

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 Tuesday, 27 January 2015
10 (The hearing starts in open session at 9.35 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 call the case.
16 THE COURT OFFICER: (Interpretation) Thank you, Mr President.
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, Mr President.
20 PRESIDING JUDGE EBOE-OSUJI: Thank you.
21 Appearances.
22 MR STEYNBERG: Good morning, Mr President, your Honours. For the
23 Prosecution the team remains unchanged.
24 MR NARANTSETSEG: Good morning, Mr President, your Honours. The victims
25 are represented by Charlotte Devinat, James Mawira and myself,

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- 1 Orchlon Narantsetseg. Thank you.
- 2 MR KIGEN-KATWA: Good morning, your Honours. Mr Sang's team remains the
3 same and Mr Sang is present.
- 4 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 5 MS ALAGENDRA: Good morning, Mr President, your Honours. For the record
6 Mr Ruto is present today. And the Defence team will remain the same, your
7 Honour.
- 8 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
9 Mr (Redacted).
- 10 MR (Redacted): (Via video link) Good morning, Mr President. And good
11 morning to everyone else.
- 12 PRESIDING JUDGE EBOE-OSUJI: Thank you. Your appearance is noted as well.
13 We are in open session.
- 14 Witness, welcome back. And Ms Alagendra will continue her cross-examination.
15 Ms Alagendra, we are in open session.
- 16 MS ALAGENDRA: Your Honour, perhaps we can go back to --
- 17 WITNESS: KEN-OTP-P-0743 (On former oath)
18 (The witness speaks English)
19 (The witness gives evidence via video link)
- 20 THE WITNESS: Mr President --
- 21 PRESIDING JUDGE EBOE-OSUJI: We will go to --
- 22 MS ALAGENDRA: -- private session.
- 23 PRESIDING JUDGE EBOE-OSUJI: -- private session.
- 24 *(Private session at 9.37 a.m.) Reclassified as Open session
- 25 THE COURT OFFICER: (Interpretation) We are in private session, Mr President.

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1 PRESIDING JUDGE EBOE-OSUJI: Thank you.

2 Witness, you wanted to say something?

3 THE WITNESS: Yes, your Honour.

4 PRESIDING JUDGE EBOE-OSUJI: Proceed.

5 THE WITNESS: It is about the video clip the Chamber was shown yesterday when
6 we were almost finishing.

7 Your Honour, I observed the video, but then to me it was -- it was not actually the real
8 video; it is actually the type of the DJ (phon) (indiscernible) of videos for the main
9 character that I was expecting to see was missing. Again, the pictures appeared to
10 me as if it had -- it had been disturbed. That is it, your Honour.

11 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, you've heard that concern
12 expressed.

13 MS ALAGENDRA: Indeed, your Honour. Just for the record, your Honour, there's
14 some words at line 14 which is inaudible.

15 PRESIDING JUDGE EBOE-OSUJI: The point of the witness's concern is still
16 apparent, is that he was not -- there was some character he was expecting to see and
17 didn't, and it appeared to him that the video had been disturbed.

18 MS ALAGENDRA: Yes.

19 PRESIDING JUDGE EBOE-OSUJI: Why don't you play that video again.

20 MS ALAGENDRA: In fact, your Honour, what I was going to do is I was going to
21 leave that video aside and the issue and move on to -- to something else and we won't
22 pursue the issue of that video.

23 PRESIDING JUDGE EBOE-OSUJI: You will no longer pursue the issue of the video?

24 MS ALAGENDRA: No, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: All right. Of course if the Prosecutor wants to

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1 follow it up, then the video will have to be played at that point, but we will leave it at
2 that.

3 Witness, we will have to move on. The lawyer for Mr Ruto has indicated that she
4 does not want to pursue that video anymore, so as far as we are concerned, we are to
5 ignore that video as far as she is concerned, all right? Can you hear me?

6 THE WITNESS: Your Honour, yeah, I do hear you, but I remember answering so
7 many questions, but at this minute I am not seeing the reason why the video has to
8 be -- or, the matter has to be left aside when actually it has risen a lot of concern on
9 my side.

10 The other thing that I even forgotten is that the voice of the presenter does not match
11 with the -- with the pictures because the voice is more clear and the pictures there are
12 appearing blood so it gives me a lot of wonders and concerns, your Honour.

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

14 (Pause in proceedings)

15 MS ALAGENDRA: Your Honours, if I may, perhaps just to make the witness
16 comfortable, I don't mind just playing the video again just for him to have a look at it
17 since he's come back first thing in the morning with that in his mind.

