

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 Wednesday, 21 January 2015
10 (The hearing starts in open session at 9.41 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 The situation in the Republic of Kenya, in the case of The Prosecutor versus
18 William Samoei Ruto and Joshua Arap Sang, ICC-01/09-01/11.
19 We are in open session.
20 PRESIDING JUDGE EBOE-OSUJI: Thank you.
21 Are there changes in appearance?
22 MR STEYNBERG: Two small changes -- well, not small, two changes for the
23 Prosecution team, your Honours. The case manager, Grace Goh, is back in place of
24 Jasmina Suljanovic and we are joined this morning by Peter Schotsman, Swahili
25 interpreter, in case it's necessary.

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1 PRESIDING JUDGE EBOE-OSUJI: Thank you.

2 MR NARANTSETSEG: Good morning, Mr President, your Honours. No change.

3 Thank you.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you, Mr Narantsetseg.

5 Mr Kigen-Katwa?

6 MR KIGEN-KATWA: Good morning, your Honours. Our interns, Cynthia Bondi
7 and Marie-Ange, are absent for the time being, otherwise the team remains the same.

8 PRESIDING JUDGE EBOE-OSUJI: Thank you.

9 Ms Alagenda, please.

10 MS ALAGENDRA: Good morning, Mr President, your Honours. For the Ruto
11 Defence we remain the same.

12 PRESIDING JUDGE EBOE-OSUJI: Thank you.

13 And, Mr (Redacted) at the remote location, are you there?

14 MR (Redacted) (Via video link) Yes, I am, your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: Your appearance --

16 MR (Redacted) Good morning.

17 PRESIDING JUDGE EBOE-OSUJI: Your appearance noted as well.

18 Witness, welcome back.

19 Before we proceed, the Chamber's been informed that Ms Alagenda has a matter to
20 raise before commencement of the -- or continuation of the testimony.

21 Is that correct?

22 MS ALAGENDRA: Indeed, your Honour.

23 PRESIDING JUDGE EBOE-OSUJI: We're in open session now. Is it to be taken in
24 open session or in the private session?

25 MS ALAGENDRA: I think we can do it in open session, your Honour.

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1 PRESIDING JUDGE EBOE-OSUJI: Does the Prosecutor know about the subject
2 matter?

3 MR STEYNBERG: No, your Honours, I don't.

4 PRESIDING JUDGE EBOE-OSUJI: All right. And the witness is also in the
5 courtroom, so to speak, at the remote location of course. Do we need to excuse him
6 for the discussion or at least cut the audio feed?

7 MS ALAGENDRA: Your Honour, in fact, in fairness to the witness I think he should
8 probably be allowed to listen to these issues.

9 PRESIDING JUDGE EBOE-OSUJI: Has it to do with the testimony of the witness?

10 MS ALAGENDRA: Indeed, your Honour.

11 PRESIDING JUDGE EBOE-OSUJI: If it is about the testimony of the witness, let's not
12 have the witness listen to the issues because we do not want a discussion about his
13 testimony to influence how he testifies after that discussion.

14 So court officer at the remote location, could you mute or, rather, cut the audio feed to
15 the witness.

16 THE COURT OFFICER: (Via video link) Mr President, the audio has been cut.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you.

18 Ms Alagendra.

19 MS ALAGENDRA: Thank you, Mr President.

20 Your Honours, yesterday evening at almost 7 p.m. we received a -- some disclosure
21 from the Prosecution and I have provided your Honours with a copy of this
22 disclosure. And, your Honours, this is a --

23 PRESIDING JUDGE EBOE-OSUJI: Document filed on 20 January 2015; is that it?

24 MS ALAGENDRA: Indeed, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: Investigator's report?

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1 MS ALAGENDRA: Indeed.

2 PRESIDING JUDGE EBOE-OSUJI: All right.

3 MS ALAGENDRA: The information contained in that document which was filed
4 yesterday was in fact information which was in the possession of the Prosecution
5 office since 14 June 2013 as is stated in the document.

