

1 International Criminal Court
2 Pre-Trial Chamber II
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor vs Ali Muhammad Al Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Single Judge Rosario Salvatore Aitala
7 Review on Detention - Courtroom 3
8 Thursday, 27 May 2021
9 (The hearing starts in open session at 9.29 a.m.)
10 THE COURT USHER: [9:29:19] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE AITALA: [9:29:37] Good morning, everyone.
14 For the record, this is a detention hearing under Rule 118(3) of the Rules.
15 Mr Court Officer, please call the case.
16 THE COURT OFFICER: [9:29:57] Good morning, Mr President.
17 This is the situation in Darfur, Sudan, in the case of The Prosecutor vs
18 Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb"), case number ICC-02/05-01/20.
19 And for the record, we are in open session.
20 PRESIDING JUDGE AITALA: [9:30:14] Thank you very much.
21 Just for the records, Mr Prosecutor, will you introduce yourself and your colleagues.
22 MR NICHOLLS: [9:30:22] Good morning, your Honour. Good morning, colleagues.
23 I'm Julian Nicholls. I'm joined today with Ghazaleh Meskoob, attorney, and our case
24 manager, Dusan Ilic. Thank you.
25 PRESIDING JUDGE AITALA: [9:30:36] Good morning. Thank you.

1 Mr Counsel for the Defence, *bonjour*.

2 MR LAUCCI: [9:30:40](Interpretation) Good morning, your Honour. This morning
3 on the Defence bench, Vanessa Grée; Ahmad Issa, case manager; and myself,
4 Cyril Laucci, lead counsel.

5 PRESIDING JUDGE AITALA: [9:30:54] *Merci beaucoup*.

6 Madam Massidda, we start with you, OPCV, and then the other Legal
7 Representatives of Victims.

8 MS MASSIDDA: [9:30:58] Good morning, Mr President. Appearing for the Office
9 of Public Counsel for Victims myself, Paolina Massidda, accompanied in courtroom
10 by Ms Sarah Pellet. Following the hearing remotely, Ms Mekka Abdelgabar,
11 assistant to counsel; Ms Ludovica Vetrucchio, legal officer; and Ms Ana Peña, case
12 manager. Thank you.

13 PRESIDING JUDGE AITALA: [9:31:18] Thank you.

14 Good morning, the other Legal Representative of Victims. Madam Clooney, please.

15 MS CLOONEY: [9:31:29] Thank you. Good morning, your Honours. I'm
16 Amal Clooney. I'm the Legal Representative for Victims. Joining my team from the
17 courtroom today is Vera Padberg, assistant to counsel. And there's also
18 Katharina Lewis and Yasmine Chubin, associate counsel, following remotely; as well
19 as Samarth Patel, following remotely, assistant to counsel.

20 PRESIDING JUDGE AITALA: [9:31:51] Thank you very much.

21 *Sabah al-noor*, Mr Amin. Would you please introduce yourself and your colleagues.

22 MR AMIN: [9:32:03](Interpretation) Good morning, your Honours. I'm joined by
23 Mr Fady Nasser and Mr Abdallah.

24 THE INTERPRETER: [9:32:23] And another gentleman that the interpreters couldn't
25 gather the name of.

1 MR AMIN: [09:32:27] (Interpretation) Thank you, your Honours.

2 PRESIDING JUDGE AITALA: [9:32:28] Thank you very much.

3 Now, as mentioned yesterday, the main purpose of this hearing is for the Chamber to
4 ascertain if Mr Abd-Al-Rahman's condition of detentions are fine, as it is mandated by
5 Rule 118(3). This is not a hearing about whether pretrial detention should continue
6 or not. This will be done in due course. So it's mainly about the suspect.

7 So Mr Abd-Al-Rahman, good morning. I would like to hear from you about how are
8 you and the conditions of detentions. I've seen during these days likely that you
9 look well, but I would like to hear from you. How are you, how you feel and if
10 there's any consideration you want to make about the conditions of detention.

