITNESS: Yes.

3 PRESIDING JUDGE EBOE-OSUJI: -- one second - person number 17, you said you were
4 with him. Person number 17 that would be (Redacted)

5 THE WITNESS: Yes.

6 PRESIDING JUDGE EBOE-OSUJI: All right. And person number 14, that would be
7 (Redacted)

8 THE WITNESS: Yes.

9 PRESIDING JUDGE EBOE-OSUJI: Person number 3 that will be (Redacted)
10 (Redacted)

11 THE WITNESS: Yes.

12 PRESIDING JUDGE EBOE-OSUJI: And person number 2 would be (Redacted)
13 (Redacted)

14 THE WITNESS: Yes.

15 PRESIDING JUDGE EBOE-OSUJI: Thank you.

16 MR GARCIA:

17 Q. And person number 14 (Redacted)

18 A. Yes, (Redacted)

19 Q. That would be number 2 (Redacted)

20 And person number 3, (Redacted)

21 A. Number 3, yes, (Redacted)

22 Q. And finally, person number 2, (Redacted)
23 (Redacted)

24 A. With that -- (Redacted)

25 Q. Now, Mr Witness, (Redacted)

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- 1 (Redacted)
- 2 A. (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 Q. I just need you to be a bit clearer. (Redacted)
- 6 (Redacted)
- 7 A. (Indiscernible) beaten or something else by the group.
- 8 Q. Okay. And people of what ethnicity?
- 9 A. Yeah, the -- the target was Kikuyus by them and also supporters of the Party of
- 10 National Unity, some of the supporters.
- 11 Q. Now, can you tell us what you did on 27 December?
- 12 A. Let me confirm first what happened in the evening of 26.
- 13 Q. Please, go ahead.
- 14 A. Around 6 o'clock one of the vehicle which was carrying original ballot papers
- 15 were burned down along -- next to Barag'etuny Plaza.
- 16 Q. Can you give us the name of the plaza?
- 17 A. Barag'etuny.
- 18 Q. Can you spell that for us?
- 19 MR GARCIA: We can go into public session, your Honour, for this part.
- 20 PRESIDING JUDGE EBOE-OSUJI: Open session.
- 21 (Open session at 12.09 a.m.)
- 22 THE COURT OFFICER: We're back in open session, Mr President.
- 23 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 24 Witness, do you have your sheet of paper with you and the pen?
- 25 THE WITNESS: No.

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1 PRESIDING JUDGE EBOE-OSUJI: All right. You will be given a piece of paper
2 and a pen. That will enable you write down some of the names you may be required
3 to spell from time to time.

4 Mr Garcia, you said we can mention the name of the plaza.

5 MR GARCIA: Yes, without -- without a problem.

6 PRESIDING JUDGE EBOE-OSUJI: Okay.

7 MR GARCIA: I just don't -- I'd like, if possible -- indeed we can do that in public, no
8 problem.

9 PRESIDING JUDGE EBOE-OSUJI: All right. You mentioned a certain plaza.
10 We're having difficulty getting the name. Can you write it down on the piece of
11 paper and then try and spell it for us.

12 Yes?

13 MR GARCIA:

14 Q. Could you spell that out for us, Mr Witness?

15 A. It's P-A-R-N-G and then you put an apostrophe and then you put it E-D-U-N-Y.

16 PRESIDING JUDGE EBOE-OSUJI: Did you spell P-A-R-N-G-'-E-D-U-N-Y.

17 THE WITNESS: Yes.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you.

19 THE WITNESS: Plaza.

20 MR GARCIA:

21 Q. Now you say one of the vehicles which was carrying orange ballot papers was
22 burnt down. Can you just --

23 A. Not orange, original --

24 Q. Original.

25 A. -- ballot papers to the station were burned down, people were thinking that this

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1 is the fake ballot papers.

2 Q. Now, I just want to know this: Were you there to -- to witness this? Did you
3 see this?

4 A. I didn't but I find out the car -- or, at least, the shell of the car, but I was not
5 there when it was really -- I didn't see who was -- who burn it but I just go and see it.

6 Q. All right. So you saw the -- the shell of the car?

7 A. Yes.

8 Q. What did you hear about -- what exactly did you hear about this vehicle? And
9 remember the five seconds.

10 A. Because it was carrying the original ballot papers, people think that it was
11 carrying the fake ballot papers but they just decide to set -- to burn it down, meaning
12 that they have already get what they wanted.

13 Q. Did you have any in -- can you tell us what type of a vehicle this was that was
14 burnt down?

15 A. It was burnt down because it was carrying the -- the -- the ballot papers and the
16 police who were escorting it they were -- no have -- have -- didn't have chance to -- to
17 stop the public from doing it.

18 Q. What type of a vehicle was this?

19 A. It was -- I cannot remember the -- the type of, but it was small -- a small car
20 which is -- which pick-up but it's small like Datsun, like that. I cannot know exactly
21 because it was already burnt down when I'm there -- when I was there.

22 Q. And where did you hear this information from?

23 A. No, they -- the people (indiscernible) just will hear the information, then the
24 people started running toward that direction, then I also went -- run that direction
25 and find out it was that -- the car was already burned down.

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1 Q. Now, do you know who would have burnt down the car?

2 A. I say I didn't see exactly when they are doing it, but I can confirm that
3 may -- maybe it was the same youths who are going around the streets demanding
4 they should protect, that they should know that people were carrying the fake ballot
5 papers.

6 Q. Now, was there anything else you'd like to tell us about that evening, the
7 evening of 26 December that occurred that you would have been a witness to?

8 A. I can't remember for now, but it -- I'll -- I don't -- but anything that happened
9 that particular day, but if I will remember in another time I will just say.

10 MR GARCIA: Your Honours, I would like to go into a private session for five
11 minutes approximately.

12 PRESIDING JUDGE EBOE-OSUJI: Before you do, at line 4, is it I can't or I can
13 confirm?

14 MR GARCIA:

15 Q. Mr Witness, I asked you a question as to if you knew who would have burned
16 down the car and you say I said didn't see exactly when done but -- and we're having
17 difficulty wondering if you said I can or I can't confirm maybe it's the same youth;
18 which one is it?

19 A. I have said that I -- I didn't see who was burning the vehicle, but I was
20 just -- because I was not there when the incident happened.

21 PRESIDING JUDGE EBOE-OSUJI: So you said you could not confirm?

22 THE WITNESS: Yes, I could not confirm, yeah.

23 PRESIDING JUDGE EBOE-OSUJI: Okay.

24 MR GARCIA: Your Honours, I'd like to go into private session, five minutes
25 approximately.

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1 PRESIDING JUDGE EBOE-OSUJI: Private session.

2 (Private session at 12.16 p.m.) Reclassified as Open session

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

4 MR GARCIA:

5 Q. Now, Mr Witness, I'd like to take you to 27 December, the next day. What
6 were you doing on that day?

7 A. I just went straight, around 6 -- 5.30, I went straight to where I could
8 make vote -- make in -- I went straight to (Redacted)

9 Q. And where is (Redacted)

10 A. (Redacted)

11 Q. All right. So we're speaking about 5.30 in the morning, is that correct?

12 A. Yes.

13 Q. What were you doing at (Redacted)

14 A. I just went to vote in my polling station called (Redacted)

15 Q. What did you do after that?

16 A. After that, there was somebody who was coming around and came and picked me, we
17 went round the part of Eldoret North to see what was going on, (Redacted)

18 (Redacted)

19 (Redacted)

20 Q. All right. Just to be clear on that matter, you say that (Redacted)

21 (Redacted)

22 A. Yes.

23 Q. (Redacted)

24 A. (Redacted)

25 (Redacted)

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1 (Redacted)

2 Q. And just for the record, it's page 62, line 8 (Redacted) Is that --

3 A. Yes.

4 Q. Is that it? Is that correct?

5 A. Yeah.

6 Q. (Redacted)

7 (Redacted)

8 And remember the five seconds, Mr Witness.

9 A. (Redacted)

10 (Redacted)

11 MR KHAN: Mr President, can I clarify what I heard at page 62, line 8 was an

12 (Redacted) if that could be clarified It just says (Redacted) that was

13 clarified to (Redacted) But I heard the witness say (Redacted)

14 PRESIDING JUDGE EBOE-OSUJI: Witness, was that what you said, (Redacted)

15 (Redacted)

16 THE WITNESS: Yes. (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 PRESIDING JUDGE EBOE-OSUJI: All right. (Redacted)

22 (Redacted) --

23 THE WITNESS: Yes.

24 PRESIDING JUDGE EBOE-OSUJI: -- (Redacted)

25 THE WITNESS: Yes.

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- 1 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 2 (Redacted)
- 3 THE WITNESS: Any other.
- 4 PRESIDING JUDGE EBOE-OSUJI: -- any other -- (Redacted)
- 5 THE WITNESS: Yes.
- 6 PRESIDING JUDGE EBOE-OSUJI: Did you say "Yes"?
- 7 THE WITNESS: Yes.
- 8 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 9 THE WITNESS: (Redacted)
- 10 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 11 THE WITNESS: Yes.
- 12 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 13 MR GARCIA:
- 14 Q. (Redacted)?
- 15 A. (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 Q. And just to clear up the transcript, page 64, line 1, it's (Redacted)
- 21 (Redacted)
- 22 A. Yes.
- 23 Q. Now, can you tell us, (Redacted) ?
- 24 A. (Redacted)
- 25 (Redacted)

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1 Q. And just to be clear, Mr Witness, are you saying (Redacted)

2 A. (Redacted)

3 Q. So that's a correction at line 10 of page 64. And I see that it must be corrected as well at

4 line 3, 2, 3 and 4. It's actually (Redacted)

5 (Redacted)

6 (Redacted)

7 A. (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. All right. Now, just in regards to Ziwa, what is the predominant ethnic group

13 that lives in the Ziwa area?

14 A. Kalenjin, mainly Nandis.

15 Q. Are there any other ethnic groups that live in that area?

16 A. Majority are Nandis. I cannot confirm any other tribes. Maybe there is, but in

17 small number. But after that there is a farm called Mafuta. It was Kikuyus there,

18 some Kikuyus.

