

Trial Hearing
Witness: KEN-OTP-P-0128

(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 Carbuccion and Judge Robert
7 Fremr
8 Trial Hearing
9 Friday, 31 January 2014
10 (The hearing starts in open session at 9.37 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, your Honour. Situation in
17 the Republic of Kenya, in the case of The Prosecutor versus William Samoei Ruto
18 and Joshua Arap Sang, ICC-01/09-01/11. We are in public session.
19 PRESIDING JUDGE EBOE-OSUJI: I see that appearances are the same.
20 Ms Weiss?
21 MS WEISS: The same, your Honour.
22 PRESIDING JUDGE EBOE-OSUJI: Mr Nderitu?
23 MR NDERITU: The same.
24 MR KOECH: The same, your Honour.
25 MR HOOPER: And remain the same for the Ruto Defence as well.

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- 1 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 2 MR HOOPER: Your Honour, we have those exhibits to announce and Ms Jayaraj
3 will go through the numbers, if she may? Thank you.
- 4 MS JAYARAJ: Good morning, your Honours. I'll just be reading out the ERN
5 numbers. The first one is KEN-D09-0029-0018.
- 6 PRESIDING JUDGE EBOE-OSUJI: What is that again, do you remember?
- 7 MS JAYARAJ: Yeah, that's a Google map. The second item is KEN-D09-0029-0017
8 and that's also a Google map.
- 9 MS WEISS: No objection to both of those, your Honour.
- 10 MS JAYARAJ: The third item is KEN-D09-0029-0016, also a Google map.
- 11 PRESIDING JUDGE EBOE-OSUJI: Ms Weiss?
- 12 MS WEISS: No objection, your Honour.
- 13 PRESIDING JUDGE EBOE-OSUJI: How many, all the Google maps?
- 14 MS JAYARAJ: Yes, those are all three Google maps.
- 15 PRESIDING JUDGE EBOE-OSUJI: All three Google maps --
- 16 MS JAYARAJ: Yes, your Honour.
- 17 PRESIDING JUDGE EBOE-OSUJI: -- and the Prosecution does not object. The
18 Google maps are accepted onto the record as the next in the Ruto Defence exhibits.
- 19 THE COURT OFFICER: (Interpretation) Document KEN-D09-0029-0018
20 confidential will be given the EVD number, T-D09-000125. Document
21 KEN-D09-0029-0017 public will be given the EVD number T-D09-00126. Document
22 KEN-D09-0029-0016 public will be given the EVD number T-D09-00127.
- 23 MS JAYARAJ: And the next item would then be KEN-OTP-0083-0343, and that's an
24 OTP item. That's a sketch.
- 25 PRESIDING JUDGE EBOE-OSUJI: Where is the tab?

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- 1 MS JAYARAJ: It's tab 27, your Honour.
- 2 PRESIDING JUDGE EBOE-OSUJI: Ms Weiss?
- 3 MS WEISS: No objection, your Honour.
- 4 PRESIDING JUDGE EBOE-OSUJI: The item is accepted onto the record as the next
5 in the Ruto Defence exhibits.
- 6 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0083-0343
7 confidential will be given the EVD number T-D09-00128.
- 8 MS JAYARAJ: The next item is KEN-D09-0029-0001, and those were the series of
9 photographs that were shown to the witness. The photograph that ends with 0001,
10 0002, 0007, 0005 and 0008 was shown to the witness.
- 11 PRESIDING JUDGE EBOE-OSUJI: Ms Weiss?
- 12 MS WEISS: Your Honour, the Prosecution objects to two of those photographs
13 being given -- being admitted, the first one being 0005. (Redacted)
14 (Redacted). I refer your Honours to page 49
15 of yesterday's transcript, lines 21 to 24.
16 The second photograph the Prosecution objects to is the one ending 0008. (Redacted)
17 (Redacted), and I refer your Honours to page
18 50 of yesterday's transcript, lines 18 to 23.
- 19 PRESIDING JUDGE EBOE-OSUJI: Any response?
- 20 MR HOOPER: Well, photographs are real evidence. My impression was that the
21 witness had agreed (Redacted)
22 (Redacted) that was discussed of course yesterday, and the witness's
23 evidence was that it was different,(Redacted) But my
24 understanding of the position was that it wasn't being disputed that (Redacted)
25 (Redacted)

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1 (Redacted)

2 Now, in any event, the position is reached whereby discussion is taking place in
3 court that needs to be rooted, and it needs in this case to be rooted on the
4 photographs, even where there's disagreement.

5 PRESIDING JUDGE EBOE-OSUJI: The Chamber will accept the photos with the
6 exception of 0005 and 0008. Those two items will be marked MFI. The rest would
7 come in as the next in the Ruto Defence exhibits.

8 We're then talking about 0001 -- Counsel, can you take them again? 0002, is that it?

9 MS JAYARAJ: Yes, your Honours. It's 0001, 2, 7 and 5 and 8.

10 PRESIDING JUDGE EBOE-OSUJI: 0001, 0002, 0007 would come in as the next in
11 the Ruto Defence exhibits.

12 I understand there is a technical problem in view of the way the Defence had
13 uploaded the document. Apparently uploaded all of them as one item, given one
14 ERN number, I think. Next time let's not do it that way, because that assumes that
15 all of it would be admitted onto the record.

16 So for purposes of the record, the only items of the photos admitted as exhibits are
17 the ones I indicated 1, 2 and 7. 5 and 8 would be only in there for purposes of
18 identification, MFI. That should get us around the difficulty.

19 MR HOOPER: Well, perhaps we can sort that out afterwards, either by --

20 PRESIDING JUDGE EBOE-OSUJI: Yes. Let's --

21 MR HOOPER: -- sending you individual photographs --

22 PRESIDING JUDGE EBOE-OSUJI: Very good.

23 MR HOOPER: -- in due course.

24 MS JAYARAJ: Yes, your Honours. Thank you. The next item is

25 KEN-D09-0029-0024. That was at your Honours' bundle tab 10A and was the

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1 handwritten letter by the witness.

2 PRESIDING JUDGE EBOE-OSUJI: No, that will not come in as an exhibit. It was
3 for purposes of memory refreshment, and it served its purpose.

4 MS JAYARAJ: Thank you, your Honours. The next item is KEN-OTP-0109-0264 at
5 your Honours' tab 32.

6 MS WEISS: No objection, your Honour.

7 PRESIDING JUDGE EBOE-OSUJI: No objection. The document comes in then as
8 the next in the Ruto Defence exhibits.

9 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0109-0264 R01 will
10 be given the EVD number T-D09-00129. It is a confidential document.

11 PRESIDING JUDGE EBOE-OSUJI: Any more?

12 MS JAYARAJ: Thank you. The next item is KEN-OTP-0083-0340, the first redacted
13 version at your Honours' tab 26. And it's the certificate of registration of a self-help
14 group.

15 MS WEISS: No objection, your Honour.

16 PRESIDING JUDGE EBOE-OSUJI: The item is accepted as the next in the Ruto
17 Defence exhibits.

18 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0083-0343 R01
19 confidential will be given the EVD number T-D09-00130.

20 MS JAYARAJ: The next item is KEN-OTP-0078-0395, the first redacted version at
21 your Honours' tab 37. And that is an email from the witness to the OTP.

22 MS WEISS: No objection, your Honour.

23 PRESIDING JUDGE EBOE-OSUJI: Document accepted as the next in the Ruto
24 Defence exhibits.

25 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0078-0395 R01

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1 confidential will be given the EVD number T-D09-00131.

2 MS JAYARAJ: The last item, your Honours, is KEN-OTP-0078-0351, the first
3 redacted version at your Honours' tab 24. And it's a handwritten letter by the
4 witness.

5 MS WEISS: No objection, your Honour.

6 PRESIDING JUDGE EBOE-OSUJI: Document accepted as the next in the Ruto
7 Defence exhibits.

8 THE COURT OFFICER: (Interpretation) Document KEN-OTP-0078-0351 R01
9 confidential will be given the EVD number T-D09-00132.

10 MR HOOPER: Those are all the matters at present, your Honour. Can I just
11 correct my colleague's -- the spelling of my colleague's name. That's Shalini Jayaraj,
12 and Jayaraj is spelt J-A-Y-A-R-A-J for the record. Thank you very much.

13 WITNESS: KEN-OTP-P-128 (On former oath)

14 QUESTIONED BY MR HOOPER: (Continuing)

15 Q. And good morning, Mr Witness. I'm sorry to have left you sitting there
16 during that exercise, but you realise as we go along it's important that we get all our
17 documents numbered and in order.

18 Now, we were -- I'd like to -- you to help me as to what happened in January when
19 you walked to Nandi Hills.

20 PRESIDING JUDGE EBOE-OSUJI: You know we are in open session?

21 MR HOOPER: Yes, I appreciate that.

22 Q. And you walked from a certain place to Nandi Hills. And as we are in open
23 session let's -- let's just refer to it like that, village, hamlet, a certain place. We won't
24 name it by name.

25 And as I understand it, you say you went in order to see what government opinion

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1 was, and to do that you went to see or you intended or thought you were going to
2 see the DC, the district -- the district commissioner; is that correct?

3 A. Your Honour, I didn't go by myself. There was a whole crowd with me and
4 we didn't know what we were going to do there, but those in charge had appealed to
5 us. The government leaders had done it and there were some of us who thought
6 that they were going to be talking to us.

7 Q. Was this essentially a march because people were extremely upset in their
8 belief that the elections had been rigged?

9 A. Your Honour, yes. That was the impression, because there were complaints
10 here and there, and there were disturbances in the country. It was a march, and I
11 thought that the DCs were going to be talking to us. That's what I was thinking.

12 Q. Do you remember, is it right that Mr Raila Odinga, leader of the ODM party,
13 had made a public announcement calling for demonstrations by people to object to
14 the -- what he called the rigged election? Do you remember his making a public
15 announcement to that effect?

16 A. No, your Honour.

17 Q. Do you remember --

18 MR HOOPER: This is tab 31 of our bundle. It's a screening note, and I needn't
19 certainly at this stage trouble the witness with it. It's not a document, of course, that
20 he ever saw or signed.

21 Q. Do you remember, Mr Witness, making a -- being interviewed by people
22 called (Redacted)

23 (Redacted) Do you remember that?

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

25 *(Private session at 9.58 a.m.) Reclassified into open session

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1 THE COURT OFFICER: (Interpretation) We are in private session, your Honour.

2 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, I think it's safer for us to take that
3 question and answer in private session and then we will see.

4 MR HOOPER:

5 Q. And what's your answer, Mr Witness?

6 A. Your Honour, could you repeat the question? I didn't understand it
7 properly.

8 Q. Can you remember talking to two people, one was called (Redacted), the
9 other one (Redacted)? It may have been (Redacted)

10 (Redacted)

11 (Redacted) and you discussed the events with them over about 40, 45 minutes.

12 Do you remember that? The date incidentally was in (Redacted)

13 (Redacted). Do you remember that?

14 A. Your Honour, I remember speaking to the ICC staff (Redacted), but I don't
15 remember their names. I spoke to a number of them and they had different names,
16 your Honour.

17 Q. All right. Well, we're not -- the names aren't important. You remember the
18 event. In fact, that would, I think, have been (Redacted)

19 (Redacted)

20 (Redacted)? Is that right? (Redacted)

21 (Redacted); is that right?

22 A. Your Honour, I agree that I spoke to them, the Prosecutor staff. However, I
23 don't remember the different dates on which we spoke, your Honour.

24 Q. Yes, and we all fully understand that, and we are talking about events that
25 occurred now several years ago. So don't worry about that. But do you remember

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1 telling them this, about this walk that in early – quote, "In early January 2008 ODM
2 agents organised a baranza ...", a baraza sorry, "... in Nandi Hills Town. They said
3 that everybody in the area must go to this meeting which would be addressed by
4 Ruto." Do you remember saying that?

5 A. Your Honour, I already explained this clearly. I said that it was the
6 government agents from the -- the elders from the community who said that we
7 would go on this trip and people had to prepare. I didn't say that it was any agents
8 from any particular group, your Honour.

9 Q. But did you recall saying or do you recall telling -- this is the bit I'm interested
10 in, that this baraza was to be addressed by Ruto, do you remember saying that?

11 A. Your Honour, it is highly probable that I said that, but I no longer remember.
12 Because of an issue like that, all the Kalenjin community accept such an invitation
13 because they expect that Mr Ruto will take the floor.

14 PRESIDING JUDGE EBOE-OSUJI: I think we can go back in the public session
15 now.

16 MR HOOPER: Yes.

17 PRESIDING JUDGE EBOE-OSUJI: I just didn't know where --

18 MR HOOPER: I understand.

19 PRESIDING JUDGE EBOE-OSUJI: -- what might come up.

20 MR HOOPER: And I'll revisit this in a way that --

21 PRESIDING JUDGE EBOE-OSUJI: And while we're in private session, there was a
22 request from the OTP that the names be deleted from -- why is that?

23 MS WEISS: Your Honour, these investigators (Redacted), and as
24 much as my learned friend and the Defence counsel have the names of these
25 investigators, the public should not have them, (Redacted)

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1 (Redacted).

2 PRESIDING JUDGE EBOE-OSUJI: There should not be a problem with that,
3 Mr Hooper?

4 MR HOOPER: No, I have no problem.

5 PRESIDING JUDGE EBOE-OSUJI: Good. Okay. We'll go back to public session
6 now.

7 (Open session at 10.04 a.m.)

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

9 MS WEISS: Your Honour, just a small transcript issue. I'm told by my -- the OTP
10 interpreter that at page 10, line 11 the word "trip" should actually be
11 "demonstration". And it's quite an important difference, so I just wanted to raise it
12 right now with your Honours while we're at that point.

13 PRESIDING JUDGE EBOE-OSUJI: I don't imagine that the Defence would have a
14 problem with that?

15 MR HOOPER: No, problem, your Honour. I thank my friend for the correction.
16 Are now we in public?

17 PRESIDING JUDGE EBOE-OSUJI: We are.

18 MR HOOPER: We are? Thank you.

19 Q. Sorry, we were just discussing, Mr Witness -- I'd asked you this, whether you
20 recalled in (Redacted) -- or saying in the past to the Prosecution that everybody in
21 the area had been told to go to that meeting which would be addressed by Ruto, and
22 can you just repeat to us what your position is?

23 PRESIDING JUDGE EBOE-OSUJI: Counsel, I think we've made an issue out of
24 whether to say Mr Ruto. And the Defence thought it would -- what goes for the
25 Prosecution also goes for the Defence on that one.

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1 MR HOOPER: I was just reading the text as it appears on the page. Mr Ruto for
2 himself doesn't mind the appellation or not.

3 PRESIDING JUDGE EBOE-OSUJI: Except when the Defence makes an issue out of
4 it, let's stick with the --

5 MR HOOPER: Oh, yes.

6 PRESIDING JUDGE EBOE-OSUJI: Yes. It has to be Mr for everybody in the
7 courtroom.

8 MR HOOPER:

9 Q. So over to you, Mr Witness. Did you -- you were telling us that it's
10 something you may have said. Is that right? Can you just explain. What do you
11 mean that this meeting would be addressed by Ruto? Mr Ruto, sorry.

12 A. Your Honour, it wasn't a normal case of affairs. The whole -- to see the
13 whole Kalenjin community mobilised like that. If they hadn't heard that it was
14 going to be Ruto who was going to speak, I mean, that's what they said to the people
15 who were there. They said that Mr Ruto was going to be there, and that's the
16 reason why they came in such large numbers, your Honour.

17 Q. So they came in large numbers because of the attraction of Mr Ruto. So it
18 wasn't, as you told us, because they were all ordered to go and it was compulsory to
19 go; is that what you're saying?

20 A. Your Honour, I just said the following: I didn't know who was going to be
21 there. Even some of us, people from other communities, didn't know. But to see
22 that the Kalenjin were in such high numbers there, that wasn't normal because they
23 were the ones who were more numerous than any other community. And to have
24 such a demonstration, that meant that in one way or in another it was Mr Ruto who
25 was going to address them.

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1 Q. And to your knowledge did they address them?

2 A. Your Honour, what happened there -- well, I didn't see Mr Ruto there. There
3 were different things with regards to what we thought before, your Honour.

