

1 International Criminal Court
2 Trial Chamber III
3 Situation: Republic of Kenya
4 In the case of The Prosecutor v. Paul Gicheru - ICC-01/09-01/20
5 Presiding Judge Miatta Maria Samba
6 Trial Hearing - Courtroom 3
7 Monday, 21 February 2022
8 (The hearing starts in open session at 9.33 a.m.)
9 THE COURT USHER: [9:33:44] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE SAMBA: [9:34:11] Good morning, everyone.
13 Could the court officer please call out the case.
14 THE COURT OFFICER: [9:34:19] This is the situation in the Republic of Kenya, in
15 the case of The Prosecutor versus Paul Gicheru, case reference ICC-01/09-01/20.
16 And for the record, we are in open session.
17 PRESIDING JUDGE SAMBA: [9:34:34] Thank you very much, Madam Court
18 Officer.
19 And can I ask that the parties introduce themselves, please.
20 MS ZAGO: [9:34:44] Good morning, your Honour. Good morning, everyone. For
21 the Prosecution today, Marion Rabanit, on my left, trial lawyer; behind me,
22 Inbal Djalovski and Laura Warrlich; and myself, Alice Zago, trial lawyer.
23 I apologise on behalf of Mr Steynberg to the Court who could not attend the hearing
24 today and tomorrow due to precautionary measures he's taking after being exposed
25 to a person who has tested positive in a COVID-19 test. So he apologises, and I

1 apologise on his behalf to the Court and everyone participating today. Thank you.

2 PRESIDING JUDGE SAMBA: [9:35:21] Thank you very much.

3 The Defence, please.

4 MR KARNAVAS: [9:35:24] Good morning, Madam President. And good morning
5 to everyone in and around the courtroom. Michael Karnavas for -- lead counsel for
6 Mr Gicheru. With me is Suzana Tomanovic, associate counsel; Noah Al-Malt, who is
7 legal assistant; and we're joined today with Victoria Amann-Lasnier as our case
8 manager. Thank you.

9 PRESIDING JUDGE SAMBA: [9:35:51] Thank you very much, Mr Karnavas.

10 And for the record, I note that Mr Gicheru is in court.

11 Can counsel for the victim -- I mean, the witness, sorry, introduce himself.

12 MR AOUINI: [9:36:06] Good morning, Madam President. I am Hédi Aouini from
13 the bar of Tunis. I'm the Rule 74 counsel for Witness P-0431. Thank you.

14 PRESIDING JUDGE SAMBA: [9:36:20] Thank you very much.

15 Now, before we get started, the Chamber notes the Rule 68(3) application which the
16 Prosecution forwarded to the Chamber and the Defence yesterday afternoon.

17 In line with the directions given by the Chamber in its email, Mr Karnavas, can I now
18 invite you to make oral submissions in response, please.

19 MR KARNAVAS: [9:36:48] Thank you, Madam President.

20 First, I would like to begin with some preliminary remarks before I go into my
21 substantive remarks. And that is, the witness was proofed over a period of 17 hours,
22 from 17 or 19 February 2022, 17 hours. The proofing session ended on Saturday at
23 1.10 p.m., Saturday afternoon. I received the Prosecution's request on a Sunday right
24 before 5 p.m.

25 Now, I don't want to scribe any bad intentions, but I find it rather unbecoming and

1 certainly disquieting that I would be receiving this request and that you would be
2 receiving this request on a Sunday afternoon, for the following reasons:
3 One, the Court, this Chamber, has been rather generous and flexible to the parties in
4 allowing them to communicate with the Chamber via email.
5 Secondly, a 10-page submission was totally unnecessary when a two or a three cogent
6 paragraph in an email would have sufficed.
7 Third, and more importantly - and, granted, my learned colleague may not be as
8 experienced - but within a matter of an hour or two, or a day, or maybe even two
9 days, one would come to the conclusion that this witness has some special needs and,
10 therefore, should communicate it to the Chamber and to the parties as quickly as
11 possible.
12 Might I also add that this witness was previously interviewed, 13 March 2021.
13 Granted, this was not an in-person interview. But even at that point in time, they
14 would have realised that perhaps this particular witness, you know, had
15 some -- some shortcomings, if you will, and therefore, they could have availed
16 themselves to the route of Rule 68(3). They chose not to, but we're going to get to
17 that.
18 But my point is this: This trial is a sprint, is very short, it's very intense. The stakes
19 may not be as high as in a -- in an Article 5 case, but for Mr Gicheru, this is a
20 momentous occasion because his liberty is at stake, his professional license is at stake.
21 And, therefore, he wants to have a fair trial.
22 I don't think it should take too much effort for the Prosecution to -- if they find
23 themselves in these situations, to simply communicate to the parties and to the
24 Chamber as quickly as possible. I'm sure your staff, who is hardworking and very
25 efficient, should not be disturbed on a Sunday afternoon. Maybe they're used to it

1 from other cases, but I don't think it's necessary. We have enough stress. We don't
2 need to create more stress.

3 So, I invite -- on this particular point, I invite the Chamber to at least give us a
4 cautionary instruction that, in the future, feel free to make a brief, cogent submission
5 by email, as was done -- and the very last time it was done, by the way, your Honour,
6 was on 31 January 2022, when they submitted a two-page, a two-page email making a
7 request. It was a -- it was a rather substantial request. And her Honour indicated,
8 "Okay. We'll shorten the time for a response. And if you will, Defence, you can
9 respond by email in kind." And it was handled in that fashion. And I very much
10 appreciate that because there's no need to write lengthy submissions.

11 And might I also inform the Prosecution that there is such a thing as cut and paste,
12 cut and paste. You know, we're in that -- you know, when I started, we didn't have
13 that. But now we have this -- the ability to produce a document by cutting and
14 pasting, and this would have taken about approximately one or two hours to make
15 this submission. It should not have taken a day and a half, even if, even if it dawned
16 on them, after the conclusion of 17 hours of meeting with the gentleman, that he had
17 some special needs.

18 So that's my opening salvo. Now let me get to the substance.

19 This is not a situation where I need to go nuclear. It's a simple request. It's a
20 reasonable request, you could say. The Rules allow it. There is one pesky issue,
21 and that is, they missed the deadline. They missed the deadline.

22 Now, the judges in this tribunal, and in other tribunals, have wide discretion, and
23 they don't want to punish either party or -- especially the witnesses or the victims or
24 the -- or the accused by holding firm to certain deadlines when it's not a
25 make-or-break situation. And this is not one of them. This is not one of them.

1 And the temptation would be, the temptation would be to say: Well, okay, no harm,
2 no foul. Why don't we just go ahead and allow the Prosecution to go forward as it
3 wishes.

4 And were this request made before the deadline, to be very honest, very frank, I
5 probably would have said, I'll leave it to the Court's discretion, as I've done on many,
6 many occasions. I'm an easy kind of guy, you know. I think it's -- I've proved that
7 I'm pretty easy to get along with.

8 Now, unfortunately, they didn't do that. So now they come, like Oliver Twist, cup in
9 hand, and they say, "Oh, please, give us this opportunity to avail ourselves to
10 Rule 68(3)." And what are the reasons? What are the reasons? And those reasons
11 can be found on paragraph 4 of their submission.

12 And I looked at them again today. And, frankly, I didn't give this much thought last
13 night because what can I do on a Sunday night? But this morning I looked at it with
14 clear eyes, and I kind of pondered over paragraph 4. And what are the excuses that
15 are -- that they're providing? And it's almost like, a dog ate my, you know,
16 homework, sort of excuse.