6 And your Honours will recall that --

7 (Pause in proceedings)

8 PRESIDING JUDGE EBOE-OSUJI: Yes.

9 MS ALAGENDRA: And, your Honours, in my submissions yesterday when we
10 were dealing with whether or not this witness should be treated as hostile, one of the
11 issues I raised was that the Prosecution did not investigate the new information they
12 received from him. And the most important information, your Honour, which the
13 witness gave them seven months ago was that all the confirmation witnesses had
14 provided them with false evidence. And in the 2014 interviews the Prosecution took
15 him to task, they asked him, "Why didn't you tell us this before? Why are you telling
16 us this only now?"

17 PRESIDING JUDGE EBOE-OSUJI: Ms Alagenda, where are we going with this?
18 I want to understand so that we can deal with your issue quickly and continue with
19 the testimony of the witness.

20 MS ALAGENDRA: Indeed, your Honour. If your Honours will just bear with me,
21 I just want to give you a bit of a background.

22 PRESIDING JUDGE EBOE-OSUJI: Well, we don't want the background to sort of
23 evolve into a full-blown speech about what the Prosecution may or may not have
24 done well. We just -- this is a witness who is testifying, the witness has been asked
25 pointed questions on some pointed issues and you have now received disclosure

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1 which, according to you, is relevant to the issues the witness had either testified to or
2 will testify to, and you are saying this raises an issue. Can we quickly deal with that
3 issue without a long --

4 MS ALAGENDRA: I will.

5 PRESIDING JUDGE EBOE-OSUJI: -- discussion. Yes.

6 MS ALAGENDRA: I will, your Honours. And the witness told the Prosecution
7 that he had in fact told them this in 2013, and yesterday the opening questions which
8 my learned friend quickly went into to impeach the credit of the witness was that he
9 never gave them this information in 2013. He was questioned, "Did the investigator
10 write down what you said? Where did you meet him?" The witness repeated what
11 he said earlier, met them -- met him in The Hague, he wrote it down. In so many
12 words his account was discredited.

13 Last night, your Honour, we received this document which indeed confirms the
14 witness did meet with this investigator in 2013 and he did give an indication to the
15 investigator that there's something wrong with the Prosecution evidence. And on
16 the record of this disclosure it's from the contemporaneous records, so the
17 investigator was writing as the witness was saying this.

18 Firstly, your Honour, this was not disclosed to us until 7 p.m. after the witness has
19 been impeached on that issue. And this, your Honour, is a serious disclosure breach
20 and it's -- it's an even more worrying breach, your Honour, because what if the
21 witness had forgotten his conversation with the Prosecution in 2013?

22 PRESIDING JUDGE EBOE-OSUJI: That's -- that would now be a speculative
23 prospect. What if, there are all kinds of what ifs that arise in the course of testimony.
24 The essential issue now is that you're saying that this new disclosure is material in the
25 case; isn't that what you're saying?

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- 1 MS ALAGENDRA: It is extremely material in the case and perhaps may --
- 2 PRESIDING JUDGE EBOE-OSUJI: The materiality of it will be dealt in this way:
- 3 Either that the Prosecution going forward with the testimony of the witness, or
- 4 examination of the witness, reflects this as you would like it done, they may not agree
- 5 to your interpretation of the significance of this material, so they can finish their
- 6 examination-in-chief, which has now turned into cross-examination on account of
- 7 declaration of the witness as a hostile witness, but if they finish that exercise and
- 8 you're not satisfied with the way they've dealt with it, then you take it up in your
- 9 turn.
- 10 That is the way we will do it, and the remainder of it we will take when it comes time
- 11 to make final submissions of the parties. There is no other way we can deal with
- 12 this.
- 13 MS ALAGENDRA: Your Honours, in brief then, our application is a request that the
- 14 Prosecution stay its cross-examination and these proceedings be stalled and they go in
- 15 and they investigate information they received while this witness was in their custody,
- 16 so to speak. That's our request.
- 17 PRESIDING JUDGE EBOE-OSUJI: That's your application. All right.
- 18 MS ALAGENDRA: And this issue, your Honour, it does go to the heart of the case,
- 19 your Honour, and we hope the Prosecution is just not going to march on putting
- 20 away this very important information they got last night and just proceed with the
- 21 witness as if nothing happened.
- 22 PRESIDING JUDGE EBOE-OSUJI: And that will be the determination of the
- 23 Chamber on what happens. All right. Thank you very much for your submissions.
- 24 Before Mr Steynberg responds, Mr Kigen-Katwa, do you have submissions of your
- 25 own on this matter?

