

Trial Hearing  
WITNESS: KEN-OTP-P-0613

(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 Friday, 25 February 2022  
8 (The hearing starts in open session at 9.34 a.m.)  
9 THE COURT USHER: [9:34:45] All rise.  
10 The International Criminal Court is now in session.  
11 Please be seated.  
12 PRESIDING JUDGE SAMBA: [9:35:07] Good morning, everyone.  
13 Madam Court Officer, can you kindly mention the matter, please.  
14 THE COURT OFFICER: [9:35:17] Good morning.  
15 This is the situation in the Republic of Kenya, in the case of The Prosecutor versus  
16 Paul Gicheru, case reference ICC-01/09-01/20.  
17 And for the record, we are in open session.  
18 PRESIDING JUDGE SAMBA: [9:35:32] Thank you very much.  
19 Can I have the parties introduce themselves, please.  
20 MR STEYNBERG: [9:35:37] Good morning, Madam President. Good morning,  
21 everyone. For the Prosecution this morning we are the same as yesterday.  
22 PRESIDING JUDGE SAMBA: [9:35:45] Thank you very much.  
23 Defence, please.  
24 MR KARNAVAS: [9:35:49] Good morning, Madam President. Good morning to  
25 everyone in and around the courtroom, same composition as yesterday.

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ICC-01/09-01/20

- 1 PRESIDING JUDGE SAMBA: [9:35:57] Thank you very much.
- 2 Good morning, Mr Gicheru.
- 3 Good morning, Madam Witness.
- 4 WITNESS: KEN-OTP-P-0613 (On former oath)
- 5 (The witness speaks English)
- 6 THE WITNESS: [9:36:04] Good morning, your Honour.
- 7 PRESIDING JUDGE SAMBA: [9:36:05] Yes. We are going to continue with your
- 8 cross-examination by Defence counsel. So you know the other day -- the day before
- 9 yesterday, you took a solemn undertaking to tell the truth and nothing but the truth
- 10 to this Court, so you are still under oath, just a reminder.
- 11 And a little bit of homework or housekeeping. I'm informed by the interpreters that
- 12 we still have to try to maintain the pauses and to go slow, so that the witness's
- 13 answers are captured by the interpreters. Thank you very much.
- 14 Mr Karnavas, your witness, please.
- 15 QUESTIONED BY MR KARNAVAS: (Continuing)
- 16 Q. [9:36:44] Good morning, Madam.
- 17 A. [9:36:47] Good morning, your Honour.
- 18 Q. [9:36:50] If you recall, last summer, in July 2021, you came to The Hague for
- 19 a period of four days to be interviewed by the Prosecution. Do you recall that?
- 20 A. [9:37:15] Your Honour, it wasn't July.
- 21 Q. [09:37:21] It was July, right? No, I'm -- I apologise -- my apologies. It was in
- 22 October.
- 23 A. [9:37:29] Yes, your Honour.
- 24 Q. [9:37:30] Right. I stand corrected. Thank you very much.
- 25 And by my estimation it was -- it was October 4, 5, 6 and 7, and during that period of

1 time, you spent 15 hours with the Prosecution. Would that be about right, during  
2 the course of the four days?

3 A. [9:37:52] I don't remember the exact time, but I know I had a meeting with them,  
4 your Honour.

5 Q. [9:37:58] All right. And we already discussed yesterday - and, we will discuss  
6 later on today - one of the topics that was -- that you were questioned on and that had  
7 to do with conversations that you had with person number 12 back in 2014, when the  
8 Prosecution had asked the Dutch government to monitor the mobile phone of person  
9 number -- number 12 and your voice was captured over a period of, I think it was 44  
10 hours, 2 minutes and 57 seconds. So, do you recall that was one of the subjects that  
11 you discussed in October?

12 A. [9:38:56] Yes, your Honour.

13 Q. [9:38:57] Now, there was another topic that was discussed during that period  
14 and that had to do with certain testimony that had -- of certain witnesses during the  
15 main trial. They wanted to question you about three witnesses who had testified  
16 slightly differently than you had in the Ruto and Sang trial. Do you recall that?

17 A. [9:39:28] I recall, your Honour.

18 Q. [9:39:34] In fact, Mr Steynberg questioned you a little bit on direct examination  
19 on that, do you recall that?

20 A. [9:39:40] I recall, your Honour.

21 Q. [9:39:42] Right. And just so that we're clear, as I understand it, you had  
22 testified on June 18 to June 20, 2014, over a period of three days, 18.6.2014 to 20.6.2014.  
23 Would that be about right?

24 A. [9:40:24] Yes, your Honour.

25 Q. [9:40:25] Okay. And just as an aside, just as an aside, because we will get to

1 this topic later, the conversations that were captured between you and person number  
2 12 - as a result of the Prosecutor's asking the Dutch government to monitor those  
3 telephone conversations - were from June 5, 2014 and August 18, 2014. Would that  
4 be about right to your recollection?

5 A. [9:41:01] It's not right, your Honour.

6 Q. [9:41:04] Okay. All right. We'll get to that.

7 In any event, during this four-day period in -- last year, in October 2021, you had an  
8 opportunity to give your explanations concerning what witness number -- person  
9 number 8, person number 14, and, I believe, it was person number 30 had testified in  
10 court. Do you recall that?

11 A. [9:41:50] Yes, your Honour.

12 Q. [9:41:51] And we can find your answers, your explanations, we can find them,  
13 as I'm sure you've read them, on tab -- tab 45.

14 A. [9:42:13] Which binder, your Honour?

15 Q. [9:42:15] Binder 2. And it's KEN-OTP-0160-0609, that's tab 45? And when  
16 you have it, let us know.

17 A. [9:43:06] I have it, your Honour.

18 Q. [9:43:07] Okay. Now, is this one of the documents that you had a chance to  
19 review over the three- or four-day period before coming court to testify?

20 A. [9:43:18] Yes, your Honour.

21 Q. [9:43:24] Okay. So before coming here today, you had a chance to read it, to  
22 read your answers?

23 A. [9:43:34] In the morning?

24 Q. [9:43:36] Not today, this morning, but last week when -- when they gave you all  
25 these documents and they were there questioning you and telling you what to expect

1 in coming here, you read this document?

2 A. [9:43:49] Yes, your Honour.

3 Q. [9:43:51] Okay. So your memory, that very good memory that God gave you  
4 was refreshed, was it not?

5 A. [9:44:01] Yes.

6 Q. [09:44:01] Okay.

7 A. [09:44:02] It was refreshed.

8 Q. [9:44:03] All right. Now -- and just so you know where we're going with this,  
9 you can find your answers to the questions that were asked of you back in -- in  
10 October 2021, you will find them on pages 4, 5 and 6, starting with  
11 paragraphs -- starting with paragraphs 12 and going all the way to paragraph 25, and  
12 that would be -- just to read the KEN numbers in, it's KEN-OTP-0160-0612, 0613 and  
13 0614. All right?

14 A. [9:45:04] Yes, your Honour.

15 Q. [9:45:05] Okay. Now if we could -- and by the way, all of this, as I understand  
16 it, this is already in evidence, but if you need to go and look -- look at this to refresh  
17 your memory as I go along, feel free. But essentially I'm going to just read to you  
18 portions of what these witnesses have said and to give you an opportunity to give  
19 whatever response you feel necessary and then the Court will decide who is right,  
20 who is wrong, what to believe, what not to believe and what have you. Okay?

21 A. [9:45:57] Thank you, your Honour.

22 Q. [9:45:57] Okay. So we'll start with person number 8, person number 8. And if  
23 we could turn to tab -- tab 83, if we could turn to tab -- third binder. And this  
24 witness testified -- when you find -- you know, my apologies for -- that you have to  
25 have both binders open.

- 1 A. [9:46:44] You said binder 3?
- 2 Q. [9:46:46] Binder 3, tab 83. Binder 3, tab 83.
- 3 A. [9:46:50] Thank you.
- 4 Q. [9:47:19] Do you have it?
- 5 A. [9:47:21] Yes, your Honour.
- 6 Q. [9:47:22] Okay, fine. Apologies.
- 7 Now we can see from the top of the page that it's witness -- we see the number of the  
8 witness, that it's witness number -- number 8, and the P -- the number that he was  
9 given in that trial. At the bottom of the page, you will see it's page number 1, and on  
10 the left hand, you will see the date when he testified. So that would be 8 September  
11 2014, right? Do you see that?
- 12 A. [9:48:02] Who testified?
- 13 Q. [9:48:03] Well, the person number 8. We're talking about -- this is the  
14 testimony -- I apologise. Let me -- what you're looking at is a transcript of the  
15 trial -- of the main trial, Ruto and Sang. And if you look up at the left-hand side at  
16 the very top, it gives the person's number in that trial. And for today's purposes,  
17 that person is number 8. So if you could look at -- if you could look at the document  
18 with all the numbers of the people that were listed by the Prosecution, you should be  
19 able to locate person number 8.
- 20 PRESIDING JUDGE SAMBA: [9:49:03] Have you seen who person number 8 is,  
21 Madam Witness, on the list you have?
- 22 THE WITNESS: [9:49:07] Yes, I have seen, your Honour.
- 23 PRESIDING JUDGE SAMBA: [9:49:10] Thank you very much.
- 24 MR KARNAVAS:
- 25 Q. [9:49:11] We already discussed yesterday that you were acquainted with person

1 number 8. We verified yesterday, we -- you told us that you knew person number 8.

2 A. [9:49:28] Yes, your Honour.

3 Q. [9:49:29] Okay. And as I indicated, if you look at the bottom of the page, you  
4 will see a date and it says, 08.09.2004. Do you see that?

5 PRESIDING JUDGE SAMBA: [9:49:51] "2014."

6 MR KARNAVAS: [9:49:53]

7 Q. [9:49:54] 2014, I'm sorry, 2014. Do you see that?

8 A. [9:49:57] Yes, your Honour.

9 Q. [9:49:58] Okay. And that would have been after you testified in the Ruto and  
10 Sang case because we already established that you testified in June -- between June 18  
11 and June 20, would that be right?

12 A. [9:50:22] Yes, your Honour.

13 Q. [9:50:23] Okay. So if we could turn to -- if we could turn to page 32, page 32 of  
14 this -- of this document. Do you have it? And I'm going to look at -- I will start  
15 with line --

16 PRESIDING JUDGE SAMBA: [9:50:55] Witness, we are still looking at tab 83. If  
17 you flick the pages, you will see a page 32. The next page is 31, the other one after  
18 that is page 32. Are you there?

19 THE WITNESS: [9:51:12] Yes, your Honour.

20 MR KARNAVAS: [9:51:22]

21 Q. [9:51:23] Okay, if I could focus your attention to line 11 and I will read from line  
22 11 to the next page to approximately line 14. All right?

23 So let me start:

24 "So the details which follow that you told the investigators, where did you get that  
25 information from?"

1 Answer: "It was my makeup.

2 So before we read through the 24 paragraphs, do I understand you correct -- well, is  
3 there anything that you said about this meeting which is in fact true, or is it all made  
4 up?"

5 Answer: "It was all made up.

6 And what was the reason why you made up this story about the meeting at Mr Ruto's  
7 house?

8 It was -- it was to show that Mr Ruto held meetings in -- a meeting in his house where  
9 the post-election violence was planned."

10 Question: "And remind us again why you felt it necessary to invent such a story."

11 I read it -- "I've said it was to show that Mr Ruto held meetings in his home, whereby  
12 those meetings were used to plan how to attack the Kikuyus.

13 And in giving this -- well, you've told us that you made this all -- you made this all up,  
14 so I presume you hadn't discussed this with any other person what details you should  
15 give about [the] meeting?"

16 Answer: "Initially I said we had discussed."

17 Then we see Mr Steynberg making an intervention.

18 You go into private session.

19 And it says:

20 Question -- by the way, this is you being questioned, it appears from Mr Steynberg.

21 PRESIDING JUDGE SAMBA: [9:53:45] When you say -- Mr Karnavas, you say "you  
22 were questioned," this is not the witness, not (Overlapping speakers)

23 MR KARNAVAS: [9:53:53] No, oh, I'm -- I apologise. When the witness was  
24 questioned, I apologise. You're right.

25 Q. [9:53:53] When the witness was questioned, witness -- person number 8 was



1 questioned:

2 "Discussed with whom, Mr Witness?"

3 And the answer is: With you. Without mentioning your name.

4 Line 9: "And remind us what did" you, that is, what did you -- "... what did [she] tell  
5 you?

6 [I've said] that she told me that my statement shall touch political rallies that was  
7 attended by Mr Ruto, meetings that Mr Ruto held in his home and those rallies, that if  
8 it was not attended by Mr Ruto himself was attended" by those -- "by the close friends  
9 of Mr Ruto, that it is assumed that if Mr Ruto was not there and these close allies were  
10 there, it will mean that mister --" that they represented -- "they were representing  
11 Mr Ruto."

12 Now you were questioned about this, do you recall?

13 A. [9:55:07] Yes, your Honour.

14 Q. [9:55:08] And in order to save some time, although her Honour is being very  
15 generous in allotting us time to question you, do you stand by the answers that you  
16 gave in -- when you were -- when you were questioned on this on October 10, 2021?

17 A. [09:55:35] Yes, your Honour.

18 Q. [09:55:36] Okay. On October -- on October 7 or whatever.

19 All right. Do you want to -- do you wish to add anything else?

20 A. [9:55:42] Yes, your Honour.

21 Q. [9:55:43] Okay. If you wish to add, go ahead.

22 A. [9:55:53] Your Honour, person number 8 talked or give false information on me  
23 because he had already received bribe and changed the whole story. And according  
24 to me, the meeting which was taking place in Ruto's home or the venues, it was  
25 a public -- it was a public rallies, not a one-person rally on my own. So it was

1 obvious, so this number 8 was changing the story to be look like I am a liar, but if you  
2 go into the record, the rallies took place in Sugoi's home. Thank you, your Honour.

3 Q. [9:56:59] Okay. So if I -- if I understand your testimony - because we're going  
4 to go through a few more bits of his testimony - he's a liar, and you're a truth-teller?

5 A. [9:57:12] Yes, your Honour.

6 Q. [9:57:13] Okay. Now if we go to the next section, this will be in tab 84, in  
7 binder -- binder 3, tab 84, we're still with person number 8, and, when you have it, let  
8 us know.

9 A. [9:57:57] Which page, your Honour?

10 Q. [9:57:58] (Microphone not activated) the first page, I just want to make sure that  
11 we are -- we're on the same page. You will see that it's September 9, 2004 at the  
12 bottom. Do you see that?

13 A. [9:58:20] Yes, your Honour.

14 Q. [9:58:21] Okay. Now if we flip to page 41, page 41, if I could draw your  
15 attention to line 7. Are you there?

16 A. [9:58:35] Yes, your Honour.

17 Q. [9:58:36] Okay. And who are the people who you say -- and who are -- and  
18 who are the people who you say she told you to mention? Your answer -- I mean his  
19 answer. I apologise. Person number 8's answer. "She told me to mention [person  
20 number 43], [person number 53], somebody called Gicheru and another person  
21 called --"

22 Do you see that?

23 A. [9:59:18] I can see, your Honour.

24 Q. [9:59:20] And I take it your answer is, he's lying there as well?

25 A. [9:59:24] Yes, your Honour.

1 Q. [9:59:26] All right. If we go -- if you go to the next page and we can -- it starts  
2 with:

3 "Yes?

4 Yeah, that she had talked to [person number 53] on how she was going back."

5 Line 3, question:

6 "And why is it that [she] would want to tell all [...] this to the Prosecution" -- "to the  
7 Prosecution investigators? What was the purpose of that?"

8 Answer: "The purpose -- the purpose was that she wanted to remain relevant to the  
9 [...] Prosecution or to the OTP, that she said that if you want to be taken care of well,  
10 you cite incidences whereby you may say that you have been approached."

11 Do you see that?

12 A. [10:00:32] I see that, your Honour.

13 Q. [10:00:33] And I take it is the same answer: He's lying, you're telling us the  
14 truth?

15 A. [10:00:38] He's lying, your Honour.

16 Q. [10:00:39] Okay. Now if we go to -- if you flip a couple of pages -- well, we go  
17 to page 66 in my document, page 66, still remaining with person number 8, and it's  
18 the same date, he's testifying on the same day, it's September 9, 2014. Are you there,  
19 ma'am?

20 A. [10:01:05] Yes, your Honour.

21 Q. [10:01:06] Okay. And if we -- if I can turn your attention to line number 4, line  
22 number 4, question:

23 "All right. So you don't deny speaking to [person number 19], but you state that it  
24 had nothing to do with delivering money to [you]; is that right?"

25 Answer: "Yes."

1 Question: "Why did you then tell the investigators in your statement that you spoke  
2 to [person number 19] about the issue of delivering money to [you] at paragraph 26?  
3 You've just read that paragraph, Mr Witness. Can you not recall why you  
4 mentioned this to the investigators?"

5 Answer: "Yeah, it was still on the plan that -- to show that there is a plan to snatch  
6 [her]" -- to snatch you -- "from the [Prosecution] programme."

7 Do you see that?

8 A. [10:02:17] I can see, your Honour.

9 Q. [10:02:19] Okay. And I take it here too, same answer: He's lying, you're  
10 telling us the truth?

11 A. [10:02:25] Yes, your Honour.

12 Q. [10:02:26] All right. And then if we could turn to page 68, page 68, same  
13 document, same person, same day, September 9, 2014, and if we look -- if we -- we'll  
14 start at the beginning at the first line, just an answer.

15 "Not really, I think I informed those investigators that [you] had a secret line that she  
16 told me -- she told me that she was using to communicate it to me, because she never  
17 wanted [to] -- that the other lines had been tracked by -- by the ICC programme. So  
18 she said that she had a secret line which she used to call me and tell me all those  
19 stories."

20 And I take it the same answer: He's lying and you're telling us the truth?

21 A. [10:03:34] Yes, your Honour. I can -- can I add it?

22 Q. [10:03:38] Can you -- can you -- you want to --

23 A. [10:03:39] Yes.

24 Q. [10:03:41] Okay. Please. Please.

25 A. [10:03:41] If I had another line which I was communicating to him, I should

1 have -- he should have handed over to OTP investigators.

2 Q. [10:03:55] All right.

3 A. [10:03:57] Thank you, your Honour.

4 Q. [10:03:57] I don't want to get ahead of myself, but I can't help but ask you this  
5 question: You had other lines at times that you did not hand over to an -- to the OTP  
6 investigators or to W- -- to the victims and witness section, is that correct?

7 A. [10:04:14] I handed over the whole lines which I was using with this number 8  
8 person.

9 Q. [10:04:22] With this number 8 person, but my question was a -- more general.  
10 There were times that you had private lines of communication that neither the  
11 Prosecutor nor the victims and witness section knew about?

12 A. [10:04:41] Yes, your Honour.

13 Q. [10:04:42] Okay. All right. And thank you for that, for being forthcoming on  
14 that issue.

15 A. [10:04:47] With a specific person, your Honour, and the person is number 12.  
16 That's the only person I can say.

17 Q. [10:04:55] Well, that's the only person that we know because thanks to the  
18 Prosecutor, he managed to get number 12 tapped and so we know that just with  
19 person number 12, you had 44 hours, 2 minutes and 57 seconds worth of  
20 a conversation. Some 80-some conversations that you have. God only knows who  
21 else you were calling because your phone wasn't being monitored. It was only  
22 person number 12. But we're going to get there. I just -- if you could be patient a  
23 little bit, we're going to get to that section. Okay? So let's focus on person number  
24 8 right now.

25 A. [10:05:34] That is why I was telling you --

1 Q. [10:05:35] Okay.

2 A. [10:05:35] -- that -- yeah, your Honour.

3 Q. [10:05:37] Okay. Now, staying again with person number -- number 8, if you  
4 go to tab 99, tab 99, and here we see -- it's binder number 3. And if we look at the  
5 bottom of the page, we see that it's now 15 September 2014. At the top of the page,  
6 we can see that we're still with person number 8.