17 The age. Is this something that they discovered, you know, on a Sunday night, his
18 age? No.

19 His education level. Is this the first time that they discovered his educational level?
20 They spoke to him. The last time it was in March 2021, and they met with him on
21 2015. So they would have known that the gentleman had the education level that he
22 had.

23 The language requirements. Well, how on God's earth did the investigators
24 communicate with this gentleman before? Through language assistants, unless the
25 investigators spoke Swahili. And to my understanding, they did not. So, obviously,

1 that wasn't a newsflash for them.

2 Then they talk about his background. Well, I don't understand what that means, his
3 background, how that factors in. And they say that he's required slow and
4 methodical questioning and assistance to pursue documents and images.

5 Now, if they had this communication with the gentleman, with him being country X,
6 and those questioning him in The Hague would - and, mind you, it's not
7 person-to-person - those challenges would have become readily apparent to them.

8 And then they say, well, even documents in Swahili, you know, he would take a long
9 time to go through, and then there is this -- the PIL that we have to use in this case,
10 and so that complicates matters and would slow the proceedings down.

11 And then, lastly, he (Redacted). And, incidentally, I have (Redacted),
12 but you don't see me complaining. I soldier through. (Redacted)
13 (Redacted). I totally understand that. That's why you see me
14 pacing -- well, when you're not -- we're not in session.

15 But the long and short of it is, unless the gentleman is perfectly capable of following
16 the proceedings, answering questions, there's no compelling reason to grant this
17 motion. No compelling reason.

18 And why is that? They say, well, initially we had projected 4.5 hours and -- that's
19 what they initially projected. Though, in the submission -- and I have to call on my
20 colleague. I hesitate to do this. I really don't like pointing out what I consider sort
21 of sneaky -- a sneaky way of putting it. They say, paragraph 23, "The Prosecution
22 estimates that, should the application be granted, it would require one and a half
23 hours to conduct its direct examination of the witness, instead at -- instead of at least
24 4.5 hours, as originally anticipated."

25 They never said "at least". Now, maybe in the -- in the world of the Prosecution, "at

1 least" is to be assumed. In my world, they say 4.5, 4.5. They didn't say, well, give
2 us at least this amount, but we may require more.

3 Now they say -- now it's going to -- it's likely to be significantly longer. How
4 significantly longer might it be? One hour? Two hours? I don't know.

5 But what are they saying? We can save a total of three hours, three hours. And
6 that would be so expeditious, so efficient, you know, that when you put it on the
7 balancing scale, well, it warrants granting the request because, after all, it won't be
8 prejudicial to the Defence.

9 And here's my -- my problem with all of this: Now that they've set it out this way, if
10 the gentleman is going to have a hard time on direct examination, on direct
11 examination, where he's been schooled for 17 hours on how to answer questions and
12 what questions are going to be posed to him and what documents to look at, and
13 what have you, because that's the process, nothing that they're going to show him is
14 going to be a first instance, like perhaps the Defence. He's going to be asked in a
15 very friendly manner. Not that I'm going to be unfriendly with the gentleman. But
16 if he's incapable of doing direct examination as they had planned, and now they say,
17 well, let me ask just a few questions, 1.5 hours, when, frankly, it should take one
18 minute or two minutes to say: Do you recognise these documents? Do you agree
19 that we admit them? Yes. Okay. Fine. That's my direct examination. Were
20 they to do that, I might say, you know, that's a savings of time. But they want to
21 have their cake and eat it too.

22 But if the gentleman cannot follow their direct examination, how on God's earth is he
23 going to follow cross-examination? And then, am I going to be getting all sorts of
24 objections that I'm being unfair to the witness when I'm being -- when I'm pointing
25 him to certain documents and I'm demanding that an answer be given? And,

1 granted, style matters. I understand that. And hopefully you will note that it's not
2 a -- I'm not a one-speed kind of guy. I'm not going to do a New York-style
3 cross-examination on this gentleman. So I'll be soft, I'll be gentle, but I will be
4 persistent. And that's my problem.

5 I see this as a pretext, in a sense. And not -- and I'm not saying this, you know, that
6 there is bad faith. But there's -- in some ways, it is a pretext to circumvent
7 Mr Gicheru's right to a full, fair and robust, and robust confrontation,
8 cross-examination of this witness, as he's entitled to under the Statute.

9 Now, having said all of that, having said all of that, in anticipating that you are in a
10 position to most likely lean in favour towards the witness, because he's old and
11 because this is not, as I said, sort of a make-or-break situation and there is a remedy,
12 that if you are to grant the Prosecution's request, then we would submit, considering
13 that we received the request so late and considering that I would have prepared the
14 cross differently -- and mind you, I was preparing when I received this.

15 Now, you might say, "Well, you know, Mr Karnavas, you're an experienced lawyer.
16 And if you were in the state or federal court in the United States, you would get no
17 sympathy from your judges." And you would be absolutely right. The judge
18 would say, "Cry me a river. Proceed." That's how we do it there. But, again, over
19 there, we don't have these rules where they say, okay, now you can bring in all these
20 documents and consider it direct examination. So there is that.

21 So we would say, if you are going to grant this request, that you allow us to proceed
22 tomorrow with our cross-examination, especially if the gentleman can only sit for
23 certain periods of time.

24 And, also, my request would be that, if I need to go into the following day -- and I'm
25 not saying I will. I'm not saying I need it. Originally, I had projected two sessions,

1 to be - you know, full disclosure - with this gentleman. That's how I projected it. I
2 might need three. I might need four. I don't know if we need to. I'm perfectly
3 willing take, you know, periodic breaks to accommodate the gentleman. And I can
4 assure you, I will try my utmost to be as considerate and as gentle with the -- with the
5 witness.

6 But my first -- my first position would be, I think that there are no compelling reasons
7 to deviate from their decision. They chose not to avail themselves of the rule. They
8 knew in advance. And so -- but I understand that we have a gentleman with some
9 particular shortcomings.

10 So, as I said, my first reaction, my first position is reject it. We can go slower. It's
11 not that much of a savings. However, I do understand that it is not so highly
12 prejudicial to the Defence that somehow it would be a point on appeal were I to say,
13 well, gee, my client was denied his right to a fair trial because in this one instance we
14 deviated from what I would call more or less an artificial deadline, but nonetheless,
15 all deadlines are essential.

16 And those are my submissions, your Honour. And I thank you very much for
17 giving me this opportunity to be heard.

18 PRESIDING JUDGE SAMBA: [9:54:00] Thank you very much, Mr Karnavas. I take
19 note of all that you've said.

20 I'll retire for three minutes and come in again with a ruling.

21 The Prosecution, do you have anything new to say? I'll give you two minutes, please.
22 Just two minutes.

23 MS ZAGO: [9:54:24] Thank you, your Honour.

24 In the interest of time and expediency, the Prosecution rests on its written
25 submissions. No new information is necessary to bring to the attention of your

1 Honour for the purpose of this Rule 78 -- sorry, Rule 68(3) application. Thank you.

2 PRESIDING JUDGE SAMBA: [9:54:43] Thank you very much.

3 I'll then stand the Court down for three minutes and come in with a ruling.

4 THE COURT USHER: [9:54:50] All rise.

5 PRESIDING JUDGE SAMBA: [9:55:01] Yes. Just a moment, please.

6 MR AOUINI: [9:55:04] Thirty seconds, Madam President.

7 PRESIDING JUDGE SAMBA: Yes, please.

8 MR AOUINI: [09:55:05] Just to put on the record that the filing on F288, regarding

9 the assurances, would be applicable either way -- either in your decision. So that

10 would be valid whether admission is --

11 PRESIDING JUDGE SAMBA: [9:55:18] We'll get there. We'll get there. Not to

12 worry.