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1 MR KIGEN-KATWA: Mr President, we -- I adopt the position taken by
2 Ms Alagendra.

3 PRESIDING JUDGE EBOE-OSUJI: Thank you.
4 Mr Steynberg.

5 MR STEYNBERG: Yes, thank you, your Honours.

6 The first point I wish to make is that I'm rather surprised --

7 PRESIDING JUDGE EBOE-OSUJI: On the application, because we've already -- let's
8 not go back to what was said before Ms Alagendra's application.

9 MR STEYNBERG: Yes.

10 PRESIDING JUDGE EBOE-OSUJI: The issue now is the application Ms Alagendra
11 has made. Of course in dealing with it doesn't stop you from keeping in mind what
12 she had said before.

13 MR STEYNBERG: Yes, of course, your Honour.

14 PRESIDING JUDGE EBOE-OSUJI: But I just don't want us to follow on the
15 chronology of first we deal with what she said before and then we deal with the
16 application. No. Let's take it from the application and then we can invert your
17 rationale for your response to take into account what she said.

18 MR STEYNBERG: Thank you, your Honours. I was just going to observe that it
19 would have been in my submission entirely inappropriate to have had this argument
20 in the presence of the witness. I'm surprised my learned friend thought that that
21 would be an appropriate way to proceed.

22 PRESIDING JUDGE EBOE-OSUJI: But, you know, you shouldn't make that point
23 because the witness is not listening to this conversation.

24 MR STEYNBERG: As the Court pleases.

25 Your Honours, the Prosecution opposes the application. The cross-examination of

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1 this witness, I submit, will demonstrate that he's a thoroughly unreliable and
2 incredible witness regardless of these allegations that he has made.
3 Furthermore, I take issue, your Honours, with the characterisation that my learned
4 friend has placed on this investigator's note that has been now disclosed. She
5 characterised this as saying that the witness had told us there was something wrong
6 with the Prosecution evidence. He said nothing of the kind, your Honours, nothing
7 of the kind.
8 He hinted that he may have information relevant to the Article 70 investigation. I'm
9 speaking from memory, of course, because I had no notice of the application, and
10 I don't have the note in front of me.
11 Your Honours, my understanding is what he said was he had information about
12 witness interference. He refused to divulge names. He refused to divulge any
13 further information. When he was called back, he didn't want to talk to the
14 investigator. And it is true the investigator didn't call him back a second time, but
15 there was nothing in what this witness told the investigator which could have caused
16 him to think that either this witness's evidence was false or the evidence provided by
17 any other witness was false.
18 The information was related to an on-going attempt to interfere with the Prosecution's
19 witnesses, which is still ongoing to this day, your Honours, and which your Honours
20 have already heard a lot of information about. Your Honours, it is -- it is correct that
21 this information is relevant to what the witnesses say, as has stated in his evidence.
22 It may be that the Prosecution may be criticised for not disclosing this information
23 previously, but in the context, your Honours, this witness was interviewed over
24 several days, he provided several hundreds of pages of evidence of facts and for this
25 one fact to be isolated as a fact that should have jumped to the attention of the

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1 Prosecution to trawl through its records to see whether or not there was any note of
2 any such interaction with the witness which might be relevant, your Honours, we
3 submit is over-egging the pudding as one might say.
4 So, your Honours, we submit that the application is misplaced. It's not founded by
5 this disclosure. And, your Honours, if the Defence requests an adjournment of their
6 cross-examination to give them time to digest this information and to investigate on
7 their own, that's one matter, but, your Honours, we submit that there is no basis on
8 which to order the Prosecution to undertake any further investigation.