19 Q. So the name of the farm at line 6, page 65, is M-A-F-U-T-A, is that correct,

20 Mr Witness?

21 A. Yes.

22 Q. Now, you say that there were youths standing (Redacted)

23 (Redacted) These were youth of what ethnic group?

24 A. Nandis.

25 MR KHAN: Mr President, we're in private session still. Unless we're going to ask

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1 further questions that would somehow compromise the identity of the witness,
2 perhaps this can be done in public. By its very nature it's a location where many,
3 many scores of people at least would have attended and perhaps it can be done in
4 public.

5 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia.

6 MR GARCIA: Your Honour, I'm just proceeding cautiously. (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 MR KHAN: Mr President, what I was anticipating is, cognizant of what my friend is saying,
14 the witness of course can simply detail (Redacted)

15 (Redacted) That can be done in a couple of minutes perhaps in private, and

16 then of course we can go into public regarding what (Redacted) We've

17 already heard evidence that there was --

18 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

19 MR KHAN: Indeed.

20 MR GARCIA: The problem is, your Honour, but the substance of his testimony, the

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 PRESIDING JUDGE EBOE-OSUJI: How much longer do you think?

2 MR GARCIA: Just a couple minutes more, your Honour, in this regard. And then I
3 just want to broach another subject related as well to the elections. I'll ask the
4 witness a couple of questions, and I'll see if I can lead that in public.

5 PRESIDING JUDGE EBOE-OSUJI: All right. We'll remain in private session.
6 Proceed, Mr Garcia.

7 MR GARCIA:

8 Q. (Redacted)

9 (Redacted)

10 A. (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. (Redacted)

15 A. (Redacted)

16 (Redacted)

17 Q. (Redacted)

18 (Redacted)

19 A. (Redacted)

20 Q. (Redacted)

21 A. (Redacted)

22 Q. (Redacted)

23 A. (Redacted)

24 (Redacted)

25 Q. (Redacted)

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- 1 (Redacted)
- 2 A. (Redacted)
- 3 MR GARCIA: (Redacted)
- 4 (Redacted)
- 5 Q. (Redacted)
- 6 (Redacted)
- 7 A. (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 Q. (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 A. (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 Q. (Redacted)
- 18 A. (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 MR GARCIA: We can go into public, your Honour.
- 22 PRESIDING JUDGE EBOE-OSUJI: Public session.
- 23 (Open session at 12.31 p.m.)
- 24 THE COURT OFFICER: We are in open session, Mr President.
- 25 MR GARCIA:

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1 Q. Now, Mr Witness, can you tell us what you observed at the Uasin Gishu
2 Primary School on the 27th of December?

3 A. It was just counting from 6 o'clock in the evening, just was receiving the results
4 from different place and making together and then count them.

5 Q. And can you tell us how things went while they were counting the results?

6 A. Anyway, it was just counting from -- it was the ballot boxes arriving from
7 different polling stations, different areas, just they counting them until the whole
8 night. So there was nothing on -- taking place there but counting the whole night.

9 Q. So tell us were you there when the results were finally given?

10 A. I wasn't there because I stay around -- until around after midnight and then
11 I -- then I just go home. And then later on in the morning I -- I just went other part of
12 the town, but I just arrive later on around before few after 11, I think, when the results
13 of the -- were announced. I cannot remember exactly the time, but I wasn't there
14 exactly.

15 Q. All right. And when they were delivering the results, did things run
16 smoothly?

17 A. Yeah, they were celebrating and chanting and now they said, "Now we have
18 win from the ground. What you are after now is the national."

19 Q. Who was declared the winner?

20 A. In Eldoret North, Honourable William Ruto.

21 Q. Now, were there any other people that were declared as winners in their
22 particular locations?

23 A. There are so many councillors. The majority were ODM who were declared
24 winners.

25 MR GARCIA: I'd like to go into private session, your Honours, for about five

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1 minutes.

2 PRESIDING JUDGE EBOE-OSUJI: Private session.

3 (Private session at 12.34 p.m.) Reclassified as Open session

4 THE COURT OFFICER: We're in private session, Mr President.

5 MR GARCIA:

6 Q. Now, Mr Witness, I'd like to take you to 28 December, the next day. Can you
7 tell us what you did on that day?

8 MR KHAN: Mr President, just so there's no confusion with the witness, the witness
9 stated that he was there until midnight, so we're already on the 28th, and he said that
10 he came back to town in the morning of the 28th after 11 o'clock in the morning. So
11 the witness has already taken us to the morning of the 28th, 11 a.m., and he's back in
12 the town of Eldoret.

13 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, overruled.

14 MR GARCIA:

15 Q. So, Mr Witness, what happened on the 28th? What did you do?

16 A. I have said that (Redacted) where -- just around 11, or
17 somewhere there. And then when the results was announced then Honourable Ruto
18 was declared and then some many councillors were also declared, but there was one
19 councillor who was having -- their votes was not clear. That is one of the Market
20 Ward in Eldoret, where ODM candidates was declared against what exactly what was
21 supposed to be because a PNU candidate was supposed to be declared the winner.

22 Q. Now just so we can understand this clearly, you said Baket (phon)?

23 A. Market Ward.

24 Q. Market?

25 A. Yes.

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1 Q. Okay.

2 A. Market.

3 Q. Can you -- can you spell that for us, please?

4 A. Market like in Swahili -- in English. Market.

5 Q. So it's the Market Ward?

6 A. Yes.

7 Q. All right. And you said that an ODM candidate was declared against what
8 exactly what was supposed to because of a PNU --

9 A. Because, (Redacted) the candidate of PNU was supposed
10 to be declared the winner.

11 Q. Why do you say the candidate of PNU was supposed to be declared the winner?

12 A. Because he was --

13 Q. Remember the five seconds. Remember the five seconds and you can answer
14 the question.

15 A. (Redacted)

16 (Redacted) and she would have been declared the winner.

17 Q. Do you remember the name of this person who was supposed to be declared the
18 winner?

19 A. Jane Wangoi.

20 MR GARCIA: So the first name is Jane, just for the record, page 72, line 2.

21 Q. Now, you say she was leading. (Redacted)

22 (Redacted)

23 A. (Redacted) I

24 hear that she was -- because it was in town, the counting was counted for the wards, I

25 (Redacted) but anyway even the results were actually sure that

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1 she was ahead but the figure was small. But she was declared -- she was about to declare the
2 winner, but later on she wasn't declared again and the other candidate of ODM, Mr Kiptum,
3 was declared.

4 MR GARCIA: So for the record, it's page 72, line 13, it's Mr Kiptun, K-I-P-T-U-N?

5 Q. Is that correct, Mr Witness?

6 A. Eh?

7 Q. The name of the person who was declared the winner finally was --

8 A. Is what?

9 Q. K-I-P-T-U-N?

10 A. Kiptum, "M."

11 Q. "M", not an "N". All right. So K-I-P-T-U-M as in Mark.

12 Now, can you tell us how it came to be that Mr Kiptum was declared the winner
13 when you're saying that Ms Jane Wangoi was in the lead? Can you explain that to
14 us? And remember the five seconds, Mr Witness.

15 MR KHAN: Mr President, perhaps this definitely can go into public session?

16 (Redacted)

17 (Redacted) and it

18 would be interesting if -- for the public to hear it.

19 MR GARCIA: I have no problem with that, your Honour. It's just what followed
20 afterwards that -- and that's the reason why I wanted to go into private, but indeed
21 we can do it but it will be for two or three minutes, I imagine. Then I will ask to go
22 into private.

23 PRESIDING JUDGE EBOE-OSUJI: Public session.

24 See if you can get around coming back to private session in two minutes. You have
25 some other things that can be discussed in public, if you can?

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1 MR GARCIA: Unfortunately, your Honour, I'd looked it over and I'd like to broach
2 the next subject in private. Unfortunately I think it's the only way to do it, but this
3 subject obviously we can exhaust it in public.

4 PRESIDING JUDGE EBOE-OSUJI: All right. Proceed, please.

5 Open session.

6 (Open session at 12.40 p.m.)

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

8 PRESIDING JUDGE EBOE-OSUJI: Thank you.

9 MR GARCIA:

10 Q. Now, Mr Witness, I'm just going to put to you the question again. Can you
11 explain to the Court, if you're able to, how is it that you were saying that Ms Wangoi
12 was in the lead and then finally it's Mr Kiptum of the ODM who was declared the
13 winner? Now, remember the five-seconds rule and then explain it fully.

14 A. Yes. During the counting, Jane Wangoi was leading until the end of the
15 counting. Then there was some -- there was the counting of the ward was taking
16 place until 11, then the declaration was not taking place and then because Wangoi
17 was leading, but later on the results were showing that she was leading, but there was
18 a confusion where the returning officer stop announcing. Instead of announcing she
19 starts just dilly-dallying and later on declare Kiptum, but actually during the counting
20 Wangoi was leading.

21 But actually I can say this: I didn't hear for myself. I can hear -- I hear from some
22 other people saying that this is not -- I can quote. It's, "Mheshimiwa say that, "No,
23 declare Kiptum and then she can go to court if she want."" But that one I didn't hear
24 myself, but I hear from other people.

25 Q. So let's just -- I just want to be clear on that matter. So this is not something

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1 that you witnessed yourself, but you said that you heard it from other people that --

2 A. During the counting I was there when Wangoi was leading, but when they
3 reach a final announcement we were waiting for Wangoi to be declared but Kiptum
4 was declared the winner.

5 Q. Now, I'd like you to just explain to that further -- explain to us that further.
6 You said that, "Mheshimiwa says that, 'No,' declare Kiptum." What happened
7 exactly? Remember the five seconds and explain that?

8 A. This is not my --

9 PRESIDING JUDGE EBOE-OSUJI: You mean -- you mean the part he said he wasn't
10 there when the thing was said?

11 MR GARCIA: I'll be more precise.

12 Q. Mr Witness, I understand that you were provided this information?

13 A. Yes.

14 Q. But what exactly -- how exactly did that happen? And you stated that Mr --

15 MR KHAN: Mr President, what my learned friend can ask is, "What were you told?"
16 Not more than that.

17 MR GARCIA: Your Honour, I'd like to put back the witness in context. He's given
18 the start of an explanation, and I want to bring him back on what he's said already to
19 the Court so he can further explain that.