4 Q. Well, to your knowledge, did he address people that day in Nandi Hills?

5 A. Your Honour, I repeat, there weren't speeches, the speeches that we were
6 expecting when we left our homes. We just saw the things that happened there,
7 your Honour.

8 Q. All right. In fact -- and I'm not going to mention the name of the village or
9 place -- it's right to say that it wasn't compulsory and people who didn't want to go,
10 didn't go? That's right, isn't it? You didn't have to go.

11 A. Your Honour, the call was made for all men to go to Nandi Hills. You know,
12 there are a lot of people -- there were a lot of people on the road who were going
13 there, and you, you're a person if you stay a home and in particular if you are from a
14 different community, it was an obligation. And even I didn't demonstrate, but it
15 was compulsory for men. The people who could stay at home, well, it would be
16 poorly seen by the government or by the leaders who had called this demonstration,
17 your Honour.

18 Q. Is it right that very few other Luhyas went?

19 A. Your Honour, when you start a trip to go somewhere you can't look
20 backwards to see who is behind you. You look in front of you and you look at those
21 who are in front of you. As far as I could see, a lot of people left. Perhaps those
22 who stayed were ill. As far as I'm concerned, nobody stayed in their homes if they
23 were men, your Honour.

24 Q. What time did you -- did you leave? What time did you set out from that
25 place?

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1 A. Your Honour, I left at 9.30 -- well, let's say around 10.

2 Q. And what time did you reach Nandi Hills?

3 A. Your Honour, I arrived at Nandi Hills towards 1, a few minutes before.

4 Q. A few minutes before. All right. And you walked there, is that right,
5 together with a large body of other people? Is that right?

6 A. Yes, your Honour.

7 Q. Quite a few hills to walk on that road; is that right?

8 A. Your Honour, the people took different roads. There were roads which were
9 alongside. Some people took their vehicles, which took them further to the front.
10 And there were also others who were just walking on the road.

11 Q. You were one of those walking along the road; that's right, isn't it?

12 A. Yes, your Honour.

13 Q. And I asked you whether that involved climbing several hills on the way to
14 Nandi Hills Town.

15 A. Yes, your Honour. Nandi Hills is a region where there are hills and valleys.
16 But I took the main road. I didn't take secondary roads.

17 PRESIDING JUDGE EBOE-OSUJI: Witness, the question from the lawyer was
18 whether your walk to the place involved you climbing several hills. Can you
19 answer just that question about you -- whether or not you had to climb several hills
20 on the way to the place?

21 MR HOOPER:

22 Q. I'll just put it clearly that I'm saying is if you walk along that road, that road
23 goes up hill quite a lot. You have to climb those hills that it goes up. Is that right?

24 A. Yes, your Honour. I said that there were hills there. There were valleys
25 there. The Nandi Hills region is like that. Valleys and hills.

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1 Q. But you were telling us that the women had in some way been organised to
2 support the walkers by providing them with food, and that you yourself were able
3 to stop and eat at no expense of your own on your walk to Nandi Hills. All that is
4 correct, is it not?

5 A. Your Honour, I didn't eat food -- I didn't eat food whose origin I didn't know
6 what it was. But it's true that there was women who were alongside the road who
7 were providing people who were tired, to people who were hungry. They could
8 stop and they could eat and then they could continue on their journey, but I didn't
9 know that they paid for that.

10 Q. Very well. Did you stop on that journey? Did you rest at any time before
11 getting to Nandi Hills?

12 A. Yes, your Honour. During such a long trip, even if there are a lot of you, you
13 walk. Personally I was walking. I stopped to rest. Some people went very fast.
14 Others used vehicles, your Honour.

15 MR HOOPER: I've just got two questions that may be best placed in private
16 session.

17 PRESIDING JUDGE EBOE-OSUJI: Private session.

18 *(Private session at 10.18 a.m.) Reclassified into open session

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

20 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Mr Hooper, please
21 proceed. Do we have -- if you can remind me again, do we have the distance? It's
22 coming. Okay.

23 MR HOOPER:

24 Q. Two questions. The first one is this: Did you walk with any friends?

25 A. Your Honour, yes. At a certain time on the road I met people who I knew.

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1 Sometimes they were going forward, I was behind or the other way around, but

2 during this trip, yes, I did meet people who I knew. Yes, your Honour.

3 Q. Any Luhya friends?

4 A. Yes, your Honour.

5 Q. And who was that?

6 A. Your Honour, my friends, they were people that I knew when we were living

7 (Redacted) your Honour.

8 Q. Do you have any names that you can remember, particularly those that lived

9 in (Redacted)

10 A. Your Honour, I saw (Redacted), your Honour. I also saw (Redacted).

11 Q. If you can just spell the names as you say them. It's for the record, for the

12 transcript so we've got an accurate record. So the first name you gave us and then

13 the second, if you can say them both again and then spell -- and spell each one as

14 you say it. Thank you very much.

15 A. Your Honour, the first is (Redacted), and then I also saw

16 (Redacted)

17 Q. And they're both from (Redacted), or not?

18 A. Yes, they all live in (Redacted), your Honour.

19 Q. All right. Thank you. (Redacted)

20 (Redacted)

21 (Redacted)

22 lived there ten years, (Redacted); is

23 that right?

24 A. Your Honour, yes. I would say that I don't remember the exact distance, but

25 (Redacted)

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1 (Redacted) I can't

2 remember the distance, your Honour.

3 Q. I'm asking you about the main road, the main road that you're walking along.

4 Now, you told us yesterday from (Redacted) and that's

5 going towards Nandi Hills. (Redacted), do you

6 know?

7 A. Your Honour, I can't know that.

8 Q. All right.

9 MR HOOPER: Can we go into open session again, please?

10 PRESIDING JUDGE EBOE-OSUJI: Back to public session.

11 (Open session at 10.24 a.m.)

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

13 MR HOOPER:

14 Q. Now, if one was to walk quite quickly, quickly, in fact, say at 6 kilometres an

15 hour, which I suggest is quite quick and would be quicker than you've described

16 people were walking in that long column of men. Let's just pause for a moment.

17 Did you want to reflect how long it took you to walk between (Redacted) and Nandi

18 Hills?

19 A. Your Honour, I said that personally I walked slowly. Sometimes I had a rest.

20 Sometimes I followed the others and I walked quickly. But I arrived there around 1.

21 So if I left (Redacted) around 9.30 or around 10 and I arrived there at 1.00, well, that's

22 it, your Honour.

23 PRESIDING JUDGE EBOE-OSUJI: (Microphone not activated)

24 MR HOOPER: I think that got missed on the transcript.

25 PRESIDING JUDGE EBOE-OSUJI: One second, Mr -- private session.

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1 MR HOOPER: Sorry, we're going in and out. I'm sorry.

2 *(Private session at 10.26 a.m.) Reclassified into open session

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

4 MR HOOPER: Yes, I realise I did.

5 PRESIDING JUDGE EBOE-OSUJI: We will delete (Redacted) from counsel's question.

6 And we will also delete the witness's reference to walking from (Redacted).

7 Are we safer to be continuing this in private session?

8 MR HOOPER: No, we can come out into open. I'm, as it were, in Nandi Hills
9 now.

10 PRESIDING JUDGE EBOE-OSUJI: Public session.

11 (Open session at 10.27 a.m.)

12 THE COURT OFFICER: (Interpretation) We're in open session.

13 PRESIDING JUDGE EBOE-OSUJI: Witness, we're now back in public session.

14 Remember the red light is on.

15 MR HOOPER:

16 Q. Now, you've told us how you got to Nandi Hills police station, and you've
17 seen a photograph of that police station that the Prosecution showed you and you
18 say essentially it looked like --

19 MS WEISS: Your Honour, I'm sorry. The Prosecution did not show the picture of
20 Nandi Hills police station.

21 MR HOOPER: Oh, sorry. I thought -- I thought you had for completeness.

22 Q. In any event, it's accepted that Nandi Hills police station today doesn't look
23 very different to how it would have looked like it 2007. Let me just put it like that,
24 and we accept that.

25 Mr Witness, you arrive at Nandi Hills police station. Just tell us again what

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1 happened there when this policemen gets killed. You're about 15 metres away.

2 What do you actually see?

3 A. Your Honour, I was behind a crowd who came before me, and as we were

4 told in the message or call that was made to the other tribes, you do what the

5 Kalenjin do. So stay behind them and do what they do. And when I arrived close

6 to the door of the DC, then I saw there were people who were starting to shout next

7 to the shop. There was also the police.

8 And after I heard that a policeman had been killed, a leader and officer in charge of

9 the police station and I -- there were people there. They, having heard some

10 speeches, I heard that they started speaking and also I started to run to go back

11 home.

12 And I thought perhaps that people would be murdered or the police were going to

13 shoot at people. And I was thinking, well, how can somebody shoot an arrow at a

14 policeman and the -- when policemen have rifles? And there was total confusion.

15 I was very confused.

16 THE INTERPRETER: The interpreter corrects that it was before hearing speeches,

17 not after hearing speeches.

18 MR HOOPER:

19 Q. All right. So you saw -- you're in the crowd, you see the arrow suddenly fly

20 and hit the policeman; is that right?

21 A. No, your Honour. I couldn't see the arrow. I was a long way away from the

22 people and there were a lot of people in front of me. But people called out and

23 someone said the chief of police had just been killed by an arrow, so then I went

24 back.

25 Q. Did you see the policeman fall down?

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1 A. Your Honour, there were a lot of people there. And I saw things from a long
2 way away and I was afraid there might be massacres, and because I was afraid, I
3 didn't want to go closer to that place, your Honour.

4 Q. Did you see the policeman fall down?

5 A. Your Honour, I said some time ago that I was behind the huge crowd, and
6 you know when someone falls down the middle of a crowd of 500 people, you can't
7 see the person. But when I heard that it was the police commander, I turned
8 around and went back the other way.

9 PRESIDING JUDGE EBOE-OSUJI: Witness, the question of the lawyer was very
10 specific, and you may be able to answer it just as specifically. What he is asking you
11 is whether with your own eyes you saw -- did you see the policeman fall down, yes
12 or no?

13 THE WITNESS: (Interpretation) Your Honour, at a distance I saw that someone
14 had just fallen down, but I wasn't close enough to really see.

15 MR HOOPER:

16 A. I wonder if we can just have -- you can have a look at your statement that we
17 gave the Prosecution. We've already visited what you said in your letter in
18 September -- sorry, January, and we visited your victim's application form
19 yesterday, and I'm not going to go through those again, because that's on the record.
20 We read it into the transcript. But can we -- can you please be shown your
21 statement, and in particular I just want you to look at paragraph 51 of your
22 statement.

23 PRESIDING JUDGE EBOE-OSUJI: Tab?

24 MR HOOPER: It's 25 -- is it 25? 25.

25 THE COURT OFFICER: (Interpretation) Mr Hooper, could you please give us an

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1 ERN number?

2 MR HOOPER: Yes, sorry. The ERN number KEN-OTP-0083-0328 R03. And we
3 may have a hard copy which might be much easier for the witness.

4 Q. (Microphone not activated)

5 MR STEYNBERG: Microphone.

6 MR HOOPER:

7 Q. (Microphone not activated) -- a blue line on 51 so you can see that that's the
8 bit that I'd like you to pay attention to.

9 All right. I'll read -- I'll read out what paragraph 51 says and then I'll ask you a
10 question about it.

11 Paragraph 51, "A Kikuyu was the officer in charge of the police station, the OCS, and
12 he came out to address the group. He was flanked by at least ten officers who were
13 all armed. I noticed that some of the officers were Kalenjin. The Kalenjin officers
14 had a creeping plant called senendet ...", S-E-N-E-N-D-E-T, "... tied to their
15 weapons. Before the OCS could address the people, he was shot by an arrow by
16 someone in the crowd. I didn't see where the shot came from, but I saw the OCS
17 fall down. I later learned that the arrow was poisonous because others told me that
18 the OC's body was swollen after he was shot."

19 And you can just stop there, Mr Witness, and put that statement to one side -- well,
20 just keep it there for a moment.

21 It's plain there what you're saying, isn't it? Were you close enough to see senendet
22 on the Kalenjin soldiers' rifles?

23 A. Your Honour, there were police officers in the crowd and they had tied
24 senendet around their weapons. That's what I noticed.

25 Q. Well, I'm looking at your statement given over three days, 20 – 20/30 hours of

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1 interview. "He was flanked by at least ten officers who were all armed. I noticed
2 some of them were Kalenjin. They had a creeping plant tied to their weapons."
3 Well, what about, "I saw the OCS fall down"? That's after he was shot by an arrow.
4 "He was shot by an arrow ... I didn't see where the shot came from, but I saw the
5 OCS fall down." It's clear what you're saying, isn't it?

6 A. Your Honour, he couldn't just go around with only Kalenjin officers. There
7 were officers from different ethnic groups, and so I wondered why some of the
8 officers had senendet on their weapons. And I was told that it was only the
9 Kalenjin officers who had their weapons tied with senendet.

10 Q. Just answer the question. Why did you say this: "He was shot by an arrow
11 by someone in the crowd. I didn't see where the shot came from, but I saw the OCS
12 fall down"? And I'm saying to you it's clear what you're telling the Prosecutor in
13 (Redacted), isn't it?

14 A. Yes, your Honour. What I'm saying is this: I didn't see where the arrow
15 was shot from. I was in the crowd and I suddenly saw someone fall down, and I
16 was told that it was the officer in charge of the police station. That's what I was
17 told. I couldn't see where the arrow which had been shot had come from because I
18 was in the crowd.

19 Q. You're -- Mr Witness, you're being very specific here. Let's look at -- look at
20 paragraph 51. First of all, it's a Kikuyu you say was the officer in charge, and he
21 came out to address the group. He was flanked by ten officers. Before the OCS
22 could address the people, he was shot. "I didn't see where the shot came from but I
23 saw the OCS fall down." Poisonous arrow, body swollen after he was shot I was
24 told. It's clear what you're saying there, isn't it?

25 PRESIDING JUDGE EBOE-OSUJI: Counsel, the question is becoming either

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1 repetitive or argumentative.

2 MR HOOPER:

3 Q. Now, last week in preparation for your evidence you were seen by the
4 Prosecution.

5 MR HOOPER: That's at tab 33, your Honour, clarifications and corrections.

6 Q. And in respect of paragraph 51 I just have the following entry, and that's at
7 item 13 on the -- on the clarification document. It reads, paragraph 51, "The Kikuyu
8 OCS died." That's all it says. So, Mr Witness, clearly that was discussed last week
9 and that's how it was left.

10 Now, I want you, perhaps it would be helpful if you could just look at --

11 MS WEISS: Your Honour, the witness hasn't responded to that question.

12 PRESIDING JUDGE EBOE-OSUJI: Indeed, Mr Hooper.

13 MS WEISS: Your Honour, can I just clarify that the clarifications --

14 PRESIDING JUDGE EBOE-OSUJI: One second. One second.

15 MR HOOPER:

16 Q. Is that right, first of all, Mr Witness, you did discuss this with the Prosecution
17 last week? Is that right? Your paragraph 51 that we've just looked at, that was
18 discussed with the Prosecution when you met them in preparation here for your
19 evidence; is that right?

20 A. Your Honour, I would like to -- the counsel for the Defence to tell me what I
21 discussed with the Office of the Prosecutor so that things can be clear.

22 PRESIDING JUDGE EBOE-OSUJI: I think that's a very legitimate concern.

23 MR HOOPER:

24 Q. Last week do you remember meeting the Prosecution -- the 21st, yes, just over
25 a week ago, 21 January this year with my learned friend -- no, with Lara Renton

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1 present or noted. Don't have who counsel was. I think my learned friend was
2 there.

3 Did you discuss with the Prosecution your evidence, your statement, did you go
4 through it with them paragraph by paragraph and make corrections and
5 clarifications? Do you remember doing that?

