

Trial Hearing
Witness: KEN-OTP-P-0743

(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 Monday, 26 January 2015
10 (The hearing starts in open session at 9.40 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 Please, court officer, call the case.
16 THE COURT OFFICER: (Interpretation) Thank you, Mr President. The situation
17 in the Republic of Kenya, in the case of The Prosecutor versus William Samoei Ruto
18 and Joshua Arap Sang, ICC-01/09-01/11.
19 We are in open session, Mr President.
20 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
21 Appearances.
22 MR STEYNBERG: Good morning, your Honours. The Prosecution remains the
23 same, except that we are rejoined again this morning by Lorenzo Pugliatti.
24 MR NARANTSETSEG: Good morning, your Honours. The same as last week.
25 Thank you.

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- 1 MR KIGEN-KATWA: Good morning.
- 2 PRESIDING JUDGE EBOE-OSUJI: But I notice that someone's absent and there is a
3 new person.
- 4 MR NARANTSETSEG: Yes, of course. Thank you.
- 5 PRESIDING JUDGE EBOE-OSUJI: Mr Nderitu is not here, that's the point I'm
6 making. Yes.
- 7 MR KIGEN-KATWA: Good morning, your Honours. Mr Sang's team remains the
8 same. Mr Sang is present. Only the interns, Cynthia Bondi and Marie-Ange are
9 absent. Thank you, Mr President.
- 10 MS ALAGENDRA: Good morning, Mr President, your Honours. For the record
11 Mr Ruto is present and the Defence team remains the same.
- 12 PRESIDING JUDGE EBOE-OSUJI: Thank you.
13 And Mr (Redacted).
- 14 MR (Redacted): (Via video link) Good morning, Mr President. And good
15 morning to everyone else.
- 16 PRESIDING JUDGE EBOE-OSUJI: Your appearance also noted on the record.
17 Ms Alagenda, you will continue your cross-examination of this witness. But we
18 had indicated last week that we will get back to you on your indication that you will
19 stay with this witness until Monday next week. We had indicated that that will not
20 happen and, in fact, we have now reviewed the time spent by the Prosecutor
21 examining the witness and also the time spent by Mr Kigen-Katwa.
- 22 In the result, the directive is that you will conclude your cross-examination by
23 Thursday, end of Thursday, in good time to allow any re-examination to be done
24 within that time. So your examination must conclude by Thursday, and that would
25 also, as I said, include any time the Prosecution will need to re-examine. So far they

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- 1 have not been in the habit of using more than 30 minutes generally to re-examine, let's
2 hope that remains the case. All right?
- 3 MS ALAGENDRA: I'll comply, your Honour.
- 4 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 5 WITNESS: KEN-OTP-P-0743 (On former oath)
6 (The witness speak English)
7 (The witness gives evidence via video link)
- 8 THE WITNESS: Mr President --
- 9 PRESIDING JUDGE EBOE-OSUJI: One second, Witness.
10 Would you want to start in open session? You shake your head, so we go to private
11 session.
- 12 MS ALAGENDRA: Yes, please, your Honour.
- 13 PRESIDING JUDGE EBOE-OSUJI: Yes, we will go to private session, and then we
14 will hear the witness as well when we are in private session.
- 15 *(Private session at 9.44 a.m.) Reclassified as Open session
- 16 THE COURT USHER: (Interpretation) We are in private session, Mr President.
- 17 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Thank you very much.
18 Before Ms Alagenda continues, Witness, you wanted to say something?
- 19 THE WITNESS: Yes, Mr President.
- 20 PRESIDING JUDGE EBOE-OSUJI: Yes, proceed.
- 21 THE WITNESS: I just want -- it -- it is just a reminder of what I had asked the
22 Chamber the other -- last week, and you had said that I had to remind you at any time
23 in this process about the Prosecutor's (indiscernible)
- 24 PRESIDING JUDGE EBOE-OSUJI: That if there was something that the Prosecutor
25 had asked you that had resulted in you now remembering something to be corrected

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1 or something, is that it?

