

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 International Criminal Court
2 Trial Chamber V(a) - Courtroom 1
3 Situation: Republic of Kenya
4 In the case of The Prosecutor v. William Samoei Ruto
5 and Joshua Arap Sang - ICC-01/09-01/11
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera Carbuccia and Judge Robert
7 Fremr
8 Trial Hearing
9 Monday, 27 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 announce the case.
16 THE COURT OFFICER: Thank you, Mr President. Situation in the Republic of
17 Kenya, in the case of The Prosecutor versus William Samoei Ruto and Joshua Arap
18 Sang, ICC-01/09-01/11.
19 PRESIDING JUDGE EBOE-OSUJI: Thank you.
20 I see that appearances remain the same.
21 MR KIGEN-KATWA: They do on our part, Mr President.
22 MR KHAN: Indeed, Mr President.
23 MR GARCIA: Good morning, your Honours. Save for the absence of Mr Anton
24 Steynberg, the Prosecution team is the same.
25 MR NDERITU: Good morning, Mr President, your Honours. The appearances are

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

- 1 the same on our side. Thank you.
- 2 MR BOURGON: Good morning, Mr President. Same thing for Witness 356.
- 3 Thank you, Mr President.
- 4 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 5 Witness, welcome back, and Mr Khan will continue his cross-examination of you.
- 6 Again, I remind you of a need to listen carefully to the question, make sure you
- 7 understand the question that is being asked of you before answering. Also try not
- 8 to guess at answers to the question. Answer what you know. Also do your best,
- 9 please, to observe the pauses between the completion of the question asked of you
- 10 and you beginning to answer the question.
- 11 And, Counsel, as well the same goes. Thank you. We know that because
- 12 everyone -- the witness is testifying in English and the counsel is also questioning in
- 13 English, so that poses greater risk of overlapping. Thank you.
- 14 Mr Khan, we ended in private session on Friday. Do you want to go back into
- 15 private session to continue, or --
- 16 MR KHAN: Please, Mr President.
- 17 PRESIDING JUDGE EBOE-OSUJI: You do?
- 18 MR KHAN: Private.
- 19 PRESIDING JUDGE EBOE-OSUJI: All right.
- 20 MR KHAN: I'm grateful.
- 21 PRESIDING JUDGE EBOE-OSUJI: How long do you think we will be in there?
- 22 MR KHAN: Five minutes.
- 23 PRESIDING JUDGE EBOE-OSUJI: Five minutes. Private session, please.
- 24 *(Private session at 9.40 a.m.) Reclassified as open session
- 25 THE COURT OFFICER: We are in private session, your Honours.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1 PRESIDING JUDGE EBOE-OSUJI: Thank you. Mr Khan, please.
- 2 WITNESS: KEN-OTP-P-356 (On former oath)
- 3 QUESTIONED BY MR KHAN: (Continuing)
- 4 Q. Good morning, Mr Witness.
- 5 A. Good morning, your Honour.
- 6 Q. (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 A. Yes, yes, your Honour.
- 10 Q. And originally in Kenya you (Redacted), did you not?
- 11 A. I didn't understand your question, your Honour.
- 12 Q. You engaged a (Redacted)
- 13 (Redacted); is that right?
- 14 A. Yes, your Honour.
- 15 Q. (Redacted); is that right?
- 16 A. Yes, your Honour.
- 17 Q. And he --
- 18 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, one second. I don't want to break
- 19 your stride. Do we have on record the proposition about (Redacted)
- 20 (Redacted)?
- 21 MR KHAN: Your Honour, that was the (Redacted), and, in fact, it's in the Prosecution
- 22 file, (Redacted), as well as a record of the (Redacted).
- 23 PRESIDING JUDGE EBOE-OSUJI: What I mean is have we brought it into the
- 24 discussion or the testimony before now?
- 25 MR KHAN: Your Honour, I will go back and make it clearer.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: Yes.

2 MR KHAN:

3 Q. Witness, is it correct that after you were (Redacted), a time came
4 when you were (Redacted)?

5 A. Yes, your Honour.

6 Q. And is it correct that the (Redacted)?

7 A. Yes, your Honour.

8 Q. And it was in relation to that (Redacted) that you were (Redacted) and you
9 were (Redacted); is that right?

10 A. Yes, your Honour.

11 Q. And the (Redacted); is that right?

12 A. I didn't -- I don't understand the meaning of --

13 Q. (Redacted)?

14 A. Yes, your Honour.

15 Q. (Redacted); is that right?

16 A. No, your Honour.

17 Q. Now, you engaged (Redacted)

18 (Redacted); is that right?

19 A. Yes, your Honour.

20 Q. And (Redacted)

21 (Redacted); is that right?

22 A. No, your Honour.

23 Q. Did you tell the Prosecution that (Redacted) from you?

24 A. Your Honour, no -- yes, I did so, your Honour, and I would like to give an
25 explanation on that.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 Q. Well, Witness, we can go on because it's not a --

2 MR GARCIA: I object, your Honour. If the question has been asked of the witness
3 and the witness wants to give additional explanation, he should be let -- he should
4 be allowed to do so. It's in all fairness to the witness.

5 MR KHAN: Your Honour, with my -- in my respectful submission it's not a matter
6 of fairness. It's a matter of counsel eliciting relevant evidence. The witness was
7 asked not background, but did he seek to engage (Redacted)? He said "Yes." I
8 said, "Did (Redacted)?" After saying "No," he said "Yes."

9 Your Honour, in my respectful submission, if one is to avoid a meandering
10 testimony I should be allowed to go to the next question, but if you want him to
11 answer of course there's no objections.

12 PRESIDING JUDGE EBOE-OSUJI: Yes, yes, let him explain.

13 THE WITNESS: Your Honour, I would like to say that it was not the first time of
14 (Redacted). When I was (Redacted)

15 (Redacted) And before even

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 your Honour. And after that -- after I was (Redacted)

22 (Redacted) your Honour.

23 MR KHAN:

24 Q. So the (Redacted); is

25 that right?

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 A. Yes, your Honour.

2 Q. Yes. So you couldn't get (Redacted), could you? You couldn't engage
3 (Redacted)?

4 A. Your Honour, I could have gotten the (Redacted), but I refused to do so because I
5 saw that (Redacted), your Honour.

6 Q. And because you did not proceed with (Redacted), a time came when you
7 went to the -- an (Redacted).

8 Do you remember that?

9 A. I remember, your Honour.

10 Q. And (Redacted) referred you to the -- what you describe as the (Redacted),
11 (Redacted) correct?

12 A. Yes, your Honour.

13 Q. Do you remember when you met with (Redacted)
14 (Redacted)?

15 A. Yes, your Honour, I remember.

16 Q. When was that, Witness?

17 A. I don't remember the year or the date. It was in (Redacted) -- between
18 (Redacted), your Honour, or (Redacted). I don't remember the exact
19 year.

20 Q. Yes. And do you recall who you met at the (Redacted)?

21 A. Yes, your Honour. I first met one (Redacted).

22 Q. Is that (Redacted)?

23 A. He is a (Redacted), your Honour. I don't know his next name.

24 Q. He's a (Redacted), you say?

25 A. Yes, your Honour.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1 Q. Yes. Does the name (Redacted) ring a bell?
- 2 A. No, not (Redacted). I -- I -- he has another name of which I cannot remember for
3 now.
- 4 Q. And the (Redacted) that you told the Prosecution you went to
5 see is actually called the (Redacted). Is that the full
6 name? Do you agree with me?
- 7 A. Yes, your Honour.
- 8 Q. And the full -- the (Redacted), correct?
- 9 A. Yes, your -- yes, your Honour.
- 10 Q. Thank you. Now, Witness, you have in front of you --
- 11 MR KHAN: Well, your Honour, the Court has been given a PIS form -- PIS 2. I
12 hope that's been distributed. If it hasn't, I'd be grateful if it's done now.
- 13 PRESIDING JUDGE EBOE-OSUJI: In the meantime, Mr Khan, you may want to
14 spell the name you mentioned earlier.
- 15 MR KHAN: Yes. (Redacted), as in (Redacted). And (Redacted).
16 (Redacted)
- 17 Q. Witness, the (Redacted) you went to see, not a (Redacted) man, is he?
- 18 A. He is a (Redacted) man, your Honour.
- 19 Q. A (Redacted) man, yes. Thank you, Witness. Do you know somebody called
20 (Redacted)?
- 21 A. I -- I know him, your Honour. He is (Redacted).
- 22 Q. In fact, he's the one that told you about (Redacted), correct?
- 23 A. Yes, your Honour.
- 24 Q. And are you aware that (Redacted)
25 (Redacted)? Are you aware

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 of that?

2 A. I am -- I am not aware, your Honour.

3 Q. Are you aware that (Redacted)

4 (Redacted)?

5 A. I'm not aware, your Honour.

6 Q. Are you aware that the (Redacted)

7 (Redacted)?

8 A. I am not aware, your Honour.

9 Q. Now, Witness, we're going to go in a moment, with Mr President and their
10 Honours' leave, into public session, but I'd be grateful if you take care to answer
11 questions by reference to the document in front of you. I will careful in my

12 (Redacted)

13 (Redacted)

14 A. Yes, your Honour.

15 Q. Now, if at any point you feel that you'll give an answer that you feel may
16 somehow reveal who you are, just put your hand up and I'll ask his Honour, the
17 President, if we could move into private session for a moment. Do you

18 understand?

19 A. Yes, your Honour.

20 Q. I'm grateful.

21 MR KHAN: Your Honour, with that I would ask that we go into public session.

22 PRESIDING JUDGE EBOE-OSUJI: We will be going into public session, but before
23 we do, the line of question you've now announced you're about to embark upon,
24 how appropriate is it? The reason I say so, I may be wrong, but it appears that the
25 hint is that this witness will be invited to make comments on other people who may

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 (Redacted), I'm not sure, and we're in private session and the witness

2 is here.

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 PRESIDING JUDGE EBOE-OSUJI: (Redacted).

11 Of course that's always an issue when that issue -- when there is a danger of it, but
12 it's about the practice of having one witness make comments on other people. I say
13 other people advisedly.