6 A. Yes, your Honour.

7 Q. And do you remember discussing paragraph 51, this story of the OCS being
8 killed with a poisoned arrow?

9 MS WEISS: Your Honour, if I can just put that into context. That is under the
10 heading --

11 MR HOOPER: You perhaps can do it in --

12 PRESIDING JUDGE EBOE-OSUJI: Wait, wait --

13 MR HOOPER: -- in cross-examination.

14 PRESIDING JUDGE EBOE-OSUJI: Wait, one second.

15 MR HOOPER: Re-examination.

16 PRESIDING JUDGE EBOE-OSUJI: Let's complete the question and then see if
17 there's a need for you to clarify anything.

18 Mr Hooper, proceed.

19 MR HOOPER:

20 Q. Do you remember discussing paragraph 51?

21 A. Your Honour, it wasn't a discussion as such. We reviewed the statement to
22 see if it was mine. We didn't go through every single paragraph as such.

23 Q. Well, in respect to paragraph 51, do you remember discussing this paragraph?

24 A. Your Honour, we went through the whole statement so that I could confirm
25 that it was my statement. We didn't have time to go through it paragraph by

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1 paragraph, so I scanned it to make sure that it was my statement. That was what
2 was done, your Honour.

3 Q. Do you remember at least specifying the Kikuyu OCS died, or words to that
4 effect?

5 A. Yes. Yes, your Honour.

6 Q. And what else did you discuss about that paragraph that you remember?

7 A. Your Honour, I have just told you that what we did was to make sure that it
8 was my statement. And that was done, but we didn't discuss each paragraph in the
9 statement.

10 Q. Well, you were four hours with the Prosecution.

11 MR HOOPER: And I understand there will be a transcript and a tape of what was
12 said, and I will be making an application to the Court -- well, I do now, I don't ask
13 for a ruling now -- for access to that transcript. Let me move on.

14 PRESIDING JUDGE EBOE-OSUJI: You're moving away from that?

15 MR HOOPER: Yes, I am.

16 PRESIDING JUDGE EBOE-OSUJI: All right.

17 MR HOOPER: Well, I'm not moving away from the subject, but I'm moving away
18 from the discussions with the Prosecution last week, yes. So I'm not going to go
19 further into what was or was not said to the Prosecution last week.

20 PRESIDING JUDGE EBOE-OSUJI: All right. So you will -- you're moving away
21 from clarification or not concerning paragraph 51?

22 MR HOOPER: Yes. We've had the answer as I understand it.

23 PRESIDING JUDGE EBOE-OSUJI: Right. Do you have any other question on the
24 clarification so far, on the clarification exercise that would have been done by the
25 Prosecution in the document we just referred to.

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1 MR HOOPER: Well, the witness has said it was just gone through. He didn't get
2 any time to properly review things. We understand it was a four-hour discussion.
3 I'm concerned, we're concerned as to the extent of what the witness says, and it may
4 be that what he says will be borne out, and I'm sure that's fine, so in due course.

5 PRESIDING JUDGE EBOE-OSUJI: All right. Okay.

6 MR HOOPER: I'm looking at the clock, and again I'm --

7 PRESIDING JUDGE EBOE-OSUJI: Yes, yes, but I want Ms Weiss to say what she
8 wanted to say about the clarification sheet.

9 MR HOOPER: Well, maybe that could be said in the absence of the witness. So
10 perhaps as we're coming up shortly to 11, if I pause shortly before and give my
11 learned friend a moment or two to raise that matter, would that be satisfactory to
12 your Honour?

13 PRESIDING JUDGE EBOE-OSUJI: That should satisfy the Court, yes, but I just
14 want her to put on record what she was going to say. And it's fair that you were
15 concerned --

16 MR HOOPER: Yes.

17 PRESIDING JUDGE EBOE-OSUJI: -- that that not be done in the presence of the
18 witness.

19 MR HOOPER: Thank you, your Honour.

20 Q. Now, Mr Witness, we're still in open session. Let me revisit what you, in
21 fact, told us on your transcript. T-83 at page 43 at line 20 onwards.

22 The head -- "I thought we'd go to the DC so that he could speak to us, but we didn't
23 get that far. The police came. The head of the Nandi Hills police turned up. And
24 often when people form a group like that the police try to organise people, but
25 before he spoke someone came out. Someone came out from the other side and he

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1 shot an arrow, and the person hit by the arrow fell down and I was afraid. When I
2 saw that the policeman had been killed I thought they're going to shoot us, and so I
3 turned around and started running back home."

4 Do you remember saying that? Now, can I just --

5 A. Yes, your Honour.

6 Q. I'm sorry, overlap there.

7 Can I ask you to look at a photograph? This is KEN-D09-0029-0014 at tab 2 and if
8 that can be brought up onto the screen?

9 PRESIDING JUDGE EBOE-OSUJI: This is not confidential material? You don't
10 need to protect it, do you?

11 MR HOOPER: No.

12 PRESIDING JUDGE EBOE-OSUJI: All right.

13 MR HOOPER:

14 Q. Do you recognise that person?

15 A. (No interpretation)

16 MR HOOPER: There was a response. It's not on the transcript.

17 Q. I'll ask the question again. Do you recognise that person?

18 A. No, your Honour.

19 Q. All right. I'm going to suggest that that is a man called George Odhiambho.

20 I'll spell his name. George O-D-H-I-A-M-B-L-O (sic). Oh, sorry, start again.

21 O-D-H-I-A-M-B-H-O. Odhiambho. And he's a Luo and 36 years I suggest in the
22 police and he was the OCS at Nandi Hills December, January of 2007/8. You don't
23 recognise him?

24 A. No, your Honour.

25 Q. The OCS at Nandi Hills at the time wasn't Kikuyu, was he? He was this

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1 man, a Luo; is that right?

2 A. Your Honour, after the OCS was murdered, we were told that it was a
3 Kikuyu. I personally don't know if he was Luo, if he was OCS, but after the OCS
4 was murdered, people said that he was a Kikuyu.

5 Q. And can I ask you to look at another photograph. This is tab 3 and it's
6 KEN-D09-0029-0015. Looking at that photograph, you see it's -- it's my case that
7 that is the same man. That photograph was taken last week. Do you see? So he's
8 alive. What I'm saying is the man who was the OCS and was a Luo, in fact, at
9 Nandi Hills station is alive. What do you say to that, that the OCS is alive today
10 and no OCS was injured or murdered at all in Nandi Hills? What do you say to
11 that?

12 A. Your Honour, I don't know these people you've shown me. What I have to
13 say is this: When we reached Nandi Hills, there was a group of people, and
14 suddenly we were told that an officer from the police station had been attacked, that
15 he'd been shot by an arrow.

16 Q. I'll leave that there.

17 A. But I couldn't go and check to establish his identity.

18 Q. I see.

19 MR HOOPER: I'll leave that there for the time being and come back after our break.

20 PRESIDING JUDGE EBOE-OSUJI: Hopefully not on whether or not the OCS was
21 murdered on that occasion. I think we really have to move away from that and
22 leave the rest for your argument.

23 MR HOOPER: I'm not asking any more questions now. I'll back to the subject at
24 11.30.

25 PRESIDING JUDGE EBOE-OSUJI: That's what I'm saying.

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1 MR HOOPER: Yes, I'm --

2 PRESIDING JUDGE EBOE-OSUJI: Even at 11.30, we've heard enough about
3 whether or not the OCS was murdered on the occasion.

4 MR HOOPER: Well, I'm moving to a slightly another point arising from that, which
5 won't take more than a minute or so.

6 PRESIDING JUDGE EBOE-OSUJI: We'll see. Okay. That's not to say you will be
7 allowed, but we'll see how it goes.

8 Witness, it is time for our morning break. We will let you out of the courtroom for
9 now and then we will expect you back at 11.30.

10 If the blinds could come down and the witness escorted from the courtroom. And
11 immediately after that we will go back into public session for Ms Weiss to say what
12 she wanted to say about clarification. Blinds down, please.

13 *(Closed session at 11.00 a.m.) Reclassified into open session

14 THE COURT OFFICER: (Interpretation) We are in closed session, your Honour.
15 (The witness stands down)

16 PRESIDING JUDGE EBOE-OSUJI: We go back to public session.
17 (Open session at 11.01 a.m.)

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

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

20 Ms Weiss?

21 MS WEISS: Your Honour, the point I wanted to make on the clarifications sheet is
22 that it's divided into two sections, one with the heading that says, "After reviewing
23 the statement, the witness brought the following clarifications to the attention of the
24 OTP." There's one point there. It's not the point about paragraph 51.

25 There's a second heading which says "In response to the OTP, the witness made the

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1 following clarifications."

2 PRESIDING JUDGE EBOE-OSUJI: Excuse me. Where is the -- where is the tab
3 again for the clarification sheet?

4 MS WEISS: The Defence can help you.

5 MR HOOPER: (Microphone not activated)

6 PRESIDING JUDGE EBOE-OSUJI: 33?

7 Plead process, Ms Weiss.

8 MS WEISS: So the issue at paragraph 13 under the heading, "In response to the
9 OTP" is where the witness said the Kikuyu OCS died. It was in response to a
10 pointed question by the OTP, and it's unfair to put to the witness why he didn't say
11 anything else. It was in response to an OTP question.

12 Now, your Honour, my learned friend has made an application to see the tape. He
13 simply made the application. He's not laid a proper foundation. There's -- there's
14 no allegation of impropriety.

15 And I know your Honours are familiar with the decision you handed down on -- on
16 witness preparation, but in the -- it says, "In the event of coaching a witness or any
17 other improper interference with the evidence to be presented by a witness, the
18 non-calling party may request the Chamber to order the disclosure of the video.

19 The party making such a request shall satisfy the Chamber that there is a concrete
20 and credible basis for the request." And I'm of course in decision 524, paragraph 47.
21 Now, your Honour, my learned friend has not made a concrete and credible basis to
22 see the tape. However, the Prosecution has no issue with your Honours, the
23 Chamber looking at the tape if you so wish.

24 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, that was a response to your
25 application for the tape. You made the application. Do you want to argue it in

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1 reply?

2 MR HOOPER: I merely add that this isn't a unique area. It's Rule 77 in PEXO.

3 And we've got an account here that may or may not, in fact, throw light on the
4 credibility of this witness which the Prosecution have access to and we don't. No
5 issue of impropriety. I'm not alleging any impropriety at all. We're not concerned
6 with the Prosecution's stance. We're concerned with what the witness said and in
7 particular what his responses were this morning as to the nature of the exercise and
8 in particular and very pointedly in respect of -- of his account of the murder of the
9 Kikuyu OCS.

10 PRESIDING JUDGE EBOE-OSUJI: But the question then arises if we start making
11 disclosure orders for videotapes, does it not also take us in the territory of statements
12 given must also be videotaped and disclosed? Something like that.

13 MR HOOPER: It's -- well, this is a -- this is a new area, isn't it? And we're all
14 perhaps to some extent feeling our way in it. My suspicion is the Chamber never
15 intended to put a highly restrictive narrow gate of access to this material. I'm aware
16 that my focus here is largely at the moment on paragraph 51. If the Court feels
17 that --

18 PRESIDING JUDGE EBOE-OSUJI: Why don't you do this: Let's think about it
19 again and see if you are going to reconsider, and if you insist on it, let us know at
20 11.30.

21 MR HOOPER: Well, what I'm suggesting in this particular instance is if we could
22 have access at least to what was discussed in relation to events at Nandi Hills.
23 Now, there will be a transcript or it's capable of being a transcript produced. It may
24 not be today. It will be something that will be ex post facto the witness in those
25 circumstances.

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1 But one has to take into account the general demeanour of this witness in the course
2 of cross-examination, the way in which he's answered questions, and then in that
3 context what he said about his attitude to the process that was conducted last week.
4 And what's particularly of concern is that we know that he sat with the Prosecution
5 for four hours. So it doesn't sound to me -- I mean four hours is longer than a court
6 day. It's -- it's a substantial period of time, so it's hardly a glossing over of matters.

7 PRESIDING JUDGE EBOE-OSUJI: So you are insisting on --

8 MR HOOPER: Yes.

9 PRESIDING JUDGE EBOE-OSUJI: -- your request?

10 MR HOOPER: Well, yes.

11 PRESIDING JUDGE EBOE-OSUJI: All right.

12 MR HOOPER: And I'd go further than that. If the Prosecution avail themselves of
13 a prepping, I say a prepping, of a precursor, as it were, to the evidence in that way,
14 they naturally are going to be vulnerable, quite rightly, to this kind of application.
15 It's a privilege that comes with the responsibilities and liabilities to some extent
16 under Rule 77.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you. Chamber will rise and we'll be
18 back at 11.30.

19 THE COURT USHER: All rise.

20 (Recess taken at 11.08 a.m.)

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

22 THE COURT USHER: All rise.

23 Please be seated.

24 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. The Chamber will
25 render its ruling on the Defence request for the video of the Prosecution preparatory

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1 session with this witness, Witness 128. The Defence made the application for the
2 disclosure in relation to the point concerning the witness's testimony about the
3 killing or the alleged killing of the OCS of Nandi Hills Town police station, which
4 according to his testimony, the killing occurred within days after the announcement
5 of the Kenya presidential election results during a demonstration at Nandi Hills
6 Town.

7 The Defence's point of that cross-examination concerned the witness's credibility.
8 In making that point and in their argument, the Defence did not argue that the
9 matter was more than collateral insignificance in relation to the main issues in the
10 case. Defence also did not allege or argue that there had been any impropriety
11 committed by the Prosecution in the preparation of the witness for his testimony.
12 In the circumstances, the Chamber is satisfied that the supply by the OTP of the
13 clarification sheet coupled with the explanation given by Ms Weiss satisfies the
14 purposes of the Defence. In the circumstances, the application is denied.

15 Mr Hooper, please proceed.

16 MR HOOPER: Yes, thank you very much.

17 Q. Now, Mr Witness, we were just dealing with events in Nandi Hills. Is it right
18 that the officer commanding the police division, that's the OCPD, was a man called
19 Paul Wanjama, that's Wanjama, W-A-N-J-A-M-A. He was in charge of Nandi Hills
20 police division; is that right? He was the top policeman, in other words, in Nandi
21 Hills.

22 A. Your Honour, I can't know that.

23 Q. Well, you tell us you lived in the area, familiar with the area for very many
24 years. Didn't you know who the main policeman was in Nandi Hills?

25 A. Your Honour, the government authorities, the OCPD and OCS were not

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1 known to everyone. People who worked with them knew who they were.

2 Q. Very well. He was a Kikuyu, I suggest. And he was in charge of Nandi
3 Hills and two other divisions. He's alive and well today. You see, what I am going
4 to put to you, Mr Witness, is simply this, there was no policeman injured, let alone
5 killed, at Nandi Hills at any time during the post-election violence. Do you accept
6 that proposition? Today, do you accept that proposition?

7 A. Your Honour, I see that it was a problem. They wanted to drag us into
8 something which we didn't understand. It was a plan to get us involved in a story
9 that we didn't understand, your Honour.

10 Q. You see, I suggest, Mr Witness, you never were in Nandi Hills that day. You
11 never did go on a walk to Nandi Hills. You were a long way away in Western
12 Province at that time. What do you say to that?

13 A. No, your Honour.

14 Q. Now, following the incident at the police station that you claim you
15 witnessed, you told us that there was then looting. And may I make it plain that it's
16 accepted by this Defence that looting took place in Nandi Hills.

17 Mr Witness, is it right that, in fact, it was much of a free for all, and not only
18 Kalenjin, but Luhya, Luo, and Luhya also participated in the looting? That's right,
19 isn't it?

20 A. Your Honour, I heard that Kalenjin businessmen who had vehicles, and even
21 those who came from where I lived, took property which had been looted. And I
22 know that there were Kalenjins who did that, your Honour.

23 Q. I'm asking you, Mr Witness, do you accept that Luhya people also
24 participated and Luo people also participated in the looting in Nandi Hills?

25 A. I'm not informed of that, your Honour.

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1 Q. Now, in your evidence you told us how Kalenjin soldiers or police were
2 showing the crowd where to loot. Do you remember saying that?

3 A. Your Honour, depending on the person that --well, I'd already, I'd already
4 left. But that's what people told me, your Honour.

5 Q. Oh, I see. And what about Kalenjin police shooting off the locks? Is that
6 something you saw or was that something you were told?