7 Do you have it, Madam?

8 A. [10:06:24] Yes, your Honour.

9 Q. [10:06:24] And if we could flip the page and go to page 49, 49 of this document.  
10 Do you have it?

11 A. [10:06:41] Yes, your Honour.

12 Q. [10:06:42] If I could focus your attention to line 20. Question: "How did you  
13 know that information?"

14 Answer: "Yeah, [...] she told me that [that] she was using the -- the sister's children  
15 [...] to get some money and that she was claiming that the husband died in the  
16 post-election violence in 2007, yet she was not married.

17 Has she ever married as far as you know?"

18 Answer: No."

19 I take it he's lying here as well?

20 A. [10:07:29] Your Honour, he's -- he was lying. And if I add this, right, my sister  
21 was not married, and ...

22 Q. [10:07:43] We don't need to go into specifics. If you deny -- if you say that he's  
23 lying and you're telling us the truth, that would be sufficient. Unless you -- we  
24 could go into private session and then you want to give a more -- a fuller explanation,  
25 it's up to you. I want to be fair to you so if you --

- 1 A. [10:07:59] He was lying, your Honour.
- 2 Q. [10:08:01] Okay, all right. Can we move on to the next person then?
- 3 A. [10:08:06] Yes, your Honour.
- 4 Q. [10:08:08] Okay, thank you.
- 5 If we -- now I'm going to first ask you to look at that list, and look at person number
- 6 30, person number -- number 30. Okay?
- 7 A. [10:08:28] Yes, your Honour.
- 8 Q. [10:08:29] And do you recognise that name?
- 9 A. [10:08:34] Yes, your Honour.
- 10 Q. [10:08:34] And that's someone else that you were familiar with?
- 11 A. [10:08:37] Yes, your Honour.
- 12 Q. [10:08:38] You had spoken to on many occasions?
- 13 A. [10:08:40] Yes, your Honour.
- 14 Q. [10:08:44] All right. If we could go to tab 85, tab 85, which is in binder 3.
- 15 A. [10:09:13] I'm in there, your Honour.
- 16 Q. [10:09:15] Thank you. And if we look at the very top of this document, on the
- 17 left-hand corner we see the number given to that particular witness, who happens to
- 18 be person number 30 in -- for the purposes of our trial. At the bottom we see it's 23
- 19 September 2014. Okay?
- 20 Now if you could turn the page, and we're going to go to page 42, 42.
- 21 A. [10:10:13] Yes, your Honour, I'm in there.
- 22 Q. [10:10:14] Okay. And I just want to focus your (Microphone not activated)
- 23 PRESIDING JUDGE SAMBA: [10:10:19] Your speaker is off, Mr Karnavas.
- 24 MR KARNAVAS: [10:10:24] Sorry. Apologies.
- 25 Q. [10:10:26] So if we go to line 4, line 4, and it appears that Mr Steynberg is

1 questioning this witness or -- yeah.

2 "Now, Mr Witness, if you can please bear with me while I just find my spot again."

3 And I apologise, now it seems to be the president or whatever -- or the presiding  
4 judge.

5 "Witness, the question the Prosecutor asked you was this: What is the name of that  
6 third person not associated with the OTP, who it was you say that told you what to  
7 say in your statement?

8 What is the name of that person?"

9 And the answer: "Those persons are number 1" -- and it's my understanding that  
10 that was you, as number 1 -- and number 3 on the list. And number 3 in that case,  
11 it's my understanding, and I stand to be corrected by my learned colleague, is person  
12 number 63 in this case.

13 Do you see that?

14 A. [10:11:47] Yes, your Honour.

15 Q. [10:11:48] And could you please be so kind as to look at that list of numbers and  
16 see whether you recognise person number 63.

17 A. [10:12:04] Yes, your Honour.

18 Q. [10:12:05] And again, you've told us yesterday but just to make sure that we're  
19 clear, you knew person number 63 quite well?

20 A. [10:12:17] I knew him but not quite well. I knew him as professional.

21 Q. [10:12:24] Okay. You talked to him, he talked to you?

22 A. [10:12:28] Yes, your Honour.

23 Q. [10:12:32] All right. Now if we could turn -- if we could turn to page 59, and  
24 we're still on tab 85, we're still talking about witness number 30. When you get to  
25 page 59, let me know.



1 A. [10:13:03] Got it, your Honour.

2 Q. [10:13:05] Okay. Thank you.

3 Now I'm going to start mid -- mid-sentence on line 2:

4 "On that day, I met [person number 63 in our case] for the first time and we discussed  
5 the matter. That is what I said."

6 Presiding judge: "All right. That we've understood, but the Prosecutor's question is  
7 this: You said that during that meeting you had with number 1" - that is you - "and  
8 [person number 63] they told you to include in your statement certain information.  
9 Do you understand?"

10 The witness says: "Yes, I understand you, Mr President."

11 The presiding judge: "That information they told you to include in your statement,  
12 was it information about what happened or was it information that was made up in  
13 the sense that those things did not happen?"

14 Witness: "This was fabricated information to make my statement look credible."

15 Presiding judge: "All right. At the time that [the] fabricated information -- at the  
16 time [that] the three of you, according to you, decided to put the fabricated  
17 information in your statement, who came up with the story? Who came up with the  
18 fabricated story?"

19 I want you to understand the difference I'm making now. It is one thing to say, well,  
20 here is a story we're looking at, put it in his statement. It is another matter for  
21 somebody to be the one that came up with that story to begin with that needed to be  
22 put in the statement.

23 So what I want to understand from you now is who -- whose idea was it? Who came  
24 up with the fabrication?"

25 Witness: "It was person number [63]. However, person number 1" - that is

1 you - "was also involved, but to a lesser extent."

2 I take it it's your same answer as you did with the previous witness, this witness is  
3 lying and you're the truth-teller?

4 A. [10:16:31] He's lying, your Honour. And I can add, this witness met  
5 investigators before me and I never knew that he was already called and I never knew  
6 what information investigators needed, so I couldn't say anything about -- because I  
7 didn't know what -- I didn't know what information the investigators are -- are  
8 want -- they want. So he was lying, your Honour.

9 Q. [10:17:01] All right. And I take it you also stand by, you know, the information  
10 that you provided the Prosecutor in October 2021 in your statement for more -- for a  
11 more complete answer to the -- to this particular witness, right?

12 A. [10:17:20] What did you say?

13 Q. [10:17:22] Of course you already discussed this with the Prosecutor in October,  
14 so you also stand by that --

15 A. [10:17:30] Yes, your Honour.

16 Q. [10:17:31] Okay. All right.

17 A. [10:17:31] Thank you.

18 Q. [10:17:33] I deliberately did not read everything that you said to save some time.  
19 Her Honour is going to have that information, but feel free to elaborate as much as  
20 you want on anything. So don't let me limit you to a yes or a no. Okay?

21 A. [10:17:50] Thank you, your Honour.

22 Q. [10:17:50] You're welcome.

23 Now if we could go to tab 86, tab 86. We're still in the same binder, and if you're  
24 there, let me know.

25 A. [10:18:06] I'm in there, your Honour.

1 Q. [10:18:07] Okay. And you will see at the bottom of the page, now it's the 24th,  
2 the 24th of September 2014. Okay?

3 A. [10:18:18] Yes, your Honour.

4 Q. [10:18:19] Now if we turn to page 18, if we turn to page 18.

5 PRESIDING JUDGE SAMBA: [10:18:25] Sorry, just for clarity, we're still looking at  
6 the testimony of witness number 30 on the list, is it?

7 MR KARNAVAS: [10:18:31] That's correct, that's correct.

8 PRESIDING JUDGE SAMBA: Thank you.

9 MR KARNAVAS: [10:18:33] Yes. Thank you, your Honour.

10 Q. [10:18:36] So this is the same person, person number 30. If you don't recall who  
11 person number 30 is, please glance at it very quickly at the list here to refresh your  
12 memory.

13 A. [10:18:49] I remember, your Honour. Thank you.

14 Q. [10:18:51] Okay, all right.

15 Now if I could direct your attention to line 6, line 6 and I'll read -- I'm trying to read as  
16 slowly as I can so we get the translation properly.

17 Question: "And bearing in mind you had never lived in location number 1, what do  
18 you think would happen if investigators went to location number 1 and asked the  
19 people living there if they knew you?"

20 Answer: "It would be a mistake.

21 A mistake by who?

22 On my part."

23 Question: "And the investigators found that you did not, in fact, live in location  
24 number 1, do you think you still would have" -- "you still would have got all the  
25 benefits you were expecting?"

1 Answer: "Well, you know, based on what they told me -- well, let me explain.

2 They told me all those things because investigations had been carried out at location

3 4."

4 And for our purposes, location number 4 is location number 12 on our list. Location

5 number 12 on our list. So if you want to look at location -- location number 12, so

6 you can -- you know what they're -- they're talking about. Okay?

7 A. [10:20:47] Yes, your Honour.

8 Q. [10:20:48] Okay.

9 "If the investigation had been carried out correctly, they would have gone to where

10 we were" and all -- "and in all the surrounding areas, but these people told me that",

11 quote, "Those other people are very far away, they will not come here," and it is not

12 for that -- "and it is for that reason that we gave that statement the way we did."

13 Question: "All right. Let me just clarify two things: Firstly, [...] you say 'they told

14 me,' you're referring to person [number] 1" - that is you - "and 3" - that is person 63

15 in our case - "is that right?"

16 Answer: "Yes.

17 You then you said that "They told me ... those things because investigations had been

18 carried out" -- "because investigations had been carried out at location 4." That is

19 location 12. Answer -- "Is that what you meant to say, location [number] 4 on the

20 PIS?" That is local number 12.

21 "Yes."

22 So do you wish to comment on this at all?

23 A. [10:22:31] Yes, your Honour. I can say these people were lying, and after they

24 received bribery and they change all the statement and they change all things to put

25 me because I didn't receive a bribery.

1 Q. [10:22:50] Okay. Now I'm going to switch to another person and that's person  
2 number 14, person number 14. So if you could look at the list, look at the list and see  
3 whether you -- just to remind us whether you recognise this person, whether you  
4 know this person.

5 A. [10:23:21] Yes, your Honour.

6 Q. [10:23:25] Okay. And you know him quite well?

7 A. [10:23:26] Not quite well.

8 Q. [10:23:27] Okay.

9 A. [10:23:28] I know him, as I told the investigators earlier.

10 Q. [10:23:31] Okay. You were talking to him, he was talking to you during this  
11 period, during the period of say 2011, 2012, 2013?

12 A. [10:23:42] Not quite, unless we need advices from the project we had, that is  
13 how we were communicating.

14 Q. [10:23:49] Okay. So let's look at tab 82. That should also be in binder number  
15 3.

16 PRESIDING JUDGE SAMBA: [10:24:02] Did you say 82 or 87?

17 MR KARNAVAS: [10:24:05] Eighty-two. 82.

18 PRESIDING JUDGE SAMBA: [10:24:06] Eighty-two.

19 THE WITNESS: [10:24:19] In there, your Honour.

20 MR KARNAVAS: [10:24:22]

21 Q. [10:24:25] Okay, great. And if we look at the very top, we see the P number of  
22 the witness, and, for our purposes, it's person number 14. If you look at the bottom,  
23 we see that it is 5 September 2014. And again, this would have been after you had  
24 testified?

25 A. [10:24:43] Yes, your Honour.

- 1 Q. [10:24:44] Okay. All right. And if we look at page 65, page 65.
- 2 A. [10:25:01] In there, your Honour.
- 3 Q. [10:25:02] Great. And if I could focus your attention to -- we'll start with line 11.
- 4 I'm trying to read as little as possible because all of this will be in ...
- 5 The answer: "Yes. Yesterday I said that in April last year 2013, I was approached
- 6 by a certain lady, who told me that she was --" that she had been -- that "she had some
- 7 connection[s] with -- with the ICC. [...] she told me that -- because she was" with the
- 8 organisation number 1 on our list -- "she was a [...] supporter, I was a [...] supporter"
- 9 of that -- I'm sorry, it's 15, number -- organisation number 15. And he says: "I was
- 10 [with organisation number 15] supporter, she approached me and told me she was
- 11 speaking with some people from -- from the ICC. Then she told me that they were
- 12 looking for some more witnesses because the key witnesses at the time had started
- 13 withdrawing so that the ICC was looking for some witnesses to go and testify. And
- 14 then she told me that the main intention was to -- to victimise the two parties, William
- 15 Ruto and Joshua Sang, in the post-election violence that took place in 2007-2008.
- 16 Then she told me that once you are a witness, you're going to be able to get a lot of
- 17 support. You may -- your children will go to good schools, you will get --" you will
- 18 get -- "you will live a luxurious life, you will pursue further education and also you
- 19 will be relocated in the country of your choice and not here in Africa."
- 20 Would you -- do you wish to respond to that?
- 21 A. [10:27:37] Yes, your Honour. This person number 14, I never knew even when
- 22 he met with ICC. I didn't have any connection and I didn't know. So it's false and
- 23 he's trying to discredit me to be look like I am after receiving bribery.
- 24 MR KARNAVAS: [10:28:19] Let me have a moment.
- 25 (Counsel confers)

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1 MR KARNAVAS: [10:28:28] Your Honour, I must apologise. There's a mix-up.  
2 This -- we're talking about person number 8. So it's my fault. I deeply -- deeply  
3 apologise for the inconvenience. But now we have a correction.

4 Q. [10:28:51] So if you could look at -- and I apologise to you, Madam Witness,  
5 because --

6 PRESIDING JUDGE SAMBA: [10:28:55] Sorry, let me just understand and clarify,  
7 Mr Karnavas, because we have a different witness number on the first face of 82, tab  
8 82. I mean that witness is number 14 on the list that we are using in court. The first  
9 page, at least the first page of 82, tab 82.

10 MR KARNAVAS: [10:29:28] Okay.

11 PRESIDING JUDGE SAMBA: [10:29:29] That witness is certainly number 14. And  
12 from what I see, the second page, that is, page 64 that you are talking about following  
13 65, 76, yes, and 77, that's a different witness.

14 MR KARNAVAS: [10:30:08] Okay. I -- I see the mix-up and I -- okay, let me try to  
15 clarify. Try to clarify. And I stand corrected. The first page relates to person  
16 number -- number 14 and that probably, in my haste, I put it in a wrong pile.

17 Q. [10:30:33] So the part that I have quoted with you, Madam, the part that we just  
18 discussed, that I just read, that relates to person number 8, okay? So it wasn't  
19 person -- we're going to get to person number 14, but this person, right now we're  
20 dealing with person number 8, so this is what person number 8 said, okay?

21 Now if you could first look at the list and see whether you know person number 8.

22 A. [10:31:13] Which tab?

23 Q. [10:31:14] Well, on this list -- on your list (Microphone not activated)

24 PRESIDING JUDGE SAMBA: [10:31:18] Sorry, your microphone.

25 MR KARNAVAS: [10:31:19]

- 1 Q. [10:31:20] The list that we have, the list of individuals.
- 2 A. [10:31:24] I was in tab 82 so -- yes.
- 3 Q. [10:31:30] Okay. I understand.
- 4 A. [10:31:32] Which page?
- 5 Q. [10:31:34] Well, I'm not asking you to go to another page, but we're referring to  
6 person number 8 and I was asking you to look at that list of names --
- 7 A. [10:31:42] Yes, I know, your Honour.
- 8 Q. [10:31:44] Okay. So to make sure that I -- because I confused everybody in  
9 court, including myself, occasionally it happens.
- 10 A. [10:31:53] Understandable.
- 11 Q. [10:31:54] But the portion that I read to you came when person number 8 was  
12 testifying in the Ruto and Sang case and this is what he's saying about you. So I take  
13 it your answer is the same?
- 14 A. [10:32:11] Yes, your Honour. The answer is no.
- 15 Q. [10:32:12] Right.
- 16 A. [10:32:14] He was lying, and after getting the bribe, he changed everything.
- 17 Q. [10:32:18] All right.
- 18 A. [10:32:19] To discredit me.
- 19 Q. [10:32:21] And just to make sure that we -- I've covered this, you knew person  
20 number 8? You were acquainted with him?
- 21 A. [10:32:28] I knew him. And he was my neighbour, your Honour.
- 22 Q. [10:32:32] So dare I say you knew him fairly well?
- 23 A. [10:32:39] I don't understand if you say very well. I knew him --
- 24 Q. [10:32:42] Okay, you knew him.
- 25 A. [10:32:43] -- as a neighbour and -- yeah.



- 1 Q. [10:32:46] Okay. Well, where I come from, they say you see your neighbour  
2 before you see the sun; so that's why you usually know the neighbour fairly well.
- 3 A. [10:32:57] Not -- not that much.
- 4 Q. [10:32:58] Okay, all right.
- 5 A. [10:32:59] It was officially.
- 6 Q. [10:33:00] Okay.
- 7 A. [10:33:03] Yes, your Honour.
- 8 Q. [10:33:05] Now if we could go to page 77, page 77.
- 9 A. [10:33:09] In the same binder?
- 10 Q. [10:33:11] In the same binder, this is the same document, same document.  
11 We're still on tab 82.
- 12 A. [10:33:16] Thank you, your Honour.
- 13 Q. [10:33:26] And we are still with the same person.
- 14 A. [10:33:31] In there, your Honour.
- 15 Q. [10:33:32] Okay. Now if you look at line 1: "So I was saying that if the details  
16 is needed ..."  
17 Okay?  
18 So again, line number 1:  
19 "So I was saying that if the details is needed, I am there to -- to give."  
20 Question: "Do you regard the discussions that you had with this lady as being  
21 simply being details? Is this just a detail?"  
22 Answer: "I think there I said that I was recruited by [her]." By you, that is.  
23 Do you see that?
- 24 A. [10:34:16] I can see, your Honour.
- 25 Q. [10:34:17] So here, he's saying that you recruited him, and I take it from your

1 earlier answer, you're saying he's lying and you're telling the truth?

2 A. [10:34:33] Yes, your Honour. I never recruited him and you can find that from  
3 Mr Prosecution record --

4 Q. [10:34:41] Okay.

5 A. [10:34:42] -- who recruited him to ICC.

6 Q. [10:34:44] Okay.

7 A. [10:34:45] Thank you, your Honour.

8 Q. [10:34:46] Well, just let me clarify one point. Because you say the Prosecution  
9 record, are you suggesting that anything the Prosecutor says is correct, that we have  
10 to accept?

11 A. [10:34:59] They have the record showing who recruited that person, who  
12 introduced that person number 8 -- who recruited person number -- is it number --

13 Q. [10:35:15] Yeah, number 8. Number 8. Number 8 is saying that you recruited  
14 him.

15 A. [10:35:25] Number 8, yes, I recruited him, but I didn't recruited, I just gave out  
16 the number and, then, from there, I don't know what was happening, your Honour.

17 Q. [10:35:37] Okay. All right. All right, thank you.

18 If -- if we can go to tab 87, tab 87, still in third binder. And now we're going to get to  
19 person number 14. So now -- so when you get to tab 87, please let us know.

20 A. [10:36:34] I'm in there, your Honour.

21 Q. [10:36:36] Thank you, thank you very much.

22 And we can see the person's number at the very top. At the very bottom on the left  
23 side, we see that this witness testified on 18 September 2014. And if I could turn  
24 your attention to -- now to page 63. Page 63.

25 A. [10:37:08] In there, your Honour.

1 Q. [10:37:09] Okay, very good.

2 And if could draw your attention to line 23, it's at the bottom of the page. Are you  
3 there?

4 A. [10:37:24] Yes, your Honour.

5 Q. [10:37:25] All right.

6 Answer: "Your Honour, since the first recording that we mentioned the name  
7 Gicheru, that is when I discovered that the name" -- "that the name that is supposed to  
8 be used in this discussion was Gicheru. That is why we mention Gicheru, Gicheru at  
9 the -- all the time."

10 If we go to the next page.

11 Question: "And when you're saying, Mr Witness, 'Gicheru will complete it,' will  
12 complete what?"

13 Answer: "Your Honour, we were talking about completing an issue that was not  
14 there." Just fabricating -- "Just fabrication for how to get money."