20 PRESIDING JUDGE EBOE-OSUJI: Yes. The difficulty was when the witness said
21 he was not there and -- well, that already begins to get, you know, a little difficult for
22 forensic purposes, but -- and then when you ask him "What exactly happened?" So
23 we do not know what you meant by that; whether you meant the circumstances in
24 which he was told that and the surrounding circumstances of that including what
25 anyone would have said to him, or what? That's the problem, but that's what you

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1 meant, wasn't it?

2 MR GARCIA: Indeed, your Honour, and I'll just reformulate my question now.

3 Q. Mr Witness, if you can just tell us, take your time, exactly what was told to you
4 in regards to what had been -- what had happened with Mr Mheshimiwa?

5 PRESIDING JUDGE EBOE-OSUJI: Not Mr -- not Mr Mheshimiwa, but I think
6 Mheshimiwa should be the title.

7 MR GARCIA: Yes.

8 THE WITNESS: I said that during the counting of the votes I was there and they
9 were almost ahead of it, but I later went away. But when I was coming, when
10 Wangoi was declared -- no, not -- Kiptum was declared, I heard from some people
11 saying that it take a lot of time before he was declared, Kiptum, but I heard from
12 some people saying that Mheshimiwa has said that Kiptum should be declared and
13 then if the lady have any complaints she could go to court.

14 MR GARCIA: Thank you for that clarification, Mr Witness.

15 Your Honours, I'd like to go into a private session.

16 PRESIDING JUDGE EBOE-OSUJI: Before we do, back to the tallying of the votes of
17 Ms Jane Wamboi?

18 THE WITNESS: Wangoi.

19 PRESIDING JUDGE EBOE-OSUJI: Wangoi, relative to Mr Kiptum's vote. Did you
20 say you were present all the time?

21 THE WITNESS: During the counting, but --

22 PRESIDING JUDGE EBOE-OSUJI: One second. All the time from the beginning of
23 the return of votes for Ms Wangoi and its counting until the end when Mr Kiptum
24 was announced the winner, were you present all along when all the votes were being
25 counted for the two of them?

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1 THE WITNESS: I was just there part of it until -- because the -- the polling papers
2 from different polling stations just arrived from the Market Ward. There
3 was -- Market Ward it populated, it is having a lot of votes, so it was -- the counting
4 was fairly slow for -- for the ward. But I was there until almost after 11 and then the
5 following day I was -- I came when I hear that Wangoi was leading. And actually
6 you could see from the early she was leading in the early counting of the votes. And
7 actually, according to information, she was leading until the end. But on
8 announcing the -- Wangoi I was there, but I didn't hear that -- how it end up leading,
9 but I didn't know exactly, but actually she was leading from the time I was in the
10 counting hall.

11 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, I will leave it at that. You can ask
12 follow-up questions on that if you want.

13 MR GARCIA: Just a couple of follow-up questions.

14 Q. Now, Mr Witness, who told you this about this, this whole thing that
15 Mheshimiwa would have intervened? Who told you about this incident?

16 A. One of them is number 29.

17 Q. Is there anybody else on the list? You say that one of them. Is there anyone
18 else on the list who told you or it's just number 29?

19 A. There is some people I cannot remember their names right now because they
20 say the same.

21 Q. And without revealing obviously the name of this person, person number 29,
22 where was this person during, to your knowledge, during the counting of votes?

23 A. (Redacted)

24 Q. One minute.

25 I'll address that question in -- in private session, your Honour, and I'd ask that we go

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1 into private session, please.

2 PRESIDING JUDGE EBOE-OSUJI: For how long now? For the rest of -- we'll go to
3 private session.

4 MR GARCIA: Indeed, your Honour.

5 (Private session at 12.49 p.m.) Reclassified as Open session

6 THE COURT OFFICER: We're in private session, Mr President.

7 PRESIDING JUDGE EBOE-OSUJI: Private session.

8 MR GARCIA:

9 Q. Now, Mr Witness, you were about to tell us what person number 29 was doing on that
10 day. You said (Redacted) of, and I cut you off. Can you continue
11 that, please?

12 A. Of --

13 Q. Remember the five -- remember the five seconds.

14 A. Of (Redacted)

15 Q. And where was he (Redacted) Just -- I
16 know you're eager to answer, but just wait five seconds.

17 A. He was there around (Redacted)

18 Q. And when did he tell you this? When did he give you this information?

19 A. After 11 on 28.

20 Q. Now, in regards to Ms Jane Wangoi you said that there was a mention of her
21 going to court. Can you tell the Court if you know anything about what happened
22 with this -- this case, with Ms Jane Wangoi?

23 PRESIDING JUDGE EBOE-OSUJI: Before we do that, Mr Garcia, person number 29,
24 whom you say (Redacted) did you see him there with your own
25 eyes being (Redacted)

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1 THE WITNESS: Yes, I was seeing him there.

2 PRESIDING JUDGE EBOE-OSUJI: You saw him there with your own eyes?

3 THE WITNESS: I saw him there, yeah, yeah.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 MR GARCIA:

6 Q. Now in regards to Ms Jane Wangoi, can you tell the Court what happened with
7 her -- her case?

8 A. She went to court. As the case went through, about almost three or four years,
9 and then -- and then the court declare her the winner. And even person number 29
10 was a witness during the case. And she was declared the winner later on after
11 almost four years.

12 Q. Where did you get this information from that she was eventually declared the
13 winner before the court?

14 A. I --

15 Q. Remember -- remember the five seconds.

16 A. (Redacted)

17 (Redacted)

18 Q. So what else did you do for the remainder of the day, 28 December?

19 A. I can't recall very well what I specifically did, but actually I was in town but I
20 can't remember very well what I did the whole -- the other part of afternoon. Yeah.

21 Q. Well, did you stay in town? Did you go back home? What did you do?

22 A. Go home later, but I can't remember the exact time which I -- I went home. I
23 can't recall what I -- exactly I did after 29 -- after 28, yeah, unless you help me -- to
24 help me -- remind me what exactly.

25 Q. Well, do you remember what you would have done in those days, 28, 29?

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1 What -- what comes to your mind?

2 A. There was actually a follow-up of listening to the -- what was going in the
3 National Tallying Station -- tallying -- in Nairobi, national tallying -- KICC and
4 to -- were following up what -- the results of -- of what was going on there.

5 Q. And what else?

6 A. There was a lot of people. Actually, in town there was a lot of tension again
7 (indiscernible) because of people -- people imagining that election might be rigged.
8 They were sure that election will -- will not -- will be rigged, but by then Raila Odinga
9 was leading, there was -- they were waiting for the results, but later on, after few days,
10 and then things changed again.

11 Q. You say there was a lot of tension in town?

12 A. Yes.

13 Q. Can you tell us how that was manifested or --

14 A. People were imagining that maybe election will not be fair, maybe it will be
15 rigged because the results of some other parts has just come in and now Mheshimiwa
16 left for Nairobi to help in the National Tallying Centres.

17 PRESIDING JUDGE EBOE-OSUJI: Now, the word at line 6 would be tallying, would
18 it, Mr Garcia, National Tallying Station?

19 Was that what you said?

20 THE WITNESS: Yes. Centres, yes. In KICC, Nairobi.

21 PRESIDING JUDGE EBOE-OSUJI: At KICC, Nairobi?

22 THE WITNESS: Yes.

23 PRESIDING JUDGE EBOE-OSUJI: Yes, I think I heard KICC.

24 MR GARCIA:

25 Q. Now, Mr Witness, your residence at the time, I understand, was place number 7

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1 I think you said to us?

2 A. Mm-hmm, yes.

3 Q. How much time did you spend there at this place, number 7?

4 A. All through to 30 December.

5 PRESIDING JUDGE EBOE-OSUJI: Did you say December or the same month?

6 THE WITNESS: December.

7 MR GARCIA:

8 Q. And this area where you live in, what is the area known as?

9 A. Mmm?

10 Q. What is the area? Is it --

11 A. It's number 7.

12 Q. And can you just tell the Court what ethnic groups live in this area?

13 A. Majority are Kalenjins and -- yeah, majority are Kalenjins.

14 Q. Now, do you recall what you would have done at the later part of 28 December,
15 what did you do the rest of the day?

16 A. Can't recall very well.

17 PRESIDING JUDGE EBOE-OSUJI: Maybe in relation to something generally,
18 Mr Garcia, might assist him.

19 MR GARCIA: Well, your Honour, I'm a bit reluctant to lead in any which way on
20 this matter. If need be, perhaps I can resort to refreshing the witness's memory.

21 PRESIDING JUDGE EBOE-OSUJI: Try again.

22 MR GARCIA:

23 Q. Now, Mr Witness, you personally, did you attend any -- any meeting, any
24 gathering?

25 A. Yes, later in the evening.

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1 Q. Pardon me?

2 A. Later in the evening.

3 Q. Can you -- can you tell us -- later in the evening. Can you tell us what -- what
4 you did later in the evening? You -- you can -- you don't need the -- actually, we're
5 in private session for the moment and just if you can tell us what you did?

6 A. After the -- I was in the -- I went to the location number 7 I think around the
7 evening of that day.

8 Q. And what did you do?

9 A. Later in the evening there was some youths who came to say that we want -- we
10 have a meeting somewhere and then they're saying, okay, we have to go together.

11 Q. All right. And these youth, can you tell what ethnicity they were?

12 A. Kalenjin.

13 Q. Now, had you ever seen these youths prior to that?

14 A. Yes, they are neighbours of the area.

15 Q. And you said that they came to say we have a meeting somewhere.

16 A. Yeah. (Redacted)

17 Q. Where were you when the youth came to see you? Remember the five
18 seconds.

19 A. I was outside (Redacted) which is not far from -- people were discussing in
20 groups about what is going on in elections and, yeah, I was there.

21 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, we have to leave it there.