11 Again, Mr Abd-Al-Rahman, this is not about whether you should be in pretrial
12 detention, let alone about your responsibilities. Those will be dealt with in due
13 course. It's about your everyday living in the detention centre, how you feel and if
14 you are in good health.

15 So please stand up, take off your mask and you can respond.

16 MR ABD-AL-RAHMAN: [9:34:05](Interpretation) In the name of God, most
17 gracious, most merciful, first of all, I would like to extend my thanks to the
18 Presiding Judge, my deepest thanks to him, for granting me this opportunity to talk.

19 And I would like you to reiterate my name, my name is Ali Muhammad Ali
20 Abd-Al-Rahman, born January 1, 1949.

21 And first I would like to express, to pray for mercy for all the victims who died in
22 Darfur and we hope that Darfur lives in peace away from all tribal conflicts.

23 Second of all, I came from Sudan here voluntarily. I came forward to the ICC to
24 ensure that I am totally considered innocent from all allegations regarding Darfur
25 with which I have absolutely nothing to do.

1 Third of all, I am totally fine at the detention centre. I have nothing to complain
2 about. And I reiterate my thanks to you. Thank you.

3 PRESIDING JUDGE AITALA: [9:35:15] Well, thank you, sir. It is good to hear that
4 the conditions of your detention are fine. We take pride of keeping the detention
5 centre in the most -- at the highest standards in the world.

6 And I take note also of your other statements. Again, this is not the moment for
7 dwelling upon your possible responsibility, but you are presumed innocent and you
8 have a legal team at your disposal to support you.

9 Now I will give the floor to the parties and the participants. Again, let me recall that
10 the detention on the review of the pretrial detention within the 120-day time limit
11 under paragraph 2 of Rule 118 will be taken in due course and this is not the moment.
12 Parties and participants may file their written observations about that matter if they
13 so wish following these deadlines: The Prosecutor's and the Victims' submissions
14 shall be filed no later than Friday, 11 June. And the Defence may respond by Friday,
15 18 June.

16 Now, keeping this in mind, I give the floor to you, Mr Prosecutor. If you have any
17 point to make, I'm here to listen.

18 MS MESKOOB: [9:37:04] Good morning, Mr President. Thank you. No, the
19 Prosecution does not have submissions on that matter. Thank you very much.

20 PRESIDING JUDGE AITALA: [9:37:17] Thank you very much.

21 Now the Legal Representatives of the Victims, we follow the order which now has
22 become usual. OPCV first and then the other Legal Representatives. Please.

23 MS MASSIDDA: [9:37:33] Thank you, your Honour. We do not have specific
24 submissions, as the Prosecution, at this point in time.

25 The only thing that I would like to recall on behalf of victims that we represent,

1 because this is a recurrent concern that they have, is just to indicate to the Chamber
2 how they are concerned about any kind of issues related to the detention of
3 Mr Abd-Al-Rahman for what we have already indicated on another issues about
4 pretrial detention.

5 So the only thing that I would like to address is simply the fact that victims remain
6 concerned about any discussion in relation to the detention or not detention of
7 Mr Abd-Al-Rahman.

8 We do not have specific submissions today and will present eventually more
9 specifically the concerns of the victims on the continued detention of the suspect in
10 due course.

11 Thank you very much.

12 PRESIDING JUDGE AITALA: [9:38:31] Thank you very much. I'll take note of
13 what you said. I understand that the victims have an interest in this matter. This is
14 why you've been given the floor and your colleagues will be as well. Again, you
15 may file written submissions on a technical legal level in due course.

16 Madam Clooney, please, the floor is yours.

17 MS CLOONEY: [9:38:57] Thank you. Thank you so much, your Honour.

18 May I just say I will of course take up your invitation to make the more detailed legal
19 submissions in writing, but perhaps just for purposes of today I can share some of the
20 views that have been communicated to me by victims, you know, some of whom
21 have been following this hearing of course. And when I raised the question about
22 possible release of the suspect, they -- you know, I think it's fair to say that they are
23 panicked by the idea that the suspect could be released at this stage.