14 MR KHAN: Your Honour, the rules, as Mr President of course knows, is that
15 questions must be relevant in relation to a fact in issue or a general circumstance to
16 the case for which testimony is necessary. There is no rule of evidence that will
17 prohibit eliciting from a witness evidence that may go to those issues, even if it goes
18 to the issue of credibility of other people that (Redacted).

19 So, your Honour, in my respectful submission, there is a strong basis for the
20 application and no countervailing argument put forward that would say that the
21 questions should be restricted or held in public.

22 Simply because a witness is going to speak about somebody else is absolutely
23 permissible, in fact, absolutely permissible. The only restrictions will be if it's
24 irrelevant. And, your Honour, we say in the circumstance of this case, for reasons
25 that will become apparent hopefully, how the witness came here is important to one

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 of the issues in the case regarding credibility and the veracity of the account.

2 PRESIDING JUDGE EBOE-OSUJI: Can we bring down the blinds, court officer. I
3 want the witness escorted from the courtroom for a minute.

4 *(Closed session at 9.54 a.m.) Reclassified as open session

5 THE COURT OFFICER: We are in closed session, your Honour.

6 PRESIDING JUDGE EBOE-OSUJI: Witness, if you could excuse us for just a little
7 while, while the lawyers debate a point of law that it is not appropriate for -- to be
8 debated in your presence.

9 THE WITNESS: Yes, your Honour.

10 (The witness stands down)

11 PRESIDING JUDGE EBOE-OSUJI: It's unfortunate that we already started the
12 discussion. Fault lies with me, of course, mentioning -- supposing the possibility

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 respectful submission, from eliciting that evidence if it is probative to a fact in issue,

Trial Hearing
Witness: KEN-OTP-P-0356

(Closed Session)

ICC-01/09-01/11

1 including credibility. And, your Honour, it should not be curtailed. So these --
2 PRESIDING JUDGE EBOE-OSUJI: Do we have authority for that? I will need
3 authority for that proposition. If you can find it, it might assist us in this case. As I
4 (Redacted)
5 difficulty becomes this: What is good for the goose, as they say, is also good for the
6 gander.
7 (Redacted)
8 (Redacted)
9 (Redacted)
10 (Redacted)
11 (Redacted)
12 Do you see the problem?
13 MR KHAN: Your Honour, that's not case in hand. The first rule is, and it needs no
14 authority in my respectful submission, is the basic starting point, the basic premise
15 for all rules of evidence is relevance and probative value. And if evidence is
16 relevant and probative, counsel should be allowed to ask those questions.
17 Now, your Honours, I'm not calling the witness. The witness has been called by the
18 Prosecution and has been put forward in relation to the issues the Prosecution wish
19 him to speak to. Your Honour, we say that if the witness can speak to issues that
20 (Redacted)
21 those people's links are, we must be entitled to elicit that evidence.
22 And, your Honours --
23 PRESIDING JUDGE EBOE-OSUJI: That's a different -- one second. One question.
24 It's one thing -- you've fused two concepts. One is a fact in issue. I asked you the
25 question why is it appropriate. It should have been enough to say there is a fact in

Trial Hearing
Witness: KEN-OTP-P-0356

(Closed Session)

ICC-01/09-01/11

1 issue and we will keep an eye on the facts so we will have limited it there, but the
2 problem came when you say credibility, including credibility. That's where the
3 (Redacted)

4 That's what I say we need authority for.

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 Honour's point now. I was not talking about the credibility of those people that are
12 named. I was talking about relevance to the credibility of the witness before you
13 and the veracity of that witness's account. Your Honour, I'm not going to be going
14 into question of general reputation of those individuals --

15 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

16 MR KHAN: -- at this point.

17 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, you were rising?

18 MR GARCIA: Your Honour, yes. Just on this question of credibility, I think it's
19 resolved. My understanding has always been that a witness in a common law

20 (Redacted)

21 witness. Obviously that's for the Court to determine ultimately.

22 Now, just to be precise in this regard, the list -- the PIS document that I've just

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0356

(Closed Session)

ICC-01/09-01/11

1 If the Defence counsel wishes to ask questions of Witness 356 as to general
2 information about these people, it can be done, but it should be done in private
3 (Redacted)
4 the person that 356 is speaking about. So we shouldn't be doing that in public even
5 if we do use a number.
6 A second issue, which is even much more important, is that I fear the Defence
7 counsel is using this list of names, and I'll object accordingly to certain -- to certain
8 names, but in one regard -- in regards to (Redacted), it's quite important that there's a
9 name of a person as a -- who has been used as a source, a lead for the Prosecution,
10 that has been redacted from the information in -- in (Redacted).
11 Now, I understand that Defence -- if Defence counsel wishes to embark upon a line
12 of questioning to try and determine who this person is, the Prosecution is going to
13 object. There is a pre-approved redaction that has been granted by this Chamber to
14 the name of that person, and I don't think it's legal or reasonable for the Defence to
15 try and attempt to find out the name of that person through a process of elimination.
16 So that's quite important.
17 And in regards to that, the Defence counsel has the (Redacted)
18 that the witness gave to this (Redacted), so there's no need -- absolutely no
19 need for the Defence to obtain the name of the person from (Redacted). They have the
20 material. They can cross-examine Witness 356.
21 So if Defence counsel is going to embark on that type of line of question, which I feel
22 they were obviously from -- they are from the line -- from the names that I see here,
23 that should not be permitted by the Chamber.
24 MR KHAN: Your Honour, one could get tied up in knots unnecessarily. Your
25 Honour, the Prosecution were asked if there was an intermediary in this case, and

Trial Hearing
Witness: KEN-OTP-P-0356

(Closed Session)

ICC-01/09-01/11

1 they answered in writing that there's not. Your Honour, I'm not seeking to elicit
2 names from the -- the witness per se. I'm putting names to him that are relevant.
3 Now, your Honours, there's no rule -- the Prosecution, it would be antithetical we
4 say to the proper administration of justice for the Prosecution to say go into perdu
5 (Redacted)
6 to ask questions.
7 The prohibition is if those questions identify a person (Redacted). Your
8 Honour, that is not what I'm seeking to do, but what I am seeking to do in this
9 section of questioning, if I can get into it, is to show a network that has been
10 operating that has identified witnesses, helped them cobble together narratives and
11 fed them to the Prosecution opposite.
12 And, your Honours, it's important, in my respectful submission, that your Honours
13 can make an assessment, if we have a point or if it's a rubbish point, but your
14 Honours, the questions are proper. Even the questions regarding number 12 and
15 number 13, they should not be prohibited. I'm not mentioning their names.
16 They're going to be by pseudonym. And if I mention them in public, I will do so
17 (Redacted)
18 (Redacted)
19 So, your Honours, on that basis it is my respectful submission that we can safely
20 proceed as anticipated.
21 PRESIDING JUDGE EBOE-OSUJI: All right, we've heard all the argument.
22 MR KHAN: I'm grateful.
23 MR GARCIA: Your Honour, if I may. Just one last -- one last item. Even when
24 these names are mentioned in public, it's -- it's problematic because people are
25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0356

(Closed Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 session and any comments following that.

4 Any questions as well regarding (Redacted) as to the identity of people that would

5 have been in communication with the witness, that should not be permitted of the

6 Defence. They don't need this information at all for the purposes of the

7 cross-examination, and they know full well that the name of a person that was in

8 contact with the witness is redacted. So if they had wanted to raise that issue of the

9 validity of the redaction, they should have done so before. There's no basis before

10 the Chamber to lift that redaction at this point.

11 MR KHAN: Your Honour --

12 PRESIDING JUDGE EBOE-OSUJI: One point. Let me understand the Prosecutor's

13 point.

14 (Redacted)

15 must be done in private session, isn't that?

16 MR GARCIA: That's correct, your Honour.

17 PRESIDING JUDGE EBOE-OSUJI: All right. About (Redacted), I also want to

18 understand what you're saying about (Redacted). Are you saying that there should be

19 no questions at all asked either in private or in public that goes behind the redaction

20 done in respect of (Redacted)?

21 MR GARCIA: That's correct, your Honour. If questions need to be posed

22 regarding (Redacted), there's a variety of questions that can be asked without trying to

23 elicit from the witness the name or the identity of the people that helped him or that

24 communicated with him at (Redacted).

25 I submit that at this stage it's not important, it's not relevant. They have all the

Trial Hearing
Witness: KEN-OTP-P-0356

(Closed Session)

ICC-01/09-01/11

1 material, the (Redacted) in their
2 possession. The Defence has this and they're able to cross-examine at large whether
3 there's any contradictions, or whether the prior statement of the witness corresponds
4 to what he's stating in court today.

5 PRESIDING JUDGE EBOE-OSUJI: But what -- why shouldn't the Defence be
6 asked -- be permitted to ask questions about (Redacted) in private session?

7 MR GARCIA: Questions about (Redacted), your Honour, in private session so long as
8 it doesn't touch upon the names of people who (Redacted) or who might have
9 helped the -- the -- or communicated with the witness in my opinion should not be
10 permitted. There's a redaction --

11 PRESIDING JUDGE EBOE-OSUJI: That's what I'm trying to understand. Why
12 should the Defence not be permitted to ask a witness on the stand in private session
13 any question at all that goes to a possible fact in issue in a case?

14 Remember the reason I said this is it is one thing for the Prosecution to do -- and I'm
15 not making a statement now. I'm only explaining something to be addressed by
16 both lawyers. It is one thing for the Prosecution through their own resources to
17 conduct their investigations and come upon certain sensitivities that compel them to
18 seek redactions to material revealed by the Prosecution, and this is material obtained
19 by the Prosecution.

20 Isn't that a separate consideration from the Defence making their own inquiries even
21 if those inquiries go to the same zone the Prosecution had investigated? To tell the
22 Defence to not ask questions about (Redacted), does that not amount effectively to
23 telling the Defence you may not even conduct an investigation about (Redacted)? Can
24 we go that far, or did I miss it?