22 MR GARCIA: Indeed, your Honour.

23 PRESIDING JUDGE EBOE-OSUJI: Witness, we will take our lunch-break now.

24 THE WITNESS: Mm-hmm.

25 PRESIDING JUDGE EBOE-OSUJI: And we will come back at 2.30.

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- 1 We will go now into closed session to usher the witness out of the courtroom.
- 2 (Closed session at 1.01 p.m.) Reclassified as Open session
- 3 THE COURT OFFICER: We are in closed session, Mr President.
- 4 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 5 (The witness stands down)
- 6 PRESIDING JUDGE EBOE-OSUJI: The Court will rise.
- 7 THE COURT OFFICER: All rise.
- 8 (Recess taken at 1.01 p.m.)
- 9 (Upon resuming in open session at 2.35 p.m.)
- 10 THE COURT USHER: All rise.
- 11 Please be seated.
- 12 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 13 Witness, welcome back. Mr Garcia will continue his examination-in-chief.
- 14 Mr Garcia, we are in open session.
- 15 MR GARCIA: Your Honours, I'd ask that we go back into private session.
- 16 PRESIDING JUDGE EBOE-OSUJI: For how long?
- 17 MR GARCIA: I'd say for the next 30 minutes, your Honour, at a minimum.
- 18 PRESIDING JUDGE EBOE-OSUJI: Private session.
- 19 (Private session at 2.36 p.m.) Reclassified as Open session
- 20 THE COURT OFFICER: We're in private session, Mr President.
- 21 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 22 MR GARCIA:
- 23 Q. Good afternoon, Mr Witness. When we left off before the lunch-break, you were
- 24 speaking to us about youths who came to your estate and you went to I think it's
- 25 (Redacted)

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1 A. Yes.

2 Q (Redacted) Is that correct?

3 A. Yeah.

4 Q. Now, can you tell us approximately what time this was on the 28th?

5 A. Actually this date it was around after 10 in the evening.

6 Q. Now, can you tell us -- (Redacted) exactly?

7 A. In an area called (Redacted)

8 Q. Can you spell that for us, the name of the place (Redacted)

9 Remember the five seconds.

10 A. (Redacted)

11 Q. So (Redacted) that's correct?

12 A. No, not (Redacted)

13 Q. (Redacted)

14 A. Uh-huh, (Redacted)

15 Q. Now, Mr Witness, I just want to make sure that everything you say gets onto
16 the transcript and everyone can hear you, so when you're responding to questions
17 make sure that you're speaking directly into the microphone and you're not speaking
18 away from the microphone --

19 A. Okay.

20 Q. -- so that it's clear. So don't -- try not to move around too much when
21 you're -- when you're ending your sentences. We want to hear the start and the end
22 of your sentences clearly, all right?

23 A. Okay, yes.

24 MR KHAN: And, Mr President, on that topic, at line 4 the witness didn't say "not
25 guilty." He said (Redacted)

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1 MR GARCIA: Indeed, your Honour.

2 Q. And this place (Redacted) how far away is it from your -- your house in location
3 number 7?

4 A. I'm not sure, but maybe (Redacted) or more.

5 Q. Now you said that youths came to get you. How many youths were there?

6 A. There were so many, but we went there because already some of them were
7 in -- already go there, but we were about seven of us, so I cannot remember exactly,
8 but about seven, but the rest have already gone there before.

9 Q. Now, did you know at that point in time what this was all about, the meeting (Redacted)
10 (Redacted) Remember the five seconds.

11 A. Yes, as I said earlier during I told you before that I -- I will not actually saying
12 what I've -- because I didn't attend the real meeting and I cannot support what I
13 have -- I hear it from a group source to be here in the court so I could decide to say,
14 okay, this information I'm about to say maybe I heard from the source of the people
15 where -- were there, so I should not be taken to be -- to take this story to be mine and I
16 would like to -- to -- in front of the Court to say this story should -- maybe I can say
17 what happened, but I cannot exactly say it was mine or I was in the meeting.

18 Q. All right, Mr Witness. Thank you for that. So I'll just -- I'll just ask you
19 questions and you'll tell us what you observed on that day, all right?

20 A. Okay.

21 Q. Now, did you eventually end up going (Redacted) on that evening?

22 A. Yes, I do.

23 Q. Once again, just remember that after I ask my question, wait a couple of seconds,
24 when you see the red light go off and then answer.

25 Tell us, what did you see when you arrived at (Redacted) that evening?

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1 A. There were a group of people outside (Redacted) but anyway the meeting was
2 over if there is any -- if there were any meeting, but it was already over.

3 Q. Now, you say there was a group of people outside of (Redacted) How many
4 people approximately? Remember the five seconds, Mr Witness.

5 A. I think maybe less than (Redacted)

6 Q. Now, do you know -- did you know any of these people who were there, these
7 (Redacted) people approximately? Do you know any of them?

8 A. I know the then (Redacted) is if I
9 can remember, (Redacted) I know (Redacted) himself and some of the neighbours I cannot
10 remember their names.

11 Q. Now, when you arrived there, can you just give it a -- give us a portrait of what
12 was happening at that point?

13 A. People were just talking, chatting in -- in groups. No -- no really anything was
14 going on, but people were talking about elections results, and actually I heard from
15 some of them that they were -- they are worried that election might be rigged. That
16 is what they said they were discussing, but it's not me myself who heard about it.

17 Q. Now, I understand that you were not there and you were not listening to what
18 was said during the meeting --

19 A. Yeah.

20 Q. -- but did anyone give you information as to what was said during this
21 meeting?

22 MR KHAN: Mr President, I do object. Hearsay of course is admissible as a matter
23 of general -- generality, but your Honours have previously alerted the parties
24 regarding the perilous nature and dubious evidential utility of such evidence,
25 particularly when it goes to important aspects of a case.

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1 The witness has been so far very careful to underline at least twice that he was not at a
2 meeting if indeed there was a meeting.

3 PRESIDING JUDGE EBOE-OSUJI: Objection is sustained.

4 MR KHAN: I'm grateful.

5 MR GARCIA:

6 Q. Now, Mr Witness, you mentioned a (Redacted) Can you tell us who this
7 person is?

8 A. (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. Can you tell us of what ethnicity he was?

13 A. Kalen -- Kalenjin/Nandi.

14 Q. And when you arrived there at (Redacted) can you tell us where
15 mister -- what (Redacted) was doing?

16 A. He was just chatting with some people, a group of people, and no major things
17 that he was talking. He was just talking in a group.

18 Q. (Redacted)

19 A. Yeah. Yes.

20 Q. Now, can you tell us who Mr Kibor is?

21 A. He is an elder. He was one of the elder of ODM and a respected person in
22 Uasin Gishu. That is how -- what I can describe of him at the moment.

23 Q. You said he was an elder of the ODM. Can you explain to us what that means?

24 A. I have -- I am not a member of -- I wasn't a member of ODM, but I understand
25 according to sources that some elders were for -- elected for to be elders of the party

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1 so -- ODM at the national level, so I don't know what is the function of elders or they
2 are just sitting down to give advice or what. I don't know by then.

3 Q. And do you know who would have elected him as elder of the party?

4 A. I cannot -- not know, but I know it's maybe national office because he's -- he's
5 somebody who is known across the politics of Kenya.

6 Q. You also said he was a respected person in Uasin Gishu?

7 A. Yes.

8 Q. Can you tell us what you mean by that?

9 A. For a long time he has been in the leadership of the parties, especially KANU
10 and now -- by then ODM. He has been also in other political parties as a prominent
11 person.

12 Q. Now, at that point in time, in 2007, did Mr Kibor occupy any other functions,
13 public functions?

14 A. As an elder of ODM, he was one of the people who -- who was among the
15 leaders of the ODM in the region.

16 Q. And after 2007, after the post-election violence, did he occupy any other
17 functions?

18 MS BUISMAN: Mister --

19 THE WITNESS: Um --

20 MS BUISMAN: I think we can go into public at this stage.

21 MR GARCIA: We can for this portion, your Honour, yes.

22 PRESIDING JUDGE EBOE-OSUJI: Open session.

23 (Open session at 2.49 p.m.)

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

25 MR GARCIA:

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1 Q. Now, Mr Witness, my question was: After 2007 did Mr Kibor to your
2 knowledge occupy any other functions?

3 A. He continued being a prominent politician from ODM and also worked as a
4 businessman (indiscernible), but I cannot con -- he doesn't have an official public post
5 as I know, but he's a farmer and he's also a businessman.

6 Q. Now you said he was a farmer as well. Where was his farm, or his farms?

7 A. His farms is along mostly in Uasin Gishu, Ziwa area and the area of Burnt
8 Forest, but I'm not sure, but mostly Ziwa areas have some farms there.

9 Q. Now, these farm in the Ziwa area, did they have any name?

10 A. We have -- I think one of them is Mafuta Farm and I cannot know the other one,
11 the name that where his original home area, but I -- yeah, I don't know exactly the
12 name of the farm.

13 Q. Now I just want to come back on Mafuta Farm. Where is that?

14 A. Along -- not far from Ziwa also.

15 Q. Now, do you know what kind of farming is done there on Mafuta Farm?

16 MR KHAN: Mr President, is this relevant, the farming, agricultural prowess or
17 crops growed by Jackson Kibor?

18 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia?

19 MR GARCIA: It will become relevant, your Honour. I have just a couple of
20 questions.

21 THE WITNESS: He's a farmer, wheat farmer, and he has some transport lorries and
22 beyond that I don't know another one.

23 MR GARCIA:

24 Q. Now, you said he had some transport lorries?

25 A. Yes.

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1 Q. Right. Do you know what kind of lorries these are, what kind of
2 transportation?

3 A. Yes, long trailers which carry goods from Mombasa to any other part of the
4 country, or even outside.

5 Q. Now I just want to be clear on this subject. Have you ever seen any of these
6 lorries?

7 A. Yes, I see. It's common -- it's quite common, it's always in town, Eldoret and
8 other areas.

9 Q. And just to be clear on this matter, are they recognizable in any -- in any way?

10 A. Yes, it is written "Mafuta Farm."

11 Q. And where is that written exactly on the lorry?

12 A. At the side of the door of the vehicle and even at the top of, yeah, "Mafuta
13 Farm."

14 Q. And you said that Mr Kibor was also a businessman. Is there any other
15 business that he -- that he was engaging in as well apart from this farming?

16 A. Apart from farming and transportation, I don't know any other.

17 Q. And the transportation business, what was it exactly?

18 A. Transport goods from the port of Mombasa to other -- other areas. I don't
19 know.

20 Q. Now, you mentioned two people that you saw on that day. Is there anybody
21 else that you would have seen that you could identify, who you would know the
22 name of?