7 A. Yes, your Honour. I know that people who came from there told that story.

8 Q. All right. So you're not saying you saw them doing that yourself then; is that
9 right?

10 A. Yes. I'd already left by then, your Honour.

11 Q. And rich men giving money to looters for looting, example number three you
12 told us yesterday, that again was not something you saw then. It was something,
13 was it, that you were told by others?

14 A. Yes, your Honour.

15 Q. And so you saw no looting yourself; is that right?

16 A. Your Honour, I saw people carrying goods. I saw them carrying things, and
17 that's why I understood that they were some of the looters, your Honour. They had
18 them on their vehicles.

19 Q. No. My question is did you see the looting taking place at all in Nandi Hills?
20 which was the distinct impression I got of your evidence yesterday.

21 A. No, your Honour. I had already left the place. All these things happened
22 after I had left, your Honour.

23 Q. Indeed. And that would be consistent with what you said in your statement
24 to the Prosecution back in (Redacted). It's a very small passage. I don't
25 need to pass this up to you. Paragraph 52, "I later found out that some of the crowd

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1 started looting, but I didn't see that. I was on my way back ...", et cetera.

2 So perhaps your eye fell on that this morning, did it, Mr Witness, as you sat there

3 with the statement in front of you? Did you read that bit this morning?

4 MS WEISS: Your Honour, that's an unfair proposition to put to the witness.

5 PRESIDING JUDGE EBOE-OSUJI: Objection sustained.

6 MR HOOPER:

7 Q. Have you changed your evidence since yesterday?

8 A. Your Honour, I think I'm saying what I said yesterday, and I'm repeating the
9 same thing today.

10 Q. All right. Thank you for that clarification.

11 Now, you told us yesterday that as you left, a friend phoned you. And when you
12 went on this march, did you have your phone with you?

13 A. Yes, your Honour, I had a telephone.

14 Q. Why did you have your phone with you on that march?

15 A. Your Honour, a mobile telephone is to be taken everywhere, use it
16 everywhere, on the farm, everywhere you go, your Honour.

17 Q. Are you saying you don't -- you carry it with you all the time? Is that what
18 you are saying?

19 A. Yes, your Honour. That's standard practice for me. And I think lots of
20 other people do the same, your Honour.

21 Q. May I ask you this, while you're here in The Hague, do you have a mobile
22 phone with you?

23 A. Your Honour, I don't have a telephone here at the moment.

24 Q. In The Hague, that is, not in court of course. In The Hague, do you have a
25 telephone with you?

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1 A. Your Honour, I have a telephone, but I can't telephone because the code is
2 different here and the charges are different here and I can't afford to use it here. I
3 have it, but it's not turned on, your Honour.

4 Q. All right. Thank you for that.

5 Don't give me the name, but can you remember the name of the friend who phoned
6 you and told you things, what was happening in Nandi Hills? Can you remember
7 that person's name? And don't mention his name, because if you do remember it,
8 we can go into private session, and you can tell us. But don't tell us in open. Just
9 tell us "yes" or "no." Do you know the person, do you remember the name of the
10 person who phoned you, yes or no?

11 A. No, I've forgotten, your Honour.

12 Q. All right. And can we just go -- perhaps we should go into private session.
13 Well, anyway, you go back to a particular place from Nandi Hills -- we're in open
14 session, I'll remind you, and we remain in that as long as it's safe to do so. Don't
15 mention any particular place -- and you went back to a particular place --

16 MR HOOPER: Perhaps we should go into private session actually. It's to deal
17 with family and the like.

18 PRESIDING JUDGE EBOE-OSUJI: Private -- private session.

19 MR HOOPER: Yes, so private, just for a few questions and we'll go back into
20 public. About 10 minutes, I suspect, in private.

21 *(Private session at 11.52 a.m.) Reclassified into open session

22 THE COURT OFFICER: (Interpretation) We are in private session, your Honour.

23 MR HOOPER:

24 Q. I understood you to say that you went back to (Redacted) and collected there your
25 (Redacted) children. I'm sorry. You took (Redacted)

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1 (Redacted) some of the children, and you take them to (Redacted); is that

2 right?

3 A. Yes, your Honour.

4 Q. And the next day, you go back, risking death as you explained, in order to

5 retrieve the (Redacted) remaining (Redacted) children; is that right?

6 A. Yes, your Honour.

7 Q. In your statement at page 50 -- paragraph 55, you say you left (Redacted) children

8 and went back to collect them. Which is it, (Redacted)?

9 PRESIDING JUDGE EBOE-OSUJI: He has the statement, I presume?

10 MR HOOPER: He has, yes.

11 Q. (Redacted), Witness?

12 A. Your Honour, there were (Redacted) children.

13 Q. And you'd abandoned them -- well, not abandoned them. You'd left the day

14 before. Why didn't you ask any of your (Redacted) neighbours to look after them?

15 A. Your Honour, no one was safe. Everyone was trying to get away and save

16 their lives. No one was going to look after anyone else's safety at that time, your

17 Honour.

18 Q. Why didn't you phone any of your (Redacted) neighbours or your friends

19 there to see how the children were while you were away?

20 A. Your Honour, I went back quickly and I thought I'd hurry back and get them.

21 I couldn't get my neighbours involved, because they had their worries, your Honour.

22 Q. And the youngest child you left there was (Redacted)? (Redacted)

23 (Redacted)?

24 A. Your Honour, I said I took (Redacted). The ones who

25 stayed behind were (Redacted), your Honour.

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1 Q. So as I understand it, you go down, you go from Nandi Hills to (Redacted) You
2 collect (Redacted) children, and you go back to (Redacted). That's
3 the same day obviously as the Nandi Hills demonstration. And then the next day
4 you go back and retrieve the children; is that right?

5 A. Yes, your Honour.

6 Q. Now, (Redacted), you told us about him. Is he (Redacted), or not?

7 A. Your Honour, (Redacted). He lived in Nandi
8 Hills for a long time. He speaks the language.

9 Q. Well, he lived in (Redacted), didn't he?

10 A. Yes, your Honour.

11 Q. (Redacted)

12 A. Your Honour, (Redacted)
13 (Redacted), but that was all, your Honour.

14 MR HOOPER: Can I ask for a photograph to be shown you. It's our tab 11, and
15 it's -- well, just before that's done -- no. We're still in private, are we? So that's
16 KEN-D09-0029-0023. And perhaps the statement could be retrieved from the
17 witness. Thank you.

18 Is it up yet? A hard copy, we've got a hard copy here. Can perhaps we give the
19 witness this hard copy and overcome the technical difficulties.

20 THE COURT OFFICER: (Interpretation) Mr Hooper, it appears that the number
21 that you've given us isn't the number of the first page, please.

22 MR HOOPER: Never mind. We've got the document.

23 Q. Can I ask you, Mr Witness, you look at that photograph, do you recognise the
24 person in that photograph? Yes or no?

25 A. Your Honour, I recognise this person.

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1 Q. Is that Mr -- is that (Redacted)?

2 A. Yes, your Honour.

3 Q. And is his full name (Redacted)?

4 A. Your Honour, I knew him under the name of (Redacted). Other names I didn't
5 know.

6 MR HOOPER: All right. And just again my reference I've got on the photograph
7 is KEN-D09-0029-0023, but I've dealt with the photograph and I move on just for the
8 record to straighten that problem, if it is a problem, out a little later.

9 Q. You see, I suggest that you left (Redacted) sometime before Christmas of 2007.
10 You'd been working away from (Redacted). And you, I suggest, told (Redacted)
11 (Redacted)

12 (Redacted) What do you say to that?

13 A. Your Honour, those are your words. They're not mine.

14 Q. You were in (Redacted), weren't you? You were back in (Redacted)
15 (Redacted) probably, I suggest, in (Redacted). Is that right? You are on oath, you know.

16 A. Your Honour, (Redacted) I went to lots of different places. What you've just
17 said there is false.

18 Q. You didn't go back to (Redacted). That's accepted. You sent (Redacted), I suggest,
19 (Redacted) to collect the children. What do you say to that? This is my case.

20 MS WEISS: Your Honour, if my learned friend could perhaps put a time on when
21 the witness did not go back to (Redacted).

22 MR HOOPER:

23 Q. He didn't go back anywhere near (Redacted). He's never been to (Redacted), that's our
24 case. He never went back to (Redacted), strangely enough, then or since. And the
25 closest I suggest, Mr Witness, you ever got to that area was about 5 January, but you

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1 didn't go to (Redacted) yourself?

2 MS WEISS: Your Honour, the problem that the Prosecution has is the two words
3 "that's accepted," because it's not accepted.

4 MR HOOPER: I misunderstand the point. Let me put, as I'm duty bound to do,
5 our case as I understand it to be in terms of where this witness was.

6 Q. I suggest you weren't in (Redacted) from a little time before Christmas 2007, and
7 you never returned to (Redacted) again. What do you say to that?

8 A. Your Honour, I said no.

9 Q. And maybe perhaps I suggest part of the reason was (Redacted)
10 (Redacted)

11 (Redacted) let

12 me put it like that. And you left (Redacted) and didn't go back again. What do you say
13 to that?

14 A. Your Honour, I reject your words.

15 Q. And there was (Redacted) to collect. Which (Redacted) you say you
16 went back for?

17 A. Your Honour, I didn't say that (Redacted). I returned to get
18 my children, your Honour.

19 Q. Your evidence was to take (Redacted) some children.

20 MS WEISS: Could we have the reference for that, please, your Honour?

21 MR HOOPER: Well, let's start with --

22 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, also you need to keep in mind
23 when you've made your point.

24 MR HOOPER: Yes.

25 PRESIDING JUDGE EBOE-OSUJI: And what is better addressed by way of

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1 submissions to the Chamber as opposed to back and forth of the witness.

2 MR HOOPER: I agree.

3 THE INTERPRETER: Microphone, please.

4 MR HOOPER: I've got page 80. Let me, let me come back to that. If I made a
5 false point, I'll readily own up to it. I can deal with it a little later.

6 Q. Right. So you never go back to (Redacted).

7 Can I come now to the Kobujoi meeting that you say took or put up. And you say
8 there were posters put up, a lot of posters with Mr Ruto's face on them. Can I ask
9 you this, in Aldai constituency, why would that be the case? Why would Ruto's
10 photograph be up when it was Sally Kosgey who was contesting the seat? What
11 position, if any, let me put it another way, was Mr Ruto seeking in the election? Do
12 you know?

13 A. Your Honour, according to the Kalenjin culture, an elder, such was the case of
14 Mr Ruto on that day, any politician should be alongside him to say that's the person
15 who is necessary. The posters of Mr Ruto were everywhere, of this person were
16 everywhere to show that this was the person who supported Mr Ruto, your Honour.

17 MR HOOPER: Why, thank you.

18 Can I just come back to the reference. 29 January, edited transcript page 66, lines 13
19 to 15, quote, "First time ...", this is when he goes back, "... (Redacted) some of the
20 children (Redacted) that is to say (Redacted) children."

21 Q. So you did say that, do you see? I'm not going back to the point. My friend
22 has the reference.

23 MR HOOPER: I think we can be in open session actually now dealing with the
24 Kobujoi meeting.

25 PRESIDING JUDGE EBOE-OSUJI: Open session.

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1 (Open session at 12.10 a.m.)

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

3 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper.

4 MR HOOPER: Yes.

5 PRESIDING JUDGE EBOE-OSUJI: How much time are we --

6 MR HOOPER: A bit longer. We didn't start until almost 11 o'clock this morning
7 your Honour will recall. And the pace has been a slow walking pace at the very
8 best. We are not getting there as quickly as I hoped, but I appreciate the time
9 matter, and I think I can speed up, let's put it like that. But I think with your
10 Honour's leave and I hope indulgence, it may go at least no more than 30 minutes
11 into the afternoon.

12 PRESIDING JUDGE EBOE-OSUJI: Proceed.

13 MR HOOPER: Thank you, your Honour.

14 Q. You can't recall the date of the Kobujoi meeting, except you thought it was
15 November, before December. You may remember you saying that. And I'm just
16 interested to ask you this, it's again a reference to the screening note when you were
17 first spoken to by the Prosecution, which is not a document you have, but let me just
18 relate to you -- that is not tab 21 -- 31, I'm sorry. The difficulty with having a
19 left-hand writing -- where you're recorded as saying, and I'd like your views on this:
20 "The first meeting he attended took place in Kobujoi, Nandi Hills District in
21 mid-December 2007. He does not remember the exact date. Meeting was attended
22 by 150 to 200 people, including Ruto, Henry Kosgey, Sally Kosgey, Cheramboss, and
23 their allies. The meeting was held in the afternoon or earlier. The master of
24 ceremony was Cheramboss. Ruto was the guest of honour."
25 I'll read it all. "Ruto addressed the attendees. He encouraged them to vote for him.

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1 He said that if they win, they will kick out all non-Nandi, which are according to
2 witness Luhya, Luo, Kikuyu, Kisii. Ruto said they will take the land back to the
3 Nandi."

4 All right. So that is your first recorded account. It might be wrong, it might be
5 right in terms of what the listener recorded. But looking back, do you think that
6 Kobujoi meeting was -- that there was a meeting in Kobujoi in mid-December?
7 What do you say? Was it in mid-December?

8 A. Your Honour, if I remember, it was the last events with regards to the politics.
9 I didn't say December. I said end of November, during the preparations for the
10 elections and everything to do with the electoral campaign, your Honour.

11 Q. I understand that Mr Raila Odinga, ODM, and others, Sally Kosgey and
12 others had a big meeting in Kobujoi on 16 December. See, that's what I'm asserting
13 to you. Now, do you remember that? Do you remember hearing of that meeting?
14 You were, had a certain position, of course, as we know. Do you remember if there
15 was such a meeting with Mr Raila Odinga heading the bill, 16 December? What do
16 you say?

17 A. Your Honour, no, I don't. I don't remember anymore.

18 Q. Now, you tell us that the meeting you attended Raila Odinga attended; is that
19 right? He was there, you say; is that right?

20 A. Yes, your Honour.

21 Q. Of course, he was the main man in ODM. Tell me this, why is it the very first
22 time you ever mentioned Raila Odinga as being present was in that witness box on
23 Monday or Tuesday, was it? Anyway, Tuesday, the very first time you ever
24 mentioned Raila Odinga. You never mentioned him in your statement to the
25 Prosecution. You never mentioned him in any clarifications. Why was that?

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1 A. Your Honour, I had already said that there were posters of Raila Odinga and
2 other members of the ODM, and there were other posters of Mr Ruto with regards to
3 communiqué, Mr President.

4 Q. I'm asking you why is it you never mentioned -- have never mentioned until
5 Tuesday that Raila Odinga was at this Kobujoi meeting when he's the main man in
6 ODM running for president against your favoured, Mr Kibaki? Why was that?

7 A. Your Honour, I spoke about posters, posters that we used in order to
8 announce the news. It was Raila, posters of Raila, but also of Ruto and Sally, Sally
9 Kosgey, who was also one of the candidates, your Honour.

10 Q. Sally Kosgey was the parliamentary candidate for Aldai as we know. And is
11 it right that Mr Cheramboss was in fact in charge of her security? Do you know
12 that?

13 A. No, your Honour.

14 Q. Now, in your evidence you speak about knowing Mr Cheramboss. Do you
15 know him personally, or is it that you were telling us merely things you've heard
16 about him from others? What is your position when you say you know him?

17 MS WEISS: Your Honour, we're in public session. I'm not sure if this is going to
18 go somewhere that will identify the witness.

19 MR HOOPER: Mr Cheramboss is a very well-known public figure. I'm merely
20 asking this witness whether he knows him personally or whether he knows of him
21 rather than knows him. I don't think that necessarily -- let me put it like this to him
22 so we narrow the question.

23 Q. Mr Witness, Mr Cheramboss, do you know him personally? Yes or no?

24 A. Your Honour, I know this person.

25 Q. I'm asking you know him, but are you saying you're a friend of his or you're

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1 an associate of his?

2 Let's move away from that. I want to stay in open, open session. My friend can

3 come back to it if she wants to. This photograph that we saw of Mr Cheramboss,

4 I'm a bit puzzled. Perhaps you can help me. (Redacted)

5 (Redacted) yes? Just tell us why, why did you do that? You

6 don't appear in the photograph yourself. It's not as if it's a photo of you and Mr

7 Cheramboss.

8 PRESIDING JUDGE EBOE-OSUJI: We're not pulling up the photo for public?

9 MR HOOPER: No.

10 PRESIDING JUDGE EBOE-OSUJI: Okay.

11 MR HOOPER: We don't need to. We know the photograph. The witness

12 remembers the photograph of Mr Cheramboss.