13 MR AOUINI: [9:55:24] Thank you, your Honour.

14 (Recess taken at 9.55 a.m.)

15 (Upon resuming in open session at 9.59 a.m.)

16 THE COURT USHER: [9:59:24] All rise.

17 Please be seated.

18 PRESIDING JUDGE SAMBA: [9:59:41] The Chamber will now rule on the urgent

19 request by the Prosecution to introduce the prior recorded statement of Witness

20 P-031 -- 341, excuse me, Witness P-0341, via Rule 68(3) of the Rules.

21 The Prosecution transmitted a courtesy copy of the request to the Chamber and the

22 Defence yesterday, and the request was formally filed this morning.

23 The Prosecution explains in its submissions that it had underestimated the amount of

24 time the questioning of this witness would take.

25 The Defence made its submission orally this morning and requested that the motion

1 be rejected or be granted extra time.

2 First, as a general comment, the Chamber does not agree with the Prosecution that the
3 reasons why it filed its request at such late point in time, less than 24 hours before the
4 start of the testimony of this witness, were outside of the Prosecution's control.

5 The Prosecution explained, it simply misjudged the time it would need to examine
6 this witness. This reason is fully in its control. This alone would be reason enough
7 to reject the request. However, the Chamber has also considered the motivation for
8 the request.

9 The Prosecution now claims that the testimony of the witness would, upon its new
10 estimation, take 9 hours. It further submits that with the introduction of P-0341's
11 prior recorded statements, the time of examination would be only one and a half
12 hours.

13 While the shortening of the examination time would be indeed considerable, the
14 Chamber considers that an authorisation to introduce the statements at this point in
15 time would not be fair to the Defence. The Defence prepared on the assumption that
16 the witness would provide all his evidence directly in court.

17 An introduction via Rule 68(3) requires an adaption and review on what questions to
18 put to the witness and how to structure the questioning of the witness by the Defence.
19 This is simply not possible at this late point in time.

20 So, for these reasons, the Chamber finds that an introduction of the evidence via
21 Rule 68(3) would be prejudicial to the Defence and inconsistent with the rights of the
22 accused, unlike claimed by the Prosecution. Accordingly, the Chamber rejects the
23 request.

24 So this concludes the oral decision of the Chamber.

25 The Prosecution -- yes, Madam Prosecutor.

1 MS ZAGO: [10:03:41] I was just standing because you addressed me. Thank you.

2 PRESIDING JUDGE SAMBA: [10:03:46] Thank you very much.

3 The Prosecution is now calling Witness P-0341 as its second witness. At the outset, I
4 wish to note for the parties, it is the Chamber's understanding that this witness will be
5 testifying in Swahili. I would, therefore, remind everyone of the importance of the
6 need to speak slowly for the interpreters, Mr Karnavas, and to observe the
7 five-second rule between questions and answers.

8 Now, before commencing, the Chamber notes briefly that protective measures are
9 confirmed to this witness by virtue of decision 276 and that the VWU recommends no
10 further protective measures.

11 So I will now discuss the issue of Rule 74 assurances. Counsel for the witness, pay
12 attention -- no, because you were on your legs before I left, so I'm addressing that
13 section now. You may sit down.

14 Will the court officer please move into private session for that.

15 (Private session at 10.05 a.m.)

16 THE COURT OFFICER: [10:05:31] We are in private session, Madam President.

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

- 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 redacted – Private session.

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 (Open session at 10.11 a.m.)

20 THE COURT OFFICER: [10:11:05] We are back in open session, Madam President.

21 PRESIDING JUDGE SAMBA: [10:11:08] Thank you very much.

22 The Chamber will now render its decision on the requested assurances in accordance
23 with Rule 74 of the Rules of Procedure and Evidence.

24 Mindful of the factors specified in Rule 74(5) of the Rules, the Chamber has decided to
25 provide assurances pursuant to Rule 74 of the Rules in order to enable the witness to

Trial Hearing
WITNESS: KEN-OTP-P-0341

(Open Session)

ICC-01/09-01/20

1 testify without fear of the consequence of self-incrimination.

2 The Chamber notes the additional request by Mr Aouini regarding protective
3 measures. The Chamber repeats that the witness has already been granted
4 protective measures which protect his identity by virtue of decision 276.

5 So this concludes the ruling of the Chamber.

6 Please bring in the witness.

7 (The witness enters the courtroom)

8 PRESIDING JUDGE SAMBA: [10:13:37] Thank you very much, Madam Court
9 Officer.

10 Mr Witness, good morning. Good morning, sir.

11 WITNESS: KEN-OTP-P-0341

12 (The witness speaks Swahili)

13 THE WITNESS: [10:13:55] (Speaks English) Good morning, Madam.

14 PRESIDING JUDGE SAMBA: [10:13:56] You're going to testify before the
15 International Criminal Court. On behalf of the Chamber, I would like to welcome
16 you to the courtroom.

17 Sorry, Mr Aouini, is there any -- do you have any problem?

18 THE COURT OFFICER: [10:15:02] Your Honour, we are following up with the
19 problem and hope to have this -- the issue sorted out shortly.

20 Swahili booth, can you hear us?

21 PRESIDING JUDGE SAMBA: [10:15:05] Thank you very much, Madam Court
22 Officer.

23 So, Mr Witness, I'll say good morning again to you. Good morning.

24 THE WITNESS: [10:15:17](Interpretation) I'm very fine. Good morning. I'm very
25 fine.

Trial Hearing
WITNESS: KEN-OTP-P-0341

(Open Session)

ICC-01/09-01/20

- 1 PRESIDING JUDGE SAMBA: [10:15:22] You are going to testify before the
2 International Criminal Court.
- 3 THE WITNESS: [10:15:31](Interpretation) Yes.
- 4 PRESIDING JUDGE SAMBA: [10:15:33] So on behalf of the Chamber, I would like to
5 welcome you to this courtroom.
- 6 THE WITNESS: [10:15:42](Interpretation) Thank you. I will testify.
- 7 PRESIDING JUDGE SAMBA: [10:15:45] Mr Witness, I will now read you the solemn
8 undertaking to tell the truth that every witness who testifies before the Court must
9 agree to.
- 10 THE WITNESS: [10:16:01](Interpretation) Yes.
- 11 PRESIDING JUDGE SAMBA: [10:16:03] I solemnly declare that I will speak the truth,
12 the whole truth and nothing but the truth.
- 13 THE WITNESS: [10:16:18](Interpretation) Yes, I --
- 14 PRESIDING JUDGE SAMBA: [10:16:21] So do you understand and agree to what I
15 have just read?
- 16 THE WITNESS: [10:16:29](Interpretation) I have clearly understood you.
- 17 PRESIDING JUDGE SAMBA: [10:16:35] Do you agree to what I have just read,
18 Mr Witness?
- 19 THE WITNESS: [10:16:49](Interpretation) Honourable Judge, I have accepted what
20 you have said by hundred per cent.
- 21 PRESIDING JUDGE SAMBA: [10:16:57] Thank you very much. So we will
22 continue.
- 23 Mr Witness, let me now explain to you the protective measures that the Chamber has
24 put in place for your testimony.
- 25 THE WITNESS: [10:17:17](Interpretation) Yes.

