

Trial Hearing
WITNESS: KEN-OTP-P-0341

(Open Session)

ICC-01/09-01/20

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 Tuesday, 22 February 2022
8 (The hearing starts in open session at 9.32 a.m.)
9 THE COURT USHER: [9:32:59] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE SAMBA: [9:33:28] Good morning, everyone.
13 We'll continue with the testimony in chief of the witness. But before we do that, can
14 I ask the court officer to kindly mention the matter, please.
15 THE COURT OFFICER: [9:33:48] Good morning, Madam President.
16 This is the situation in the Republic of Kenya, in the case of The Prosecutor versus
17 Paul Gicheru, case reference ICC-01/09-01/20.
18 And for the record, we are in open session.
19 PRESIDING JUDGE SAMBA: [9:34:05] Thank you very much.
20 Can I have the parties introduce themselves, please.
21 MS ZAGO: [9:34:10] Good morning, your Honour. Good morning, everyone.
22 Today appearing for the Prosecution is Marion Rabanit, Inbal Djalovski and
23 Laura Warrlich, all trial lawyers. And myself Alice Zago, trial lawyer as well.
24 Thank you, your Honour.
25 PRESIDING JUDGE SAMBA: [9:34:27] Thank you very much.

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- 1 Mr Karnavas, please.
- 2 MR KARNAVAS: [9:34:30] Good morning, Madam President, and good morning to
3 everyone in and around the courtroom. Same composition as yesterday morning.
4 Thank you.
- 5 PRESIDING JUDGE SAMBA: [9:34:40] Thank you very much, Mr Karnavas.
6 Thank you very much, Mr Karnavas.
7 Good morning, Mr Gicheru.
8 Good morning, Mr Witness.
- 9 WITNESS: KEN-OTP-P-0341 (On former oath)
10 (The witness speaks Swahili)
- 11 THE WITNESS: [9:34:53] *Jambo*.
- 12 PRESIDING JUDGE SAMBA: [9:34:56] We are going to continue with your
13 testimony in chief, which means that the Prosecutor will continue asking you
14 questions.
15 Do you understand me?
- 16 THE WITNESS: [9:35:13] (No interpretation)
- 17 PRESIDING JUDGE SAMBA: [9:35:15] So I want you to be mindful that you are still
18 on oath. That is to say the truth to the Court, the whole truth and nothing but
19 the truth. Do you understand?
- 20 THE WITNESS: [9:35:36] (No interpretation)
- 21 PRESIDING JUDGE SAMBA: [9:35:49] I cannot get the English translation.
- 22 THE COURT OFFICER: Could the Swahili booth please check the channel.
- 23 THE INTERPRETER: [9:35:53] "Yes, I do understand."
- 24 PRESIDING JUDGE SAMBA: [9:35:56] I now have it. I now have it.
25 I want to assure you of your protection again under Rule 74 that I assured you of

- 1 yesterday when you first entered the courtroom. Do you understand?
- 2 THE WITNESS: [9:36:15](Interpretation) Yes, I do understand very well,
3 your Honour.
- 4 PRESIDING JUDGE SAMBA: [9:36:19] So feel free and just give your testimony,
5 calm down, give your testimony, say the truth to the Court what you know happened.
6 Okay?
- 7 THE WITNESS: (Interpretation) Yes, I do.
- 8 PRESIDING JUDGE SAMBA: [9:36:40] Thank you very much.
9 Madam Prosecutor, your witness, please.
- 10 MS ZAGO: [9:36:43] Thank you, Madam President.
- 11 QUESTIONED BY MS ZAGO: (Continuing)
- 12 Q. [09:36:45] Good morning, Witness.
- 13 PRESIDING JUDGE SAMBA: [9:36:49] Maybe before you go on, Ms Zago --
- 14 THE WITNESS: [09:36:49] Good morning.
- 15 PRESIDING JUDGE SAMBA: [09:36:49] I'm sorry. Before you go on, I know you
16 did ask yesterday for some time this morning. Do you have an idea of how long
17 you're going to be in chief with this witness, please.
- 18 MS ZAGO: [9:36:59] I will be needing the entire session, the first session of
19 the morning.
- 20 PRESIDING JUDGE SAMBA: [9:37:09] That's fair. Thank you. Carry on, please.
- 21 MS ZAGO: [9:37:12] Thank you, thank you.
- 22 Q. [9:37:17] Good morning, sir, again.
- 23 A. [9:37:21] Good morning.
- 24 Q. [9:37:21] We are going to start your testimony again this morning and I would
25 like to seek the authorisation of the Chamber because the next question is engaging

1 Rule 74, potentially, and I see that our Rule 74 counsel is also present in -- in
2 the courtroom today. And I would be grateful if I could be given 7 to 10 minutes to
3 address two issues that, one, engages Rule 74, and the other may reveal the identity of
4 the witness.

5 PRESIDING JUDGE SAMBA: [9:38:02] We will do that.

6 Mr Aouini, you didn't introduce yourself, but I take note of you in court.

7 Thanks, Ms Zago.

8 Madam Court Officer, can we kindly go into private session a little bit.

9 (Private session at 9.38 a.m.)

10 THE COURT OFFICER: [9:38:27] We're in private session, Madam President.

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

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- 19 (Open session at 9.56 a.m.)
- 20 THE COURT OFFICER: [9:56:39] We are back in open session, Madam President.
- 21 PRESIDING JUDGE SAMBA: [9:56:42] Thank you very much.
- 22 Carry on, Madam Prosecutor.
- 23 MS ZAGO: [9:56:45] Thank you.
- 24 Q. [9:56:46] Sir, we are in public session and I would like to confirm with you
- 25 if -- you can put the binder away. Thank you. And you can now use the first

1 document, the protected information list, the one with the red letters. Yes, I see that
2 you've been shown that document. We are in public session now, so I will be
3 referring in my questions to places and locations on this sheet.

