

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 Thursday, 29 January 2015
10 (The hearing starts in open session at 9.33 a.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
15 Court officer, please, the case.
16 THE COURT OFFICER: (Interpretation) Thank you, your Honour.
17 Situation in the Republic of Kenya, in the case of The Prosecutor versus William
18 Samoei Ruto and Joshua Arap Sang, ICC-01/09-01/11.
19 We are in open session.
20 PRESIDING JUDGE EBOE-OSUJI: Thank you.
21 Do appearances remain as they were?
22 MR STEYNBERG: Good morning, your Honours, Mr President. For the
23 Prosecution, Mr Garcia is absent this morning, he will join us later in the day,
24 otherwise the team remains the same.
25 PRESIDING JUDGE EBOE-OSUJI: Thank you.

Trial Hearing
Witness: KEN-OTP-P-0743

(Open Session)

ICC-01/09-01/11

1 Mr Narantsetseg.

2 MR NARANTSETSEG: Good morning, Mr President, your Honours. On our side
3 we remain the same. Thank you.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 Mr Kigen-Katwa.

6 MR KIGEN-KATWA: Good morning, your Honours. Honor Lanham, case
7 manager, is absent, otherwise Sang's team remains the same. And Mr Sang is
8 present. Thank you, your Honours.

9 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra.

10 MS ALAGENDRA: Good morning, Mr President, your Honours.

11 PRESIDING JUDGE EBOE-OSUJI: Yes.

12 MS ALAGENDRA: For the Ruto Defence, we remain the same.

13 PRESIDING JUDGE EBOE-OSUJI: Thank you.

14 Mr (Redacted).

15 MR (Redacted): (Via video link) Good morning, Mr President. And good
16 morning to everyone else.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Good morning to you,
18 too.

19 Ms Alagendra, you will be finishing today and definitely by 3.15, but if you can finish
20 sooner than that, that's even better as you know.

21 Witness, welcome back. Ms Alagendra will continue --

22 WITNESS: KEN-OTP-P-0743 (On former oath)

23 (The witness speaks English)

24 (The witness gives evidence via video link)

25 THE WITNESS: Thank you.

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

- 1 PRESIDING JUDGE EBOE-OSUJI: She will continue her cross-examination.
- 2 We are in open session, Ms Alagendra.
- 3 MS ALAGENDRA: If we can go to private, please, your Honour.
- 4 PRESIDING JUDGE EBOE-OSUJI: We go back to private session.
- 5 *(Private session at 9.35 a.m.) Reclassified as Open session
- 6 THE COURT OFFICER: (Interpretation) We are in private session.
- 7 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 8 Would you be finishing before 3.15?
- 9 MS ALAGENDRA: I'll do my best, your Honour.
- 10 PRESIDING JUDGE EBOE-OSUJI: Thanks.
- 11 QUESTIONED BY MS ALAGENDRA: (Continuing)
- 12 Q. Good morning, Mr Witness.
- 13 A. Good morning, your Honour.
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

- 1
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Page redacted

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Page redacted

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Page redacted

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Page redacted

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Page redacted

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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7 MS ALAGENDRA: Your Honours, perhaps I can do this after the break.

8 PRESIDING JUDGE EBOE-OSUJI: Indeed. We will then take our morning break

9 now. First, let's excuse the witness from the room.

10 Witness, you will be excused and we will see you in 30 minutes for our morning

11 break.

12 (The witness exits the video-link room)

13 THE COURT OFFICER: (Via video link) Mr President, the witness is out of the

14 transmission room.

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

16 (Trial Chamber confers)

17 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, I had to overrule your question

18 that appears at line 7 of page 39.

19 Mr Steynberg, you might want to consider putting on record anything you know

20 about why I would have overruled that question.

21 MR STEYNBERG: I'll have a look. Right now, your Honours, or may I have a

22 chance to --

23 PRESIDING JUDGE EBOE-OSUJI: Later on. You don't have to do it right now --

24 MR STEYNBERG: Thank you, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: -- but it's just so the record is straight on what's

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

- 1 going on.
- 2 MR STEYNBERG: As the Court pleases.
- 3 PRESIDING JUDGE EBOE-OSUJI: The Court will rise.
- 4 (Recess taken at 10.58 a.m.)
- 5 (Upon resuming in open session at 11.36 a.m.)
- 6 THE COURT USHER: All rise.
- 7 Please be seated.
- 8 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 9 Witness, welcome back.
- 10 And Ms Alagendra, we're in open session.
- 11 MS ALAGENDRA: Your Honours, can we go to private session --
- 12 THE WITNESS: Mr President.
- 13 MS ALAGENDRA: -- for about 10 minutes.
- 14 PRESIDING JUDGE EBOE-OSUJI: Private session for about 10 minutes. We'll go
- 15 to private session.
- 16 And Witness, we'll come to you when we're in private session. It looks like you
- 17 want to say something.
- 18 THE WITNESS: Yes, your Honour.
- 19 *(Private session at 11.39 a.m.) Reclassified as Open session
- 20 THE COURT OFFICER: (Interpretation) Thank you, Mr President. We apologise
- 21 for the delay and we are in private session. Thank you.
- 22 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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12 Page redacted

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25

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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21 PRESIDING JUDGE EBOE-OSUJI: Thank you.

22 (Open session at 12.11 a.m.)

23 THE COURT OFFICER: (Interpretation) We are in open session, your Honour.

24 PRESIDING JUDGE EBOE-OSUJI: Proceed.

25 MS ALAGENDRA:

Trial Hearing
Witness: KEN-OTP-P-0743

(Open Session)

ICC-01/09-01/11

1 Q. Sir, do you recall your testimony that you attended a harambee at a school on 15
2 October?

3 A. Yes, I do, your Honour.

4 Q. And you testified that Mr Ruto made a speech. Do you recall that, sir?

5 A. Yes, your Honour.

6 Q. Now, when you met with the Prosecution, when you were preparing to come to
7 testify, you said that during that event Mr Ruto made the usual political speech that
8 politicians make when elections are approaching. Do you remember that, sir?