Trial Hearing
WITNESS: KEN-OTP-P-0341

(Open Session)

ICC-01/09-01/20

- 1 PRESIDING JUDGE SAMBA: [10:17:19] The following measures are put in place to
2 protect you.
- 3 THE WITNESS: [10:17:26](Interpretation) Yes.
- 4 PRESIDING JUDGE SAMBA: [10:17:29] Voice and face distortion has been put in
5 place for the duration of your testimony.
- 6 THE WITNESS: [10:17:43](Interpretation) Yes.
- 7 PRESIDING JUDGE SAMBA: [10:17:44] This means that no one outside the
8 courtroom can see your face or hear your real voice during your testimony.
- 9 THE WITNESS: [10:17:59](Interpretation) Yes.
- 10 PRESIDING JUDGE SAMBA: [10:18:00] There will also be the use of pseudonym.
- 11 THE WITNESS: [10:18:08](Interpretation) Yes.
- 12 PRESIDING JUDGE SAMBA: [10:18:10] In accordance with that, we will all refer to
13 you only as "Mr Witness" to make sure that the public does not know your name.
- 14 THE WITNESS: [10:18:34](Interpretation) Yes.
- 15 PRESIDING JUDGE SAMBA: [10:18:34] So when you answer questions that will not
16 give away who you are, we will do so in open session.
- 17 THE WITNESS: [10:18:50](Interpretation) Yes.
- 18 PRESIDING JUDGE SAMBA: [10:18:51] Which means that the public can hear what
19 is being said in the courtroom even though they will not see you or hear your real
20 voice.
- 21 THE WITNESS: [10:19:10](Interpretation) Yes.
- 22 PRESIDING JUDGE SAMBA: [10:19:11] When you are asked to describe anything
23 that relates specifically to you, or if you are asked to mention facts that might reveal
24 your identity, we will do this in a private session.
- 25 THE WITNESS: [10:19:37](Interpretation) Yes.

Trial Hearing
WITNESS: KEN-OTP-P-0341

(Open Session)

ICC-01/09-01/20

- 1 PRESIDING JUDGE SAMBA: [10:19:37] In private session, there is no broadcast, and
2 no one outside the courtroom can hear your voice.
- 3 THE WITNESS: [10:19:49](Interpretation) Yes.
- 4 PRESIDING JUDGE SAMBA: [10:19:51] If ever anything gets said during public
5 session which should have been said in private session, we will do our best to protect
6 this information.
- 7 THE WITNESS: [10:20:10](Interpretation) Yes.
- 8 PRESIDING JUDGE SAMBA: [10:20:13] Your testimony will be broadcast on a daily
9 basis so we can remove any such remarks from the public broadcast.
- 10 THE WITNESS: [10:20:29](Interpretation) Yes.
- 11 PRESIDING JUDGE SAMBA: [10:20:31] This means, if anything does go wrong, we
12 can try and stop the public from hearing it.
- 13 THE WITNESS: [10:20:43](Interpretation) Yes.
- 14 PRESIDING JUDGE SAMBA: [10:20:45] The parties and the legal officers of the
15 Court are monitoring this at all times, so please be assured that you are protected.
- 16 THE WITNESS: [10:21:02](Interpretation) Yes.
- 17 PRESIDING JUDGE SAMBA: [10:21:05] The Prosecution has also prepared a list so
18 that you can safely make reference to information which might identify you.
- 19 THE WITNESS: [10:21:22](Interpretation) Yes.
- 20 PRESIDING JUDGE SAMBA: [10:21:26] So there is an English and a Swahili version
21 of that list before you.
- 22 THE WITNESS: [10:21:34](Interpretation) Yes.
- 23 PRESIDING JUDGE SAMBA: [10:21:36] The Prosecution will explain this to you
24 when it begins its questioning.
- 25 THE WITNESS: [10:21:46](Interpretation) Yes.

Trial Hearing
WITNESS: KEN-OTP-P-0341

(Open Session)

ICC-01/09-01/20

- 1 PRESIDING JUDGE SAMBA: [10:21:47] Okay. Mr Witness, you have also been
2 assigned a lawyer to provide you with legal advice about possible self-incrimination.
3 THE WITNESS: [10:22:08](Interpretation) Yes.
4 PRESIDING JUDGE SAMBA: [10:22:09] The Chamber gives you the assurance that
5 your testimony will not be used against you in any subsequent proceedings before
6 this Court.
7 THE WITNESS: [10:22:27](Interpretation) Yes.
8 PRESIDING JUDGE SAMBA: [10:22:29] Now, this applies as long as you do not
9 commit any offence or misconduct when testifying, such as by giving testimony
10 which is false here.
11 THE WITNESS: [10:22:49](Interpretation) Yes.
12 PRESIDING JUDGE SAMBA: [10:22:50] If any question is asked that could lead to
13 your self-incrimination, we will hear your answer in private session and keep this
14 answer confidential.
15 THE WITNESS: [10:23:09](Interpretation) Yes.
16 PRESIDING JUDGE SAMBA: [10:23:12] So you are well assured. Do you
17 understand that, Mr Witness?
18 THE WITNESS: [10:23:18](Interpretation) I understand.
19 PRESIDING JUDGE SAMBA: [10:23:20] Very well. And, lastly, I also have a few
20 practical matters you should have in mind when giving your testimony.
21 THE WITNESS: [10:23:34](Interpretation) Yes.
22 PRESIDING JUDGE SAMBA: [10:23:36] Everything we say here in the courtroom is
23 written down and interpreted.
24 THE WITNESS: [10:23:46](Interpretation) Yes.
25 PRESIDING JUDGE SAMBA: [10:23:49] It is, therefore, important to speak clearly

Trial Hearing
WITNESS: KEN-OTP-P-0341

(Open Session)

ICC-01/09-01/20

1 and at a slow pace.

2 THE WITNESS: [10:24:03](Interpretation) Yes.

3 PRESIDING JUDGE SAMBA: [10:24:04] So please speak into your microphone and
4 only start speaking when the person asking you the question has finished.

5 THE WITNESS: [10:24:19](Interpretation) Yes.

6 PRESIDING JUDGE SAMBA: [10:24:21] To allow for the interpretation, everyone
7 has to wait a few seconds before starting to speak.

8 THE WITNESS: [10:24:34](Interpretation) Yes.

9 PRESIDING JUDGE SAMBA: [10:24:37] If during the proceedings you have
10 questions yourself, raise your hand so that we know that you wish to say something.

11 THE WITNESS: [10:24:51](Interpretation) Yes.

12 PRESIDING JUDGE SAMBA: [10:24:53] So have you understood all that,
13 Mr Witness, all that I have said?

14 THE WITNESS: [10:25:00](Interpretation) I have understood them clearly.

15 PRESIDING JUDGE SAMBA: [10:25:03] Thank you very much. So we start with
16 your testimony.

17 THE WITNESS: [10:25:10](Interpretation) Yes.

18 PRESIDING JUDGE SAMBA: [10:25:12] Madam Prosecutor, your witness.

19 MS ZAGO: [10:25:17] Thank you very much, your Honour.

20 Before we begin, let me provide some additional information for the record. During
21 the preparation session, the witness was provided warnings pursuant to Rule 66(3).