9 As I've stated, there has been a RFA, request for assistance sent to Kenya for various
10 records, which we are still awaiting. My learned friends have asked for certain
11 information which I received this morning, and I'll respond to that in due course.
12 But the Prosecution opposes, your Honour.

13 MS ALAGENDRA: Your Honours, if you will allow me just one minute?

14 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, you say this witness is, quote, "a
15 thoroughly unreliable and incredible witness," unquote. This is a witness you called
16 to testify. Beyond the merits of the application of Ms Alagendra, you will of course
17 tell us why we should continue to listen to this witness if this is how you view him.

18 MR STEYNBERG: Your Honours, this witness has made certain allegations which
19 go to the heart of the integrity of the Prosecution's case. In those circumstances, for
20 the Prosecution not to call this witness would have been inappropriate it would seem.
21 The Prosecution -- the main aim of the Prosecution ultimately is to have the truth
22 before this Court, and in that regard it is necessary for this witness to come and testify
23 in order to establish whether or not the version he gave us originally is the truth or
24 whether his subsequent recantation allegations against the Prosecution is the truth, or
25 ultimately whether neither of these versions is to be believed because the witness has

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1 been too discredited.

2 So, your Honours, it is in the determination of the truth that the Prosecution saw fit to
3 call this witness one way or the other.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 Ms Alagendra.

6 MS ALAGENDRA: Your Honours, in fact, my first issue was precisely the one
7 which your Honour has just raised. But the second issue, your Honour, is that all
8 the submissions of my learned friend about what the witness actually told this
9 investigator is not in this note, and we'd request for disclosure of the so-called
10 contemporaneous records.

11 And furthermore, your Honour, the witness had asked the OTP to contact him, and
12 the note clearly says they did not. Article 70, which is going to touch or discredit
13 Prosecution evidence, is not pursued. If it is going to fall on this side of the
14 courtroom, it's -- it's -- they go to any extreme to get it, your Honour, and this is not
15 right.

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

17 (Trial Chamber confers)

18 PRESIDING JUDGE EBOE-OSUJI: The Chamber rules on Ms Alagendra's request.
19 The application to stay the Prosecutor's continued examination of this witness is
20 rejected, and Mr Steynberg will continue with his examination of the witness. And
21 the Defence will take their turn, and when the time comes if they for any reason want
22 to revisit their application, it will be up to them to make the application at that time,
23 and the Chamber will also rule accordingly. But we will proceed.

24 MR STEYNBERG: Thank you, your Honours. As the Court pleases. May we
25 have the witness back in the remote location, please?

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1 PRESIDING JUDGE EBOE-OSUJI: Court officer, you can now reactivate the
2 witness's audio feed.

3 MR STEYNBERG: Your Honours, and while that's being done, may we also proceed
4 to private session. There is one issue I wish to touch upon which is identifying in
5 nature, and thereafter I intend to proceed into matters falling under Rule 74.

6 PRESIDING JUDGE EBOE-OSUJI: Private session.

7 *(Private session at 10.01 a.m.) Reclassified as open session

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

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

10 (The witness speaks English)

11 (The witness gives evidence via video link)

12 QUESTIONED BY MR STEYNBERG: (Continuing)

13 Q. Good morning, Mr Witness. Can you hear me?

14 A. I can hear you. Thank you.

15 Q. All right. Mr Witness, I'd just like to get a little bit of further information about
16 something you mentioned yesterday. You recall that I asked you (Redacted)

17 (Redacted) and I recall that you told the Court that (Redacted)

18 (Redacted) is that correct?