4 Do you remember that we used it yesterday?

5 A. [9:57:30] Yes, I do remember.

6 Q. [9:57:33] And I will ask you kindly to do the same. If you need to refer to any
7 place or any individual in your answers that are listed here, please take a moment
8 and look at this list. Yes?

9 A. [9:58:05] That's right, I've seen.

10 Q. [9:58:08] Thank you, sir.

11 Yesterday you told us that you met person number 19 at the location number 5.

12 For everyone's benefit, page 103, lines 12 to 14 of yesterday's transcript, T-53.

13 A. [9:58:47] Yes, we met with him a number of times.

14 Q. [9:58:52] Yes. I wanted to speak about the meeting that you had with him at
15 location number 5. And during that meeting you told us yesterday that P-19 -- sorry,
16 person 19 gave you money.

17 A. [9:59:20] He used to give me money many times.

18 Q. [9:59:26] Yes, we are talking about the meeting yesterday, that you told us about
19 yesterday at location number 5. Do you see location number 5 on your list?

20 A. [9:59:45] Yes, I do. I remember number 5.

21 Q. [9:59:50] Yesterday you told us -- I apologise to repeat the question, but I just
22 wanted to be sure that we understand each other. So yesterday you told us that you
23 met person 19. Do you see who person 19 is on the list?

24 A. [10:00:10] Yes, I do. I can see him.

25 Q. [10:00:12] You told that you -- you told us that you met him at location

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1 number 5.

2 A. [10:00:25] Yes.

3 Q. [10:00:25] And that person 19 gave you money at that location.

4 What I want to ask you is to clarify who person 19 came with, because you told us
5 that he came with someone else.

6 A. [10:01:06] He came for the first time -- he came for the first time, he was with
7 Mr Gicheru.

8 Q. [10:01:37] Do you remember how -- how much money you received. You told
9 us that you received money on that occasion. How much was it?

10 A. [10:01:52] Whenever we met in that (Redacted), it used to be 100,000. 100,000.

11 Q. [10:02:11] Did Mr Gicheru speak to you at that meeting?

12 A. [10:02:21] Yes, he used to speak, but not a lot. The person who used to speak
13 a lot is this one, number 19. He is the one who used to ask questions if he wanted to
14 do some investigations.

15 Q. [10:02:39] At this meeting at this location number 5, did person number 19 told
16 you anything, during this meeting in particular?

17 A. [10:02:53] He said many things. He tried to ask about several issues concerning
18 other people and concerning the victims' meetings for ICC in Eldoret hotels and in
19 other places.

20 Q. [10:03:15] Using your list of persons that you have here on page 3 of
21 the confidential list, did (Redacted) mention anyone in particular --

22 PRESIDING JUDGE SAMBA: [10:03:34] Counsel, you're referring to a list. Why
23 not the numbers? Why name names? We're in public session.

24 MS ZAGO: [10:03:46] Excuse me.

25 (Counsel confer)

1 MS ZAGO: [10:03:56] I apologise. I will request a redaction. Thank you. And
2 direction to the public gallery, if there is anyone.

3 Q. [10:04:15] Sir, it seems I am the one making the mistakes here. Don't worry
4 about it.

5 So let me ask you the question again. You just mentioned that person number 19 at
6 this meeting tried to ask you about several issues concerning other people and
7 concerning the victims' meetings for ICC.

8 So I would like to ask you, do you recall if person 19 spoke to you about particular
9 individuals, asked you about particular individuals. And, if necessary, please look
10 at the list that you have in front of you. And if you need to name anyone who is on
11 the list, please refer to that person by the number. Thank you.

12 A. [10:05:44] He asked me several times about number 9, and other people whose
13 names I don't see them here.

14 Q. [10:06:06] That is okay. We can --

15 A. [10:06:12] Number 38 was also mentioned and he asked me if that person can be
16 a witness. I told him I don't know if he can be a witness.

17 He also asked about -- about number 43, whether he was meeting with white people.

18 But he also asked about the parents of number 37, whether I know them or not.

19 Together with the other persons, I think these are the ones I can recall being asked
20 about.

21 Q. [10:07:10] Thank you, sir. I will ask you more questions about these
22 individuals once we return to private session with the permission of the Court. But
23 for now, I would like to ask you did you know why person number 19 was asking
24 you about all these individuals?

25 A. [10:07:40] He wanted these people to withdraw themselves from ICC's

1 witness -- from being ICC witnesses.

2 Q. [10:07:51] And why was he asking you about these individuals?

3 A. [10:08:01] You know, these people, I was with them. We shared the same
4 political ideology, so this -- he thought I might have an influential person who can
5 convince them to withdraw themselves from being ICC witnesses. I think that's
6 the reason he expected from me.

7 There is a -- I have recalled another name, and that is number 22. And this one, they
8 looked at this person in different means and they got him, although he was in Europe
9 by then. But they managed to get him.

10 Q. [10:08:56] Who managed to get him? Please use the list, we are in public
11 session.

12 A. [10:09:07] He didn't mention the name of the person who managed to get him,
13 but he generally said, "We have managed to get him."

14 Honourable Judge, I wanted to add something here, that most of the time this number
15 19 was using us -- he is -- he was using the -- the term "us", not "I", so he was always
16 referring to a group of persons, not he himself.

17 Q. [10:09:52] And who was part of this group of persons in your understanding?

18 A. [10:10:06] Please can you rephrase your question.

19 Q. [10:10:08] Yes. You explained to us that when person 19 was speaking to you,
20 he was always referring to "us" and not himself. So I want to understand who are
21 these group of people, Mr -- person 19 was referring to in your understanding?

22 A. [10:10:40] Based on my understanding and based on my speculation, I think this
23 person was a close person to a big person in the country, so I think he was part of
24 the connection of the big person in the country so that he could create a group of
25 persons to work on his behalf.

1 Q. [10:11:09] All right. I will ask you to clarify the name of the big person, if you
2 know, once we go into private session.

