

Trial Hearing
WITNESS: DAR-OTP-P-0905

(Open Session)

ICC-02/05-01/20

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and
7 Judge Althea Violet Alexis-Windsor
8 Trial Hearing - Courtroom 2
9 Monday, 10 October 2022
10 (The hearing starts in open session at 9.36 a.m.)
11 THE COURT USHER: [9:36:17] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:36:41] Yes, good morning, all.
15 Can we call the case, please.
16 THE COURT OFFICER: [9:36:46] Good morning, Madam President. Good
17 morning, your Honours.
18 This is the situation in Darfur, Sudan, in the case of The Prosecutor versus
19 Ali Muhammad Ali Abd-Al-Rahman, case reference ICC-02/05-01/20.
20 And for the record, we are in open session.
21 PRESIDING JUDGE KORNER: [9:37:03] Yes, appearances for the Prosecution,
22 please.
23 MR NICHOLLS: [9:37:05] Good morning, Madam President. Good morning,
24 your Honours. Good morning, everyone. Julian Nicholls, Edward Jeremy,
25 Ester Kosova, Matas Stankevicius and Alison Whitford. Thank you.

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1 PRESIDING JUDGE KORNER: [9:37:18] Yeah, victims.
2 MR SHAH: [9:37:19] Good morning, Madam President, your Honours.
3 Nur Mahameed and Anand Shah for the participating victims. Thank you.
4 PRESIDING JUDGE KORNER: [9:37:27] And Defence.
5 MR LAUCCI: [9:37:30](Interpretation) Good morning, Madam President. Good
6 morning, your Honours. Good morning, dear colleagues. This morning, once
7 again Mr Ali Muhammad Ali Abd-Al-Rahman is not present in the courtroom.
8 The Defence is represented by Madam Nina Guilloux, Ahmad Issa, case manager, my
9 colleague Iain Edwards and myself, Cyril Laucci, lead counsel.
10 Thank you.
11 PRESIDING JUDGE KORNER: [9:37:59] Yes, thank you.
12 We're in public session, I take it. Right.
13 Yes, now, Mr Nicholls, and Mr Laucci, it is a touch unfortunate, to say the least, that
14 the number of witnesses lined up until the next break doesn't seem to have been
15 sufficient on any circumstances. Appreciating that there are difficulties in -- as I'm
16 well aware, in getting witnesses here, I really think that more witnesses should have
17 been lined up, because we are wasting court time by not proceeding.
18 Now added to, I understand, the decision not to call witness -- what was his number?
19 Was it 87 -- yes, 879 as a result of the preparation session, which given that I think at
20 one stage I said that it might be an idea if witnesses in their preparation session didn't
21 appear to be compelling, not to call. But nonetheless, the fact remains that for
22 the next two weeks that we are due to sit there are only three witnesses left.
23 And I am not minded to say, Mr Laucci, that no other witness who will be called after
24 the witness this afternoon is going to be very short, I gather, for the rest of the week.
25 I'm afraid that's just not on.

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1 MR LAUCCI: [9:39:49] We have P-007.
2 PRESIDING JUDGE KORNER: [9:39:51] Yes, who is this afternoon.
3 MR LAUCCI: [9:39:53] Yeah, yeah.
4 PRESIDING JUDGE KORNER: [9:39:54] Yes. Who going to take this afternoon and
5 no longer, as I understand it.
6 MR LAUCCI: [9:39:58] I think we can expect that it will carry on tomorrow but --
7 PRESIDING JUDGE KORNER: [9:40:04] Basically tomorrow morning.
8 So what I'm going to say is this, that I gather that there may be difficulties with P-11,
9 but P-935 should be called on Thursday. That gives you two days, Mr Laucci.
10 MR LAUCCI: [9:40:20] Thursday is a reasonable compromise.
11 PRESIDING JUDGE KORNER: [9:40:23] Thank you very much. At least we get
12 one more witness in this week. And P-11 next week. And that's it, isn't it?
13 MR NICHOLLS: [9:40:34] Yes, your Honour. And I'm sorry about that. I won't
14 try to make excuses, but this is the first time we had three witnesses that we were
15 expecting to call that suddenly we couldn't contact. And 879, I believe, is the first
16 witness after prep that we've decided it would not be worth calling.
17 P-11, for reasons I won't go into, is unfortunately set in stone. We understand from
18 VWS that that witness is in the ICCPP, so really out of our hands.
19 This morning, very early, I've asked our team, with VWS, they're checking on 935
20 now, and I see my friend agrees -- well, he is not to agree, but is not fighting too hard
21 on Thursday. So we will -- we will do our best to get that witness here as soon -- as
22 soon as possible, but we haven't yet heard from VWS on that witness. That witness
23 was originally scheduled for next week because we understood from VWS that
24 the witness had some reason why they couldn't be here this week. But we will try
25 to -- to move that up. And we will also look at what witnesses, again in discussion