23 A. Yes, the name Isaac Maiyo.

24 Q. Now, can you tell the Court who this person is, Isaac Maiyo?

25 A. Yes, in Eldoret North CDF chairman, Constituency Development Fund

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1 chairman.

2 Q. I just want to make sure, Mr Witness. You mentioned that he's the chairman of
3 the Constituency Development?

4 A. Fund, CDF.

5 Q. The CDF, so the Constituency Development Fund; is that correct?

6 A. Yes, I don't know if it's -- anyway.

7 Q. And could you tell the Court is that -- how one gets to become a chairman of the
8 CDF?

9 A. He must be nominated by an area member of parliament.

10 Q. And in this case can you tell us how Mr Isaac Maiyo came to become the
11 chairman of the CDF?

12 A. I think he was nominated by Mheshimiwa William Ruto.

13 Q. Now, apart from being chairman of the CDF, did Mr Isaac Maiyo occupy any
14 other functions to your knowledge?

15 A. Before -- during the election of 2007, I think he was coordinator of ODM in that
16 region of North Rift.

17 Q. Can you tell us exactly what that -- what does that function comprise? What
18 does a coordinator do of the ODM?

19 A. I think he supervised the election of the -- giving out the document -- the
20 certificates or standing during the nomination of the party can -- he's the one to -- to
21 supervise. If I know -- if it is that the function right.

22 Q. Now, do you know how Mr Isaac Maiyo came to be -- came to occupy that
23 function, supervisor?

24 A. I don't know really, but it's by the fact that he is -- he come from Eldoret North
25 and Mheshimiwa is -- or one of the national official of the ODM, the pentagon.

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1 MR KHAN: Mr President, this is the difficulty we get into because in a few months'
2 time when reviewing the transcript, the witness is being asked a question without
3 saying he definitively knows somebody's position at what time and if so the basis of
4 knowledge. He says, "I think" and so on and so forth and, your Honour, based upon
5 that supposition further questions are asked and that puts us in danger and that's
6 why, precisely why, in my respectful submission such speculative questions should
7 not be put.

8 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, these are matters you can deal with
9 either in your own cross-examination or in submissions at the appropriate time.
10 Looking at line 18, the words "less the one" I believe should be "he's the one," as is he
11 is the one. Those were -- that's what the witness said there, the one to supervise.

12 MR GARCIA: Indeed, your Honour.

13 MR KHAN: And, Mr President, at 19 perhaps also if -- I think the witness qualifies
14 "if I know -- if that indeed the function right."

15 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, can you clear that up, or do you
16 accept Mr Khan's correction in that instance?

17 MR GARCIA: I'm just looking at the -- which -- I'm sorry.

18 PRESIDING JUDGE EBOE-OSUJI: Line 19 of page 93.

19 MR GARCIA: Yes, I'm going to ask the witness. Maybe he can clarify that.

20 Q. Mr Witness, as to the -- you spoke to us about Mr Maiyo having this role of
21 supervising the certificates during the elections of the party. Now, what can you tell
22 us about that? Is it something you knew at the time or something you're not sure
23 about? Which one is it?

24 A. I'm sure, because it was in a public knowledge that he was supervising the
25 election and nomination of the party ODM by -- in the area.

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1 Q. All right. Now, you've also confirmed to a certain degree that he was the
2 chairman of the CDF at that point in 2007. Can you tell the Court what is the basis of
3 your -- of your knowledge on that?

4 A. Eldoret North (Redacted) and I can know that chairman of CDF is
5 somebody well-known.

6 Q. Now you do understand, Mr Witness, the reason why I'm asking you these
7 questions is because you've said on several occasions "I think" before you give the
8 answer.

9 A. No, this one is not "I think." He was the chairman of CDF. Excuse me.

10 Q. Now can you tell us what, if any -- what, if any, type of relationship this person
11 Mr Isaac Maiyo would have had with Mr William Ruto at this time, 2007?

12 A. (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 THE WITNESS: Okay.

17 MR GARCIA:

18 Q. Now, Mr Witness, my question was: What can you tell us about any
19 relationship, if there was any, between Mr Isaac Maiyo and Mr Ruto at that point,
20 2007?

21 A. Their -- their relationship it must be strong because if he was -- he elect him as a
22 chairman of CDF, he must be somebody he trusts and also he was also given some
23 role to supervise election of the party. So that's also show that he was very close and
24 working with him closely and he's a person who is also part of his people.

25 Q. Now, Mr Witness, can you tell if -- can you tell us what, if any, was the

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1 relationship between Mr Kibor and Mr Ruto at this point in time, 2007?

2 A. As I've said earlier, that Kibor was actually a national figure as an elder of party
3 and also Honourable Ruto was also part of the national and in fact national figure of
4 their party, so those people have a relationship as the political figures in the party.

5 MR GARCIA: I'd like to go into a private session for a couple of minutes, your
6 Honour.

7 PRESIDING JUDGE EBOE-OSUJI: Private session.

8 (Private session at 3.03 p.m.) Reclassified as Open session

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

10 MR GARCIA:

11 Q. Now, Mr Witness, I understand that you arrived at (Redacted) once the
12 meeting had already ended. How much time did you stay there for?

13 MR KHAN: Objection, Mr President. The witness was quite clear he doesn't even
14 know if there was a meeting.

15 MR GARCIA: Your Honour, it was my understanding that there had been one and
16 the witness is saying that he didn't arrive there on -- at the start, he arrived there once
17 it had ended, but I can ask the question to the witness.

18 MR KHAN: Well, Mr President, all of us should be careful when a witness is in the
19 box and is trying to tell the truth. Your Honour, the witness said quite clearly, and
20 I can go back to the transcript, when the meeting ended, if indeed there was a meeting.
21 So, your Honours, one can't inject when the witness says if indeed there was a
22 meeting the affirmative proposition that a meeting took place. That is to contradict
23 the evidence under oath of the witness who is trying to be honest.

24 PRESIDING JUDGE EBOE-OSUJI: Can you rephrase, Mr Garcia?

25 MR GARCIA:

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1 Q. Now, Mr Witness, when you -- when you arrived at (Redacted) do you
2 know what had occurred there at (Redacted) before you -- you arrived there, if
3 anything?

4 A. Repeat again.

5 Q. I understand that you arrived at (Redacted) at a certain time. Can you
6 tell us what, if anything, had occurred there before you had arrived? Did you find
7 out about that?

8 A. That's why I've said earlier that actually I don't want to use information that I
9 get from the people who were there to confirm that there was any meeting or there
10 was a meeting or to say, okay, people were talking about that Kikuyus are already
11 rigged the election and now we need to be prepared. So -- so those are the
12 information that I never wanted to use as part of my testimony here in the court.

13 Q. We understand that, Mr Witness. Can you tell us what the people were talking
14 about when you got there?

15 A. They were just talking speculation --

16 MR KHAN: Mr President, I object. The Court has ruled upon this and in my
17 submission the Court and indeed the Prosecution, who we hope has a statutory
18 obligation to get to the truth, should be extremely hesitant to press a witness when
19 the witness themselves realising the solemnity of the occasion is reluctant to rely
20 upon what he said by way of -- of hearsay, and for us to step in and require the
21 witness to give evidence that the witness himself is not comfortable about giving or
22 confident about is really to step into the realms of darkness and the shadows.
23 We should stay on the straight and narrow as to what the witness saw and direct
24 evidence. Your Honours have ruled on this issue and my learned friend can't get
25 round it, in my respectful submission, by putting the same question in a different

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1 way.

2 MR GARCIA: It's a different question, your Honour. I'm asking the witness what
3 he heard simply. What were the people talking about? That's the question that I've
4 asked.

5 PRESIDING JUDGE EBOE-OSUJI: What do you expect to -- do you expect him to
6 talk about? Does that answer contemplate the meeting? If not, he will not give that
7 answer. The ruling is that the witness has said he does not want to repeat hearsay
8 about a meeting. That's the ruling.

9 Now, is your question designed for another purpose?

10 MR GARCIA: Simple purpose, your Honour, is for the witness to just relate to the
11 Court what the people were talking about following this -- when he arrived there.

12 PRESIDING JUDGE EBOE-OSUJI: Objection sustained.

13 MR GARCIA:

14 Q. Now, Mr Witness, I'd like us to go to 29 December. Now, can you tell us what
15 you did on that day, on 29 December 2007?

16 A. On 29th I was in the house in the morning hours and the results of the elections were
17 there and announced all over the country. People were actually following the -- the results
18 from Nairobi and people were started becoming impatient over the delay of the
19 announcement of the results. And people now started meeting from place -- different places,
20 and on that particular date is -- I was in the same area, location 7, and around 11 or before 11
21 also there was some -- also youths wanted to gathered to know information further what is
22 going on. And actually the area
23 councillor was very active at that particular moment of being elected (Redacted)
24 leaders around gathered together around under (Redacted)
25 (Redacted)

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1 Q. (Redacted)

2 A. (Redacted) And that meeting, it was just a few people
3 gathering, about less than hundreds of youths, and mostly from those areas of
4 surrounding.

5 Q. All right. So you say that around on that particular date on the -- we're
6 speaking about the 28th, and around 11 or before 11, there was also some youth, and
7 you say "wanted to gather or know information." What were the youth doing?

8 MR KHAN: Mr President, I'm sorry, line 11. Are we on the 28th or the 29th?

9 THE WITNESS: 29th.

10 MR GARCIA: Sorry. I must have misspoke if I said the 28th. 29th.

11 MS BUISMAN: Do we need to lead this in private?

12 MR GARCIA: Yes, we do, your Honour. This is the type of information, (Redacted)
13 (Redacted)

14 PRESIDING JUDGE EBOE-OSUJI: All right. We will remain in private.

15 MR GARCIA:

16 Q. Now, Mr Witness, you say there was some youth who wanted to gather and
17 know information. Who were these youths?

18 A. Notable people there are the Kalenjin youths who are living around the area (Redacted)
19 (Redacted) and (Redacted)

20 MR GARCIA: And just for the transcript, it's page 101, line 1, it is (Redacted) It is
21 (Redacted)

22 Q. Is that correct, Mr Witness?

23 A. Yes.

24 Q. (Redacted) And what were these youths doing exactly on that day, on
25 the 29th?

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1 A. Actually the youths were like they were prepared for anything, any eventuality,
2 because they were really knowing that election will not be fair or it will be rigged.