3 Let me move on to the next question, then. After this -- I'll rephrase. Did you know
4 all the people who were mentioned to you during this meeting? Did you know any
5 of them?

6 A. [10:11:47] For --

7 THE INTERPRETER: [10:11:50] Sorry, he mentions the names (Redacted) I don't
8 know if --

9 THE WITNESS: [10:11:58](Interpretation) So this person number 22, I know him
10 very well. And the other person -- wait a moment, I don't see -- yes, number 37, I
11 know him very well. But I don't know his home background. He was living in
12 another county so I don't have any background about his family.

13 MS ZAGO: [10:12:41]

14 Q. [10:12:42] That is okay, sir. Thank you.

15 At this meeting did person 19 tell you anything else, that you recall?

16 A. [10:12:57] I can't recall some of the issues he discussed with me because there
17 were several issues. During that -- during the meeting -- during that meeting he was
18 accompanied by Mr Gicheru was the first. But there were several other meetings
19 which he himself came to -- to talk to us.

20 Q. [10:13:18] And how do you -- did you feel during that meeting, during that
21 meeting or after the meeting, how did you feel about it?

22 A. [10:13:33] I felt fearful, I felt threatened, because I had already received
23 information that he was (Redacted) so I was a bit fearful.

24 Q. [10:13:46] Fearful or -- of what, exactly?

25 A. [10:13:52] I was -- I was fearful of being killed. I could lose my life.

1 Q. [10:14:08] What did P -- person 19 tell you about -- about this to create this fear
2 in you?

3 A. [10:14:26] Based on the nature of the questions he asked me and as he was
4 directing me to work -- or to participate in difficult tasks and he was insisting about
5 working on that assignment. That's why I was fearful, because many things,
6 clandestine things were happening in Kenya, so that's why I was -- I felt threatened.
7 Honourable Judge, in other meetings I can recall -- I remember he -- he once
8 threatened us that "I will -- I will kill you once you reveal everything that we are
9 discussing." And so that's why I was fearful.

10 PRESIDING JUDGE SAMBA: [10:15:16] Yes, Counsel.

11 MR AOUINI: [10:15:17] Sorry to interrupt, Madam President. I think we are
12 moving into a section where it reveals the identity of -- of the witness from the
13 persons mentioned and the substance of the interactions, so I'd kindly request that we
14 deal with these in private session. Thank you.

15 PRESIDING JUDGE SAMBA: [10:15:43] Mr Karnavas.

16 MR KARNAVAS: [10:15:44] I leave it to your wise discretion.

17 PRESIDING JUDGE SAMBA: [10:15:49] Madam Prosecutor.

18 MS ZAGO: [10:15:52] I do not see the -- the -- the area of this questioning engaging
19 Rule 74, but I'm gladly going into private session if the identity of the witness is
20 possibly potentially compromised.

21 PRESIDING JUDGE SAMBA: [10:16:14] Counsel, my understanding is that, you
22 know, this was a meeting and there were other, a lot of other people, maybe. It was
23 not just the witness and one person. My concern is that, you know, you people are
24 naming names. You know, a few minutes ago he mentioned a name which sounds
25 like the second name in person number 9. You know, I don't know whether you

1 have asked for a redaction of that, but these kind of, you know, mistakes is what I'm
2 really, really concerned about.

3 MS ZAGO: [10:16:54] Yes, your Honour, redactions were requested and I
4 understand that they were granted. However, in light of yesterday's experience that
5 we exhausted the -- the number of redactions available in the period of time, it would
6 be wiser, as suggested, to move into private session because the use of the PIL might
7 be more complicated than expected.

8 PRESIDING JUDGE SAMBA: [10:17:25] Madam Court Officer, can we go into
9 private session for a little bit.

10 (Private session at 10.17 a.m.)

11 THE COURT OFFICER: [10:17:42] We're in private session, Madam President.

12 (Redacted)

13 (Redacted)

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17 (Open session at 10.51 a.m.)

18 THE COURT OFFICER: [10:51:40] We are back in open session, Madam President.

19 PRESIDING JUDGE SAMBA: [10:51:44] Thank you very much.

20 Yes, Ms Zago, why are you standing?

21 MS ZAGO: [10:51:49] Yes, I would like to -- the permission to address the Court,
22 suggesting that at the end of this examination, including cross-examination, we can
23 offer to provide lessor redacted versions of the transcripts so that they can be
24 distributed in -- in a timely manner to the public in light of the struggles that we had
25 concerning the private sessions that were extended, probably more than necessary.

1 But now with the benefit of time, we can address properly and provide suggested
2 redactions to your Honours. With the agreement of the Defence, of course.

3 PRESIDING JUDGE SAMBA: [10:52:32] I'm sure the Defence would not object to
4 that, Mr Karnavas.

5 MR KARNAVAS: [10:52:37] No, your Honour. And such housekeeping matters
6 should be taken at the end of the day, not during -- right as I'm about to start my
7 cross-examination. Thank you.

8 PRESIDING JUDGE SAMBA: [10:52:46] Mr Karnavas, you are not about to start.
9 You said that you will come back after the break and you will start.

10 MR KARNAVAS: [10:52:51] I understand, but I want to prepare, so there is no sense
11 in doing housekeeping matters in the middle of the session.

12 PRESIDING JUDGE SAMBA: [10:52:57] Okay. Well, thank you very much,
13 Madam Prosecutor.

14 Mr Karnavas, since you are still on your legs, we have heard the testimony of, of
15 course, that witness yesterday and into today. I know you are ready for your
16 cross-examination. Could you give me an idea, an indication of how long you think
17 (Overlapping speakers)

18 MR KARNAVAS: [10:53:12] I can, I can. My expectation, my hope, my hope would
19 be that the gentleman can have a nice comfortable lunch. In other words, we would
20 finish by lunchtime. That's my hope. Otherwise we might go into -- a little bit into
21 the afternoon session. But I'm going to keep it short. I'm going to keep it efficient.

