

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 and Joshua Arap
5 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 Friday, 24 January 2014
10 (The hearing starts in open session at 9.40 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: Court officer, please call the case.
15 THE COURT OFFICER: Thank you, Mr President. The Situation in the Republic
16 of Kenya, in the case of The Prosecutor versus William Samoei Ruto and Joshua
17 Arap Sang, ICC-01/09-01/11. We are in private session, your Honours -- open
18 session, sorry, your Honours.
19 PRESIDING JUDGE EBOE-OSUJI: Open session, thank you very much.
20 I see the Prosecution appearances remain as it was yesterday and the Defence.
21 MR KHAN: Mr President, counsels' attendance remains the same. The only
22 change is the excused physical presence of Mr Ruto.
23 MR KIGEN-KATWA: Mr Sang's remains the same, Mr President.
24 PRESIDING JUDGE EBOE-OSUJI: Thank you.
25 Mr Nderitu?

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 MR NDERITU: May it please your Honours, on our side there is a slight change for
2 the time being. Mr Orchlón Narantsetseg will be joining us after the break. Thank
3 you.

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

5 MR BOURGON: Good morning, Mr President. No change for the representation
6 of Witness 356. However, I have informed the Chamber that I will not be able to be
7 present for the second session should you wish to discuss this issue at some later
8 point. Thank you, Mr President.

9 PRESIDING JUDGE EBOE-OSUJI: Thank you.

10 We are starting without the witness quickly for an announcement as to scheduling
11 until the Easter recess, we will take it that far, especially in light of the decision of
12 Trial Chamber V(b) on the Kenyatta case.

13 The current session of this trial as indicated earlier will run until 31 January and then
14 we would adjourn and reconvene on Monday, 17 February 2014. We will stay in
15 trial until 11 March 2012 (sic) until 11 March 2012 -- 2014, 2014. The reason the 12th
16 comes in, you'll see why -- with a possibility of 12 March being a buffer date for any
17 unfinished business, 12 March.

18 We will rest it there. And then we will reconvene on Monday, 31 March 2014 until
19 16 April 2014 -- until 16 April 2014. There will be no buffer date for that. So we
20 will stop cold on 16 April. That is the schedule we will have for the judicial
21 calendar until the Easter recess.

22 Now, there is a pending -- can we go briefly in private session for just a quick minute
23 or two?

24 *(Private session at 9.44 a.m.) (Reclassified into Open session)

25 THE COURT OFFICER: We're 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.

2 Prosecutor, the request for summons, summonses to witnesses, is it a public
3 litigation? I understand it is.

4 MR STEYNBERG: Your Honours, it was originally filed confidentially, but there is
5 a public redacted version filed.

6 PRESIDING JUDGE EBOE-OSUJI: So we can discuss it?

7 MR STEYNBERG: We can discuss it in public.

8 PRESIDING JUDGE EBOE-OSUJI: Okay.

9 MR STEYNBERG: The only -- the redactions were relating to the specific details
10 pertaining to the witnesses concerned. As long as we're not going to go into those
11 details, there is no problem.

12 PRESIDING JUDGE EBOE-OSUJI: We will not. We will then go into public
13 session.

14 (Open session at 9.45 a.m.)

15 THE COURT OFFICER: We are in open session, Mr President.

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

17 Now, there was the matter of the Prosecutor's request for summonses to be issued to
18 certain witnesses. We will not be discussing the details of those witnesses, but the
19 idea of their litigation. It's a novel issue certainly for this Chamber, and it's one
20 which the Chamber would benefit from a hearing, a public hearing on the matter,
21 and we would like to schedule a hearing, a status conference for that purpose.

22 We're consulting with you to see whether this is inconvenient for you in light of the
23 fact that it will fall within the break period on the 14th, Friday, 14 February. That
24 would be the Chamber's preference, to litigate that question, just a status conference
25 on that and any other matter we may need to take up before reconvening

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 on the 17th for the hearings.

2 MR KHAN: I'm grateful, Mr President, for the inquiry. That would be convenient
3 for the Defence.

4 PRESIDING JUDGE EBOE-OSUJI: All right.

5 MR KIGEN-KATWA: That's okay with me, Mr President.

6 PRESIDING JUDGE EBOE-OSUJI: That's also convenient for you?

7 MR STEYNBERG: That's perfectly acceptable for the Prosecution. Thank you.

8 PRESIDING JUDGE EBOE-OSUJI: That is also acceptable to you?

9 MR STEYNBERG: Yes.

10 PRESIDING JUDGE EBOE-OSUJI: All right.

11 Victims' counsel?

12 MR NDERITU: That's suitable. Thank you.

13 PRESIDING JUDGE EBOE-OSUJI: Thank you. Then we will be issuing the
14 necessary scheduling order. Thank you very much.

15 (Trial Chamber confers)

16 PRESIDING JUDGE EBOE-OSUJI: We will now bring down the blind and invite
17 the witness back into the courtroom to continue his testimony.

18 MR STEYNBERG: Your Honour, if I may just mention, there is on the witness
19 summons filings still the outstanding issue of a requested reply. I'm sure that will
20 be resolved in good time before 14 February.

21 *(Closed session at 9.48 a.m.)(Reclassified into Open session)

22 THE COURT OFFICER: We're in closed session, your Honours.

23 PRESIDING JUDGE EBOE-OSUJI: Thank you. Please invite the witness back into
24 the courtroom.

25 (The witness enters the courtroom)

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

- 1 PRESIDING JUDGE EBOE-OSUJI: Let's go back into the open session. Welcome
2 back, Mr Witness.
3 WITNESS: KEN-OTP-P-356 (On former oath)
4 THE WITNESS: Thank you, your Honour.
5 (Open session at 9.49 a.m.)
6 THE COURT OFFICER: We are in open session, your Honours.
7 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, please continue with your
8 cross-examination.
9 QUESTIONED BY MR KHAN: (Continuing)
10 Q. Witness, good morning.
11 A. Good morning, your Honour.
12 Q. When you were interviewed by the Prosecution in (Redacted), you said that
13 you had been to Mr Ruto's house in Eldoret many times. Do you remember saying
14 that, Witness?
15 A. Yes, your Honour.
16 MR KHAN: And, your Honour, for my learned friends it's KEN-OTP-0081-0515 at
17 531 to 533.
18 Q. And, Witness, you said that you went several times during the 2007 general
19 elections. Do you remember saying that?
20 A. No, your Honour. I didn't say during 2007 general election.
21 Q. Did you say that you had been several times during 2007?
22 A. No, your Honour. I didn't say 2007, your Honour. I said I have been there
23 several times, your Honour.
24 Q. Did you say you had been during that -- during the elections of 2005?
25 A. There were no elections in 2005, your Honour.

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

- 1 Q. Did you say you went there during the 1997 elections?
- 2 A. Yes, your Honour, I said so.
- 3 Q. So you deny saying that you went there during the 2005 general election, is
4 that right?
- 5 A. Your Honour, there were no elections in 2005.
- 6 Q. And, Witness, you went to the house, and you described the house in Eldoret.
7 And you told the Prosecution, and it's at 0532, you said it's a, line 542 for the
8 Prosecution, "It's a two-storey house, down and up. There is a first floor and a
9 second floor." Do you remember saying that? "It's a two storey house"?
- 10 A. Your Honour, I meant the -- the -- the ground and one floor up, your Honour.
- 11 Q. Right. So to be clear, a ground floor and a staircase with an upstairs, is that
12 right?
- 13 A. Your Honour, I meant just the normal floor and one, one floor up, your
14 Honour.
- 15 Q. And you described this as the exterior of this house being white in colour.
16 Do you remember telling that to the Prosecution?
- 17 A. Yes, your Honour.
- 18 Q. You said it was surrounded with an electric fence. Do you remember saying
19 that?
- 20 A. I remember, your Honour.
- 21 Q. Did you go inside that house?
- 22 A. Yes, I did, your Honour.
- 23 Q. And, in fact, you say it's a large place, isn't it? It has about 15 rooms.
- 24 A. The one which I said it is about 15 rooms is the house in Sugoi, your Honour.
- 25 Q. Witness, I'm looking at the transcripts of your interview with the Prosecution.

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 And you say --

2 MR KHAN: And, your Honours, it's KEN-OTP-0081-0531.

3 Q. And, Witness, listen to this please. You're asked to describe houses in
4 Nairobi and Eldoret, and you say at line 504, "I don't know about the Nairobi house,"
5 is that right?

6 A. Yes, your Honour, I did, I said that.

7 Q. You then say, "But I know about the Eldoret house and the Sugoi house." Do
8 you remember saying that?

9 A. Yes, your Honour.

10 Q. You were asked about, by the Prosecution, "How about the Eldoret house?"
11 And you say this, Witness, and listen carefully, "The Eldoret house is around 15
12 rooms."

13 Do you remember saying that, Witness?

14 A. Your Honour, I don't remember. And maybe I messed up by saying 15
15 rooms. The house which I said it's between 10 to 15 rooms is the house in Sugoi,
16 your Honour.

17 Q. And, Witness, you were quite specific what house you're talking about,
18 because at line 512 of KEN-OTP-0081 to 00531, you say, "It's along Old Nairobi
19 Road." Do you remember saying that?

20 A. Yes, I said so, your Honour.

21 Q. And you have quite some discussion about Nairobi Road, because the
22 interviewer, the Prosecution, mishear it as "ordinary road." And you say, "No. It's
23 Old Nairobi Road." Do you remember saying that?

24 A. Yes, I did, your Honour.

25 Q. You said "Opposite the Pioneer estate." Do you remember saying that?

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 A. I said it's along Pioneer, Pioneer area, your Honour.

2 Q. Witness, just answer the question. Did you say it was opposite the Pioneer
3 estate, yes or no?

4 A. I didn't say so, your Honour.

5 Q. All right. And you accept you say it had two levels, one ground and one
6 above?

7 A. Yes, yes, your Honour.

8 Q. Living quarters above, was it?

9 A. Your Honour, what I meant is the normal floor and one up, your Honour.

10 Q. There is quite some discussion about it. And you say, "Yes, it's a two-storey
11 house," and you describe it. Have you ever stayed in that house?

12 A. No, your Honour, I have never stayed in that house.

13 Q. And then you went on, and it's KEN-OTP-0081-0532, and you go on and
14 describe the -- sorry. I think I misquoted. 0081-0534. And you go on and describe
15 the Sugoi house. Do you remember that, Witness?

16 A. Yes, your Honour.

17 Q. You say you've been to the Sugoi house many times?

18 A. Yes, your Honour.

19 Q. You say you stayed in the Sugoi house, is that right?

20 A. One night, your Honour.

21 Q. And you described that house as having 15 to 20 rooms. Do you remember
22 saying that?

23 A. Your Honour, I said 10 to 15 rooms, your Honour.

24 Q. Witness, you're telling dishonest, making dishonest statements to this Court,
25 aren't you?

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 A. I don't remember if I said so, your Honour.

2 Q. Well, Witness, let me read what you said. 0081-0534. And you're asked by
3 the Prosecution:

4 "Please, can you continue and try to describe for us the house of Mr Ruto, Ruto."

5 And you say, "In Sugoi?"

6 They say, "In Sugoi."

7 You say, "It is about 15 to 20 rooms."

8 The interviewer says, "15"?

9 You say, "To 20 rooms. I haven't counted."

10 Do you remember saying that, Witness, or do you maintain it is only ten rooms now,
11 massive restriction?

12 A. I remember saying that, your Honour.

13 Q. So why did you say a minute ago it's ten rooms? What happened? Did it
14 collapse, half of it?

15 A. Your Honour, I remember it's about ten to 15 rooms, your Honour.

16 PRESIDING JUDGE EBOE-OSUJI: Counsel, let's stick with the factual proposition.

17 Let's leave out the editorialising. You can make your submissions at the right time.

18 MR KHAN:

19 Q. And, Witness, you described the exterior of this house as red roof with white
20 walls. Do you remember that?

21 A. Yes, I did, your Honour.

22 Q. And you've eaten in that house?

23 A. I have slept there once, your Honour, but I have been there several times,
24 your Honour.

25 Q. So you know it well, Witness?

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 A. Yes, your Honour, I know it.

2 Q. Witness, I put it to you, you have never in your life been into any home of Mr
3 William Ruto, either in Nairobi or in Sugoi or in Eldoret. What do you have to say
4 about that?

5 A. That's a lie, your Honour. I have been to both Eldoret house and Sugoi
6 house, your Honour.

7 MR KHAN: Your Honours, I'd refer the Bench with your leave to tab 83. And I'd
8 ask to be put on the screen for the witness, and it's public, in fact,
9 KEN-D09-0028-0193.

10 THE COURT OFFICER: Mr Khan, does the ERN number finish by 0193 of the first
11 page of the document?

12 MR KHAN: It's the second in a series. The first photograph is

13 KEN-D09-0028-0192. But the photograph I wish to show, I don't want to go
14 through all of them, is KEN-D09-0028-0193.

15 Q. Witness, can you see that photograph?

16 A. Yes, your Honour.

17 Q. You've never been there, have you?

18 A. I've been there, your Honour.

19 Q. And that house, if you look at the photograph, more than a third of it, in fact,
20 is a garage. Do you see that on the left?

21 A. Yes, your Honour.

22 Q. And that house does not have 15 rooms, Mr Witness. It has one and a half
23 bedrooms and another room and a small kitchen. It's a very small house. It's
24 about -- it's not even as big as this courtroom.

25 PRESIDING JUDGE EBOE-OSUJI: Which house is this, counsel? The Nairobi

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 house, the Eldoret house, the Sugoi house?

2 MR KHAN: Your Honour, this is the Eldoret house.

3 PRESIDING JUDGE EBOE-OSUJI: Has the witness testified to that? Have you
4 asked him questions to identify the house.

5 MR KHAN:

6 Q. Witness, which house -- I'll put it to you, Witness. This is the house of Mr
7 Ruto in Eldoret. You haven't been there, have you?