22 And the way I intend to proceed for the time being, your Honour, with your leave, is
23 to remain in public session for approximately 10 to 15 minutes in order to confirm
24 with the witness some information that is contained in the information list, which
25 should have been distributed to your Honours, the parties and the witness himself in

Trial Hearing
WITNESS: KEN-OTP-P-0341

(Open Session)

ICC-01/09-01/20

1 Swahili.

2 We have included information that the Defence intended to use. Therefore, the list
3 should be complete.

4 QUESTIONED BY MS ZAGO:

5 Q. [10:26:49] With that in mind, sir, good morning.

6 A. [10:26:54] Yes, I'm fine.

7 Q. [10:27:00] We met briefly last week during your preparation session. Do you
8 recall?

9 A. [10:27:07] Yes, I recall that.

10 Q. [10:27:12] Before I commence, I would like to ask you to listen carefully to a few
11 instructions so that we can proceed efficiently.

12 A. [10:27:28] Okay. It's fine.

13 Q. [10:27:32] I would like to ask you that if you do not understand the
14 interpretation that you're being provided, that you let the Court know and, if
15 necessary, interrupt my questioning.

16 A. [10:27:56] Fortunately, what I've read today, this morning, I have understood
17 them all. There's no problem with interpretation.

18 Q. [10:28:09] Very well. Thank you. We are in public session now, so please be
19 careful what you say and how you answer my questions.

20 A. [10:28:19] Yes.

21 Q. [10:28:22] As your Honour has mentioned, you should have in front of you a list
22 that is called "Protected Information" and has written down in red letters
23 "Confidential". Do you have it?

24 A. [10:28:42] Yes, I have the copies.

25 Q. [10:28:46] Can you go please to page 2 of this form.

1 PRESIDING JUDGE SAMBA: [10:29:01] Counsel, there are two of such forms. The
2 one in English and one in Swahili, I suppose, before the witness. Do you want to
3 confirm with the witness which one he is using?

4 MS ZAGO: [10:29:14] Certain, your Honour. Thank you. I understood that the
5 witness only had Swahili, but I will certainly confirm with you.

6 Q. [10:29:23] Sir, could you please look at the form that you have, you're perusing
7 right now, and can you confirm to the Court whether the form you're looking at is in
8 Swahili right now.

9 A. [10:29:42] Yes, I confirm the document I have in Kiswahili language.

10 Q. [10:29:48] Just to be sure that you are not further confused, do you have a
11 second form in English as well? Or you only have one in Swahili?

12 A. [10:30:03] I only have a Swahili document. I don't have an English document.

13 Q. [10:30:08] Thank you, sir.

14 If you please can go to page 2 of this document that you have. Can you see at the
15 top of the page, there is a word that says "locations".

16 A. [10:30:34] Yes, I see.

17 Q. [10:30:36] And it is followed by numbers, starting with 1, following 2, 3, all the
18 way down to number 23. Do you see that?

19 A. [10:30:51] Yes, I see it.

20 Q. [10:30:56] These are all locations that if you need to refer in your answers when
21 we are in public session, you will refer to by location number. Meaning that if you
22 want to refer to the location, which I'm not spelling now in public session, but if you
23 need to refer to the location which is listed as number 1 in this list, you will refer to as
24 "location number 1".

25 Perhaps, your Honour, with your leave, if we can move to private session to have

1 more ease to explain the witness again the use of the form so that we can make
2 concrete example (Overlapping speakers)

3 PRESIDING JUDGE SAMBA: [10:32:10] Well, we could, but these are some of the
4 issues I was thinking that you ought to have taken him through during your
5 preparation so he knows.

6 But, Madam Court Officer, can we go into private session, quickly, please.

7 (Private session at 10.32 a.m.)

8 THE COURT OFFICER: [10:32:34] We are in private session, Madam President.

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)

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Open session at 10.41 a.m.)

5 THE COURT OFFICER: [10:41:28] We're back in open session, Madam President.

6 PRESIDING JUDGE SAMBA: [10:41:30] Thank you.

7 Madam Prosecutor, your witness, please.

8 MS ZAGO: [10:41:35] Thank you, your Honour.

9 Q. [10:41:36] Sir, you have this list in front of you. Can you please go to the last
10 page of this document, page number 5.

11 A. [10:41:53] Yes, I've gone there.

12 Q. [10:41:55] Do you see that at the top of the page it says "personal information"?

13 A. [10:42:07] Yes.

14 Q. [10:42:09] Do you see that then it has -- it says "full name, ethnicity"?

15 A. [10:42:21] Yes.

16 Q. [10:42:22] All the way to "work experience".

17 A. [10:42:26] Yes.

18 Q. [10:42:29] I would like you to read -- without saying anything about what you're
19 reading, I would like you to read and confirm if the information on this page is
20 correct. Just tell me if the information is correct, yes or no.

21 A. [10:42:52] The information that I have here that concerns my name is correct and
22 is fine. There's no problem with the information in this -- in this form.

23 Q. [10:43:05] Thank you.

24 Your Honour, can you -- apologies.

25 Sir, can you confirm that, without mentioning the ethnicity, but can you confirm that

- 1 the ethnicity on this page is correct?
- 2 A. [10:43:22] Yes, it's correct.
- 3 Q. [10:43:24] Are the languages in this form correct?
- 4 A. [10:43:29] Yes, they are correct.
- 5 Q. [10:43:33] Is the personal background mentioned in this list correct?
- 6 A. [10:43:40] Yes, correct.
- 7 Q. [10:43:42] And, finally, is "work experience" correct?
- 8 A. [10:43:49] Yes.
- 9 Q. [10:43:51] Thank you, sir.
- 10 Let's -- let's start with your testimony. If you can pause for a second looking at that
- 11 list and focus on the questions. Yes? Very well.
- 12 Sir, is it correct that in December 2017 there was a presidential election in Kenya?
- 13 A. [10:44:36] Yes.
- 14 Q. [10:44:39] And is it correct that in that election, the two main political parties
- 15 were the Party of National Unity, also known as PNU, and the other party was the
- 16 Orange Democratic Movement, also known as ODM?
- 17 A. [10:45:05] Yes, it's correct.
- 18 Q. [10:45:10] Without revealing any information that is confidential, where were
- 19 you at the time of this general election in 2007?
- 20 A. [10:45:31] (Redacted)
- 21 (Redacted)
- 22 Q. [10:45:51] Thank you, sir.
- 23 Is that correct that after the announcement of the electoral results, violence erupted in
- 24 Kenya?
- 25 A. [10:46:14] Yes, I remember there were violences, and civilian unrest started after

1 the announcement of the election results.

2 MS ZAGO: [10:46:29] Your Honour, I'm afraid, based on the type of answers that
3 I am receiving, that it would be more prudent for me to ask the next set of questions
4 in private session, with your leave.

5 PRESIDING JUDGE SAMBA: [10:46:47] Madam Court Officer, can we go to private
6 session, please.

7 (Private session at 10.46 a.m.)

8 THE COURT OFFICER: [10:47:00] We're in private session, Madam President.

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)

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 (Recess taken in private session at 10.58 a.m.)
- 17 (Upon resuming in open session at 11.32 a.m.)
- 18 THE COURT USHER: [11:32:03] All rise.
- 19 Please be seated.
- 20 PRESIDING JUDGE SAMBA: [11:32:29] Good morning again.
- 21 We are going to continue the testimony in-chief of this witness, P-0341.
- 22 And, Madam Prosecutor, we are in open session. Be mindful of that.
- 23 I see we have the support of VWU staff to help just with the list, the protected
- 24 information list as to numbers and things like that.
- 25 So, Madam Prosecutor, your witness, please.