15 Question: "Complete what, Mr Witness? What was Gicheru supposed to  
16 complete?"

17 Answer: "Your Honour, I told you that I don't know Gicheru, neither I've never  
18 seen" -- "neither I've never seen her -- him, but the discussion was well-planned so  
19 that you can release money -- the investigators can release money to [that] lady."  
20 The lady being you.

21 A. [10:39:07] Your Honour, it's not true. And the name Gicheru, I got it from him  
22 and he was the one, according to the recording, I recorded him, the picture is proving  
23 that he was the one talking about Gicheru. I told you before I never met Gicheru, I  
24 never talked to him. So they had -- he's the one who brought this whole issue saying  
25 they want you to go back and already money is there and the recording is there.

1 Thank you, your Honour.

2 Q. [10:39:40] We're going to switch topics, we're going to go someplace else, so  
3 we're finished with that.

4 A. [10:39:47] Thank you, your Honour.

5 Q. [10:39:48] Now during the course of your involvement with the OTP, yesterday  
6 we saw where you were communicating with witnesses, at one point, they had told  
7 you to stop it or they had asked you who had tasked you. The OTP investigators  
8 had in fact asked you to tape-record all of your conversations, had they not?

9 A. [10:40:14] Yes, your Honour.

10 Q. [10:40:16] And at some point -- you know, and they provided you with the  
11 means to tape-record?

12 A. [10:40:21] Yes, your Honour.

13 Q. [10:40:22] Sometimes it was the tape-recorder aside and sometimes I think it was  
14 built into the phone, as I understand it?

15 A. [10:40:29] Yes, your Honour.

16 Q. [10:40:31] And so -- and we see from the disclosure material from the  
17 Prosecution quite a few tape recordings from you and I -- so I don't doubt that. And  
18 from my disclosure material, it appears that you had a Sony device -- a Sony audio  
19 and a Technobile. Does that ring a bell? I mean, the two different phones?

20 A. [10:41:04] Yes, your Honour. I had --

21 Q. [10:41:07] Provided to you by the OTP?

22 A. [10:41:09] It was a mobile.

23 Q. [10:41:11] Yeah.

24 A. [10:41:12] Samsung. My phone, Techno. And I can't remember the name of  
25 the device.

1 Q. [10:41:21] Okay.

2 A. [10:41:23] But, yeah.

3 Q. [10:41:25] All right. Now I have a folder here. As you can see, I go through  
4 these folders. That's -- I mean, I can't remember everything so I just try to put things  
5 in, and as you can see, I have some documents. And in all of these documents, and  
6 I'll -- I will read them into the record, and maybe we can go through every single one  
7 of them, which may take a while, or I can just ask you one or two questions and see if  
8 we can come to some agreement on what your testimony is. Okay?

9 A. [10:42:02] The choice is yours, your Honour.

10 Q. [10:42:04] All right. Thank you.

11 Now, having gone through what has been provided to us by the Prosecution, and  
12 what -- and these, by the way, are the same documents that you used to refresh your  
13 memory, to use to -- you know, you went through before coming here to give your  
14 evidence. There appear to be numerous instances -- numerous instances where you  
15 did not record conversations you were having with various individuals, either  
16 because the device didn't work, you forgot to turn it on, or for whatever other reason.  
17 Can we agree on that?

18 A. [10:42:59] Yes, your Honour.

19 Q. [10:43:00] Okay. And there were times -- there were times when -- whenever  
20 they would ask you to provide your phone to them so they could check, you would  
21 do that?

22 A. [10:43:13] I hand it over, your Honour.

23 Q. [10:43:15] Right. And the reason you handed it over because they wanted to  
24 see who was calling you and who you were calling, right?

25 A. [10:43:25] Yes, your Honour.

1 Q. [10:43:25] And from that at least we could glean some information as to when  
2 you might have been having conversations that you were not recorded -- that you had  
3 not recorded, right?

4 A. [10:43:40] Yes, your Honour.

5 Q. [10:43:41] All right. And to be fair to you, when the Prosecution investigators  
6 would come and you would say, "Well, so-and-so called me, I didn't record it, but to  
7 my recollection, this is what happened. This is it what we talked about." Right?

8 A. [10:44:03] No, your Honour. The information was I tried to record it, but the  
9 device was not recording. It's not like I could --

10 Q. [10:44:11] I understand, Madam. I'm not suggesting at this stage, at this stage,  
11 that for some reason or other you were not recording, but what I am suggesting is  
12 that -- or what I can see from here is that when they were able to prove that you were  
13 having unrecorded conversations, you would at least inform them that, "Yes, I had  
14 so-and-so call me from this number," and since it wasn't recorded, you would  
15 volunteer what you recalled from that conversation?

16 A. [10:44:55] I have volunteered, your Honour, and tell -- give the whole  
17 information, I was.

18 Q. [10:45:00] Right.

19 A. [10:45:00] They ask.

20 Q. [10:45:01] Right. They asked and you would -- you would tell them,  
21 "So-and-so called me. It isn't recorded, but this is what they told me."

22 A. [10:45:10] Yes, I remember --

23 Q. [10:45:11] Right.

24 A. [10:45:11] -- I said that.

25 Q. [10:45:17] Okay. Now at least you would agree with me on this one, I hope,

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1 since it wasn't recorded, all we can do is take your word of what exactly was said  
2 during that -- that conversation. Would you agree with me?

3 A. [10:45:35] Yes, your Honour.

4 Q. [10:45:37] Okay. Because as we'll see later, when we get to the recorded  
5 conversations that you had with person number 12 - when you did not know that you  
6 were being recorded - there, we can see, you know, the discussion, we can see what  
7 number 12 said, we can see what you said, we can see who is saying what to whom.  
8 But in this instance when we don't have those recordings, all we have is what you  
9 represented to the Prosecutors as to what the discussion was about when so-and-so  
10 called you, and, for whatever reason, that conversation was not recorded?

11 A. [10:46:24] Yes, I told them what was --

12 Q. [10:46:25] Okay.

13 A. [10:46:27] And the other part, which I told, they're there. They can confirm it --

14 Q. Okay.

15 A. [10:46:31] -- what was said --

16 Q. [10:46:32] All right.

17 A. [10:46:32] -- your Honour.

18 Q. [10:46:32] All right.

19 MR KARNAVAS: [10:46:34] Now, your Honour, I'm at your hands. I have a list,  
20 I've typed it out, of all these documents. I can read it into the record at this point. I  
21 could hand it over to -- so we don't take too much time, but I could -- she's already  
22 acknowledged this, so I don't need to go through this entire litany of documents  
23 which are already in the record. But if you wish, I could mention the person's name  
24 and I could mention the document. I could go over it with the -- with your staff and  
25 then we could decide later on. I'm at your hands.

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1 PRESIDING JUDGE SAMBA: [10:47:22] What do you actually mean, Mr Karnavas?

2 MR KARNAVAS: [10:47:26] Well, I had, initially, you know, in preparation for this,  
3 had the witness said no, I was prepared to go through all of these documents and to  
4 point out instances where it is acknowledged that she hasn't -- you know, that it  
5 wasn't recorded. The witness has acknowledged that, yes, those -- you know, there  
6 were times when she did not record.

7 Now at some point, we're going to be mentioning this in our final brief. If you think  
8 it's necessary for us to at least read into the record those documents, which are  
9 already in, or where we think, you know, there's an indication that it wasn't recorded,  
10 I could do so.

11 If you think it's not necessary because the documents are already in and then we can  
12 simply make references to it, considering that we have -- already have the admission  
13 from the witness. My concern is, that at some point, at some point the Prosecution  
14 doesn't say, "Well, you didn't put this to the witness. You didn't put this particular  
15 document to the witness."

16 So, I mean, I see we're getting close to the -- the lunch break. This can be -- I mean  
17 the morning break. We don't have to resolve this issue right now. We can come  
18 back. I can move on to the next section and then --

19 PRESIDING JUDGE SAMBA: [10:49:03] But maybe if I just ask, and the documents  
20 you are talking about, are they already on the record?

21 MR KARNAVAS: [10:49:07] They're already on the record.

22 PRESIDING JUDGE SAMBA: [10:49:09] So why not make references to them so  
23 that --

24 MR KARNAVAS: [10:49:10] I can --

25 PRESIDING JUDGE SAMBA: [10:49:12] -- you know, they remain on the record.



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1 MR KARNAVAS: [10:49:15] I could -- I could do that right now. I could do that  
2 right now.

3 PRESIDING JUDGE SAMBA: [10:49:17] Yes, I think you should do that. Thank  
4 you.

5 MR KARNAVAS: [10:49:20] Okay. And that probably will take us to the break  
6 because there are quite a few but ...

7 MR STEYNBERG: [10:49:24] Your Honour, I'm in your hands, but if I can maybe  
8 shortcut the process. The documents as I understand it my learned friend's referring  
9 to are the witness statements of this witness where she mentions instances that she  
10 had conversations, and the witness statements states this was not recorded for  
11 whatever reason.

12 PRESIDING JUDGE SAMBA: [10:49:42] Yes. I just want for him to refer us to, you  
13 know --

14 MR STEYNBERG: [10:49:45] Right.

15 PRESIDING JUDGE SAMBA: [10:49:45] -- the various documents and which  
16 sections he is talking about, maybe lines or something like that.

17 MR STEYNBERG: [10:49:53] All I wish to state is that the Prosecution doesn't  
18 dispute that if that's in the statement.

19 MR KARNAVAS: [10:49:59] Okay. I'll just read the -- I'll proceed as instructed.

20 PRESIDING JUDGE SAMBA: [10:50:03] Thank you, Mr Karnavas.

21 MR KARNAVAS: [10:50:05] Yes. So the documents are KEN-OTP-01 --

22 PRESIDING JUDGE SAMBA: [10:50:11] Is there a tab number, maybe?

23 MR KARNAVAS: [10:50:15] Okay, we could do that as well. That might be even  
24 easier, you know. It would be tab 28, binder 2. Would that be -- do I need to go  
25 through all of the KEN numbers and stuff like that?

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1 PRESIDING JUDGE SAMBA: [10:50:35] As long as you are sure that that's the  
2 document.

3 MR KARNAVAS: [10:50:38] Right. I have -- yeah, I have -- all the documents are  
4 here, your Honour, so I could go through the tab numbers and that might be -- and  
5 then for -- for assistance, I can make copies and provide a copy to the Prosecution and  
6 provide a copy to the Court. Mr Steynberg is taking me at my word.  
7 But anyway, it's tab 28, tab 30. There's another one on tab 28, tab 32.

8 PRESIDING JUDGE SAMBA: [10:51:10] You say 30 and 32 or do you mean 28 and  
9 32?

10 MR KARNAVAS: [10:51:17] There's 28. 32, tab 32. Tab 33. There's another one  
11 on tab 33. There's tab 25. There's another one on tab 25. There's a third one on tab  
12 25. There's tab 26 again. There's tab 25. We have -- I've categorised them by  
13 individuals, your Honour. There's tab 34. There's tab 35. There's tab 36. There's  
14 tab 37. There's another tab 38. And I believe that's it.

15 And as I indicated, I could provide this cheat sheet, which I have. It's the benefits of  
16 having a super staff, super colleagues. And I could provide that to your assistants  
17 and to the Prosecution so they know exactly what pages I'm referencing in these  
18 documents and paragraphs. Okay?

19 PRESIDING JUDGE SAMBA: [10:53:10] That would be appreciated, Mr Karnavas.  
20 Thank you.

21 MR KARNAVAS: [10:53:14] Okay. Now the next -- the next topic -- the next topic  
22 is going to take -- take us beyond the break, so this might be a good time to take  
23 a break.

24 PRESIDING JUDGE SAMBA: [10:53:29] Maybe if I just ask before we go away,  
25 when we come back, how long would you --

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- 1 MR KARNAVAS: [10:53:39] Well, Madam President, I've slowed down, as you've  
2 noticed. You know, I'm almost like in reverse. But, on the other hand, we've made  
3 significant progress. So I think if we go at this pace and continue with this kind of  
4 progress, I'm hoping that we can finish by lunchtime. But I can assure you --
- 5 PRESIDING JUDGE SAMBA: [10:54:02] So you mean you will need the entire  
6 session?
- 7 MR KARNAVAS: [10:54:05] Yes, yes, yes, your Honour.
- 8 PRESIDING JUDGE SAMBA: [10:54:06] All right.
- 9 MR KARNAVAS: [10:54:08] For sure.
- 10 PRESIDING JUDGE SAMBA: [10:54:09] Well, we are in public session, aren't we?  
11 Yes.  
12 So at this stage, I will adjourn the matter and ask that you come back for 11.30.  
13 Madam Witness, just a little break for some maybe 35 minutes now and we come back  
14 at 11.30.  
15 Mr Gicheru, the same to you, please.  
16 Thank you very much.
- 17 THE WITNESS: [10:54:45] Thank you, your Honour.
- 18 THE COURT USHER: [10:54:49] All rise.  
19 (Recess taken at 10.54 a.m.)  
20 (Upon resuming in open session at 11.31 a.m.)
- 21 THE COURT USHER: [11:31:45] All rise.  
22 Please be seated.
- 23 PRESIDING JUDGE SAMBA: [11:32:07] Well, good morning again, everyone.  
24 Mr Karnavas, you'll have to continue, but maybe ...  
25 Mr Steynberg, I want to ask whether you've made up your mind at this point, with all

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1 the cross-examinations that has gone -- that have gone out yesterday, today, possibly  
2 the day before, right? Or yesterday and today, whether you'd want to do any  
3 re-examination?

4 MR STEYNBERG: [11:32:42] I'm grateful, your Honour. Yes, there are several  
5 points I would like to do clarifications on. I estimate it will probably take between  
6 45 minutes and an hour to cover them all.

7 PRESIDING JUDGE SAMBA: [11:32:54] All right. Thank you.

8 Mr Karnavas, your witness, please.

9 MR KARNAVAS: [11:32:58] Thank you.

10 If the Prosecution cares to share those points, I might be able to help him during my  
11 cross-examination.

12 Q. [11:33:09] If we could turn to tab 38, tab 38. And that's in volume 2, binder 2,  
13 tab 38. This is sort of a subsection of the issue of phones.

14 Are you there?

15 A. [11:34:03] Yes, your Honour.

16 Q. [11:34:05] Okay. Now, this morning I touched on -- a little bit on this issue of  
17 phones and whether you had phones that you were not supposed to have and  
18 whether you were communicating with folks when you were not supposed to be  
19 communicating. So this -- this part of my cross-examination deals with that, but first  
20 sort of a -- a preliminary matter with -- on this topic is found on tab 38. If we look at  
21 the second -- the third paragraph, it says you were asked if you're still in contact with  
22 other witnesses, and they list a number of witnesses, and you were told to stop  
23 contacting people in Kenya.

24 MR STEYNBERG: [11:35:03] Sorry, your Honour, can we just have a date on this,  
25 please.

1 MR KARNAVAS: [11:35:08] Yeah, you're absolutely right. It's a document that I  
2 received from the Prosecution that's filed on 12/10/2013.

3 Q. I wish to, for the record, just to show that you have been -- it would appear that  
4 you were contacting witness on your own and -- from this document, and you were  
5 told to stop doing that. Would that be correct?

6 A. [11:35:37] Your Honour, I was having my Kenyan phone number and they were  
7 using that call to call me and they -- we used that Kenyan number.

8 Q. [11:35:48] But in here, it seems to indicate that you were told to stop  
9 communicating with -- with individuals?

10 A. [11:35:53] But my phone was on, your Honour, and they could call and ...

11 Q. [11:35:59] "... she was told to stop contacting people in Kenya," so here it appears  
12 that you were contacting others in Kenya. So would you acknowledge that that was  
13 going on? Or did the investigator who wrote this report, did he just make that up?  
14 Is he lying?

15 A. [11:36:22] No, your Honour, he's not lying.

16 Q. [11:36:27] Okay. All right. And incidentally, although it was filed  
17 on -- on -- yeah, it was filed 10/12, and this is -- it's about October 12, 2013 when you  
18 got this message.

19 A. [11:36:41] And I gave them the number.

20 Q. [11:36:42] I understand. Ma'am, there's no need to get defensive. I'm just  
21 pointing out that this is what they're saying.

22 Now if you could go to tab 43. Tab 43. And that's in binder 2, binder 2.

23 And this is - while you're looking for it - the date of this exchange, your Honour, is 30  
24 July 2014. 30 July 2014.

25 Do you have it?

- 1 A. [11:37:33] Yes, your Honour.
- 2 Q. [11:37:34] Okay. And of course this is -- this would be after you had testified,  
3 right?
- 4 A. [11:37:40] Yes, your Honour.
- 5 Q. [11:37:42] So you had testified and you were still in The Hague at the time?
- 6 A. [11:37:45] Yes, your Honour.
- 7 Q. [11:37:46] Okay. And as we indicated, this was -- you -- when you were having  
8 these communications with person number 12, you were not aware that you were  
9 being tape-recorded?
- 10 A. [11:38:01] I was not aware, your Honour.
- 11 Q. [11:38:02] Okay. And is it fair to say that the first time that you became aware  
12 of that was in October last year, October 2021?
- 13 A. [11:38:15] Yes, your Honour.
- 14 Q. [11:38:16] Okay. So from 2014, for instance, when the Prosecution became  
15 aware of this, they didn't bother to ask you in 2015, '16, '17, '18, '19, '20, '21, all those  
16 years went by and the Prosecutor never contacted you to ask you what exactly you  
17 were saying in these communications, right?
- 18 A. [11:38:42] Yes, your Honour.
- 19 Q. [11:38:44] All right. Now if you look at page 44, if we could -- we see some  
20 initials, by the way, and I think we can -- we agreed yesterday, but just again to  
21 remind ourselves, you see your initials there, right?
- 22 A. [11:39:09] Yes, your Honour.
- 23 Q. [11:39:10] And we see -- we see the initials of the person -- of person number 12?
- 24 A. [11:39:16] Yes, your Honour.
- 25 Q. [11:39:17] Okay. And at times we may come across some other initials, and

1 we'll see who they are. But anyway, here, if we look at line 1428, you say: "They  
2 are leading me in circles and don't want to give me a phone."

3 Further down, 1434, line 1434: "Yes, I was told people [in location number 30] talk to  
4 her but they went to [location number 18]."

5 And then further down on line 1441: "Let me call her, let me call that lady and hear  
6 what she says."

7 Now, you were not supposed to be having any of these conversations, right? It's  
8 a "yes" or a "no", or "I will explain". But give me whether you were allowed to or not  
9 allowed to first.

10 A. [11:40:23] I was not allowed. But I will explain, your Honour.

11 Q. [11:40:26] Okay, please do.

12 A. [11:40:29] After I testified and I was so lonely and I thought those people were  
13 in protection programme because they never told that they are out.

14 Q. [11:40:43] Yes?

15 A. [11:40:44] So, and I feel like talking to someone because I couldn't get in touch  
16 back home and I thought of, let me just talk to them because I was in a country which  
17 I can't speak the language.

18 Q. [11:41:01] Okay.

19 A. [11:41:01] And I can't speak to Victim Witness Unit unless if I need something.  
20 So the only -- I say, Okay, they are in here and they are getting contact, I say let me  
21 just have a chat with them, thinking that they were in the protection. But afterwards  
22 I realised that -- from person number -- wife of person number 5 inform me that they  
23 are no longer in the protection and I was -- and as time, conversation, when it was  
24 going on, and I realised that this -- I was in the wrong. So I wanted to explore more  
25 from, so everything which I was saying in there, it wasn't meant to. I just wanted to

1 know much more about him because it looked like -- I thought this person was in  
2 protection and he was not. So the -- all -- all things which we -- we were talking, I  
3 was just talking to keep conversation on.

4 Q. [11:42:39] Okay. Is that your answer?

5 A. [11:42:42] Yes, your Honour.

6 Q. [11:42:43] Okay. And of course all of this -- all of this, all of this you told the  
7 Prosecutor in -- in October 2021. You explained all of this. What you just told us,  
8 you also told this to the Prosecutor in October 2021?