8 A. Your Honour, your Honour, this is the house of which Mr Ruto moved to
9 after being in the house which was in Old Nairobi Road. And this house is also in
10 Pioneer, your Honour. This is not the house of which Mr Ruto was staying in 1997,
11 your Honour.

12 Q. And you say you went to this house in 2007?

13 A. I remember being to that house, your Honour, but not actually in 2007, your
14 Honour.

15 Q. When did you go to this house, Witness, before 2007?

16 A. Before 2007 I was there, your Honour.

17 Q. So in 2007, which house did you go to in Eldoret?

18 A. Your Honour, I don't remember exact. But in 1987, the house which I was
19 describing as having one storey on top, it's not this house, your Honour. It was
20 along Eldoret and Old Nairobi Road in Eldoret, your Honour.

21 But this house, the house we see on the screen now is not along -- is not the one
22 which is along Old Nairobi Road, your Honour.

23 Q. So, Witness, you don't remember which house you went to in 2007?

24 A. I didn't -- I don't remember -- if I went to Honourable Ruto's house in Eldoret
25 in 2007, it must be this house. But before 2007 elections, I went to this house, your

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 Honour.

2 Q. Witness, let me read what you told the Prosecution. 0081-0533. And you're
3 describing the house in Eldoret, and you were asked by the Prosecution at line 566,
4 "Have you been there?"

5 You said, "Yes."

6 You were asked, "How many times?"

7 And you said this, "Several times during 2007 general election, 2005 general election,
8 and 1997 general election."

9 You were asked, "Do you know when this house was built?"

10 You said, "No. At first I knew that this house was not owned by Mr Ruto, but he
11 was leasing it, leasing, but he later bought it."

12 And you are asked very specifically later on at line 577, "And 2007, how many
13 times did you go there?"

14 You said, "I hope I went there only once."

15 And you were asked, "And when, when was it?"

16 You said, "It was around May."

17 They were very specific, "No, I'm talking about 2007."

18 You say -- you said, "Yeah, May 2007."

19 So, Witness, it was very clear you were talking about one house, one house you've
20 described, and you said you'd been to that house in 1997, 2005, and 2007, isn't that
21 true? That's what you said?

22 A. Your Honour, the house which I went in, I remember, yes, I went to this
23 house in 2007, before 2007 general election, but the house which I was describing is
24 the house of 19 -- 1997 general election, before 1997 general election, or in 1997
25 general election, Honourable Ruto was living in a house along Old Nairobi Road.

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 And that house was the one having the white paint and the security fence, electric
2 security fence. And it was having one floor on top, your Honour.

3 Q. Mr Witness, can I tell you one thing. And I'd like your reaction for the Court.
4 Mr Ruto, I put it to you, has lived in that house, the photograph of which you have
5 seen, since around 1998. And he has never ever lived in a two-storey house in
6 Eldoret ever. What do you have to say about that?

7 A. That is a lie, your Honour, because I went there several times myself. And I
8 even know the person who was a security in that compound, your Honour.

9 Q. Witness, I want to be quite specific so there is no misunderstandings. I'm not
10 asking about your travels and your imagination. I'm asking about physically with
11 your feet entering a building. You've never been there, have you?

12 A. I have been there several times, your Honour, both the two houses in Eldoret
13 and the Sugoi house, your Honour.

14 MR KHAN: Your Honour, with the Court's leave, I would ask to turn the Bench's
15 attention to 84, tab 84. And I wonder if KEN-D09-0028-0197 could be put on the
16 screen.

17 Q. Mr Witness, can you see the walls of that house?

18 A. Yes, your Honour.

19 Q. Not white, are they?

20 PRESIDING JUDGE EBOE-OSUJI: Counsel, I don't know what you're proposing to
21 do with all these materials we are seeing that we've reviewed. I would like to avoid
22 a situation where at the end of the -- let me revise myself. It will be better if you are
23 proposing to either tender something into the record, do it after treating that
24 particular item. It's easier, better that way. I know we've in the past dumped
25 things in at the end. It's not ideal.

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 MR KHAN: Indeed, your Honour. It reminds me, I was not true to my intention
2 yesterday, and I didn't deal with the exhibits that I dealt with yesterday either. So
3 perhaps that can be done at a suitable point during the day as well, when it comes to
4 the exhibits.

5 PRESIDING JUDGE EBOE-OSUJI: Okay. We can do that, but now that we've
6 looked at two houses --

7 MR KHAN: Your Honour, let me do it in this way.

8 Q. Witness --

9 A. Your Honour.

10 Q. -- seeing that photograph, do you know, and hearing what I've already said,
11 do you know whose house that is?

12 A. Honourable William Ruto's house in Sugoi, your Honour.

13 Q. And you can see the colour of the brickwork, can't you?

14 A. I can see, your Honour.

15 Q. It's not a white painted house, is it?

16 A. Yes, your Honour.

17 Q. You accept your description of the -- and that's the house of Mr William Ruto
18 in Sugoi, isn't it?

19 A. Yes, your Honour.

20 Q. So you accept your description of this being white painted exterior is wrong?

21 A. I accept, your Honour. I messed up by that.

22 Q. Witness, the reason I'm saying you messed up is because you haven't been
23 there.

24 A. I've been there several times, your Honour.

25 Q. And you say you've been to the interior?

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 A. I slept there once, your Honour. But even the sitting room, I've been there
2 several times, your Honour.

3 Q. You see, the reason I have such difficulty, witness, with that account is, and
4 the judges will see, have the opportunity of a site visit and seeing the house in due
5 course, but that house doesn't have 15 to 20 rooms. It has four bedrooms, and that's
6 all, nowhere near 15 to 20 rooms.

7 And so I'm saying that the reason your description on the interior and the exterior is
8 so different from reality is because you've never been there. What do you have to
9 say about that?

10 A. Your Honour, the house has ten to 15 rooms, your Honour.

11 MR KHAN: Your Honour, I've asked to exhibit --

12 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, fair enough, we'll get to that. Do you
13 have floor plans as an exhibit of the house as an alternative to site visit, not
14 precluding site visits, but see if we can exhaust other methods of proving things for
15 and backing up on the more expensive procedure. If you've got the floor plans of
16 the house, that may be something worth considering.

17 MR KHAN: Your Honour, I think we may have them, but not for use with this
18 particular witness. There would be no use with him anyway we say.

19 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

20 MR KHAN: But, your Honours, in due course we'll endeavour to get them to the
21 Bench.

22 Your Honour, I would ask to tender as an exhibit both the documents that I've
23 shown. So that is the ERN number is KEN-D09-0028-0193, and that's the house of
24 Mr William Ruto in Eldoret; and, secondly, Mr William Ruto's home in Sugoi, which
25 is 0028-0197. Now, your Honour, the witness has purportedly identified those, and

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 I would ask that they be exhibited.

2 PRESIDING JUDGE EBOE-OSUJI: Are you tendering only or proposing to tender
3 only 01 --

4 MR KHAN: Your Honour, the whole series, in fact, I'd ask to be tendered.

5 PRESIDING JUDGE EBOE-OSUJI: So then --

6 MR KHAN: I don't think the Prosecution will object. They showed the same,
7 different perspectives of the same building that has been identified by the witness.

8 PRESIDING JUDGE EBOE-OSUJI: So the previous --

9 MR GARCIA: Actually, your Honour --

10 PRESIDING JUDGE EBOE-OSUJI: One second, please. The previous house would
11 be in the series of the photos between 0192 --

12 MR KHAN: Your Honour, starting with --

13 PRESIDING JUDGE EBOE-OSUJI: -- to 0196? Is that it?

14 MR KHAN: Indeed, your Honour, that's quite correct.

15 PRESIDING JUDGE EBOE-OSUJI: All right.

16 Mr Garcia, you were about to say something?

17 MR KHAN: Your Honour, I have no objection showing every photograph to the
18 witness, if that's what the Prosecution wishes.

19 MR GARCIA: There is no objection, your Honour. Sometimes it's might be better
20 for the witness to actually have a look at the other photos because they show
21 different sides of the house, but that's for Defence counsel to consider if he finds it
22 necessary or for the Court.

23 PRESIDING JUDGE EBOE-OSUJI: Why don't we -- that's a good suggestion. Let's
24 quickly go through it with the witness, if we can do it.

25 MR KHAN: In that case, if the first one could be put on, which is 0028-0192.

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: Now, Witness, what photo do you see? Can
2 you identify what photo that is? We're looking at the document marked, that ends
3 with 0192.

4 THE WITNESS: William Ruto's house in Eldoret, your Honour.

5 MR KHAN: I'm grateful. Your Honour, then I'd ask to be put on the screen 0194,
6 so KEN-D09-0028-0194.

7 PRESIDING JUDGE EBOE-OSUJI: Before 194, let's take it in series. There is 193,
8 0193?

9 MR KHAN: Your Honour, I can do that again.

10 PRESIDING JUDGE EBOE-OSUJI: Yes, let's do that. Just I know -- I think we've
11 seen that before, right?

12 MR KHAN: Indeed.

13 PRESIDING JUDGE EBOE-OSUJI: But let's just --

14 MR KHAN: With the Court's assistance, the one ending 0193, so
15 KEN-D09-0028-0193.

16 PRESIDING JUDGE EBOE-OSUJI: Witness, you saw this photo earlier, and you
17 identified it, is that correct?

18 THE WITNESS: Yes, your Honour.

19 PRESIDING JUDGE EBOE-OSUJI: That is another perspective of the same photo, of
20 the same house you saw before, is that the case?

21 THE WITNESS: Yes, your Honour.

22 PRESIDING JUDGE EBOE-OSUJI: Thank you.

23 MR KHAN: I'm grateful. And after that the one ending 0194, so the full number
24 KEN-D090028-0194, please.

25 PRESIDING JUDGE EBOE-OSUJI: What do you see, Witness?

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

- 1 THE WITNESS: The house of William Ruto in Eldoret, your Honour.
- 2 PRESIDING JUDGE EBOE-OSUJI: The same house?
- 3 THE WITNESS: Yes, your Honour.
- 4 PRESIDING JUDGE EBOE-OSUJI: Again, from a different angle?
- 5 THE WITNESS: Yes, your Honour.
- 6 MR KHAN: And then, your Honours, perhaps I'll start again with the first one I
7 showed last time so the sequence is complete. I'd ask to be put on the screen
8 KEN-D09-0028-0197.
- 9 PRESIDING JUDGE EBOE-OSUJI: All right. Before we do that, Prosecutor, so it
10 looks like that's a different house, 0197 is a different house.
- 11 MR GARCIA: Yes.
- 12 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, you're not objecting to the earlier
13 house represented by photos 0192 to 0193?
- 14 MR GARCIA: No, your Honour. They've been --
- 15 PRESIDING JUDGE EBOE-OSUJI: 94, 94.
- 16 MR GARCIA: They have been identified by the witness, so the Prosecution has no
17 objection.
- 18 PRESIDING JUDGE EBOE-OSUJI: Okay.
- 19 MR GARCIA: I understand 0197 has been as well identified by the witness.
- 20 PRESIDING JUDGE EBOE-OSUJI: So you're also not objecting to it?
- 21 MR GARCIA: We have no objection.
- 22 MR KHAN: Grateful. So dealing with the Eldoret house first, your Honour, I'd
23 ask it be given an exhibit number. Your Honour, we can do it now or do it at the
24 end when I've dealt with the Sugoi house, as the Court pleases.
- 25 PRESIDING JUDGE EBOE-OSUJI: Let us begin with the Sugoi house.

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

- 1 MR KHAN: Your Honour, the one that was looked at first so far, of course, that's
2 the Eldoret house, the white single-storied house, that's the Eldoret house.
3 PRESIDING JUDGE EBOE-OSUJI: That's the Eldoret.
4 MR KHAN: Indeed.
5 PRESIDING JUDGE EBOE-OSUJI: 0192 --
6 MR KHAN: Yes.
7 PRESIDING JUDGE EBOE-OSUJI: -- to 194 --
8 MR KHAN: Indeed.
9 PRESIDING JUDGE EBOE-OSUJI: -- is the Eldoret house?
10 MR KHAN: Yes.
11 PRESIDING JUDGE EBOE-OSUJI: Thank you for the correction. All right. Then
12 that comes in as the next Ruto Defence exhibit.
13 THE COURT OFFICER: Thank you, Mr President. The pictures in
14 KEN-D09-0028-0192 until page 0194 will bear the following umpire,
15 EVD-T-D09-00095 and will be referenced as Ruto Defence exhibit number 95. These
16 pictures will be registered as public.
17 PRESIDING JUDGE EBOE-OSUJI: Thank you.
18 Mr Khan, you now want to deal with 0197. Do you --
19 MR KHAN: Five photographs, 0028, 0197 to 0201.
20 PRESIDING JUDGE EBOE-OSUJI: There may be a problem with 0200.
21 MR KHAN: Zero? Your Honour, in that case, excluding that photograph. Your
22 Honour, it's a wide-angled, it' a panoramic photograph. So it --
23 PRESIDING JUDGE EBOE-OSUJI: Some of us know that that could use that thing
24 called stitching technology to do it, and if that's the case, then there may be questions
25 about that. So that's a difficulty with.

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 MR KHAN: So, your Honour, we don't -- I won't seek to rely upon that

2 photograph.

3 So in that case the Prosecution don't object to the first photograph 0028-0197. I

4 would ask then to be shown to the witness for the sake of completeness the next in

5 the series 0028-0198.