2 THE WITNESS: It is actually not a correction, but just to react on what he had said,
3 your Honour.

4 PRESIDING JUDGE EBOE-OSUJI: What is it?

5 THE WITNESS: (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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

19 Ms Alagendra will now continue.

20 QUESTIONED BY MS ALAGENDRA: (Continuing)

21 Q. Good morning, Mr Witness.

22 A. Good morning, Ms Defence.

23 Q. Sir, I'm going to continue asking you questions from where we stopped on

24 Friday, okay?

25 A. Yes, your Honour.

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6 MS ALAGENDRA:

7 Q. Sir, since --

8 A. Your Honour, may I -- may I -- may I have five minutes break?

9 PRESIDING JUDGE EBOE-OSUJI: All right. We will take our break now. Let's
10 take our morning break and then we will reschedule things.

11 The Court will rise.

12 THE COURT USHER: All rise.

13 (Recess taken at 10.31 a.m.)

14 (Upon resuming in open session at 11.05 a.m.)

15 THE COURT USHER: All rise.

16 Please be seated.

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

18 Welcome back everyone. We are in open session.

19 MS ALAGENDRA: Private session, please, your Honour.

20 PRESIDING JUDGE EBOE-OSUJI: Private session.

21 MS ALAGENDRA: In fact, one question in open session, please. In open.

22 Q. Sir, can you tell the Court, without mentioning any names, from your
23 knowledge, the first witnesses that were relied on to confirm the case against Mr Ruto,
24 which political party did they belong to, sir?

25 A. Your Honour, most of them were in PNU.

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1 Q. Thank you, sir.

2 MS ALAGENDRA: If we can go to private, please.

3 PRESIDING JUDGE EBOE-OSUJI: Private session.

4 *(Private session at 11.06 a.m.) Reclassified as Open session

5 THE COURT OFFICER: (Interpretation) We are in private session.

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

7 We will continue until 1. We will take our lunch-break at that time.

8 Proceed.

9 MS ALAGENDRA: Thank you, your Honour.

10 (Redacted)

11 (Redacted)

12 (Redacted)

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13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 PRESIDING JUDGE EBOE-OSUJI: We will leave it there for now, Ms Alagendra.

20 We will take it up at 2.30.

21 Witness, we will take our lunch-break now. We will see you again in the afternoon.

22 The Court will rise.

23 THE COURT USHER: All rise.

24 (Recess taken at 1.00 p.m.)

25 (Upon resuming in open session at 2.34 p.m.)

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- 1 THE COURT USHER: All rise.
- 2 Please be seated.
- 3 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 4 Witness, welcome back.
- 5 Ms Alagendra, we're in open session.
- 6 MS ALAGENDRA: Back in public -- private please, your Honour.
- 7 PRESIDING JUDGE EBOE-OSUJI: Private session then.
- 8 *(Private session at 2.34 p.m.) Reclassified as Open session
- 9 THE COURT OFFICER: (Interpretation) We are in private session, Mr President.
- 10 MS ALAGENDRA: Your Honour, please request for this document I've been
- 11 referring to to be exhibited as an exhibit, please, the ERN KEN-OTP-0116-0243.
- 12 PRESIDING JUDGE EBOE-OSUJI: Any objection?
- 13 MR STEYNBERG: Your Honours, the only observation I have is that it seems to be
- 14 marginally relevant at best, but we don't object.
- 15 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa?
- 16 MR KIGEN-KATWA: I have no objection, Mr President.
- 17 PRESIDING JUDGE EBOE-OSUJI: Admitted.
- 18 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0116-0243 will be
- 19 given the EVD number T-D09-00382. And the document is confidential.
- 20 MS ALAGENDRA: Thank you.
- 21 Q. Good afternoon, sir.
- 22 A. Good afternoon.
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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15 (Redacted)

16 Q. And you've given us a full explanation as to what you meant, so I'm not going

17 to go into that issue, but you'll recall, sir, that what happens in this interview on

18 (Redacted) is that you provided more information to the OTP which was

19 unfavourable to Mr Ruto; do you recall that, sir?