25 MR GARCIA: No, I understand your Honour's point in the matter. Both -- both

Trial Hearing
Witness: KEN-OTP-P-0356

(Closed Session)

ICC-01/09-01/11

1 matters overlap at this point. What I'm stating simply to the Court is that there's
2 ongoing -- serious ongoing security reasons for which the Prosecution solicited a
3 redaction to the name of the person that communicated with Witness 356.
4 Obviously there is a right and the Defence is entitled to conduct its investigations,
5 and that's why I'm saying that if -- if this was a line of investigation that the Defence
6 wished to follow, they could have raised the issue prior to this -- to the start of
7 Witness 356's testimony and debated or disputed the question of the validity of this
8 redaction.

9 Now, we find ourselves at the trial right now. The witness has testified. I think
10 that the Defence needs to show or establish some basis on which the identity of the
11 person who would have been speaking with 356 or communicated with him at
12 (Redacted) is relevant to the trial to the credibility of this witness.

13 The Defence has in their possession all the material that is necessary to conduct a
14 complete and thorough cross-examination of the witness in matters regarding his
15 credibility because he has offered a (Redacted).

16 So what I'm basically -- what I'm submitting, your Honour, is at this -- at this stage
17 the Defence hasn't established or laid the grounds to demonstrate that it's necessary
18 or important to even elicit the names of these people or persons that would have
19 communicated with Witness 356 in (Redacted). There's been no demonstration of that.

20 PRESIDING JUDGE EBOE-OSUJI: But that would then be -- your point then would
21 be an argument of relevance, isn't it, as opposed to the Defence should not ask
22 questions about (Redacted) at large?

23 MR GARCIA: Indeed, your Honour. There is -- I understand that the Chamber
24 when it initially commented on this matter said, well, there's basically -- if there's a
25 question of fact in issue. In my humble opinion, there is no fact at issue at this point

Trial Hearing
Witness: KEN-OTP-P-0356

(Closed Session)

ICC-01/09-01/11

1 regarding the name or the identity of the person that would have spoken to the
2 witness, so it's clearly irrelevant.

3 Once the Defence has established a basis that it is relevant to -- and attaches itself or
4 has a link to the credibility of the witness then I think we can reconsider the matter,
5 but for the moment the Prosecution asked for a redaction to the name of this person
6 because of ongoing security concerns, which are serious, and therefore the Defence
7 has -- has not established that this is relevant in any which way, if not to make the
8 witness uncomfortable, obviously, because he has dealt with these people at
9 (Redacted). They have all the material that they need to cross-examine at length the
10 witness on (Redacted), and that I submit is a matter that goes to
11 credibility.

12 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, what is the relevance of (Redacted)

13 MR KHAN: Your Honour, we say there's been a big scam here. The witness,
14 (Redacted) and others have been coaching witnesses, money has been floating
15 around like there's no tomorrow in order to identify witnesses not about the truth
16 but specifically to fix Mr William Ruto, and (Redacted) has been one of the prime
17 recipients of this information.

18 There's been fee-splitting and all kinds of nonsense going on, and we say this
19 witness has been told about it, told that a vehicle for a new life is to give relevant
20 evidence to the OTP, and that's why his account has changed in a manner that will
21 be demonstrated during the rest of my cross-examination. Your Honour, it's clearly
22 relevant in our submissions, and the attempt to curtail this right by the Prosecution
23 we say is completely unfounded.

24 (Trial Chamber confers)

25 PRESIDING JUDGE EBOE-OSUJI: The Chamber has considered the issues

Trial Hearing
Witness: KEN-OTP-P-0356

(Closed Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 It is also the Chamber's ruling regarding (Redacted) that the Defence may ask questions
7 about (Redacted), but where such questions will go to revelation of any information
8 that is redacted in the Prosecution's earlier material, it also must be done in private
9 session.

10 That presents, of course, Mr Khan, a dilemma. If you do not know what is
11 redacted, how do you get around it? It makes sense then to be more prudent and
12 do these things in private session. So you may ask questions about (Redacted).

13 Thank you. We will now bring the witness back in.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

26

Trial Hearing
Witness: KEN-OTP-P-0356

(Closed Session)

ICC-01/09-01/11

- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 MR KHAN: Your Honour, can I -- can I just say to short circuit it so we don't spend
- 14 more time. I'm content, given what's been said, I will refer to (Redacted)
- 15 by only the number in the PIS.
- 16 PRESIDING JUDGE EBOE-OSUJI: Fair enough.
- 17 MR KHAN: Otherwise he will not be mentioned.
- 18 PRESIDING JUDGE EBOE-OSUJI: So we don't need to make any ruling --
- 19 MR KHAN: No, your Honour.
- 20 PRESIDING JUDGE EBOE-OSUJI: -- one way or the other?
- 21 MR KHAN: Indeed.
- 22 PRESIDING JUDGE EBOE-OSUJI: So it's not a practical matter --
- 23 MR KHAN: Yes.
- 24 PRESIDING JUDGE EBOE-OSUJI: -- so that we -- it's not a matter of principle that --
- 25 MR KHAN: No, I'm not accepting the principle. Just to move forward.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: Fair enough. All right. So that's done now.

2 Let us bring the witness back in.

3 Mr Khan, (Redacted), isn't it? Has it been fully explained on the record?

4 MR KHAN: Your Honour, I'll do so.

5 (The witness enters the courtroom)

6 PRESIDING JUDGE EBOE-OSUJI: The blinds may go up, but we remain in private
7 session for now.

8 *(Private session at 10.19 a.m.) Reclassified as open session

9 THE COURT OFFICER: We are in private session, your Honour.

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

11 Witness, welcome back. We had to excuse you momentarily. These things happen
12 from time to time. Mr Khan will continue.

13 Mr Khan, we are in private session.

14 MR KHAN: I'm grateful, Mr President. I'm content with your leave we go into
15 public. Public session.

16 PRESIDING JUDGE EBOE-OSUJI: Public session then.

17 (Open session at 10.19 a.m.)

18 THE COURT OFFICER: We are in open session, your Honours.

19 PRESIDING JUDGE EBOE-OSUJI: Thank you. Mr Khan, please proceed.

20 MR KHAN:

21 Q. Mr Witness, looking at the form in front of you, it's correct, is it not, that you
22 met with a representative of 4 -- sorry, of 5, a representative of 5 and gave a
23 statement; is that right?

24 A. It is true, your Honour.

25 Q. And the process of giving a statement took a long time; is that right?

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

- 1 A. It didn't take a long time, your Honour.
- 2 Q. You sat with them until the evening; is that right?
- 3 A. No, your Honour.
- 4 Q. Did you meet with number 2 on the form in front of you?
- 5 A. Yes, your Honour.
- 6 Q. You gave a statement to 2, did you?
- 7 A. I did, your Honour.
- 8 Q. And that statement took quite a while, did it? It was a detailed statement?
- 9 A. Yes, your Honour.
- 10 Q. How many hours do you think, Witness?
- 11 A. About one hour, your Honour.
- 12 Q. And in that meeting you spoke about the possibility of witness protection; is
13 that right?
- 14 A. I don't remember if I did so, your Honour.
- 15 Q. Well, wasn't it specifically put to you that if you were to say you were under
16 threat, you could be placed under a witness protection programme? Weren't you
17 told that?
- 18 A. Your Honour, it was me whom I told them that I was under threat, your
19 Honour.
- 20 Q. Did they tell you that if you were under threat, you could be placed under a
21 witness protection programme? They told you that, didn't they?
- 22 A. They told me, your Honour.
- 23 Q. Thank you, Witness. Now, I'm correct, am I not, that there were many
24 organisations in the North Rift which were focussed on providing witness
25 protection? You're aware of that, aren't you?

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 A. I was not aware of all of them, your Honour.

2 Q. You've heard of the Centre for Human Rights and Democracy, have you?

3 You've heard of that?

4 A. Your Honour, by answering all these questions, I would -- I would not be
5 free --

6 MR GARCIA: Hold on one second. Your Honour, yes. One second. I'd ask that
7 we go into private session.

8 PRESIDING JUDGE EBOE-OSUJI: Private session.

9 *(Private session at 10.23 a.m.) Reclassified as open session

10 THE COURT OFFICER: We are in private session, your Honours.

11 PRESIDING JUDGE EBOE-OSUJI: Yes, Mr Garcia?

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 24 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 you would like us to do so in private session, all right?

2 THE WITNESS: Yes, your Honour.

3 PRESIDING JUDGE EBOE-OSUJI: Thank you. Back to public session.

4 (Open session at 10.27 a.m.)

5 THE COURT OFFICER: We are in open session, your Honours.

6 MR KHAN:

7 Q. Mr Witness, I'm going to ask you a few questions and if you could be careful
8 to answer "yes," "no," or "I don't know" to the questions that I put.

9 So my first question is that you're aware, are you not, that there were many small
10 organisations and NGOs operating in the North Rift which were --

11 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, he's already answered that. Your
12 specific question was whether the witness has heard of the Centre for Human Rights
13 and Democracy.

14 MR KHAN:

15 Q. Have you heard of that organisation, Witness?

16 A. I heard about it, your Honour.

17 Q. Have you heard of the -- an organisation called the Centre Against Torture?

18 A. No, your Honour.

19 Q. Have you heard of an organisation called the Anti-Torture Campaign
20 Network?

21 A. No, your Honour.

22 Q. Also known as the ATCN? Heard of that, ATCN?

23 A. No, your Honour.

24 Q. How about an organisation called the Kalenjin Youth Alliance, also known as

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

- 1 KALYA, have you heard of that one?
- 2 A. I have heard about it, your Honour.
- 3 Q. How about Good Samaritans International?
- 4 A. I have heard about it, your Honour.
- 5 Q. Yes. Now, the ones you've heard about, you are aware, are you not, that
- 6 they were providing witness protection for victims and witnesses of the post-election
- 7 violence in Kenya? You're aware of that?
- 8 A. I was not aware, your Honour.
- 9 Q. You were not aware?
- 10 A. Yes, your Honour.
- 11 Q. And you know, do you, that certain people like Mr Ken Wafula, Mr Abubakar
- 12 Juma, Mr Jonah Ruto, Mr George Bett and Mr Thomas Ngetich, N-G-E-T-I-C-H,
- 13 along with number 12, 13 and 15 on your list, that all of these people were involved
- 14 in these supposed witness protection schemes? Are you aware of that?
- 15 A. I was not aware and I am not aware to now, your Honour.
- 16 Q. Are you aware that the organisations that you were familiar with or you
- 17 heard about, they received funding from USAID?
- 18 A. I'm not aware, your Honour.
- 19 Q. Are you aware that one of the main conduits, one of the main implementers
- 20 for USAID on the ground in the North Rift was a group called Chemonics,
- 21 C-H-E-M-O-N-I-C-A -- I-C-S? You've heard of Chemonics?
- 22 A. No, your Honour, I have not heard of them.
- 23 Q. Have you heard of Mr Mark Lawler, L-A-W-L-A-R (sic)?
- 24 A. No, your Honour.
- 25 Q. Regional manager of Chemonics?