6 PRESIDING JUDGE EBOE-OSUJI: Please, if the witness can be shown that.

7 MR KHAN:

8 Q. Do you recognise that photograph, Witness?

9 A. That is the compound of William Ruto's house in Sugoi, your Honour.

10 Q. I'm grateful.

11 MR KHAN: And with the Court's assistance, the next photograph,

12 KEN-D09-0028-0199.

13 PRESIDING JUDGE EBOE-OSUJI: Witness, do you recognise what's being shown?

14 THE WITNESS: The house of William Ruto in Sugoi, your Honour.

15 MR KHAN: I'm grateful. And then the last one, your Honours, with the assistance

16 of the Court, KEN-D09-0028-0201.

17 PRESIDING JUDGE EBOE-OSUJI: Witness, do you recognise those being shown?

18 THE WITNESS: Still the house of Honourable William Ruto in Sugoi, your Honour.

19 PRESIDING JUDGE EBOE-OSUJI: Did you say "Still the house of Honourable

20 William ..." --

21 THE WITNESS: It's the same house I was shown before, your Honour.

22 PRESIDING JUDGE EBOE-OSUJI: Okay. Remember to pause before you start

23 talking, that's what is going on, so we avoid overlap. Thank you.

24 Mr Khan -- Prosecution, you do not object, of course?

25 MR GARCIA: No objection.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 MR KHAN: I'm grateful, your Honours. And I'd ask with the Court's leave that
2 those be admitted into evidence, and they be marked as Defence exhibits.

3 PRESIDING JUDGE EBOE-OSUJI: The Court will accept into the record the series
4 of photos from 0197 to 0201 with the exception of 0200.

5 THE COURT OFFICER: Thank you, Mr President. This series of photographs
6 between KEN-D09-0028-0197 until KEN-D09-0028-0201, excluding photograph at
7 page 0200, will bear the following number, EVD-T-D09-00096, and would also be
8 referenced as Ruto Defence exhibit number 96. These pictures will be registered as
9 public.

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

11 MR KHAN: And, your Honours, if we can go to private session for a moment,
12 please?

13 PRESIDING JUDGE EBOE-OSUJI: Private session.

14 *(Private session at 10.25 a.m.) (Reclassified into Open session)

15 THE COURT OFFICER: We're in private session, Mr President.

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 22 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 (Open session at 10.29 a.m.)

22 MR KHAN: Your Honour, I believe I can speak about the alleged meeting in early
23 November or December or whatever the date is.

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

25 MR KHAN: Your Honour, as long as it doesn't identify anything, I think that's in

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 order.

2 PRESIDING JUDGE EBOE-OSUJI: Shall we go back into private session briefly.

3 *(Private session at 10.29 a.m.) (Reclassified into Open session)

4 PRESIDING JUDGE EBOE-OSUJI: Yes, Mr --

5 THE COURT OFFICER: We're in private session, Mr President.

6 PRESIDING JUDGE EBOE-OSUJI: Thank you. I saw the green light.

7 Yes, you were saying you want -- your next subject matter is the meeting?

8 MR KHAN: Your Honour, I was intending to do it in public.

9 PRESIDING JUDGE EBOE-OSUJI: I wanted to find out -- I'm not saying --

10 MR KHAN: Yes.

11 PRESIDING JUDGE EBOE-OSUJI: -- I wanted to take up what you were trying to

12 do. You said you believe you can do that in public. What meeting is that?

13 MR KHAN: Well, your Honour, in that case let's go into private. I apologise. Let

14 me err on the side of caution, and then I will go into it with the witness.

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 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 26 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 Q. Your account to the Prosecution is quite different to the account you've given
16 in court today. And I want to read some extracts so you can see what I'm talking
17 about, Witness.

18 PRESIDING JUDGE EBOE-OSUJI: All right. Mr Khan, we did it not the correct
19 way before. We can't keep doing it that way. The witness needs to be shown
20 material if you are going to contradict him. That's the usual method.

21 MR KHAN: Your Honour, let me read the extracts, which everyone has got it. So
22 I'm not going to read --

23 PRESIDING JUDGE EBOE-OSUJI: Does the witness have it?

24 MR KHAN: Your Honour, if the Court wished the whole transcript be given to
25 him, it can. But in my respect --

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1 PRESIDING JUDGE EBOE-OSUJI: Not the whole transcript. I don't think you're
2 going to now contradict him with the whole transcript. You're going to look at
3 certain things that were said on certain pages. Can you -- can we begin with that?
4 MR KHAN: Yes. If it could be put on the screen KEN-OTP-0081-0870, the witness
5 can look at it on the screen with the Court's leave.
6 MR GARCIA: Can counsel for Defence please give us the ERN of the transcript? I
7 understand that this is the page or is this the ERN number of the transcript itself?
8 MR KHAN: The page is KEN-OTP-0081. In fact, I can start a page later to save
9 time, 0871. So KEN-OTP-0081-0871.
10 PRESIDING JUDGE EBOE-OSUJI: Would that be around tab 20?
11 MR KHAN: Indeed, at tab 20. Your Honour, in fact, we've got hard copies that we
12 can give to the witness if it would be quicker with the usher's assistance.
13 PRESIDING JUDGE EBOE-OSUJI: That's what I thought.
14 MR KHAN: I didn't know we had clean copies, so I'm grateful.
15 PRESIDING JUDGE EBOE-OSUJI: All right. I've been advised that the eCourt
16 system has frozen or something, but we can continue with the hard copy as long as
17 we don't need to pull anything up from eCourt.
18 MR KHAN: Your Honour, I'm grateful. Sometimes, as your Honour has
19 previously said, the old ways are the best ways.
20 Has that been given to the witness? I'm grateful.
21 Q. Witness, if you can go to the top of the page, just acquaint yourself with the
22 page first for a moment. And you can look at the document, in fact. Feel free to
23 look over the document, Witness. You may look at the document and turn the
24 pages so you can identify what is, what is the paper before you.
25 PRESIDING JUDGE EBOE-OSUJI: Do you want to map it for him? What lines are

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 we looking at?

2 MR KHAN: Your Honour, I'll do that in a moment.

3 PRESIDING JUDGE EBOE-OSUJI: All right.

4 MR KHAN: I just want him to look at the document, and then I'll take him through
5 it in sequence.

6 MR GARCIA: Just for the record, your Honour, the transcript number that we're
7 referring to is 0081-0858. That's the number of the transcript itself, so for the future
8 if we want to refer to it.

9 MR KHAN: Well, your Honours, I've got the numbers I've cited and the hard copy.

10 PRESIDING JUDGE EBOE-OSUJI: What the Prosecutor is doing --

11 MR KHAN: The page, I'm grateful.

12 PRESIDING JUDGE EBOE-OSUJI: -- he is giving us the front page. And then as
13 we know, the rest of the following pages are numbered sequentially.

14 MR KHAN: I'm grateful for that assistance.

15 PRESIDING JUDGE EBOE-OSUJI: Yes.

16 MR GARCIA: The problem is that we can't find it otherwise, your Honour, from
17 just the page number.

18 MR KHAN:

19 Q. Witness, if you can go to the page that ends 0871. Can you see that page,
20 0871? Just above it, it says "ICC restricted" and then "page 13." Can you see that?

21 A. I've seen it, your Honour.

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 30 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 31 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 32 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 Q. Witness, the only thing I'll --

15 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, also I've been watching it. Please
16 mind your pace. I know you've been giving the court reporters a run for their
17 money.

18 MR KHAN: So sorry. I apologise to the Court and also to the long-suffering court
19 reporters. Unfortunately they're a bit used to me, but I will endeavour to be much
20 slower.

21 PRESIDING JUDGE EBOE-OSUJI: And I'm told the eCourt system is back in
22 operation.

23 MR KHAN: Your Honour, in the few minutes remaining, instead of going to a new
24 topic entirely, I would be most grateful if the Court would allow me to do something
25 I should have done this morning, which is to clear up the exhibits that I dealt with at

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 the end of yesterday, yesterday afternoon. So, your Honour, may I do that?

2 Your Honour, what I would seek to do is deal with a total of eight exhibits. The

3 first is a photograph (Redacted) that we showed, which is D09-0028-0040. The

4 witness was shown that (Redacted). It was the (Redacted)

5 (Redacted). He accepted that was the (Redacted), and on that basis it is my

6 respectful submission it should be given an exhibit number.

7 PRESIDING JUDGE EBOE-OSUJI: Any objection?

8 MR GARCIA: No objection.

9 PRESIDING JUDGE EBOE-OSUJI: That will be accepted into the record as the next
10 in the Ruto exhibits.

11 THE COURT OFFICER: Thank you, Mr President. The photograph

12 KEN-D09-0028-0040 will bear the following number, EVD-T-D09-00097 and will also
13 be referenced as Ruto Defence exhibit number 97.

14 MR KHAN: I'm most grateful. Your Honour, the next document is D09-0028-0047.

15 This was a document written by -- it's a document from the (Redacted). The

16 witness accepted the document, which referred to the (Redacted), he accepted

17 (Redacted). In my respectful submission, there is sufficient

18 indicia of reliability and relevance by virtue of the witness's testimony, and it should

19 be admitted into evidence on behalf of Mr William Ruto.

20 PRESIDING JUDGE EBOE-OSUJI: Prosecution?

21 MR GARCIA: In this particular case, the Prosecution is not objecting. We also

22 noted that the witness immediately upon seeing the document referred to what was

23 being spoken about and explained that he understood it. So for this document there

24 is no objection.

25 PRESIDING JUDGE EBOE-OSUJI: Did you identify it?

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 MR KHAN: Your Honour, I'll do it again, D09-0028-0047.

2 PRESIDING JUDGE EBOE-OSUJI: You did identify it before. Thank you. So it
3 will be accepted into the record.

4 MR KHAN: I'm much obliged, your Honour. The next is D09-0028-0045. That
5 was the (Redacted). The witness was shown it. He
6 accepted it's his name. It was a document not made with contemplated criminal
7 proceedings in mind, but in the ordinary course of (Redacted) business. There is
8 sufficient indicia of reliability given the witness's account, and I'd ask that it also be
9 admitted into evidence.

10 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, do you know what document Mr
11 Khan is referring to?

12 MR GARCIA: Yes. He's referring to document at tab 29. It can be corrected if it is
13 the case. And it's KEN-D09-0028-0045. It's a (Redacted).

14 And I think that the objective of Mr Khan's cross-examination on that point was to
15 demonstrate there was an (Redacted). I do believe it was (Redacted)
16 or both.

17 PRESIDING JUDGE EBOE-OSUJI: Tab 29, you said?

18 MR GARCIA: Yes, your Honour. According to what I have in my notes, it's tab
19 29.

20 MR KHAN: Indeed, it is tab 29, your Honour.

21 PRESIDING JUDGE EBOE-OSUJI: I see it now. All right.

22 Prosecution?

23 MR GARCIA: And the Prosecution objects to that. When the witness was shown
24 this (Redacted), he immediately stated that he disagreed with what was stated in
25 that (Redacted). He stated that (Redacted). So basically he

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 doesn't agree with it, and he doesn't identify it in any which way. It's not
2 authenticated.
3 Defence counsel has indicated that there is inherent indicia of reliability. But I don't
4 see where this inherent indicia of reliability is. It's a (Redacted). There is
5 absolutely no evidence of the fact that it is authentic or it is what it purports to be or
6 that it has been officially stamped or that it comes from official -- that it's officially
7 recognized. So basically you have a document with which the Defence -- the
8 witness disagrees with completely, and it's quite dangerous to admit this into the
9 case of the Prosecution. I'd say that at this point since it has been shown --

10 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, say no more.

11 (Microphone not activated)

12 MR KHAN: Yes, your Honour.

13 PRESIDING JUDGE EBOE-OSUJI: Sorry, this document will have to be marked for
14 identification.

15 MR KHAN: Your Honour, before the Bench rules on that, may I make another very
16 small submission on the point or not?

17 PRESIDING JUDGE EBOE-OSUJI: Let's move on. Now, you see the obvious
18 difficulties with that. If you look at even this document, (Redacted)
19 (Redacted), if we're looking at the same document, and the
20 Prosecution has argued the point.

21 Now, this is not a case of the witness having testified a certain way in chief, and you
22 bring in a document that coincides with that. That's not what we're looking at.
23 That is the ruling.

24 MR KHAN: I'm grateful, your Honour. I'll move on.

25 Your Honour, the next document is D09-0028-0037 at tab -- it was selected from the

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 (Redacted). Your Honour, under the, in fact, your Honour's principle identity of
2 concepts, the witness says that (Redacted). He testified he (Redacted)
3 (Redacted).
4 Your Honour, the fact that he disagree with the content is a matter we say of weight.
5 Your Honour, as I said yesterday --
6 PRESIDING JUDGE EBOE-OSUJI: What tab? Sorry, it's what tab again?
7 MR GARCIA: Tab 26, your Honour.
8 PRESIDING JUDGE EBOE-OSUJI: Tab 26. Proceed.
9 MR KHAN: Now, your Honour, the witness accepts that he (Redacted).
10 The witness accepts that he was a (Redacted). The witness accepts that he
11 went -- the year of (Redacted). Your Honour, of course he denies the other
12 substance.
13 But in my respectful submission, the bar for admissibility should not be set high. If
14 we don't bolster this later on, of course, your Honours can dismiss it or give it
15 marginal weight. But if we're not allowed to admit evidence when we say there is
16 sufficient indicia of reliability in these circumstances, there will be a very, very long
17 Defence case, indeed, if one is needed, because witnesses will have to come on all
18 these issues.
19 Your Honour, the whole architecture we say of the Rome Statute is really to follow
20 on from the Yugoslav Tribunal and the Rwandan Tribunal, which is one of free
21 admissibility. And your Honours being professional judges, not juries that can be
22 prejudiced, are well capable of dismissing evidence, of not giving it weight or giving
23 it weight at the end once it's been bolstered by any other Defence evidence or
24 bearing in mind an overall assessment of a witness that is heard.
25 So, your Honours, I know the Prosecution have taken a very strict interpretation to

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 the admissibility of Defence exhibits in the Prosecution's case. In my respectful
2 submission, that is in error. It is contrary to the scheme of the Rome Statute. And I
3 say in this case, given that the witness has accepted (Redacted)
4 (Redacted), that there is no
5 real argument other than the Prosecution don't like it for it not to be admitted. And
6 the "I don't like it" argument is not good enough.
7 MR GARCIA: Your Honour, I'll make my submissions regarding this document.
8 And I understand there are two other documents --
9 PRESIDING JUDGE EBOE-OSUJI: Before you do, before you do, please --
10 Mr Khan, so that we get for the particulars as to the document for the record, you've
11 given the ERN number. I believe it's KEN-D09-0028-0037. And it is a document
12 dated the (Redacted), and a document addressed to certain (Redacted),
13 (Redacted), and then (Redacted). That's what we're talking about?
14 MR KHAN: Indeed.
15 PRESIDING JUDGE EBOE-OSUJI: Fair enough.
16 MR KHAN: Our legal assistant, your Honour.
17 PRESIDING JUDGE EBOE-OSUJI: All right. Please.
18 MR GARCIA: Your Honour, there are two other documents that are very similar to
19 this one insofar as they're testimonial evidence. What you have here is the
20 testimony of a witness on paper. That's the documentary evidence. And that's
21 why it is dangerous to let it in. Article 69(2) of the Rome Statute says clearly that in
22 principle, the basic principle is that a witness should come and testify.
23 PRESIDING JUDGE EBOE-OSUJI: But this document --
24 MR GARCIA: And it's on a collateral matter as well, your Honour.
25 (Trial Chamber confers)

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, we will not admit this. It is indeed a
2 witness statement. That is the best that it can be described as, (Redacted)
3 (Redacted). It will not come in.