9 A. [11:43:08] Yes, your Honour.

10 Q. [11:43:09] Okay. Now that is in evidence, so we don't need to hear that  
11 explanation again, but thank you for offering it. Is there anything else, something  
12 new that you haven't shared, that you thought about, that might have escaped your  
13 attention that you would want to give as an explanation? Because we're going to  
14 spend quite a bit of time going over some of the things that you said, when you didn't  
15 know that you were being listened into.

16 So, so that we move along and get you out of the witness box by today, please  
17 complete your -- any other explanations you wish to give at this point in time as far as  
18 why you were making those phone calls.

19 A. [11:43:58] Which phones calls, your Honour?

20 Q. [11:44:01] All of -- well, the ones that you were having with number 12 when  
21 you were not supposed to have.

22 A. [11:44:04] I was -- I have explained to you, your Honour, that I was bored and --

23 Q. [11:44:13] Okay. Bored and lonely. And as I understand it, there's one place  
24 where you also say that you were recovering, you were sick. And that was -- that's  
25 also an explanation that you give.



1 A. [11:44:23] I was sick from the beginning, your Honour, so they knew it, I was  
2 sick.

3 Q. [11:44:29] Okay. All right. And so that's it. Is there anything else you wish  
4 to share with us on that at this point?

5 A. [11:44:37] The only thing I want to share is like everything I said there, it wasn't  
6 accurate, your Honour.

7 Q. [11:44:46] Okay. What you're -- in other words, what you were saying when  
8 you were not being listened into was not accurate?

9 A. [11:44:53] Not -- what I'm saying is when I was talking to him, because I know  
10 his agenda was to make me to leave the ICC, and that is the time now I wanted to  
11 know much more about him.

12 Q. [11:45:01] Okay.

13 A. [11:45:02] So I had to say something, so he can give me the information because  
14 I -- I'd been talking to him when I was in location number... Mm... I talked to him  
15 when I was in location number 12, but he never mention he's out of programme.  
16 And he talked to me before and he mentioned to me that when are you joining, when  
17 I wasn't even a witness. So for me, I thought he was really in the protection, but I  
18 didn't know that he was having another agenda that want me to -- to move out of  
19 protection and go to asylum seeking.

20 Q. [11:45:59] Okay. All right. Well, that's what we're going to discuss a little bit  
21 down the road, but let me just make sure that I fully understand what you're telling  
22 us. And let me begin by -- by saying or asking you, you had already testified, right?

23 A. [11:46:17] Yes, your Honour.

24 Q. [11:46:18] Okay. So the ICC no longer needed you, at least, not for case  
25 number -- not the main case, right?

- 1 A. [11:46:27] Yes, your Honour.
- 2 Q. [11:46:28] All right. And at the time when you were in The Hague, you were  
3 making attempts to have your children join you, right?
- 4 A. [11:46:39] Yes, your Honour.
- 5 Q. [11:46:40] As we will see later on, the issue of adoption - and that was  
6 the -- your -- you -- word that was used, was something that was discussed between  
7 you and person number 12, right?
- 8 A. [11:46:56] Because --
- 9 Q. [11:46:57] Because -- because it had come up in court, you were questioned on it.  
10 In fact, the presiding judge asked you some questions, right? So that was one of the  
11 topics of conversations, right, when you were in The Hague?
- 12 A. [11:47:14] It was not a judge who ask, it was the --
- 13 Q. [11:47:15] All right. Very well.
- 14 A. [11:47:16] -- defence -- defence lawyer ask.
- 15 Q. [11:47:19] All right. And during this period, there was also the issue of  
16 relocation, right?
- 17 A. [11:47:26] Yes, your Honour.
- 18 Q. [11:47:27] Okay. So there were all these issues in the air and, as I understand it,  
19 your accommodations were being paid for by the ICC?
- 20 A. [11:47:42] Yes, your Honour.
- 21 Q. [11:47:43] And though you may not have had many communications with  
22 the -- the OTP and it looks like they were not communicating with you after you  
23 testify, you were in constant communication with the folks from the witness  
24 and -- the Victims and Witness Section, right?
- 25 A. [11:48:06] Yes, your Honour.

- 1 Q. [11:48:07] In fact, they would come periodically to check up on your -- on your  
2 mental health.
- 3 You're shaking your head, does that mean yes?
- 4 A. [11:48:19] Yeah, they could come.
- 5 Q. [11:48:20] Well, I didn't -- I didn't -- it's a little different whether they could.  
6 They would. They did in fact come, did they not?
- 7 A. [11:48:30] No, your Honour. In my explain, it's only if I call and say I'm not  
8 feeling well, they could come --
- 9 Q. [11:48:37] Okay. They did not (Overlapping speakers)
- 10 A. [11:48:38] -- hospital.
- 11 Q. [11:48:40] Okay. Did they not come to sort of check up on you, in general?
- 12 A. [11:48:46] I don't remember.
- 13 Q. [11:48:46] You don't remember them coming to take you shopping, asking you  
14 whether you want to go to the beach? You don't remember that?
- 15 If you don't remember, say "I don't remember." I'm going to refresh your memory.
- 16 A. [11:49:03] Yeah, they -- they did.
- 17 Q. [11:49:05] Okay. Did I just refresh your memory?
- 18 A. [11:49:08] I've already accepted that they did.
- 19 Q. [11:49:10] Okay. All right. And when they would come periodically,  
20 sometimes they came unannounced, right?
- 21 A. [11:49:18] Yes, your Honour.
- 22 Q. [11:49:21] And there was a reason why they came unannounced, was there not?  
23 There was a reason?
- 24 A. [11:49:26] I don't remember.
- 25 Q. [11:49:27] You don't remember. Okay.

1 Well, do you remember them coming in unannounced to search where you were  
2 staying?

3 A. [11:49:38] Nobody searched me, your Honour.

4 Q. [11:49:40] Well, were they looking to see whether you had other communication  
5 devices, other mobile -- mobile phones that you were not supposed to have?

6 A. [11:49:48] It's not true, your Honour. VWU never searched my room,  
7 your Honour.

8 Q. [11:49:54] Okay. All right. Did they ever instruct you not to use any other  
9 devices, other than the one that they had given you for communications?

10 A. [11:50:06] Yes, your Honour.

11 Q. [11:50:07] Okay. And would it be fair to say that you did not follow that  
12 advice?

13 A. [11:50:13] Yes, your Honour, because I was bored and I was lonely.

14 Q. [11:50:20] Well -- okay. And would it be fair when they asked you, you lied  
15 about it?

16 A. [11:50:29] I lie about what, your Honour?

17 Q. [11:50:31] About using other communication devices to call people that you  
18 were not supposed to be calling, either here in The Netherlands or elsewhere, in other  
19 countries where other witnesses might be located, or your relatives.

20 A. [11:50:48] They never ask me, your Honour, they never ask me, "Do you have  
21 another device?"

22 Q. [11:50:53] And you never said to them -- you never lied to them?

23 A. [11:50:59] We -- we didn't --

24 Q. [11:50:59] Let me -- let me caution you, Madam. And I say this with the utmost  
25 respect.

1 I spent a great deal of time ploughing through the 1,450 whatever pages of  
2 communications that you had. So I'm not just standing up here asking questions.  
3 I've read the material. And I'm prepared to go through some of it. Okay? I  
4 understand --

5 A. [11:51:28] And I'm here to answer, your Honour.

6 Q. [11:51:30] I understand. And I understand that you may not have been  
7 provided with the full transcript from the Prosecution, so you might be at  
8 a disadvantage.

9 I also know that a great deal of time has passed and, even with this God-given good  
10 memory of yours, you might not remember all the details. So if you're not sure or if  
11 you don't remember, my advice would be to tell us, as opposed to being categorical  
12 under oath. Okay?

13 A. [11:52:03] Yes, your Honour.

14 Q. [11:52:05] All right. Let's look at tab 44, tab 44. Second binder. And this is  
15 a conversation 15 August 2014.

16 Do you have it, Ma'am?

17 A. [11:52:33] Yes, your Honour.

18 Q. [11:52:33] Okay. If we look at -- at page 1, and we see -- you see your name,  
19 you see the other person's name.

20 And if we look at line 7. These are just quick samples. You know, I call them  
21 vignettes: "Yes, I was talking on another line."

22 Line 11: "Yes, I was talking with people at home as I had been connected by  
23 [so-and-so]."

24 So you -- here is an example where you're talking on another line when this person is  
25 trying to reach you through his phone, through this other phone that you have, which

1 VWU is unaware that you're using, right?

2 A. [11:53:17] No, your Honour. The only phone I had was the forwarding call.

3 I -- I used to call VWU and then they forward the call to people back home. The only  
4 people I talked to here in Netherlands was person number 12.

5 Q. [11:53:36] Okay. Well, let me stop you there. That's the only person that we  
6 know of, because he was being tape-recorded. You see, your phone for whatever  
7 reason, the Prosecutor, who would have been aware that you were having these  
8 communications because he made the request to the Dutch government to have  
9 person number 12 tapped, his phone tapped, so he would have been apprised. For  
10 whatever reason, he never bothered to have your phone tapped. So we don't know.  
11 We just --

12 A. [11:54:10] But I am telling you because I am the one who.

13 Q. [11:54:14] Okay. So we have to accept your word?

14 A. [11:54:16] Yes, sir.

15 Q. [11:54:17] Okay. And it would be fair to say that there's no way of checking  
16 that word of yours, is there?

17 A. [11:54:29] You can check.

18 Q. [11:54:30] Okay. If you go to tab 13. Tab 13, binder 1, this is a conversation on  
19 30 June 2014.

20 And while you're looking for it, let me read the KEN number, is 0157-2952 and ...

21 PRESIDING JUDGE SAMBA: [11:55:03] 2925.

22 MR KARNAVAS: [11:55:12] 2925. You're right, your Honour.

23 THE WITNESS: Did you say binder 2?

24 MR KARNAVAS: Binder, binder 1.

25 PRESIDING JUDGE SAMBA: [11:55:15] Binder volume 1, the last tab.

1 Thirteen, 1-3. Thirteen.

2 THE WITNESS: [11:55:54] Got it, your Honour.

3 MR KARNAVAS: [11:55:57]

4 Q. [11:55:59] Thank you. Now if -- if you could turn to page 11, page 11. Again,  
5 we can see your initials and we can see person number 12, so you're talking to him.

6 Line 332, I'll just read: "They will betray me."

7 He says: "They have to give you some privacy."

8 Now when you say, "They will betray me", who you are talking? Who will betray  
9 you? And who should be giving you privacy?

10 A. [11:56:44] Your Honour, yes, I talked about that but it wasn't meant. I was just  
11 talking for the sake of keep -- to keep conversation going on.

12 Q. [11:57:01] I understand. You've told us that many, many times.

13 A. [11:57:04] Yes.

14 Q. [11:57:04] And I don't mean to be disrespectful, but I'm asking you a very direct  
15 question. When you say, "They will betray me." My question was, who is they?  
16 Okay? I'm not asking the why, you may -- you answered the way you did, but I'm  
17 asking, who is they? If you could tell us.

18 A. [11:57:27] There was nobody, your Honour. I was just talking for the sake, to  
19 keep conversation going on.

20 Q. [11:57:34] Okay. So when you're saying here, "They will betray me," is sort of  
21 like big brother or big sister, somebody out there in the stratosphere is going to betray  
22 you?

23 A. [11:57:44] As I've told you, I wasn't referring to anyone. I was just -- it was -- I  
24 was just saying it.

25 Q. [11:57:50] Okay. And when he says, "They -- they have to give you some

1 privacy." Who -- do you know what he's referring to? And if you -- I don't want  
2 you to speculate, if you don't know what he's talking about, just tell me that you're  
3 referring to somebody and he's saying something else. Who is "they"?

4 A. [11:58:12] For him, he was referring because he was against the VWU and ICC  
5 staff.

6 Q. [11:58:15] Okay. All right.

7 A. [11:58:16] So everything for him was like they are not good, so leave these  
8 people alone. Come out of --

9 Q. [11:58:25] Okay. All right. And you say on line 343: "Yes, they want to  
10 know all my movements." Again, it's the "they", who is they? Who are you  
11 referring to "they" over here?

12 A. [11:58:42] I was just saying it again, your Honour, I didn't refer anyone. I was  
13 just saying to keep the conversation going on. But I didn't refer anybody.

14 Q. [11:58:53] Okay. We have to slow down a little bit, you know.

15 A. [11:58:57] Thank you.

16 Q. [11:58:58] For the wonderful language assistants here.

17 When he says: "They have to give you some privacy", you seem to know exactly  
18 who he's referring to. And he's referring to VWU. And so I -- I just want to put to  
19 you very straightforwardly that when you say on line 343: "Yes, they want to know all  
20 my movements", you're referring to "they" as VWU wanting to know all your  
21 movements, are you not?

22 A. [11:59:37] But --

23 Q. [11:59:40] Are you not? It's a "yes", it's a "no", it's "I don't know", it's "I can't  
24 remember." Pick any one of those.

25 A. [11:59:46] It's a yes.



1 Q. [11:59:47] Okay.

2 A. [11:59:48] And I -- I can explain.

3 Q. [11:59:49] I don't need the explanation at this point because you've already  
4 explained it.

5 A. [11:59:53] No, I need to explain again.

6 Q. [11:59:55] Okay. Explain it again. And, please, take your time.

7 A. [11:59:58] Thank you. My -- my explanation was, when I had this conversation  
8 was like I wanted to keep on the conversation and explore more about this person  
9 because I never knew who he was. I thought he was an ICC witness, but he was not.  
10 And yeah, if I can say that.

11 Q. [12:00:29] Okay. Now if I could refresh your memory a little bit, if I may, and I  
12 know it's only from yesterday, but yesterday there were a couple of instances when  
13 this person's name came up and I showed you a couple of documents, and it appears  
14 that you tell the Prosecutors at one point, the investigators, that you had  
15 a conversation with this person in 2011. And then later on, I showed you  
16 a document where in-between your first interview of December 1 and 2, 2012, and I  
17 believe it was July 2013, sandwiched in-between there, you informed them that this  
18 person had called you from The Hague. Do you recall that?  
19 Do you recall that? Just -- we're going to take baby steps. You know, if you recall it,  
20 "Yes". If not, I can either move on or refresh your memory again. Do you recall  
21 that?

22 A. [12:01:41] I can recall and I can explain, your Honour.

23 Q. [12:01:44] No, I -- well, if I -- if I could conduct the questioning, we'll go a lot  
24 quicker.

25 I just want to -- the point that I'm trying to make is, you knew this person --

1 A. [12:01:55] Before ICC.

2 Q. [12:01:56] -- before ICC. You knew him in 2011. And in 2013, does he not ask  
3 you a question point blank: "Why aren't you here with us in The Hague?" Right?  
4 Remember that exchange?

5 A. [12:02:12] It was different location, your Honour. You are putting as if it was --

6 Q. [12:02:16] The point I'm trying to make is, you knew who he was.

7 A. [12:02:20] Your Honour, I had stated that the person -- when I went into  
8 protection in Kenya, I was -- I changed my number, the one he used to have it. And  
9 when I came into location number, ah ... and I had a new number. So he called me  
10 and I didn't know who was -- who gave him the number. And that is the time I  
11 informed the investigators he has called and I was asked to record it, and I record it.

12 Q. [12:02:54] Well, I don't know whether it was recorded or not, and I'm not  
13 suggesting that --

14 A. [12:02:58] I'm making clear that's why I told them, so they were aware that I -- I  
15 talked to that person. But before, he was asking me, I was using a different number.  
16 When I went into protection, I changed the number and the number which I was  
17 using I handed over to Prosecution.

18 Q. [12:03:20] Are you finished?

19 A. [12:03:21] Yes, your Honour.

20 Q. [12:03:22] Okay. Now, first of all, I'm not contesting that you didn't have this  
21 conversation. In fact, I'm insisting - and I'm glad that you recorded it, or at least you  
22 passed it on - because now you're in The Hague, okay, and now you're having these  
23 conversations with this individual. And, as I indicated, there were 44-hours plus of  
24 conversations with him, so when you claim that you didn't know who he was, or  
25 what his motive was, or what he was doing there, I put to you, Madam, that it doesn't

1 ring true?

2 A. [12:04:06] It's -- it's not true, your Honour.

3 Q. [12:04:09] Okay. Very well. So let's go on with this, otherwise we're going to  
4 be here next week and I -- I want you to have an enjoyable weekend.

5 So we go to line 347, or line 345: "Because there is a line -- there is a line they are  
6 really hiding." "... there is a line they are really hiding."

7 Line 347: "I was with them and they took that line away. I was with them and they  
8 took that line away."

9 When we're talking about a "line", are we talking about a means of communication, if  
10 you recall?

11 A. [12:05:02] If I can recall, your Honour, it doesn't make sense, because nobody  
12 took my line away, nobody took ...

13 Q. [12:05:11] Madam, Madam, whether it makes sense or not --

14 A. [12:05:15] That's why I was telling you things which I was saying wasn't  
15 accurate, because nobody took my line away. I was given and the one I ask, I use it  
16 and --

17 Q. [12:05:24] Very well.

18 A. [12:05:25] -- that was it.

19 Q. [12:05:26] And then we go to 351: "That's why I was telling you that if they  
20 learn about that plan they will come and take everything in the house."

21 "That's why I was telling -- that's why I was telling you", meaning person number  
22 2 -- number 12 -- that they, whoever they may be, "if they learn about that plan",  
23 whatever that plan may have been, "that they will come and take everything in the  
24 house."

25 Do you recall saying that?

1 A. [12:06:03] I can't recall, your Honour. And I'll explain also. Because I was  
2 living in a -- in apartment and I didn't have anything in there, it was only clothes, so  
3 there was nothing to take it on. The only thing I had is clothes and the phone, that  
4 was it, your Honour. So this conversation, I was just talking for the sake of keep  
5 conversation going. I didn't mean it.

6 Q. [12:06:29] Okay. You've already told us that, so we can move a lot quicker  
7 because I have a lot of vignettes to go through.

8 So if we go to line 355, he asks: "How come they took the line?"

9 Answer: "I used to hide it because I use ... to talk to people at home, so I think they  
10 took it when I had gone to use the bathroom. There is one -- there is one called  
11 A.2.6" - that's the acronym - "I think he is the one who took it because I had placed it  
12 somewhere, but these people can search everywhere in the room."

13 Now that was your answer, was it not? Was it your answer? Can we get -- can we  
14 establish that?

15 A. [12:07:30] It was my answer, your Honour.

16 Q. [12:07:32] Okay. Now, I'm sure you're going to give me the same explanation,  
17 so can I move on?

18 A. [12:07:41] Yes, your Honour.

19 Q. [12:07:42] Okay. Thank you. And then on line 360: "[I put] it in my bag  
20 where I normally keep my clothes."

21 He says: "Okay."

22 Okay. "I told them that the phone was not mine but the line is mine." Let me read  
23 that one more time: "I told them that the phone was not mine but the line is mine."

24 So help me out here. Here you use the word "phone" and "line" in the same sentence.

25 So can we now establish that when you say "line", you're referring to a phone? Can

1 we establish that? That's what you're referring to when you say "line", you're saying  
2 "phone"? That's what it means, right?

3 A. [12:08:44] Yes, your Honour.

4 Q. [12:08:45] Okay. And it would appear -- it would appear from this that you  
5 have not been honest with them because you say: "I told them that the phone was  
6 not mine but the line is mine." So in other words, I told them I don't know about it,  
7 it's not mine, but actually it is mine.

8 Now, yesterday, yesterday, you told us that on occasions, depending - I believe the  
9 word was circumstances - depending on circumstances, it's okay to lie.

10 Was this one of those circumstances?

11 A. [12:09:31] I didn't mean that. What I -- I meant was like if I am in protection  
12 and someone comes up and asks me something like, "Where are you?" So I was  
13 referring there. Maybe the communication, you know I'm not an English, it is a  
14 language I learn, so sometimes I might slip it.