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1 with -- we'll notify the Defence who we might be able to bring up for next week.

2 It is getting more difficult when unforeseen witness -- reasons the witnesses drop out,

3 because -- because we've been progressing quite quickly, less than two hours on

4 average a witness, the pool is shrinking, which is a good thing, there's less to go

5 through, but it's harder to find a witness who is available to quickly come.

6 So, again, I apologise for that, but we will let the Chamber know as soon as we hear

7 from VWS on 935's availability for Thursday.

8 PRESIDING JUDGE KORNER: [9:42:43] Yeah, there was one thing that occurred to

9 me, although I imagine this is going to happen again, and that is I don't how close

10 you are to calling evidence about the video that Mr Abd-Al-Rahman produced, to

11 which the Defence object, as to whether to deal with that argument.

12 MR NICHOLLS: [9:43:04] Yeah, there is one problem with that, I think I can say it in

13 open session, which is that -- actually I'd rather go into private. It may be paranoid

14 but I'd rather do that in private session.

15 PRESIDING JUDGE KORNER: [9:43:19] All right, let's go into private session for a

16 moment.

17 Well, we have to go into private anyhow for the witness, so ...

18 (Private session at 9.43 a.m.)

19 THE COURT OFFICER: [9:43:31] We are in private session, Madam President.

20 (Redacted)

21 (Redacted)

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(Open Session)

ICC-02/05-01/20

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4 (Open session at 4.28 p.m.)

5 THE COURT OFFICER: [16:28:45] We're back in open session, Madam President.

6 PRESIDING JUDGE KORNER: [16:28:47] All right. Tomorrow's witness then,

7 as -- either I leave it on or I don't put it on.

8 Okay. Tomorrow's witness we think is not going to take more than, what,

9 the morning, all together. Who's calling the witness tomorrow?

10 MR NICHOLLS: [16:29:07] That's Ms Simms, your Honour, who was in here earlier

11 in case the witness came up. I'm sorry, I didn't catch how long you said. I think

12 Ms Simms will -- oh, you are here, sorry, I apologise.

13 I think we'll be less than an hour on direct, so probably half an hour, 40 minutes

14 maximum.

15 PRESIDING JUDGE KORNER: [16:29:27] Is that your witness, Mr Laucci,

16 tomorrow?

17 Are you going to finish in the morning session or you're going to go into the -- not

18 that it matters, it's up to you.

19 MR LAUCCI: [16:29:36] I think if it is no more than one hour on the OTP side,

20 depending on the -- the victims, I think we can be done by lunch. Not

21 a hundred per cent sure. I don't know. It also depends on how the witness reacts,

22 really.

23 PRESIDING JUDGE KORNER: [16:29:52] Well, on the face of it, the witness doesn't

24 know who Ali Kushayb is at all, doesn't really add a great deal to this -- to this case,

25 but, anyhow.

Trial Hearing
WITNESS: DAR-OTP-P-0905

(Open Session)

ICC-02/05-01/20

- 1 All right. Yes. I think that ...
- 2 There's an ERN to be entered on to the record then.
- 3 THE COURT OFFICER: [16:30:16] Thank you, your Honour.
- 4 The document DAR-OTP-0220-4779, marked by Witness P-905 on Friday, was
- 5 uploaded and registered as DAR-REG-0001-0016 and is marked as confidential.
- 6 Thank you.
- 7 PRESIDING JUDGE KORNER: [16:30:41](Microphone not activated)
- 8 THE COURT USHER: [16:30:47] All rise.
- 9 (The hearing ends in open session at 4.30 p.m.)