22 PRESIDING JUDGE SAMBA: [10:53:33] Thank you very much, that's very good to
23 know.

24 So at this point I'll ask that we take a short break. We'll come back at 11.30.

25 Mr Witness, I will see you at 11.30. And Mr Gicheru, 11.30. Parties, 11.30.

- 1 THE COURT USHER: [10:53:49] All rise.
- 2 (Recess taken at 10.53 a.m.)
- 3 (Upon resuming in open session at 11.32 a.m.)
- 4 THE COURT USHER: [11:32:06] All rise.
- 5 Please be seated.
- 6 PRESIDING JUDGE SAMBA: [11:32:40] Good morning, again.
- 7 Mr Karnavas, we're going to start cross-examination of this witness, so your witness,
- 8 please.
- 9 MR KARNAVAS: [11:32:50] Thank you. Thank you, Madam President.
- 10 QUESTIONED BY MR KARNAVAS:
- 11 Q. [11:32:56] Good morning, sir.
- 12 A. [11:33:00] I am fine.
- 13 Q. [11:33:04] Good. Now I just want to ask a few questions to make sure that I
- 14 have the essence of your testimony correct. So I will -- I will try to summarise what
- 15 we heard from you since yesterday. Okay?
- 16 A. [11:33:28] Yes.
- 17 Q. [11:33:31] You told us that you were paid slightly over 2 million Kenyan
- 18 shillings over a period of months so as not to be a witness in the -- against William
- 19 Ruto; is that correct?
- 20 A. [11:33:54] Yes.
- 21 Q. [11:33:53] The money was given to you, and as I understand it, at least from one
- 22 of your statements, there were times when (Redacted) collected some money but
- 23 also you were receiving money from Mr Gicheru and from this individual, person
- 24 number 19. Correct?
- 25 PRESIDING JUDGE SAMBA: [11:34:24] Can the VWU staff help.

1 Excuse me, do you have the document before you, Mr Witness? The list.

2 Can you, Madam VW -- yes, can you help the witness, please.

3 Person number 19.

4 MR KARNAVAS: [11:34:51]

5 Q. [11:34:52] So you told us that you were receiving money sometimes from
6 Mr Gicheru, sometimes from person number 19. And in your statement -- in one of
7 your statements you indicate sometimes (Redacted) would go and pick up some
8 money as well?

9 A. [11:35:13] Yes.

10 Q. [11:35:14] And yesterday -- you don't have to keep staring at the numbers, sir.
11 Yesterday you told us that when you first went to the meeting or when you first had
12 the conversation about the amount of money that you would be paid not to be
13 a witness against Mr Ruto, you had requested 5 million Kenyan shillings?

14 A. [11:35:53] I was promised 5 million.

15 Q. [11:35:58] Okay. You were promised 5 million. And I believe you were also
16 promised a car, some land, (Redacted)
17 is that right?

18 A. [11:36:13] Yes, yes.

19 Q. [11:36:14] All of these things were promised to you?

20 A. [11:36:23] Yes.

21 Q. [11:36:23] But in the end you only received 2 million. A little bit over 2 million.

22 A. [11:36:34] Yes, with different instalments. I received in different instalments
23 and the total came to 2 million.

24 Q. [11:36:44] Right. Okay. And you told us that you opened up, after the first
25 instalment, you opened up a bank account and you deposited part of that money into

1 the bank?

2 A. [11:36:58] Yes.

3 Q. [11:36:59] And then after that, periodically you would also deposit other
4 amounts of money that you were receiving from Mr Gicheru or person number 19?

5 A. [11:37:11] Yes.

6 Q. [11:37:14] All right. And as I understand it correctly, you had entered into
7 some sort of an agreement, and in fact it was a written agreement?

8 A. [11:37:36] Yes.

9 Q. [11:37:38] Initially you told us that it was a typed agreement. It was typed out.
10 You didn't read it. But you signed it.

11 A. [11:37:50] Someone read it to me in English, but I don't know English. But
12 that's what it was.

13 Q. [11:37:58] So was it -- was it read to you in English, but translated into Kiswahili,
14 or was it -- or did they tell you what it -- what it said in Kiswahili?

15 A. [11:38:16] The agreement was about me withdrawing myself as a witness for
16 ICC.

17 Q. [11:38:23] All right. Okay. And as I understand it, there came a time when
18 they asked you to prepare another agreement, or statement, and that one was
19 handwritten. Maybe not by you, but someone else, but it was handwritten; is that
20 right?

21 A. [11:38:45] That came later after they were -- they feared that I was
22 communicating with the ICC officers. So they required me to -- to have another
23 statement which had to do that.

24 Q. [11:39:01] Right. And in-between this period, in-between this period when
25 they suspected that you were -- that you were still having contact with the ICC, and

1 thereafter and afterwards, they continued to give you payments, instalments of
2 the money that had been promised to you?

3 A. [11:39:25] Yes, they continued paying me. But in the -- in the end the last
4 instalment was from the hotel which I have told you, which is number 15.

5 Q. [11:39:43] Right.

6 PRESIDING JUDGE SAMBA: [11:39:43] Excuse me. Excuse me, Mr Karnavas,
7 could you go at a slower pace. Pause at least 5 seconds after the witness gives his
8 answer, so as to help the interpreters, please. Thank you.

9 MR KARNAVAS: [11:39:57] (Microphone not activated) Okay.

10 Q. [11:40:07] So just to make sure I understand, sir, even though, even though you
11 were not abiding by the conditions of the agreement that you had signed, they
12 nonetheless continued to make payments to you?

13 A. [11:40:31] You know, Honourable Judge, many things have passed. It has been
14 a long time. Some of the issues I have forgotten. I can't recall everything. But
15 what I can remember is that this person number 19 was coming to me after being
16 directed by Mr Gicheru that I should meet him in places that were designated for us
17 to meet. I can't recall how many times, but he came to me several times.