4 MR KHAN: Your Honour, I'm grateful.

5 PRESIDING JUDGE EBOE-OSUJI: Next?

6 MR KHAN: In that case, the next document at tab 32, D09-0028-0038, I would ask
7 to be marked for identification.

8 PRESIDING JUDGE EBOE-OSUJI: That will be marked for identification. That
9 would be 0144, you said?

10 MR KHAN: Your Honour, 0038 and tab 32.

11 PRESIDING JUDGE EBOE-OSUJI: Please, again, can we have the ERN number and
12 date of document --

13 MR KHAN: Sorry.

14 PRESIDING JUDGE EBOE-OSUJI: -- and other identifying particulars. There may
15 be confusion.

16 MR KHAN: I'm sorry, your Honour. I think it's our mistake. It's not yours at all,
17 your Honour. In fact, your Honour, that ERN is at tab 27. And I'd ask that that be
18 MFI'd. That's at tab 27. Your Honour, it's the one where the ERN was a little bit
19 illegible ending 0038.

20 PRESIDING JUDGE EBOE-OSUJI: Now, before we get to this, 0037, are you asking
21 for it to be marked for identification then or not?

22 MR KHAN: Your Honour, please, marked for identification. 0037, in fact, your
23 Honours, I asked for it to be exhibited. The Court ruled that it could only be
24 marked for identification. And bearing in mind that ruling, I'm not repeating my
25 stance, which was held to be in error or not founded.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1 PRESIDING JUDGE EBOE-OSUJI: All right.
- 2 MR KHAN: So for the next document ending 0038, I'd ask for that to be marked for
3 identification.
- 4 PRESIDING JUDGE EBOE-OSUJI: You're asking for it to be marked for
5 identification?
- 6 MR KHAN: Indeed, bearing in mind the Court's ruling.
- 7 PRESIDING JUDGE EBOE-OSUJI: I'm not sure that the Court's ruling applies
8 across the board to everything. I think we need to take item by item. And some of
9 them are clearly the same, others are not. But if you are asking for this to be
10 marked for identification, Prosecution?
- 11 MR GARCIA: Once again, your Honour, my submissions are the same for these
12 type of documents.
- 13 PRESIDING JUDGE EBOE-OSUJI: All right.
- 14 MR GARCIA: They should be marked for identification.
- 15 PRESIDING JUDGE EBOE-OSUJI: They're marked for identification then.
- 16 MR KHAN: Your Honour, the next document appears at tab 72, and it's
17 KEN-D09-0028-0085. Your Honour, it's a (Redacted)
18 (Redacted). I'd ask
19 that that be marked for identification.
- 20 PRESIDING JUDGE EBOE-OSUJI: That will be done, marked for identification.
21 I'm also looking at the clock. Is that the last, or is there another one that comes?
- 22 MR KHAN: Your Honour, two others, very briefly, KEN-D09-0028-0056. That's a
23 (Redacted) that the witness stated he recognised.
24 Based upon that, I would ask for that (Redacted) to be exhibited,
25 KEN-D09-0028-0056.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, let's do this. Let's take our morning
2 break now and then when we come back you can start again with that request.

3 MR KHAN: It's just two documents. I'll do that, your Honour.

4 PRESIDING JUDGE EBOE-OSUJI: Yes. We'll bring the blinds down now.

5 *(Closed session at 11.03 a.m.) (Reclassified into Open session)

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

7 PRESIDING JUDGE EBOE-OSUJI: We are in closed session. While the blind is
8 coming down, court officer, you may escort the witness once the blinds are down.

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 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 PRESIDING JUDGE EBOE-OSUJI: Chamber will rise.
- 8 (Recess taken at 11.05 a.m.)
- 9 (Upon resuming in open session at 11.37 a.m.)
- 10 THE COURT USHER: All rise.
- 11 Please be seated.
- 12 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Mr Khan, you were
- 13 beginning to -- we will go into --
- 14 MR KHAN: Public session, your Honour, and just two exhibits.
- 15 PRESIDING JUDGE EBOE-OSUJI: We will need to go into private session.
- 16 *(Private session at 11.38 a.m.) (Reclassified into Open session)
- 17 THE COURT OFFICER: We are in private session, your Honours.
- 18 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 19 Mr Khan, the next item you mentioned, I thought it was safe that we would discuss
- 20 that in private session if you want to tender it. I do not know what debate will -- if
- 21 there is any that will ensue, but please proceed.
- 22 MR KHAN: Your Honour, I'm grateful. It's at tab 49, KEN-D09-0028-0056. It's a
- 23 (Redacted). Your Honours, as we're now in private session, it's (Redacted),
- 24 and the witness identified (Redacted), said he recognises (Redacted). And on that
- 25 basis, it's my submission that an exhibit number can properly be assigned.

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 PRESIDING JUDGE EBOE-OSUJI: Was it?
- 11 MR KHAN: Yes.
- 12 PRESIDING JUDGE EBOE-OSUJI: Okay. All right. Then good.
- 13 You want that exhibited you said?
- 14 Prosecution?
- 15 MR GARCIA: No objection, your Honour.
- 16 PRESIDING JUDGE EBOE-OSUJI: Pardon me?
- 17 MR GARCIA: No objection, your Honour.
- 18 PRESIDING JUDGE EBOE-OSUJI: All right. This is one instance where the
- 19 Chamber says no to the material, the reason being we had indicated earlier that there
- 20 was no relevance to that material because the witness did indicate that (Redacted)
- 21 (Redacted), and we thought that it then became irrelevant to
- 22 start canvassing (Redacted). We made that claim and you
- 23 abandoned that line of inquiry, rightly so.
- 24 Now, we will not be admitting this onto the record either as exhibit or even for
- 25 identification, without prejudice to you down the line.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 MR KHAN: May I make submissions on that issue with the Court's leave? Just
2 very briefly. Your Honour, the submission, if the Court allow me to make it, is that
3 we said very clearly, and this was the pitch of our cross-examination, that the
4 witness knowingly has positioned himself at the centre, close were his words, to
5 (Redacted) as a device to get what he wanted, namely certain benefits.
6 (Redacted)
7 (Redacted)
8 (Redacted)
9 Your Honour, so it seems to me only fair where the witness has recognised a
10 (Redacted), it is relevant. And I won't say more than that, but your Honour, I
11 wanted to be clear on the point that why -- the purpose for which we were pursuing
12 that line of questioning.
13 PRESIDING JUDGE EBOE-OSUJI: Thank you, Mr Khan. The ruling remains.
14 Thank you. As I said, without prejudice to -- if you do pitch the relevance more
15 clearly in the course of the case, the matter will then have to come back, but for now
16 we're not accepting that.
17 MR KHAN: Your Honour, I'm grateful.
18 And, your Honour, the last photograph is KEN-D09-0028-005. This is the person,
19 (Redacted). The witness stated that (Redacted)
20 photograph is of that person that he's identified. Once again, your Honour, we say
21 it's clearly relevant because the witness has knowingly we say (Redacted)
22 (Redacted) been running a line that he is close to (Redacted), and we put
23 certain questions to him. He's identified the person, and we say it's clearly relevant
24 and admissible.
25 Your Honour, what weight --

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1 PRESIDING JUDGE EBOE-OSUJI: What tab?
- 2 MR KHAN: Tab 50, your Honour.
- 3 PRESIDING JUDGE EBOE-OSUJI: So it would be --
- 4 MR KHAN: Your Honour, the witness --
- 5 PRESIDING JUDGE EBOE-OSUJI: It will be 0057 then.
- 6 MR KHAN: Yes, your Honour. I think I missed the last number.
- 7 Your Honour, those were my submissions as to why an exhibit should be assigned:
- 8 Relevant, probative, identified. The witness has spoken about this person, and I'd
- 9 ask that it be given an exhibit number with the Court's leave.
- 10 PRESIDING JUDGE EBOE-OSUJI: Prosecution?
- 11 MR GARCIA: No objection, your Honour.
- 12 PRESIDING JUDGE EBOE-OSUJI: This will be admitted. We accept this onto the
- 13 record.
- 14 MR KHAN: I'm grateful, your Honour.
- 15 THE COURT OFFICER: Thank you, Mr President.
- 16 PRESIDING JUDGE EBOE-OSUJI: That's it?
- 17 THE COURT OFFICER: Thank you, Mr President. Document KEN-D09-0028-0047
- 18 will bear the following EVD number: EVD-T-D09-00098. Document
- 19 KEN-D09-0028-0045 will bear the following number: MFI-T-D09-000099.
- 20 Document KEN-D09-0028-0037 will bear the following number: MFI-T-D09-00100.
- 21 Document KEN-D09-0028-0038 will bear the following number: MFI-T-D09-00101.
- 22 Document KEN-D09-0028-0085 will bear the following number: MFI-T-D09-00102.
- 23 And finally document KEN-D09-0028-0057 will bear the following number:
- 24 EVD-T-D09-00103 and will also be referenced as Ruto Defence exhibit number 103.
- 25 And these documents will be registered as confidential.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

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

2 Mr Khan.

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

4 PRESIDING JUDGE EBOE-OSUJI: We are in private session.

5 MR KHAN: Your Honour, we can -- well, before we --

6 Q. Witness, I'm going to ask you a question, just one question at the moment,
7 regarding your interview with (Redacted). Do you remember having that interview?

8 A. Yes, your Honour.

9 Q. Okay. So I'm not going to refer to (Redacted) nor should you, but when I
10 talk about my first question relates to an interview, I'm talking about the (Redacted)
11 interview. Do you understand?

12 A. I remember, your Honour.

13 Q. I'm grateful.

14 MR KHAN: And, your Honours, we can go into public session with the Court's
15 leave.

16 PRESIDING JUDGE EBOE-OSUJI: We will go back to the public session.

17 (Open session at 11.48 a.m.)

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

19 MR KHAN:

20 Q. Witness, did you give an interview where you said that you didn't have any
21 criminal background?

22 A. Yes, your Honour -- I didn't say I don't have any criminal background, your
23 Honour.

24 Q. You didn't say that?

25 A. Yes, your Honour.

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 Q. I'll come back to that, Witness, in a private session.

2 MR KHAN: Your Honours, I would ask that the PIS form be given to the witness.

3 I think others -- other parties have been given copies.

4 PRESIDING JUDGE EBOE-OSUJI: Please give the PIS form, Defence PIS form to
5 the witness.

6 MR KHAN:

7 Q. And, Witness, I had said in my last question I had promised to come back to a
8 topic, and I will if I -- if I remember, but I don't want --

9 PRESIDING JUDGE EBOE-OSUJI: Counsel, one second. For the record, so the PIS
10 we're looking at says --

11 MR KHAN: PIS 1.

12 PRESIDING JUDGE EBOE-OSUJI: That will be the document identified as Defence
13 PIS 1-P-356.

14 MR KHAN: Indeed. Defence PIS 1-P-356, correct.

15 Q. Witness, just in relation to my last question, lest there be any
16 misunderstanding, I put it to you that you did -- when you were interviewed, you
17 said that you did -- you said this, and let me quote: "I did not have any criminal
18 background." You deny saying that, do you?

19 A. I don't remember saying that, your Honour.

20 MR KHAN: And, your Honour, just for my learned friends it's

21 KEN-OTP-0116-0672.

22 PRESIDING JUDGE EBOE-OSUJI: One second so we can get to it.

23 MR KHAN: Well, your Honour, I'm moving on. I'm moving on.

24 PRESIDING JUDGE EBOE-OSUJI: You're moving on, okay.

25 MR KHAN: It's for the record for my friends' assistance. The first number for

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 Mr Garcia, 0657 is the first page number. I'm grateful for the assistance. And line
2 463.

3 Q. Now, Witness, looking at the form in front of you, can you see that sheet of
4 paper?

5 A. Yes, your Honour.

6 Q. And it's divided into places, people and objects. Can you see that?

7 A. Yes, your Honour.

8 Q. So because we're now in public session, the public can hear what we're
9 saying, I want you to -- I'll ask hopefully quite precise questions, and I don't want
10 you to use the name of anybody that may identify you, but I'm going to refer you
11 quite specifically to this document. So please keep a close eye on it. Is that
12 understood?