18 PRESIDING JUDGE EBOE-OSUJI: Yes. Maybe that needs to be done, but in the
19 meantime I need to put on record that the Registry had informed the Chamber that
20 there were some apparently bandwidth problems yesterday, internet problems, that
21 affected the quality of the video as it was played and the suggestion from the Registry
22 is that might have resulted because of the internet traffic at that time of day, but when
23 they played it this morning, when they tested it this morning, it played better, so let's
24 see if we have a different output when you play it this morning, Ms Alagendra, and
25 whether that would set the witness's mind at ease.

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1 MS ALAGENDRA: Indeed, your Honour. For that reason alone that I would
2 request that we would be allowed to play it again.

3 PRESIDING JUDGE EBOE-OSUJI: Yes.

4 MS ALAGENDRA: Thank you.

5 Your Honours, for the record, we're going to be playing the video

6 KEN-D09-0041-0241.

7 (Viewing of the video excerpt KEN-D09-0041-0241)

8 MS ALAGENDRA: Your Honours, will you permit me just to go a little bit back

9 because I think the person the witness is wanting to see is actually in the video and
10 that may assist him.

11 PRESIDING JUDGE EBOE-OSUJI: Go back and do it for him by frame if you must
12 to make it easier for the witness to see.

13 QUESTIONED BY MS ALAGENDRA: (Continuing)

14 Q. Mr Witness, I would like you to watch the video carefully and see if you see a
15 gentleman in a beige jacket, okay?

16 A. Yes, your Honour.

17 Q. What you are -- what you are interested in, Mr Witness, is you're saying that
18 you don't see Farouk Kibet on this video, isn't it?

19 A. Yes, your Honour.

20 Q. And I suggest to you, sir, that the man in the beige jacket is Farouk Kibet, so if
21 you can watch the video carefully and perhaps that may settle your mind, okay?

22 PRESIDING JUDGE EBOE-OSUJI: First of all, that's an interesting point indeed.

23 Why don't you, as characters appear, you can freeze-frame the video and see if the
24 witness recognizes who are there.

25 (Viewing of the video excerpt KEN-D09-0041-0241)

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1 MS ALAGENDRA: Your Honours, can I just start the video again, please.

2 PRESIDING JUDGE EBOE-OSUJI: Yes.

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

4 MS ALAGENDRA:

5 Q. For the record I've stopped the video at 19 seconds. Sir, can you tell the
6 Chamber who is that you see on the screen?

7 A. This one is Honourable Kimkung -- I mean John Serut.

8 Q. That's correct. I'm going to continue playing, sir.

9 PRESIDING JUDGE EBOE-OSUJI: Honourable who?

10 MS ALAGENDRA: He said John Serut, your Honour.

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

12 (Viewing of the video excerpt KEN-D09-0041-0241)

13 MS ALAGENDRA:

14 Q. Sir, can you tell the Chamber who this is on the screen?

15 A. Yeah, though it is not clear, the voice from it shows that this one is Gideon Moi.

16 Q. And that is at time stamp 32 seconds. And for the record the spelling of John
17 Serut, Serut is S-E-R-U-T.

18 (Viewing of the video excerpt KEN-D09-041-0241)

19 MS ALAGENDRA:

20 Q. Sir, can you tell the Chamber who this gentleman is, please?

21 A. This one is Nicholas Biwott, your Honour.

22 MS ALAGENDRA: And that's at time stamp 46 seconds, your Honour.

23 (Viewing of the video excerpt KEN-D09-0041-0241)

24 MS ALAGENDRA:

25 Q. Sir, do you recognize the person that's on the screen now?

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1 A. Yes, your Honour.

2 Q. And you also see there's a microphone in front written "NTV," the blue?

3 A. I cannot see the writings.

4 Q. Okay. I'm going to play it a bit more, sir, and just observe also that the
5 microphone in front of Mr Ruto is NTV, the news channel, please.

6 (Viewing of the video excerpt KEN-D09-0041-0241)

7 MS ALAGENDRA:

8 Q. That's at 1.04. Sir, can you tell the Chamber who this is on the screen?

9 A. This one is the former president Daniel Arap Moi, your Honour.

10 (Viewing of the video excerpt KEN-D09-0041-0241)

11 MS ALAGENDRA:

12 Q. Sir, do you see the gentleman in the beige, the beige jacket and the lighter beige
13 trousers, in the middle of the screen?