24 And just to convey to you some of the things I heard, as you know, the vast majority
25 of the victims live in camps that lack adequate security, and almost all of them have

1 expressed security concerns. Many victims have told me that they fear retaliation by
2 the suspect or his associates if he were to be released.

3 As one victim put it: "I feel scared and insecure because I am one of the witnesses
4 against Ali Kushayb in the ICC; I belong to the Fur tribe; and these camps are not
5 secure."

6 At one of the camps in Chad victims have also said that, quote, their "lives will be at
7 risk" if the suspect *is released.

8 And this fear, your Honour, is also very real outside the camps. A victim who lives
9 in Bindisi stated, quote: "Ali Kushayb should not be released because I might be
10 killed." And another victim said, quote, "he will kill ... others ... to hide the truth".

11 Many victims have also highlighted that releasing the suspect would give his
12 associates a license to kill. In the words of one client, quote: "I completely object to
13 the release of Ali Kushayb because it will be another disaster. He will return, and
14 reorganise and mobilise his associates, who will be confident that there is no real
15 accountability." Another victim said, quote: "Ali *Kushayb's release would
16 *embolden his partners who will commit crimes with more confidence."

17 Indeed, your Honour, many victims feel that now that the proceedings are under way,
18 his release would cause security unrest in Darfur and that they would have to leave
19 the area.

20 In the words of one of my clients, quote: *"If you release him, we won't be able to
21 stay in Darfur anymore; we'll be stateless".

22 Your Honours, it took almost 20 years to bring this suspect before the Court and in
23 our written submissions we will explain why this is indeed not the time to release
24 him. Thank you.

25 PRESIDING JUDGE AITALA: [9:41:47] Thank you very much.

1 Mr Amin, the floor is yours now.

2 MR AMIN: [9:42:00](Interpretation) Your Honours, good morning. I do not have
3 specific submissions to make on the matter, but there are concerns by the victims
4 regarding the possibility of the release of the suspect. There are a number of extreme
5 concerns even at the very slight mention of this possibility. The victims said that the
6 mere thinking about this possibility will undermine the whole process that has led to
7 this stage of the case. Achieving this stage in itself has been reassuring for the
8 victims.

9 The other point is that his tribal belonging, knowing that his tribe is present and
10 widespread across Sudan and even beyond Sudan, even at this stage there has been a
11 frightening and an intimidation of the victims inside Sudan and outside Sudan. So
12 any thinking about releasing him or any declaration regarding his release will cause
13 tremendous and widespread panic among all the victims.

14 My third point is that the thinking about this possibility will lead to a decrease in the
15 victims' involvement in the judicial process at the Court, something that would be
16 contrary to what we're working on. We're working on increasing the involvement of
17 victims in the proceedings.

18 Your Honours, I would like to convey to you one example of the tremendous
19 happiness one of the victims had regarding this process. He relayed that the victims,
20 when they saw these hearings, finally felt reassured and felt that the hope is renewed
21 that after 20 years justice can eventually be rendered.

22 And talking about a possible release would only shock and traumatise the victims.
23 Not to mention, that many of whom are indeed subject to intimidation and threats
24 even before any release.

25 So that this suspect remains in custody is very essential, without infringing in any

1 way on the presumption of innocence and all the entitlements he is granted at this
2 stage.

3 We should remember that there is a sincere fear that the victims and the witnesses
4 could be influenced, their testimonies could be tampered with, whether the witnesses
5 who have already testified or those who could testify in the future. Therefore,
6 keeping the safety and the well-being of victims in mind is essential. And in light of
7 that, we request that the suspect remains in custody to ensure that the remaining part
8 of the proceedings goes as we hope it would.