13 A. Yes, your Honour, but I would like to ask something, your Honour. If we
14 were -- we are in --

15 PRESIDING JUDGE EBOE-OSUJI: One second. One second. Can we go into
16 private session.

17 *(Private session at 11.51 a.m.) (Reclassified into Open session)

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

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 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 Witness, you had something to say?

14 THE WITNESS: Your Honour, I would like to say that already he has told me that
15 he has -- he is going to speak if I had any criminal -- criminal record, your Honour.

16 And I would like to say that even if numbers will be used, whoever gave them the
17 information will automatically know it's me, your Honour.

18 MR KHAN: Your Honour, may I continue?

19 PRESIDING JUDGE EBOE-OSUJI: There's a concern expressed what -- Mr Garcia
20 first and then Mr Khan.

21 MR GARCIA: If I may, Mr -- your Honour, and the witness can correct me if I'm
22 wrong, but I think he's concerned there's a matter that's going to be raised by
23 Defence counsel regarding criminal record of the witness, and the witness I think is
24 legitimately concerned that if that does go on in a public session, then whoever
25 would have given this information to the Defence team will know immediately that

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 it is the witness who was on the stand and who is testifying. I think that's the
2 concern that the witness is trying to articulate.
3 So I think that we should do that part if indeed we're going to -- we're going to cross
4 that -- that bridge at one point, in private session so that the witness can feel at ease
5 in testifying about those matters.

6 MR KHAN: Your Honour --

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 MR KHAN: Your Honour, in my respectful submission, the arguments put
12 forward by my learned friends, whilst no doubt well meant, are completely
13 spurious. Your Honour, leaving aside the issue of the right to a public trial, the
14 experience of the counsel must be given at least a small, smidgeon of -- of respect.
15 Your Honour, there are thousands, unfortunately, of criminals in this country, never
16 mind elsewhere in the world.

17 PRESIDING JUDGE EBOE-OSUJI: In any country.

18 MR KHAN: In any country. And it cannot be said by any stretch of the
19 imagination that simply because somebody has been convicted or even convicted in
20 Kenya it is this witness.

21 Your Honour, it's relevant for us to make this public. There's a public interest in
22 knowing the type of witnesses that the Prosecution are calling against Mr William
23 Ruto. It goes directly to credibility, and we say there's a very strong and indeed
24 compelling public interest militating fair in -- towards public hearings.

25 Your Honours, I will use the PIS with care, and in my respectful submission, there's

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 no chance the witness will be identified.

2 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, there's some sympathy on my part
3 with the concern that it is one thing to say someone has a criminal record, which so
4 far has been discussed to that extent in the public session. It's quite another matter
5 to explore the circumstances of the criminal transaction or criminal -- criminality or
6 the criminal antecedent in question. Do you see what I'm getting at? By the time
7 you've --

8 MR KHAN: Your Honour, if, for example -- your Honour, as I said, in my
9 respectful submission, the way I'm planning to conduct this, there's no risk, there's
10 no discernible risk, that it will identify the witness. What it will show is the nature,
11 the character of the witness that the Prosecution have put forward as a witness of
12 truth.

13 Now, your Honours, of course I take the point that I may not name an individual,
14 but if the circumstances of the crime are such that he may otherwise be identified,
15 the protective measures would be violated. Your Honour, I'm not intending to
16 proceed in that manner.

17 PRESIDING JUDGE EBOE-OSUJI: In that case, let's -- we will --

18 MR GARCIA: Your Honour, if I may, I now notice that these criminal records that
19 the Defence counsel is intending to put to the witness, the source of these -- of -- the
20 person who would have given these criminal records to the Defence is not indicated.
21 Now, the Prosecution doesn't understand why that's been redacted, and we'd like to
22 have information because of the concerns that the witness has articulated.

23 PRESIDING JUDGE EBOE-OSUJI: That's a different matter, isn't it?

24 MR GARCIA: It is slightly different. It's on the same subject. It's just that the
25 witness has indicated that he's concerned that the circumstances of these criminal

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 records might identify him. So that's why I would like to know who is the source.

2 I'm not sure on what basis the redactions have been applied by Defence.

3 Second item, your Honour, is that if Defence counsel, and I trust because of
4 experience is going to go into this matter, I trust he's not going to go into details of
5 the criminal records which could identify the witness, and maybe that's what's
6 causing him discomfort in that regard.

7 PRESIDING JUDGE EBOE-OSUJI: All right. We will go into public session.

8 Witness, the lawyer has said that he will -- and we're also going to look out for it, so
9 will the lawyer for the Prosecution (Redacted)

10 (Redacted) -- on

11 discussing in public the circumstances of if there's any crime committed in the past
12 that he's going to discuss.

13 What we do not -- just so you're clear, the Court will not give protection so that there
14 will be no discussion at all in public about whether or not you may or may not have
15 had a criminal background. That is not the extent of it, but we want to protect you
16 from being identified in particular.

17 THE WITNESS: Your Honour, I would like to ask that what of my response?

18 Because if the lawyer will ask me questions using the numbers and maybe I have my
19 response, how can I express my response, your Honour?

20 PRESIDING JUDGE EBOE-OSUJI: Now, that's a very good thing you've done.

21 You've told us that you are now keeping an eye on that problem we want to. Keep
22 that in mind. If the answer you will give goes beyond yes or no to his question, and
23 in going beyond yes or no you may give an answer that identifies you, let us know.

24 THE WITNESS: Thank you, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: Thank you. We will go into public session and

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 Mr Khan will take it from there.

2 (Open session at 12.00 p.m.)

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

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

5 MR KHAN:

6 Q. Witness, if you could look at the document in front of you, it's true, is it not --

7 PRESIDING JUDGE EBOE-OSUJI: Are we talking about the PIS? What

8 document?

9 MR KHAN: Yes, the PIS form.

10 Q. You see that, Witness?

11 PRESIDING JUDGE EBOE-OSUJI: The Defence PIS.

12 MR KHAN:

13 Q. You see that document?

14 A. Yes, your Honour.

15 Q. Divided in three: Places, people and objects?

16 A. Yes, your Honour.

17 Q. It's true, is it not, that person 17 on that form -- can you see number 17?

18 A. I see, your Honour.

19 Q. Reported you to the police for stealing, and if you look at the object under 19,
20 can you see that?

21 A. Yes, your Honour, I see.

22 Q. And selling it?

23 A. Yes, your Honour, I see.

24 Q. And you were charged with a criminal offence, weren't you?

25 A. I was charged, your Honour.

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 Q. And you were sentenced to one month imprisonment; is that right?

2 A. Yes, your Honour.

3 Q. And --

4 PRESIDING JUDGE EBOE-OSUJI: One second, Counsel. Witness's response was
5 yes, he had seen person number 17 and yes, he had seen item number 19. The point
6 needs to be clearer.

7 Witness, counsel is saying that person number 17 reported you to the police for
8 stealing item number 19, item indicated as number 19. Was that what happened?

9 THE WITNESS: Yes, your Honour. It happened.

10 PRESIDING JUDGE EBOE-OSUJI: All right.

11 Mr Khan, continue.

12 MR KHAN:

13 Q. And you were convicted for that offence; is that right?

14 A. Yes, your Honour.

15 Q. And you were sent by a judge to prison for one month; is that right?

16 A. It was two months, your Honour, not one month.

17 Q. And the proceeds of your crime you spent on drink, did you not?

18 A. I didn't, your Honour.

19 Q. You didn't spend the money that you got for selling the object number 19 on
20 the sheet before you, if you look at it?

21 A. I have seen --

22 Q. You didn't spend that money on liquor?

23 MR GARCIA: I object, your Honour. I can understand Defence counsel's right to
24 cross-examine on questions of prior convictions. Actually, on this type, I think that
25 this prior conviction is over 20 years old, and that's something that's important.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 The second thing is that this line of questioning on what he would have used the
2 money to do is completely irrelevant for the purposes of that examination of
3 determining whether he has prior convictions and whether that affects the credibility
4 of the witness. There's absolutely no -- there's no need for that at all. It's just
5 character evidence regarding the witness.

6 MR KHAN: Your Honour, in my respectful submission --

7 (Trial Chamber confers)

8 PRESIDING JUDGE EBOE-OSUJI: Objection overruled.

9 MR KHAN: I'm grateful.

10 Q. And, in fact, you told the Prosecution, Witness, that you spent the proceeds of
11 your crime on drink, didn't you?

12 A. I have never ever told them that, your Honour.

13 MR KHAN: Your Honour, I will refer the Bench to tab 40 on the file.

14 PRESIDING JUDGE EBOE-OSUJI: So you will do the usual thing of contradicting.
15 Tab 40 you said? Tab 40?

16 MR KHAN: Your Honour, tab 40. It's KEN-OTP-0107-0561 of the evidence file,
17 not the transcript file, your Honour. The evidence file.

18 MR GARCIA: Your Honour, the Prosecution is going to object to the line of
19 questioning which we think Defence counsel is about to embark on.

20 PRESIDING JUDGE EBOE-OSUJI: Private session.

21 *(Private session at 12.05 p.m.) (Reclassified into Open session)

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

23 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia?

24 MR GARCIA: Yes, your Honour. I don't want to interrupt the Court while
25 the -- or my -- Defence counsel in his cross-examination, but I notice that two items

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 have been put in the list of the items for a cross-examination, and the one that
2 preoccupies me the most is 41 --

3 PRESIDING JUDGE EBOE-OSUJI: Before you proceed with that, you said -- we
4 have the witness on the stand, and you are not objecting to a specific question but to
5 a line of questions?

6 MR GARCIA: What I will be objecting to, your Honour, is that Defence counsel
7 embark upon cross-examining the witness on what I imagine Defence counsel sees
8 as disreputable conduct where this disreputable conduct has no link or connection
9 with the credibility of the witness. That's what I -- that's what I'm aiming to
10 prevent.

11 I think that that kind of conduct serves illegitimate purposes and it doesn't help the
12 Court in any which way to determine or ascertain what is the credibility of the
13 witness. I think the common law is clear on that point.

14 So that's the -- the route that I think Defence counsel will be embarking on, and I will
15 be objecting if questions are put to the witness regarding disreputable conduct as
16 is -- I think it's in tab 41 where there's mention of that.

17 So I just want to advise the Court in that matter. If Defence is going to be
18 embarking on that, I will be objecting. I don't want to interrupt the
19 cross-examination, but I'm already stating my position.

20 PRESIDING JUDGE EBOE-OSUJI: But this is an argument you can make at the end
21 of the case, isn't it, depending on what the Defence wants to do with the evidence
22 they may or may not elicit?

23 MR GARCIA: I would say, your Honour, that even at this point embarking on a
24 cross-examination on disreputable conduct which has no linkage to the credibility of
25 the witness should not be permitted, and that's why I would object.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1 PRESIDING JUDGE EBOE-OSUJI: We haven't seen that. Objection overruled.
- 2 Please proceed.
- 3 We go back to the public session.
- 4 MR KHAN: Your Honour, in fact, maybe we --
- 5 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, I've already made the ruling. Do you
- 6 want to argue about the ruling already made?
- 7 MR KHAN: Your Honour, I was going to ask that we stay in private session so I
- 8 could read --
- 9 PRESIDING JUDGE EBOE-OSUJI: Oh, you want to stay in private session? All
- 10 right. Good.
- 11 So we remain in private session.
- 12 MR KHAN: Your Honours have at tab 40 in front of you, it's KEN-OTP-0107-0561.
- 13 Q. And let me read this, Witness. This is what the Prosecution have told us
- 14 happened. The Prosecution told us this, "P-356 ...", that's you, "... informed the
- 15 investigators about a (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted) Now, did you hear that?
- 20 A. Yes, your Honour.
- 21 Q. You told the Prosecution investigators that the (Redacted)
- 22 (Redacted), did you not?
- 23 A. I remember I (Redacted), your Honour.
- 24 MR KHAN: Your Honour, we could go into public session, with your leave.
- 25 PRESIDING JUDGE EBOE-OSUJI: Back into public session.

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 (Open session at 12.09 p.m.)

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

3 MR KHAN:

4 Q. Witness, in private session I asked you a question that whether or not you
5 spent the proceeds of the crime on drink. You denied it. And when I put a
6 document to you, you accepted after all that you had said you had spent the money
7 on drinks. That's right, is it not?

8 A. It is true, your Honour.

9 Q. And, Witness, if you look at the sheet in front of you, do you see the person
10 who is listed at number 15 under people? Can you see that person?

11 A. Yes, your Honour.

12 Q. Did you also steal from him an object, the object listed at number 19?

13 A. That's a lie, your Honour. I have never ever done that, your Honour.

14 Q. And, in fact, you admitted that theft even to person at number 14, didn't you?

15 A. Your Honour, the person at number 14 is the one -- okay, your Honour, I
16 didn't.

17 Q. And you told the person at 14 that you had sold that object at place number 6
18 at the top, didn't you?

19 A. It's a lie, your Honour.

20 Q. Can you see the person's name mentioned at number 10?

21 A. I have seen, your Honour.

22 Q. You stole the object listed at number 20. Can you see that, the object listed at
23 number 20?

24 A. I have seen, your Honour.

25 Q. You stole that from person number 10, didn't you?

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 A. Your Honour, I could have -- it could have been even better if both names of
2 the person were listed, your Honour, but I don't even remember --
3 PRESIDING JUDGE EBOE-OSUJI: Now, wait, wait. Be careful. There's
4 sometimes when it's better to respond with yes or no. As I indicated to you before,
5 if you feel that you must elaborate on an answer beyond yes or no in a manner that
6 might reveal your identity, you let us know, but if it is sufficient in your mind -- and
7 we also have the Prosecution here who called you to testify. If it is sufficient to
8 respond with the answer yes or no, that is the safest way to proceed when a witness
9 who has been protected is giving testimony in public.
10 Counsel, repeat the question.