9 A. I do remember, but it wasn't actually in that context.

10 Q. Okay. Then you came here and your testimony on 19 January 2015, you
11 testified that in his speech Mr Ruto said, and I quote, "We have no reason to follow
12 the Kikuyu and, if necessary, we will drive the Kikuyu out."

13 Do you remember that, sir?

14 A. Yes, your Honour.

15 Q. Sir, when he said, when Mr Ruto said "We have no reason to follow the
16 Kikuyu," did you mean that he was referring to President Mwai Kibaki?

17 A. He was meaning all the Kikuyus and their parties, not only the President Kibaki.
18 Because he was not fighting for the presidency at that time.

19 Q. So he was referring to all other Kikuyu politicians?

20 A. Yes, your Honour.

21 Q. And he said -- when he said, "We will drive the Kikuyu out," what he was
22 meaning is that all these politicians will be driven out of government; is that what he
23 meant?

24 A. No. It -- it was the -- all the Kikuyus who had encroached into Rift Valley,
25 your Honour, because they were -- they did come to Rift Valley just by the -- they

Trial Hearing
Witness: KEN-OTP-P-0743

(Open Session)

ICC-01/09-01/11

1 benefited from the politicians. That was what -- the benefit from the politicians.

2 Q. And you said he was speaking in Nandi. And then he spoke in English for the
3 benefit of journalists. Do you remember your testimony, sir?

4 A. Yes, correct.

5 Q. And these were journalists from the international press and the Kenyan press; is
6 that right?

7 A. That's what he had told us.

8 Q. And in your statement to the Prosecution, you said that Mr Ruto had come with
9 a lot of journalists. Do you recall that, sir?

10 A. Yes, your Honour.

11 Q. And then you also testified that there were many people, you couldn't give an
12 estimate how many were there, but there were a great many people, and they even
13 occupied the road that led towards the school. Do you remember that, sir?

14 A. Yes, your Honour.

15 Q. And then at that point in your testimony you stopped and you said, "I've told
16 you what I remembered for the time being."

17 And after that my learned friend showed you your previous statement to refresh your
18 memory. Do you remember that, sir?

19 A. Yes, I do, your Honour.

20 Q. Now, in your first statement to the OTP, Mr Witness, in July 2010, you did not
21 mention that Mr Ruto used the word "Majimbo" and it appears you also forgot to
22 mention that here in court until Mr Steynberg provided you your second OTP
23 statement to refresh your memory. Do you recall that, sir?

24 A. I do recall.

25 Q. And the reason you did not say it the first time to the OTP in your statement

Trial Hearing
Witness: KEN-OTP-P-0743

(Open Session)

ICC-01/09-01/11

1 and the reason you did not say it the first time when you were testifying here, sir, is
2 because Mr Ruto did not speak about majimbo. That's correct, isn't it, sir?

3 A. No.

4 Q. Okay. Let me take you to the statement that was shown to you to refresh your
5 memory in court, okay?

6 Your Honours, that will be at tab 2 of the OTP binder, KEN-OTP-0053-0256, and I'm
7 going to page 0053-0259, and it's at paragraph 13. If that can be put on the screen,
8 please, that page.

9 Sir, do you see the document in front of you?

10 A. Yes, I'm seeing it, your Honour.

11 Q. Okay. Let's read what it says there. It says, "The word 'majimbo' was used by
12 Ruto to hide the actual meaning of his words, to prevent the intelligence services or
13 the Administration Police - if present at the harambee - to understand what he was
14 talking about. Instead, they would take it literally. The word 'majimbo' was also
15 regularly used on Kass FM."

16 Sir, when you say that "Instead, they would take it literally," what you meant is that
17 the intelligence services and administration police that were present, they would
18 think Mr Ruto is talking about devolution when he says "Majimbo"; am I right, sir,
19 that's what you meant?

20 A. That is it. That is it, your Honour.

21 Q. And then we go to line -- sorry, to paragraph 14. And let's read that together,
22 sir.

23 "Ruto knew that there were people in the audience who would not vote for him,
24 especially the PNU supporters."

25 Do you see that, sir?

Trial Hearing
Witness: KEN-OTP-P-0743

(Open Session)

ICC-01/09-01/11

- 1 A. Yes, I'm seeing it, your Honour.
- 2 Q. Okay. So you confirm, sir, there were PNU supporters there in the audience?
- 3 That's what you were saying; am I right sir?
- 4 A. Yes, your Honour.
- 5 Q. Are you able to estimate how many PNU supporters were there?
- 6 A. If they were more, they could not be more than a hundred.
- 7 Q. Okay. So about a hundred? Would you agree?
- 8 A. No. I'm saying not more than 100 --
- 9 Q. Okay, not more.
- 10 A. -- that is to say they were not a hundred.
- 11 Q. Okay. So, now, during the same interview session with the OTP, after telling
- 12 the OTP that Mr Ruto has used the word "majimbo" to hide the meaning from the
- 13 administration police and the intelligence service who would be present, let's see
- 14 what you then go on to say in the same interview session.
- 15 Your Honours, could we go to tab 14, please.
- 16 Sir, what we were just looking at is your statement to the OTP taken between 26 and
- 17 30 May 2011. So now we go to the next day, 1 June 2011. That would be
- 18 KEN-OTP-0055-0583 and I'd like to go to page 0587.
- 19 Sir, do you see it on the screen?
- 20 A. Yes, I'm seeing it, your Honour.
- 21 Q. Okay. Here now you are asked again about 15 October 2007 about the
- 22 harambee. And this is now what you tell the investigators Mr Ruto said.
- 23 PRESIDING JUDGE EBOE-OSUJI: What line?
- 24 MS ALAGENDRA: Let me quote from line 117, your Honour.
- 25 Q. You say there Mr Ruto says, "These people, because they don't vote for us the