1 MS ZAGO: [11:33:06] Thank you, I'm grateful.

2 Your Honour, I will attempt to be very brief with the witness in private session. I
3 intend to show another document that might identify him and follow-up questions
4 that can do that as well. So I would be grateful if I could be allowed to go in private
5 session, please. Thank you.

6 PRESIDING JUDGE SAMBA: [11:33:33] Certainly, Madam Prosecutor.

7 Madam Court Officer, can we go briefly into private session, please.

8 (Private session at 11.33 a.m.)

9 THE COURT OFFICER: [11:33:53] We are in private session, Madam President.

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)

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

1 (Redacted)

2 (Open session at 11.58 a.m.)

3 THE COURT OFFICER: [11:58:44] We're back in open session, Madam President.

4 PRESIDING JUDGE SAMBA: [11:58:47] Thank you very much.

5 Madam Prosecutor, please.

6 MS ZAGO: [11:58:52] Thank you, your Honour.

7 Q. [11:58:59] (Microphone not activated)

8 THE INTERPRETER: [11:58:59] Microphone, please, Counsel.

9 MS ZAGO: [11:59:03]

10 Q. [11:59:05] We are back in public session, Witness. Do you understand?

11 A. [11:59:14] Yes.

12 Q. [11:59:16] Yes. So be careful in your answers, all right?

13 A. [11:59:24] Yes.

14 Q. [11:59:25] Thank you. Could you please tell the Court, sir, who Mr Gicheru is,
15 if you know it.

16 A. [11:59:45] Your Honour, Mr Gicheru is a lawyer in Eldoret and Nairobi.

17 Q. [11:59:57] And do you know him personally?

18 A. [12:00:06] Yes, I met him one day, but before that, I didn't know him and I could
19 not hear anything about him because he's not one of those very well-known lawyers
20 and I didn't know him very well.

21 Q. [12:00:25] Thank you, sir.

22 Madam President, I fear we'll have to go in private session now. Thank you.

23 PRESIDING JUDGE SAMBA: [12:00:36] Can we go back to private session, please.

24 (Private session at 12.00 p.m.)

25 THE COURT OFFICER: [12:00:46] We're in private session, Madam President.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 (Recess taken at 12:59 p.m.)
- 20 (Upon resuming in open session at 2.32 p.m.)
- 21 THE COURT USHER: [14:32:03] All rise.
- 22 Please be seated.
- 23 PRESIDING JUDGE SAMBA: [14:32:28] Good afternoon again.
- 24 Before we continue, Madam Prosecutor, I would like to seek some clarifications
- 25 regarding the last point the witness mentioned before we went for a lunch break.

1 I'm looking at the real-time transcript, there seems to have been some issue or
2 confusion in the interpretation regarding the sum of money mentioned by the witness.

3 And I'm looking at page 74 of the transcript - do you have it before you - lines 12
4 through 25, and page 75, lines 1 through 7.

5 So could you please clarify or seek clarification from the witness on the sum of money
6 he mentioned and whether or not he did receive the money.

7 MS ZAGO: [14:34:03] Thank you, your Honour. Indeed I intended to clarify this
8 portion. I was hesitant to reply because the unedited transcripts, the number of
9 pages that I have have changed, so I was trying to locate the precise passages your
10 Honour was referring to. But that was intended to be clarified. Thank you,
11 your Honour.

12 PRESIDING JUDGE SAMBA: [14:34:31] So thank you very much. Carry on, please,
13 if you can seek the clarification of the witness.

14 MS ZAGO: [14:34:39] Thank you. Can I seek clarification whether we're in private
15 or public?

16 PRESIDING JUDGE SAMBA: [14:34:47] For now we are in public session, please.

17 MS ZAGO: [14:34:53]

18 Q. [14:34:55] Sir, good afternoon. We're back in public session, and before we had
19 the break, you mentioned some money that was given to you and we need to clarify
20 exactly the amount.

21 PRESIDING JUDGE SAMBA: [14:35:19] Did he say money that was given to him?
22 I think the money that was given to him was clear. The other one that the interpreter
23 seemed to have some problems with was some bigger amount of money.

24 MS ZAGO: [14:35:37] Yes, your Honour. I'm reading from the transcript here and
25 I can quote the witness's answer so that we understand what we're seeking a

1 clarification on.

2 I'm quoting: "I think after -- it was after receiving something from Ruto, because that
3 day when I went there, I was given" and on my transcript I have 500,000 and then
4 there is an interruption by the interpreter.

5 Perhaps we can simply put the question again to the witness.

6 PRESIDING JUDGE SAMBA: [14:36:24] You may do that. It's your witness. Be
7 mindful that we're in open session.

8 MS ZAGO: [14:36:31] Yes, your Honour. Thank you.

9 Q. [14:36:35] Sir, before we had a break this morning, you told us that at that
10 meeting that we discussed that you attended, you were given a certain amount of
11 money. Can you please confirm the amount for us.

12 A. [14:37:15] Before I was given that money, we had discussions, and in fact the
13 discussion was about what type of the support. We agreed on (Redacted)
14 (Redacted). But for
15 the first day I was given 500,000 Tanzanian -- Kenyan shillings, 500,000 Kenyan
16 shillings.

17 Q. [14:37:55] Thank you. When you were given that money, were you told why
18 that money was being given to you?

19 A. [14:38:12] That money was given after I agreed that I will withdraw myself as
20 the ICC witness.

21 Q. [14:38:30] And what did you do with that money?

22 A. [14:38:41] I went -- I deposited the same day, I deposited the money into my
23 bank account. 300,000 I deposited it into my account. But the remaining amount, I
24 just took it back home for my spending.

25 Your Honour, before I got the money, we had signed a contract. The contract was

1 prepared somewhere else, by -- it was prepared by a different advocate, and I was
2 told to sign that contract confirming that I'm withdrawing myself as the ICC witness.
3 So I had to sign that agreement first. That contract was prepared separately. I
4 didn't participate in the preparation of the contract, but I was only asked to sign the
5 contract or the agreement.

6 Q. [14:39:55] Thank you, sir.

7 I would like us to understand you clearly, and I apologise if I repeat the question, but
8 it is important that we understand the chronology accurately.

9 At the meeting that we discussed earlier this morning, and I can quote from the
10 transcript in a moment, but to gain time, you mention that person number 39 on your
11 list gave you 10,000 Kenyan shillings.

12 A. [14:41:01] Yes, for the first time when I entered the office, that person number 30
13 is the one who gave me 10,000 for lunch and transport. But other issues were
14 directed ...

15 THE INTERPRETER: [14:41:28] He's looking for the names.

16 THE WITNESS: [14:41:59](Interpretation) After I received 10,000 Kenyan shillings,
17 he pointed a finger to number 23, name number 23, that I should explain everything
18 to him because he's the focal person, he is the central person for -- I don't see the
19 person in the list. I'm looking at the person (Overlapping speakers)

20 MS ZAGO: [14:43:01] Madam President, if -- I ask for permission to go into private
21 session to facilitate the eliciting of the evidence on this point. Thank you.

22 PRESIDING JUDGE SAMBA: [14:43:12] For the name.

23 Madam Court Officer, can we go into private session briefly, please.

24 (Private session at 2.43 p.m.)