14 A. Now, are you saying beige or pale?

15 Q. Beige. Light, light brown. And the trousers --

16 A. Yes. Yes, I --

17 Q. -- is almost white?

18 A. Yes, I'm seeing it.

19 Q. And do you recognize that that is Farouk Kibet?

20 A. No.

21 Q. I'll play a bit more, sir. Please observe the gentleman. This is at time stamp
22 1.21.

23 (Viewing of the video excerpt KEN-D09-041-0241)

24 MS ALAGENDRA:

25 Q. Were you able to get a better glimpse of him?

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1 A. That's where the pictures are -- are more disturbed --

2 Q. I will just take --

3 A. -- and I could not --

4 Q. I will take it back again, sir. And now that I've pointed out the person to you,
5 you can observe him more closely, okay?

6 A. Yes.

7 (Viewing of the video excerpt KEN-D09-041-0241)

8 MS ALAGENDRA:

9 Q. Were you able to catch it now?

10 A. Sorry?

11 Q. Did you observe the person that I pointed out to you in the light jacket and
12 trousers? Did you see him again just now?

13 A. Your Honour, I -- I was just seeing the colours of the clothes that had been told,
14 but the face cannot be recognized.

15 PRESIDING JUDGE EBOE-OSUJI: The record needs to reflect that difficulty, that
16 even the Chamber could not have made out the face of anyone in those clothes
17 indicated. It would have been surprising if the witness had recognized the person
18 from just that clip.

19 We do not have a high definition video here, so we can move on.

20 MS ALAGENDRA: But, your Honour, if it assists, we are willing to accept that that
21 person who comes in and pushes in the light jacket and trousers is indeed Farouk
22 Kibet.

23 PRESIDING JUDGE EBOE-OSUJI: That is your position.

24 MS ALAGENDRA: Yes.

25 PRESIDING JUDGE EBOE-OSUJI: That is your position.

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1 MS ALAGENDRA: Yes.

2 PRESIDING JUDGE EBOE-OSUJI: The witness is saying he is unable to confirm that
3 proposition. He is not saying it is him or it is not him. He's simply saying he
4 cannot say that from the quality of the video --

5 MS ALAGENDRA: Indeed, your Honour.

6 PRESIDING JUDGE EBOE-OSUJI: -- and what's going on in the video. Let's
7 proceed.

8 MS ALAGENDRA:

9 Q. And aside from whether or not it is visible on the video, I would also like to tell
10 you, Mr Witness, that we accept Mr Farouk Kibet was present on that occasion. Do
11 you understand me, sir?

12 A. I do understand, your Honour. But the thing which I was interested in in
13 Farouk was actually to see the most important part that he played, when the fighting
14 occurred. But the video, of course, when it reaches there, it becomes blood, you just
15 see black objects moving and not seeing the actions itself, your Honour.

16 Q. Thank you for that, sir.

17 Now, just before I move away from this video, you heard Mr Ruto speaking there,
18 and will you confirm that what he was saying is in fact this, and he says, "Now, let me
19 ask you, the people of Mount Elgon, in a hyena's court, does a goat have any justice?"
20 Did you hear him say that?

21 A. I did, your Honour.

22 Q. Thank you, sir.

23 Your Honours, I can move on to a --

24 PRESIDING JUDGE EBOE-OSUJI: Yes, one second.

25 (Pause in proceedings)

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1 PRESIDING JUDGE EBOE-OSUJI: All right. I was trying to understand from the
2 court officer whether at the remote location the witness is seeing -- was being played
3 simultaneously as we see it; in other words, being played from the same source, and
4 I understand that that is the same case, that the video is played from here and it gets
5 to him from here.

6 The reason I make that observation is twice the witness has indicated he saw black
7 when the person you indicated as Farouk Kibet got involved in the action there, I do
8 not recall seeing black, so my concern is whether the transmission from here to there
9 may have resulted in him seeing something on that end that we're not seeing on this
10 end. But it may be safe that it appeared that the person you indicated did get
11 involved in the activity, although it is not clear to what extent, the video doesn't show
12 us that much.

13 Continue, please.

14 MS ALAGENDRA:

15 Q. Mr Witness, with that I'm going to move on to a different issue, okay?

16 A. Yes, your Honour.

17 Q. Thank you. Sir, we left off yesterday when we were discussing some
18 handwritten notes that you used during one of your interviews with the OTP. Do
19 you recall that, sir?

20 A. Yeah. Yes, your Honour, I do recall the issue of the notes.

21 Q. And you told the Court yesterday that you did not remember the details about
22 how you came to prepare those notes or why you took it to the interview. Do you
23 remember saying that, sir?

24 A. I do remember.

25 Q. And when you come back today, do you have any recollection again regarding

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1 those notes or you still don't remember?