9 Thank you, your Honours.

10 PRESIDING JUDGE AITALA: [9:45:26] Thank you very much.

11 Now, Mr Counsel for the Defence, Mr Laucci, *s'il vous plaît*.

12 MR LAUCCI: [9:45:38](Microphone not activated)

13 PRESIDING JUDGE AITALA: [9:45:54] Mr Laucci, your microphone is not activated.
14 Start all over again just for the records, please.

15 MR LAUCCI: [9:46:00](No interpretation)

16 PRESIDING JUDGE AITALA: [9:46:25] Excuse me, Mr Laucci.

17 Mr Court Officer, there is no interpretation, English --

18 THE INTERPRETER: [9:46:29] Excuse me, excuse me. The interpreter did not have
19 her microphone on in this case. I did a double switch.

20 PRESIDING JUDGE AITALA: [09:46:34] I see, okay.

21 THE INTERPRETER: [09:46:36] I apologise.

22 PRESIDING JUDGE AITALA: [9:46:38] It's a pandemic of -- microphone pandemic.
23 Okay, but it's fine, it's fine. You don't need to translate --

24 MR LAUCCI: [09:46:44] (Overlapping speakers)

25 PRESIDING JUDGE AITALA: [09:46:44] No, no, no. You don't need to restart. I

1 do understand.

2 MR LAUCCI: [9:46:45](Interpretation) I will limit my remarks to the condition of the
3 detention of my client.

4 So I will not respond the comments made by the representative of victims which
5 verged on to another subject.

6 Regarding the conditions of detention, we have just heard from him that his
7 conditions are good. And I would like to add two remarks to what he has said.

8 Since my client was transferred to The Hague, Mr Ali Muhammad Ali

9 Abd-Al-Rahman has not been able to have any visit from family members. This is
10 normally a right for detained persons to receive family visits. We understand that
11 there are difficulties to organise such visits, particularly because of the pandemic, but
12 I would like to bring this to your attention. And I would like to express the wish
13 that the Registry and the Registrar do their utmost to try and establish a visit of this
14 type.

15 The second comment I'd like to make is a positive comment. I've already expressed
16 my satisfaction, and I sent a special message to the Registrar to this effect, but I would
17 like to take this occasion to stress that the detention section has really gone above and
18 beyond all one could hope for in the normal times. They have done extremely well
19 with regard to the organisation very quickly for the medical expertise that we
20 presented during the confirmation of charges. And that is really -- so thanking them
21 for that, that is all I would like to say at this moment. Thank you.

22 PRESIDING JUDGE AITALA: [9:48:55] Thank you very much, Mr Laucci.

23 The Chamber has taken note of all the observations. On the matter of visits, you do
24 understand that health takes precedence, and there are rules of the host country and
25 rules of the Registry which must be abided by in the interests of everyone, starting

1 with the inmates and all of the staff of the Court and yourselves, the legal teams.

2 Well, the Chamber has taken note of your observations. I've given you the deadlines
3 for written submissions on the legal matter, so whether pretrial detention should
4 continue or not.

5 Thank you, Mr Abd-Al-Rahman, for your statements. We understand that you are
6 in good health - we are happy for this - and that your conditions are appropriate. So
7 I have my gratitude to the Registry for their work.

8 If there are no other observations, then I would like to thank you all for your
9 participation, and again the interpreters, the technicians, court officers and the
10 security officers and everyone at Registry for making this hearing possible.

11 So have a pleasant day and see you soon. Thank you.

12 THE COURT USHER: [9:50:17] All rise.

13 (The hearing ends in open session at 9.50 a.m.)

14 CORRECTIONS REPORT

15 The following corrections, marked with an asterisk and included in the audio-visual
16 recording of the hearing, are brought into the transcript.

17 Page 6 line 7

18 "in" Is corrected to "is"

19 Page 6 line 15

20 "Kushaybe's" Is corrected to "Kushayb's"

21 Page 6 line 16

22 "emboldened" Is corrected to "embolden"

23 Page 6 lines 20-21

24 "If you release him we won't be able to stay in Darfur any more" Is corrected to " If
25 you release him, we won't be able to stay in Darfur anymore"