18 Q. [11:41:03] And when he came to you several times, he came there for
19 the purpose of giving you instalment payments, right? That was --

20 A. [11:41:15] Yes, it's true that there was no time that he came without payments.
21 All the time he could give me 100,000 or some other payments.

22 Q. [11:41:25] And just to make sure that we're clear, those payments were being
23 made even after they were unhappy with you because they thought you were still
24 continuing to be a witness for the ICC?

25 A. [11:41:50] I think the last time after they -- they suspected me, I think it was

1 the meeting that I held with number 1, so they started suspecting me. But
2 the previous ones I think they only suspected. But they became aware of that after I
3 met with number 1.

4 Q. [11:42:12] Okay.

5 Just to make sure that I understand you correctly. You had a *tête-à-tête*, you -- with
6 number 1. You met number 1 in person and had a conversation about you receiving
7 payments; is that what you're telling us?

8 A. [11:42:33] I'm saying where I went. No, I'm talking about the location number
9 1. I am talking about location number 1. But the person number 1, I didn't receive
10 any money from person number 1. I was talking about the location number 1.

11 Q. [11:42:54] My apologies. All right.

12 Now, as I also understand your testimony, there were times when Mr Gicheru was
13 calling you, right?

14 A. [11:43:17] Yes, I was communicating with him many times through the phone.

15 Q. [11:43:22] Sometimes you would -- he would call you and sometimes you would
16 call him?

17 A. [11:43:30] Yes.

18 Q. [11:43:33] And you even told us that he was he who put his number in your
19 phone under the name "Paulo". We saw that this morning, right?

20 A. [11:43:45] Yes.

21 Q. [11:43:47] Very well. And you also tell us, in your statement at least, that you
22 had many other communications with others that were involved in this matter, other
23 individuals. And if you look at the list of persons, I'll just name a few. So if you
24 can have that list. So for instance, number 13, person number 13.

25 A. [11:44:28] Number 13 is my son.

1 Q. [11:44:31] I understand, but did you not have communications with him on your
2 phone? Did you not communicate with him?

3 A. [11:44:40] Yes, I was communicating with him through my phone.

4 MR KARNAVAS: [11:44:43] And may we go into -- into private session because
5 I don't see the name of this person on -- and I don't wish to ...

6 PRESIDING JUDGE SAMBA: [11:45:00] Madam court officer, can we go into private
7 session, please.

8 (Private session at 11.45 a.m.)

9 THE COURT OFFICER: [11:45:15] We're in private session, Madam President.

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

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17 (Redacted)

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19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

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4 (Open session at 11.46 a.m.)

5 THE COURT OFFICER: [11:46:26] We are in open session, Madam President.

6 MR KARNAVAS: [11:46:28] Oh, sorry. Sorry.

7 PRESIDING JUDGE SAMBA: [11:46:29] Thank you very much, Madam

8 Court Officer.

9 Mr Karnavas, please.

10 MR KARNAVAS: [11:46:33] Thank you. Thank you. I only had one shot of

11 espresso, so you can imagine what two would have done.

12 Q. [11:46:42] You also had contact with person number one, right, by phone?

13 A. [11:46:49] Many times I communicated with him. He was the representative of
14 the victims of ICC and he -- she was inviting us to the meetings that were held in
15 Nairobi or Nakuru.

16 Q. [11:47:06] Okay. And of course you indicated person number 38?

17 A. [11:47:18] Yes, yes.

18 Q. [11:47:19] And many others. Including person number 44. Do you recall
19 contacting person number 44, at least attempting to speak with to her, you calling
20 person number 44?

21 A. [11:47:57] I don't remember. What I can remember is that we were together
22 with her during campaigns, but we never discussed about the victims or whatever
23 way about the victims.

24 Q. [11:48:16] All right. And when we speak of person number 44, that's the same
25 person that we see on the list of names extracted from your mobile phone that was

1 shown to you by the Prosecutor earlier this morning?

2 A. [11:48:39] Yes. The phone communications were there because she was
3 a partner in the -- in the discussions, so maybe we had some communications with
4 her. But unfortunately she didn't attend any meetings of the victims. Maybe on
5 other issues I had communicated with her.

6 Q. [11:49:06] All right. So did I more or less capture the essence of your testimony?
7 I know you said much more, but I want to -- I want to make sure that what I've
8 described thus far is essentially your testimony.

9 A. [11:49:30] Yes.

10 Q. [11:49:32] All right. Now help me out here. What we can glean from your
11 statement and other evidence is that there came a time when you provided
12 the investigators with two phones, two mobile phones. Do you recall that?

13 A. [11:49:56] Yes, I recall.

14 Q. [11:49:58] And when you provided them with those two phones, you only had
15 one SIM for them?

16 A. [11:50:11] Yes.

17 Q. [11:50:15] You had lost the other SIM?

18 A. [11:50:19] Yes.

19 Q. [11:50:21] The phones were provided to the investigators in order for them to
20 examine the phones to see what was in your phones and SIM card; is that right?

21 A. [11:50:34] Yes.

22 Q. [11:50:36] Now -- and that's where that list of names comes from, as I
23 understand it?

24 A. [11:50:44] Yes.

25 Q. [11:50:49] Did the Prosecutor ever tell you what the results were from

1 the examination?

2 A. [11:51:04] I -- I wrote my statement, but they didn't tell me what were the results
3 of the investigation. I don't know. If you want to explain to me in detail, you can
4 tell me. But I don't recall anything.

5 Q. [11:51:24] Well, I'll -- I will explain in some detail, but I'll take your word for it
6 that the Prosecutors never bothered to explain to you what was in or what was not in
7 your phone, having examined it.

8 But in your conversations, or during your conversations with the OTP investigators
9 when you were giving your -- your statement - and I believe you said it was three or
10 four days. We have the dates - there were times that -- when they were asking you
11 for numbers, for you to provide them numbers of individuals that you had been in
12 contact with that you claim to have been calling. Do you recall that?