20 A. No.

21 Q. And I'll remind you one of the things you told the OTP during this interview

22 was that in 2002, Mr Ruto slapped Mr John Serut, the MP of Mount Elgon. Do you

23 remember saying that to Mr Garcia, sir?

24 A. I do remember the event, but not what I said to mister -- to the OTP Prosecutor.

25 Q. Well, let's go to your OTP interview.

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- 1 Your Honours, it's at tab 23 of the OTP binder. And it's KEN-OTP-0090-1007, and
2 I'm going to page 1013 -- in fact, 1012.
3 And I'm just going to read to you what you say at lines 179 to 181 of that interview of
4 (Redacted). You said:
5 "Now in these clashes, mostly first of all the Honourable Ruto had gone there, visited
6 the Mt Elgon and in the first place the MP at that particular time was beaten by this
7 Honourable Ruto in front of his people. I can say that."
8 Then at the next page, 1013, you say the MP you are talking about is John Serut.
9 And at line 198 you were asked: "When you say beating him can you just explain
10 that? What do you mean by that? What did he do?" Mr Garcia asks you.
11 And you said: "He went there and slapped him and he could have another slap
12 Farouk also had interfered because at that time Farouk appear to be one of his
13 bodyguard although he was a nominated councillor."
14 Then at line 207 Mr Garcia asks you: "OK so Ruto slapped him, did anything else
15 happen? What happened?"
16 And you say: "Now after that came now the clashes, fighting amongst these same
17 people."
18 Do you recall saying that to Mr Garcia during that interview, sir?
19 A. No, your Honour.
20 Q. You did not say that or you don't recall it?
21 A. I don't remember.
22 Q. Okay. I've just reminded you what you said in your recorded interview and
23 I've read to you from a transcript. Are you seeing it on your screen, sir?
24 A. Sorry?
25 Q. Okay, you see it on your screen. That's the transcript of the recording.

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1 A. Yes. Yes, I do.

2 Q. Okay. So do you now recall that that is what you said during that interview?

3 A. I do recall the event in Kenya, but not me telling the investigators or the
4 con -- people who were concerned.

5 Q. And for the record, sir, what is contained there that Mr Ruto slapped John Serut,
6 that is false, isn't it? That's not true?

7 A. It is true.

8 Q. Okay. Sir, I'm going to show you something. I'm going to play you a video
9 and then I'll ask you some questions, okay?

10 A. Yes.

11 Q. But before that, sir, can you tell me did you witness this event yourself, or did
12 you -- did someone tell you about it? Did you hear about it?

13 A. It was in the -- it was both in TV and newspapers.

14 Q. So you saw it on the TV?

15 A. Yes, your Honour.

16 Q. Okay. So I'm going to play you a video, and it's KEN-D09-0041-0241.

17 And, your Honours, the transcript is at tab 109 of the Defence bundle.

18 (Playing of the video excerpt KEN-D09-0041-0241)

19 MS ALAGENDRA:

20 Q. Sir, did you have a good look at that video I just played for you?

21 A. No, it wasn't clear, your Honour.

22 Q. Do you want me to play it again?

23 A. Of course it will -- if it will be more visible than it was.

24 Q. Okay. But I also want you to listen to what is being reported as well, okay?

25 A. You know the thing that I'm keenly watching is to see Mr Farouk, Farouk

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1 Kibet --

2 Q. Okay.

3 A. -- because the newspapers had captured him.

4 Q. Now, you said you saw this on the news, sir. Did you watch it on the news?

5 A. And the next -- yes, I watch it. And the next day from the newspapers again.

6 Q. And do you remember seeing this clip that I just played for you?

7 A. Yeah, I do remember.

8 Q. And do you remember, sir, that what in fact did happen, which is what is being
9 reported in this news clip --

10 PRESIDING JUDGE EBOE-OSUJI: I thought the witness said if you wanted to play
11 it again or you were not going to play it again?