19 A. Yes.

20 Q. Can you please tell the Chamber (Redacted)

21 A. Your Honour, there is something that -- that I first want to clarify before I come
22 to what the leading counsel is asking.

23 Q. Well, can you first tell us what it is about, and we'll then decide whether to do
24 that now or whether to do that possibly a little bit later, okay. What's it about?

25 A. It is about what I said yesterday concerning the -- (Redacted)

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1 (Redacted)

2 Q. All right, Mr Witness. I promise that I will deal with that issue, so if you just
3 keep that in the back of your mind, and can we first just discuss what I've asked you
4 this morning, all right?

5 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, let's do this, not to overrule you on
6 the matter, but since this thing is fresh in the witness's mind, and let's deal with that
7 now. You can take up your question, you know where it is.

8 MR STEYNBERG: Very well, your Honours.

9 PRESIDING JUDGE EBOE-OSUJI: Yes.

10 Witness, go ahead. What is it you want to tell the Court?

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

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

11 Mr Steynberg, it is now time for the morning break. We will take it now and come
12 back in 30 minutes.

13 Witness, we will take our usual morning break at this time and we will come back
14 in 30 minutes, okay.

15 The Court will rise.

16 THE COURT USHER: All rise.

17 (Recess taken at 10.59 a.m.)

18 (Upon resuming in open session at 11.35 a.m.)

19 THE COURT USHER: All rise.

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

21 Mr Steynberg, we're in open session.

22 MR STEYNBERG: Your Honours, mindful of previous instructions, I would like to
23 start putting certain documents into the record so they don't accumulate, documents
24 that have been referred to so far. I imagine this can be done in public session.

25 The first document I would like to ask to be admitted, and the basis of admission at

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- 1 this stage is purely for impeachment purposes, the Prosecution does not at this stage
2 rely on the truth of contents, which is not to say that at a later stage we may consider
3 it necessary to make an application for it to be admitted for that purpose.
4 The ERN of this statement dated the 10th to 14 July 2010 is KEN-OTP-0029-0131.
5 PRESIDING JUDGE EBOE-OSUJI: Where is this document, what tab?
6 MR STEYNBERG: Your Honours, it's tab number 1.
7 PRESIDING JUDGE EBOE-OSUJI: This is the statement?
8 MR STEYNBERG: First statement to the OTP by this witness, your Honours.
9 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, any objection?
10 MR KIGEN-KATWA: Mr President, we do not object on condition that it is not
11 being relied for its truth.
12 PRESIDING JUDGE EBOE-OSUJI: That is what Mr Steynberg said. At this stage
13 he's not seeking to admit it for the truth of the content. If he wants to do that at a
14 later stage he will make the necessary application.
15 Ms Alagendra?
16 MS ALAGENDRA: No objection, your Honour. No objection.
17 PRESIDING JUDGE EBOE-OSUJI: No objection.
18 The document is admitted as the next Prosecution Exhibit in the case.
19 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0029-0131 will have
20 the number EVD-T-OTP-00269. The document is confidential.
21 PRESIDING JUDGE EBOE-OSUJI: Thank you.
22 MR STEYNBERG: Thank you, your Honours.
23 The next document is the witness's statement dated 26 to 30 May 2011, it's at tab 2.
24 The ERN is KEN-OTP-0053-0256. I request this is admitted on the same basis.
25 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa?