13 Q. (Redacted)? What

14 was the point? What was the point?

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 Q. Why did you want a photograph of Cheramboss?

22 A. Your Honour, Mr Cheramboss is a very well-known figure among the

23 Kalenjin in Kenya. I don't think that it was something bad to have his photograph,

24 your Honour. He was famous.

25 Q. Did you have Mr Ruto's photograph?

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1 A. No, your Honour.

2 Q. The photograph was taken at a school I'm not identifying. In fact, the school
3 was a school, a school built by Mr Cheramboss, is that right, and maintained by him?

4 A. Yes, your Honour.

5 Q. A school attended by all ethnic groups, the children of all ethnic groups, that
6 girls' school, isn't it?

7 A. No, your Honour. Perhaps things have changed. At the time the school
8 wasn't a boys' school. Mr -- your Honour, could you ask your question again so
9 that I can answer it better?

10 Q. That school, it's a girls' school, not a boys' school, girls' school. And it was
11 open to girls of all ethnic groups who were pupils there, all ethnic groups, Luhyas,
12 Kikuyu, everyone. That's right, isn't it?

13 A. Your Honour, this school was not -- well, this photo wasn't taken at the girls'
14 school. (Redacted)

15 (Redacted) And the other

16 persons from other ethnic groups could send their children to that school.

17 Q. And you know Mr Cheramboss. I mean, his son, his eldest son is married to
18 a Kikuyu. There are other Kikuyus that have married into that family. That's
19 right, isn't it?

20 A. I have no news on that.

21 Q. Thank you. Now, you tell us you're in Kobujoi at a time when the dais is
22 being put up. You're passing through. And you had been visiting your parents,
23 who live at location 8; is that right?

24 A. Yes, it's true, your Honour.

25 Q. Don't name the district or place, but how far from your village that you were

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1 living in at that time is the place where your parents lived? How far in kilometres,
2 approximately, of course?

3 A. Your Honour, I don't know a lot about the distances of roads, your Honour.

4 Q. If I was to suggest about 50 kilometres, what would you say? Yes.

5 A. Your Honour, you're the one who said that.

6 Q. Well, I'm asking you. You're a mature man. You travel regularly there.

7 Have you no idea how far it is?

8 MS WEISS: Your Honour, I think we've been over this and over this point of
9 kilometres. The witness has said he doesn't know. If perhaps there is another way
10 my learned friend can find out the distance, but clearly this witness is not equipped
11 to tell him the kilometre distance.

12 MR HOOPER:

13 Q. All right. I'll leave that point. Anyway, let's come back to the real question
14 or query. You'd been visiting your parents that day, and you were on your way
15 back passing through Kobujoi when you saw this dais being erected; is that right?

16 A. Your Honour, it was when I was passing that I saw that they were building
17 this dais.

18 Q. And you were coming back from visiting your parents; is that right?

19 A. Your Honour, I just said it was when I was going to visit my parents.

20 Q. And how often would you visit your parents at that time?

21 A. Your Honour, it depended on the aim and the means available that I had in
22 order to go there.

23 Q. Would you agree it's a long way there and back?

24 A. Yes, your Honour.

25 Q. Now, you told us that after seeing the dais, the next day you were passing

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1 Kobujoi again; is that right? This is the time when you, of course, see the rally at

2 Kobujoi; is that right?

3 A. I did not say that, your Honour.

4 Q. Well, I may again be wrong or I may be right. We'll try and establish that.

5 Had you been visiting your parents the day of the Kobujoi rally?

6 A. Yes, your Honour. Well, to understand this now, your question, I said when

7 I went there I saw them building the dais. I didn't go back the same day or the day

8 after. I stayed there for a while, because I was going to see someone who was sick.

9 I think I've explained the situation clearly, your Honour.

10 Q. All right. Well, we'll just clarify whether you said it was the next day in your

11 evidence, whatever significance we may attach to that.

12 But on the day of the meeting, were you coming back from your parents' house?

13 Yes or no?

14 THE INTERPRETER: The Swahili booth did not get the answer of the witness.

15 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, could you repeat the question?

16 MR HOOPER:

17 Q. On the day of the Kobujoi political meeting, had you been visiting your

18 parents? Were you coming back from your parents passing where the political rally

19 was? Let me put that question again.

20 On the day of the Kobujoi rally, you told us you passed the rally, and you went, of

21 course, to attend it. And I'm asking you is it your case, your story that you were

22 coming back from your parents when you saw the rally taking place?

23 A. Yes, your Honour.

24 Q. So on both days, both the day that you saw the dais being erected and the day

25 that you attended the rally, on both days you were coming back having visited your

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1 parents; is that right?

2 A. I did not say that, your Honour. What I said is this, when I went to see my
3 parents, they were building the dais. That was another day. And I stayed there for
4 a while, because there was someone who was sick. I didn't say that I went back the
5 day after. It took a while. And I went back after I saw the person who was sick
6 who was there, your Honour.

7 Q. All right. Well, can you have your statement, please? Perhaps we can just
8 deal with this. And it's paragraph 25. And as it's coming to you, let me just read in
9 a redacted version of what you've said: "Before the meeting a dais was
10 constructed." This is paragraph 25. "I saw the dais two or three days before the
11 ..."

12 PRESIDING JUDGE EBOE-OSUJI: One second, please. Witness, do you have your
13 statement?

14 MR HOOPER: No. It's coming to him I think. It's being taken. I've asked for it.
15 Can he have the statement, please, the hard copy.

16 PRESIDING JUDGE EBOE-OSUJI: Yes.

17 MR HOOPER: Oh, we may have kept it.

18 PRESIDING JUDGE EBOE-OSUJI: Let's give it to him.

19 MR HOOPER: Sorry, we kept it. Thank you very much. If you can show him
20 paragraph 25.

21 Q. So just read those two lines. Don't read them out, because we're in public
22 session. So putting that aside just for a moment, do you agree that on a previous
23 occasion you told the Prosecution you were coming back after visiting your parents
24 when you noticed the dais was being built? Do you agree that you've said that, and
25 is it true?

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1 A. Yes, your Honour. What I've said is that it was after two or three days, your
2 Honour.

3 Q. Can I take you then, just have a quick look, please, paragraph 30. Can I just
4 take you to that, too? Again, just read it to yourself. Don't read it out loud.

5 And just very briefly looking at that, you can see that you're saying that you were
6 passing again coming back from your parents. Do you remember saying that, and
7 is it true? And that's on the Kobujoi meeting day.

8 A. Yes, your Honour.

9 Q. And at page 16 of the edited transcript of 29 January 2014, the reference that I
10 was asked to give and which I supply was this, "The rally was held before the
11 construction of the dais, before the end of the construction of the dais. The rally
12 was not held on the same day. First the dais or the platform was built, and then the
13 rally was held the next day. When I came back from my trip, I went by -- I went by
14 that place at about 3."

15 So let's just unravel it. Did the meeting take place the next day as you gave in
16 evidence Tuesday, or did it take place two or three days later after the building of
17 the dais? Which, which is your account?

18 A. Your Honour, what I'm saying is that when I went home, I didn't come back
19 on the same day. I think I spent two or three days there. But it wasn't the day
20 after, your Honour.

21 Q. Now, you've told us in your interview, I read it out earlier, there were 150 or
22 200 people there. And that you've increased in your evidence to 500. But, Mr
23 Witness, that would be a very poor turnout, wouldn't it, for Raila Odinga, Mr Ruto,
24 Sally Kosgey, wouldn't it? The rally that Mr Raila Odinga had was attended by
25 thousands, wasn't it?

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1 A. Yes, your Honour.

2 Q. And you say that you're coming by it, and you join the rally. And what
3 happened? You bumped into (Redacted), did you? Now, how did you two meet
4 (Redacted)?

5 PRESIDING JUDGE EBOE-OSUJI: Can you ask him your last question?

6 MR HOOPER: Yes, sure.

7 Q. You were informed about what was -- can we go into private session? Sorry.

8 PRESIDING JUDGE EBOE-OSUJI: Private session.

9 *(Private session at 12.41 p.m.) Reclassified into open session

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

11 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

12 (Redacted)

13 MR HOOPER: I know.

14 PRESIDING JUDGE EBOE-OSUJI: -- that particular question.

15 MR HOOPER: I know.

16 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

17 (Redacted) The reference to (Redacted) having translated will be

18 deleted from the public version of the broadcast.

19 MR HOOPER: And we're in private session now.

20 Q. (Redacted), how did you come to meet him? Was it by arrangement, or did
21 you just bump into one another?

22 A. Your Honour, it was by chance. He was standing up there, and he was
23 listening, too. And I stopped there.

24 Q. I suggest -- well, we can go into public session. One, one matter perhaps
25 before we go. I suggest (Redacted) doesn't speak Kalenjin any better than you do.

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1 What do you say to that?

2 A. Your Honour, I say that (Redacted) spoke very good Kalenjin. He
3 understands the language better than I do.

4 MR HOOPER: I can go into open session.

5 PRESIDING JUDGE EBOE-OSUJI: Back to public session.

6 (Open session at 12.43 p.m.)

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

8 MR HOOPER:

9 Q. And I'm coming now to the meeting that was held in -- the second meeting.

10 And you thought that that meeting was around late, late November; is that right?

11 A. Yes, your Honour. I don't remember the exact date, but it was towards the
12 end of November. And I think the next week was when the election was held.

13 Q. Yes. Well, I understand, except there was a meeting in December at that
14 place. It was a Sally Kosgey meeting. And Mr Cheramboss was there. He did
15 not, I suggest, speak. What do you say to that?

16 A. I say no. He did speak on that day.

17 Q. (Redacted) was there. He works for the Foreign Affairs Department in
18 Nairobi, does he not, or did at the time; is that right?

19 A. Your Honour, looking at the list here, I can see number 3.

20 Q. (Overlapping Speakers) -- for the Foreign Affairs Department in Nairobi, does
21 he not? That's his job or was his job at the time? Remember, we're in open session.

22 A. Your Honour, I do not know.

23 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, one second. Let's go into private
24 session for a quick minute.

25 *(Private session at 12.46 p.m.) Reclassified into open session

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

2 PRESIDING JUDGE EBOE-OSUJI: Thank you. I did not or I was expecting a

3 certain request for deletion, but it doesn't come. We need to delete from the

4 delayed broadcast the reference in a few questions past, the witness's answer that the

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 We also need to delete from that portion of the question and answer the answer

9 about him (Redacted)

10 We go back to public session.

11 MR HOOPER: Actually can we just stay in private just for a moment? And I'll

12 clear up one matter.

13 PRESIDING JUDGE EBOE-OSUJI: We remain -- we're remaining.

14 MR HOOPER:

15 Q. We remain in private, so I can put this to you, put the case to you. It's

16 accepted there was a meeting, accepted Sally Kosgey was there, Cheramboss was

17 there, (Redacted) was there, (Redacted) was you, and you were there. That's all

18 accepted, you see. We don't dispute that meeting in December -- well, whenever it

19 was in Koyo. In fact, (Redacted) was with you, wasn't he? (Redacted)

20 (Redacted)

21 (Redacted); is that right?

22 A. No, your Honour.

23 Q. Well, did you get any money for attending this political rally held on behalf of

24 Sally Kosgey?

25 A. No, your Honour. That day -- well, I'll explain something to you. In the

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1 field when there is political things going on, politicians don't just give you money
2 like that. And I didn't leave that place to go somewhere else, and so I never saw
3 anything to do with money. And I never got any money, your Honour.

4 Q. Let me make a correction to what I put to you, though I've heard that answer,
5 just so I've got it straight. In fact, (Redacted)

6 (Redacted) is that

7 right?

8 A. No, your Honour.

9 Q. And your position is politicians don't give out money as easily as that, is that
10 right, at meetings?

11 A. Your Honour, this question about giving money related to the political
12 parties. And they do it secretly. And it's an offence, because you can be arrested
13 by the government authorities, your Honour.

14 MR HOOPER: Thank you. Well, those are my questions, except for one issue, and
15 it's about your telephone. And we've passed up a report this morning. I'm
16 not -- by (Redacted), which we received yesterday. And rather than recall this
17 witness at a later time, I propose to put the essence of what our case is based on this
18 report. The Prosecution have got it. And I'm quite -- and it may be appropriate to
19 show the witness the particular extract of telephone. And I think I could almost
20 complete that by lunch, shortly after 1 o'clock, and that will be the conclusion of my
21 questions.

22 PRESIDING JUDGE EBOE-OSUJI: Now, we've gotten wind that there might be a
23 dispute on this matter.

24 MR HOOPER: A very unexpected position -- situation. I'm very surprised.

25 PRESIDING JUDGE EBOE-OSUJI: You're surprised? The point then is: Is this a

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1 debate that should --

2 MS WEISS: In the absence of the witness I would ask, your Honour.

3 PRESIDING JUDGE EBOE-OSUJI: Yes. So why don't we excuse the witness for
4 now so he can have an early lunch. We will use the rest of the time to discuss that
5 matter.

6 MR HOOPER: Very well.

7 PRESIDING JUDGE EBOE-OSUJI: Why don't we do that.

8 MR HOOPER: We can do that certainly.

9 PRESIDING JUDGE EBOE-OSUJI: All right. Closed session. The witness
10 escorted from the courtroom.

11 *(Closed session at 12.53 p.m.) Reclassified into open session

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

13 PRESIDING JUDGE EBOE-OSUJI: Thank you. You can now show the witness out
14 of the courtroom.

15 (The witness stands down)

16 PRESIDING JUDGE EBOE-OSUJI: All right. Do we do this in private session, or
17 public?

18 MS WEISS: It can be public.

19 PRESIDING JUDGE EBOE-OSUJI: All right. Let's go to public session.

20 (Open session at 12.57 p.m.)

21 PRESIDING JUDGE EBOE-OSUJI: We're back in public session. We'll go as far
22 as --

23 MR HOOPER: Can I just say we've had a little debate. We're quite open about
24 this, but the problem is we don't want witnesses yet to come to suddenly all lose
25 their phones. Oh, we're in public.

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1 Well, anyway, if we can go to private session, I think it might be easier. Then I can
2 explain. Perhaps we can have a redaction on that, that statement. If you can strike,
3 is that the phrase, my last comment from the record, if that's possible?

4 PRESIDING JUDGE EBOE-OSUJI: We go to private session.

5 *(Private session at 12.55 p.m.) Reclassified into open session

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

7 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Mr Hooper, I see
8 nothing to delete or strike from delayed broadcast from what you said.

9 MR HOOPER: Well, merely that I featured the excuse. We don't want any
10 reference to I said telephones being -- we don't want telephones to be thrown away
11 by witnesses who are going to come in the future. It doesn't directly, I know, mete
12 it, but if that was removed then there would be no hint.

13 PRESIDING JUDGE EBOE-OSUJI: That is no reason to strike it from the --

14 MR HOOPER: Very well. All right, very well. Well, that's all. We're in private
15 session. I think your Honour wants the Prosecution to --

16 PRESIDING JUDGE EBOE-OSUJI: You make your case.

17 MR HOOPER: Oh, very well.

18 PRESIDING JUDGE EBOE-OSUJI: Yes.

19 MR HOOPER: Well, your Honour will see that there is a report by (Redacted)
20 (Redacted) in this case. It's a cell site analysis report. I won't go
21 through it further than that, particularly because of all the cell site analysis reports
22 I've ever seen, this is certainly one of the clearest, and it's no challenge to read it.
23 And it's set out, if I may say so, in an exemplary way, a clear way.

24 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, I need to -- one second, please. I
25 want us to be clear what we're doing here so we know how we proceed with these

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1 sorts of things. Why are we now in private session?