Trial Hearing
Witness: KEN-OTP-P-0743

(Open Session)

ICC-01/09-01/11

1 only thing is to kill them and evict them from the Rift Valley." close quote.
2 And then you go on to say, "He went on to say that the day he would need or require
3 the youths 'Please, please come. If I call for young people to come I need them. If
4 there's a need or a concern please tell me.'"
5 Then the investigator asks you, at line 134, "Did he use the word, 'kill'? Did he say
6 openly 'We will ... the only solution is to kill them', in reference to the Kikuyu?"
7 Then I go to the next page 0588, at lines 141, and you say, "Yes. That's correct."
8 At line 146 you say, "Nobody will challenge him why he has said what he said."
9 Then at line 147, the investigator questions you. He says, "But you told us that he
10 was not using these kind of words openly."
11 And then you explain at 168, "But at the beginning he was open."
12 Then we go to the next page, 0589.
13 PRESIDING JUDGE EBOE-OSUJI: Let's go back, follow it in sequence.
14 MS ALAGENDRA: I'll take it from line 147.
15 PRESIDING JUDGE EBOE-OSUJI: Yes.
16 MS ALAGENDRA:
17 Q. Where the investigator says "But you told us that he was using these kind of
18 words openly.
19 You say, "Listen, there ... there are 2 things there" -- "... 2 things here. If he is with
20 people at his house or ... or in ... back home in their ... in his constituency, he did.
21 But when he was in ... on air, Kass FM, there ... that's where they use some idiomatic
22 language, and they were in the build-up to the election. That's where the idioms
23 were much used. But at the beginning he was open."
24 Then we go to the next page 0589, and the investigator asks you, "However,
25 (Redacted), you told us that on that day on 15 October, Ruto was using words as, for

Trial Hearing
Witness: KEN-OTP-P-0743

(Open Session)

ICC-01/09-01/11

- 1 example, 'majimbo.' And he used, you said ... he used his word, for example ..."
- 2 Then at line 177, the investigator asks you "... to hide the actual meaning of what he
- 3 actually meant, to prevent other people to understand what ... to understand what he
- 4 was saying.
- 5 I don't know why he will use 'majimbo' to hide a meaning and now he would use
- 6 openly, 'Let's kill him.'"
- 7 That's what the investigator is querying you about.
- 8 PRESIDING JUDGE EBOE-OSUJI: "Let's kill them."
- 9 MS ALAGENDRA: "Let's kill them."
- 10 Your Honour, give me one minute, one second.
- 11 MR STEYNBERG: Your Honours, also at line 12 it shouldn't be "he used his word."
- 12 It was "he used this word, for example," not "his word."
- 13 MS ALAGENDRA:
- 14 Q. Then let me go back a little bit, 183, the investigator asks you, "I don't know why
- 15 he will use 'majimbo' to hide a meaning and ... and now he would use openly," open
- 16 quote, "'Let's kill them,'" close quote.
- 17 And then you say, "Have you finished?"
- 18 And you explain, at line 192, "You need to understand that in the beginning people
- 19 needed to understand and that's my opinion. Even the," open quote, "'majimbo,'"
- 20 close quote, "at first people didn't know what it meant really. But in the build-up to
- 21 the election people came to understand what it meant. And that time when he was
- 22 using the word," open quote, "'majimbo'" --
- 23 PRESIDING JUDGE EBOE-OSUJI: "At that time."
- 24 MS ALAGENDRA:
- 25 Q. "At that time when he was using the word," open quote, "'majimbo,'" close quote,

Trial Hearing
Witness: KEN-OTP-P-0743

(Open Session)

ICC-01/09-01/11

1 and I go to the next page 0590, line 203, you say, "... people didn't know. That's why
2 he used the word," open quote, "'Let's kill them,'" close quote, "because people did not
3 understand what would come next."

4 So that's the account you give in the very same interview where you say Mr Ruto is
5 hiding what he was trying to convey from the AP and the intelligence. That's your
6 statement, sir.

7 Do you recall all of that that I said to you?

8 A. When did you say I gave the investigators this statement, your Honour?

9 Q. This is in June 2011. Anyway, I'll move on, sir, it's there on the record. This is
10 what you have told the OTP. That's the account.

11 PRESIDING JUDGE EBOE-OSUJI: And your question is?

12 MS ALAGENDRA:

13 Q. Do you recall saying that to the OTP, sir?

14 A. Which one now?

15 Q. What I've just read to you, this version.

16 A. No.

17 Q. This is a recorded interview transcript that I've just read to you. So you don't
18 remember saying all of this to the OTP; that's what you're saying, yes?

19 A. And I think I had answered that. I had said that the answer of that one.

20 Q. Okay. Sir, this fundraising event at the school, sir, what was the money being
21 raised for?

22 A. Being raised for or was being raised for?

23 Q. What was the harambee for?

24 A. Your Honour, I could have understood the question more clearly if the question
25 was what was the harambee for.

Trial Hearing
Witness: KEN-OTP-P-0743

(Open Session)

ICC-01/09-01/11

1 Q. Thank you, sir, you've just repeated exactly my question. But I'll ask it again.

2 What --

3 PRESIDING JUDGE EBOE-OSUJI: All right. One second.

4 Can you answer, Witness, as you understood it? And if the lawyer is not happy,
5 then she'll ask you another question.

6 THE WITNESS: It was for the building of a library, library building.

7 MS ALAGENDRA:

8 Q. So this is the harambee where money was being raised to build a library, is that
9 what you are saying?

10 A. Yes, your Honour.

11 Q. So who else spoke at this harambee apart from Mr Ruto?

12 A. I do remember a village elder called Christopher Kisorio and the head teacher of
13 the school -- oh, sorry.

14 Q. What did the head teacher say, sir?

15 PRESIDING JUDGE EBOE-OSUJI: Witness, did you hear the question?

16 THE WITNESS: I've just -- your Honour, I thought she was still continuing, your
17 Honour.

18 MS ALAGENDRA:

19 Q. Let me repeat the question, sir. You said the head teacher spoke. And you
20 don't need to mention any names, please. What did the head teacher say in the
21 speech?