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- 1 MR KIGEN-KATWA: We do not oppose, Mr President.
- 2 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra?
- 3 MS ALAGENDRA: We don't object, your Honour.
- 4 PRESIDING JUDGE EBOE-OSUJI: Admitted.
- 5 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0053-0256_R03 will
- 6 have the number EVD-T-OTP-00270. The document is confidential.
- 7 MS ALAGENDRA: Your Honours, if I may just clarify one matter? Is it the case
- 8 that it's being admitted simply in reference to the portions which my learned friend
- 9 put to the witness? Just for us to be sure.
- 10 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg?
- 11 MR STEYNBERG: No, your Honours. The document is a comprehensive whole of
- 12 an interview, and it may well be that an argument I will want it refer to other parts of
- 13 that document in my arguments why the witness's evidence is to be impeached. So
- 14 it's for the whole document.
- 15 PRESIDING JUDGE EBOE-OSUJI: But for impeachment purposes at this stage, not
- 16 for the truth of the contents?
- 17 MR STEYNBERG: Indeed, your Honour.
- 18 PRESIDING JUDGE EBOE-OSUJI: Yes.
- 19 MR STEYNBERG: The document was shown to the witness. The witness
- 20 confirmed that that was his document and his signature --
- 21 PRESIDING JUDGE EBOE-OSUJI: Yes.
- 22 MR STEYNBERG: -- and adopted the whole of the document, if not the truth
- 23 thereof.
- 24 MS ALAGENDRA: Your Honours, in that case, our position is that only the portions
- 25 put to him can be relied on even on the basis of it being used for impeachment,

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1 your Honour.

2 PRESIDING JUDGE EBOE-OSUJI: The document --

3 MS ALAGENDRA: Not the whole --

4 PRESIDING JUDGE EBOE-OSUJI: You can make that argument later on, but we've
5 admitted the document.

6 Mr Steynberg, the next?

7 MR STEYNBERG: Thank you, your Honours. The next document is the
8 continuation of the same interview, the audio -- or, the transcripts of the
9 audio-recorded interview commencing on 30 May 2011 until 1 June 2011. These are
10 contained from tabs 3 to 17 of the Prosecution bundle. The ERNs, starting ERN is
11 KEN-OTP-0055-0288 and the last ERN commences at 0055-0650. The CMS is in
12 possession of a list of all of the relevant ERNs.

13 Your Honours, once again, this is a continuation of the same interview. The witness
14 does not -- it's audio recorded. The audio recordings have been disclosed to the
15 Defence. There is no dispute, as far as I know, that this is the witness with this
16 interview -- this is an interview with this witness, although he claims not to remember
17 the specific occasion. He does not dispute that this is his interview and that this is a
18 correct recording of his interview. Your Honours, once again, we request admission
19 for the same purposes.

20 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa?

21 MS ALAGENDRA: Your Honours, if I may address you first? Your Honours, in
22 relation to this interview, we do object simply because very, very limited portions of it
23 was put to the witness. This is a transcript which goes into quite a number of pages.
24 And our position is that the portions which my learned friend dealt with is already
25 read into the record and that should be sufficient, your Honour. That's our position.

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1 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa?

2 MR KIGEN-KATWA: We will take the same position, Mr President; that the
3 portions that were put to the witness, we do not object to those parts.

4 PRESIDING JUDGE EBOE-OSUJI: The document is admitted in its entirety.

5 If -- we understand the Ruto Defence position to be that they do not accept the
6 admission of the document for the parts that were not put to the witness directly in
7 the Prosecutor's examination, but that is a matter that will be dealt with at the right
8 time.

9 Mr Steynberg.

10 MR STEYNBERG: Your Honours, the last document I intend to deal with at this
11 point, which was referred to yesterday, is the third statement by the witness to the
12 Prosecution on 19 August 2011. Again, this is transcripts of an audio recorded
13 interview. The tabs are tabs 18 to 20, and the relevant ERNs are KEN-OTP-0067-0706
14 to KEN-OTP-0067-0759.

15 And I apologise that I think I have jumped the gun because the court officer has not
16 yet read the ERNs for the previous one, but perhaps you can do those two together.

17 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa?