2 MR HOOPER: The reason we're in private session is that we don't want, this
3 Defence doesn't want this discussion to be made public, because we have other
4 witnesses yet to come, and we feel that if they're alerted, yes, if they're alerted to the
5 process that we're discussing here, there may be a temptation, as has happened in
6 the sister case, for witnesses to claim that they didn't carry their phones with them
7 and the like. That's, that's the problem. So I don't know where we're going --

8 PRESIDING JUDGE EBOE-OSUJI: So let me tell you, I understand that to be your
9 point. But the point I want to underscore, and then I'll leave it, I will hear from Ms
10 Weiss about the need for private session. But we are in private session to protect
11 your strategy, not because we are concerned about the identity of a witness, isn't that
12 the case?

13 MR HOOPER: That's the case.

14 PRESIDING JUDGE EBOE-OSUJI: All right. So when the Prosecution makes a
15 request in the future about needing to go into private session to protect your
16 strategy, we will keep this in mind.

17 MR HOOPER: Yes.

18 PRESIDING JUDGE EBOE-OSUJI: Okay.

19 Ms Weiss?

20 MS WEISS: Your Honour, I'm quite content to make these submissions in private
21 session.

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

23 MR HOOPER: What I want to put to this -- what I will put to the witness in any
24 event, because it's in my submission wholly appropriate to do so, is that he was
25 clearly in (Redacted), and that he

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1 (Redacted) which is
2 very different, of course, to his account.
3 Now, what this report shows, and what we've had so far is an identification of his
4 telephone, an acceptance by him of his telephone number, a statement by him that
5 he, as he put it, like everyone else, keeps his telephone with him, that he's had this
6 telephone for two or three years prior.

7 PRESIDING JUDGE EBOE-OSUJI: Sorry, sorry. I have to sign this.

8 MR HOOPER: Sorry.

9 PRESIDING JUDGE EBOE-OSUJI: Proceed, please.

10 MR HOOPER: I was just saying that we have a witness here who has
11 acknowledged the telephone number, who said that he had his telephone with him
12 when he moved about, that he's had the telephone, he said, for two or three years
13 before this incident, the evidence he gave yesterday. So we have a very clear
14 identification in respect of the number.

15 Now, where do we come to in this report? What I want to do is to give this witness
16 a fair opportunity, I want to draw his attention to extracted times of these calls being
17 made. It can be simply done, because all I need to do, for example, so that he can
18 follow is to show him, your Honour, page 5.

19 PRESIDING JUDGE EBOE-OSUJI: Do I have it?

20 MR HOOPER: You do. I hope this has been distributed.

21 PRESIDING JUDGE EBOE-OSUJI: Yes, I see it. Thank you.

22 MR HOOPER: It's the supplemental cell net. Now, obviously in the future
23 matters, matters will be proved in a formal and proper way. May I say,
24 incidentally, this (Redacted) is indeed the Prosecution expert in Kenya II. That's
25 (Redacted) So, anyway, that's neither here nor there.

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1 MS WEISS: I understand he's a joint expert.

2 MR HOOPER: Well, a joint expert becomes the expert of each party and so --

3 PRESIDING JUDGE EBOE-OSUJI: Yeah, but you made it sound as if he was only a
4 Prosecution expert.

5 MR HOOPER: No, I gave it the best gloss I could of course, but it does remain the
6 case that the witness is accepted -- was accepted as an expert witness by the
7 Prosecution. I know that (indiscernible).

8 Now, I'm not going to go through all the history of extraction of cell net. What I
9 would say is that our information is that in respect of these phone records from
10 (Redacted), a virgin database, if I can put it like that, was accessed. In other words,
11 as far as the experts are concerned, the source of his material has integrity. In due
12 course we'll doubtless hear that and explore that at some length if it still remains
13 disputed by the Prosecution.

14 But, in any event, what we have here is call data in respect of this phone. It can't be
15 for any other phone. And if you look down at page 5, the first column, and there is
16 only really one, two columns one needs to look at here. The first column, if one
17 runs one's fingers down, we can see 25 December, various calls. Some of these are
18 texts, by the way, not just calls. 26th, 26th, Boxing Day, day after Christmas, the
19 27th, over the page all the way down, 28th, 29th. Of course, 27th is polling day and
20 we go through 29th, 31st, and all the way down to 4 January.

21 Now, if you then go back to the DS site --

22 MS WEISS: Your Honour, can I ask why my learned friend is actually going
23 through the report here? It's not in evidence. It's not been put through a witness
24 yet. Is counsel giving evidence here, or --

25 MR HOOPER: No, I'm not obviously giving evidence. I'm helping you I hope as

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1 well, helping the Prosecution understand it.

2 If we look at the DS site, that's the aerial site that captures the call. It's often on a

3 trig basis, a number of sites. But you can pinpoint where the call is made from. In

4 this case, it's the local radio mast. A mobile phone, radio waves to a radio mast, and

5 then circulating, so you can tell where anyone is who uses their mobile phone at the

6 time that they use it if they have got the phone on them obviously. So it's a record

7 of where, of the phone's use and position. And (Redacted)

8 (Redacted)

9 PRESIDING JUDGE EBOE-OSUJI: This is still about credibility of a witness?

10 MR HOOPER: Yes, credibility. (Redacted)

11 (Redacted)

12 Now, now, none of these calls can possibly be made from Nandi Hills, anywhere

13 near them, because of the distance that the radio waves can travel. It's just

14 impossible. This isn't amateur stuff. This is a top expert examining hard scientific

15 material. And I am saying that, not to give evidence, but to point out the relevance

16 for the Defence, the significance of the material. And what we are anxious to do is

17 to ask the witness, point this out to the witness in a very straightforward way.

18 These are the dates. These are the phone calls. This is the place. What do you

19 say, your opportunity, or else we bring him back at some other time.

20 Now, it goes obviously to his account. It goes to his veracity. Indeed, if you turn

21 over to page 8, you'll see the map there and the paragraph above it to explain that

22 map. Basically there has been very little movement of this handset during that

23 time period we've just looked at. Its location appears to be in an area between

24 (Redacted)

25 PRESIDING JUDGE EBOE-OSUJI: All right. Mr Hooper, Mr Hooper --

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1 MR HOOPER: And then just to go on to the last thing, because we don't need all
2 the pages, if we go to the last page almost of this material, you'll find at page 22, we
3 pick up the telephone calls after 4 January. And you can see there we've got calls
4 5th, 6th, 7th, 8th, 9th, 11th, 12th, et cetera. And you can see where the site is,
5 (Redacted)

6 Now, the (Redacted) mast would also capture a call being made from (Redacted) It's not
7 our case that he was in (Redacted) at all, and it's not his case. But there we are.
8 (Redacted). And this phone is being used between 5 January
9 and the 12th there by a gentleman who has told us he's very fearful of that area.
10 So this goes to his evidence. This goes to the heart of his evidence, to the
11 truthfulness of his account and obviously his credibility.

12 PRESIDING JUDGE EBOE-OSUJI: All right. Mr Hooper, question to you, what
13 precisely do you say you want to do assuming the witness is on the stand, and you
14 want to use this thing, what exactly do you say you want to do?

15 MR HOOPER: I want to show him the extract of page 5, 6, and 7, explain simply
16 that our understanding is that this is of his telephone, its use, and its location during
17 those dates. What do you have to say about that? Similarly in respect of the page
18 11. That would be it.

19 PRESIDING JUDGE EBOE-OSUJI: All right. And do you mean all of page 5, or do
20 you mean just the table?

21 MR HOOPER: Yes, the table.

22 PRESIDING JUDGE EBOE-OSUJI: And nothing, and nothing above the table?

23 MR HOOPER: Yes. In fact, we could even extract -- possibly print out over lunch
24 just the table.

25 PRESIDING JUDGE EBOE-OSUJI: Just the table barely.

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- 1 MR HOOPER: Just the table, yes, and maybe the map, because -- no. He's no good
2 at maps, is he? So just the table.
- 3 PRESIDING JUDGE EBOE-OSUJI: Just the table.
- 4 MR HOOPER: Yes.
- 5 PRESIDING JUDGE EBOE-OSUJI: So we're limiting the procedure to just the table?
- 6 MR HOOPER: Just the table.
- 7 PRESIDING JUDGE EBOE-OSUJI: Nothing above it. All right.
- 8 MR HOOPER: And similarly that last page, just the table of the January use, his
9 phone showing this, any explanation.
- 10 PRESIDING JUDGE EBOE-OSUJI: All right. Let's hear from Ms Weiss.
- 11 Ms Weiss, they're saying just the table, nothing else.
- 12 MS WEISS: Your Honour, the Prosecution objects to both the report and the table
13 being shown to the witness, but not only just being shown to the witness, any
14 assertions to its content should also not be put to the witness. Your Honour, it's in
15 effect a witness statement. And the proper way to ask about this is through the
16 author.
- 17 Your Honour, there has also been no authentication of the material upon which this
18 report is based. In fact, the Prosecution has serious doubts about the underlying
19 data. The data is in dispute.
- 20 Your Honour, it's my submission that the value of the expert's analysis is only as
21 good as the reliability of the underlying data itself. The Prosecution reviewed this
22 document after it received it only yesterday afternoon and found that the data in
23 itself was even incomplete. There were no outgoing calls -- there are only outgoing
24 calls -- sorry -- no incoming calls recorded. There is again, as I say, no underlying
25 data and the dates prior to 25 December are missing.

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1 It would be entirely unfair to put this report or even the tables that the Defence have
2 mentioned to the witness.

3 PRESIDING JUDGE EBOE-OSUJI: All right, okay. What about just the
4 proposition without showing any table?

5 MS WEISS: Well, I think the Defence have already done that, which the Prosecution
6 did not object to. They can do it again. We won't object, but no reference must be
7 made to this report. It would be intimidating for the witness to say, "An expert has
8 come to this conclusion. What do you say?" That is our submission on it.

9 PRESIDING JUDGE EBOE-OSUJI: I understand that they will not be doing that,
10 that we're now limiting it to, if, for instance, if just the table alone and nothing above
11 the table we see at page 5 is shown to the witness, that's all, no reference to who
12 prepared it, just --

13 MS WEISS: We maintain our objection to that, your Honour. The main matter for
14 that is the fact that we do not have the underlying data. We have an issue with the
15 underlying data. The Defence is aware of this. Thank you.

16 PRESIDING JUDGE EBOE-OSUJI: We will take our lunch break and come back at
17 2.30.

18 MR HOOPER: Certainly.

19 PRESIDING JUDGE EBOE-OSUJI: There are people who have other plans.

20 MR HOOPER: I can say very quickly two things. You're not going to get incoming
21 calls. This is a cell net. This is --

22 PRESIDING JUDGE EBOE-OSUJI: All right.

23 MR HOOPER: -- you know, there is a misunderstanding. And we were open, we
24 invited the Prosecution to, as they did in Kenya II, in writing to share this expert, a
25 world authority. Now, no stone turned.

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- 1 PRESIDING JUDGE EBOE-OSUJI: We've heard you.
- 2 MR HOOPER: That's the problem.
- 3 PRESIDING JUDGE EBOE-OSUJI: We will rise and meet at 2.30.
- 4 THE COURT USHER: All rise.
- 5 (Recess taken at 1.15 p.m.)
- 6 (Upon resuming in open session at 2.40 p.m.)
- 7 THE COURT USHER: All rise.
- 8 Please be seated.
- 9 PRESIDING JUDGE EBOE-OSUJI: Thank you --
- 10 MS WEISS: Your Honour.
- 11 PRESIDING JUDGE EBOE-OSUJI: -- very much.
- 12 Witness, welcome back. We are in open session.
- 13 Ms Weiss?
- 14 MS WEISS: Your Honour, I just wanted to introduce one more person on the
- 15 Prosecution team this afternoon is Mr Benjamin Gumpert. He's a senior trial
- 16 lawyer. And Gumpert is spelled G-U-M-P-E-R-T.
- 17 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, you may proceed. Chamber's
- 18 ruling is there will only be propositions put to the witness --
- 19 MR HOOPER: Very well.
- 20 PRESIDING JUDGE EBOE-OSUJI: -- and not --
- 21 MR HOOPER: Documents.
- 22 PRESIDING JUDGE EBOE-OSUJI: -- shown any document or source of the
- 23 proposition.
- 24 MR HOOPER: All right. All right. Thank you very much. We were in open I
- 25 take it?

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1 PRESIDING JUDGE EBOE-OSUJI: Yes.

2 MR HOOPER: Yes. Thank you. Yes, I see we are.

3 Q. Mr Witness, you told us as part of your account how you went to
4 retrieve -- hold on --

5 PRESIDING JUDGE EBOE-OSUJI: Let's --

6 MR HOOPER: Yes, let's go into --

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

8 MR HOOPER: We'll go into private session.

9 PRESIDING JUDGE EBOE-OSUJI: And then so you collect your thoughts and see.

10 MR HOOPER: Private session, please. And I can deal with another matter in
11 private session as well and then come back to the other matter.

12 *(Private session at 2.42 p.m.) Reclassified into open session

13 THE COURT OFFICER: (Interpretation) We are in private session, your Honour.

14 MR HOOPER:

15 Q. Mr Witness, just returning now to your return -- we're in private session -- to
16 (Redacted) to retrieve people there finally, the final children as it were. And you
17 returned with them, as I understand it, to (Redacted) Is that
18 right?

19 A. Yes, your Honour.

20 Q. And that would have been, as I understand it, about 3 January. In any event,
21 it was the day after the demonstration at Nandis Hill -- Nandi Hills Town; is that
22 right?

23 A. Yes, your Honour.

24 Q. And when you went there, where did you actually go? Was it (Redacted)
25 (Redacted), or was it somewhere else (Redacted)?

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1 A. Your Honour, when I went back, I went back to my place of origin, that is to

2 say, (Redacted)

3 Q. And how long did you remain there for; can you remember?

4 A. Your Honour, I stayed there ever since that time, ever since that day up until

5 now.

6 Q. And did you ever return to (Redacted)?

7 A. No, your Honour.

8 Q. Or to Nandi Hills district?

9 A. No, your Honour.

10 Q. Thank you. Now, do you know a man called (Redacted)? And

11 I'll spell that. (Redacted)

12 (Redacted) Do you know someone by that name?

13 A. Your Honour, I know someone by the name of (Redacted), not

14 (Redacted), your Honour.

15 Q. When did you last have contact with him? And by that I mean meet him

16 face to face or speak to him by telephone or email him? When was your last contact

17 with him?

18 A. Your Honour, I don't really remember. I think it was between the -- between

19 (Redacted) your Honour.

20 Q. Since the post-election violence -- since -- let me put it more specifically.

21 Since 2008, have you ever spent any time living together?

22 A. No, your Honour, but we did stay in touch. But we never stayed together,

23 your Honour.

24 Q. Was it not the case that between (Redacted)

25 (Redacted)?

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1 A. Yes, your Honour. (Redacted)

2 (Redacted), your Honour.

3 Q. Well, (Redacted), didn't he?

4 A. Yes, your Honour.

5 Q. By that I mean (Redacted), did he

6 not?

7 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper --

8 THE WITNESS: (Interpretation) Yes, your Honour.

9 PRESIDING JUDGE EBOE-OSUJI: -- you've got that answer yes to now?

10 MR HOOPER: Yes, thank you.

11 PRESIDING JUDGE EBOE-OSUJI: We're talking about 2013 you mean?

12 MR HOOPER: 2013.

13 PRESIDING JUDGE EBOE-OSUJI: Okay.

14 MR HOOPER: Let me ask -- just discuss one matter. Give me one moment.

15 Q. Just answer yes or no to this question if it's permitted --

16 PRESIDING JUDGE EBOE-OSUJI: No, no. Before we do that, I need to -- I've

17 watched that line of question now for some time. It's 2013. The bearing is not clear

18 to me.

19 MR HOOPER: The next question -- can I just ask the next question and --

20 PRESIDING JUDGE EBOE-OSUJI: All right. Let's see.

21 MR HOOPER:

22 Q. And just answer yes or no, Mr Witness. (Redacted)

23 (Redacted)

24 A. Your Honour, I do know that that person is (Redacted), but I don't know

25 (Redacted)

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1 Q. Am I right in saying it was you who (Redacted)

2 (Redacted)

3 A. Your Honour, you are telling the truth.

4 Q. And since (Redacted), you -- it's right to say

5 you have (Redacted); is that

6 right?

7 A. Please repeat that question, your Honour. I don't really understand it

8 properly.