15 Q. [12:09:48] Okay.

16 A. [12:09:49] Yeah, thank you.

17 Q. [12:09:50] All right. Well, I will agree with you that - and, I think here, is where  
18 we are in agreement - under the circumstances where somebody is trying to get you  
19 to reveal your true identity, you can lie about it.

20 But surely you're not saying -- surely you're not saying that this is one of those  
21 occasions? Here, this is just -- can we put this in the category of lies? Can we put  
22 this in the categories of lies? "Yes", "no", "maybe", "I don't know."

23 A. [12:10:17] Yes, and I can explain also.

24 Q. [12:10:19] Well, you just explained that to us.

25 A. [12:10:22] Yes. I -- I --

- 1 Q. [12:10:22] But if -- if you feel the need to explain why you lied, go ahead.
- 2 A. [12:10:29] I was telling him to get information. I was not honest because I  
3 knew the motive was him to trap me so I can go out of the protection programme and  
4 join for -- to asylum seeking.
- 5 Q. [12:10:47] Okay.
- 6 A. [12:10:47] So that is why, even me, I wasn't honest with him.
- 7 Q. [12:10:49] Okay. So now to make sure that -- let me slow down a little bit.  
8 Heart be still.  
9 If I understand you right, you're saying here in this instance, you're lying to him  
10 about lying to the VWU; is that right?
- 11 A. [12:11:10] But you can confirm it with --
- 12 Q. [12:11:12] No, I'm asking you -- and I just want to make sure I understand you.  
13 You know, is that what you're trying to tell us, that you're lying to him because he's  
14 trying to trap you?
- 15 A. [12:11:21] Yes, your Honour.
- 16 Q. [12:11:21] You're lying to him about lying to the VWU. That's your -- that's  
17 your answer?
- 18 A. [12:11:30] He was not in contact with VWU, but he wanted also me not to be  
19 contact with VWU, your Honour.
- 20 Q. [12:11:36] Ma'am, Ma'am, I'm trying to be as -- as restrained - I think is the  
21 word - as I possibly can be. I just want a simple answer. You told us that you  
22 thought he was trying to trap you and just lure you away from the -- the ICC so that  
23 you can seek asylum --
- 24 A. [12:11:57] Yes, your Honour.
- 25 Q. [12:11:58] -- in a western country where, you know, you could also be rejoined

1 with your children. Right? That's what he was trying to do.

2 A. [12:12:07] Yes, your Honour.

3 Q. [12:12:08] Okay. We can accept that. Now, here in this instance you're  
4 told -- you're telling us - and I want to make sure that we're clear, that I understand  
5 it - that you're saying you're lying to him about lying to the VWU about this -- this  
6 phone that you were not supposed to have, right? Is that what you're telling us?

7 It's a "yes" or a "no".

8 Is that your explanation?

9 A. [12:12:35] Yes, I was lying to him.

10 Q. [12:12:36] You were lying to him about lying about having a phone?

11 A. [12:12:41] But I didn't -- the phone I had was -- is the one who provided to him.

12 Q. [12:12:46] All right. I think -- I think let's move on a little bit. I don't want to  
13 get bogged down as enticing it is to have this conversation.

14 If we go to line 364: "They asked me to give -- to give them it and put it in the  
15 computer." He says: "Okay."

16 Next page. This is you: "Thank goodness I didn't save anyone's name, it was just  
17 numbers."

18 "Thank goodness I didn't save anyone's name[s] -- anyone's name, it's just numbers."

19 He says: "Okay."

20 "They asked me why I had another line and [I] didn't tell them that I had another  
21 phone with me.

22 Okay.

23 I told them it belongs to one of my family, and I came with it when I came to ..." you  
24 know, to location number ... I think it's -- I apologise.

25 MR STEYNBERG: [12:14:09] Twenty-six, your Honour.

- 1 MR KARNAVAS: [12:14:12] Twenty-six. Thank you. Thank you very much.
- 2 Q. "... when I came [from location 26]."
- 3 So, "I told them it belongs to one of my family, and I came with it when I came to
- 4 [location 26]."
- 5 He says: "You are right.
- 6 I couldn't use that other line because they were using it for video link."
- 7 "They", I don't know who you're referring to, but I suspect we're talking about the
- 8 VWU. And then he says: "Okay."
- 9 And then you say: "They asked -- they asked: why didn't you say that you have
- 10 another line?"
- 11 And he says: "Okay."
- 12 And you say: "I told -- they told me off." "They told me off." They scolded you, in
- 13 other words. And he says: "Okay."
- 14 And you -- you respond: "That is why I don't give them a chance because of the way
- 15 they talk to me sometimes."
- 16 Now, just -- I just want to move on, but I just want to ask one question: Is all of this,
- 17 on your side -- on your side of the conversation, a make believe story because you're
- 18 just -- you don't want to get lured away from the ICC, so you're saying all of these
- 19 things to him to just go along with the conversation?
- 20 A. [12:15:39] Yes.
- 21 Q. [12:15:40] And that -- and that all of this, all of this that you're saying is a lie. In
- 22 other words, that you did not have another phone, you were not told not to use it,
- 23 you did not lie to them when they asked you whose phone is it. Those are lies that
- 24 you told this person.
- 25 A. [12:16:01] I had a conversation, your Honour, with him.



- 1 Q. [12:16:04] Are you saying those are lies? So when you say: "Thank goodness I  
2 didn't save anyone's name, it was just numbers", that's a lie? You're telling --
- 3 A. [12:16:19] Yes, your Honour, it was lies. Everything I talked to him was --
- 4 Q. [12:16:20] Was lies.
- 5 A. [12:16:20] -- not -- I didn't tell any -- any the truth, because I know the motive.
- 6 Q. [12:16:25] Okay.
- 7 A. [12:16:26] And I -- nobody came to me and ask, and I put the computer -- all  
8 their things. You can confirm from VWU. Nobody came me, nobody ask me about  
9 the SIM card --
- 10 Q. [12:16:40] Okay.
- 11 A. [12:16:41] -- or -- and everything. No, your Honour.
- 12 Q. [12:16:43] All right. If we go to tab 4, if we go to tab 4, which is in binder 1.  
13 And while everybody's looking at it -- looking for it, I should say, it's 0157-3948, and  
14 the date is 26 June -- 26 June 2014. So this would have been approximately six days  
15 after you had -- no, a few days, six days, after you had testified. Do you have it,  
16 Ma'am? Have you located the document?
- 17 A. [12:17:34] Yes, your Honour.
- 18 Q. [12:17:35] Okay. Now if we could look at page 39, if you look at page 39 on  
19 this, and it's 0157-3988. When you find it, let me know.
- 20 A. [12:18:12] In there, your Honour.
- 21 Q. [12:18:14] (Microphone not activated) You see your initials, you see his initials,  
22 right?
- 23 THE INTERPRETER: [12:18:17] Microphone, please.
- 24 MR KARNAVAS: [12:18:20]
- 25 Q. [12:18:20] You see his initials and your initials, right?

- 1 A. [12:18:24] Yes, your Honour.
- 2 Q. [12:18:25] Okay. So line 1286: "They came and searched the whole house  
3 looking for phones."  
4 Let me repeat that: "They came and searched the whole house looking for phones."  
5 Now, was that a lie?
- 6 A. [12:18:42] Yes, your Honour. Nobody came to search my --
- 7 Q. [12:18:46] Okay. And then he says: "Okay, but I told you before I don't  
8 understand how they did it to you."  
9 And then on 1288: "Because I know a lot about them, all this gossip is from OTP, they  
10 told -- they told these people to be careful with me."  
11 He says: "OTP are bad people."  
12 And you respond: "I think they gave out a report that I talk[ed] with the other  
13 people."  
14 So all of this is lies as well? It's a yes or no. So --
- 15 A. [12:19:29] Yes, your Honour. I have explained it.
- 16 Q. [12:19:32] Okay. Okay. Now if we could go to page 42, page 42. When you  
17 get there let me know.
- 18 A. [12:19:45] In the same binder?
- 19 Q. [12:19:47] In the same binder, yes. We are still on tab 4.
- 20 THE INTERPRETER: [12:19:51] Microphone.
- 21 MR KARNAVAS: [12:19:52]
- 22 Q. [12:19:52] We're still on tab 4, we're still on tab 4, so it's the same.  
23 Do you have it? Page -- it's -- it's tab 4, we're on page 42. Do you have it?
- 24 A. [12:20:15] Yes, your Honour.
- 25 Q. [12:20:16] Okay. Now if we look at -- if I could draw your attention --

1 (Microphone not activated).

2 PRESIDING JUDGE SAMBA: [12:20:38] Mr Karnavas, your mic, microphone,  
3 please.

4 MR KARNAVAS: [12:20:41] It's KEN number 0157-3991, page 42 on this document.

5 Q. If we -- if -- if I can draw your attention to line 1400, 1-4-0-0, your initials, you  
6 say: "Maybe they think that I am hiding a phone."

7 He says: "The hotel is big; you have a lot of places to hide it if you want to."

8 Incidentally, you were staying at a hotel, right?

9 A. [12:21:21] I was in apartment, your Honour.

10 Q. [12:21:24] Okay. All right. And then you say: "They came the other day and  
11 looked everywhere but they didn't get it, and I am using it now."

12 Okay, now I'm sorry, I'm going to press you a little bit on this one. Surely you're not  
13 saying that you're lying when you're talking to him because you're using the very  
14 same phone that you claim you hid, so I think it's kind of an impossibility, but maybe  
15 you have an explanation.

16 A. [12:22:04] Your Honour, I'm not refusing I had conversation with this person. I  
17 had several conversation. But the first conversation I had I use -- is it called a booth?

18 Q. [12:22:19] A telephone booth?

19 A. [12:22:21] Yes.

20 Q. [12:22:19] Yeah.

21 A. [12:22:19] And then later on, this person brought me a line and a phone.

22 Q. [12:22:28] Gave you a phone and gave you a SIM card?

23 A. [12:22:30] Yes, your Honour.

24 Q. [12:22:31] Which you didn't report?

25 A. [12:22:33] I was embarrassed and I was ashamed.

1 Q. [12:22:36] Well, I'm sure you were, but you didn't report. You didn't report it  
2 to VWU after they told you - for your own security, by the way - you're not supposed  
3 to do any of that, right?

4 A. [12:22:48] I was embarrassed and I was ashamed with myself, and I was  
5 ashamed of them also.

6 Q. [12:22:56] And you were also told not to use telephone booths either, right?

7 A. [12:22:57] Yes, your Honour.

8 Q. [12:23:01] Okay. And then you say further down: "I don't blame them ..."  
9 Well, let me just read it, okay:  
10 "Maybe they think ... I am hiding a phone."

11 You say then further down:

12 "They came the other day and looked everywhere but they didn't get [to] it, ... I am  
13 using it now.

14 They won't get it." You: "[*Laughing ...*]." That's what they have, they heard  
15 laughing over the -- you laughing at that answer.

16 He says: "OTP are really bad people."

17 Then you say: "I don't blame them because [I told them that they --] ... they were told I  
18 am complicated.

19 Really?

20 They told them that I am very complicated."

21 Are you complicated?

22 A. [12:23:48] Not at all, your Honour.

23 Q. [12:23:50] Okay. If we could look at tab number 8, tab number 8, binder 1.  
24 KEN number, KEN-OTP-0159-0098. The date is 28 June 2004.

25 A. [12:24:20] I'm in there, your Honour.

- 1 Q. [12:24:21] Okay. Great. If we could look at page number 11. Page number  
2 11.
- 3 A. [12:24:46] I'm there, your Honour.
- 4 Q. [12:24:47] Super. If we could look at line 351, it's the first line, we see your  
5 initials. Do you see them?
- 6 A. [12:24:59] Yes, your Honour.
- 7 Q. [12:25:00] Okay. And here, we also see some other initials, "MC", and then -- so,  
8 obviously, you're having -- there's somebody else in this conversation. As I read,  
9 maybe that might ring a bell.
- 10 Anyway, line 351: "So that is it, we are here. I had told those people to bring me  
11 the phone tomorrow, on Monday so that I can phone you but they don't know that.  
12 So I want you to have our old one, another line."
- 13 MC says: "OK."
- 14 Then you say: "The one -- the one that was ours."
- 15 MC: "Yes, the one that was ours."
- 16 Then you go on to say: "Not [the] other line. Let us not go back to the one we  
17 had -- the one we had used before."
- 18 MC: "[Oh, it's] fine, I will look for it. It is better if they give -- if they give you your  
19 own, that's better."
- 20 Then you say: "The good thing is that I have a secret one but if you want to give me  
21 a number then you buy another line and then you -- then you give it to [person  
22 number 4] then he will give it to me."
- 23 PRESIDING JUDGE SAMBA: [12:26:38] Person number 12.
- 24 MR KARNAVAS: [12:26:41] Person number 12. I'm sorry, person number 12.
- 25 Q. [12:26:43] Then you go on: "Don't send it through [another] one."

- 1 No, that is fine. I will buy it and give it to [person number 12]."
- 2 Then you go on: "And if you have a secret message, you can call him and tell him."
- 3 And then further down at 367: "Then you can tell him to call me on the secret line
- 4 because I don't want that sometimes you can write I really -- I really don't want to be
- 5 with those people if these things work out, I will disappear."
- 6 MC: "No, that is right. Let us [preserve], I know ..."
- 7 Then you say: "They have, they have troubled me for many years. I don't want their
- 8 stories anymore."
- 9 Now do you recall this exchange at all? And I know it's been a long time.
- 10 A. [12:27:46] It is a long time, but I can say I -- I agree. I had conversations several
- 11 times, but --
- 12 Q. [12:27:56] Okay. All right. But you recall this one?
- 13 I don't mean -- I don't want to go into it too much, but do you recall having this one?
- 14 A. [12:28:05] I -- I remember. You know, it was a long time ago and so many
- 15 conversation have been going. Even you now, you are just mixing up the papers
- 16 because, you know, a lot of work.
- 17 Q. [12:28:17] You're right.
- 18 A. [12:28:19] So the same as me. I -- I don't remember anything and I'm a not
- 19 computer --
- 20 Q. [12:28:22] Okay.
- 21 A. [12:28:23] -- yeah.
- 22 Q. [12:28:24] But one thing I want to clarify, and maybe you can help us out here,
- 23 when you were having these conversations with number 12, sometimes somebody
- 24 else would join in on that conversation, right?
- 25 A. [12:28:41] Yes, your Honour.

1 Q. [12:28:41] Okay. So there may be somebody with -- with number 12, or were  
2 there also occasions when you would call number 12 and number 12 would call  
3 somebody else and sort of you're using the phones to communicate with a third party  
4 through phone number 12. Was that also being used?

5 A. [12:29:04] Because he was with the wife, the children and the other family.

6 Q. [12:29:12] Okay.

7 A. [12:29:09] Yes, your Honour.

8 Q. [12:29:09] All right. I just want to make sure, because we saw some initials and  
9 I gave the indication that your phone wasn't being tapped, and so I wanted to clarify  
10 that point.

11 Now if we could go on to another topic, it's slightly different. If we look at tab 1, tab  
12 1, and this is a recording. It's in binder 1, binder 1. And this is a recording on 3 July  
13 2014.

14 So you go to binder -- go to binder number 1 and it's tab 1. And in this one, there's  
15 a variety of issues that we're going to touch on, so ...

16 A. [12:30:17] I'm in there, your Honour.

17 Q. [12:30:19] Okay. All right. So if you go to page 21, okay? Page 21 in  
18 this -- in this tab. So it's tab 1, page 21. You're talking with person number 12. On  
19 line 675, he's saying to you: "I want you to make sure you start asking for money for  
20 a holiday as from tomorrow."

21 And you reply: "They will come here tomorrow because they were going to send me  
22 money today, so I requested them to come at 3 so that I can ring -- so that I can ring to  
23 check if my children were given permission."

24 Further down, line 682: "I will tell [this person] that I wanted to see him -- that I  
25 wanted to see him then [then] I'll let him know about the holiday."

1 So it appears that he's suggesting to you that you should be demanding VWU holiday  
2 money, because at some point there are references that, yeah, well, the white man  
3 goes on holiday, why shouldn't you since you're over here, right?

4 A. [12:31:56] I don't know, your Honour.

5 Q. [12:31:57] Okay. And then you -- there's a further -- there's an exchange. He  
6 says, at some point in line 689, he says, not you, he says: "She's very stupid."

7 And then do you know who he's referring to from this conversation? And I don't  
8 want a name, but do you know who he's referring to? Is this -- is it --

9 A. [12:32:28] I don't know, because the people who work in VWU are so many, so I  
10 don't remember who was referring to.

11 Q. [12:32:35] Right. But what he was basically saying, that the person working for  
12 VWU was stupid?

13 A. [12:32:41] Yes, your Honour.

14 Q. [12:32:42] Okay. And then you go on, because obviously from the conversation  
15 you appear to know this person, on line 694: "Let me tell you ..."

16 696: "... she is afraid of me."

17 698: "She is afraid of me since ..."

18 700: "I have realised from the way she talks to me."

19 702: "She is afraid of me."

20 704: "She opens the door for me."

21 Next page, 708: "When I get in and out of the car she opens the door for me, that is  
22 what I want. *[Laughing ...]*"

23 Do you recall that exchange?

24 A. [12:33:36] Yes, your Honour, I exchanged words with him, but it doesn't mean  
25 that those things happened.



- 1 Q. [12:33:40] Okay.
- 2 A. [12:33:41] You can confirm with VWU nothing like that happened. I was just  
3 making him to feel like I am in his side.
- 4 Q. [12:33:47] Okay.
- 5 A. [12:33:48] So he can tell me more information.
- 6 Q. [12:33:54] Okay. Well ...
- 7 A. [12:33:59] Nothing happened really.
- 8 Q. [12:34:01] I know. But when you say something like that, so you could get  
9 more information, it just raises a flag. It sounds like there you are again --
- 10 A. [12:34:10] To under --
- 11 Q. [12:34:06] Let me finish.
- 12 A. [12:34:07] No, to understand him. That's my point, your Honour.
- 13 Q. [12:34:10] Oh, you're trying -- oh, yes, okay.
- 14 A. [12:34:11] Because I met him and I talked to him without knowing who he was.  
15 For me, I knew him he was an ICC witness. But it wasn't, your Honour. That is my  
16 point. So making me to talk the same language as he were talking so he can reveal  
17 everything, because he was hiding from me that he -- he has already gone out of ...
- 18 Q. [12:34:39] Okay.
- 19 A. [12:34:39] Yeah. So, for me, I was interested why this guy was hiding. I had  
20 to use words so I can understand him proper. That was it, your Honour.
- 21 Q. [12:34:49] Okay. All right. But I just -- I mean, my question was slightly  
22 different.
- 23 When you said that you wanted to find more information, I just wanted to -- to clarify  
24 that point - I think you might have clarified it - as to whether you were somehow like  
25 the 007 we talked about yesterday, out there in the field trying to entice people to talk

- 1 to you, to get information. That was sort of the -- the impression that I -- that I got.
- 2 So you're not there trying to get information to pass on to somebody else, you're just
- 3 trying to find out who this person really is?
- 4 A. [12:35:30] For myself.
- 5 Q. [12:35:31] For yourself.
- 6 A. [12:35:32] Yes, so I understood, because I didn't know him, your Honour.
- 7 Q. [12:35:38] Okay. Okay.
- 8 A. [12:35:41] Because communicating to him, I thought it was ICC witness
- 9 protection, your Honour. And that's why I was comfortable with him.
- 10 Q. [12:35:46] Okay.
- 11 A. [12:35:47] But later on, when I learn what this was telling me to do, I think he
- 12 was -- he wanted to make trouble so I can be chased from the protection,
- 13 your Honour.
- 14 Q. [12:36:02] Okay. All right. Well, let me finish with this document and then
- 15 I'm being -- I'm being guided by my colleague, so I might have to obey orders. If we
- 16 go to page 23, page 23.
- 17 A. [12:36:26] Which tab?
- 18 Q. [12:36:27] The same -- the same document.
- 19 A. [12:36:28] Binder.
- 20 Q. [12:36:32] Yes, same -- same tab, Tab 1. Tab 1.
- 21 A. [12:36:33] In there, your Honour.
- 22 Q. [12:36:37] And we go to line 757, this is him saying: "Tell them next time ... they
- 23 resume you won't be -- you won't be leaving this country ..." You say: "Okay."
- 24 Then further down, 763: "And after that you start asking for an apartment."
- 25 And then you say: "These people won't do anything to me because I haven't done the

1 case for them; yet they [will] still need me."  
2 Okay. Now was that a lie?  
3 A. [12:37:24] I had already testified, your Honour. So it was lies.  
4 Q. [12:37:42] Okay. All right. On tab 4, if we go to tab 4, binder 1. Okay?  
5 A. [12:38:04] I'm in there, your Honour.  
6 Q. [12:38:05] Okay, great. Great. Super. And this is KEN-OTP-0157-3948. If  
7 we could go to -- if we could go to page -- page 44, page 44. And when you get there,  
8 let me know.  
9 A. [12:38:41] I'm there, your Honour.  
10 Q. [12:38:42] Okay. Great. If we look at -- if I could direct your attention at  
11 line 1470, and incidentally this is a recording on 26 June -- 26 June 2014. Okay?  
12 A. [12:39:00] You say 1470? Line 14 --  
13 Q. [12:39:04] Yeah, 14 -- 1470 on page 44. Do you have it? This is tab 4.  
14 A. [12:39:14] Yes, your Honour.  
15 Q. [12:39:15] Okay. All right. So you say: "Yes." He says: "They told us not to  
16 buy mobile phones [to] make calls but we ignored them; we were making -- we were  
17 making calls."  
18 This is what person number 12 says. And you say: "Making [cells] is not a problem,  
19 the problem is for people to report you."  
20 He says: "It's true, people are bad." And you say: "You trust a person and you decide  
21 to have a chat and discuss things but later he/she reports you."  
22 We go -- he says: "Yes." you say: "Yes." "Yes." You laugh.  
23 He says: "But I think that things are now difficult. They will be known  
24 because -- because there are issues." And you say: "But I don't blame them, I blame  
25 OTP because they lied about me."