13 A. [11:52:09] I don't recall.

14 Q. [11:52:10] Do you recall telling the investigators that you could not remember
15 the number of, say, your son because it was in the SIM card and you no longer had
16 the SIM card that was lost?

17 A. [11:52:32] Honourable Judge, I can't recall everything that I had discussed with
18 them during that time. I can't -- it's a long time, so I can't recall. I can't say
19 anything. I can't say that I said this and that. It might be possible that I said or I -- I
20 didn't say. I have forgotten many issues.

21 Q. [11:52:52] All right. And to be fair with you, I will -- to the extent that I can, I
22 will go through parts of your statement to refresh your memory or to confront you
23 with certain evidence. But would it surprise you, sir, that from the examination of
24 your phone, the examination that was done by the experts chosen by the Prosecution,
25 we don't see any calls from you to Mr Gicheru or from Mr Gicheru to you? Would

1 that surprise you?

2 A. [11:53:42] It doesn't surprise me at all.

3 Q. [11:53:45] All right. Now you did -- there came a time when you provided
4 the OTP, the investigators, with your bank statements. Do you recall that?

5 A. [11:54:05] Yes.

6 Q. [11:54:06] In fact, there had been some confusion because initially you did not
7 provide them with the -- the right documents, but eventually you managed to get
8 them the documents that they were looking for.

9 A. [11:54:26] Please can you rephrase your question.

10 Q. [11:54:30] Okay. Did they not initially ask you to bring the documents in
11 a sealed envelope the first time, certified, and they weren't quite correct, but then later
12 on you managed to get them the correct documents that we saw here in court?

13 A. [11:54:53] Yes. I came to Nairobi after I was told that the -- the documents were
14 not satisfactory. So I had to go back and collect over additional documents.

15 Q. [11:55:06] Now from the documents that were shown to you -- help me out here,
16 because I'm reading them and I don't see anything in your bank statement that says
17 that that money came from either Mr Gicheru or person number 19, or somebody else.
18 It just says that you deposited the money. Is that fair?

19 A. [11:55:39] They didn't give me cheque, they gave me cash. And that's why it
20 doesn't show who -- where the money came from, because they are giving me cash
21 and not cheque.

22 Q. [11:55:53] But from your statement, how do we know that that money came
23 from Mr Gicheru and not from one of your relatives? Can you prove today to this
24 Court that fact?

25 A. [11:56:11] I -- I confirm in this Court that I communicated with Gicheru several

1 times. And I don't understand why you -- you say there were no conversations. I
2 communicated with him through the phone several times.

3 Q. [11:56:25] Sir, there's no need to get excited. I'm not suggesting you didn't
4 communicate. I'm suggesting that there's no record. You're claiming to do that.
5 But I have nothing, we have nothing, the Prosecution has nothing that confirm that
6 those communications actually occurred. That's what I'm suggesting. And I'm not
7 saying it's your fault.

8 PRESIDING JUDGE SAMBA: [11:56:49] How about the telephone log, I don't know
9 which tab that is, showing telephone calls or something that came from this person
10 that the witness described as "Paulo" I think?

11 Mr Karnavas.

12 MR KARNAVAS: [11:57:14] Yes, we have the logs, your Honour, but we don't see
13 any communications. It's just a name in a log. And I'm not suggesting that it's not
14 there. But we -- you know, he could have put it in himself. And I -- if I may
15 proceed, your Honour, I might be able to assist in that.

16 PRESIDING JUDGE SAMBA: [11:57:35] Go on. Go ahead, Mr Karnavas.

17 MR KARNAVAS: [11:57:38]

18 Q. [11:57:38] Now at some point, Mr Witness, at some point you had told us
19 yesterday that you had received Mr Gicheru's business card. Do you recall that?

20 A. [11:57:57] Which business card?

21 Q. [11:57:59] Mr Gicheru's business card. Do you recall that?

22 A. [11:58:10] There was a card, yes, I took from Mr Gicheru.

23 Q. [11:58:14] All right. And on that card there are numbers, are there not?

24 A. [11:58:24] Yes.

25 Q. [11:58:24] And the number that is in your mobile phone is also on the card, is it

1 not?

2 A. [11:58:32] I can't remember to have compared the numbers, because Mr Gicheru
3 had a lot of -- had several phones with different numbers. But the number that I
4 used to communicate with him is the one he gave me.

5 Q. [11:58:47] Okay. We'll get to that.

6 Concerning the agreements, the contracts that you told us, you indicated that you did
7 not receive a copy. In fact, you told us that you didn't even read those agreements.

8 A. [11:59:13] Yes, I didn't read myself because it was written in English and I don't
9 know English.

10 Q. [11:59:20] And the agreement that you were signing was for the benefit of
11 the ICC. You were telling the ICC you were no longer going to be a witness.

12 A. [11:59:31] Yes.

13 Q. [11:59:32] You were withdrawing from the ICC.

14 A. [11:59:38] Yes. They -- they told me that they are the ones who are going to
15 send the agreement to ICC telling them that this witness has withdrawn from being
16 the ICC witness.

17 Q. [11:59:50] And yet we have no agreements, or none were provided from
18 the Prosecution, that we see, that you signed withdrawing as a witness against
19 Mr Ruto.

20 A. [12:00:12] That's what happened. I didn't make a follow up on what happened
21 later after I signed.

22 Q. [12:00:20] And one last matter. I mean, you indicated to us yesterday that you
23 were very vocal, very -- very public in your advocating as a victim against Mr Ruto in
24 the post-election violence. Do you recall saying -- telling us that?

25 A. [12:00:52] Yes, I remember I talked a lot during -- after the post-election violence.

1 And I was not the representative of the victims, but I was among the victims.

2 Q. [12:01:05] Right. And you told us yesterday that you talked and you were
3 making public speeches and attending all these victims' meetings and being very
4 vocal, all the way up until 2013; is that right?