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 A. No, your Honour.

2 Q. He has a restaurant and bar called the Well Restaurant and Bar. You've not
3 heard of him?

4 A. No, your Honour, I have not heard.

5 Q. Did you ever hear that USAID was particularly focused in trying to get
6 evidence against Mr William Ruto?

7 A. No, your Honour.

8 Q. Had you heard that USAID was trying to implicate him in the post-election
9 violence?

10 A. I have never heard, your Honour.

11 Q. Or to act as a magnet for witnesses that would somehow blame him or people
12 that were thought to be supporters of him?

13 MR GARCIA: I object, your Honour.

14 MR KHAN:

15 Q. Were you aware of that?

16 MR GARCIA: I object, your Honour. That's the third time that the same type of
17 question has been put to the witness, and clearly the witness has no information
18 regarding USAID.

19 PRESIDING JUDGE EBOE-OSUJI: Objection is sustained.

20 MR KHAN:

21 Q. Are you aware that USAID was providing protection to people that were
22 perceived to be allied to Mr William Ruto?

23 A. No, your Honour, I'm not aware.

24 Q. Are you aware that the benefits for witness protection that was being offered
25 in the North Rift by these organisations was very substantial compared to the

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 ordinary earnings of ordinary Kenyans in that area?

2 MR GARCIA: I object, your Honour. I don't see how the witness can answer this
3 type of question. And I --

4 PRESIDING JUDGE EBOE-OSUJI: Sustained.

5 THE WITNESS: I'm not aware, your Honour.

6 PRESIDING JUDGE EBOE-OSUJI: And when I say "sustained," it means the
7 objection for the Prosecution has been accepted by the Court and you shouldn't
8 answer the question.

9 MR KHAN:

10 Q. Are you aware that in order to get benefits people were falsely blaming
11 Mr William Ruto?

12 MR GARCIA: I object, your Honour. The witness can't answer that type of
13 question.

14 MR KHAN: Your Honour, this is rather surprising. It's a very easy question to
15 ask. The answer of course may amount to a collateral question or all the rest of it,
16 but, your Honour, there's been no basis for the objection to say that a witness can't be
17 asked whether or not he knows there's a scam in place.

18 PRESIDING JUDGE EBOE-OSUJI: Can you look at your question; whether the
19 witness is aware that in order to get benefits people were falsely blaming Mr Ruto?
20 The objection is sustained.

21 MR KHAN: I'll reformulate it.

22 Q. Are you aware that people were giving stories, Mr Witness, knowingly giving
23 stories implicating Mr Ruto in the post-election violence in order to receive the
24 benefits that came with the witness protection schemes being offered in the North
25 Rift? Are you aware of that?

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: It is the same question reformulated. The point
2 about it, it's not a formulation of it but the substance of it that this witness would
3 know people who testified --

4 MR KHAN: Well, your Honour, he knows --

5 PRESIDING JUDGE EBOE-OSUJI: One second -- and that they were receiving
6 benefits and they were falsely blaming Mr Ruto. Objection is sustained.

7 MR KHAN: Your Honour, can I say for the record -- I'll move on, but I want to
8 make a record. The Bench, in my respectful submission, and the Prosecution cannot
9 anticipate evidence. There's been no argument put forward that it's impossible, if
10 there's a cabal, if there's a group in place that's discussing false evidence, that the
11 witness would not be able to testify in relation to the question.

12 So, your Honour, I'll move on, but I have a duty to put my case and I'm saying the
13 witness was part of a scam and that's what the question was focused on and he knew
14 that other people were doing exactly what he did which was putting forward false
15 evidence.

16 But, your Honour, I'll move on, but I wanted the record to be clear as to the ground
17 of relevance and my objection in principle to the argument put forward by the
18 Prosecution and indeed the ruling of the Court that it should be disallowed, but,
19 your Honour, I'll move on.

20 PRESIDING JUDGE EBOE-OSUJI: You might have began with whether he knew of
21 anyone, but when you say "people" --

22 MR KHAN:

23 Q. Are you aware of anyone, Witness, who has given false evidence regarding
24 Mr Ruto to get benefits?

25 A. No, your Honour.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 Q. Are you aware that people including Mr Ken Wafula, Mr Abubakar Juma and
2 persons 12, 13 and 15 knew completely well that the stories they were receiving from
3 individuals regarding Mr William Ruto were false, but they took those accounts
4 because they were getting money from USAID?

5 A. I'm not aware, your Honour.

6 Q. Are you aware then with this, Witness, that individuals, and please include
7 yourself in this, put in exaggerated and false claims in Kenya with these
8 organisations claiming huge amounts for rent, school fees and allowances, and they
9 were paid simply because the story they gave was one that was in demand by
10 USAID and other organisations?

11 A. I'm not aware, your Honour.

12 MR KHAN: Your Honour, could we go into private session for a moment, please.

13 PRESIDING JUDGE EBOE-OSUJI: Private session.

14 *(Private session at 10.37 a.m.) Reclassified as open session

15 THE COURT OFFICER: We are in private session, your Honours.

16 MR KHAN:

17 Q. Witness, did you receive benefits in Kenya from any organisation before you
18 (Redacted)

19 A. No, your Honour. I didn't receive even a single cent.

20 Q. Did you receive -- apart from cents, did you receive accommodation or
21 housing allowances or other money?

22 A. I didn't receive any -- any money, your Honour.

23 Q. Are you aware that USAID -- well, start with this: Are you aware that
24 Ambassador Ranneberger, the former United States ambassador, was very active on
25 the ground in the North Rift and was promising these groups even more money if

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 they would change William Ruto as their leader? Are you aware of that?

2 A. I'm not aware, your Honour.

3 Q. Are you aware that even in the last election USAID or individuals purporting
4 to act for USAID were giving money to political opponents of Mr William Ruto in
5 the last election? Are you aware of that?

6 A. I am not aware, your Honour.

7 Q. Are you aware, and we're in private session, that (Redacted) and
8 (Redacted) were given video cameras and audio recordings -- recorders by
9 USAID so they could try to get evidence against Mr William Ruto?

10 A. I am not aware, your Honour.

11 Q. Had you heard that spy pens with cameras and recorders were given to
12 people so that they would go to meetings in the hope of getting evidence regarding
13 incitement and other matters against Mr William Ruto?

14 A. I'm not aware, your Honour.

15 Q. When you were interviewed by (Redacted) --

16 MR KHAN: Your Honour, it's has been 17, OTP -- KEN-OTP-0108-0603 --

17 PRESIDING JUDGE EBOE-OSUJI: Which binder, the transcripts binder or the --

18 MR KHAN: It's the evidence binder, your Honour, at tab 17. It's the (Redacted)
19 interview.

20 Q. You said -- let me read it to you, Witness.

21 PRESIDING JUDGE EBOE-OSUJI: Can we give him --

22 MR KHAN: Yes, it can be put on the screen. KEN-OTP-0108-0559 at 0603.

23 Q. Witness, it's the bottom of the page from line -- approximately line 1502 that
24 I'm reading. And this is your interviews with (Redacted), and you talk about your
25 worries and then you are asked this, (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1 (Redacted)
- 2 You say, "Yes."
- 3 You are asked, (Redacted)
- 4 (Redacted)
- 5 You say, "Yes."
- 6 (Redacted)
- 7 Then you say, (Redacted)
- 8 Interviewer said, "Okay."
- 9 (Redacted)
- 10 Is it the case, Mr Witness, that one of the prime reasons why you were interested in
- 11 giving your account or giving the account that was being put forward is because
- 12 (Redacted) would help take care of you and provide for your welfare, your
- 13 family and your life in general? Is that one of the prime motivations in your
- 14 account, Witness?
- 15 A. No, your Honour, and I would like to give an explanation on that.
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 And when I heard about (Redacted), I heard it first (Redacted)
- 25 (Redacted). And he was saying that there are other people

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 calling themselves (Redacted), and they are going around collecting evidence from the
2 people regarding the post-election violence.

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 Q. Witness, sorry to interrupt. I think a lot of evidence has been given
16 previously when you were asked questions by the Prosecution, so I didn't want to
17 interrupt you straightaway. I wanted you to continue, but let me ask you some
18 specific questions. I think you've said what you wanted to say on that earlier issue.
19 Your Honour, if the Court are minded, I'd ask to move forward. Otherwise, we
20 may get quite a long narrative.

21 PRESIDING JUDGE EBOE-OSUJI: One second. The witness raises his hand.

22 Have you finished what you wanted to explain?

23 THE WITNESS: Let me finish, your Honour.

24 PRESIDING JUDGE EBOE-OSUJI: Please.

25 THE WITNESS: I would like also to say that when I went to (Redacted) for the first

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 time, I talked with (Redacted) people. I talked with (Redacted), and
2 they promised me that -- they told me that (Redacted) is not a good place whereby
3 they can talk to me because I had told them that I am being followed each and
4 everywhere I go.

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 And I remember that I gave my evidence with fear and I talked whatever it came out
14 of my mouth, because the only thing that I wanted by that time was to take the
15 (Redacted), and I had no intention of testifying.

16 And after completing my statement is when they told me that they have seen
17 that -- they have followed my statement, and if it is possible, I accept that they will
18 give my evidence to the ICC, and I didn't have time to object. So I said "yes," but in
19 my heart I had not accepted.