11 MR KHAN:

12 Q. Witness, I'm saying that you stole item number 20 from person number 10.
13 That's the truth, isn't it?

14 A. No, your Honour.

15 Q. And you also were in trouble, were you not, when you stole item number 25?
16 Can you see that at the bottom? You stole item number 25 from place number 9.
17 Do you remember that incident?

18 A. No, your Honour. And I beg to respond to that, your Honour, in private
19 session, your Honour.

20 PRESIDING JUDGE EBOE-OSUJI: Let's go to private session.

21 *(Private session at 12.14 p.m.) (Reclassified into Open session)

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

23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 Witness?

25 THE WITNESS: Your Honour, the said (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), your Honour. It's a fixing

7 that have been fixed to me, your Honour.

8 MR KHAN:

9 Q. Witness, so --

10 MR KHAN: Still in private, your Honour.

11 Q. Witness, so you were playing the role of the honest (Redacted). You were

12 the one trying to put things back as they should have been; is that right?

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 Q. Are you sure you're not mixing it up with the story you've told regarding

18 (Redacted) on that time you say? You're blaming

19 (Redacted), aren't you?

20 A. I am not blaming (Redacted) at all, your Honour, but I am trying to say that

21 whoever gave you the information took what (Redacted) did and fixed it on me,

22 your Honour.

23 MR KHAN: Your Honour, we can go back into public session with your leave.

24 PRESIDING JUDGE EBOE-OSUJI: Back to public.

25 (Open session at 12.16 p.m.)

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 THE COURT OFFICER: We are in open session, your Honour.

2 MR KHAN:

3 Q. Witness, how many times have you been arrested?

4 A. Two times, your Honour -- three times is the times that I have been arrested,
5 but two times I have been sentenced to (Redacted), your Honour.

6 Q. Yes. And please just be careful with your answers. We are in public
7 session.

8 So you say you've been arrested --

9 PRESIDING JUDGE EBOE-OSUJI: Okay, wait. Let's not repeat that. We've got
10 that in open session. We will be redacting some details given. That's why I'm
11 intercepting you.

12 MR KHAN: Your Honour, I don't see the detail, but I'll move on.

13 PRESIDING JUDGE EBOE-OSUJI: I'm not saying for you to abandon your line of
14 inquiry --

15 MR KHAN: Yes.

16 PRESIDING JUDGE EBOE-OSUJI: -- but if we need to --

17 MR KHAN: I'm grateful.

18 PRESIDING JUDGE EBOE-OSUJI: You can also ask it without repeating some
19 details and we know what he said. You can take it from there.

20 MR KHAN:

21 Q. (Redacted)

22 A. (Redacted), your Honour.

23 Q. How many times have you been convicted?

24 PRESIDING JUDGE EBOE-OSUJI: All right. We'll go into private session.

25 *(Private session at 12.18 p.m.) (Reclassified into Open session)

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

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

2 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, we have to do this in private session.

3 MR KHAN: Your Honour, did I say something that -- so I don't repeat it, that could
4 identify the witness?

5 PRESIDING JUDGE EBOE-OSUJI: Not in a direct way, but when we start talking
6 about somebody who has been (Redacted), details
7 like that can cause problems.

8 MR KHAN:

9 Q. Witness --

10 PRESIDING JUDGE EBOE-OSUJI: I'm not saying -- I'm not saying you
11 intentionally set out to identify, but I see difficulty, that's all.

12 MR KHAN: Your Honours, I'll move on, but it's a matter of public record that
13 hundreds of thousands of people are convicted every year in the courts of Kenya,
14 and so it cannot by any stretch of the imagination, by reasonable contention by the
15 Prosecution or counsel for the witness be said to implicate him in any way, shape or
16 form.

17 Your Honour, we have expressed constantly a very fervent desire that this be kept as
18 far in public as possible because we lament the Prosecution's decision to call
19 witnesses like this against Mr William Ruto.

20 PRESIDING JUDGE EBOE-OSUJI: We do see your interest in the way you want to
21 conduct it, of course, but let's proceed.

22 MR KHAN:

23 Q. Witness, how many times have you been (Redacted)?

24 A. Your Honour, I have been (Redacted).

25 Q. Yes, I get that point, Witness, that you've been (Redacted), but

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 how many times have you been (Redacted)?

2 A. I don't understand your question, your Honour, because what I know is that
3 (Redacted), it's -- that's what -- when you have been convicted, your
4 Honour.

5 Q. (Redacted)

6 (Redacted)?

7 A. Your Honour, I could say that (Redacted)

8 (Redacted), your Honour, and that's what I

9 understand. (Redacted), your Honour.

10 Q. (Redacted)

11 A. (Redacted)

12 (Redacted), your Honour.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 A. No, your Honour.

17 Q. So it's right to say that (Redacted)

18 (Redacted); is that right?

19 A. Your Honour, (Redacted)

20 (Redacted), your Honour.

21 Q. And so the (Redacted), just tell us (Redacted)?

22 A. (Redacted)

23 (Redacted), your Honour.

24 Q. And (Redacted)?

25 A. I don't remember for now it was (Redacted)? your Honour, but I (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1 (Redacted), your Honour.
- 2 Q. (Redacted)
- 3 (Redacted)
- 4 (Redacted) ; is that right?
- 5 A. (Redacted), your Honour.
- 6 Q. (Redacted)?
- 7 A. (Redacted)? your Honour.
- 8 Q. (Redacted)?
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 A. (Redacted)
- 13 (Redacted), your Honour.
- 14 Q. (Redacted)
- 15 (Redacted), was it?
- 16 A. Repeat your question, your Honour.
- 17 Q. When you (Redacted)
- 18 (Redacted), was it?
- 19 A. (Redacted), your Honour. I remember.
- 20 Q. (Redacted)?
- 21 A. (Redacted).
- 22 Q. (Redacted),
- 23 A. (Redacted).
- 24 Q. So you had made – (Redacted)
- 25 (Redacted)?

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1 A. (Redacted), your Honour.
- 2 Q. Do you know what (Redacted)?
- 3 A. I don't remember, your Honour.
- 4 Q. And the circumstances, tell the Court, please, a little bit about the
5 circumstances of that (Redacted)?
- 6 A. Your Honour, by that -- by that year (Redacted), your
7 Honour, and in that circumstances (Redacted)
8 regards. So in that year (Redacted), your
9 Honour, and the (Redacted), your Honour. And
10 after -- after (Redacted), your Honour, (Redacted)
11 (Redacted), your Honour, and after (Redacted), your
12 Honour, (Redacted).
- 13 And the following -- (Redacted)
14 (Redacted), your Honour, (Redacted),
15 your Honour.
- 16 Q. And you (Redacted), Witness?
- 17 A. Your Honour, (Redacted), your Honour, and
18 (Redacted), your Honour.
- 19 Q. Witness, let's do it by chronology. (Redacted), you told the
20 Prosecution you were around (Redacted) years old; is that right?
- 21 A. Yes, your Honour.
- 22 Q. You were born in (Redacted); is that correct?
- 23 A. Yes, your Honour.
- 24 Q. So the (Redacted) -- well, it was (Redacted) ; is that right?
- 25 A. I don't remember the exact year, your Honour.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 Q. But you were (Redacted); is that right?

2 A. I was approximately (Redacted) years, your Honour. I don't remember if I
3 was exactly 19.

4 Q. And (Redacted), what year was
5 that?

6 A. I don't remember, your Honour.

7 Q. You went -- you were (Redacted), were you?

8 A. Yes, your Honour, I was (Redacted).

9 Q. (Redacted)?

10 A. I don't remember if they were (Redacted), but I was (Redacted)
11 (Redacted).

12 Q. You don't remember. They (Redacted), did they?

13 A. (Redacted)

14 (Redacted).

15 Q. And you were (Redacted) ; is that right?

16 A. I was (Redacted). I was (Redacted), your
17 Honour.

18 Q. You were (Redacted), weren't you?

19 A. I was, your Honour.

20 Q. Which (Redacted)?

21 A. (Redacted), your Honour.

22 Q. So quite a memorable sequence of events. You say -- you tell the Court you
23 can't remember even the year; is that right?

24 A. I can't remember the year, your Honour, but it is -- it is around (Redacted)
25 years ago again, your Honour.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 Q. (Redacted)?

2 A. (Redacted), your Honour.

3 Q. So (Redacted); is that right?

4 A. Yes, your Honour.

5 MR KHAN: Your Honour, in my respectful submission, we can go into public
6 session.

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

8 (Open session at 12.28 p.m.)

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

10 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, proceed.

11 MR KHAN:

12 Q. (Redacted)

13 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, one second.

14 MR KHAN: I'm sorry.

15 PRESIDING JUDGE EBOE-OSUJI: Back to closed session -- private session.

16 *(Private session at 12.28 p.m.) (Reclassified into Open session)

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

18 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, you do see why it's a very treacherous
19 exercise to be skating this thing this way. "(Redacted)" will be struck from public
20 publication in the usual way.

21 MR KHAN: And, your Honour, I apologise to the Court. Perhaps for a moment I
22 can go into private session.

23 Q. Witness, when you were -- when you (Redacted)

24 (Redacted)?

25 A. (Redacted), your Honour.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 Q. (Redacted)?

2 A. Yes, your Honour.

3 Q. (Redacted)?

4 A. (Redacted)

5 (Redacted), your Honour.

6 Q. All right. I'm going to show you a document, Witness.

7 And, your Honours, it's tab 3.

8 Witness, why did you tell the Prosecution when you spoke to them that you were

9 (Redacted) if you now say you were (Redacted)

10 (Redacted)?

11 A. Your Honour, I can't remember saying it, but I told them that I was (Redacted)

12 (Redacted). If I said it, maybe I did it by mistake, your Honour.

13 Q. Witness, we're in private session. What you said is that you were (Redacted)

14 (Redacted). (Redacted)

15 (Redacted). So you told the Prosecution you were (Redacted)

16 (Redacted); isn't that right?

17 MR GARCIA: I'd object. Can Defence counsel please just give us the exact

18 reference of what he's referring to there?

19 MR KHAN: Your Honour, I've previously said that was tab 40.

20 PRESIDING JUDGE EBOE-OSUJI: 0561.

21 MR KHAN: So, your Honour, may I proceed?

22 PRESIDING JUDGE EBOE-OSUJI: You may.

23 MR KHAN:

24 Q. Witness, so you told the Prosecution --

25 PRESIDING JUDGE EBOE-OSUJI: But you may -- at some point you may want to

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 tell us the difference between admitting to being (Redacted)

2 (Redacted), so much so that we will have to belabour the point. That is what I'm
3 getting at.

4 MR KHAN: Yes, your Honour, I'm aware, but I can't, of course, explain everything
5 in front of the witness. Your Honour, I take the point and you'll see why in a
6 moment.

7 Q. So, Witness, I put it to you for that particular matter you were (Redacted)
8 (Redacted); is that right?

9 A. I remember -- I remember it's (Redacted), your Honour.

10 Q. And you were about (Redacted) years of age?

11 A. Yes, your Honour. I said I was about (Redacted) years of age.

12 MR KHAN: Your Honour, I would now go to tab 3. And I'd ask to be put on the
13 screen KEN-D09-0028-0003.

14 Q. Witness, can you see that?

15 A. Yes, your Honour.

16 Q. This is a (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)? You can see that, can't you?

21 A. I have seen, your Honour.

22 Q. (Redacted); you can see that?

23 A. Yes, your Honour.

24 Q. And you see it's signed. What did that (Redacted) relate to?

25 A. It is the (Redacted), your

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 Honour.

2 Q. But, Witness, (Redacted) was when you were (Redacted) years of age; is that
3 right? Is that right?

4 PRESIDING JUDGE EBOE-OSUJI: Counsel, why don't you proceed perhaps safely
5 by seeing whether this document refreshes the witness's memory before we start
6 getting into other aspects of what this may signify.

7 MR KHAN:

8 Q. Witness, looking at this document, do you say this relates to the (Redacted)
9 (Redacted)?

10 A. Yes, your -- yes, your Honour.

11 Q. Do you still say that (Redacted)?

12 A. No, your Honour. It was (Redacted), your Honour.

13 Q. So what I'm putting to you is that this is a different (Redacted). Doesn't
14 relate to the (Redacted) at all. You see the (Redacted) there? It's (Redacted), isn't it?

15 A. Yes, your Honour.

16 Q. And you told the Court under oath that you recall being (Redacted)
17 (Redacted). Do you remember saying that?

18 A. Your Honour, I now recall that I was (Redacted), your
19 Honour, not -- not (Redacted), your Honour. I am sure, your Honour, that I have
20 been (Redacted), your Honour.