3 Already they heard information about that, and they say, Okay, we have to be ready
4 to see what we can do after we get orders from above.

5 Q. Now, where were you on that specific morning of the 29th?

6 A. Yes, (Redacted)

7 Q. Now, you say that there was a meeting?

8 A. Yes, (Redacted)

9 (Redacted)

10 Q. All right. So there was a meeting (Redacted)
11 is that correct?

12 A. Yes, yes.

13 Q. Now, did you or not -- did you or did you not attend this meeting?

14 A. I attend.

15 Q. Now, can you explain to the Court how it is that you came to attend this
16 meeting?

17 A. By then area I was living, it's like the people around (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted) So I joined them. We joined them

21 together. They came and called me that you are going for the meeting to hear
22 what -- what is going on.

23 Q. All right. I just want to go back through that. (Redacted)

24 (Redacted)

25 (Redacted)

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- 1 A. Yes.
- 2 Q. And as a result (Redacted)
- 3 (Redacted)
- 4 A. (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 Q. (Redacted)
- 8 (Redacted)
- 9 A. (Redacted)
- 10 Q. (Redacted)
- 11 (Redacted)
- 12 A. (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 Q. (Redacted)
- 17 (Redacted)
- 18 A. (Redacted)
- 19 (Redacted)
- 20 Q. (Redacted)
- 21 (Redacted)
- 22 A. I am saying --
- 23 Q. Just take the five seconds and then explain it to us. Take your time.
- 24 A. Okay. Because I was -- (Redacted)
- 25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 A. Yes.

5 Q. Can you tell us how that happened? What happened exactly?

6 A. Anyway they were gathering to know information further about election and
7 know about exactly what is going nationally. Those are the things that they could be
8 related -- related by the area councillor.

9 (Redacted)

10 (Redacted)

11 (Redacted) -- inform me about

12 the meeting and say that this meeting should be everybody. If you are a Kalenjin,
13 why should you not attending this meeting?

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted) Okay, we are going to see the letter. We can have to go to town
20 for that, if there is anything we can see, that to understand there was demonstration
21 and prayers and so many things that is going on in town.

22 Q. All right. I want to understand you. (Redacted)

23 (Redacted) We are going to what
24 exactly?

25 A. You have to be in the meeting to know exactly what is going on. So that is the

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1 only -- I can put it that way only. Let not put more words, because they were saying,
2 yes, to know what is going on, especially from Nairobi.

3 MR KHAN: Mr President, can I correct? I think in fact at line, page 104, line -- line 11,
4 what the witness says (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted) So perhaps we should be a bit careful.

9 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia?

10 MR GARCIA:

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 They are youths from the area.

15 Q. And they are youth of what ethnicity?

16 A. Kalenjin.

17 Q. And can you tell us precisely what they told you (Redacted)

18 A. Was just saying that we have a meeting outside there, so let's go out to hear now
19 so -- because it is like you have to be part of us because you are Kalenjin. Why didn't
20 you attend the meeting? So I take a stake to attend the meeting also.

21 Q. And you say that they say -- did they say something about why don't you
22 attend as a Kalenjin?

23 A. As you are a part of Kalenjin, yes.

24 Q. (Redacted)

25 A. (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. Okay. How many -- how many of these people were there in all?

7 A. What?

8 Q. How many people were there in all that came to you, to see you?

9 (Redacted)

10 (Redacted) There were about six or seven. But who were living there were three.

11 Q. (Redacted)

12 A. (Redacted)

13 (Redacted) So I wanted also to go to hear what is exactly -- what is going on,

14 because by then there was nothing wrong which was came -- taking place. So I had

15 to attend.

16 Q. I understand. And you respond to us (Redacted)

17 (Redacted)

18 A. (Redacted)

19 MR KHAN: Mr President, firstly, you know, examination needs to be -- it is difficult

20 sometimes, I know, but one needs to be quite balanced. Your Honour, one needs to

21 look at the context. There is a question: (Redacted)

22 (Redacted)

23 (Redacted) So I want to go to hear. I want

24 to go to hear what is exactly -- what is going on, because by then there was -- I -- nothing

25 wrong.

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- 1 And, your Honours, then to put another question focused on part of an answer (Redacted)
2 (Redacted) is perhaps to
3 queer the pitch a little bit.
4 PRESIDING JUDGE EBOE-OSUJI: Not quite so. The Prosecutor had asked: (Redacted)
5 (Redacted) There's nothing wrong with that
6 question.
7 Witness, you can answer it.
8 THE WITNESS: (Redacted)
9 (Redacted) And actually they were saying, "You are part of the community. Why
10 don't you attend and join us?" (Redacted)
11 (Redacted)
12 MR GARCIA:
13 Q. So, Mr Witness, I understand from your testimony that you eventually, that you
14 did attend --
15 A. Yes.
16 Q. -- this meeting? Yes.
17 Can you tell us where precisely this meeting took place?
18 A. (Redacted)
19 Q. Now, when you arrived at this -- at the meeting place, can you tell us what you
20 saw there?
21 A. I see youths and -- who were sitting down and they were talking. Somebody
22 was talking with them, and then they continued that way. The meeting continued.
23 I just go and sit down in the place, the same place.
24 Q. How many youths were there approximately when you arrived?
25 A. If I'm not wrong, (Redacted)

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1 Q. And what did you do when you arrived there?

2 A. Just sit down.

3 Q. Now you said somebody was talking. Who was talking when you arrived?

4 A. A councillor.

5 Q. What councillor?

6 A. (Redacted)

7 Q. What language was (Redacted) speaking in?

8 A. Kalenjin.

9 Q. Now, can you tell the Court what (Redacted) was saying?

10 A. He was just talking about election results and say, "Okay, these Kikuyu are not
11 good. It seems they are going to rig election and we have to be ready for anything to
12 make sure that we demand our right."

13 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, one second please.

14 Thank you. Please proceed.

15 MR GARCIA:

16 Q. Was there anything else that you heard (Redacted) say?

17 A. He was also (Redacted)

18 Q. How much time did he talk for?

19 A. Maybe less than ten or ten minutes.

20 Q. And apart from the two subjects that you've spoken to us about, did he say
21 anything else that you remember?

22 A. He was just commenting about the -- how different areas of -- of elect rigging is
23 taking place.

24 Q. Can you give us more information on that? What was he -- what was he
25 saying in how the different areas of election rigging was taking place?

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- 1 A. It's part of Molo and Meru areas?
- 2 Q. And the second place you mentioned? I think you said Molo and what --
- 3 A. Meru. Meru.
- 4 Q. M-E-R-U?
- 5 A. Mm-hmm.
- 6 Q. Now, you said that (Redacted) said "And we have to be ready for
- 7 anything to make sure that we demand our right." Can you explain that to us?
- 8 What did he mean by that?
- 9 A. If -- it's exactly the way you say it, to demand our right is to make sure that if
- 10 going to be any rigging then they will -- they will be ready for any even -- anything,
- 11 like war.
- 12 Q. Did (Redacted) say anything else in regards to this, about being ready?
- 13 A. He was saying that we hear information from our leader.
- 14 Q. What did he say exactly in that regard?
- 15 A. We were saying that -- we are waiting information from our leader. He
- 16 was -- he hear information, we are waiting.
- 17 Q. And when he was -- he said, "We are waiting information from our leader." In
- 18 your understanding who was -- who was the leader that he was referring to?
- 19 A. The only leader was -- in Nairobi was Mheshimiwa Ruto.
- 20 Q. Can you tell the Court what is the word he used for the -- for leader?
- 21 A. Kirwakindet.
- 22 Q. Can you spell that for us, please?
- 23 A. K-R -- K-R-K-I-R-W-A-N-T-E-D.
- 24 Q. I see that you are writing it down. It might be the best way of going about this.
- 25 A. K-I-R-W-A-R -- no, W-K-I-N-T-E -- E-T.

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1 Q. Can you just repeat that in one?

2 A. K-I-R-W-A-K-I-N-D-E-T.

3 Q. Thank you. So that's Kirwakindet?

4 A. Eh.

5 Q. All right. Now you are saying the only leader in Nairobi was Mheshimiwa

6 Ruto. Is that -- that's your testimony?

7 A. Mm.

8 Q. And when he's referring to the only leader, what he means by that?

9 A. Because he was leading -- he was --

10 MR KHAN: I'm sorry, Mr President, I don't think the evidence was that (Redacted)

11 (Redacted) is talking about the only leader. It's the witness himself who is saying that the

12 only leader in Nairobi is William Ruto. So we need to be a bit careful and a bit

13 accurate about these matters.

14 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia?

15 MR GARCIA: Yes, indeed, the question is to the witness what does he understand

16 by that?

17 Q. What did you understand by -- when (Redacted) -- when, to your idea, the

18 only leader is Mheshimiwa Ruto in Nairobi?

19 A. Because --

20 PRESIDING JUDGE EBOE-OSUJI: One second, Mr Garcia. Now can you start

21 afresh with that question so that there is no confusion.

22 MR GARCIA:

23 Q. Now, you said, Mr Witness, in response to one of my questions, that the only

24 leader in Nairobi was Mheshimiwa Ruto, right?

25 A. Yes.

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1 Q. Now, to your understanding, what does that -- what -- what did he mean by
2 that, the --

3 PRESIDING JUDGE EBOE-OSUJI: That's the problem, Mr Garcia. Mr Khan's
4 observation is that the witness said in his view -- it appeared that the witness's
5 testimony was to the effect that the only leader in Nairobi was Mr Ruto. It becomes
6 difficult to ask him what he understood that to mean when we are talking about
7 whatever it is that (Redacted) would have said. It seems to be crossing the wire
8 between possibly what the witness made of what (Redacted) said and what
9 (Redacted) actually said being rolled up and then proceeding with a question.

10 MR GARCIA: I certainly don't want to confuse the witness or the Chamber on this
11 matter, your Honour.

12 PRESIDING JUDGE EBOE-OSUJI: Yes, that's why I said let's be careful with that
13 information.

14 MR GARCIA: Certainly.

15 MR KHAN: Your Honour, if it helps my learned friend, I mean a very simple
16 question is did (Redacted) say who was Kirwaketet if that helps?