20 And even when the ICC contacted me at the first place, I didn't -- I didn't believe it
21 was the ICC because they called me first with a private number. And whatever we
22 were talking I was panicking and I didn't know anything that I told.

23 The statement -- I'm finishing, your Honour. The statement that I gave to (Redacted)
24 brought a lot of confusion in -- in my entire life when I am -- (Redacted).

25 And even the first time when I met personally with the representative of the ICC, I

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 was -- I was not in a position of whether I try to talk to them according to what I told
2 (Redacted) or I talked the truth, because I was not in a position that I had fully accepted
3 that I be a witness.

4 But after three days or two days is when I asked myself a lot of question, and I gave
5 myself and I accepted to be a witness, your Honour. That's all I can say, your
6 Honour.

7 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, continue.

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

9 Q. So it was (Redacted) that pushed you towards the ICC; is that right?

10 A. They didn't push me, your Honour, but they lied to me that the ICC will help
11 punish both (Redacted), your
12 Honour. That's what I can say.

13 Q. So it's because of (Redacted), in any event, that you came to the attention and
14 gave your story to the ICC; is that right?

15 A. Yes, your Honour, that one I accept.

16 Q. And when did you first come into contact with (Redacted)?

17 A. Your Honour, I don't remember the year. It took around (Redacted) months or
18 (Redacted) months before I got the ICC that my first -- before my first meeting with
19 the ICC. I don't remember. I'm not clear about the months, but it took plenty of
20 time before I met the ICC.

21 Q. And what was (Redacted) role in your dealings with
22 (Redacted)?

23 A. Your Honour, as I said before, it was not (Redacted) alone whom let me know
24 the (Redacted). I met (Redacted) I remember very well. (Redacted)
25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 MR KHAN: Your Honours, I'll move because I'd like to finish this topic before the
11 break so I can start something new afterwards.

12 Q. Witness, I'm going to play you a short video, KEN-OTP-0073-0206. And if
13 you can look at -- that's a video that (Redacted). And if you can pay particular
14 attention to the (Redacted) that's in the shot.

15 MR KHAN: Track 1 first and then track 2, please.

16 Q. Witness, while that's being done, so we don't waste time, when you spoke
17 to -- and we're in private session -- (Redacted)
18 (Redacted), didn't you, (Redacted)?

19 A. Your Honour, they asked me (Redacted)
20 (Redacted). I told -- yes, I remember telling him (Redacted)
21 (Redacted), your Honour.

22 MR KHAN: And, your Honour, that's at tab 24, KEN-OTP-0073-0249. At 0257 the
23 (Redacted)
24 (Redacted)

25 Now, if we are ready to play the -- are we ready to play it yet, court officer?

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 Q. Witness, again while we get the track in place, did you ever meet foreigners
2 with the first names of (Redacted)? Did you meet those people? They
3 were -- they were telling people anyway that they were acting for (Redacted) in Kenya,
4 (Redacted).

5 A. I didn't meet any foreigner, your Honour.

6 MR KHAN: Are we ready yet?

7 Q. And you told (Redacted) that you wanted (Redacted), did you not? You didn't just
8 want protection, you wanted (Redacted); is that right?

9 A. Come again, your -- I -- I didn't understand.

10 Q. You told (Redacted) that you wanted (Redacted)?

11 A. What is the meaning of "(Redacted)", your Honour? I don't understand.

12 Q. Well, while that's being -- I wonder if another document can be put on the
13 screen. It's tab 25.

14 PRESIDING JUDGE EBOE-OSUJI: He's asking for the meaning of "(Redacted)".

15 MR KHAN: Your Honour, I'm doing it through his own signed statement. At tab
16 25, your Honour, KEN-OTP-0073-0209, and I wonder if that could be put on the
17 screen. KEN-OTP-0073-0209.

18 Q. And, Witness, it will come on the screen in a moment, but you say this, and
19 you can check your signature, you sign it on (Redacted), and it says, (Redacted)
20 (Redacted). Do you remember asking for that?

21 It's just almost the last paragraph. The main paragraph starting, (Redacted)
22 (Redacted), and it's the last sentence. You say, (Redacted)
23 (Redacted). Do you remember that?

24 A. Yeah, your Honour -- yes.

25 Q. Right. And by "(Redacted)" you meant what? You wanted to (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 A. Your Honour, as I told you that when I talked with (Redacted), I don't even
3 recall whatever I talked to them and -- I don't -- I don't -- I didn't understand myself
4 by then, your Honour, when I talked to (Redacted).

5 Q. And one of the reasons -- while it's on the screen, if you go up to the third
6 paragraph, (Redacted)
7 (Redacted); is that right?

8 A. Yes, your Honour.

9 Q. And I'm going to read this. You said, (Redacted)
10 (Redacted)
11 (Redacted). Do you remember saying that?

12 A. I remember, your Honour.

13 Q. So because of what you call a (Redacted), you thought you
14 were in fear? That's what you were telling (Redacted).

15 A. Yes, your Honour. And also the way I was being followed, your Honour.

16 Q. Yes. And could we go to the bottom of the page just so, Witness, you can
17 verify that's your signature. That's your signature, is it, Witness?

18 A. Yes, your Honour.

19 Q. I'm grateful.

20 MR KHAN: I wonder if yet the previous track can be shown? And that's the
21 KEN-OTP-0073-0206, track 1 and track 2. Court officer, is it possible or should I
22 move on?

23 THE COURT OFFICER: Mr Khan, track 1 seems to be an audio with some
24 squeaking noises. We don't see any picture.

25 MR KHAN: Well, your Honour, we'll check that in the break.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1 Q. Witness, you stated that -- you communicated with (Redacted) in (Redacted),
2 did you not?
- 3 A. (Redacted)?
- 4 Q. (Redacted), yes, in (Redacted). I think it was (Redacted) according to the
5 Prosecution.
- 6 A. I don't recall (Redacted), your Honour.
- 7 Q. (Redacted)
- 8 A. Yes, your Honour. He called me.
- 9 Q. He called you. So you spoke in (Redacted)?
- 10 A. I don't remember the month, but he called me.
- 11 Q. From (Redacted) onwards your phone number was -- and you can write it down if
12 you want, Witness -- (Redacted). Is that right?
- 13 A. Yes, yes, your Honour.
- 14 Q. And before that, in 2007/2008, you also had a phone, did you not?
- 15 A. I had a phone, your Honour.
- 16 Q. And that phone (Redacted); is that right?
- 17 A. Yes, your Honour.
- 18 Q. And that phone number started (Redacted), correct?
- 19 A. It started (Redacted), your Honour.
- 20 Q. And does this refresh your memory: The number, in fact, was (Redacted)?
21 Does that ring a bell?
- 22 A. No, your Honour. That -- that was not my number.
- 23 Q. Do you want to write it down, Witness?
- 24 A. It was (Redacted) something. I remember there were (Redacted) something.
25 Q. (Redacted) something?

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1 A. Yes, your Honour.
- 2 Q. You didn't remember that when the Prosecution were asking you questions,
3 did you? You simply said it was (Redacted)?
- 4 A. Yes, I said it was (Redacted), but it -- it ended with (Redacted) or something, (Redacted) something.
- 5 Q. Tell me in your time in Kenya how many numbers have you had?
- 6 A. Many numbers, your Honour.
- 7 Q. Right. Could you write down this number, please. (Redacted). Now, you
8 say you've had many numbers, but now writing it down, and you can write it again
9 if you want, and realising you're under oath, can you recall that's one of the numbers
10 you had?
- 11 A. This one is not the number that was (Redacted), your Honour.
- 12 Q. No, it may not be the number (Redacted), but can you recall this is
13 one of the numbers you had, Witness, (Redacted)?
- 14 A. I can't recall it, your Honour.
- 15 Q. Can't recall it.
- 16 MR KHAN: Your Honour, that may be a convenient time.
- 17 PRESIDING JUDGE EBOE-OSUJI: Indeed. One second.
- 18 The Court will rise for the morning break. The blinds down, please.
- 19 *(Closed session at 11.00 a.m.) Reclassified as open session
- 20 THE COURT OFFICER: We are in closed session, your Honours.
- 21 PRESIDING JUDGE EBOE-OSUJI: Thank you. Mr Khan, how are we doing?
- 22 MR KHAN: Your Honour, not well. It will go to tomorrow lunchtime, so I will
23 need the full three days.
- 24 PRESIDING JUDGE EBOE-OSUJI: Please escort the witness from the courtroom.
25 (The witness stands down)

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, the Bench will strongly urge you to
2 keep an eye on the time.

3 MR KHAN: Your Honour, I'm aware of that. In fairness, of course, quite a bit of
4 time today was spent on another matter rather than just the direct testimony of the
5 witness, but your Honour, I'm moving as fast we can. As the Prosecution have said,
6 this is a -- they say, they say, a unique witness. I will keep my eye on the clock,
7 move as fast as I possibly can.

8 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

9 THE COURT USHER: All rise.

10 (Recess taken at 11.01 a.m.)

11 *(Upon resuming in private session at 11.35 a.m.) Reclassified as open session

12 THE COURT USHER: All rise.

13 Please be seated.

14 THE COURT OFFICER: We're in private session, your Honours.

15 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, please proceed.

16 MR KHAN: Your Honour, I will try to complete this section very quickly. I
17 understand the technical difficulties that belaboured us before have been solved. So
18 I would ask with the kind assistance of the court officer if we could play those two
19 tracks, KEN-OTP-0073-0206.

20 (Viewing of the video excerpt KEN-OTP-0073-0206)

21 MR KHAN:

22 Q. And, Witness, if you could look at the recording, Witness, you can confirm
23 that's a portion of (Redacted) - can you? Witness, you
24 saw the video. That's (Redacted); is that right?