12 MS ALAGENDRA: Perhaps --

13 PRESIDING JUDGE EBOE-OSUJI: You don't have to.

14 MS ALAGENDRA: -- I'll put my question first, your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: All right. Proceed.

16 MS ALAGENDRA:

17 Q. Sir, did you hear what was being said on this video, in particular it says in
18 relation to Mr Ruto that had no sooner, and no sooner had Mr Ruto "...made more
19 remarks on the issue than Serut shot up with a Tyson like punch that fell on
20 unsuspecting Ruto." Did you hear that?

21 A. I was not interested in the voice, but I just wanted to see Farouk because he was
22 there, more visible and active in that part.

23 Q. Shall I play it for you again?

24 A. Please do it, your Honour.

25 MR STEYNBERG: Your Honour, and I wonder whether while it's being queued up

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1 if my learned friend could clarify whether the witness saw this report? There are
2 more than one TV channel in Kenya.

3 (Playing of the video excerpt KEN-D09-0041-0241)

4 MS ALAGENDRA:

5 Q. Sir, did you hear the news report that it was Serut that punched Mr Ruto?

6 A. But it will be more clear if you also produce the newspapers please, because it
7 was actually clear from the press that Ruto beaten up Serut in -- before his electorate.

8 Q. I will leave that issue for now, sir. I'll come back to it later.

9 And in this interview, sir, on (Redacted), one of the things that you were also trying to
10 explain to Mr Garcia was that (Redacted)

11 (Redacted) Do you remember that?

12 A. No.

13 PRESIDING JUDGE EBOE-OSUJI: Before you proceed, Ms Alagenda, is it fair to
14 say that in the clip you showed there was actually no video of anybody throwing any
15 punches and landing on anyone?

16 MS ALAGENDRA: That is correct, your Honour.

17 PRESIDING JUDGE EBOE-OSUJI: All right. We just thought the record should
18 reflect that.

19 MS ALAGENDRA: Indeed, your Honour.

20 PRESIDING JUDGE EBOE-OSUJI: Proceed.

21 MS ALAGENDRA:

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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16 (Redacted)

17 (Redacted)

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19 (Redacted)

20 (Redacted)

21 (Redacted)

22 Q. Now, let me go to your (Redacted) interviews.

23 And, your Honour, that's at page 18 of the OTP bundle -- tab 18. It is

24 KEN-OTP-0067-0706. And the date of the interview is (Redacted).

25 Now, sir, during this interview with the OTP, you gave them quite a bit of

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1 information about Mr Ruto, which I will come to later. But what is interesting, sir,
2 about this interview is that you actually went to this interview very, very well
3 prepared. You went in there with a detailed set of notes. Do you recall that?

4 A. No, your Honour.

5 Q. Okay. So let's go to tab 19, KEN-OTP-0067-0736, and I'm looking at 0737, and
6 at lines 23 of that interview.

7 Do you see it, sir?

8 A. Yes.

9 Q. Page 0737, and at lines 23, which is the start of the interview, the investigator
10 says, "I am noting that (Redacted) has some written notes."

11 And you say, "Yeah, exactly."

12 And the investigator says "... that he brought with him to the interview today and that
13 he's using to refresh his memory as he is interviewed."

14 And you say, "It is very correct."

15 Do you remember that, sir?

16 A. No, your Honour.

17 Q. Perhaps I'll show you the notes you went to that interview with. And it's at tab
18 69, the Defence bundle, your Honour. It's KEN-OTP-0060-0691.

19 Can you see your screen, Mr Witness?

20 A. I'm seeing it.

21 Q. Do you recognise these notes?

22 A. They're familiar to me.

23 Q. Is that your handwriting?

24 A. Especially the first part, yes, is my handwriting.

25 Q. And did anyone help you write these notes?

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1 A. I don't remember writing them.