22 A. For now I cannot remember what she -- she said, Mr President.

23 Q. And the master of ceremonies, sir, what did he say?

24 A. He just requested for the development of the region.

25 Q. What were his exact words?

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

1 A. I don't think if I can mention them when we are this way because it will also -- it
2 might lead to I being known, your Honour.

3 MS ALAGENDRA: Your Honours, perhaps we go to private session for this.

4 PRESIDING JUDGE EBOE-OSUJI: Private session.

5 *(Private session at 12.33 p.m.) Reclassified as Open session

6 THE COURT OFFICER: (Interpretation) We are in private session, Mr President.

7 MS ALAGENDRA:

8 Q. Sir, please tell us the exact words of Mr Kisorio.

9 A. I may not be in a position to say the exact words, but what he actually had
10 meant on that day, your Honour, he had just requested the power -- power to be
11 brought to the village and also improvement of the roads, for roads at that time were
12 in very bad position -- condition.

13 Q. Okay.

14 MS ALAGENDRA: Your Honours, we can go back to public session.

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

16 (Redacted)

17 (Redacted)

18 (Pause in proceedings)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Open session at 12.37 p.m.)
- 15 THE COURT OFFICER: (Interpretation) We are in open session, Mr President.
- 16 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 17 Proceed.
- 18 MS ALAGENDRA:
- 19 Q. Sir, you told the Court that in his speech, Mr Kisorio --
- 20 PRESIDING JUDGE EBOE-OSUJI: What you told the Court in private session.
- 21 MS ALAGENDRA:
- 22 Q. And, sir, when we went to private session, what you told the Court that
- 23 Mr Kisorio said was, he was requesting for power, power to be brought to the village,
- 24 and also improvement of the roads because the roads at that time were in a very bad
- 25 position, in a bad condition.

Trial Hearing
Witness: KEN-OTP-P-0743

(Open Session)

ICC-01/09-01/11

1 That's what you said in private session?

2 A. Yes, yes, your Honour.

3 Q. And when you said he was requesting for power to be brought to the village, sir,
4 do you mean electricity?

5 A. That is it, your Honour.

6 Q. Did he say anything else?

7 A. I can't remember if he had other things to say.

8 Q. Now, can you tell the Court, sir, what did Mr Ruto say in relation to the purpose
9 of the harambee? You said the harambee was for the building of a library. What
10 did he say about that issue?

11 A. I don't remember him talking about the construction of the library. But I just
12 know that he talked about the election day and the voting and how voting should be
13 done.

14 Q. And the people who were present in the harambee, sir, they were the parents of
15 children who attend that school as well; is that right?

16 A. Not only parents, parents plus the people who came from nearby villages.

17 Q. And the children also?

18 A. Your Honour, what is -- I would like to know the meaning of the word
19 "children" in this context.

20 Q. School children. It's a school, so children who go to that school. Did they also
21 attend the event?

22 A. Yeah, they were in the -- in school --

23 Q. And what did --

24 A. -- your Honour.

25 Q. What did Mr Ruto say about the school, did he address the children? Did he

Trial Hearing
Witness: KEN-OTP-P-0743

(Open Session)

ICC-01/09-01/11

1 say anything to encourage the parents? What else did he say, sir?

2 A. I can't remember, your Honour.

3 Q. But did he say more or only what you have told the Chamber he said?

4 A. Yeah, what I've told the Chamber is what I do still remember, your Honour.

5 Q. And you don't remember anything else he said?

6 A. No.

7 Q. And you also told the Prosecution, sir, that Mr Ruto gave out some money to
8 people. Do you recall that?

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 PRESIDING JUDGE EBOE-OSUJI: Let's stop. Private session.

23 *(Private session at 12.42 p.m.) Reclassified as Open session

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

25 PRESIDING JUDGE EBOE-OSUJI: Thank you.

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 Q. Sir, can you tell the Court the name of the old man?

16 A. Mr (Redacted).

17 Q. Could we have on the screen KEN-D09-0038-0479, please.

18 PRESIDING JUDGE EBOE-OSUJI: Bundle?

19 MS ALAGENDRA: It's not in the bundle, your Honour. I handed it in this
20 morning.

21 Q. Sir, do you recognise this man?

22 A. He's actually, your Honour --

23 Q. Who is this man?

24 A. Mr (Redacted).

25 Q. And he is the man (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 A. Yes, your Honour.

3 MS ALAGENDRA: Your Honours, we can go back into public, but before that, if we
4 can admit this photograph as an exhibit, please.

5 PRESIDING JUDGE EBOE-OSUJI: If you're going to continue discussion -- okay.
6 You're done with the discussion with the gentleman whose photo we see on the
7 screen.

8 Prosecutor, any objection?

9 MR STEYNBERG: No objection, your Honour.

10 MR KIGEN-KATWA: No objection, Mr President.

11 PRESIDING JUDGE EBOE-OSUJI: The photograph is admitted.

12 THE COURT OFFICER: (Interpretation) Document KEN-D09-0038 -- I apologise.
13 Document KEN-D09-0038-0479 will bear the EVD number T-D09-00389.