17 MR GARCIA:

18 Q. Mr Witness, you have mentioned (Redacted) speaking. How much time
19 did you stay there in all at this meeting (Redacted) ?

20 A. I confirm what Mr Khan had just ask, he didn't say who was Kirwaketet, but
21 he was just referring, asking Kirwaketet from Nairobi, but according to me because
22 one of the things is to know how our election was going on and Mheshimiwa was in
23 tallying centre in Nairobi, so I refer to him as -- because -- but he didn't say it which
24 Kirwaketet or which leader.

25 Q. Thank you for that, Mr Witness.

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1 A. Okay.

2 Q. Now, how much time did you spend at this meeting?

3 A. About 40 minutes, or less.

4 Q. Now, you've mentioned that (Redacted) spoke. What happened
5 afterwards?

6 A. There was somebody who is -- I don't know his name, but he was a (Redacted)
7 by the tribe, was living around there. He was -- also somebody was talking a lot, but
8 this guy (Redacted) -- I think a (Redacted) but I cannot
9 know his name, but he was talking also about -- he was angry that Kikuyus were already rig
10 election and we have to be prepared. So he was, like, showing the identification of the
11 houses around there belonged to Kikuyus.

12 Q. Now, I just want to make sure about this. Did this person address the crowd,
13 just like (Redacted) or was it just the person who was talking?

14 A. Yes, he did. He addressed shortly.

15 Q. All right. And just to be sure, this was -- from what I understand of your
16 testimony, this was after (Redacted) spoke?

17 A. Yes.

18 Q. Now, you say that he was (Redacted). Are you
19 speaking about (Redacted)?

20 A. Yes.

21 Q. You say also he was (Redacted) by tribe?

22 A. Yes.

23 Q. Now is this also of the Kalenjin ethnicity?

24 A. Yes.

25 Q. Now, you said that he -- when he was speaking you said that he was angry that

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1 the Kikuyu -- that Kikuyus were already rigging election and that they had to be
2 prepared?

3 A. Yes.

4 Q. Can you give us more information on what he said exactly?

5 A. He was saying that he's -- because we have already known that election is going
6 to be rigged, we have to be -- these people should go out from our side also.

7 Q. And when he was referring to "these people" what ethnic group? What is he
8 referring to?

9 A. Kikuyu.

10 Q. And just on that same issue, when he says "go out from our side," what did that
11 mean? Go out from where?

12 A. Repeat again.

13 Q. You said that these people had to "go out from our side also."

14 A. Okay. To be driven from Rift Valley or the area of Eldoret to -- to the area,
15 their ancestral land in Central Kenya.

16 Q. You said he was also showing the identification of the houses around there
17 belonged to Kikuyus?

18 A. Mm-hmm.

19 Q. How was he doing that? Can you -- can you explain that to us?

20 A. He was showing a paper which writes as -- because he was sitting down he was
21 pointing by finger around five houses, but the rest he was just saying "the other side",
22 but he didn't mention which side, okay.

23 Q. All right. So the -- you say that he was pointing out by finger around five
24 houses?

25 A. Yes.

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1 Q. Did you recognise these houses that he was pointing out?

2 A. Yes, (Redacted)

3 Q. And who did these houses belong to?

4 A. Kikuyus.

5 Q. You also mentioned that he was showing a paper. What was that all about?

6 A. Maybe he has written the numbers of the houses of the Kikuyus, but I don't know
7 exactly if indeed (Redacted) he was talking about 35 houses, but I don't confirm
8 that.

9 Q. And just to be clear, about how many houses was he talking about, this person
10 from --

11 A. Was -- was --

12 Q. -- (Redacted) Remember to take five seconds before you respond.

13 A. About 35. 35.

14 Q. And can you tell us what, if anything, he was saying in regards to these houses,
15 the five, the 35 houses?

16 A. He was just saying you have known, but actually he didn't say anything beyond
17 that point that -- he was saying we know. He was talking as if everybody knows.
18 We know these houses. So that's -- there is nothing else he said from there.

19 PRESIDING JUDGE EBOE-OSUJI: Witness, there have been two numbers
20 mentioned, five houses, 35 houses. Can you help me understand? Did he identify
21 five houses, or did he identify 35 houses, or did he identify five houses immediately
22 and said the rest were somewhere else? Can you help me understand?

23 THE WITNESS: Thank you, your Honour. He was just pointing five houses,
24 because it was seen from where we were.

25 PRESIDING JUDGE EBOE-OSUJI: He was pointing at five houses --

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1 THE WITNESS: Yes.

2 PRESIDING JUDGE EBOE-OSUJI: -- that were seen from where you were?

3 THE WITNESS: But the others were not seen, but he was pointing the other side,
4 but you could not see. Yes.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 MR GARCIA:

7 Q. Now, what did you understand as to -- as to why he was pointing out these
8 houses, these houses that belonged to Kikuyus?

9 A. When he was talking he was so angry that he could show that he was -- really
10 wanted that these houses to be -- yeah, but he didn't say anything.

11 Q. I just want to bring you back on what you -- what you just said. He was -- he
12 really wanted that these houses to be, but he didn't say anything?

13 A. I think according to me, not him, he was saying that maybe he was referring
14 that -- showing people so that in case of anything they know what is -- who are living
15 in those houses so they could do anything. They maybe go there to chase them or
16 burn their houses or anything else. That is what happened after a few days from
17 that time.

18 Q. All right. And just to be clear for the record, this is not something that you
19 heard, but this is something that you think?

20 A. He was just identifying the house, but he didn't say what action will be taken.

21 Q. Now, did he say anything else in regards to these houses?

22 A. No, he was just saying these people will never vote with us and they know what
23 to do next, but he didn't say what kind of action he is going to take, but he could not
24 say anything.

25 Q. And how much time did he speak for?

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1 A. Yeah, at least six or seven minutes. Yeah, six or seven minutes.

2 Q. Do you remember what he said when he finished speaking to the crowd?

3 A. I can't remember very well, but what I have just tell you is the identification of
4 the houses.

5 Q. And what was the reaction of the crowd that was there listening when he was
6 talking about these things?

7 A. The reaction was that actually people were not -- yes, they were not -- they
8 didn't show anything that they will do anything, but they just say, "Okay, we have
9 known," but they didn't say anything beyond that point.

10 MR KHAN: Mr President, just for the sake of accuracy, the previous page, 117,
11 line 20, the witness is reported as saying "No, he was just saying these people who
12 have never fought with us" and I think it's vote, who never vote or voted with us, but
13 perhaps that can be clarified?

14 MR GARCIA:

15 Q. Mr Witness, just to be clear, did you say "vote" or "fought"?

16 A. No. That's what he has said.

17 Q. Okay. Now, Mr Witness --

18 PRESIDING JUDGE EBOE-OSUJI: Wait, wait. I think he said "what he has said,"
19 referring to Mr Khan, what Mr Khan said he -- the witness made a motion of the head
20 in the direction of Mr Khan.

21 You meant to say that the word should be "vote"?

22 THE WITNESS: Yes.

23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 MR GARCIA:

25 Q. Now, Mr Witness, you've stated that you heard a (Redacted) speak. Also

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1 a person from (Redacted) Now, this person from (Redacted) had you ever seen him
2 previous to this day?

3 A. Yes, he's -- he was living around (Redacted)

4 Q. Now, apart from these two people, did anyone else address the crowd or speak
5 during that meeting?

6 A. Yes, some others, but I didn't hear them. But so many others spoke before, but
7 I don't know.

8 Q. Now, apart from (Redacted) and this other individual from (Redacted)
9 were you able to identify anybody else that you knew there at the meeting?

10 A. I can't remember very well, but -- yeah, I can't recall.

11 Q. You can't recall if there were people there that you knew apart from these two
12 individuals, or you can't recall their names?

13 A. There were so many other people, it's -- as I tell you, there were youth of
14 hundred, so can't remember -- all of them I cannot know even their names.

15 Q. Now, were there any other important people there apart from the youth?

16 A. There was somebody who was not living in the area, but living far from that
17 area, called (Redacted) . He's now dead.

18 Q. Now, (Redacted) where was he from?

19 A. (Indiscernible) of (Redacted)

20 Q. It's -- (Redacted)

21 A. Yes.

22 Q. And what was (Redacted) doing there at the meeting?

23 A. I think he was also supporting the -- the youths, that these people, Kikuyus,
24 have rigged elections already.

25 Q. Now when you arrived at this meeting, could you tell us what (Redacted)

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1 was doing?

2 A. He was talking just on phone, but I could not know who he was talking to.

3 Q. I understand that you could not tell who he was talking to, but what happened
4 afterwards, after he was talking on the phone?

5 A. He was just saying that, yeah, let's still wait for the leader, the same word that
6 he was using, then we can know what is the way forward.

7 Q. And who was he saying this to?

8 A. When he say a leader we cannot -- yes, he was saying -- referring a leader from
9 up.

10 Q. Let me clarify my question. You said that -- I asked you what happened
11 afterwards, after he was talking on the phone, and you said, "He was just saying that,
12 yeah, let's still wait for the leader"?

13 A. Yes.

14 Q. Who was he saying this to?

15 A. To the crowd.

16 MR KHAN: Mr President, sorry, the witness has answered that.

17 MR GARCIA: Actually, he --

18 MR KHAN: -- previously.

19 MR GARCIA: -- just answered the question right now.

20 PRESIDING JUDGE EBOE-OSUJI: He just answered it saying "To the crowd."

21 MR GARCIA: He hadn't answered the question before.

22 Q. You're saying that, "Let's still wait for the leader." What word was he using for
23 leader?

24 A. The other one which I said before.

25 Q. Can you repeat it, please, for the record?

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1 A. Kirwakindet.

2 Q. Was there anything else that he said?

3 A. No. If there is any, I can't remember.

4 Q. Now, can you explain to us what you understood by this when he said, "Let's
5 just wait for the leader"?

6 A. There was nothing they could have come out from Nairobi confirming that
7 election is rigged, the results of the elections was not yet came out, so anything that
8 they could do -- they could do before and so they should wait for the results, national
9 results, to come out and if there is any rigging, then they could act or demand their
10 rights. That is what it could mean.