18 MR KIGEN-KATWA: We take the same position, Mr President, that our position is
19 that parts that have been put to the witness are the ones to be admitted.

20 PRESIDING JUDGE EBOE-OSUJI: Ms Alagendra?

21 MS ALAGENDRA: Your Honours, our position remains as previously.

22 And additionally, your Honour, we are not certain when would be the right moment
23 to address the issue of admissibility once the statements are admitted as to how they
24 can --

25 PRESIDING JUDGE EBOE-OSUJI: The right moment is this: We are not before a

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1 jury that you should fear that when you put in material, the jury will be unable to
2 handle it. This is a Bench of professional Judges. You know that. You know the
3 difference.

4 The documents are admitted.

5 MS ALAGENDRA: I'm grateful, your Honour.

6 MR STEYNBERG: As the Court pleases, your Honour.

7 Your Honour, then I would like to continue posing questions to this witness on
8 matters which engage Article 74. And I regret I must once again, once my learned
9 colleague is finished, ask to go back into private session.

10 PRESIDING JUDGE EBOE-OSUJI: Court officer will read in -- will reflect the
11 documents that have been admitted onto the record.

12 THE COURT OFFICER: (Interpretation) Thank you, your Honour. Document
13 KEN-OTP-0055-0288 will have the number EVD-T-OTP-00271. The document is
14 confidential.

15 Document KEN-OTP-0067-0706_R04 will have the number EVD-T-OTP-00272. This
16 document is also confidential.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you.

18 Mr Steynberg, proceed. We're in --

19 MR STEYNBERG: Private session, please.

20 PRESIDING JUDGE EBOE-OSUJI: -- open session now. The request is to go into
21 private session. We will go into private session.

22 *(Private session at 11.46 a.m.) Reclassified as open session

23 THE COURT OFFICER: (Interpretation) We're in private session, your Honour.

24 PRESIDING JUDGE EBOE-OSUJI: Thank you.

25 (Redacted)

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20 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg, do you want to take a few minutes
21 finishing this or -- this is now the time for us to rise. It may be appropriate to do so
22 now.

23 MR STEYNBERG: Your Honours, it will take probably five minutes. So perhaps I
24 can deal with it when we get back.

25 PRESIDING JUDGE EBOE-OSUJI: Yes, I think so.

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1 All right. Witness, we will take our lunch-break and you also take yours. All of us,
2 we need a break in this business from time to time. Have your lunch and then come
3 back and do what you were doing before, which is focusing on the questions and
4 answering them factually, okay?

5 THE WITNESS: Yes, your Honour.

6 PRESIDING JUDGE EBOE-OSUJI: Thank you.

7 The Court will rise.

8 THE COURT USHER: All rise.

9 (Recess taken at 1.00 p.m.)

10 (Upon resuming in open session at 2.35 p.m.)

11 THE COURT USHER: All rise.

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

13 Witness, welcome back.

14 Mr Steynberg, we're in open session. How are we doing on time?

15 MR STEYNBERG: Your Honours, at the current rate I estimate that I will be finished
16 by the tea break, the morning break tomorrow morning.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you. We're in open session.

18 MR STEYNBERG: May we please return to private session, your Honours.

19 PRESIDING JUDGE EBOE-OSUJI: Private session, please.

20 *(Private session at 2.36 p.m.) Reclassified as open session

21 THE COURT OFFICER: (Interpretation) Mr President, we're in private session.

22 PRESIDING JUDGE EBOE-OSUJI: Thank you.

23 Please proceed.

24 MR STEYNBERG: Thank you.

25 (Redacted)

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(Private Session)

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

7 And we will bring the proceedings to a close today.

8 Witness, we will meet again tomorrow.

9 Court will rise.

10 THE COURT USHER: All rise.

11 *(The hearing ends in private session at 4.03 p.m.) Reclassified as open session

12 RECLASSIFICATION REPORT

13 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September

14 2013, the version of the transcript with its redactions becomes Public.