14 MS ALAGENDRA:

15 Q. Sir, in your statement to the Prosecution, which you have said is correct, you
16 also said Ruto gave money to those present because this was his routine. Do you
17 remember saying that, sir?

18 PRESIDING JUDGE EBOE-OSUJI: We're in private session.

19 MS ALAGENDRA: We can go to public.

20 PRESIDING JUDGE EBOE-OSUJI: Public session.

21 (Open session at 12.46 p.m.)

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

23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 Witness, we're back in the open session.

25 MS ALAGENDRA:

Trial Hearing
Witness: KEN-OTP-P-0743

(Open Session)

ICC-01/09-01/11

1 Q. Sir, you remember the told the OTP that Mr Ruto gave everybody present
2 money?

3 A. Everybody present, no.

4 Q. So he didn't give you any money?

5 A. No.

6 Q. Okay. And sir, did you see this event reported in the newspapers?

7 A. I beg your pardon, your Honour?

8 Q. Did you see this event reported in the newspapers?

9 A. Your Honour, I don't remember seeing it in the newspapers.

10 Q. You didn't see it in any newspapers, did you, sir?

11 A. I even didn't take time to go and look for the newspapers, your Honour.

12 Q. Now, can you tell the Court, sir, during this harambee, during his speeches, did
13 Mr Ruto say "We have to kill Kikuyus"?

14 A. Yes, your Honour. He said that if they're not going to win they have to kill and
15 eject the Kikuyus.

16 Q. So now your testimony is that Mr Ruto said "Kill"?

17 A. Sorry?

18 Q. Now your testimony is that Mr Ruto said "kill Kikuyus"; is that your testimony,
19 sir?

20 A. Your Honour, I think that is one of the words that he used at that time.

21 Q. You think. Sir, did you go and report this to the police, what you heard?

22 A. Your Honour, unless the counsel could have understood well who was at the
23 police station at that time.

24 Q. Who?

25 A. Mr Owiti.

Trial Hearing
Witness: KEN-OTP-P-0743

(Open Session)

ICC-01/09-01/11

1 Q. Eldoret police station, sir? Angelus Karuru, you could have gone to him. Did
2 you report it, sir? Yes or no?

3 A. Are you meaning -- are you -- no.

4 Q. Angelus Karuru, K-A-R-U-R-U.

5 A. Who is that, your Honour?

6 Q. That's the OCPD, sir. You don't know that?

7 A. I've even not heard of that name, your Honour.

8 Q. Did you report it to the DO, who's not very far away from the school, sir? Did
9 you report it to her?

10 A. No, your Honour.

11 Q. Do you know who is the DO in that area?

12 A. Currently, no. But at that time it was a woman, and she used to visit Ruto's
13 home regularly. And anybody could not even dare to go and report that to her
14 because eventually the message could go back to Mr Ruto.

15 Q. What is her name?

16 A. I've forgotten the name, your Honour.

17 Q. What's her ethnicity, sir, the DO's ethnicity?

18 A. I can't remember.

19 Q. Is the reason you can't remember her name and her ethnicity and why you have
20 given an excuse that she's a regular visitor of Mr Ruto's home is the reason because
21 she is a Kikuyu called Rebecca Maturi?

22 A. Yeah, I cannot remember.

23 Q. But she's a Kikuyu. I'm sure you remember that, sir, don't you?

24 A. No. It cannot even come to my brains for this -- the lady had not stayed there
25 for quite a long time. And in fact, I had seen her once.

Trial Hearing
Witness: KEN-OTP-P-0743

(Open Session)

ICC-01/09-01/11

1 Q. Sir, you have said repeatedly, over and over again, in your testimony in this
2 Court and to the Prosecution, that the interviews you did in July of last year was the
3 truth; am I right, sir?

4 A. Yes, your Honour.

5 Q. And all of what you have just testified, sir, about Mr Ruto calling for the
6 eviction of Kikuyus which have then changed to killing of Kikuyus is all false, isn't it?

7 A. Your Honour, I don't -- I could not understand that part.

8 Q. Your testimony that Mr Ruto called for eviction of Kikuyus and he asked -- and
9 he called for Kikuyus to be killed, that testimony of yours before this Court,
10 Mr Witness, is a complete fabrication. Do you agree with me, sir?

11 A. Your Honour, no.

12 Q. I'm going to take you back to your interviews of July 2014, sir, where you have
13 said over and over is the whole truth. And let's go through what you have said there,
14 okay?

15 Your Honours, we go to tab 46.

16 PRESIDING JUDGE EBOE-OSUJI: Whose bundle?

17 MS ALAGENDRA: The Prosecution bundle, your Honour. Your Honours, it may
18 be also helpful if your Honours had the first statement with you as well.

19 PRESIDING JUDGE EBOE-OSUJI: One at a time.

20 MS ALAGENDRA: It's KEN-OTP-0142-0513 and we're going to go to page 0516.

21 Q. Do you have it there, sir?

22 A. Yes, your Honour.

23 Q. Page 80 -- at line 84, the investigator says, And that this -- "And that is the
24 meeting of 15 October ... at ... Secondary School."

25 Okay? So this is what is being discussed now during this part of your interview.

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: 15 October 2007.

2 MS ALAGENDRA: Yes, your Honour. I missed that.

3 Q. So let's go to the next page, 0517. At lines 111, the interviewer says, "I would
4 like to ask you upfront" --

5 Your Honours, can I ask my learned friend if he will have any difficulties with me
6 going through this in public?

7 MR STEYNBERG: Well, your Honours, this is really more an issue for Rule 74
8 counsel, but reading lines 111 to 113 it seems that there might be some risk involved.