9 Q. I'm sorry for that. Let me put it more clearly. Since (Redacted)

10 (Redacted)

11 (Redacted)

12 A. That is true, your Honour.

13 Q. And was some of that (Redacted)

14 (Redacted)?

15 A. Your Honour, (Redacted)

16 (Redacted)

17 (Redacted) your Honour.

18 Q. All right. And is he from (Redacted)?

19 A. I don't know, your Honour. All I know is where he lives, he's

20 currently -- where he's currently living, but I don't know whether he comes from

21 (Redacted).

22 Q. Don't tell us where he's currently living. What ethnicity is he; do you know?

23 A. Yes, your Honour.

24 Q. What -- what ethnicity is he?

25 A. He is a (Redacted) person, your Honour.

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1 Q. And you don't know where he was living prior to or during the post-election
2 violence; is that right?

3 A. Your Honour, he's already explained that. He said that he was living in
4 (Redacted) before the elections, your Honour.

5 Q. Does he speak (Redacted)?

6 A. Yes, your Honour. (Redacted)
7 (Redacted), your Honour.

8 MR HOOPER: All right, thank you. I have no further questions that need to be
9 put in private session. We can go into public session with your Honour's leave.

10 PRESIDING JUDGE EBOE-OSUJI: We will. Mr Hooper, you've noticed that we
11 have been quite generous during your --

12 MR HOOPER: Yes.

13 PRESIDING JUDGE EBOE-OSUJI: -- cross-examination because there is no other
14 witness lined up for this session, the remainder, but --

15 MR HOOPER: And I said I'd be just half-an-hour after lunch.

16 PRESIDING JUDGE EBOE-OSUJI: I thought I would make -- let you know this is
17 not how we -- we feel that this cross-examination should have been wrapped up
18 quite some time ago.

19 MR HOOPER: Indeed.

20 PRESIDING JUDGE EBOE-OSUJI: We'll go to public session.

21 (Open session at 2.57 p.m.)

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

23 MR HOOPER:

24 Q. Finally, Mr Witness, can I just put this, that -- what --

25 PRESIDING JUDGE EBOE-OSUJI: I see you rifling through your notes. We are in

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1 public --

2 MR HOOPER: Yes.

3 PRESIDING JUDGE EBOE-OSUJI: -- session you know.

4 MR HOOPER: Public session.

5 PRESIDING JUDGE EBOE-OSUJI: Okay. You know what I mean.

6 MR HOOPER: Yes, I understand.

7 Q. Would you be surprised to learn that during the period from 25 December
8 2007 up and including 4 January 2008, so all those days, from 25 December through
9 Christmas, through the new year up until 4 January, would you be surprised to learn
10 that your telephone made calls only from (Redacted) and none from the area
11 that --

12 MS WEISS: Your Honour, I object --

13 MR HOOPER:

14 Q. -- we've spoken about?

15 MS WEISS: -- to that. I think this was discussed earlier, the contents, and this is
16 exactly what Mr Hooper my learned friend is alluding to.

17 PRESIDING JUDGE EBOE-OSUJI: No, that's not. The question is fine in terms of
18 the form of it, in terms of the form of it in relation to the debate we had. Whether or
19 not it's a fair question quite apart from the discussion we had is another matter.

20 MR HOOPER: And perhaps we should revert to private -- private session.

21 PRESIDING JUDGE EBOE-OSUJI: Private session.

22 *(Private session at 2.59 p.m.) Reclassified into open session

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

24 MR HOOPER:

25 Q. What do you say to what I've just put to you?

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1 A. Your Honour, could you please repeat your question?

2 Q. Would it surprise you to learn that your telephone between the period of 25
3 December 2007 through to 4 January 2007 (sic), all those days, Christmas Day, voting
4 day, New Year's Day, all those days only made telephone calls -- was only recorded
5 as having made telephone calls from (Redacted)?

6 What do you say to that?

7 PRESIDING JUDGE EBOE-OSUJI: One second. Don't answer that question,
8 Witness, just yet.

9 Mr Hooper, questions have to be fair. Can you look at your notes, you know what I
10 mean, and look on top of page 6. Bottom of page 5 to top of page 6.

11 MR HOOPER: Hold on. I have to get the document. I've got it somewhere. I've
12 got it. Sorry, page?

13 PRESIDING JUDGE EBOE-OSUJI: Your paper, bottom of page 5 --

14 MR HOOPER: Yeah.

15 PRESIDING JUDGE EBOE-OSUJI: -- and to about the fifth or sixth of the way on
16 top of the 6th. If you look at that and still believe you should ask that question, let
17 me know.

18 MR HOOPER: I'm putting the question as straightforwardly and simply as I can.
19 And for reasons which I can later come to, I think it's a fair representation. I
20 appreciate -- I appreciate the point. I see the point.

21 PRESIDING JUDGE EBOE-OSUJI: And the reason I say that, it's -- if the Chamber
22 is aware of the paper and its content, should we pretend --

23 MR HOOPER: All right.

24 PRESIDING JUDGE EBOE-OSUJI: -- there's nothing wrong with the range you
25 indicated in the question?

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- 1 MR HOOPER: All right.
- 2 Q. Mr Witness, do you know somewhere called (Redacted)
- 3 (Redacted) Have you ever
- 4 heard of that in (Redacted) Do
- 5 you know where (Redacted) is?
- 6 A. Your Honour, I don't know a school with that name.
- 7 Q. Very well. Do you know (Redacted)?
- 8 A. Your Honour, I know a school called (Redacted)
- 9 It's not in the Rift Valley.
- 10 Q. Yes, very well. And (Redacted), do you know where (Redacted) is?
- 11 (Redacted)
- 12 A. Yes, your Honour.
- 13 Q. And the (Redacted), where is that approximately?
- 14 A. Your Honour, I don't know where this place is. At the time it was in the
- 15 (Redacted), but I don't know where this forest is.
- 16 Q. But at the time it was in (Redacted). All right.
- 17 Do you know somewhere called (Redacted)?
- 18 A. I don't know that village, your Honour.
- 19 Q. Well, in any event, it's our position these are all well to (Redacted).
- 20 (Redacted), it's only slightly and not into the area that we're talking
- 21 about. So let me put the question in this way. And though I'm talking about
- 22 essentially (Redacted), I'll ask you is it right -- are you surprised to discover or
- 23 to hear that your telephone was only used between Christmas and early January of
- 24 2008 in (Redacted) and not at all in the (Redacted) area or (Redacted)
- 25 (Redacted) area?

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1 A. I'm astonished, your Honour, because I didn't have a telephone -- I didn't
2 have just one. I had three telephones, three different telephones. So I don't know
3 which telephone you are referring to in this case, your Honour.

4 Q. And did you carry all these phones around with you?

5 A. No, your Honour.

6 Q. Did you have an M-Pesa account? And if you did, in respect of which
7 telephone number was it? M-Pesa. An M-Pesa account. Did you have an M-Pesa
8 account? In respect of which telephone was it?

9 A. Your Honour, it was the (Redacted) telephone which used that account, and
10 (Redacted) didn't have an M-Pesa account.

11 Q. Was it (Redacted) number that you've told us about so far, (Redacted)?

12 A. Yes, your Honour.

13 Q. And for how long can you remember did you hold an M-Pesa account? Let
14 me put it like this: Did you have an M-Pesa account before the post-election
15 violence?

16 A. Yes, your Honour.

17 Q. And that was on the number we just mentioned, was it?

18 A. (No interpretation)

19 Q. And did the M-Pesa account --

20 A. (No interpretation)

21 MR HOOPER: Sorry, the answer was not recorded. Let me ask the question.

22 We'll come back to that if necessary.

23 Q. Did your --

24 PRESIDING JUDGE EBOE-OSUJI: I thought -- I thought I heard him --

25 MR HOOPER: Yes, he did.

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1 PRESIDING JUDGE EBOE-OSUJI: -- say "ndiyo." My limited Swahili tells me
2 that's yes.

3 MR HOOPER: Yes. Yes.

4 Q. So the answer to the question did you have an M-Pesa on that number that
5 we discussed, the (Redacted) number, your answer was yes. That was before
6 the PEV. Did you continue to have your M-Pesa -- M-Pesa account on that same
7 telephone after the post-election violence?

8 A. Your Honour, I'll say the following: I had three different telephones. One
9 (Redacted), another was (Redacted), and the other.

10 THE INTERPRETER: The interpreter points out he didn't hear the last name of the
11 telephone company that the interpreter said.

12 MR HOOPER:

13 Q. Okay. Mr Witness, can we just go and just take those one by one. Three
14 different phones. First one (Redacted); is that correct?

15 A. Yes, your Honour.

16 Q. And that number is (Redacted) and it's the telephone number we've discussed
17 in this case so far; is that correct?

18 A. Yes, your Honour.

19 Q. A (Redacted) account, (Redacted); is that correct?

20 A. Yes, your Honour.

21 Q. When did you start that account, that number, and what is the number
22 please?

23 A. Your Honour, I can't remember when I started using that number. Also I've
24 lost that number. I no longer remember what that number was, your Honour. At
25 a particular time I had a problem with the network and that's the reason why I got

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1 rid of this telephone number.

2 Q. For what period of time did you have that (Redacted) account, approximately?

3 A. I used this number for three to four years.

4 Q. Did you use it over the period -- or did you have that number over the period
5 of the post-election violence?

6 A. Your Honour, it was my first number that I had before I bought the (Redacted)
7 number. I used it afterwards -- I used it before and after the post-electoral violence.

8 Q. Did you use it during the period of post-election violence?

9 A. Yes, your Honour.

10 Q. And did you obtain that account using your full and proper name?

11 A. Yes, your Honour.

12 Q. And, finally, you mentioned a third account, which I didn't quite hear. I
13 think (Redacted); is that right? Can you tell us? Can you spell it first of all and then tell
14 us how long you'd had it, for what period and what the telephone number was,
15 please?

16 A. Your Honour, I said that I had the telephone from (Redacted)
17 (Redacted) I also had the (Redacted) telephone number and I said that I could no longer
18 remember that number any more since I don't use the number any more. Because I
19 had network problems, I couldn't remember the number any more.

20 Q. I'm sorry. I -- maybe just to clarify. The third telephone, was that you say
21 an (Redacted) number? What was it? What network was it, that third telephone?

22 A. Your Honour, I had the (Redacted) number, a different number, and I wanted a
23 number which would give me the network easily, and that's why I used the (Redacted)
24 network. It was one number and after I used the number of (Redacted).

25 Your Honour, when these companies arrived, these numbers had a network

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1 coverage which was very reduced. These were (Redacted) numbers, and at that time --

2 PRESIDING JUDGE EBOE-OSUJI: One second.

3 MR HOOPER:

4 Q. Just put very simply --

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

6 Ms Weiss, do you anticipate re-examination so far?

7 MS WEISS: Yes, your Honour. I have I think about ten minutes of re-examination.

8 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, it's 20-past-3. You had promised to
9 be done by 30 minutes --

10 MR. HOOPER: Yes, indeed.

11 PRESIDING JUDGE EBOE-OSUJI: -- before -- after lunch.

12 MR HOOPER: I thought I was on track for that.

13 PRESIDING JUDGE EBOE-OSUJI: Yes.

14 MR HOOPER:

15 Q. I'm still -- just to make it clear, Mr Witness, very simply, your third phone that
16 you speak about was on (Redacted) network, yes or no?

17 A. Yes, your Honour.

18 Q. And did you also have that phone with you over the period of the
19 post-election violence, end of 2007 to 2008?

20 A. No, your Honour.

21 Q. All right. So we can perhaps forget that. Did you have the (Redacted) number
22 with you over the period September -- sorry, December, January 2008?

23 PRESIDING JUDGE EBOE-OSUJI: Did he say (Redacted), or was that you who
24 said -- put (Redacted) in there?

25 MR HOOPER: Well, it's -- it was (Redacted). You're quite right. So

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1 at the time I understand the witness to be saying it was (Redacted). So let me put the
2 question again.

3 Q. December 2007, January 2008, did you have the (Redacted) telephone with you?

4 A. Yes, your Honour.

5 Q. And during the same period, did you have the (Redacted) telephone with you?

6 A. Yes, I just got the number of (Redacted), your Honour.

7 Q. And did you have one or both those phones with you during December and
8 January 2008?

9 A. No, your Honour. I just had one at each time. I didn't transport all my
10 numbers at that time.

11 Q. So from say Christmas to the New Year 2008 what phone were you using?

12 A. Your Honour, as I said, the telephone that I used was the one which had an
13 antenna which was not far from my house, and the nearest was (Redacted).
14 could not have a good network coverage.

15 Q. Did you give your phones ever to anybody else?

16 A. Your Honour, please could you explain how I would give my phone to
17 another person.

18 Q. All right. Now, would you also -- and this is my last question -- be surprised
19 to learn that your telephone number, (Redacted) telephone number (Redacted) was
20 used between 5 January 2008 and 12 January 2008 -- may have been used at other
21 times. I'm just asking you about these times. I'll repeat the dates 5 January, 6
22 January, 7th, 8th, 9th, 11th and 12 January in (Redacted)? Would you be surprised to
23 learn that?

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

25 Q. Because that's a time when you told us you were staying in (Redacted) and you

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1 didn't dare go up to Nandi Hills. Can you explain?

2 A. Your Honour, could you put your question correctly, your Honour?

3 Q. Well, I'm trying to put it as clearly and correctly as I can. Let me put my

4 question again. Your telephone was used at least between 5 January and 12

5 January, and the records show or appear to show that you were -- or the telephone

6 was in (Redacted). Now, that's at a time when you were in (Redacted) Why is your

7 phone being used there? Does it surprise you to hear that or not?

8 A. I'm astonished, your Honour.

9 Q. And my final question is this: Is there any way that you can think whereby

10 you, you through friends or relatives, may be able to rediscover your (Redacted) or

11 (Redacted) telephone number? Can you discover -- can you -- after you've left this court,

12 do you think you'll be in a position yourself to provide me with those telephone

13 numbers?

14 A. Your Honour, I'm a parent. I have children. And when you send -- quite

15 often you send your child to a place, if that place is far away, you've got to give them

16 a telephone so that you can stay in contact with the child to know what the child's

17 position is, your Honour.

18 Q. Very well. And are you suggesting that's what happened here? And which

19 child did you send to (Redacted)

20 A. Your Honour, I wanted to say the following: If you send a child -- (Redacted)

21 (Redacted), you don't know where they might go. When he comes back, he can say I'm

22 back, but you don't know if he went far or if he was very close. I didn't have any

23 precisions in that regard with regard to the place where my child went, if you send

24 this child to a place, any place, your Honour.

25 Q. Right. Now, again can I just -- this is my final question. I'll repeat it. When

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1 you leave this court, do you think you'll be in a position yourself from friends or
2 family or your own records to find what the (Redacted) and (Redacted) telephone numbers
3 were and give them to me or get them to the Prosecutor to give to me? Do you
4 think that's something you can do?

5 A. Your Honour, if you take the SIM card out, the SIM card of a telephone, and
6 you put the SIM card somewhere, it's possible that the SIM is lost. It's difficult for
7 me to tell you that I can ask somebody and they will get the number and bring it to
8 you, your Honour.

9 Q. All right. I, in fact, asked you this question about (Redacted). I'm not sure I did
10 cover it with (Redacted). Let me just clear this. When you got your (Redacted) account,
11 you provided your full and proper name; is that right?

12 A. Your Honour, when it came to the registering of SIM cards, that wasn't very
13 long ago. (Redacted). They don't register the
14 identity of persons who buy these SIM cards. I never registered to obtain other SIM
15 cards.

16 MR HOOPER: Thank you, your Honour.

17 And may I thank you, Mr Witness, for your responses to me over the last few days.
18 Thank you.

19 PRESIDING JUDGE EBOE-OSUJI: Thank you, Mr Hooper. As I said, next time we
20 will keep a tighter rein on the cross-examination.

21 Ms Weiss?

22 MS WEISS: Mr Koech.

23 PRESIDING JUDGE EBOE-OSUJI: Mr Koech, sorry.

24 Mr Koech?

25 MR KOECH: Yes, indeed, your Honour. For the record, there will be no

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1 cross-examination from the Sang Defence team, your Honour.