25 THE COURT OFFICER: [14:43:29] We are in private session, Madam President.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

1 (Redacted)

2 (Redacted)

3 (Open session at 2.51 p.m.)

4 THE COURT OFFICER: [14:52:00] We're back in open session, Madam President.

5 PRESIDING JUDGE SAMBA: [14:52:11] Thank you very much.

6 Carry on, Madam Prosecutor.

7 MS ZAGO: [14:52:15] Thank you, your Honour.

8 Q. [14:52:17] Sir, we are back in public session. I ask you to have this list in front
9 of you so that we can use it. And I wanted to ask you a clarification about what you
10 just told the Court about the -- you asking for a certain amount of money to the
11 individuals you were meeting on the first meeting that you had with Mr Gicheru.

12 A. [14:53:07] Please repeat the question.

13 Q. [14:53:10] You mentioned -- you just told us that you requested five million
14 shillings, and what we wanted to understand clearly is whether you asked for that
15 amount of money at that meeting or at any other time?

16 A. [14:53:41] During that meeting, it was just for introduction and that's -- and
17 that's why they began with 500,000 and -- but the issues that we were discussing, it
18 was -- first of all, it's about knowing each other. I started with the higher amount
19 and they started with 500,000. So it was about negotiations.

20 Q. [14:54:11] And this negotiation, did it happen at the meeting, the first meeting
21 that you had with Mr Gicheru and other individuals?

22 A. [14:54:24] We were only two, me and Mr Gicheru, and that was another day, not
23 the first meeting.

24 Q. [14:54:32] Thank you for the clarification.

25 Now, let me ask you the following: You told us before that Gicheru at that first

1 meeting you had told you to come back three days later to (Redacted).

2 A. [14:54:55] Yes. However, I can't recall very well whether it was the same day
3 because there were some times I could go there, he could give me another day to
4 come back. And it reached a point we now had to sign an agreement and I gave him
5 my identity card and he went to another advocate, he prepared the contract.

6 Q. [14:55:32] So I understand from what you're telling us that you have met
7 Mr Gicheru on several occasions?

8 A. [14:55:44] Yes, it's true.

9 Q. [14:55:47] And apart from going to (Redacted), is there any other way you could
10 reach out or speak to or meet Mr Gicheru?

11 A. [14:56:07] After going to (Redacted) several times, he told me that instead of
12 coming to (Redacted) frequently, just call me through the phone. So I gave him my
13 numbers and he -- I gave him my phone and he saved his number with the name of
14 Paulo. So we communicated -- I communicated with him several times through the
15 phones. So most of the time our communications were through the phones.

16 Q. [14:56:38] Sir, I know that a long time has passed, but do you remember what
17 type of phone was the one you used?

18 A. [14:56:51] That phone is a Nokia brand. It's a small -- it's not a smart phone,
19 but a small phone. I'm not using smart phone for internet, I'm using this small
20 phone with a Nokia brand.

21 Q. [14:57:09] Do you still have that phone with you?

22 A. [14:57:17] I submitted the phone to the ICC Prosecutors or investigators.

23 Q. [14:57:24] Thank you, sir.

24 Let me show you a document. And allow me a second to open my binder.

25 The document I would like to show the witness is at tab 14 of everyone's binder.

- 1 And the ERN number is KEN-OTP-0150-0300. I would like the witness to take a
2 moment and go through the entirety of the document, which should be two pages.
3 Are you there, sir?
- 4 A. [14:58:49] I have seen it.
- 5 PRESIDING JUDGE SAMBA: [14:58:54] Yes, Counsel.
- 6 MR AOUINI: [14:58:56] Sorry, your Honour. Is this document being displayed in
7 public?
- 8 THE COURT OFFICER: [14:59:05] Your Honour, the document is not being
9 displayed to the public.
- 10 MR AOUINI: [14:59:07] Thank you, your Honour. Sorry.
- 11 PRESIDING JUDGE SAMBA: [14:59:11] Carry on, Madam Prosecutor. Your mic is
12 off, please.
- 13 MS ZAGO: [14:59:17]
- 14 Q. [14:59:19] Sir, you had a chance to look at this document, correct?
- 15 A. [14:59:23] Yes, I have gone through it.
- 16 Q. [14:59:27] Do you recognise it?
- 17 A. [14:59:31] Yes, I recognise it.
- 18 Q. [14:59:33] Can you tell the Court what that is?
- 19 A. [14:59:42] What I see here is a phone. There are two phones, there's one is
20 Nokia and the other one is Samsung.
- 21 Q. [14:59:59] Is this Nokia phone similar to the one you referred to before?
- 22 A. [15:00:10] Yes, they -- it looks similar and I used it so often for the
23 communications between me and Mr Gicheru.
- 24 Q. [15:00:25] Thank you, sir.
- 25 Did you use any other device to communicate with Mr Gicheru at that time?

1 A. [15:00:41] I don't recall, but it might be possible. There were times during
2 the -- I was -- I was alerted that people are tracking your communications with
3 the -- with the investigators. So sometimes it might happen that I could have
4 abandoned the phone and changed to another phone, but I don't recall perfectly what
5 happened.

6 Q. [15:01:12] And, sir, if I can direct your attention to the document, this document
7 that I just referred to, can you look at it, please. The second page. Do you see that
8 at the bottom of the page there is a signature?

9 A. [15:01:38] Yes, yes.

10 Q. [15:01:41] Whose signature is that?

11 A. [15:01:44] It's my signature.

12 Q. [15:01:46] Thank you, sir.

13 Now, going back to the negotiations that you mentioned before, could you help us
14 understand how long after the first meeting you had with Mr Gicheru, when -- how
15 long after you had the first meeting with Mr Gicheru did you have the negotiations
16 that you referred to before? It was -- was it a week? Was it a month? Was it a
17 year? Can you give us any indication?

18 A. [15:02:37] I can't remember, but it can't -- no, it cannot be one month or a week.
19 Maybe, I think it was the statement that was taken to Mr William Ruto so that he can
20 accept, and I think that maybe he accepted, but other things I have forgotten.

21 PRESIDING JUDGE SAMBA: [15:03:05] Just a moment, Madam Prosecutor.

22 Can the lady from VWU, can you use your mask, please, your face mask. Thank you
23 very much.

24 Carry on.

25 MS ZAGO: [15:03:27]

1 Q. [15:03:29] Yes, sir. About this statement that you just referred to, can you tell
2 us what that statement is? Can you explain to us what you mean by "statement" that
3 was taken to Mr William Ruto.

4 A. [15:03:50] According to me, I told them that I wanted at least five million, but
5 I was told that he said two million and he accepted two million and other things like a
6 car, a farm (Redacted). And I was told that he had accepted all
7 those things. This is what I was told by Mr Gicheru.

8 Q. [15:04:24] So let's understand well your answer. You were told by Mr Gicheru
9 that someone had accepted all the things that you had requested. Who is that
10 person?

11 A. [15:04:54] The one who accepted two million and all the other things, it is
12 Honourable William Ruto who accepted to give me that.

13 Q. [15:05:08] Thank you, sir.
14 And earlier in your evidence today, this afternoon, you mentioned that you signed a
15 contract, and I'd like you to explain to the Court what you mean by "contract" in this
16 context.

17 A. [15:05:34] You are talking about which document? The agreement that we had,
18 it was an agreement that I withdraw as a witness of ICC. That was the agreement.