2 A. Your Honour, I still don't remember.

3 Q. Thank you, sir.

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

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- 11 Your Honour, perhaps this is a --
- 12 PRESIDING JUDGE EBOE-OSUJI: Yes, a good place for a morning break.
- 13 Witness, we will take your morning break as usual for 30 minutes and we will see you
- 14 in 30 minutes.
- 15 The Court will rise.
- 16 THE COURT USHER: All rise.
- 17 (Recess taken at 10.58 a.m.)
- 18 (Upon resuming in open session at 11.35 a.m.)
- 19 THE COURT USHER: All rise.
- 20 Please be seated.
- 21 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. We're in open session.
- 22 Mr Khan, there was an indication from the Registrar --
- 23 MR KHAN: Yes.
- 24 PRESIDING JUDGE EBOE-OSUJI: -- that you want to address the Bench?
- 25 MR KHAN: Please. I'm most grateful for that message being conveyed. I've

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- 1 broached the matter of my application with my learned friend, Mr Steynberg.
- 2 PRESIDING JUDGE EBOE-OSUJI: First, we're in open session.
- 3 MR KHAN: Indeed, we can remain in open session. Of course --
- 4 PRESIDING JUDGE EBOE-OSUJI: And the witness is --
- 5 MR KHAN: Your Honour, it's unrelated to the testimony of the witness, so --
- 6 PRESIDING JUDGE EBOE-OSUJI: All right.
- 7 MR KHAN: -- the witness can hear or the sound can be turned off.
- 8 PRESIDING JUDGE EBOE-OSUJI: All right, okay.
- 9 MR KHAN: Mr President, it is an application that the Court allow us to have a one
- 10 hour lunch-break today instead of one-and-a-half hours and to finish at 3.30, or in the
- 11 alternative, if we stick to the normal schedule, to allow Mr Ruto to leave at 3.30.
- 12 The reason is that there is scheduled an African Union Heads of State Conference in
- 13 Addis Ababa and the president, His Excellency Uhuru Kenyatta, was due to leave
- 14 today. He left -- he delayed his travel for Mr Ruto to return. KLM and
- 15 Kenya Airways have, starting this month, made a commercial decision that there are
- 16 no evening flights. So in order for Mr Ruto to get back to Kenya he has to get a flight
- 17 to -- through another destination, I won't say how, in order to -- either through a
- 18 European port or London to get to Kenya.
- 19 So your Honours, I would ask that he be allowed to leave at 3.30 p.m. in order for him
- 20 to get back to Kenya tomorrow morning, upon which the president would go to
- 21 Addis Ababa.
- 22 It's an important matter because the president, apart from heads of state, there are
- 23 matters that are being discussed in advance regarding the Central African Republic
- 24 and also South Sudan. And at this moment the president of the Republic is also the
- 25 Chair of the East African association -- Community. So it's --

Trial Hearing
Witness: KEN-OTP-P-0743

(Open Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: Your request to cut it short, your request
2 effectively would be to excuse him for 30 minutes?

3 MR KHAN: Indeed. And, your Honours, if the Court wishes to shorten the lunch
4 break there would be no shortening of time away from court; in other words, he
5 would be here for the normal duration of the full court day, the normal hours. There
6 would be no excusal at all, it simply that we would finish earlier.

7 If the Court, for reasons of course the interpreters need their rest and their breaks, if
8 the Court was not amenable to that, I would simply ask that your Honours allow and
9 exercise your discretion Mr Ruto to leave at 3.30 p.m. in order to get the flights
10 necessary.

11 I've raised it with Mr Steynberg and he kindly said there is no objection from the
12 Prosecution. I'm grateful.

13 PRESIDING JUDGE EBOE-OSUJI: All right. We've heard your application. We
14 will inform you of our decision later.

15 (Trial Chamber confers)

16 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra, you'll continue your
17 cross-examination. The Chamber will deliberate on Mr Khan's application and
18 inform you of our decision, yes.

19 MS ALAGENDRA: Thank you, your Honour. Your Honour, if we can go back into
20 private session please.

21 PRESIDING JUDGE EBOE-OSUJI: Private session.

22 MR STEYNBERG: Your Honours, if I may just indicate I haven't answered to my
23 learned friend's query before the lunch-break about the payments to this witness, but
24 I think I should give it in private session and probably without the witness listening
25 in.

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: Yes. We will go into private session.