21 Q. Or is this a different (Redacted), Witness?

22 A. It's not a different (Redacted), your Honour.

23 MR KHAN: Your Honour, I'd ask for this document to be given an exhibit number.
24 The witness has identified it, he's attested that the contents are true, and I'd ask that
25 it be assigned an exhibit number next in the series of Ruto Defence exhibits.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1 PRESIDING JUDGE EBOE-OSUJI: Prosecution?
- 2 MR GARCIA: No objection, your Honour.
- 3 PRESIDING JUDGE EBOE-OSUJI: The document will be accepted onto the record
4 as the next in the Ruto Defence exhibits.
- 5 THE COURT OFFICER: Thank you, Mr President. Document KEN-D09-0028-0003
6 will be given the number EVD-T-D09-00104 and will also be referenced as Ruto
7 Defence exhibit number 104. This document will be registered as confidential.
- 8 MR KHAN:
- 9 Q. Witness, we're still in private session. (Redacted)
10 in Kenya?
- 11 A. (Redacted), your Honour.
- 12 PRESIDING JUDGE EBOE-OSUJI: Can we have some spellings, please.
- 13 MR KHAN: (Redacted). I think that's probably been recorded. And
14 (Redacted)?
- 15 Q. Witness, can you give the spellings of the places you mentioned, please.
- 16 A. (Redacted), your Honour. (Redacted),
17 your Honour.
- 18 Q. And you mentioned (Redacted) as well; is that right?
- 19 A. I said (Redacted), your Honour. I meant (Redacted).
- 20 Q. Right.
- 21 A. But it could be so if I say (Redacted) also because that was the (Redacted)
22 (Redacted), your Honour.
- 23 Q. Now, Witness, I want to show you something --
- 24 MR KHAN: At tab 56, your Honours. And I'd ask to be put on the screen
25 KEN-D09-0028-0078. That's the first page and then that's the (Redacted),

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

- 1 then the next page 0079, please, on the screen.
- 2 Q. Can you see that, Witness, or not on your screen?
- 3 A. I can see, your Honour.
- 4 Q. Can you see -- I'm looking at the hard copy. Can you see the (Redacted)
- 5 down?
- 6 A. I can see (Redacted), your Honour.
- 7 Q. Yes. And you see that the (Redacted)
- 8 (Redacted); can you see that? And
- 9 also (Redacted). Can you see that?
- 10 A. I can't -- I can't see because the words are so down, your Honour.
- 11 Q. But you remember, do you not, being (Redacted)
- 12 (Redacted)?
- 13 A. I remember, your Honour.
- 14 Q. And it was (Redacted)
- 15 (Redacted)?
- 16 A. What is -- what is that (Redacted), your Honour?
- 17 Q. Witness, do you remember being (Redacted)
- 18 (Redacted), contrary --
- 19 A. No, your Honour.
- 20 Q. -- (Redacted)?
- 21 A. No, your Honour. I don't recall at all, and I would like, if possible, (Redacted)
- 22 (Redacted) so that I can see, your Honour. Not the (Redacted), your Honour.
- 23 Q. Did you -- were you (Redacted)?
- 24 A. I don't recall the year, your Honour, but I was (Redacted)
- 25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 (Redacted), your Honour.

2 Q. And when do you say you were (Redacted)?

3 A. I didn't -- I don't know the year, but I remember that I was (Redacted)

4 (Redacted), your Honour.

5 MR KHAN: Your Honour, I would prefer the --

6 PRESIDING JUDGE EBOE-OSUJI: By what?

7 MR KHAN: (Redacted). And, your Honour, I would go to tab number 6

8 and ask to be put on the screen KEN-D09-0028-0011.

9 Q. Witness, can you see that document in front of you?

10 A. I can see it, your Honour.

11 Q. Can you recognise (Redacted)? Can

12 you recognise that as (Redacted)?

13 A. Your Honour, I don't even recognise anything there, your Honour. I only

14 recognise my name.

15 Q. Yes. That's your name, isn't it, (Redacted)?

16 A. Yes, your Honour.

17 Q. Do you remember being (Redacted)?

18 A. Your Honour, I say that I remember being (Redacted)

19 (Redacted), but I don't remember when it was, your Honour.

20 Q. And do you remember when (Redacted)

21 (Redacted)? Do you

22 remember being told that by (Redacted)?

23 A. You can come with your question again, your Honour. I didn't understand

24 you.

25 Q. When you were (Redacted), do you

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 remember being told that the (Redacted)

2 (Redacted)

3 (Redacted)? Do you remember that or not?

4 A. Your Honour, what I know, when you are (Redacted) in Kenya, there is

5 nothing like you will (Redacted). When you are (Redacted),

6 for example, (Redacted), but okay, there is a (Redacted)

7 (Redacted). I don't

8 know if that's what the lawyer is meaning, your Honour.

9 Q. Witness, if you look at the bottom of the page, you see (Redacted)

10 (Redacted) Is that correct? You were (Redacted)

11 (Redacted); is that right or not?

12 A. I was (Redacted)

13 (Redacted), your Honour, because I -- I know that (Redacted)

14 (Redacted), and

15 it is a document. And again, I would like to see the -- the (Redacted)

16 (Redacted), your Honour.

17 MR KHAN: Your Honour, I'd ask that both those documents be given an exhibit

18 number. Again, it's a matter for weight, what weight the Court gives it. The

19 witness has identified his name, he accepts he (Redacted), there's an identity

20 with his previous -- with his -- a question before the document was shown in some

21 respect.

22 And, your Honour, the second document I referred to at tab 6 accords with what the

23 witness says that he was (Redacted).

24 Your Honour, in the circumstance, I would say that both documents have sufficient

25 indicia of reliability. They're relevant to an issue in the case, namely the credibility

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 of this witness. And, your Honour, given the threshold standard for admissibility,
2 we say they should be admitted at this stage of proceedings.

3 PRESIDING JUDGE EBOE-OSUJI: What was the other -- where is the tab for the
4 earlier one? I'm at tab 6 now. Remind me.

5 MR KHAN: Tab 6, your Honour.

6 PRESIDING JUDGE EBOE-OSUJI: And?

7 MR KHAN: Tab 6 and tab 56.

8 PRESIDING JUDGE EBOE-OSUJI: Yes, I've got them.

9 Prosecution.

10 MR GARCIA: And the Prosecution is going to be objecting to both of them being
11 admitted as exhibits. The witness has clearly stated that in both cases, both
12 documents this whole issue of an (Redacted), the
13 witness completely disagrees with that assertion. So you have two documents
14 where -- which are unauthenticated, and the witness does not agree with what is
15 stipulated inside of them.

16 In regards to --

17 PRESIDING JUDGE EBOE-OSUJI: It is the same document, isn't it? Oh, sorry.
18 Tab 56. So I see the confusion, 56 has tab 6 also appearing there behind it. Yes.

19 MR GARCIA: So in regards to tab 56 and tab number 6 the witness completely
20 disagrees with the fact that he would have been (Redacted)

21 (Redacted), and that's one of the crucial aspects that

22 Defence counsel is putting to the witness, and that obviously connects to the
23 authenticity of it.

24 In regards to the document in tab number 6, once again, this is a witness statement.
25 If the Defence wants to prove this -- prove the fact that the witness has indeed been

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 (Redacted), which the witness is denying, they will have
2 to do so either by bringing an (Redacted) and a witness to
3 introduce it in court.

4 This is a witness statement at -- at tab 6, and the witness has -- the witness here in
5 court, 356, has clearly indicated that he disagrees with everything that's written
6 inside of it except and save for his name.

7 So in those circumstances, I think that the Chamber should follow the ruling that
8 it -- that it issued this morning regarding other documents which were akin to or
9 were very similar to witness statements and give this one an MFI and the other one
10 as well an MFI number.

11 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, the document will not be accepted as
12 exhibit at this point.

13 MR KHAN: Your Honour --

14 PRESIDING JUDGE EBOE-OSUJI: Both of them.

15 MR KHAN: I'm grateful.

16 Q. Witness, can I just ask you, what was the -- you deny, just so there's no
17 ambiguity, ever being (Redacted)
18 (Redacted)?

19 A. Your Honour, I have never ever been (Redacted), your Honour,
20 (Redacted), your Honour.

21 MR KHAN: Your Honour, we could go to open session.

22 PRESIDING JUDGE EBOE-OSUJI: What do you want to do with these? Mark
23 them for identification?

24 MR KHAN: Please, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: All right. The two documents appearing at tab

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 6 and tab 56 will be marked for identification for the Ruto Defence case.

2 THE COURT OFFICER: Thank you, Mr President. KEN-D09-0028-0011 will bear
3 the following number: MFI-T-D09-00105. Document KEN-D09-0028-0079 will
4 bear the following number: MFI-T-D09-00106. Both items will be registered as
5 confidential.

6 PRESIDING JUDGE EBOE-OSUJI: Thank you.

7 MR KHAN: I'm grateful.

8 PRESIDING JUDGE EBOE-OSUJI: And you want to return to public session?

9 MR KHAN: Please, your Honour.

10 PRESIDING JUDGE EBOE-OSUJI: Let's go back to the public then. You have ten
11 minutes to luncheon break, Mr Khan.

12 (Open session at 12.50 p.m.)

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

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

15 MR KHAN: Your Honour, as there's ten minutes left, I'll actually rearrange my
16 questioning because the one segment I want to do in one go, so I'll do that after
17 lunch. And, your Honour, I think if that's the case -- well, let me do it.

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0356

(Open 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

(Open 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

(Open 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

(Closed Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 MR KHAN: Your Honour, that's a convenient moment, with your leave.

10 PRESIDING JUDGE EBOE-OSUJI: We will rise for lunch after the blinds have come
11 down for the witness to be escorted from the courtroom.

12 *(Closed session at 12.59 p.m.) (Reclassified into Open session)

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

14 PRESIDING JUDGE EBOE-OSUJI: Please escort the witness from the courtroom.

15 Witness, we will let you have lunch again and then we will meet you at 2.30.

16 THE WITNESS: It's okay, your Honour.

17 (The witness stands down)

18 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, how are we doing with time?

19 MR KHAN: Your Honour, in honesty, a bit slower than I had hoped, but your
20 Honour, I will still endeavour to keep within my promise to be three days in total.

21 PRESIDING JUDGE EBOE-OSUJI: Yes. Do keep an eye for when you've made
22 your point so we don't need to belabour certain propositions.

23 MR KHAN: Indeed. I'm grateful.

24 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

25 THE COURT USHER: All rise.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 (Recess taken at 1.01 p.m.)

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

3 THE COURT USHER: All rise.

4 Please be seated.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 Welcome back, witness. Mr Khan, please proceed.

7 MR KHAN: I'm grateful, Mr President. Your Honour, I'd ask with the Court's

8 leave that KEN-D09-0028-0293 be put on the screen of the witness, not outside this

9 court, please.

10 THE WITNESS: Your Honour --

11 PRESIDING JUDGE EBOE-OSUJI: We remain in private -- we're in open now,

12 aren't we?

13 MR KHAN: Yes.

14 PRESIDING JUDGE EBOE-OSUJI: Can we go briefly into private session?

15 *(Private session at 2.36 p.m.) (Reclassified into Open session)

16 THE COURT OFFICER: We're in private session, your Honour.

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 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
- 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 90 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
- 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 96 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 97 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 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

(Open Session)

ICC-01/09-01/11

- 1 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, did you request to go into open
2 session?
3 MR KHAN: Please, Mr President.
4 PRESIDING JUDGE EBOE-OSUJI: We'll go to open session.
5 MR KHAN: I'm grateful.
6 (Open session at 3.28 p.m.)
7 THE COURT OFFICER: We are in open session, your Honour.
8 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, please proceed.
9 MR KHAN:
10 Q. (Redacted)
11 (Redacted)?
12 MR GARCIA: I object, your Honour.
13 THE WITNESS: No, your Honour.
14 MR GARCIA: I object. This is exactly the type of line of questioning that I stated
15 before that I would be objecting to. It's a line of question that deals with lifestyle or
16 other elements in the witness's life which I feel have no bearing on his credibility
17 whatsoever.
18 I think it's an illegitimate way about going and making the witness feel
19 uncomfortable and ill at ease, and it's completely useless for the Chamber, this type
20 of cross-examination.
21 PRESIDING JUDGE EBOE-OSUJI: Mr Khan?
22 MR KHAN: It's for the Bench, of course, to decide issues of credibility, not the
23 parties. Of course we're both entitled to our views. But in my respectful
24 submission this is pertinent to the motivations of this witness. We say that his
25 activities have been to -- have been completely selfish to indulge himself and

Trial Hearing
Witness: KEN-OTP-P-0356

(Open Session)

ICC-01/09-01/11

1 lead -- whether it's (Redacted) or whether it's (Redacted), it's a motive to lie before
2 this Court, because this is the means by which he can live that particular life.

3 Your Honour, we say also there are aspects of this case where some of this is
4 relevant, particularly the (Redacted), and I'll come to that later. But, your Honour,
5 it's relevant to an overall assessment of credibility.

6 Your Honours will have, of course, the onerous duty at the end of the day to put this
7 witness's testimony in context against any other evidence that the Prosecution have
8 got and decide in good conscience is this witness capable of belief in any way.

9 And we say these issues that we are bringing out, whilst they may be uncomfortable,
10 they are the product of the witness's own behaviour, and they are legitimate lines of
11 inquiry from the Defence. Your Honours, I will simply refer also the Bench to the
12 basis, which is at tab 41.

13 PRESIDING JUDGE EBOE-OSUJI: Did you say tab 41?

14 MR KHAN: Indeed. Tab 41 is KEN-D09-0028-0048. That should not be put
15 before the witness.

16 PRESIDING JUDGE EBOE-OSUJI: When you talk about tab 41, are we looking at
17 the third paragraph, Roman numeral III?

18 MR KHAN: Indeed, your Honour. Your Honour, this is further to request of
19 disclosure via my team on the 15th of January. And this was the response from the
20 Prosecution. And, your Honour, it related to earlier disclosure that had been
21 received indicating the reputation it said the witness was getting.

22 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, the objection is sustained. There is a
23 difference between that and the earlier matter of whether the crime of theft had been
24 committed.

25 MR KHAN: I'm grateful. Your Honours, I'll move on.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 Q. Witness, did you --

2

3

4

5

6

7

8

9

10

11

12

13 Page 108 redacted

14

15

16

17

18

19

20

21

22

23

24

25

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 109 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 MR KHAN: Your Honours, I'll move on. And, your Honour, I think we can stay
- 17 in private session.
- 18 Q. Witness, were you ever (Redacted)
- 19 (Redacted)?
- 20 A. I need your question again, your Honour.
- 21 Q. Did you -- were you ever (Redacted)?
- 22 A. No, your Honour.
- 23 Q. But you were certainly (Redacted), weren't you?
- 24 A. (Redacted), your Honour.
- 25 Q. But apart from that, because we've discussed that already, Witness, you were

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 (Redacted), were you not, (Redacted)

2 (Redacted)?