25 A. Yes, your Honour.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1 Q. And it's (Redacted)
- 2 (Redacted); is that right?
- 3 A. Repeat your question, your Honour.
- 4 Q. It was during that time (Redacted)
- 5 (Redacted); is that right?
- 6 A. Yes, your Honour.
- 7 Q. Grateful.
- 8 MR KHAN: If the second clip could be played.
- 9 (Viewing of the video excerpt KEN-OTP-0073-0206)
- 10 Q. Witness, you saw the (Redacted). Does that help jog your
- 11 memory regarding the name (Redacted)? You saw (Redacted).
- 12 A. I don't recall anything there.
- 13 MR KHAN: I'm grateful. The (Redacted) I was referring to just for the
- 14 record.
- 15 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, the record will reflect that the clip
- 16 only showed the (Redacted). There was no visual context to it.
- 17 (Indiscernible)
- 18 (Viewing of the video excerpt KEN-OTP-0073-0206)
- 19 MR KHAN: Your Honour, as part of the first, the first track, one sees the (Redacted).
- 20 PRESIDING JUDGE EBOE-OSUJI: Now we do see what looks like a (Redacted).
- 21 MR KHAN: Yes, I'm grateful, your Honour.
- 22 Q. Witness, you told the Prosecution -- and, your Honours, it's tab 37 -- when
- 23 you were trying to justify your, what the Prosecution described as an excessive
- 24 travel claim when you were in Kenya, you said that you had been, you had been
- 25 (Redacted). Do you remember

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 saying that?

2 A. I don't get your question again, your Honour.

3 Q. Do you remember telling the Prosecution, do you remember being asked
4 questions by the Prosecution regarding a bill you put in for travel from the
5 (Redacted)?

6 A. I don't understand the question at all.

7 Q. Do you remember the Prosecution asking you questions about a claim for
8 money that you made to the Prosecution for about (Redacted) for travel
9 from where you were in the (Redacted)

10 A. I remember, your Honour.

11 Q. And the Prosecution thought that claim was excessive. Do you remember?

12 A. Yes, your Honour.

13 Q. And do you remember telling the Prosecution that suspicion regarding
14 yourself had increased because of an (Redacted)
15 (Redacted)

16 A. No, your Honour. Maybe they misunderstood me. I didn't say -- I, I have, I
17 have never been (Redacted), your
18 Honour.

19 MR KHAN: Well, your Honour, perhaps it can be put on the screen.

20 Q. Witness, maybe this will refresh your memory? It's KEN-OTP-0104-0663 and
21 this is from the Prosecution, Mr Witness.

22 PRESIDING JUDGE EBOE-OSUJI: What binder?

23 MR KHAN: 37, your Honour, of the evidence binder. If it can be placed on the
24 screen again, please, KEN-OTP-0104-0663.

25 THE COURT OFFICER: Mr Khan, could we have the ERN of the first page, please,

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 first page of the document?

2 MR KHAN: Yes, just bear with me one moment, please I think I've given it
3 correctly previously, KEN-OTP-0104-0663 is the first page. So I gave the correct
4 number I think.

5 With the kind assistance of the court officer, if the latter part -- if the fourth bullet
6 point paragraph could be enlarged?

7 Q. Witness, this is from the Prosecution. What they say, you'll read, is (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 Now, do you remember telling the Prosecution when you were seeking to justify this
16 excessive claim that an (Redacted)

17 (Redacted)? Do you remember that now?

18 A. Your Honour, I didn't say that they had (Redacted). I said that the

19 suspicion came. And it was, it was -- I meant the (Redacted)

20 (Redacted), your

21 Honour, and the driving of which they were asking me was not from (Redacted) to

22 (Redacted). It was from (Redacted) to (Redacted), your Honour.

23 Q. But, Witness, you were not telling the Prosecution investigators that your

24 (Redacted). You were very specific here, weren't you, Mr

25 Witness, that you said that you had received, you had (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 (Redacted) and that was placing you in jeopardy? Is that

2 right, or not?

3 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, Mr Khan, let's be careful now and fair

4 to the witness. Do you see the problem with that question you're asking?

5 MR KHAN: Your Honour, I don't, but let me put it a different way, your Honour.

6 Q. Witness, did you say, and I quote, that (Redacted)

7 (Redacted)

8 (Redacted)? Did you say that --

9 A. No.

10 Q. -- to the Prosecution, or not?

11 A. No, your Honour. They must -- they misunderstood me. I said it (Redacted)

12 (Redacted), your Honour.

13 MR KHAN: Your Honour, before going to public, just two questions.

14 Q. Witness, you're (Redacted); is that right?

15 A. Yes, your Honour.

16 MR GARCIA: Object, your Honour. I don't see where -- what the relevance of this

17 is at this point.

18 MR KHAN: Your Honour --

19 MR GARCIA: Especially that question.

20 MR KHAN: Your Honour, I think sometimes one has to wait to see relevance

21 rather than just jumping up. It's no secret I think that the witness is (Redacted)

22 (Redacted), but let me put it another way. And, your Honour,

23 it's relevant. I'll be quite frank with the Chamber, my next question is going to be

24 that the witness is (Redacted). This is --

25 PRESIDING JUDGE EBOE-OSUJI: Before you do, I want to reflect on the record

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 right here that KEN-OTP-0104-0663 is not a statement but an investigator's report.

2 Now proceed.

3 MR KHAN: I'm grateful, Mr President.

4 Q. Witness --

5 MR GARCIA: Your Honour, just before we do continue, this is on a very sensitive

6 topic, I think I understood Mr Khan saying that he wanted to pose questions as to

7 (Redacted)

8 that's -- if that's the intention, then we shouldn't be asking any questions actually

9 (Redacted)

10 question the whole (Redacted). So I'd ask my Defence

11 counsel to be very cautious in this regard.

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

13 MR KHAN: Yes, your Honour.

14 Q. Witness, are you still (Redacted)?

15 A. No, your Honour.

16 Q. When did you stop (Redacted)?

17 A. (Redacted), your Honour -- (Redacted), your Honour.

18 Q. (Redacted) you stopped -- you (Redacted); is that right?

19 A. Yes, your Honour.

20 Q. So before the (Redacted), you were (Redacted)?

21 A. Yes, your Honour.

22 Q. I'm very grateful.

23 MR KHAN: Now, your Honours, I'm going to refer to tab 71 of the evidence

24 bundle. I don't need to ask further questions. I know this question -- this answer

25 was relevant to my next series of questions.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 Q. Now, Witness, you've been in receipt of benefits from the Prosecution.

2 MR KHAN: Your Honour, we can go public with your leave.

3 PRESIDING JUDGE EBOE-OSUJI: Can you safely ask these questions in public?

4 MR KHAN: Yes, your Honour. The witness is (Redacted). There is
5 nothing identifying him.

6 PRESIDING JUDGE EBOE-OSUJI: The document will have to be shown to the
7 witness.

8 MR KHAN: So if KEN-OTP-0123-0019 to 0020, if that could be shown to the
9 witness? And, your Honour, I would ask that we go into public session.

10 PRESIDING JUDGE EBOE-OSUJI: We go into public session.

11 MR GARCIA: Before we do go, your Honour, I'd also ask Defence counsel to be
12 (Redacted)

13 in. These are (Redacted) and, therefore, also
14 should be kept confidential.

15 MR KHAN: Your Honour, I'm not going to go into that. The witness said he's in
16 (Redacted). It's a (Redacted) and I don't need to ask where in (Redacted) he was.
17 That's not relevant to my questions.

18 Are we in public?

19 PRESIDING JUDGE EBOE-OSUJI: And the document is shown only in the
20 courtroom? Thank you.

21 MR KHAN: Your Honour, there is nothing in the document that is revealing. I'm
22 in the Court's hands. Maybe the dates are. Your Honour, there is nothing
23 revealing in the document, but I'm happy for it to be kept in the courtroom.
24 (Open session at 11.50 a.m.)

25 THE COURT OFFICER: We're in open session, your Honours.

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, proceed, please.

2 MR KHAN:

3 Q. Witness, before the break, in fact, while we're in closed session, I asked you a
4 few questions regarding Ambassador Ranneberger and whether or not you knew
5 that he was very active in the North Rift seeking to persuade people to drop their
6 support, their political support for William Ruto, and you said you were not aware
7 of that. Do you remember that?

8 A. Yes, your Honour.

9 Q. And then I asked you a supplementary question stating: Are you aware
10 Ambassador Ranneberger was trying to get individuals to give evidence against Mr
11 William Ruto before the ICC? Do you remember that?

12 A. I remember, your Honour.

13 Q. And you said you had no information effectively; is that right?

14 A. Yes, your Honour.

15 Q. Now I'm going to ask you some questions regarding what you've received
16 from the ICC. And the Prosecution have given us details of the money they have
17 spent on you. It's not everything. It's not everything from the Victim Witness
18 Unit, but it's OTP witness-related expenses. I want to make that clear.

19 And if you look at the document in front of you, and I'm not going to go through it
20 in detail, but just go to 1 July, you'll see that you received 3,367 US dollars on 1
21 August 2012. That's right, isn't it?

22 A. Yes, your Honour.

23 Q. And on 2 August, the very next day, the very next day, just go down, you
24 received 3,524 United States dollars; is that right?

25 A. Yes, your Honour.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 MR GARCIA: Your Honour, just so there not be any confusion afterwards on the
2 record, I think the 3,367 US dollars, that's on 2 August, unless -- I don't see any 1
3 August for that amount.

4 MR KHAN: Your Honour, 1 August was 3,367 United States dollars, which the
5 witness accept receiving, and then on 2 August 3,524 United States dollars and 53
6 cents.

7 Q. So, Witness, you received that as well, didn't you, the next day?

8 A. I received, your Honour.

9 Q. So over a period of two days, you received the equivalent of more than
10 600,000 Kenyan shillings, didn't you?

11 A. Yes, your Honour, I received.

12 Q. And you had been earning less than 100,000 Kenyan shillings per year, hadn't
13 you?

14 A. Yes, your Honour, but it was depending on --

15 Q. And, Witness --

16 PRESIDING JUDGE EBOE-OSUJI: One second. Let's go into private session
17 briefly. If need be, we can repeat the answer in public. Proceed in private session,
18 please.