2 PRESIDING JUDGE EBOE-OSUJI: Thank you, Mr Koech.

3 Before I hand the examination back to Ms Weiss, do we have any materials to
4 tender?

5 MR HOOPER: Yes.

6 MS JAYARAJ: Thank you, your Honours. The first two items we will request to
7 be MFI: KEN-D09-0029-0014 and KEN-D09-0029-0015.

8 PRESIDING JUDGE EBOE-OSUJI: One at a time. One at a time. The first one is
9 where? What tab is that?

10 MS JAYARAJ: It's at tab number 2, your Honours. KEN-D09-0029-0014. The
11 photograph of the OCS of Nandi Hills.

12 PRESIDING JUDGE EBOE-OSUJI: And you say MFI?

13 MS JAYARAJ: Yes.

14 PRESIDING JUDGE EBOE-OSUJI: All right. I take it there's no problem there, Ms
15 Weiss?

16 MS WEISS: Not for MFI, no, your Honour.

17 PRESIDING JUDGE EBOE-OSUJI: Right. The materials will be marked MFI Ruto
18 Defence.

19 THE COURT OFFICER: (Interpretation) Document KEN-D09-0029-0014 a public
20 document will be given the following number: MFI-T-D09-00138.

21 PRESIDING JUDGE EBOE-OSUJI: By the way, we should be in public session for
22 this exercise.

23 (Open session at 3.32 p.m.)

24 THE COURT OFFICER: We are in open session.

25 PRESIDING JUDGE EBOE-OSUJI: Thank you. And the next one?

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- 1 MS JAYARAJ: Thank you, your Honours. The next one will be
2 KEN-D09-0029-0015 at your Honours' tab number 3.
3 PRESIDING JUDGE EBOE-OSUJI: Again MFI?
4 MS JAYARAJ: Yes, your Honours.
5 PRESIDING JUDGE EBOE-OSUJI: No difficulty from the Prosecution, I take it?
6 No?
7 MS WEISS: No, your Honour, not for MFI.
8 PRESIDING JUDGE EBOE-OSUJI: The document will be marked MFI Ruto
9 Defence.
10 THE COURT OFFICER: (Interpretation) Document KEN-D09-0029-0015 a public
11 document will be given the following number: MFI-T-D09-000140.
12 MS JAYARAJ: Your Honours, the final item will be KEN-D09-0029-0023, and we
13 request that that be given an EVD number, please. It's on tab 11 of your Honours'
14 bundles, and it's a photograph of person number 1 on the PIS.
15 PRESIDING JUDGE EBOE-OSUJI: Ms Weiss?
16 MS WEISS: No objection, your Honour.
17 PRESIDING JUDGE EBOE-OSUJI: Received into the record as next in the Ruto
18 Defence exhibits.
19 THE COURT OFFICER: (Interpretation) Document KEN-D09-0029-0023 a public
20 document shall be given the following number: EVD-T-D09-00141.
21 PRESIDING JUDGE EBOE-OSUJI: And that's Ruto Defence Exhibit 141.
22 Ms Weiss.
23 Mr Nderitu, it remains the case that there is no re-examination from you?
24 MR NDERITU: Yes, there is no re-examination from me. Thank you.
25 PRESIDING JUDGE EBOE-OSUJI: Thank you. Ms Weiss, please.

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1 MS WEISS: Thank you, your Honour. I will start with one question in public
2 session, but then unfortunately I have to move into private because of the nature of
3 the questions. They arise out of matters that were in private and they would
4 identify the witness.

5 QUESTIONED BY MS WEISS:

6 Q. Mr Witness, my first question to you is in 2007 was it compulsory to register
7 your cell phone in Kenya?

8 A. No, your Honour.

9 Q. Do you know --

10 A. It was not mandatory.

11 Q. Do you know when it became compulsory to register your mobile phone or
12 cell phone in Kenya?

13 A. Your Honour, it was last year.

14 MS WEISS: If we could move into private session, your Honour, for the next couple
15 of questions. Thank you.

16 PRESIDING JUDGE EBOE-OSUJI: I take it then you will be finishing in private
17 session, is that it?

18 MS WEISS: Indeed.

19 PRESIDING JUDGE EBOE-OSUJI: All right. We will have some discussions, don't
20 we, Mr Steynberg, about what happens next after the break?

21 MR STEYNBERG: That's correct, your Honour. I don't -- I don't imagine, unless
22 there are any objections from the other side, that it will take very long, perhaps ten
23 minutes.

24 PRESIDING JUDGE EBOE-OSUJI: All right. Keeping that in mind, Ms Weiss, let's
25 then go into private session for you to finish.

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1 *(Private session at 3.36 p.m.) Reclassified into open session

2 THE COURT OFFICER: (Interpretation) We are in private session, your Honour.

3 MS WEISS:

4 Q. Mr Witness, I just want to take you back to a few things that you said
5 yesterday during your cross-examination by my learned friend. The first was --

6 MS WEISS: And the reference, your Honour and my learned friend, is page 33,
7 lines 14 to 17 of the transcript.

8 Q. Witness, you said about the polling station (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted) What did you mean by that?

12 A. Your Honour, well, what I meant was this: When there is people -- many
13 people from the same political party and they are facing off against a minority from
14 another tribe, the majority can easily have an influence on the minority and have
15 then enter their party or they may see them as opponents, your Honour.

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted).

25 Q. My next point, Witness, that I just want to clarify with you --

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1 MS WEISS: And, your Honour, the reference is page 70, lines 11 to 13.

2 Q. It's in relation to your wife (Redacted). You said, "When we went back to (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 A. It was after the post-electoral violence, your Honour.

7 Q. Moving on -- moving on to my next point, and this one's in relation to your

8 victim participation form.

9 MS WEISS: Page 74, lines 14 to 19, your Honours.

10 Q. Witness, you said, well -- you were asked, sorry, by my learned friend, "Well

11 is it true, did you have (Redacted), and you filled in this

12 form?"

13 And you answered, "Your Honour, it's true. It wasn't just people in my family.

14 (Redacted)

15 (Redacted)

16 Witness, who were you talking about there? Who were the people other than your

17 family?

18 A. Your Honour, I'm talking about (Redacted)

19 (Redacted)

20 (Redacted), your Honour.

21 Q. Next point, Witness, was in regards to (Redacted).

22 MS WEISS: Page 91, lines 4 to 9, your Honours.

23 Q. You said, (Redacted)

24 (Redacted)

25 (Redacted)

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1 A. Your Honour, well, I meant this: (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. So that (Redacted)

5 (Redacted)?

6 A. Your Honour, I was in the process of (Redacted)

7 (Redacted)

8 (Redacted)

9 Q. And my final question to you today, Witness -- and it comes from today's
10 cross-examination, Page 79, lines 11 to 17.

11 Witness, you said you had contact with (Redacted)

12 (Redacted)

13 (Redacted)

14 A. Your Honour, regarding someone's (Redacted), that is a confidential matter.

15 (Redacted)

16 (Redacted)

17 MS WEISS: Thank you, Witness. And they are all my questions.

18 Your Honour, I just wanted to make one correction to the transcript I've just been

19 alerted to. Line 13 of page 100 just now, (Redacted)

20 (Redacted) I'm not sure if it's been omitted from

21 the transcript here.

22 PRESIDING JUDGE EBOE-OSUJI: Can you ask the question again to the witness.

23 MS WEISS:

24 Q. Witness, I just need to clarify one small thing about your answer a moment

25 ago just for the case of the record. (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 MS WEISS: Thank you, Witness.

6 And those are my questions, your Honour.

7 PRESIDING JUDGE EBOE-OSUJI: Thank you.

8 MR HOOPER: Your Honour, I don't propose to ask any questions, but I invite your
9 Honour to perhaps ask the witness (Redacted)

10 (Redacted)

11 PRESIDING JUDGE EBOE-OSUJI: Mr Hooper, two minutes to ask that question
12 yourself.

13 MR HOOPER: Can I get away with another question too or just that one?

14 PRESIDING JUDGE EBOE-OSUJI: Just that one.

15 MR HOOPER: All right.

16 QUESTIONED BY MR HOOPER:

17 Q. Mr Witness, who were (Redacted)?

18 (Redacted)

19 (Redacted)

20 (Redacted) So amongst those people I had some
21 doubts as to who was telling the truth.

22 PRESIDING JUDGE EBOE-OSUJI: You're still within your two minutes.

23 MR HOOPER:

24 Q. But you said you were (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 MR HOOPER: All right, thank you. No other questions.

9 Thank you, Mr Witness.

10 Thank you, your Honour, for the indulgence.

11 PRESIDING JUDGE EBOE-OSUJI: Thank you very much everyone.

12 Witness, we've come to the end of your testimony in court --

13 Let's go to public now, please.

14 (Open session at 3.49 p.m.)

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

16 PRESIDING JUDGE EBOE-OSUJI: Witness, I was thanking you for coming to

17 testify before the Court. We've now finished the questions to you and your

18 answers. We thank you very much. We know it's been a trying experience sitting

19 there taking all those questions and being required to answer them. We thank you

20 for your indulgence.

21 The Court will excuse you. Thank you, but if you can bear with us and sit there for

22 a while so that we can all wrap up. At the same time, you can also enjoy the

23 lawyers arguing with one another. They will not be asking you questions any

24 more.

25 Mr Steynberg?

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1 MR STEYNBERG: Yes, thank you, your Honour. As I promised yesterday, I think
2 I have forwarded the Prosecution's proposed list of witnesses for the next two
3 sessions. For the record I can repeat them, but before I do that, I will however be
4 unfortunately begging the leave of the Court and the indulgence of my learned
5 friends to make one small alteration, and that is the first session I had previously
6 indicated that the next three witnesses would be starting with Witness 464 and then
7 Witness 323 and finally Witness 409. We estimate that that will take between 14 to
8 16 days. We have 17 days, so we should comfortably fit those three witnesses in the
9 first session.

10 The indulgence which I seek is to swap the order of the second and third witness.

11 That is, we propose to call Witness 409 before Witness 323. Unfortunately, I've run
12 into -- or we've run into some complicated scheduling difficulties. I can explain in
13 more details if necessary, but I note the clock we're running out of time. And
14 therefore we would -- I hope it won't cause any great inconvenience for my learned
15 friends -- propose to call Witness 409 before Witness 323.

16 For the following session, that is the session commencing on 31 March, we propose
17 to call the following three witnesses: Witness 442, followed by Witness 28 and
18 finally Witness 469. We estimate that will take between 14 to 16 days. I note that
19 we have 13 days. It may thus be that we don't get through all three of those
20 witnesses, in which case the last witness, who is a short witness, may have to be held
21 over to the following session. I trust that that will be in order.

22 MR KHAN: Mr President, your Honours, in relation to my learned friend's
23 indication that he wishes to change the witness order so that Witness 409 comes
24 before 323, that won't cause a difficulty for the Defence and I have no objection to
25 that, your Honour.

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

2 MR KIGEN-KATWA: I have no objection, Mr President.

3 PRESIDING JUDGE EBOE-OSUJI: All right. Noted. Thank you.

4 MR STEYNBERG: And I'm grateful for that indulgence, your Honours.

5 PRESIDING JUDGE EBOE-OSUJI: Mr Nderitu, did you wish to make an
6 observation?

7 MR NDERITU: Thank you, Mr President, your Honours. Not in connection with
8 the order of witnesses, but I don't know if there is any other business remaining, in
9 which case I would want to just raise one issue.

10 PRESIDING JUDGE EBOE-OSUJI: One second.

11 MR NDERITU: Thank you.

12 (Trial Chamber confers)

13 PRESIDING JUDGE EBOE-OSUJI: I take it there will be no -- there are no
14 submissions on the second matter.

15 Prosecutor, we will want the three witnesses to be taken, the three witnesses for the
16 indicated second session, that is the session starting 31 March to 16 April, we want to
17 complete the three witnesses by 16 April before the Easter recess. That should be
18 the target. And for that purpose, we would expect questions to really be weaned
19 down in terms of what really needs to be asked of all the witnesses, both in
20 examination-in-chief and in cross-examination. As I said, because we didn't have
21 any other witness lined up for this session, we were generous to allow all sorts of
22 questions that we would not normally have allowed in the case. That will not be
23 happening during that session. That I need to make very plain. Keep that --

24 MR STEYNBERG: Duly noted, your Honour. Thank you.

25 PRESIDING JUDGE EBOE-OSUJI: -- in mind. So with that in mind, that settles the

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1 matter for the order of witnesses and who will need to be called.
2 Mr Nderitu.
3 MR NDERITU: Thank you, Mr President, your Honours.
4 PRESIDING JUDGE EBOE-OSUJI: The court officer will need to log in some
5 evidence that wasn't done. You remember the matter of the pictures that the
6 Defence tried to tender at the time and then needed to be split up.
7 THE COURT OFFICER: (Interpretation) Thank you. The Registry would like to
8 add that the photographs that were shown to the witness during yesterday's
9 hearings received the following numbers: KEN-D09-0029-0001 confidential was
10 given the following number: EVD-T-D09-00133. KEN-D09-0029-0002 a
11 confidential document was given the following number: EVD-T-D09-00134.
12 Document KEN-D09-0029-0007 a confidential document was given the following
13 number: EVD-T-D09-00135. Document KEN-D09-0029-0005 confidential was
14 given the following number: MFI-T-D09-00136. And finally document
15 KEN-D09-0029-0008 was given the following number: MFI-T-D09-00137. I thank
16 you.
17 MS WEISS: Your Honour, while we're at it, I think the PIS was not read in either. I
18 neglected to ask for that to be read into the record.
19 PRESIDING JUDGE EBOE-OSUJI: The Prosecution PIS wasn't logged in as well?
20 MS WEISS: Exactly, your Honour.
21 PRESIDING JUDGE EBOE-OSUJI: All right. I think we have to revert to the old
22 system of once we treat a document, we will enter it at that time. Okay.
23 I'm told it has already been logged in.
24 MS WEISS: Thank you. Thank you, your Honour.
25 THE COURT OFFICER: (Interpretation) The document the PIS form for this

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1 witness was given this number: KEN-PIS-0001-0040, and this document is four
2 pages in all.

3 PRESIDING JUDGE EBOE-OSUJI: Thank you. Mr Nderitu, you said you had an
4 issue?

5 MR NDERITU: Yes. Thank you, Mr President, your Honours. It's not really an
6 issue, and quite coincidentally it comes in at 4 p.m. when we are breaking.

7 This is just to inform the Chamber and the parties that today is the last day for my
8 case manager, Ms Caroline Herzig, and I just want to record the very, very able
9 assistance that I have been able to receive from her for the last one year since I
10 became the legal representative for victims. I wish her well as she proceeds on to
11 several other different assignments. Thank you.

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

13 There's the matter of the hearing on the -- scheduled for 14 February. Mr Nderitu, I
14 hope you -- I understand there was an inquiry from you as to whether your
15 attendance would be either welcome or invited. The answer is yes. We will want
16 you to participate in that discussion. As we all know, an element of the issue has to
17 do with the criminal law or criminal procedure of Kenya, and we do -- we'll be
18 counting on the assistance of the Kenyan lawyers as the experts on the matter to help
19 guide us to see the way in that aspect of it. So you will --

20 MR NDERITU: Thank you.

21 PRESIDING JUDGE EBOE-OSUJI: -- be welcome. That's it for the session, and we
22 wish everybody safe travels, those who are travelling, and we'll see you again on the
23 next session. Thank you.

24 And thank you, Witness. Safe travels back to you as well. And everybody, the
25 court interpreters and court reporters, for bearing with us, thank you.

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1 We will be rising now, but blinds down first to escort the witness from the
2 courtroom.
3 *(Closed session at 4.01 p.m.) Reclassified into open session
4 THE COURT OFFICER: (Interpretation) We are in closed session, your Honour.
5 (The witness is excused)
6 PRESIDING JUDGE EBOE-OSUJI: Court will rise.
7 THE COURT OFFICER: All rise.
8 (The hearing ends in closed session at 4.02 p.m.) Reclassified into open session
9 RECLASSIFICATION REPORT
10 Pursuant Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
11 2013, and the email's instructions dated 10th April 2014, the version of the
12 transcript with its redactions becomes Public.