9 PRESIDING JUDGE EBOE-OSUJI: Let's go into private session.

10 *(Private session at 12.56 p.m.) Reclassified as Open session

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 Your Honours, this will be the OTP statement that's at tab 1.

10 PRESIDING JUDGE EBOE-OSUJI: Yes. And this would be a good place to stop.

11 MS ALAGENDRA: Yes, your Honours.

12 PRESIDING JUDGE EBOE-OSUJI: You can pick it up there in your 15 minutes when
13 we come back to finish and that's -- sorry, 3.15 I meant to say.

14 We will rise.

15 THE COURT USHER: All rise.

16 (Recess taken at 12.59 p.m.)

17 (Upon resuming in open session at 2.36 p.m.)

18 THE COURT USHER: All rise.

19 Please be seated.

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

21 Witness, welcome back. Ms Alagendra will continue her cross-examination.

22 Ms Alagendra, again, I've indicated when you needed to stop, and I'm hoping that

23 Mr Steynberg will not use up all the time reserved for him because we will need to have a

24 short status conference to find out where things stand on some lingering matters. We don't

25 need to discuss that in open session now.

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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

2 PRESIDING JUDGE EBOE-OSUJI: Private session. Private session.

3 *(Private session at 2.37 p.m.) Reclassified as Open session

4 THE COURT OFFICER: (Interpretation) We are in private session, Mr President.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 MS ALAGENDRA:

7 Q. Mr Witness, I'm going to continue reading what you --

8 THE COURT OFFICER: (Via video link) Mr President, the witness wanted to say
9 something.

10 PRESIDING JUDGE EBOE-OSUJI: Yes. Witness, continue.

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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21 MS ALAGENDRA: Yes, your Honour.

22 If we can go into public session, please.

23 PRESIDING JUDGE EBOE-OSUJI: Public session.

24 (Open session at 2.55 p.m.)

25 THE COURT OFFICER: (Interpretation) We are in open session, your Honour.

Trial Hearing
Witness: KEN-OTP-P-0743

(Open Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: Witness, we're now in open session, in the public session.

2 Ms Alagendra, continue.

3 MS ALAGENDRA:

4 Q. You see, Mr Witness, there is evidence before this Chamber that on 15 October 2007

5 Mr Ruto was not at that school. And I put it to you, sir, 15 October Mr Ruto was not at that
6 school. Do you accept that?

7 A. No, your Honour.

8 Q. And I put it to you, sir, on 15 October Mr Ruto was in Nairobi. He was at the KICC
9 with Mr Raila Odinga. Do you accept that, sir?

10 A. Your Honour, it's not that way.

11 Q. Your Honours --

12 A. And if I can recall, that is actually the day or a day later when OD -- when the ODM had
13 broken out from the ODM Kenya, and actually Uhuru Kenyatta going to his party KANU,
14 joining -- joining the Kibaki presidential bid. And actually it was the day that Ruto
15 first -- that's the place where Ruto first indicated that they have their own party with Raila
16 Odinga. And if they were in Nairobi in the morning, then harambee was in the evening,
17 your Honour. And it could not be -- we cannot say that it is not -- it could not be possible for
18 Ruto to make. It was actually very possible for him for at times he could even use the
19 chopper coming. So being in ICC should actually -- KICC I mean, the time should be
20 indicated. And if he was there the whole day, then the Chamber also has to be notified,
21 because I've not got an accident whereby my head has been injured.

22 Although I do forget other things at times, but there are things that I do remember.

23 Q. Mr Witness, when you were speaking to the OTP, sir, you gave four different accounts
24 of what Mr Ruto said at this harambee. When you testified before this Court, sir, you've
25 given three different accounts of what happened at this harambee. And I suggest to you, sir,

Trial Hearing
Witness: KEN-OTP-P-0743

(Open Session)

ICC-01/09-01/11

1 the reason you're not able to maintain one consistent account is that your entire story about
2 what -- about Mr Ruto calling for the eviction of Kikuyus at that school is absolutely false.

3 Do you agree with that, sir?

4 A. No, your Honour.

5 Q. Sir, moving on, you testified that on the evening of the day Mr Ruto submitted his
6 nomination papers, you heard him speaking at the municipal garden and he called for
7 eviction of Kikuyus again in Eldoret. Do you recall that, sir?

8 A. I do recall.

9 Q. Now, sir, that day when you testified to that in this Court, that was the very first time
10 you've ever mentioned Mr Ruto calling for eviction of Kikuyus at the municipal garden. Do
11 you accept that, sir?

12 A. No, your Honour.

13 Q. Have you said this to the OTP before?

14 A. To say what, your Honour?

15 Q. That you heard Mr Ruto calling for eviction of Kikuyus at the municipal garden in
16 Eldoret? Have you said that to the OTP before?

17 A. Your Honour, I can't remember that.

18 Q. Sir, we have all your statements, and I can tell you you've never said it before, sir. The
19 first time you've ever made such an allegation was here in court.

20 And, sir, you've never said this in any of your statements even to the people you were
21 speaking to before you met the OTP.

22 And 2008 right until 2015, sir, the reason you've never spoken about Mr Ruto calling
23 for eviction of Kikuyus at the Eldoret municipal garden is because what you say in
24 that regard, Mr Witness, is false. Do you accept that, sir?

25 A. No. Mr President, I do remember the day I was -- I had met with --

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: Wait, wait.

2 THE WITNESS: -- OTP investigators.

3 PRESIDING JUDGE EBOE-OSUJI: Wait. We are in public session. Let's go into private
4 session.

5 *(Private session at 3.01 p.m.) Reclassified as Open session

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

1 (Redacted) but there are some questions I want to ask you

2 and to see if you know about certain matters, okay?

3 A. Yes, your Honour.

4 Q. Sir, would you accept, sir, that the day of the nomination papers, that the day the
5 nomination papers were submitted was in fact 23 November 2007?