19 *(Private session at 11.53 a.m.) Reclassified as open session

20 THE COURT OFFICER: We are in private session, your Honours.

21 PRESIDING JUDGE EBOE-OSUJI: Yes, Witness, you were saying "It was
22 depending on" -- can you finish your --

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 suggested by the ICC, your Honour.

2 PRESIDING JUDGE EBOE-OSUJI: Thank you. Let's go back in public. We will
3 not repeat the answer in public.

4 (Open session at 11.54 a.m.)

5 THE COURT OFFICER: We are in open session, your Honours.

6 PRESIDING JUDGE EBOE-OSUJI: Thank you. I said, "We will not repeat the
7 answer in public." I did not say, "We will now" I said, "We will not repeat the
8 answer in public."

9 Mr Khan, continue, please.

10 MR KHAN:

11 Q. Witness, between -- if you look at the top of the document, do you see the
12 date there, the top of the document, between six -- yes, to the left, please, court
13 officer. If the document could be moved to the right so we could see the left
14 column.

15 Witness, do you see the date on the top? That indicates the first recorded payment
16 you received from the OTP to six months later, the last payment.

17 Next page, please, last page?

18 Mr Witness, in less -- in six months, you received more than 20,000 US dollars, didn't
19 you?

20 A. Yes, your Honour, I received.

21 Q. And receipt of these funds, this money for (Redacted) is a
22 major reason why you decided to involve yourself in this process, isn't that right?

23 A. No, your Honour. I didn't even know that I will be (Redacted)
24 another.

25 Q. Now, Witness, we're going to go to another topic. You like a drink, don't

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 you, Witness?

2 MR GARCIA: Objection. I object, your Honour. This type of, this line of
3 questioning, Defence counsel, this is his second attempt to try to get into this line of
4 questioning regarding lifestyle of the witness. And the Chamber has already
5 decided in reference to one other document on Friday that it was not permissible for
6 the Defence to go in this line of questioning, which has absolutely no bearing on the
7 credibility of the witness.

8 So, once again, I don't think that Mr Khan should embark upon this line of
9 questioning, which will not help the Chamber in any which way.

10 MR KHAN: Your Honour, in our respectful submission it has a direct bearing and
11 in fact it goes -- it goes to one of the previous documents that I referred to in private
12 session, but your Honour I'll say no more in public. Your Honour, I'm going to ask
13 three or four questions and then go into private.

14 PRESIDING JUDGE EBOE-OSUJI: The Chamber's ruling, Mr Garcia, on the
15 previous occasion was not directly on drinking or not drinking. It was on the
16 companion and supposed flaw that the Defence has also asked at the time. That's
17 not of course to say that any ruling has been made one way or the other on drinking,
18 but let's see what the relevance -- Mr Khan, you need to make it relevant.

19 MR KHAN:

20 Q. Witness, you told the Prosecution when you were interviewed that you used
21 to drink quite regularly even more than (Redacted); is that right?

22 A. (Redacted).

23 Q. Is it the case that you were accustomed when you had been on a drinking trip,
24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

- 1 MR GARCIA: I object, your Honour. First of all, in regards to the -- the first
2 question that has been posed by the Defence counsel, the witness has indicated that
3 he, I think that what he wants is to be able to respond in private session if need be.
4 As for the relevance, two questions have already been posed by counsel for Defence,
5 and I don't see any relevance to this case or to the credibility of the witness.
- 6 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, he asked for you to keep an eye on
7 relevance. We will go into private session for you to explain the relevance.
- 8 MR KHAN: Well, your Honour. Well, your Honour, I won't say more in the
9 presence of the witness even in private session, but your Honour will see in tab 25,
10 that's KEN-OTP-0073-0209, paragraph 3, and in the fourth sentence you'll see how
11 the witness describes a certain event which he's giving evidence about, and it's
12 linked to that, your Honour, the real cause of what he describes.
- 13 PRESIDING JUDGE EBOE-OSUJI: Did you say paragraph 3?
- 14 MR KHAN: Paragraph 3, your Honour -- sorry. Paragraph 4. The first,
15 second -- the fourth sentence. That assertion that's contained in the fourth sentence,
16 the issue of drink is very clearly and closely related to that averment.
- 17 MR GARCIA: Your Honour, I've had a chance to read the sentence. I don't see
18 any link at all with the credibility of the witness or anything that's relevant to this
19 case.
- 20 MR KHAN: Your Honour, I would ask as we go forward that the Prosecution not
21 stand up and object simply because evidence may be uncomfortable for them. This
22 is clearly --
23 (Trial Chamber confers.)
- 24 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 in-chief. So if you want to explore the circumstances you'll be allowed to do that,
2 but let's be careful to just not overdo this thing.

3 MR KHAN:

4 Q. Witness, when you used to drink, you usually drank to the limit; is that right?
5 You drank until you were drunk?

6 A. I didn't drink until I was drunk or forget myself, your Honour. I drank to a
7 point that I -- I feel that it's enough for me, your Honour.

8 MR KHAN: Your Honour, could we go into private session please?

9 PRESIDING JUDGE EBOE-OSUJI: Private session.

10 *(Private session at 12.02 p.m.) Reclassified as open session

11 THE COURT OFFICER: We're in private session, your Honours.

12 MR KHAN:

13 Q. Now, Mr Witness, you gave evidence last week on 20 January regarding the
14 time you were (Redacted). Do you remember that?

15 A. Yes, your Honour.

16 Q. And the date of that was (Redacted); is that right?

17 A. (Redacted).

18 Q. Yes, you're quite right, (Redacted). And you say that you had been
19 (Redacted). Do you remember telling the

20 Court that on the 20th?

21 A. Yes, your Honour.

22 Q. And do you remember telling the Prosecution that you had been (Redacted)
23 (Redacted)?

24 A. I remember, your Honour.

25 Q. And you told the Prosecution, in fact, when you were interviewed that

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 sometimes you would (Redacted). Do you remember saying

2 that?

3 A. Yes, your Honour.

4 Q. Now, you're (Redacted) and then I'm going to read what

5 you told the Court on 20 January. You said, (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 PRESIDING JUDGE EBOE-OSUJI: Pace.

10 MR KHAN: I'm grateful.

11 Q. (Redacted)

12 (Redacted)

13 Do you remember saying that?

14 A. I remember, your Honour.

15 Q. Is that true?

16 A. That's true, your Honour.

17 Q. (Redacted)

18 (Redacted) Do you remember that?

19 A. I remember, your Honour.

20 Q. (Redacted); is that

21 right?

22 A. (Redacted), your Honour.

23 Q. All right. And, Witness, you explained to their Honours, you explained to

24 their Honours that (Redacted). Do you remember

25 that?

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1 A. I remember, your Honour.
- 2 Q. (Redacted); is that right?
- 3 A. Yes, your Honour.
- 4 Q. (Redacted)
- 5 (Redacted), you told the Prosecution?
- 6 A. Yes, your Honour.
- 7 Q. (Redacted). Do you
- 8 remember saying that?
- 9 A. I remember, your Honour.
- 10 Q. (Redacted); is that right?
- 11 A. (Redacted)
- 12 Q. (Redacted)
- 13 (Redacted); is that right?
- 14 A. Yes, your Honour.
- 15 Q. (Redacted)?
- 16 A. (Redacted), your Honour.
- 17 Q. (Redacted); is that
- 18 right?
- 19 A. Yes, your Honour.
- 20 Q. (Redacted); is that right?
- 21 A. Yes, your Honour.
- 22 Q. And you told the Prosecution in your interview on (Redacted) that (Redacted)
- 23 (Redacted) -- it's at 0569 of (Redacted) transcript -- (Redacted)
- 24 (Redacted). Do you remember telling the
- 25 Prosecution that?

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 A. I remember, your Honour.

2 Q. You remember?

3 A. I didn't tell them that (Redacted)

4 (Redacted), your Honour.

5 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, let's get the right date for that.

6 MR KHAN: Yes, your Honour. It's the Prosecution -- the Prosecution transcript of

7 (Redacted) at page 0569.

8 PRESIDING JUDGE EBOE-OSUJI: Tab?

9 MR KHAN: Tab 8.

10 PRESIDING JUDGE EBOE-OSUJI: Of the transcripts binder, or your regular one?

11 MR KHAN: Transcripts, your Honour.

12 PRESIDING JUDGE EBOE-OSUJI: You said transcript of (Redacted)? That's

13 KEN-OTP-0081-0554, is that it?

14 MR KHAN: That's the one, your Honour. And then at --

15 PRESIDING JUDGE EBOE-OSUJI: What page?

16 MR KHAN:

17 Q. At page 0569, line 484, Mr Witness, you were telling the Prosecution --

18 PRESIDING JUDGE EBOE-OSUJI: Let's put it up on the screen.

19 MR KHAN: If that could be placed on the screen, I would be grateful, and if it

20 could be zoomed in?

21 Q. Witness, you'll see at the top of the screen at line 4 -- well, let's start at 480.

22 You told the Prosecution that, (Redacted)

23 (Redacted)

24 (Redacted)

25 Do you remember telling that to the Prosecution, Mr Witness?

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 A. Yes, your Honour.

2 Q. I'm grateful. And, Witness, the man -- that can be taken off the screen,
3 please.

4 Mr Witness, (Redacted); is that right?

5 A. (Redacted), your Honour.

6 Q. (Redacted); is that right?

7 A. Yes, your Honour.

8 Q. (Redacted); is that
9 right?

10 A. (Redacted), your Honour.

11 Q. (Redacted)?

12 A. Yes.

13 Q. (Redacted); is that right?

14 A. (Redacted) your
15 Honour.

16 Q. Yes, I'm grateful. Mr Witness, I'm then going to read what you -- we're in
17 private session -- what you told (Redacted) in your interview. And I'd ask that on
18 the screen KEN-OTP, tab 17, your Honour, of the exhibit, of the evidence file,
19 KEN-OTP-0108-0559, and at page 0567, starting at page 0567. And at the bottom,
20 and I'm going to just read what you said in that interview at line 242. You were
21 recounting the (Redacted). Do you remember, Mr Witness?