5 A. [12:01:27] It is -- it is up to 2014.

6 Q. [12:01:31] 2014. And in fact in your statement you say that you were even on
7 television.

8 A. [12:01:41] Yes. Even to radio.

9 Q. [12:01:45] All right. And yet the only thing that we really have that was
10 produced by the Prosecution, other than what we saw today where I don't -- and I
11 might be mistaken, I don't see your name on it. And it might be for -- for good
12 reasons, but the only thing that we have thus far is an article that was dated in 2009
13 where we see your picture and we see your name. Nothing in 2010, nothing - relax,
14 I'm not going to mention any names - 2011, 2012 or 2013, or even 2014. We don't see
15 any of that.

16 A. [12:02:39] Some things, it's not necessary to say them. Maybe it cannot be
17 written these things on all newspapers, but as far as I'm concerned I attended many,
18 many meetings.

19 Q. [12:02:52] Okay. And all we have, at the end of the day, all we have is what
20 you tell us.

21 A. [12:03:06] I don't know. Can you maybe explain.

22 Q. [12:03:09] Well, as I tried to say earlier, you talk about having all these telephone
23 conversations but we have no records, so all we have is your word.

24 A. [12:03:33] I could not do the follow up of the records, but I know that I
25 communicated with Mr Gicheru not once, many times.

1 Q. [12:03:43] You've told us that you were in the news, in the newspapers, on
2 television, on radio. But all we have is one article and nothing other than your word.

3 A. [12:04:04] Your Honour, the newspapers, that's just a part of that. But we have
4 so many things. I could not even buy all the newspapers. Sometimes I was told
5 that you appeared, you featured in the newspaper, but I could not buy
6 the newspapers because I live in a remote area. I don't come to town to buy
7 newspapers.

8 Your Honour, many newspapers in Kenya are written in English. Very few
9 newspapers are in Kiswahili, and when I go out I just buy newspapers in Kiswahili.
10 I could not read many newspapers. Even the Guardian, I did not read it.

11 Q. [12:04:54] Sir, just to be clear, I'm not being very critical. You shouldn't have to
12 go and gather all of these articles and footage from TV or radio, that's the job for
13 the Prosecution. So don't -- don't be alarmed.

14 But again, all we have is your word when you say that you wrote some contracts.
15 We don't have them physically, so we have to take your word, right?

16 A. [12:05:37] Could you please repeat that question.

17 Q. [12:05:41] I apologise. I'm trying to speed it up, but I'll try to be simpler.

18 When you tell us that you signed agreements and contracts not to be a witness against
19 Ruto, we don't have them, we can't find them, the Prosecution hasn't produced them.
20 So all we have is your word that you actually signed those contracts, right?

21 A. [12:06:14] Yes, I remember that I signed an agreement to -- to be removed as
22 a witness. But that document was left with Mr Gicheru. I didn't have a copy that I
23 could give to the investigators of ICC, because he didn't give me the copy.

24 Q. [12:06:39] And the deposits that are -- that we saw from your bank statements,
25 again, all we have is your word that the money that you were depositing came from

1 Mr Gicheru or number 19, based on this agreement of yours.

2 A. [12:07:09] Yes, I was given money by them, even if they told me that I should
3 not deposit that money to the bank account, but it's on my own will that I deposited
4 that money on my bank account.

5 Q. [12:07:27] And what I'm saying is all we have is your word where the money
6 came from. We have nothing concrete, nothing tangible to support your word. So
7 you're asking us to simply take your word.

8 A. [12:07:53] Yes.

9 Q. [12:07:54] Okay. Thank you.

10 Now I want to move to another topic. So we're going to go back in time. The time
11 is 2011. In 2011 you made an application to become a victim. Do you recall that?

12 A. [12:08:25] I recall I applied a lot of time to become a victim. But I can't
13 remember at what time, but I remember that I made a lot of applications.

14 Q. [12:08:38] Now yesterday, yesterday ...

15 PRESIDING JUDGE SAMBA: Mr Karnavas, can you turn your mic off then?

16 MR KARNAVAS: [12:08:51] Certainly, I apologise.

17 PRESIDING JUDGE SAMBA: [12:08:53] Yes, Madam Prosecutor.

18 MS ZAGO: [12:08:54] I'm very sorry to interrupt. I would like to remind that these
19 topics were elicited in private session yesterday and I would suggest that we enter in
20 the same -- in the same arrangement for the -- the courtroom if we are going to
21 discuss this issue any further. Thank you.

22 MR KARNAVAS: [12:09:18] Very well, your Honour. I totally agree.

23 PRESIDING JUDGE SAMBA: [12:09:21] Yes.

24 Madam Court Officer, can we go into private session for some bit.

25 (Private session at 12.09 p.m.)

- 1 THE COURT OFFICER: [12:09:34] We're in private session, Madam President.
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- 15 (Open session at 12.55 p.m.)
- 16 THE COURT OFFICER: [12:55:42] We're back in open session, Madam President.
- 17 PRESIDING JUDGE SAMBA: [12:55:47] Thank you very much.
- 18 And thank you very much, Mr Karnavas, for this past session.
- 19 Mr Witness, we'll break off for lunch at this period and we'll get back here to start
- 20 again at 2.30. Mr Karnavas will continue his cross-examination.
- 21 Did you understand me?
- 22 THE WITNESS: [12:56:13](Interpretation) Yes, I have understood.
- 23 PRESIDING JUDGE SAMBA: [12:56:15] Thank you very much.
- 24 So at this stage I will ask that we break for lunch and be here again at 2.30, please.
- 25 Thank you very much.