2 Q. But you recognise this to be your handwriting?

3 A. Yes, they are.

4 Q. But you don't recall how you came to write these notes, is that what you are
5 saying?

6 A. Yes, Mr President.

7 Q. And let's go to the next page. Is that your signature, sir?

8 A. Yes, it is.

9 Q. And you signed it (Redacted), because that's the date you handed it also to the
10 investigator during this interview. Do you recall that? Does that help you
11 remember how is it you came to write these notes?

12 A. No, it doesn't.

13 Q. And do you remember going to this interview with this note?

14 A. I do just remember going to the interview and talking about (Redacted)
15 (Redacted).

16 Q. But you see, sir, in your interview, all the information that's on this piece of
17 paper is actually included in that interview.

18 A. Sorry?

19 Q. All the information that is contained in this set of notes written by you which
20 you took to the interview is contained in the transcripts of that interview. So my
21 question is: Can you explain why you went to that interview with these notes and
22 told the OTP everything that's in here?

23 A. I actually can't remember going with notes, but I just remember the meeting,
24 especially the part we were discussing about (Redacted).

25 Q. And at the end of the interview, sir, right at the end.

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1 And I'm going to go to tab 20, KEN-OTP-0067-0759. Your Honours, this is the next
2 tab. And I'm going to go to page 0756 -- sorry, 0765, the last page, and at line 179.

3 Can that be put for the witness, please?

4 And, sir, there you were asked by the interviewer at the end of this interview, "Good.

5 OK, anything else? OK, so that's the end of our questions regarding what you've

6 come to talk to us about. Would you like to clarify anything that you've said during

7 the interview? Is there anything else you want to add?"

8 "I don't think there is ..." -- and you say, "I don't think there is anything that I can

9 add -- that I can clarify or add, but I do hope that ... I have just followed my ... what I

10 had wrote here correctly."

11 "OK. You're referring to the notes you'd written in preparation?"

12 And you say, "Exactly, yeah."

13 So you see, Witness, there we have an interview where the interviewer has allowed

14 you to use your notes and give her the information from those notes, and at the end

15 you say you are satisfied with that interview because everything that's in your notes

16 has exactly been said to the OTP.

17 Do you understand what I'm saying, sir?

18 A. I do understand.

19 Q. And my question to you, sir, if you can help the Court understand, why did you

20 go to this interview with these handwritten notes and give them the information that

21 is here? Why?

22 A. I don't remember, your Honour.

23 Q. And it's clear, sir, that at no time did the investigator remove the notes from you

24 or ask you any questions about why you were there talking to her from pre-prepared

25 notes; that is correct, isn't it, sir?

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1 A. I've not understood the question.

2 Q. During the entire interview, I'm putting it to you, during the entire interview,
3 the investigator did not stop you from referring to your notes throughout and neither
4 did she ask you how you prepared those notes or why you prepared those notes
5 (Redacted). Am I wrong, sir?

6 A. I don't know.

7 MS ALAGENDRA: Your Honours, if I could ask for this document to be admitted
8 please, your Honour. It's KEN-OTP-0060-0691.

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 Your Honour, if I can just have this document admitted, please.

22 PRESIDING JUDGE EBOE-OSUJI: Which one?

23 MS ALAGENDRA: The handwritten notes of the witness, KEN-OTP-0060-0691.

24 PRESIDING JUDGE EBOE-OSUJI: Any objection?

25 MR STEYNBERG: No objection, your Honour.

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- 1 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa?
- 2 MR KIGEN-KATWA: No objection, your Honour.
- 3 PRESIDING JUDGE EBOE-OSUJI: Document admitted. And that will be our last
- 4 act for the date.
- 5 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0060-0691_R03 will
- 6 bear the EVD number D09-00384. And the document is confidential in nature.
- 7 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 8 And, Witness, that brings us to the end of our proceedings for today. We'll meet
- 9 again tomorrow. Again, do not discuss your testimony with anyone overnight.
- 10 The Court will rise.
- 11 THE COURT USHER: All rise.
- 12 *(The hearing ends in private session at 4.02 p.m.) Reclassified as Open session
- 13 RECLASSIFICATION REPORT
- 14 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
- 15 2013, the version of the transcript with its redactions becomes Public.