1 1483, he says: "OTP are bad, there is no need for them to put you under protection  
2 and yet they did -- and yet they did a good job." And you say: "It's because I  
3 [know] a lot about them; I had known their [tricks] -- their tactics." I'm sorry, "... I  
4 had known their tactics." My apologies: "They brought me -- they brought me  
5 a paper and asked me to sign it stating that whatever I saw I should not disclose."  
6 If we go on to the next page, he says -- this is page 45: "They are bad then." You say:  
7 "They know that I am tough." "Okay." And you say: "They know that I am aware  
8 of how they operate so they decided to lie about me so that I cannot disclose what  
9 they have been doing."  
10 He says: "Okay." You say: "Yes." He says: "Yes." And then you say: "That is  
11 why they don't want me to have a phone, because if I have one they'll know I have  
12 already told you -- I have already told you people. *[Laughing ...]*."  
13 And he says: "Report -- report for these people?"  
14 Yes.  
15 Okay."  
16 And then you say: "So they are being careful; that is why they told these people to  
17 watch me."  
18 And then if we skip down to line 1509, you mention someone's name "was telling me  
19 that ... but I asked him where is my money, he started laughing and he told me, don't  
20 worry, we will get you some job and when you -- and when you get one you pay  
21 them." And then laughing.  
22 So do you recall this conversation?  
23 A. [12:42:34] I recall, your Honour. And I can explain also. The same as it was  
24 before, the whole information which I discussed with him, it doesn't -- there was  
25 nothing accurate in there.

1 Q. [12:42:50] Okay. Okay. Now I'm truly guided by my -- my colleague, Suzana  
2 Tomanović. We've been working 22 years, so she's terrific lawyer.

3 She tells me -- she instructs me to go to tab 17, tab 17, binder 1. Binder 2, I'm sorry,  
4 binder 2. Tab 17, binder 2,

5 A. [12:43:53] In there, your Honour.

6 Q. [12:43:55] Okay, great. And it starts with -- this is KEN-OTP-0157-4119. It's  
7 a conversation that takes place on 27 June -- 27 June 2014. Okay?

8 A. [12:44:21] Yes, your Honour.

9 Q. [12:44:22] And if I could direct your attention to line 117. Page 4, line 117. So  
10 page 4, that's KEN-OTP-0157-4124. Are you there?

11 A. [12:44:51] Yes, your Honour.

12 Q. [12:44:52] Okay, if we look at line 117, you: "Yes, I blame all this because of ICC."  
13 Person number 12 says: "Yes, these like -- these like using people but it is good you  
14 used your brain -- your brains."

15 And you say: "At least even -- at least even you people left them."

16 "At least even you people left them."

17 Now let's pause, let's pause a little bit, taking that, what you just said, look at the date,  
18 and let me ask this simple question: Does it not appear from line 119 that you at this  
19 point in time - maybe not before, maybe, we don't know - but at least as of 27 June  
20 2014, you know that they have left the ICC.

21 A. [12:46:09] It's not true, your Honour.

22 Q. [12:46:10] Okay. So here, I take it - if we're relying on your previous  
23 answers - you're lying to them because you want to find out more information, so you  
24 tell them, "At least even you people left them."

25 A. [12:46:27] Because I've already told by wife of person number ...

- 1 Q. [12:46:34] 12.
- 2 A. [12:46:35] No. Person number 12 never told me that.
- 3 Q. [12:46:39] His wife. You had lots of communication with the wife, did you not?
- 4 A. [12:46:46] It is person number 5's wife told me, your Honour.
- 5 Q. [12:46:51] Okay. All right.
- 6 A. [12:47:01] If it wasn't her, I could have never known she -- they have left the
- 7 programme.
- 8 Q. [12:47:09] Okay. If we could go to tab number 2, tab 2. And that is in the
- 9 binder 1. I'm starting to memorise these.
- 10 A. [12:47:41] In there, your Honour.
- 11 Q. [12:47:42] Okay, great. And this is -- this is a conversation that took place on 28
- 12 June 2014. And if we're looking at page number 11, it's KEN-OTP-0157-4193. And
- 13 if I could just direct your attention to line 372, he says: "Yes."
- 14 When you get to page number 11, let me know.
- 15 A. [12:48:11] 372?
- 16 Q. [12:48:13] The line is 372, the page is number 11. So when you get to the page,
- 17 let me know.
- 18 A. [12:48:24] I'm in there, your Honour.
- 19 Q. [12:48:27] If we -- if we look at 372, he says: "Yes, we don't care let them continue
- 20 supporting us."
- 21 "Yes, we don't care let them continue supporting us."
- 22 You say: "Yes, there is no problem if they are willing to support why not take the
- 23 advantage." He says: "Yes." You say: "Yes." He says: "Yes." "Okay."
- 24 Then he says: "They told us that they won't -- that they won't stop supporting us."
- 25 "... they won't stop supporting us." Who's the "they" he's referring to, by the way?

- 1 Is that VWU? Is that somebody else, some government?
- 2 A. [12:49:16] No, they were referring VWU.
- 3 Q. [12:49:19] So VWU "won't stop supporting us", meaning you too as well. You  
4 say: "Okay." He says: "Yes." And then you say: "I want them to get shocked  
5 when I'm -- I through with it."  
6 He's says: "Yes, they will be shocked, but they [are] scared of you because they know  
7 already that you are tough."  
8 Do you want to comment on that?
- 9 A. [12:49:54] Yes. I can explain that, your Honour.
- 10 Q. [12:49:55] Okay. If you want to explain it. If you don't want to --
- 11 A. [12:49:56] I want to.
- 12 Q. [12:49:57] Okay. Go ahead.
- 13 A. [12:49:57] Because I never left the programme, but for them this is the  
14 conversation was concerning, that they will be shocked. So I was trying to show  
15 them I am on their own side so that they can talk much. But in mind, I knew I will  
16 not leave the programme because I was in danger and I didn't came here to come for  
17 asylum seeker.
- 18 Q. [12:50:25] All right. Now if you go to page 12, the next page, I believe, I just  
19 want to touch on a couple of things.  
20 If you go to line 409, line 409, page 12, KEN-OTP-0157-4194. Here, he says on 409,  
21 person number 12, that is:  
22 "I realised yesterday that you must have been tired that is why we didn't -- we didn't  
23 ring you."  
24 And you say: "No, I was so upset."  
25 He says: "Okay."

1 And then you say: "And I was telling myself that is no one in Africa wants to  
2 associate with ICC, they don't want anything to do with it."

3 He says: "Okay."

4 And then you say: "They are forcing people to testify and not treating them well."  
5 Were you lying at that -- at that point? Or was that how you felt, that you were  
6 being forced to testify --

7 A. [12:51:44] No, your Honour --

8 Q. [12:51:44] -- and that you were not --

9 A. [12:51:44] -- nobody forced me, your Honour. And I had a chance with them.  
10 If I wanted to leave, ICC could not hold me. It was my voluntary, your Honour.

11 Q. [12:51:56] Very well. And I would -- I would ask you if you would, if not for  
12 me --

13 A. [12:52:02] If I -- okay.

14 Q. [12:52:04] I would ask you, if not for me, for the kind and hardworking  
15 language assistants in this case, if you could allow me to complete my sentence, wait  
16 a little bit and answer.

17 A. [12:52:17] Thank you, your Honour.

18 Q. [12:52:18] Because they cannot -- you know, they can't do their job if we're  
19 talking over each other.

20 I don't even recognise myself the way I'm talking.

21 Tab 11. Tab 11. Okay?

22 A. [12:52:40] The same binder?

23 Q. [12:52:42] Same binder. Same binder, tab 11. We're here on June 27, June 27,  
24 2004, and ...

25 Okay, if we could -- and this is KEN-OTP-0157-4047. If I could direct your attention



1 to page number 9, page number 9.

2 A. [12:53:24] Yes, your Honour, I'm in there.

3 Q. [12:53:31] Okay. And it's -- it's 27 June 2014. I misspoke.

4 Okay. So if we go to line -- on page number 9, we go to line 301, 3-0-1. This is you.

5 You see your initials, right? And you see the initials of person number 12, right?

6 A. [12:54:02] Yes, I can see, your Honour.

7 Q. [12:54:04] "And they told me to sign something because they said everything is

8 a secret."

9 He says: "Okay."

10 You say: "That any secret should not be said even if I see something I shouldn't say it

11 to anyone within or outside the court."

12 He says: "Okay."

13 "So, I asked them what is it that [they] are doing in secret that you don't want

14 anyone -- that you don't want anyone be told?"

15 He says: "Okay."

16 And you say: "Yes, I told them if you are professionals" -- this is the next page, the

17 next page, page 10, line 308, you say: "Yes, I told them if you are professionals and

18 you are doing good work, why are you telling people not to mention it to anyone,

19 what bad things are you doing?"

20 He says: "Okay."

21 And: "[So-and-so] told me that is normal, we always do it."

22 He says: "Okay."

23 You respond: "Now I have realised that they are -- they are doing [dodgy] things."

24 That's a word that Americans don't usually use, "dodgy", but what do you mean by

25 "doing dodging things"?

- 1 A. [12:55:29] Your Honour --
- 2 Q. [12:55:29] No --
- 3 A. [12:55:30] -- I don't remember saying the word like this. But I can see in the  
4 Kalenjin. Can I have a look at it? In the transcript of translation.
- 5 Q. [12:55:41] I can -- I can ask my learned colleague to provide that to us, but let me  
6 go on to the next one.
- 7 Yeah, we were not provided with that.
- 8 But in any event, if we look to line 315: "So, that is what they are -- that is what they  
9 have been doing. They ask people to sign to shut them [up] -- to shut them but with  
10 me I will share with the newspapers I don't care."  
11 He says: "... so that you don't mention to anyone. Will share it -- will share it the  
12 newspapers." And then you say: "I will broadcast all over the world."  
13 Do you recall saying that?
- 14 A. [12:56:26] Yes, your Honour. I said that because I knew he was a journalist and  
15 he was writing papers. So to make him talk more and to know that I was in his side,  
16 so I had to say something.
- 17 Q. [12:56:41] (Microphone not activated) Okay. Now when you say he was  
18 a journalist, you're talking about person number 12?
- 19 A. [12:56:50] Yes, your Honour.
- 20 Q. [12:56:51] When you're saying -- I have to repeat that because I wasn't -- so  
21 you're saying when he was a journalist, we're talking about person number 12, right?
- 22 A. [12:56:55] Yes, he was writing newspapers.
- 23 Q. [12:56:57] Right. And --
- 24 A. [12:57:00] So I had to put something which is connected to him --
- 25 Q. [12:57:00] I see --

1 A. [12:57:01] -- so he can say that, Oh, okay, so he is with us, or he going to do, and  
2 he has been going to newspapers also.

3 Q. [12:57:11] Oh, so you were -- so you were engaging in a -- I think in spying they  
4 call it "misinformation". Is that what you're doing? You were sort of passing on  
5 misinformation so that he could write about it?

6 A. [12:57:24] No, he wasn't. I -- according to here, they say that I will broadcast  
7 myself. Not him.

8 Q. [12:57:32] All right. Okay. Well, I'm about to get into the issue of money. I  
9 might be able to -- I might be able to handle this issue in like two minutes, if we can  
10 agree on one point, otherwise we could spend some time. I have a few documents to  
11 go through. So let me just cut to the quick.

12 It seems that you were questioned about the amount of money that was provided to  
13 you by the OTP. You were questioned about this in case -- in the -- in the main case,  
14 do you recall that?

15 A. [12:58:09] Yes, your Honour.

16 Q. [12:58:10] Okay. And -- and I believe the figure was -- was rather high,  
17 somewhere in the neighbourhood -- in excess of 40,000 US dollars. Do you recall  
18 that?

19 A. [12:58:29] I don't know, your Honour, because I was not given accounts. I was  
20 living in a different location and the children was living in different location.

21 Q. [12:58:34] Okay.

22 A. [12:58:35] So I wasn't aware how much and they --

23 Q. [12:58:43] I understand that. But when in court --

24 A. [12:58:47] They mentioned the figure, but I --

25 Q. [12:58:49] The mentioned the figure. Right.

1 A. [12:58:51] Yes, your Honour.

2 Q. [12:58:54] And the figure was, I have it here, it's 43,453 dollars and 23 cents.

3 Does that sound about right?

4 A. [12:59:04] Where is that, your Honour? I can't see.

5 Q. [12:59:09] Well, if -- okay. The document is --

6 PRESIDING JUDGE SAMBA: [12:59:12](Overlapping speakers) and was that in

7 dollars? Did you say dollars?

8 MR KARNAVAS: [12:59:15] In dollars. In dollars. In dollars. I was hoping that  
9 we could get an agreement. But you're right, Madam President. I'm going to need  
10 about five minutes to go through the documents. Now it might be a good time -- it  
11 might be a good time to -- to take a break (Overlapping speakers).

12 PRESIDING JUDGE SAMBA: [12:59:34] I mean, if -- you mean five minutes for the  
13 completion of your ...

14 MR KARNAVAS: [12:59:46] For the -- oh, no, no, no. Oh, no, Oh, no. I won't be  
15 able to complete my -- my cross-examination, because even though the witness is here,  
16 I can, you know, I can share, there's a topic on money, there's a topic on the  
17 adoption -- on the adoption. There's also some other vignettes, and, of course,  
18 there's some final stuff that I want to go through, there are lots of documents,  
19 and -- and I think this is very important in your understanding of her evidence and in  
20 assessing it.

21 So I'm afraid I'm going to take some more time. The Prosecutor did not bring any of  
22 this in. We're bringing it in because I think it's important for you to have a complete  
23 picture of this individual. You're hearing her explanations. I'll try to move it along  
24 rather quickly. I'm trying to get her to not repeat her old mantra. But she seems,  
25 you know, to want to, so -- and I'm trying to be as -- as polite as I possibly can be and

1 not aggressive.

2 PRESIDING JUDGE SAMBA: [13:00:53] How long do you expect to go on?

3 MR KARNAVAS: [13:00:57] Hopefully not -- well, your Honour, a lot of it depends

4 on the witness. I mean, if the witness -- and if I were to say I'm going to take -- I

5 need half an hour and the witness then begins stalling because she doesn't want to

6 answer the questions, then I'm not going to be able to get through my, you know, I

7 could -- I might have been able to get through most of it had she not given us all these

8 explanations, the same ones over and over again, and I don't wish to cut her off.

9 So if I can get some quicker answers, I might be able to finish in an hour, your Honour.

10 And I'm -- so, some topics may be covered in five minutes if I get cooperation. If I

11 don't, then I have to go and show the documents and confront her, and I know it's not

12 a pleasant experience for -- for the witness, but it's a necessary and vital part of our

13 defence.

14 PRESIDING JUDGE SAMBA: [13:01:51](Microphone not activated)

15 MR KARNAVAS: [13:01:54] If you wish to shorten the -- shorten the lunch, I have

16 no objection with that.

17 PRESIDING JUDGE SAMBA: [13:01:58] No, sorry. I could if it were for me alone,

18 but we have other staff members --

19 MR KARNAVAS: [13:02:02] I know. I mean I --

20 PRESIDING JUDGE SAMBA: (Overlapping speakers) the Registry, the interpreters

21 and --

22 MR KARNAVAS: [13:02:07] I said that without -- I should have given a caveat.

23 PRESIDING JUDGE SAMBA: [13:02:06] Yes.

24 MR KARNAVAS: [13:02:07] So my apologies to everyone, I'm not suggesting that

25 everyone else suffer through this.

- 1 PRESIDING JUDGE SAMBA: [13:02:18] All right. Then we'll come at 2.30, I  
2 suppose, after lunch.
- 3 Madam Witness, we'll continue with your cross-examination at 2.30, please, after  
4 lunch.
- 5 At this stage, I adjourn this matter till 2.30. Thank you.
- 6 THE COURT USHER: [13:02:51] All rise.  
7 (Recess taken at 1.02 p.m.)  
8 (Upon resuming in open session at 2.31 a.m.)
- 9 THE COURT USHER: [14:31:15] All rise. Please be seated.
- 10 PRESIDING JUDGE SAMBA: [14:31:20] Good afternoon, everyone.  
11 We will continue with the cross-examination.
- 12 Mr Karnavas, please, your witness
- 13 MR KARNAVAS: [14:31:43] Thank you, your Honour.
- 14 Q. [14:31:44] Good afternoon, Madam.
- 15 A. [14:31:46] Good afternoon, your Honour.
- 16 Q. [14:31:47] Okay. Now we left off with the issue of money you received for  
17 yourself and for your children and their schooling. And so if we could move to tab  
18 95, tab -- binder 3, I'll try to ...  
19 This is the OTP witness related expenses sheet, so I won't go over what was discussed  
20 at trial, unless necessary.  
21 Do you have it?
- 22 A. [14:32:44] Yes, your Honour.
- 23 Q. [14:32:45] And have you seen this document before?
- 24 A. [14:32:47] No, your Honour.
- 25 Q. [14:32:48] Okay, was it not shown to you during the Ruto and Sang case?

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(Open Session)

ICC-01/09-01/20

- 1 A. [14:32:55] No, your Honour.
- 2 Q. [14:32:56] All right. If we look at the second page and we look at the total  
3 amount - and I should have noted it - in the first page, you have a column that says  
4 USD; that stands for US dollars. And if you could just look at both the first and the  
5 second page to see the sort of expenses that are listed.
- 6 PRESIDING JUDGE SAMBA: [14:33:33] Mr Karnavas?
- 7 MR KARNAVAS: [14:33:35] Yes?
- 8 PRESIDING JUDGE SAMBA: [14:33:37] You say "US dollars", where is it?
- 9 MR KARNAVAS: [14:33:42] There's a column on the -- the second column on the ...
- 10 PRESIDING JUDGE SAMBA: [14:33:47] Oh, yes, I see it. Thank you.
- 11 MR KARNAVAS: [14:33:49] Yes, it took me a while.
- 12 Q. [14:33:50] So on the left side, we have the dates and then we have the activity,  
13 and, then as we go on, the next column has the amounts -- the itemised amounts with  
14 subtotals in the last column. And so if you look at -- on -- from the first page, and  
15 that's KEN-OTP-0132-0002, and then -- so we see on that first page, accommodation,  
16 food/beverage.
- 17 PRESIDING JUDGE SAMBA: [14:34:32] Are you there, Madam Witness?
- 18 MR KARNAVAS: [14:34:35] It's tab ...
- 19 PRESIDING JUDGE SAMBA: [14:34:38] Ninety-five.
- 20 MR KARNAVAS: [14:34:39] Tab 95 and it's in binder 3.
- 21 (Pause in proceedings)
- 22 THE WITNESS: [14:34:58](Interpretation) Yes, your Honour.
- 23 MR KARNAVAS: [14:35:00]
- 24 Q. [14:35:00] Right. Let me ask the question again now, now that -- have you seen  
25 this document before?