2 *(Private session at 11.40 a.m.) Reclassified as Open session

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

4 MR STEYNBERG: Thank you, your Honours. Very briefly, I've ascertained the
5 reasons why there has been no disclosure in relation to the monthly sub --

6 PRESIDING JUDGE EBOE-OSUJI: One second. You said you --

7 MR STEYNBERG: Without the witness, please.

8 PRESIDING JUDGE EBOE-OSUJI: All right. Let's mute the audio feed to the
9 witness, please.

10 THE COURT OFFICER: (Via video link) Mr President the audio is off.

11 PRESIDING JUDGE EBOE-OSUJI: Thank you.

12 MR STEYNBERG: I apologise for jumping the gun, your Honour.

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3 PRESIDING JUDGE EBOE-OSUJI: One second, please.

4 (Trial Chamber confers)

5 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, we've deliberated on your request.

6 The Chamber will not be shortening the lunch-break, but we'll keep the usual

7 lunch-break, but we will excuse Mr Ruto at 3.30.

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

9 PRESIDING JUDGE EBOE-OSUJI: Yes.

10 MR KHAN: It's appreciated.

11 PRESIDING JUDGE EBOE-OSUJI: And we will continue in the usual manner until

12 4.

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21 MS ALAGENDRA: Your Honours, can I ask that this investigator's report be

22 admitted, please?

23 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg?

24 MR STEYNBERG: Once again, it's been read into the record, but I have no objection.

25 MR KIGEN-KATWA: I have no objection.

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: Admitted.

2 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0141-0601_R01 will
3 be referenced as follows: EVD-T-D09-00385. The document is confidential.

4 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra and counsel generally in the case,
5 it may well be that there is value in admitting some exhibits or documents onto the
6 record, even short documents, especially when it is a critical or pivotal document, so
7 to speak, in a case, but short of that, some judgment is required on the part of counsel
8 to know when it is enough to read in material so we do not overwhelm the record
9 with everything that has been mentioned in a case. That is not efficient.

10 If there is a guarantee that during submissions counsel will be referring to a certain
11 piece of evidence, particularly then one understands the need to put them on record
12 as separate exhibits, but other than that, let's avoid the situation where everything
13 that's been mentioned is put on record as separate evidence or exhibits.

14 MS ALAGENDRA: I'll be so guided, your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: Proceed.

16 MS ALAGENDRA:

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- 13 We will leave it there for now and we will rise and return at 2.30.
- 14 Witness, we'll take our lunch-break now, so we'll see you at 2.30.
- 15 THE COURT USHER: All rise.
- 16 PRESIDING JUDGE EBOE-OSUJI: Thanks.
- 17 (Recess taken at 12.59 a.m.)
- 18 (Upon resuming in open session 2.35 p.m.)
- 19 THE COURT USHER: All rise.
- 20 Please be seated.
- 21 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 22 And, Witness, welcome back.
- 23 Ms Alagendra, we're in open session.
- 24 MS ALAGENDRA: Could we go back to private, please, your Honour.
- 25 PRESIDING JUDGE EBOE-OSUJI: You want to go back to private.

Trial Hearing
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(Private Session)

ICC-01/09-01/11

1 Private session.

2 *(Private session at 2.36 p.m.) Reclassified as Open session

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

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8 PRESIDING JUDGE EBOE-OSUJI: While that is being brought up, Mr Ruto we've

9 excused you as 3.30, so it will be -- when the time comes, Mr Khan, he can just exit

10 through whatever doors.

11 MR KHAN: Indeed. I'm most grateful.

12 PRESIDING JUDGE EBOE-OSUJI: There's no need to stop the proceedings for that.

13 MR KHAN: I'm most grateful. Thank you so much.

14 PRESIDING JUDGE EBOE-OSUJI: Yes.

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23 MS ALAGENDRA: Your Honours, perhaps we can leave it at this point.

24 PRESIDING JUDGE EBOE-OSUJI: Indeed. It's a little past 4 so we will adjourn our
25 proceedings for the day.

Trial Hearing
Witness: KEN-OTP-P-0743

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ICC-01/09-01/11

- 1 Witness, we will resume again tomorrow and do not discuss your testimony with
- 2 anyone overnight. Do you understand, as usual?
- 3 THE WITNESS: Thank you, your Honour.
- 4 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 5 THE WITNESS: Thank you, your Honour.
- 6 PRESIDING JUDGE EBOE-OSUJI: The Court will rise.
- 7 THE COURT USHER: All rise.
- 8 *(The hearing ends in private session at 4.02 p.m.) Reclassified as Open session
- 9 RECLASSIFICATION REPORT
- 10 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
- 11 2013, the version of the transcript with its redactions becomes Public.