3 A. No, your Honour.

4 MR KHAN: Your Honour, I'm looking at tab 5. And for the Court record, it's

5 KEN-D09-0028-0010. Your Honour will see that the bottom section, (Redacted)

6 (Redacted). Unfortunately there is no (Redacted)

7 (Redacted). But you'll see (Redacted)

8 (Redacted)

9 (Redacted) --

10 PRESIDING JUDGE EBOE-OSUJI: All right. Let's show the witness the document.

11 MR KHAN: Yes, if that could be on the screen please, I'd be grateful,

12 KEN-D09-0028-0010.

13 Q. Witness, if you could have a look at that document, can you see it clearly?

14 Can you see it?

15 A. I can see it, your Honour.

16 Q. Can you see that it's headed the (Redacted)

17 (Redacted). Underneath it there is a date, (Redacted)

18 (Redacted). And then underneath typed is "(Redacted)

19 (Redacted)

20 (Redacted) Do you recognise that?

21 A. I don't recognise it, your Honour.

22 Q. Have you ever been (Redacted)?

23 A. I have never ever -- this is not a (Redacted), your Honour.

24 Q. Yes. Were you ever (Redacted)?

25 A. I was never (Redacted), your Honour.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 Q. (Redacted)?

2 A. (Redacted)

3 (Redacted), your Honour.

4 MR KHAN: I'll move on. And, your Honour, I think we can go to public --

5 PRESIDING JUDGE EBOE-OSUJI: And you're moving on?

6 MR KHAN: Yes, moving on, your Honour.

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

8 (Open session at 3.42 p.m.)

9 MR KHAN:

10 Q. Witness, if you could tell me, do you remember --

11 PRESIDING JUDGE EBOE-OSUJI: Counsel, counsel, one second.

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

13 MR KHAN:

14 Q. Witness, do you remember when Mr William Ruto was the Minister of Home
15 Affairs in Kenya or the Assistant Minister for Internal Security? Do you remember
16 that?

17 A. I remember, your Honour.

18 Q. It was between August and December 2002, wasn't it?

19 A. I think so, your Honour.

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 MR KHAN: Your Honour, perhaps we can go into private session for a moment.
- 2 PRESIDING JUDGE EBOE-OSUJI: Private session.
- 3 *(Private session at 3.43 p.m.) (Reclassified into Open session)
- 4 THE COURT OFFICER: We're in private session, your Honours.
- 5 MR KHAN: And, your Honour, this question is based for the Court's information
- 6 on tab 40 of the bundle, which is KEN-OTP-0107-0561.
- 7 Q. Witness, witness, do you remember (Redacted)?
- 8 A. I know (Redacted), your Honour.
- 9 Q. You (Redacted) so to speak, didn't you?
- 10 A. (Redacted), your Honour.
- 11 Q. She was --
- 12 PRESIDING JUDGE EBOE-OSUJI: Now let's stop it there. Counsel, clearly the
- 13 (Redacted), there is no question about
- 14 that, but what has that got to do with credibility of the witness?
- 15 MR KHAN: Your Honour, he said under oath he's (Redacted). He's
- 16 been very clear, he's given (Redacted). And I've put documents to him and said,
- 17 "Maybe the records are not complete, but you've been (Redacted)
- 18 that," and he's denied it.
- 19 And, your Honour, the questions, if one looks at the document and the paragraphs
- 20 as it proceeds, the witness (Redacted)
- 21 (Redacted).
- 22 PRESIDING JUDGE EBOE-OSUJI: Fair enough.
- 23 MR KHAN: It goes to credibility, in my respectful submission.
- 24 PRESIDING JUDGE EBOE-OSUJI: Proceed then.
- 25 MR KHAN:

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 Q. Witness, did you (Redacted)

2 (Redacted)?

3 A. Not at all, your Honour. And I beg to explain, your Honour.

4 Q. Just answer my question for the moment, Witness.

5 PRESIDING JUDGE EBOE-OSUJI: He said, "Not at all." Then he said "No" to your
6 proposition and he wants to explain.

7 Proceed, Witness.

8 THE WITNESS: Your Honour, (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 MR KHAN: Your Honour, can I say, you know, narratives of a witness are one
2 thing. I'm asking very specific questions of the witness. And I will come to the
3 other nonsense that he's saying in our submission. But, your Honour, it shouldn't
4 be a licence for a witness simply to start giving a storey that has tangential relevance
5 to the case. Your Honour, the normal course -- otherwise there is no need to
6 counsel. A witness can come in, and we can say, "Tell your story," and we can all sit
7 down or stay at home.

8 The principle must be counsel directs questions that are relevant and probative.

9 And, of course, the Bench has overall supervision. If further clarifications are
10 needed or if the Bench feel that counsel is being unfair, that's one matter. But it's
11 not a free rein for a witness just to go off at will. So, your Honours, in my respectful
12 submission I should be allowed to put my questions.

13 MR GARCIA: Your Honour, I don't think that Mr Khan should have interrupted
14 the witness. The Chamber has indicated to the witness that he can give his
15 explanation. The witness was giving explanations. Maybe some part of the
16 account that the witness is saying doesn't appeal to Mr Khan, but he should be led to
17 continue stating what he was going to explain to the Court. It's all about being fair
18 to the witness.

19 I don't think on many occasions he's had -- he's had a chance, and he's explained
20 himself, so on this occasion I don't see why we should stop him from doing so. Mr
21 Khan can afterwards resume his questioning.

22 PRESIDING JUDGE EBOE-OSUJI: Witness, the question the lawyer had asked you
23 is: Did you (Redacted)?

24 THE WITNESS: No, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: Wait. And you said "No," and you said you

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 wanted to explain. You're entitled to explain an answer, and that's why we allowed
2 you to do that. See if you can make it, explain as briefly as possible and to the point
3 you want to make.

4 THE WITNESS: Yes, your Honour, even I was about to finish up. (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 And I can finish it this way, your Honour. (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted), your Honour.

21 PRESIDING JUDGE EBOE-OSUJI: And remember the question was whether you

22 (Redacted).

23 THE WITNESS: I didn't, your Honour. And I ask that if I (Redacted), I want to
24 see the (Redacted), your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, your next question.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 MR KHAN: I'm grateful.

2 Q. So, Witness, you didn't (Redacted)? You weren't (Redacted)?

3 A. I wasn't, your Honour.

4 Q. Witness, you do know the importance of speaking the truth, don't you?

5 A. I know, your Honour.

6 MR KHAN: Your Honour, I'd ask to be put on the screen so I can confront the

7 witness with it KEN-D -- KEN-OTP-0107-0561.

8 Q. And, Witness, I want you to read this, because I'm going to put it to you that

9 you gave a very different account to the Prosecution.

10 PRESIDING JUDGE EBOE-OSUJI: What tab?

11 MR KHAN: Mr President, your Honours, tab 40.

12 PRESIDING JUDGE EBOE-OSUJI: We're still at tab 40.

13 MR KHAN: Indeed. Your Honour, it's the third paragraph.

14 Q. Witness, if you can focus on the third paragraph it states this, that you

15 (Redacted)

16 (Redacted) Then it says this: (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 Have you seen that bit?

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 A. I've seen it, your Honour.

2 Q. You told the Prosecution, (Redacted)

3 (Redacted)

4 (Redacted), that is what you said, isn't it?

5 PRESIDING JUDGE EBOE-OSUJI: Mr Khan --

6 THE WITNESS: No, your Honour.

7 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, you promised, if I may use that word,

8 the posit of this line of inquiry is to show that the witness had been (Redacted)

9 (Redacted), wasn't that the case?

10 MR KHAN: Your Honour, (Redacted) even, because he was very clear whether he

11 was (Redacted).

12 PRESIDING JUDGE EBOE-OSUJI: No, he wasn't (Redacted). You said he said he

13 had been (Redacted), but you have evidence that there were (Redacted)

14 (Redacted), and that's why you were leading that line of inquiry. Is this it?

15 MR KHAN: Your Honour, this is the first portion of it, yes. This is in relation to

16 this incident. This is the basis. The witness was asked by my questions,

17 irrespective of my answer a moment ago, because maybe my response wasn't as full

18 as it should have been, my questions at the outset were very clear: How many

19 (Redacted)? How many (Redacted)? And

20 how many (Redacted)? How many times --

21 PRESIDING JUDGE EBOE-OSUJI: How are we supposed to do anything with an

22 (Redacted)?

23 MR KHAN: Your Honour, the witness has said in his earlier testimony today that

24 he's (Redacted). And he gave the details. This report that he gave

25 the Prosecution says that he was (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 (Redacted). We say that is fundamentally different from the account he

2 gave under oath at --

3 PRESIDING JUDGE EBOE-OSUJI: Do you have -- do you have the precise

4 (Redacted)?

5 MR KHAN: Well, your Honour, I'll ask my colleagues to try to find it. It's difficult

6 when I'm on my feet to scroll back and find what was said earlier today. The record

7 will speak for itself. Whatever the record says, of course, is there.

8 PRESIDING JUDGE EBOE-OSUJI: Of course. Even then - even then - even if it's

9 one thing to allow counsel some latitude among some matters, it's another thing for

10 that latitude to be pushed. (Redacted) of someone, does it go to credibility, an (Redacted)

11 of somebody, does it go to credibility? Isn't it a matter of you need to have a

12 (Redacted) and the word (Redacted)?

13 MR KHAN: Your Honour, no. Anything -- the witness's testimony under oath has

14 to be tested. And the Court, we say, has every right to look where any witness is

15 telling the truth and where a witness is lying.

16 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, one second. Your client is being

17 charged with an offence. You want to get him off. Let's assume you succeed in

18 that enterprise. Three, four years down the line he gets into another issue. Would

19 (Redacted)

20 (Redacted)

21 therefore, that is something that the Court should bother itself with on that future

22 occasion?

23 MR KHAN: Your Honour, the witness is not an accused. There is a fundamental

24 difference. Your Honour, the reason -- if I can finish? The witness has said under

25 oath, he was not I say, and the transcript will speak for itself, he has not been

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 (Redacted), has not been (Redacted), has not been (Redacted) he
2 stipulated to in testimony. This document contradicts that.
3 Your Honour, it's relevant to how much confidence the Bench can have on this man's
4 word, because he said in testimony as I understood it that he had not been (Redacted),
5 had not been (Redacted), had not been (Redacted)
6 (Redacted) that he spoke to.
7 This document prepared by the Prosecution contradicts that, because he told them
8 he (Redacted). It is, therefore, I say, a useful litmus test, one of many
9 to assess the veracity of this witness. Your Honour, it may not be the most potent
10 piece of evidence in our armoury, but it is a weapon nonetheless, and we say in our
11 respectful submission, we should not be denied use of it. There was no prejudice to
12 anybody, and the witness is not an accused. (Redacted)
13 (Redacted). To that extent, he's fundamentally different than me representing a
14 client.
15 PRESIDING JUDGE EBOE-OSUJI: All right. The ruling of the Court is that you
16 will not be asking questions about (Redacted). If you have evidence of (Redacted)
17 of this witness, get to it, please.
18 MR KHAN: Your Honour, I'll move on. But for the answer to the Bench's
19 question, at page 75 of the transcript of today, lines 9 to 15, I put questions about
20 being (Redacted). And that's the basis. He said, "No,
21 (Redacted)," but, your Honour, I'll move on.
22 THE WITNESS: Your Honour, I would like to say that --
23 PRESIDING JUDGE EBOE-OSUJI: Witness, one second. We don't want to delay
24 the matter. I've already ruled on the matter. Now, if it's about this document
25 you've looked at, we're not to discuss it any more.

Trial Hearing
Witness: KEN-OTP-P-0356

(Private Session)

ICC-01/09-01/11

1 THE WITNESS: Yes, yes, your Honour.

2 MR KHAN: Your Honour, I'll deal very briefly with two matters, and then I can
3 leave this topic of -- I can leave this topic, unless the Court are minded to adjourn
4 now.

5 PRESIDING JUDGE EBOE-OSUJI: Indeed. That's a good place to stop it for the
6 day.

7 MR KHAN: Okay.

8 PRESIDING JUDGE EBOE-OSUJI: The blind will come down, and the witness will
9 be escorted from the courtroom. And we will reconvene on Monday at 9.30.

10 *(Closed session at 3.59 p.m.) (Reclassified into Open session)

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

12 (The witness stands down)

13 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, while the witness is being escorted
14 from the courtroom, how are we doing with time? We're still good for Monday,
15 isn't it?

16 MR KHAN: Your Honour, I started yesterday afternoon, and I had indicated to the
17 Prosecution and my learned friend Mr Steynberg, I had said three days. Your
18 Honour, I will try my very best to finish on Monday. I will try. But I don't want to
19 be guillotined if I have to go over a little bit until Tuesday. That may be the case,
20 but I'll very much try to avoid it. Your Honour, in any event I'm quite confident
21 that my firm or the Chamber's firm red line of the 31st will be met, and the next
22 witness will be completed.

23 PRESIDING JUDGE EBOE-OSUJI: Indeed. But we're also mindful of any
24 possibility of re-examination for the Prosecution for the two witnesses, this one and
25 the next one coming up.

Trial Hearing
Witness: KEN-OTP-P-0356

(Closed Session)

ICC-01/09-01/11

- 1 MR KHAN: I'm grateful.
- 2 PRESIDING JUDGE EBOE-OSUJI: So we also need to --
- 3 MR KHAN: Thank you so much.
- 4 PRESIDING JUDGE EBOE-OSUJI: -- (indiscernible) this as much as we can.
- 5 Thank you.
- 6 Court will adjourn.
- 7 (The hearing ends in closed session at 4.01 p.m.) (Reclassified into open session)
- 8 RECLASSIFICATION REPORT
- 9 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
- 10 2013, and the instructions in the email dated 9th May 2014, the version of the
- 11 transcript with its redactions becomes Public.