1 A. [14:35:06] No, your Honour.

2 Q. [14:35:07] Okay. But if you could look at -- on the left side, where they list  
3 things like accommodation, food, communication, passport and what have you, and  
4 then go on to the next page, we see the same thing, so we have accommodation,  
5 medical costs and so on. And if you look at the far -- the far right, there is a total,  
6 which states \$43,453.23 cents.

7 Do you see that?

8 PRESIDING JUDGE SAMBA: [14:35:58] Can you give the reference number,

9 KEN-OTP- ... Which page are you talking about? The second page?

10 MR KARNAVAS: [14:36:04] Well, the second page. The second page is

11 KEN-OTP-0132-0012.

12 PRESIDING JUDGE SAMBA: [14:36:15] From my own document, tab 95, the second  
13 page is KEN-OTP-0132-0003 and the first page is 0002.

14 MR STEYNBERG: [14:36:29] If I may assist, your Honour. He's referring to the  
15 second-last page. I think he's probably not printed out the whole report, just the  
16 important bits.

17 MR KARNAVAS: [14:36:37] That could be it, that could be it.

18 PRESIDING JUDGE SAMBA: [14:36:42] If you could guide the witness, please.

19 MR KARNAVAS: [14:36:46] Yes. All right.

20 (Pause in proceedings)

21 MR KARNAVAS: [14:37:13]

22 Q. [14:37:14] Do you see that, Madam?

23 A. [14:37:17] Yes, your Honour.

24 Q. [14:37:19] All right. Is that about right? The expenses that were made for you  
25 from the periods of, I think it was -- it's an 18-month period offhand. Do you recall



1 that?

2 A. [14:37:37] I was never shown before, your Honour, that is why I -- I can't say.

3 Q. [14:37:39] Well --

4 A. [14:37:40] But according to here, we believe.

5 Q. [14:37:45] Right. And you were asked about it -- you were asked about it in the  
6 Ruto and Sang case, in fact, and again, your answer was you weren't shown all the  
7 specifics.

8 But the issue of \$43,453.23 cents was raised in that case as well, right?

9 A. [14:38:10] Yes, your Honour.

10 Q. [14:38:15] All right, thank you. We can move on to tab 96, binder 3. So binder  
11 3, tab 96. This next series of question has to deal with the topic of money.

12 So do you have it?

13 A. [14:38:49] Yes, your Honour.

14 Q. [14:38:50] Okay, and I want you to go to page number 5, and that would be  
15 KEN-OTP-0157-4011. Do you have it?

16 A. [14:39:15] Yes, Your Honour.

17 Q. [14:39:16] And if we look at line 141, person number 12 says:

18 "I want to advise you to request for holiday funds."

19 You say: "Yes."

20 He says: "Will these people give it out?"

21 You say: "Yes, because I can see that they are liars."

22 He says: "Start by telling that there is a holiday in July and that schools will close next  
23 week."

24 You say: "Yes."

25 He then says: "Schools depend on that as well."

1 You reply: "Yes."

2 He then says: "They will close until September and that is why people go on holiday  
3 to different countries. Others will go to AFRICA while others will go to SPAIN."

4 And you say: "Yes."

5 "[...] Others go to BELGIUM. Others go to different places therefore July will be  
6 a free month."

7 And you say: "Yes."

8 You see that?

9 A. [14:40:22] I see that, your Honour.

10 Q. [14:40:24] So in this exchange, at least he's planting the seed that you should ask  
11 for holiday money.

12 A. [14:40:30] But I never asked, your Honour.

13 Q. [14:40:32] I didn't say that you -- that you asked. This is what this document  
14 says; that there was this exchange about holiday money, right?

15 A. [14:40:41] Yes, your Honour.

16 Q. [14:40:43] All right. Now, if we could go to tab 1, tab 1 -- binder 1. Binder 1,  
17 tab 1, this is -- and it's KEN-OTP-0157-2976. It's a conversation you had in 3 July, 3  
18 July, 2014. When you find it, let me know. Tab 1 in binder 1. Do you have it,  
19 ma'am?

20 A. [14:41:31] Yes, your Honour.

21 Q. [14:41:33] Okay. If I could direct your attention to page 3, KEN-OTP-0157-2979.  
22 Do you have it? Are you there?

23 A. [14:41:50] Yeah.

24 Q. [14:41:50] Okay. Line 86, you say:

25 "That is even better but the" -- "but the problem now is my children. I am going to

1 meet" with "A.2.6 so that he can send them money."  
2 Person number 12 says: "Okay."  
3 You then say: "The children are needed in the court. They have to go ask for  
4 permission so that [...]"  
5 "[...] so they can [come] to NAIROBI."  
6 That's on line 92.  
7 Then you gone on: I was made -- I was made up ...  
8 "I have made up my mind that when I finish with these people so that I can get  
9 papers because the laws of ..."  
10 And I shouldn't be mentioning the country.  
11 "[...] they won't allow you without it."  
12 Country number -- location number 14.  
13 Then you go on -- he goes on and says:  
14 Where are they going to send ...  
15 "When are they going to send it?"  
16 And you say: "On the 8th and everything will be done."  
17 Then on line 102, he asks you: "How much is" so-and-so "going to send?"  
18 On the next page, you say: "The money?"  
19 "Yes."  
20 "I just came up with figures [*Laughing...*]"  
21 "How much did you tell him?"  
22 "50,000. [*Laughing...*]"  
23 "50,000 for all of them or each?"  
24 "[*Laughing...*]"  
25 The "laughing" is you.

- 1 "What?"
- 2 Then you say: "They are going for 3 days only so 50,000 will be enough."
- 3 "For all of them?"
- 4 And you say: "Yes."
- 5 "Okay."
- 6 "They won't use all of it. I calculated" that "they were just going to use 18,000 only."
- 7 So from this exchange, Madam, it would appear that the money that is actually going
- 8 to be needed - assuming it can be given for the purpose for which you're requesting,
- 9 18,000 - by having figured it out, having done the figures yourself, you amusingly say
- 10 it's 50,000. You're laughing about it.
- 11 So we're talking about a windfall of putting in your pocket or someone's pocket
- 12 32,000, and, I suspect that we're talking about Kenyan shillings here.
- 13 Do you see that?
- 14 A. [14:44:53] I see that, your Honour.
- 15 Q. [14:44:54] Now, were you lying here?
- 16 A. [14:44:56] Yes, I can say I had a conversation, your Honour, but, as I said before.
- 17 Q. [14:45:02] Okay, all right. If you go to page 7, page 7, on line 208, KEN number
- 18 is 0157-2983, I'd like to direct your attention to line 208, so page number 7, it's the
- 19 same document. Do you have it?
- 20 A. [14:45:37] Yes, your Honour.
- 21 Q. [14:45:38] And so on line 208, you say:
- 22 "I realised when I told him that some money was needed when my children were on
- 23 half term break ..."
- 24 He says: "Okay."
- 25 Then you say: "I told them ... so I told him that the money required was 48,000 for 5

1 days, because each was to spend 3000 for accommodation and 1500 for food per day."  
2 He says: "Okay."  
3 You then go on: "Do you know how much they send [to] my sister -- "to my sister?"  
4 He says: "No."  
5 And you say: "140,000."  
6 He says: "Thousand."  
7 And you, you respond: "I was laughing."  
8 "How much did you tell him?"  
9 "45,000."  
10 "Okay."  
11 And then you say: "That is when I realised they were mad."  
12 And he says: "They steal a lot of money in this court."  
13 Do you recall that exchange?  
14 A. [14:46:52] I exchanged it, your Honour, but I can explain that. The people,  
15 when they were in Kenya, are the one who was giving figure. Not me in -- where  
16 my location where I was. So this -- this conversation was just talking, so -- because  
17 he wanted me to jump out, so I had to say something, so -- to buy time.  
18 Q. [14:47:21] Okay. All right. And then just if we go -- if we go to -- yeah, we  
19 go further down the page on 231 -- or 230, you say:  
20 "They just give out money."  
21 He says: "They just give out the money that is why the white people are  
22 complaining that the KENYAN issue has brought a lot of problems."  
23 And we see you're laughing.  
24 If we go to the next page, the next page, page 8, that's 0157-2984, you say:  
25 "I was just laughing and I later told him that ..."

1 "Okay."  
2 "... I told him that ..."  
3 And then you go on: "When is the holiday?"  
4 Further down, line 247: "Just request" -- "Just request for your holiday and other  
5 things."  
6 And you say on 248: "I will tell them tomorrow."  
7 He says: "You have to talk with top management."  
8 "I will talk to them."  
9 And he -- then he tells you: "Avoid giving out the receipts when they asked  
10 you" -- "when they asked you to, just tell them" that "they will give you the money."  
11 And you say: "Okay."  
12 He then goes on, line 256: "If you tell the juniors they will ask you to take the receipts  
13 so that they can also get the money."  
14 And you say: "So they can also get something."  
15 He says: "Yes."  
16 And you say: "Everybody is getting something."  
17 And further down, you say: "I told them to send (Redacted) money for food and  
18 accommodation."  
19 And then you say: "They sent him 20,000."  
20 Further down, 268, we see you laughing again.  
21 Going on to the next page, page 9, 0157-2985, we start with -- with you saying:  
22 "He was shocked, he asked what kind of job am I doing and I told him he shouldn't  
23 worry."  
24 Further down: "Yes, I told him to save some for the holiday."  
25 Do you see all of that?

1 A. [14:50:07] Yes, your Honour.

2 Q. [14:50:08] And I take it - and, we can go on, but I want to save some time, so it  
3 would appear -- it would appear that some kind of a scam is being worked out.  
4 Now I don't know whether he's coaching or teaching you how to scam, but it would  
5 appear that he's certainly suggesting that you should augment the amount of money  
6 and pocket some and provide false receipts. That's more or less the gist of the  
7 conversations that you were having with this gentleman, right?

8 A. [14:50:47] Yes, your Honour, and that is why I -- I realise he wanted to put  
9 me -- to advise me wrong things so I can be ... just -- product from the protection.

10 Q. [14:51:06] Okay, and if we were look in that same vein very quickly to tab 18,  
11 which is in binder 2, tab 18; so go to binder 2, tab 18, and we don't have to belabour  
12 the point.

13 A. [14:51:26] I'm in there.

14 Q. [14:51:27] Okay. And if you go to page 7, and that's KEN-OTP-0157-3040, so  
15 get to page 7 and let me know?

16 A. [14:51:40] In there.

17 Q. [14:51:42] Okay. And if I could direct your attention to line 220.

18 A. [14:51:49] Yes, your Honour.

19 Q. [14:51:49] Person number 12:

20 "You need to ask [...] about the holiday."

21 He's desperate for you to have a holiday, it seems.

22 And 221, you say: "Yes."

23 222: "You want to travel around because people are going on holiday."

24 You say: "Yes."

25 "Taxis are there."

- 1 And you respond: "I will tell him I need a taxi, I won't take the train."
- 2 Further down, 228, he says: "[...] it's a lot of kilometres and they will give you money,  
3 it's very expensive."
- 4 Further down, line 232, he says: "[...] I took a taxi and they paid them 420."
- 5 And that would be 420 euro if he's here in The Hague.
- 6 And you say: "Really?"
- 7 And he says: "Yes."
- 8 And then we see you're laughing. And if we go to the next page, page 9, page 9,  
9 that's 0157-3042, and if we go down to line 292, when you're there, let me know.
- 10 A. [14:52:59] Yeah, I'm in there.
- 11 Q. [14:53:03] He asks: "What we will do, if they will ask for a receipt we will  
12 buy" --
- 13 "What we will do, if they will ask for a receipt we will buy a receipt book, it's only 10  
14 Euros."
- 15 And you say: "For taxis?"
- 16 And he says: "And we just write them."
- 17 Your response: "I know they will ask me for receipts."
- 18 He says: "We will buy one, that is what we used to do."
- 19 And you say: "Okay."
- 20 Then he goes on: "We will just write a fake number" of "taxis." And you say again:  
21 "Okay."
- 22 And then if we go on to the next page, page 10, page 10, KEN-OTP-0157-3043, and if I  
23 could direct your attention to the very top line, line 301, you say:
- 24 So-and-so and so-and-so "came so I won't have any problems because they are not  
25 bad people, they will give me" --



1 And you're laughing.

2 And he says: "They will have to give you a lot because of the taxi."

3 Line 304. you respond: "Because I realised that they were trying to prevent me  
4 from" -- "from talking to these ones so that it can be them giving me the information."  
5 Now, I don't know -- I can't follow that train of thought, but later on, on line 307, you  
6 say:

7 "When they give them the money, they want to come and take you around instead."

8 And from trying to piece together this conversation, it seems to me the VWU was  
9 coming around and then taking you to places, and, at some point, we see that they  
10 even wanted to take you to the beach. But you didn't want to go to the beach, you  
11 would prefer to just go visit person number 12 and his wife, is that right?

12 A. [14:55:22] Yes, your Honour.

13 Q. [14:55:23] All right. So I think there may be some other points in this, but I  
14 think we got the drift of this and so I'll move on to save some time.

15 So if we could go on now to the adoption issue. Okay?

16 A. [14:55:43] Yes, your Honour.

17 Q. [14:55:44] Okay. Now this issue - as we talked about - came up in the previous  
18 trial that you testified in the Ruto and Sang case. Do you recall?

19 A. [14:56:02] Yes, your Honour.

20 Q. [14:56:04] Okay, now, if I can --

21 (Counsel confers)

22 MR KARNAVAS: [14:56:28] I'm totally hopeless without my trusty assistants, "89"  
23 I'm told. That's in binder 3, 89, in binder 3.

24 Q. [14:56:53] When you get there, let us know.

25 A. [14:56:57] I'm in there, your Honour.

- 1 Q. [14:57:00] Okay. Now I would like to direct your attention to page 95?
- 2 A. [14:57:25] I'm in there, your Honour.
- 3 Q. [14:57:27] Okay. And if we look at line 7, line 7 -- I'm just going to read a little
- 4 bit of it, line 7 says:
- 5 And Madam, you did not go through a full legal process of adopting your sister's
- 6 children, did you?
- 7 That was the question posed to you.
- 8 Your answer: I went.
- 9 Now let me stop here for a second. We see the word "adopting", I -- can we assume
- 10 that you understood what the questioner meant when they said "adopting"?
- 11 A. [14:58:12] My understanding was, in my country, a relative can give you
- 12 children and you can say I've already adopted. We use the word --
- 13 Q. [14:58:33] Okay.
- 14 A. [14:58:34] So that is what I ...
- 15 Q. [14:58:35] Okay. All right. And then you say: I went.
- 16 A. [14:58:40] And again, let me just add, we wanted to do the process of adoption
- 17 and I -- I was -- already left the country, so I couldn't go back because I was supposed
- 18 to be in court.
- 19 Q. [14:58:58] Okay. Ma'am, when you were being questioned in that case, did you
- 20 take an oath?
- 21 A. [14:59:07] Yes, your Honour.
- 22 Q. [14:59:08] And did -- was that oath similar to the one that you took in this case?
- 23 A. [14:59:12] Yes, your Honour. I (Overlapping speakers)
- 24 Q. [14:59:14] And -- and did that oath say the truth, the whole truth and nothing
- 25 but the truth?

- 1 A. [14:59:19] Yes, your Honour.
- 2 Q. [14:59:20] Okay. So if I could proceed. So you were asked: Did you go  
3 through a full -- a full legal process -- legal process of adopting your sister's children?  
4 Did you? Your answer: I went.  
5 Did you provide the Prosecution with all the documents?  
6 And then you say: Yes, they have.  
7 Question: Was it only an affidavit signed by your sister?  
8 Answer --  
9 Was it only an affidavit signed by a sister?  
10 Answer: No, no.  
11 Question: There were other documents?  
12 Answer: Yes.  
13 Do you see that?  
14 A. [15:00:11] Yes, your Honour.  
15 Q. [15:00:12] And those were the questions posed to you and those were your  
16 answers?  
17 A. [15:00:16] Yes, your Honour.  
18 Q. [15:00:19] Okay. And at no time that I see here, did you take the opportunity to  
19 explain to the Court then that in Kenya, you can just have your relatives' children, say  
20 that you adopted them, and that's okay until it's formalised. Nowhere -- there are no  
21 qualifications that I've been able to find.  
22 So my question is, did you qualify that in that case as you're attempting to qualify in  
23 this case?  
24 It's a yes or it's a no or I don't remember.  
25 A. [15:00:56] Can you put the answer -- the question again.

1 Q. [15:00:59] Did you qualify your answer in that case to say, "Well, in  
2 Kenya" -- the way you qualified it here. You told us, "Well, in Kenya, a relative can  
3 give you children. You can say I adopted them even though the formalities, you  
4 know, the legal formalities haven't been completed."

5 Did you say anything like that in that trial because I haven't found it in the transcript?

6 A. [15:01:25] No, no, your Honour, but I had an affidavit.

7 Q. [15:01:28] Okay, you had an affidavit. And let me ask you this, did you ever  
8 produce that affidavit in that trial?

9 A. [15:01:35] No, your Honour, because I had left the country and the whole  
10 document was in Kenya.

11 Q. [15:01:41] Okay. And I take it that if you -- that you had an affidavit, it was  
12 prepared by a lawyer?

13 A. [15:01:51] Yes, your Honour.

14 Q. [15:01:55] And that lawyer had a name, right?

15 A. [15:01:57] Yes, your Honour.

16 Q. [15:01:59] And that lawyer had an office?

17 A. [15:02:01] Yes, your Honour.

18 Q. [15:02:02] And that lawyer had a telephone number that you could reach out  
19 and call?

20 A. [15:02:09] Yes, your Honour.

21 Q. [15:02:10] And not just you, but maybe VWU could reach out and call -- and call  
22 that office or even visit that office? Right?

23 A. [15:02:20] Yes, your Honour.

24 Q. [15:02:21] And since you were calling everybody, you know, and with  
25 Mr -- person number 12, there were 88 conversations with him alone during a very

1 short period of time, did you ever call that office to say: "Can you please fax or send  
2 me an electronic version of the affidavit that was signed?"

3 That was part of the adoption process that you were going through?

4 A. [15:02:59] No, your Honour. I couldn't communicate it with ...

5 Q. [15:03:02] Okay. All right. You could not communicate it with him? Or her?  
6 Whoever the lawyer was? That's what you're saying?

7 A. [15:03:10] I communicated with him when we sign, when I was in Kenya.  
8 When I left, I left the documents in there, your Honour.

9 Q. [15:03:17] Well, I guess -- well, let me put it to you this way, did this  
10 lawyer -- was it a man or a woman, if you recall?

11 A. [15:03:25] I don't recall, your Honour.

12 Q. [15:03:27] Okay. Did the lawyer prevent you from taking a copy of that  
13 affidavit because we seem to have heard this story before that affidavits are drafted  
14 and then they're not allowed to have copies of it. Did your lawyer by any chance  
15 prevent you from taking a copy of the affidavit, so at least you have some formal  
16 document to say, "I've adopted these children" or "I'm in the process of adopting these  
17 children" or "I'm their legal guardian until the formal adoption goes -- placed."  
18 Did you ever get a copy of that affidavit?