6 A. Your Honour, no. And that might be the -- I'm not aware of that, your Honour.

7 Q. Well, I recall, sir, that in your interviews of 2014 July, you indicated that you do not
8 recall the date. And I'm going to suggest to you, sir, that the date is in fact 23
9 November 2007. Do you understand me, sir?

10 A. Your Honour, that might -- that is false, because submission of papers on 23rd when
11 four days were remaining, the four days could not be enough for the campaigning.

12 Q. Sir, I mean 23rd --

13 A. On the --

14 Q. Sorry, sir. Just so you understand, I said 23 November, sir, not December.

15 A. November.

16 Q. 2007, yes.

17 A. No.

18 Q. Okay. And the Prosecution has provided the Chamber with an exhibit -- your
19 Honours, Exhibit 70 -- and the NSIS security report confirms that the date of the nomination,
20 sir, is in fact 23 November.

21 And for your Honours it's at tab 84 of the Defence binder and the information is at pages 1808
22 to 1819.

23 MR STEYNBERG: Your Honours --

24 THE WITNESS: Mr President --

25 MR STEYNBERG: Sorry, before the witness answers, can I just ask my learned friend to

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

1 confirm which nominations she's referring to? Because I understand that the presidential
2 nominations --

3 PRESIDING JUDGE EBOE-OSUJI: Let's not.

4 MR STEYNBERG: As the Court pleases.

5 PRESIDING JUDGE EBOE-OSUJI: Yes.

6 MS ALAGENDRA:

7 Q. So are you aware that Mr Fred Kapondi --

8 PRESIDING JUDGE EBOE-OSUJI: Are you discussing the documents --

9 MS ALAGENDRA: No, your Honour.

10 PRESIDING JUDGE EBOE-OSUJI: -- appearing at 84?

11 MS ALAGENDRA: No, your Honour. I've just put my proposition that there is an NSIS
12 report which confirms this date.

13 PRESIDING JUDGE EBOE-OSUJI: Since you put it to --

14 THE WITNESS: Mr President.

15 PRESIDING JUDGE EBOE-OSUJI: -- the witness, shouldn't you show it to the witness?

16 THE WITNESS: Mr President.

17 PRESIDING JUDGE EBOE-OSUJI: Yes?

18 THE WITNESS: (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 PRESIDING JUDGE EBOE-OSUJI: Thank you.

23 I'm not sure it's necessary then to put the document to the witness.

24 MS ALAGENDRA: I don't think so, your Honour.

25 Q. And, Mr Witness, are you aware, sir, that Mr Fred Kapondi, he was in fact in prison

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

1 during the nomination process, and his nomination papers were submitted by his lawyer on
2 his behalf? It was all over the news. Do you recall that, sir?

3 A. I can't remember, your Honour.

4 Q. Okay. And, sir, you recall that in your statement, (Redacted)
5 you made mention of an elder, Chelogoi, who was blessing Mr Ruto with blood. Do you
6 remember, sir?

7 A. Your Honour, I do remember.

8 Q. Are you aware, sir, that mzee Chelogoi, he actually passed away in 2005? Did you
9 know that?

10 A. I even don't know that old man, your Honour, (Redacted)
11 (Redacted)

12 Q. (Redacted)

13 A. (Redacted)

14 MS ALAGENDRA: For your Honours it's at tab 99A. That's the death certificate of
15 Mr Chelogoi from Sugoi.

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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- 14 PRESIDING JUDGE EBOE-OSUJI: Thank you, Witness. You've answered that question.
- 15 And that's the end of the questioning from Ms Alagendra.
- 16 Ms Alagendra, you will put in these notices and hand the witness over to
- 17 Mr Steynberg.
- 18 MS ALAGENDRA: (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 PRESIDING JUDGE EBOE-OSUJI: No, no, no. That's rejected. Just put in (Redacted)
- 24 (Redacted) and let's move on.
- 25 MS ALAGENDRA: Unfortunately I don't have any ERN numbers for (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

1 but, your Honours, what we can do is we can give them the -- we can register them and
2 upload them later and for now we'll just tender them as the next three -- next four Defence
3 exhibits.

4 PRESIDING JUDGE EBOE-OSUJI: All right. Just identify them to the best that you can.

5 MS ALAGENDRA: Your Honours, alternatively can I propose that we do it by way of a
6 filing?

7 PRESIDING JUDGE EBOE-OSUJI: Yes, you can do that, all right.

8 MS ALAGENDRA: Thank you, your Honours.

9 Thank you, Mr Witness.

10 MR KIGEN-KATWA: For completeness of the record, Mr President, could I request also that
11 the document in my tab 20 also be included (Redacted)
12 (Redacted)

13 PRESIDING JUDGE EBOE-OSUJI: Wasn't -- I thought it was already in.

14 MR KIGEN-KATWA: We only --

15 PRESIDING JUDGE EBOE-OSUJI: Tab 20.

16 MR KIGEN-KATWA: We accepted in what I had read to the witness, Mr President. We
17 didn't produce the document itself.

18 PRESIDING JUDGE EBOE-OSUJI: Yes, well, that comes in as well --

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

20 PRESIDING JUDGE EBOE-OSUJI: -- as part of a series. Yes.

21 Witness, that concludes the cross-examination from Ms Alagendra. The Prosecutor will have
22 some few questions, clarifying questions to you.
23 Mr Steynberg.

24 MR STEYNBERG: Thank you, your Honours. I have just four points that I'd like traverse.
25 I'll try to do it as efficiently as possible.

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

1 QUESTIONED BY MR STEYNBERG:

2 Q. Mr Witness, if I can just ask you to listen carefully to my questions and I'll try to be
3 finished with you as soon as possible, all right?