11 Q. And to your understanding why was he saying, "Let's wait for the leader"?

12 A. Because actually there was no -- nothing they could do without getting
13 the -- what is happen in Nairobi unless they refer -- they could hear even from the
14 television or anything else from above, from Nairobi, so they could act in any way.

15 Q. I just want to understand that last part, "or anything else from above." Who
16 was above?

17 A. He was talking in Kalenjin. Brak, brak is above, a higher place, like Nairobi
18 now.

19 Q. Can you spell that for us for the record, the word in Kalenjin, brak?

20 A. B-R -- R-A-K.

21 Q. Is it B-R-A-K.

22 A. B-R-A -- okay, B-R-A-K.

23 Q. Now, when he's referring to "above," what does that mean?

24 MR KHAN: Your Honour, he's answered this. He said at line 7, "like Nairobi."

25 The answer has been given to that question.

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1 MR GARCIA: Your Honour, the answer has not been given to that question. The
2 witness -- I am asking him to explain what he means from above?

3 PRESIDING JUDGE EBOE-OSUJI: Witness, you can answer the question.

4 THE WITNESS: I am answering the question according to what I thinking, not
5 because what he said.

6 MR GARCIA:

7 Q. We understand that, Mr Witness.

8 A. So what I am thinking is that there was two things could go on in Nairobi:

9 One, the counting of the votes was going on in Nairobi, so the results could be either
10 if Raila will win, that is okay, but if Raila will not win, that is automatic rigging that
11 happened and that is what they will act. So what -- that is what I mean by myself,
12 but didn't say anything beyond that point.

13 Q. Now, I'd like to know when (Redacted) would have said this to the crowd.
14 You've mentioned two people that spoke, that addressed the crowd, (Redacted)
15 and the person from (Redacted) At what point did (Redacted) --

16 A. Between that time. Not far. Between the same - almost the same - time, one
17 another after the other.

18 Q. All right, but can you give us an order? Was it before or after (Redacted)
19 spoke that (Redacted)--

20 A. After.

21 Q. Was it before or after --

22 A. After even (Redacted) spoke.

23 PRESIDING JUDGE EBOE-OSUJI: All right, wait. Witness, let the lawyer finish the
24 question and then you do the five seconds counting in your mind.

25 Mr Garcia, please start again. You can always use a motion of the hand to help the

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1 witness.

2 MR GARCIA:

3 Q. Now, Mr Witness, my last question was: Was it before or after the person from
4 (Redacted) spoke that (Redacted) said these things to the crowd? Remember the
5 five seconds.

6 A. After the (Redacted)

7 Q. Now, was there anything else that (Redacted) said apart from that?

8 A. No.

9 Q. Now do you recall, Mr Witness, who was the last person to have spoken at this
10 meeting?

11 A. I think it was him, because after that we -- people dispersed to go to town.

12 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, we are in private session. Do we
13 need to remain?

14 MR GARCIA: Your Honours, I wanted to lead this evidence regarding this meeting
15 in private session considering the fact that it did take place (Redacted)
16 (Redacted)

17 The next -- the next part of his testimony actually, some of it, a small portion of it, can be led
18 in public session, but then afterwards (Redacted)

19 (Redacted)

20 (Redacted)

21 PRESIDING JUDGE EBOE-OSUJI: That's understandable.

22 MR GARCIA: This part, your Honour, I just -- I see the amount of time remaining
23 and I just want to close this part of his testimony on this specific subject.

24 I can -- I can already tell the Court that on Monday we can start in public, but with a
25 small segment, and then immediately (Redacted)

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1 (Redacted)

2 PRESIDING JUDGE EBOE-OSUJI: All right. But again we know that you may
3 have your flow and we don't want to get in the way of it unnecessarily, but if it is
4 possible in light of private and public session going in and out to group large chunks
5 of what can be done in public together, that will be greatly appreciated by the process.

6 MR GARCIA: Indeed, your Honour.

7 PRESIDING JUDGE EBOE-OSUJI: Proceed, please.

8 MR GARCIA:

9 Q. Now, Mr Witness, just in regards to this meeting, was anything decided at this
10 meeting? What was the last word on it?

11 A. The last word was that the councillor said, "Okay, let's go to the town and we
12 shall get back to you in case we get information from anywhere and then we can
13 proceed on," but he didn't talk anything that they were planning but said, "Let's go to
14 town to join other people in their marching, or demonstrating, to know that we are
15 angry at this side of our place."

16 Q. Now, you said that he said that they were going into town and you also said
17 that they were going to get information. Where were they going to get information
18 from?

19 A. Those, the results, could be announced from Nairobi.

20 Q. Now, did you eventually go into town afterwards?

21 A. Yes, later around before 1.

22 Q. And what was the atmosphere like in town on that evening?

23 A. Actually, people had started becoming impatient. People were coming to town
24 in large numbers to demonstrate, doing a lot of things in town on that particular day,
25 demanding to know what is going on.

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1 Q. You say "People were coming into town in large numbers ..." These are people
2 of what ethnicity?

3 A. Most of them were Kalenjin, but they were coming to march in town,
4 demonstrations as well, all over anyway, but which I attended was in town, Eldoret.

5 Q. You say they were doing a lot of things in town. What exactly were they
6 doing?

7 A. They were demonstrating, also singing in the streets, blocking roads and many
8 other things. Not as using anything, but they were just lying on the road, doing
9 many things in the road.

10 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, look at the word at line 13 on the
11 current page. Is that "a lot" or is it the name of a place?

12 MR GARCIA: I can clarify with the witness.

13 PRESIDING JUDGE EBOE-OSUJI: I think he said which he attended. He said, "...
14 which I attend ... in town ..." and we see "a lot." I don't know whether he meant that.
15 Maybe the whole sentence so he can --

16 MR GARCIA: I can re-read to him.

17 Q. Now, Mr Witness, you -- in response to one of my questions you said, "Most of
18 them were Kalenjin, but they were coming to march in town, demonstrations as well,
19 all over anyway, but which I ..." did you say "attended in town a lot"?

20 A. No, I just was just observing. I didn't attend. I didn't participate in this.

21 Q. All right.

22 A. In this marching myself. I was just seeing people.

23 Q. Okay. So you were observing this?

24 A. Yes, I didn't --

25 PRESIDING JUDGE EBOE-OSUJI: "... in town ..." -- did you say "... in town, Eldoret,"

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1 or "... in town a lot"?

2 THE WITNESS: No, Eldoret town.

3 MR KHAN: Mr President, just a very small matter. Page 125, line 21, the witness
4 said quote, "'Let's go to town to join other people, that they are marching or
5 demonstrating to ..." and it says "know" and I think the witness said "show," S-H-O-W
6 "... to show that we are angry at this side."

7 PRESIDING JUDGE EBOE-OSUJI: Either word would make sense in the context,
8 but to avoid confusion can we clear it up, Mr Garcia?

9 MR GARCIA:

10 Q. Now, Mr Witness, did you say "show"?

11 A. No, I don't know what exactly. Read it.

12 PRESIDING JUDGE EBOE-OSUJI: Yes, I think it's better to -- question and answer
13 perhaps.

14 MR GARCIA: This is page 125?

15 PRESIDING JUDGE EBOE-OSUJI: Yes. You see where we are, Mr Garcia?

16 MR GARCIA: I don't see the line, your Honour. It's --

17 PRESIDING JUDGE EBOE-OSUJI: Right. Line 21, "... demonstrating to know that
18 we are angry."

19 MR GARCIA: Yes.

20 PRESIDING JUDGE EBOE-OSUJI: Is it "... demonstrating to know ..." or "...
21 demonstrating to show ..."? Perhaps the question and the answer.

22 MR GARCIA:

23 Q. Okay. Now, Mr Witness, I'm just -- I asked you a question, "Now, Mr Witness,
24 just in regards to this meeting, was anything decided at this meeting? What was the
25 last word on it?" And you responded, "The last word was that she could

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1 be ..." -- there may be some other matters that could be clarified there. "Okay, let's go
2 to the town and we shall get back to you in case we get information from -- and,
3 anyway, then we can proceed on, but he didn't talk anything that they were planning
4 but said, 'Let's go to town to join other people, the marching or demonstrating, to
5 know that we are angry ...', or did you say, "... to show that we are angry." Which
6 one is it?

7 A. No, not to show, but anyway it is to join other Kenyans because there were
8 some other part of Kenya who were actually demonstrating by then, but also to say to
9 join other group of the people, to be part of them, to show other people that we are
10 part of them.

11 Q. All right. So over here on the transcript I read, "... demonstrating to know that
12 we are angry"?

13 A. Yes, to show that the -- so that the government will know that we are angry.

14 Q. I think we can --

15 PRESIDING JUDGE EBOE-OSUJI: I think that's enough.

16 MR GARCIA: I think we can leave it at that, your Honour.

17 PRESIDING JUDGE EBOE-OSUJI: Yes, we can, and leave it at that for the day,

18 Mr Garcia, so you start -- you continue on Monday at 9.30.

19 Witness, we've come to the end of the proceedings for the day and for the week, so

20 we will be rising for the weekend and you'll be back in court on Monday at 9.30.

21 Do you understand?

22 THE WITNESS: Thank you, your Honour. Yes.

23 PRESIDING JUDGE EBOE-OSUJI: So we will require you to attend court on

24 Monday at 9.30 so we can continue your testimony.

25 In the meantime, over the weekend, you are not to discuss your testimony with

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1 anybody.

2 Do you understand?

3 THE WITNESS: Yes, I do.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 The only time we want you to discuss what's -- your testimony would be when you're
6 in the courtroom on Monday continuing to talk about what happened, all right?

7 THE WITNESS: Okay, thank you.

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

9 We will go into closed session and to usher the witness out of the courtroom. Then
10 we will rise.

11 (Closed session at 4.05 p.m.) Reclassified as Open session

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

13 PRESIDING JUDGE EBOE-OSUJI: Thank you.

14 (The witness stands down)

15 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

16 THE COURT OFFICER: All rise.

17 (The hearing ends in closed session at 4.06 p.m.) Reclassified as Open session

18 RECLASSIFICATION REPORT

19 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
20 2013, the version of the transcript with its redactions becomes Public.