- 1 THE COURT USHER: [12:56:23] All rise.
- 2 (Recess taken at 12.56 p.m.)
- 3 (Upon resuming in open session at 2.32 p.m.)
- 4 THE COURT USHER: [14:32:23] All rise.
- 5 Please be seated.
- 6 PRESIDING JUDGE SAMBA: [14:32:54] Good afternoon again, to everyone.
- 7 THE WITNESS: [14:33:01](Interpretation) Good afternoon.
- 8 PRESIDING JUDGE SAMBA: [14:33:03] Good afternoon, Mr Karnavas. You
- 9 continue with the cross-examination of this witness. But before you start, maybe just
- 10 one or two housekeeping, just to remind you to, you know, about the five seconds
- 11 rule, to allow a few seconds after the witness's testimony so that we help
- 12 the investigators and to turn off your mic when the witness is talking, please. Thank
- 13 you very much.
- 14 Yes, your witness, Mr Karnavas.
- 15 MR KARNAVAS: [14:33:39] Thank you. Thank you, your Honour.
- 16 Q. [14:33:46] Witness, good afternoon.
- 17 A. [14:33:48] Good afternoon.
- 18 Q. [14:33:49] If we could --
- 19 I'm going to turn to tab 35, your Honour.
- 20 PRESIDING JUDGE SAMBA: [14:33:59] Thirty-five of the Defence's bundle?
- 21 MR KARNAVAS: [14:34:02] Of the Defence's bundle, and that is the witness
- 22 clarification log. I don't believe it has one of those KEN numbers, but ...
- 23 Q. [14:34:19] Sir, when you came here to give your evidence, you spent a few days
- 24 with the Prosecutor, did you not? With the Prosecution team, I should say, correct?
- 25 A. [14:34:31] Correct.

1 Q. [14:34:32] And you were given an opportunity to review your statements.

2 A. [14:34:45] That's correct.

3 PRESIDING JUDGE SAMBA: [14:34:48] (Overlapping speakers) Just to say

4 that -- just to say that -- I'm sorry. Just to say that tab 35 --

5 MR KARNAVAS: [14:34:54] Thirty-nine.

6 PRESIDING JUDGE SAMBA: [14:34:55] Thank you very much.

7 MR KARNAVAS: [14:34:54] Thirty-nine.

8 I'm just following instructions from behind me. I hope we got it right.

9 Q. [14:35:18] So before -- well, let me just ask this question, sir, so we can -- we can
10 finish up early.

11 Sir, when -- when you were being prepared to testify by the Prosecution team, do you
12 recall saying then, this is in 2022, that back in 2012 is when you were provided
13 a phone? Something that you have told us earlier today. Do you recall that? It's
14 on page 4 of this document.

15 A. [14:36:19] Yes.

16 Q. [14:36:20] Yeah. And that's where you say that they gave you a phone so you
17 could communicate to schedule a full interview later, right?

18 A. [14:36:39] I was given an ordinary telephone, and I saw that it was good. Then
19 I used my line to use it. They didn't tell me how we are going to communicate.

20 Q. [14:36:53] Okay. Does that mean that they didn't even give you a number,
21 telephone number to communicate with them? They just gave you a phone? No
22 SIM card?

23 A. [14:37:10] I was not given a SIM card. I was not given any number to
24 communicate with them.

25 Q. [14:37:16] So, if I understand correctly, and I'm not -- I know it's -- we're going

1 back 10 years now. They just said, "Here's a phone. Next time we'll be able to
2 communicate better."

3 A. [14:37:35] Your Honour, after our meeting, as I told you, we did not have an
4 interpreter, but when we parted our ways, when I left to -- when I left Nairobi, that's
5 when they gave me that phone without any explanation.

6 Q. [14:37:58] And at some point you put your own SIM card in it and began using
7 it for your -- your own purposes, right?

8 A. [14:38:10] Yes.

9 Q. [14:38:11] Okay. All right. Now, if -- from my -- from the documents that I've
10 received from the Prosecution, it would appear that the next time that you are
11 communicating with the Office of the Prosecution of the International Criminal Court
12 is in 2014.

13 So if we could look at tab 2, 014 -- 0147-2132. Tab 2. And here it says -- we have
14 a message that is being sent on 24 March 2014 where apparently you contacted
15 someone by the name of (Redacted), and you passed on certain information to that
16 individual to pass on to the ICC. Am I getting it right?

17 A. [14:39:46] I remember (Redacted). It was not only him. We -- I
18 communicated with a number of people, your Honour.

19 Q. [14:39:55] I -- I understand that. But all I have here is this document, and we're
20 going to get to what was shown to you earlier by the Prosecutor. But in March 2024
21 you reached out.

22 PRESIDING JUDGE SAMBA: [14:40:10] Mindful that names are being mentioned,
23 Mr Karnavas.

24 MR KARNAVAS: [14:40:16] Yes.

25 Q. [14:40:18] You reached out to this individual to help you; is that correct?

1 A. [14:40:27] I communicated with Mr (Redacted) a number of times so that
2 he can convey my messages to the Prosecutor. But it was not only once. It was
3 a number of times. It was either by -- on phone or face by face.

4 PRESIDING JUDGE SAMBA: [14:40:49] Can we go into private session, please.
5 (Private session at 2.41 p.m.)

6 THE COURT OFFICER: [14:41:12] We're in private session, Madam President.

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10 (Open session at 3.35 p.m.)
11 THE COURT OFFICER: [15:35:34] We are back in open session, Madam President.
12 PRESIDING JUDGE SAMBA: [15:35:38] Thank you very much.
13 And as I said, thank you very much, Mr Witness. I wish you well. Thanks for
14 helping the Court.
15 And thanks, counsel for the Prosecution, all of you, and counsel for the Defence.
16 Thank you, Mr Gicheru. Thank you, counsel for the witness.
17 With that, I think tomorrow we have -- we'll take the next Prosecution witness.
18 MS ZAGO: [15:36:08] That is correct, your Honour. Mr Steynberg will be back in
19 the courtroom ready to conduct the examination of the next witness.
20 PRESIDING JUDGE SAMBA: [15:36:19] Thank you very much.
21 So with that, I'll call it off for today and wish us all well and adjourn the matter. This
22 matter stands adjourned till tomorrow at 9.30. Thank you.
23 THE COURT USHER: [15:36:37] All rise.
24 (The hearing ends in open session at 3.36 p.m.)