4 A. Yes, your Honour.

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

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11 (Redacted)

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 Q. Very well. I'll move on, your Honours.

22 Mr Witness, during -- in 2008, is it correct that there were several persons arrested

23 and some even prosecuted because of their involvement in the post-election violence

24 in the Rift Valley?

25 MS ALAGENDRA: Your Honours, this is re-examination. I don't see how this is arising

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

1 out of cross.

2 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg?

3 MR STEYNBERG: Your Honours, this arises from my learned friend's questioning about this
4 witness's description of (Redacted)

5 (Redacted) Your Honours, I

6 ask that you give me some latitude and I'll come to the point within the next two questions.

7 PRESIDING JUDGE EBOE-OSUJI: Proceed.

8 MR STEYNBERG:

9 Q. Is that correct, Mr Witness, did you know about that?

10 A. Part of it is correct, your Honour, and the other one I'm not sure, that some of the
11 victim -- some of the people who were dealing with the attacks were arrested and -- but
12 prosecution is not what I actually cannot say yes, because to me, they had been taken to
13 luxurious custodies if they were taken to any, and most of the things were just put in papers
14 to satisfy people.

15 Q. Did you not hear, for instance, Mr Witness, that there were several people prosecuted in
16 the Nakuru high court for their involvement in the burning of the Kiambaa church?

17 A. That is what I am referring to, your Honour. Hearing is different from seeing because
18 after burning a church and killing people, people cannot just be released just for the sake of
19 that there was no enough evidence. To me, the prosecution was actually done maybe in
20 papers and not practically on the ground, your Honour.

21 Q. All right. Let me just ask you this one question. According to your knowledge, if
22 someone were to --

23 MS ALAGENDRA: Your Honours, I'm going to object to this. After all of this, does my
24 learned friend really think it's fair to be leading the witness like this?

25 MR STEYNBERG: I haven't even put my question yet, your Honours.

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: Be very careful, Mr Steynberg, very, very careful.

2 MR STEYNBERG: Your Honours, I'll deal with this in argument.

3 PRESIDING JUDGE EBOE-OSUJI: Yes.

4 MR STEYNBERG:

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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- 10 MR STEYNBERG: As the Court pleases. I have no further questions.
- 11 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 12 Witness, the lawyers have finished asking you questions.
- 13 (Trial Chamber confers)
- 14 PRESIDING JUDGE EBOE-OSUJI: And the Judges have no questions for you. We thank
- 15 you very much.
- 16 MR KHAN: Mr President, I do apologise, before the witness is released, may I -- could I
- 17 make one submission but with the microphone turned off?
- 18 PRESIDING JUDGE EBOE-OSUJI: Microphone turned off at the remote location. I'm sorry,
- 19 the sound feed --
- 20 MR KHAN: Indeed.
- 21 PRESIDING JUDGE EBOE-OSUJI: -- to be disconnected for the witness at the remote
- 22 location.
- 23 THE COURT OFFICER: (Via video link) Mr President, the sound is off.
- 24 (Redacted)
- 25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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17 Can you turn the microphone back on, sorry, the audio feed.

18 THE COURT OFFICER: (Via video link) The audio is back on, Mr President.

19 PRESIDING JUDGE EBOE-OSUJI: Thank you.

20 Witness, we thank you very much for coming and answering the questions that have
21 been put to you. We know that there were many questions and you answered them
22 despite indicating irritations from time to time.

23 Now all that is over for you. You are discharged as a witness in the case. And safe
24 travels to wherever you are located. Thank you very much.

25 THE WITNESS: Thank you, Mr President.

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: Court officer at the remote location, please do escort the
2 witness out of the courtroom and we will continue with some submissions and, sorry, with a
3 status conference, a brief status conference on things.

4 (The witness is excused)

5 MR KHAN: Mr President --

6 THE COURT OFFICER: (Via video link) Okay.

7 MR KHAN: (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 THE COURT OFFICER: (Via video link) Mr President, the witness has been escorted out of
15 the transmission room. With your leave and unless counsel is needed for the remaining of
16 the proceedings, we will terminate the video-link transmission.

17 PRESIDING JUDGE EBOE-OSUJI: Mr (Redacted), I understand you need to be somewhere.
18 Isn't that the case?

19 MR (Redacted): (Via video link) That is the case, your Honour. Why, did you have
20 expectations for me to remain here longer?

21 PRESIDING JUDGE EBOE-OSUJI: No, we do not. You're excused, Mr (Redacted). You
22 may leave.

23 And court officer, thank you very much also. And both of you, wish you safe
24 travels.

25 MR (Redacted): (Via video link) Thank you, Mr President. Thank you, your Honours,

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

1 and thank you to everyone else.

2 THE COURT OFFICER: (Via video link) Thank you very much, Mr President.

3 PRESIDING JUDGE EBOE-OSUJI: Thank you. You can disconnect.

4 (Redacted)

5 (Redacted)

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

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6 (Redacted)

7 (Redacted)

8 (Redacted)

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13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 MR KIGEN-KATWA: On my part, no objection, Mr President. I would just request that if
18 my colleague could also comment on Witness Number 15 and 32 and any other witnesses he
19 intends to call.

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 MR STEYNBERG: Thank you, your Honours. As regards Witness 15 and Witness 32, the
2 Prosecution does not intend to call either of these witnesses.

3 (Redacted)

4 (Redacted)

5 (Redacted)

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- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 23 (Redacted)
- 24 The Court adjourns.
- 25 THE COURT USHER: All rise.

Trial Hearing
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(Private Session)

ICC-01/09-01/11

- 1 *(The hearing ends in private session at 4.00 p.m.) Reclassified as Open session
- 2 RECLASSIFICATION REPORT
- 3 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
- 4 2013, the version of the transcript with its redactions becomes Public.