19 Q. [15:05:55] Yes, tell us about this agreement. What was this agreement? In
20 what way was this agreement finalised?

21 A. [15:06:11] I was not even told that there was that contract. It's only Mr Gicheru
22 wanted me to give him my identity card. I gave him and then he said, "You come
23 and wait for me at the reception." And then he left.

24 After one hour or half an hour, he came back to the office. He was together with
25 another lawyer, and he called me, we -- I went to (Redacted) and he read, (Redacted)

- 1 (Redacted). You know, (Redacted). He just read
2 and said sign. I signed and he gave me back my identity card and then he said that
3 "With this you are out of ICC." But I was not given a copy.
- 4 Q. [15:07:04] Sir, mindful that we are in public session, so before answering, please
5 think carefully and just say if you remember the name of this other lawyer.
- 6 A. [15:07:22] Yes, I can remember. Even his office, I know where it is.
- 7 Q. [15:07:31] Can you tell us whether the name that you recall is among the names
8 of persons in the list that was given to you, the protected list of persons that was
9 given to you.
- 10 A. [15:08:01] I'm looking for that name, but I can't see it.
11 Yes, I can see it. Number 32.
- 12 Q. [15:08:29] Thank you, sir.
- 13 A. [15:08:36] Welcome.
- 14 Q. [15:08:38] To have clarity about this agreement or contract that you signed,
15 where -- where was it, where did you sign this agreement?
- 16 A. [15:09:00] These people, they went to prepare that agreement in (Redacted).
17 Mr Gicheru went out and he went to prepare that agreement, saying that I have
18 removed myself out of that, and then they came back to (Redacted), they
19 read and asked me to sign. But this agreement was written in English.
- 20 Q. [15:09:30] Did you sign it?
- 21 A. [15:09:33] Yes, I signed.
- 22 Q. [15:09:40] Who asked you specifically to sign this document?
- 23 A. [15:10:00] Both of them, number 32 and Mr Gicheru.
- 24 Q. [15:10:08] After signing this document, were you asked to sign any other
25 document afterwards?

1 A. [15:10:23] Yes. At one time these were -- was after months. At that time I was
2 still attending those meetings of the victims. Then they were concerned, they said
3 you write another statement. That was after some months.

4 Q. [15:10:53] Tell us about this other statement. When do you remember -- recall
5 approximately how long after signing the first agreement?

6 A. [15:11:13] Well, it took a long time. There is another statement, the third one
7 they wanted me to write, but I didn't do that.

8 Q. [15:11:25] Let's focus on the second statement that you were asked. Where was
9 it -- mindful that we're still in public session, where did you sign that other
10 statement?

11 A. [15:11:47] I think it was in (Redacted). You know, I can't
12 remember everything because it has been a long time.

13 Q. [15:11:59] Do you remember what that statement said?

14 A. [15:12:08] If I remember, I wrote with a pen saying that I have withdrawn from
15 ICC on that -- and the date which was there. That's all. I wrote with my own hand
16 and it was in Kiswahili.

17 Q. [15:12:26] And who asked you to sign that document, that second document?

18 A. [15:12:38] Well, at that time I travelled to go to the place called number 1. But
19 when I came back home, I was pressed a lot by them telling me to write down that
20 statement. And the person who was doing that a lot, he is here on number -- yes,
21 number 20, this is the person who said that I had to do that. But you know, this
22 person now he just involved himself in this issue. He's here, number 20.

23 Q. [15:13:59] Can you tell us what were the pressure that were brought upon you at
24 that point, what nature, what kind of pressure?

25 A. [15:14:17] This person number 20 had a lot -- he was very angry. He even

1 abused me.

2 Q. [15:14:30] Angry about what?

3 A. [15:14:36] Because of my trip that I travelled.

4 Q. [15:14:47] And why did you travel to location number 1?

5 A. [15:14:57] I travelled because I was invited by the investigators of ICC so that we
6 can meet there. But despite all that, we didn't meet. I was called on phone by
7 number 13 asking me why, why don't -- why did you go there? And you know that
8 there is danger. Therefore, I had to put an end to that trip and come back home.

9 Q. [15:15:36] Do you know how person number 20 knew that you were going to
10 location number 1?

11 PRESIDING JUDGE SAMBA: [15:15:44] Did he say person number 20 or 13? Can
12 he clarify?

13 MS ZAGO: [15:15:53] He mentioned both. Your Honour, he mentioned both and
14 (Overlapping speakers)

15 THE WITNESS: [15:15:58](Interpretation) The number 20 is the one who insisted
16 that I should write another statement. And number 13 is the one who called me on
17 phone saying that "You, you are together with those people" and then he requested
18 me to come back home. And I could not meet with the investigators.

19 MR KARNAVAS: [15:16:28] Excuse me, can we have a time, a time period for all of
20 this? Because we're not certain when this is all occurring, so if she could possibly
21 ask the witness about what time.

22 PRESIDING JUDGE SAMBA: [15:16:44] You mean about when he made the trip to
23 number 1?

24 MR KARNAVAS: [15:16:49] Yes, yes, your Honour. I mean, it's unclear. We're
25 just -- we're having places and locations, but we don't have time periods.

1 PRESIDING JUDGE SAMBA: [15:16:57] Madam Prosecutor.

2 MS ZAGO: [15:16:57] Yes, thank you. I was going to do that if I'm allowed to finish
3 that part of the examination.

4 Q. [15:17:08] Sir, you told us just a few minutes ago that person number 20 was
5 very angry with you. And can you tell us why he was angry with you?

6 A. [15:17:38] He was angry with me because I travelled. Then it means that I was
7 still cooperating with ICC and yet I told them that I had withdrawn.

8 PRESIDING JUDGE SAMBA: [15:17:53] Madam Prosecutor, I have certain
9 information from the Registry, so I'm going to ask the court officer for us to go into
10 private session, please.

11 (Private session at 3.18 p.m.)

12 THE COURT OFFICER: [15:18:19] We are in private session, your Honour.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 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 redacted – Private session.

- 1 (Open session at 3.56 p.m.)
- 2 THE COURT OFFICER: [15:56:50] We are back in open session, Madam President.
- 3 PRESIDING JUDGE SAMBA: [15:56:57] Thank you very much, Madam Court
- 4 Officer.
- 5 And Mr Witness -- I'm sorry, he's having a drink of water.
- 6 All right, Mr Witness, the day is far gone, it's close to 4 o'clock and we are supposed
- 7 to stop at 4 o'clock for today. So what we are going to do, the Prosecutor has not
- 8 finished asking you questions in-chief, but we are going to go away and come back
- 9 tomorrow and continue your evidence-in-chief. Is that okay?
- 10 THE WITNESS: [15:57:50](Interpretation) Yes, I'm okay.
- 11 PRESIDING JUDGE SAMBA: [15:57:53] Good. So when you leave here today,
- 12 don't discuss your evidence with any other person. Do you understand that?
- 13 THE WITNESS: [15:58:05](Interpretation) Yes, I understand.
- 14 PRESIDING JUDGE SAMBA: [15:58:07] Good. So I wish to thank the parties and I
- 15 wish to thank particularly the staff from VWU for helping us out today.
- 16 That said, I'll adjourn this matter to tomorrow when we'll come in again to start at
- 17 9.30 in the morning.
- 18 Thank you very much.
- 19 THE COURT USHER: [15:58:31] All rise.
- 20 (The hearing ends in open session at 3.58 p.m.)