22 A. I remember, your Honour.

23 Q. And you said that, (Redacted)?

24 A. Yes, your Honour.

25 Q. (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 Now, you were asked a question, (Redacted) And you

4 said, (Redacted) Is that right?

5 A. Yes, your Honour.

6 Q. (Redacted)?

7 A. Not that day, your Honour. (Redacted)

8 (Redacted)

9 Q. (Redacted); is

10 that right?

11 A. Yes, your Honour.

12 MR KHAN: (Redacted), I believe, (Redacted)

13 Q. And you say over the page, if it could be changed, please, at 0568, (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 Do you remember saying that?

20 A. Yes, yes, your Honour, (Redacted).

21 Q. And that's (Redacted), is it?

22 A. Yes, your Honour.

23 Q. And you say that, (Redacted)

24 (Redacted)

25 (Redacted) Is that right?

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1 A. Yes, your Honour.
- 2 Q. So you saw (Redacted), correct?
- 3 A. (Redacted), your Honour.
- 4 Q. (Redacted)?
- 5 A. Yes.
- 6 Q. (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 Do you remember saying that?
- 10 A. Your Honour, they didn't understand me right there. I was saying that there
- 11 was someone who had (Redacted)
- 12 (Redacted), your
- 13 Honour.
- 14 Q. Yes. And is it correct, in fact, that the person that (Redacted)
- 15 (Redacted)
- 16 A. Yes, your Honour.
- 17 Q. (Redacted), and the surname is (Redacted). That's correct,
- 18 is it?
- 19 A. I know only the last name. It must -- it must be him, your Honour.
- 20 Q. And it was in relation to that incident that (Redacted); is that
- 21 right?
- 22 A. Yes, your Honour.
- 23 Q. I'm grateful. And then you say, you continue, Mr Witness, at line 274 -- well,
- 24 let me move on.
- 25 At line 283, you say that when you (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1 (Redacted)
- 2 (Redacted) I take that you meant (Redacted); is that right?
- 3 A. Yes, yes, your Honour.
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 61 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 62 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 63 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 64 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 65 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 66 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 67 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 68 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 69 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 70 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 71 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 72 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 73 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 74 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 75 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 76 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 77 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 78 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 79 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 80 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 81 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 82 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Closed Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 83 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 84 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 85 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 86 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 87 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 88 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 89 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 A. Your Honour, what I'm trying to say is that I was not committed of being a
5 witness, and in my heart I had not entrusted to speak the whole truth about that.

6 And in two days is when I decided -- it was even after two or three days is when I
7 decided that I be a witness in this Court and I saw that being a witness I should have
8 to speak the truth, your Honour.

9 Q. Has anybody pressurised you to give evidence?

10 A. No. No, your Honour. No one pressured me, and the only thing it came to
11 me even at night, and I decided at night that I should be a witness in this Court, your
12 Honour.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 91 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 92 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 93 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 94 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 95 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 PRESIDING JUDGE EBOE-OSUJI: The document will be pulled up on the screen.

8 MR KHAN: Your Honour, I can perhaps -- also my learned friend kindly prepared

9 a binder in the lunch break. To save time, I want to move on, may we pass the

10 witness a hard copy? Would that be convenient?

11 PRESIDING JUDGE EBOE-OSUJI: That would be very --

12 MR KHAN: I'm grateful.

13 PRESIDING JUDGE EBOE-OSUJI: -- useful, yes.

14 MR KHAN: With the assistance.

15 PRESIDING JUDGE EBOE-OSUJI: The learned friend you're talking about would

16 be Ms Alagenda, isn't it?

17 MR KHAN: Indeed, your Honour.

18 PRESIDING JUDGE EBOE-OSUJI: We don't want the record to think you are

19 referring to the Prosecution.

20 MR KHAN: No, your Honour. They were kind enough to provide us the

21 information first time around.

22 Q. Witness, if you could look at the bottom of page 7, right at the bottom it says

23 0461. Have you got the page? Page 7, the old-fashioned pagination, and just take a

24 while to acquaint yourself with that contents of that page.

25 If you look at the beginning, you were asked about testifying in public. From 231

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 certain protective measures like in camera proceedings are mentioned. And then
2 from 248 you're asked if you understand what's been explained, and you said yes --

3 "Yeah, I've understood."

4 "Are you willing to continue the process?"

5 And you say, "I am willing to continue, fully willing to continue."

6 "Okay perfect," the interviewer says. "Are you willing to come to testify if you are
7 requested one day?"

8 You say, "I am willing, so long as I'm assured of the security (Redacted)."

9 "Okay."

10 And the next page, top of the next page, Witness, top of page 8, 0462 of the ERN,
11 "I'm willing to testify even in front of all the cameras," and you say you don't need a
12 lawyer present just below that.

13 So, Witness, from the beginning of your evidence to the Prosecution you knew that
14 this was with regard to criminal proceedings before this Court, didn't you?

15 A. I knew, your Honour. I was told -- I was told so by the Prosecution when
16 they first met me, your Honour.

17 Q. And I'm saying, Witness, this is all a smoke screen today when you say that
18 (Redacted)

19 (Redacted)

20 (Redacted)

21 A. Your Honour, I just -- I -- I just still maintain that I fully decided -- though I
22 talked to the Prosecution and I said whatever I said, I fully decided after that day or
23 the second -- if it was not the first day, the second day, it was the third day which I
24 decided fully inside my heart that I be a witness, your Honour.

25 MR KHAN: Your Honour, we'll move on to another topic.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 98 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 99 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 100 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 101 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 102 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 103 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 104 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 105 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 106 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 (Redacted)
2 (Redacted)
3 (Redacted)
4 (Redacted)
5 (Redacted)
6 (Redacted)
7 (Redacted)
8 (Redacted)
9 (Redacted)
10 (Redacted)
11 (Redacted)
12 (Redacted)
13 (Redacted)
14 (Redacted)
15 (Redacted)
16 (Redacted)
17 (Redacted)
18 (Redacted)
19 (Redacted)
20 (Redacted)
21 (Redacted)
22 (Redacted)

23 MR KHAN: Your Honour, I'll -- I'll move on. I'll move on. Your Honour, it may
24 be useful, in fact, another ground, we can argue it later always, but it may be useful,
25 and I would request the Court consider ordering the Prosecution to disclose the

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 video, given the nature of the witness's evidence about the Prosecution being
2 confused and therefore the proofing note being inaccurate.

3 And, your Honour, an easy way to clarify it for the Bench to make their own
4 assessment is to have access to that video and make a proper determination whether
5 the witness is telling the truth today or whether the Prosecution misunderstood
6 what was being said.

7 PRESIDING JUDGE EBOE-OSUJI: In the meantime, did you clarify the particulars
8 of this document that you've just put to the witness? As in --

9 MR KHAN:

10 Q. Witness, this document that --

11 PRESIDING JUDGE EBOE-OSUJI: You need not do it with the witness. I mean
12 apparently this is something you obtained from the Prosecution. All you need to do
13 is just -- all you need to do is just put the referencing --

14 MR KHAN: Yes, I'm grateful.

15 PRESIDING JUDGE EBOE-OSUJI: -- details on the record so --

16 MR KHAN: Your Honour, this is a proofing note, and it's headed "P-0356.
17 Witness clarifications/corrections to prior statement noted by Lucio Garcia and
18 Lorenzo Pugliatti, 6 to 10 January 2014." And, your Honour, it's a document of
19 eight pages in total.

20 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

21 MR KHAN:

22 Q. (Microphone not activated)

23 A. I'm not getting you on the microphone.

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 Q. Witness, is it the case that you've reviewed over these days of reading your
7 transcripts, you've gone over your last account and tried to insist that the last
8 account is the accurate one, and all the previous stories somehow are excused by
9 some story that you're giving the Court?

10 A. Your Honour, what I can say is that if they were -- there is anything
11 that -- when I was talking with the Prosecution for the first time, if there were any
12 mistakes that I came to learn when I reviewed my statement is where I clarified,
13 your Honour. I am not saying that I was accurate in all that I told the Prosecution.
14 I -- I learned that there were many mistakes according to the truth that I know, your
15 Honour.

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 110 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 111 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 112 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 113 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 114 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 115 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 116 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 117 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 118 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 119 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 120 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 121 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 122 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 123 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 124 redacted

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 I have a transcript that I could hand to the Bench and one for the Prosecution.

7 Sorry, I don't have a copy of that for my learned friend for the victims, but I'll

8 provide one later. It is in English anyway.

9 Q. Witness, if you could look at the screen, please.

10 (Viewing of the video extract KEN-D09-0028-0145)

11 MR KHAN: I'm grateful.

12 Q. Witness, you didn't see Mr William Ruto in that film, did you?

13 A. I didn't see him, your Honour.

14 Q. And are you aware that Mr Kibor is a strong supporter of Mr Raila Odinga
15 and has been so for years?

16 A. I know that, your Honour, and I also know that he's a very strong supporter
17 of Mr William Ruto.

18 Q. Are you aware that in the last elections Mr Jackson Kibor was supporting
19 Raila Odinga against the Jubilee Alliance of Mr Uhuru Kenyatta and Mr William
20 Ruto? Are you aware of that?

21 A. I am not aware of that, your Honour, but as I said before, even it was
22 Mr Kibor and some other elders who forced Mr William Ruto to support Mr Raila
23 Odinga.

24 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, that would be a good place to leave it
25 for the day.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 MR KHAN: I'm most grateful, your Honour.

2 PRESIDING JUDGE EBOE-OSUJI: Witness, we will be releasing you from the stand
3 for the day. We will see you again tomorrow.

4 The blinds will come down and the witness will be escorted from the courtroom.

5 *(Closed session at 4.01 p.m.) Reclassified as open session

6 THE COURT OFFICER: We are in closed session, your Honours.

7 (The witness stands down)

8 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

9 THE COURT USHER: All rise.

10 (The hearing ends in closed session at 4.02 p.m.) Reclassified as open session

11 RECLASSIFICATION REPORT

12 Pursuant to Trial Chamber V(a)'s Decision, ICC-01/09-01/11-981, dated 24 September
13 2013, and the instructions in the email dated 9 May 2014, the version of the transcript
14 with its redactions becomes Public.