19 A. [15:04:05] In fact, my sister and the children went to court and ...

20 Q. [15:04:10] Ma'am -- ma'am, excuse me, I'm going to interrupt you here. I'm not  
21 asking about your sister and I'm not asking about the court. You went to an office.  
22 You went to a lawyer. Presumably you paid that lawyer to draft an affidavit. You  
23 were entitled to a copy of that affidavit, in case you didn't know, but I'm asking you,  
24 did you ever ask for a copy of it?

25 A. [15:04:31] I had it, your Honour, and I left it when I travel.

1 Q. [15:04:34] Okay. And did it ever dawn on you that since you didn't have it  
2 with you and it was in -- in -- wherever you had left it, that either you could have  
3 somebody send it to you or call up the lawyer, have somebody else call up the lawyer,  
4 and have that affidavit sent to you?

5 A. [15:05:02] I hope my sister -- I -- I thought my sister was hand it over to the  
6 VWU, your Honour.

7 Q. [15:05:11] Okay. Now, if we can look at document -- in tab 7, tab 7, that's  
8 volume 1, and this is sort of like an aside, but it's something -- somewhat relevant I  
9 think to our discussion. It's dated 17 July 2014, tab 7. KEN-OTP-0157-2659, and  
10 when you have it, let me know and I want to -- I'm going to direct your attention to  
11 page 4, page 4, KEN-OTP-0157-2664.

12 A. [15:05:59] In there, your Honour.

13 Q. [15:06:00] Okay, could you kindly go to page 4 of this document.

14 A. [15:06:04] In there, your Honour.

15 Q. [15:06:06] All right. Now in line 111, you say:

16 "Things are not good. Even his followers who are" going "around will also be  
17 arrested. They wrote to recant their statements" so "they gave false information to  
18 the OTP. They'll also be arrested. If you give false testimony" in "the Court then  
19 you'll be imprisoned for five years."

20 Do you see that?

21 A. [15:06:42] I can see that, your Honour.

22 Q. [15:06:43] So my point in pointing this out, is, at the time when you  
23 testified - because this is on or about your testimony - you were aware that giving  
24 false testimony in court was a crime for which you could be imprisoned up to five  
25 years, right?

- 1 A. [15:07:06] Yes, your Honour.
- 2 Q. [15:07:07] Okay. If we go to tab 94, tab 94, in binder 3, binder 3?
- 3 A. [15:07:27] I'm in there.
- 4 Q. [15:07:29] Okay. Here, we have an investigative report -- by the way, it's
- 5 KEN-OTP-0129-0546, it's a report that was filed on 16 April 2014, right about the time
- 6 that this -- these events occurred, unlike the other ones that we've seen, where they're
- 7 filed three or four years later or two years later, and it says here that these two
- 8 investigators called you on 16 April 2014. Do you see that? That's the very first
- 9 line.
- 10 A. [15:08:11] Yes, your Honour.
- 11 Q. [15:08:12] And then, if we go to the second part, that is -- where it says birth
- 12 certificates of children, you say -- you have been telling investigators that you have
- 13 three children.
- 14 "She submitted copies of their birth certificates to the OTP through the Field Office
- 15 in" -- location number, I can never remember these locations, location number 30,
- 16 okay, all right -- "for their relocation process, and the OTP received them."
- 17 "However" -- "however" -- you may want to follow this document here:
- 18 "However, only one certificate" -- and it mentions the name -- "of the 3 certificates
- 19 indicates that" you are "the mother. The other 2 certificates" - and they name the two
- 20 individuals - "indicate that" - your sister - "is the mother."
- 21 Then it says you clarify that two children are biologically belonging to your sister.
- 22 "However she became an official guardian for them through an affidavit made by
- 23 a lawyer."
- 24 That's what you're telling us and that's what it says over here, and it seems that's
- 25 what you were telling them at the time.

1 "She could not tell investigators when the[se] 2 children officially became her children  
2 but she said that she had submitted a copy of the affidavit to the Field Office in  
3 Uganda." In place number 30.

4 So at least as of April 16, 2004, it appears --

5 PRESIDING JUDGE SAMBA: [15:10:32] "2014", Mr Karnavas.

6 MR KARNAVAS: [15:10:33]

7 Q. [15:10:33] 2014, 2014, it appears that they were looking for verification of what  
8 you had been claiming, that you had three children.

9 A. [15:10:43] I had children before, your Honour.

10 Q. [15:10:45] Right. And it appears that, at least, it was right around 16 April 2014  
11 that they first realised that your claims of having three children were -- well, actually,  
12 you only had one, you were taking care of two others, but at least as of that time, the  
13 OTP had not been provided with anything official that you were -- that you had  
14 adopted the children. Would that be fair?

15 Have I been -- that was a question.

16 As of this time, you had not provided them with anything, the OTP, that is?

17 A. [15:11:33] They have it, your Honour.

18 Q. [15:11:34] As of that time? We're talking about -- I'm not talking about later on,  
19 as of this time here, as of the date when they visited you and they asked that  
20 question?

21 A. [15:11:47] Yes, your Honour, I had already provide affidavit.

22 Q. [15:11:51] Okay. Now, if we could go to tab 4, tab 4, and it's in binder 1, and  
23 that's 0157-3948, and that's dated 26 June -- 26 June 2014.

24 A. [15:12:20] You say binder 1, tab?

25 Q. [15:12:23] Binder 1, tab 4, and this is June 26, 2014 and we've already established



1 that you testified from 18th to the 20th of June 2014. So this would be six days after  
2 you had completed your testimony. Have you found the document?

3 A. [15:12:47] Yes, your Honour.

4 Q. [15:12:49] Okay, now, if we could look at page 1, page 1, and we go to -- if I can  
5 direct your attention to line 21.

6 A. [15:13:02] Yes, your Honour.

7 Q. [15:13:03] And you say, "What" -- "US" - the unidentified speaker, because -- but  
8 we can still see that you're having a conversation with person number 12:

9 "What happened, you left your kids behind?"

10 And you say: "I didn't have anything I could do because they were on my neck."

11 "Okay."

12 And then you say: "And I didn't have the affidavit, I was left with the affidavit  
13 only."

14 "Okay."

15 Then you say: "Defence people had demanded it."

16 "Okay."

17 "They were complaining that they wanted to see the ... I used to adopt the children."

18 "Okay."

19 And then you go on:

20 "From the court, so I am required to" do -- "I'm required to go to the court to swear."

21 Further down:

22 "Yes, they got really tough because they were claiming that I didn't adopt the children  
23 and if I did I should give them the papers."

24 Now, when you told the -- when you told the Court, when they asked -- when you  
25 were asked specifically about whether you had adopted the children - I showed you

1 the transcript earlier - and you said, yes, from here, at least, all we can see is that there  
2 was an affidavit. You didn't have the affidavit with you, you never produced the  
3 affidavit at least to the Defence who was demanding it, and that for you to formalise  
4 at least -- to legalise the adoption process, you would need to go to Kenya.

5 Correct?

6 A. [15:14:58] It wasn't hard to process, but because I left Kenya because of security,  
7 I -- I didn't have time for that to do.

8 Q. [15:15:07] I understand. That's the explanation, that's the excuse. But my  
9 question goes to, you were asked a very concrete question, whether you had legally  
10 gone through the process of adoption. It's a very, very simple question, but very  
11 direct and very precise. And you said yes.

12 A. [15:15:25] Because I had already had children and I had already had an affidavit,  
13 so it was only the process and I wasn't in -- in Kenya.

14 Q. [15:15:33] But here you're admitting that you had to go back to Kenya to -- to the  
15 courts to sign -- to go through a court proceeding and to be present, right?

16 A. [15:15:43] Yes, your Honour.

17 Q. [15:15:44] So, in fact, you had not legally gone through the process. Remember,  
18 when I said the truth, the whole truth, that's what that part means, the whole truth.

19 Not half a truth because half a truth is half a lie. So were you not half lying?

20 A. [15:16:01] I'm not a liar, your Honour.

21 Q. [15:16:03] Okay, I'm not saying that you are, but it seems that when you testified  
22 under oath in court and when they asked you specifically --

23 A. [15:16:10] I didn't lie, your Honour, because I was with the investigators, I  
24 couldn't investigate to know the truth.

25 Q. [15:16:24] Okay. All right. If we could go to the next page, page 2, and I

- 1 understand, this is a very stressful type of questioning, but I have to do it.
- 2 A. [15:16:29] Page 2, the same?
- 3 Q. [15:16:30] Page 2, page 2, line 38. Just the next page.
- 4 A. [15:16:43] I'm in there, your Honour.
- 5 Q. [15:16:44] Okay. The unidentified speaker says:
- 6 "That you didn't adopt the children, if you did where are the papers?"
- 7 "Yes, that is what the defence wanted they didn't want the affidavit from the court."
- 8 Then, if we go down to line 51, you say:
- 9 "The protection people demanded adoption papers."
- 10 You see that?
- 11 A. [15:17:16] Yes, your Honour. I had a conversation, but because this
- 12 conversation came in, because they wanted me to leave the protection and leave the
- 13 children so that they can arrange later to come. So I told them no, this is the
- 14 situation. I can't -- I can't leave protection.
- 15 Q. [15:17:35] Okay. I think the point has been made. I won't belabour the point.
- 16 MR KARNAVAS: [15:17:48] There are more documents, your Honour, but for the
- 17 sake of moving on.
- 18 If I could just go to ...
- 19 (Counsel confers)
- 20 MR KARNAVAS: [15:18:17] If we could go to tab 1, your Honour. My apologies
- 21 for disrupt- -- binder 1, tab 1.
- 22 Q. [15:18:32] So if you go to binder 1, tab 1, are you there?
- 23 A. [15:18:38] Yes.
- 24 Q. [15:18:38] Okay. If you could find the document and it starts with -- we see it's
- 25 3 July 2014, this conversation between you and person number 12, and I'm going to

- 1 direct your attention to page 11, which is KEN-OTP-0157-2987.
- 2 Do you see that?
- 3 A. [15:19:13] You say 29 ...?
- 4 Q. [15:19:15] Okay, what I've said is page 11. Are you on page 11?
- 5 A. [15:19:30] Yes, your Honour.
- 6 Q. [15:19:30] Okay. And if we go to just 343, you say:
- 7 "They told me that they will come and pick me up when they know that the children
- 8 have been given the permission to go."
- 9 Do you have that section, ma'am?
- 10 A. [15:19:50] Yes, I have it.
- 11 Q. [15:19:51] Okay. "But I know if they get the permission no one will be around
- 12 so I will get time to come there."
- 13 You're telling person number 12 that you'll have time to come there to wherever he is.
- 14 He says: "Yes, you need to use your brain now to get your children over ... "
- 15 And you say: "I just want to use them to get money now, I want to be telling them I
- 16 need money so they can be sending and sending."
- 17 Do you see that?
- 18 A. [15:20:27] I see it -- I see that, your Honour, but I never claim any money from
- 19 the VWU.
- 20 Q. [15:20:33] Ma'am, I'm not -- I don't know that for a fact, but --
- 21 A. [15:20:34] I --
- 22 Q. [15:20:35] -- I'm only pointing this out. These were your words, were they not?
- 23 A. [15:20:42] It was, but --
- 24 Q. [15:20:43] Okay --
- 25 A. [15:20:44] -- as I told you before, the conversation I had with this person wasn't

1 accurate.

2 Q. [15:20:49] Yes. And these were your words when you were not aware that you  
3 were being tape-recorded, right?

4 A. [15:20:58] Yes, your Honour.

5 Q. [15:21:00] Okay, thank you.

6 All right. I'm going to through several other passages of your numerous discussions  
7 with person number 12, some relate -- relate to what -- to some of the excuses that you  
8 have given or explanations, however you wish to put it, to the Prosecution when you  
9 were interviewed in October 2021.

10 So with that, let me start by directing your attention to tab 17, which is binder number  
11 2, and -- do you have it? It's in binder number 2, tab 17.

12 A. [15:22:24] Yes, your Honour, I'm in number 17.

13 Q. [15:22:27] Okay. Thank you. And this sort of -- by way of an explanation,  
14 relates to paragraph 59 to your -- this is primarily for the Court's benefit, but for yours  
15 as well to paragraph 59 of your statement of 2021, which was in tab 45.

16 So I'm not suggesting we do cross-referencing now, but just for future purposes. If I  
17 could direct your attention to page 11, page 11 of this document, which is  
18 KEN-OTP-0157-4131. If I can direct your attention to line 343, you say:

19 "I think you have heard the way I am being mistreated."

20 Then you say that they told you that you were leaving tomorrow and so on.

21 But here, you see, you claim that you are being mistreated. Were you lying when  
22 you said that, that you were being mistreated or were you -- is that how you felt?

23 That you were being mistreated?

24 A. [15:23:55] It wasn't mistreated, your Honour, it was misunderstanding.

25 Q. [15:23:59] Okay. So it was -- when you say "misunderstanding",

1 misunderstanding between you and VWU?

2 A. [15:24:06] It was misunderstanding between VWU, protection people and social  
3 people.

4 Q. [15:24:13] Okay. They had the misunderstanding, not you?

5 A. [15:24:16] Not me, they ... just ...

6 Q. [15:24:20] Okay. And so their misunderstanding caused you to be mistreated?

7 A. [15:24:26] No, I wasn't mistreated but ...

8 Q. [15:24:29] Okay. All right. If we could go to tab 5, tab 5, and that's in binder  
9 number 1. And so binder number 1, tab 5. The date of your conversation is 28 June  
10 2004, and --

11 A. [15:24:54] You say?

12 Q. [15:24:55] It's tab 5, binder 1.

13 A. [15:25:09] Yes, your Honour.

14 Q. [15:25:10] And if we could go to page 3 and that is KEN-OTP-0148-0933, and if I  
15 could -- when you get there, let me know.

16 A. [15:25:37] Yes, I am in there, your Honour.

17 Q. [15:25:39] Okay. You're on page 3?

18 A. [15:25:46] Yes, your Honour.

19 Q. [15:25:46] And we'll start with line 68. This is you: "After we've finished, I'll  
20 ask them to leave me in peace, because I don't want to get into any arguments with  
21 them."

22 And then further down, line 73:

23 "I've already assisted them with what they wanted ..."

24 Line 75: "... in good faith, but they" don't "appreciate and they also" don't "want to  
25 settle me ..."

1 Line 77: "... they want to send me back home for me to be killed there. What's that all  
2 about?"

3 Then further down, you know, you're asked:

4 "Please let them know that you might decide to testify against them. Whatever  
5 happens, happens. What's that all about?"

6 And then you say:

7 "That's true. I'll tell them. I know they'll be shocked ..."

8 So here, you're saying, "Well, you know, I can testify on the other side." It seems like  
9 you're rather flexible on how you're going to testify. Right? That what  
10 you're -- that's the impression that you're giving. That you're willing to testify  
11 against them whoever they is (Overlapping speakers)

12 A. [15:27:04] Yes, your Honour, I was just telling him --

13 Q. [15:27:05] Right.

14 A. [15:27:06] -- but not -- it was not accurate because I was just giving information.

15 Q. [15:27:10] I understand --

16 A. [15:27:12] Yes.

17 Q. [15:27:12] And line 82:

18 "[t]ll cause misunderstanding[s] with the OTP."

19 And then you're laughing.

20 And then further down: "The OTP will" -- line 84:

21 "The OTP will tell them that we told you that the lady is complicated -- what did you  
22 do" -- "what did you do to her?" Laughing.

23 It seems everybody was laughing then. You continue to laugh. Then further, on  
24 line 91:

25 "I didn't want to go to the beach, because" there were -- there were -- "because I've

1 been planning to visit you people for a long time, and I thought if I go to the beach, I  
2 won't be able to see you."

3 And of course we talked about you -- you know, them wanting to take you to the  
4 beach, but of course you weren't supposed to be going around visiting people either,  
5 were you?

6 A. [15:28:10] No, your Honour.

7 Q. [15:28:11] Okay. Then they say:

8 "They told me they will take me on holiday until Monday." Right? So was  
9 that -- was that a lie or was that the truth? Did they actually tell you they were going  
10 to take you on a holiday until Monday?

11 A. [15:28:31] I don't remember, your Honour.

12 Q. [15:28:32] Okay. Well, if they were -- if they had told you that they would take  
13 you on holiday until Monday, is that a mistreatment of you?

14 A. [15:28:41] No, your Honour.

15 Q. [15:28:43] Okay. And then you go on, line 98:

16 "They don't know me well, because I've been quiet; the ones who know me well are  
17 the" only "ones, as they cautioned these ones to be careful" of "me."

18 Why did they need to be careful of you, if I may ask? Or were you just saying those  
19 things to appear boastful?

20 A. [15:29:07] I was just saying it.

21 Q. [15:29:09] Okay.

22 A. [15:29:10] I didn't mean it.

23 Q. [15:29:14] Then, if you go on to the next page, page 4, line 105, in the middle of it,  
24 we start a sentence:

25 "They even lied to me that they'd already made an application to the country I was



1 going to be settled [in], only for me to realise that they were lying to me. They  
2 already knew that -- " "They already knew that it'd be there." "That" I'd "be there."  
3 "... that it'd be there."

4 Anyway, who was lying to you?

5 A. [15:29:48] Nobody was lying to me.

6 Q. [15:29:51] And then on line 133, you say:

7 "... I'd signed an MOU" --

8 An "MOU", do you know what that means? MOU? Or a memorandum of  
9 understanding, is that what you meant?

10 "... I'd signed an MOU agreement, and that I wasn't allowed to choose where I'd go.  
11 I told him to watch me properly, and that he shouldn't" take ... "me that way" -- "talk  
12 to me that way. Didn't I have a right to choose? I can't talk ..."

13 So had you signed some sort of an agreement?

14 A. [15:30:34] Your Honour, there was no MOU signing with VWU.

15 Q. [15:30:39] Okay, if I --

16 A. [15:30:39] It was just a say, that -- to keep that conversation going.

17 Q. [15:30:45] All right.

18 A. [15:30:46] And the process even of applying for the relocation, I don't know if  
19 the Court or VWU -- and they never discuss with me.

20 Q. [15:31:01] Okay. All right. I'll try to move along quicker.

21 A. [15:31:07] Thank you.

22 Q. [15:31:07] If we go to tab 17, binder -- binder 2, tab 17, binder 2. This is dated  
23 27 June 2014.

24 A. [15:31:35] You say, tab?

25 Q. [15:31:37] Tab 17, 1-7. It's just a minor thing. Just ...

- 1 A. [15:31:45] In there, your Honour.
- 2 Q. [15:31:46] Okay. If we go to page 4, that's KEN-OTP-0157-4124, get to page 4.
- 3 A. [15:32:00] In there, your Honour.
- 4 Q. [15:32:01] If you go to line 116:
- 5 "The ladies were saying" --
- 6 This is the gentleman, person number 12 --
- 7 "The ladies were saying that they are really mistreating you." And you answer: "Yes,
- 8 I blame all this because of ICC."
- 9 He says: "Yes, these like using people but it is good you used your brains."
- 10 And then you say: "At least even you people left them." Remember, I quoted that
- 11 to you earlier. So here again, it seems that when the issue of mistreatment comes up,
- 12 you remind them that they were able to leave, yet you were still stuck --
- 13 A. [15:32:47] No, I --
- 14 Q. [15:32:48] -- where you were (Overlapping speakers)
- 15 A. [15:32:48] -- I -- there was nothing hold me. It was me myself, but I was just
- 16 telling them because they already left --
- 17 Q. [15:32:55] Okay --
- 18 A. [15:32:55] -- because if I wanted to leave, I could have -- leave. Nobody was
- 19 forcing me to --
- 20 Q. [15:33:02] Okay --
- 21 A. [15:33:02] -- be -- to stay.
- 22 Q. [15:33:03] All right. Now, there came a time when there was a conversation
- 23 between you and number 12 that was brought to the OTP's attention concerning
- 24 a laptop. Do you recall that?
- 25 A. [15:33:16] Yes, your Honour.

1 Q. [15:33:17] And it seemed that the Prosecutor had read it the way I was reading it  
2 and there seemed to be an indication that perhaps there was something untowards  
3 concerning that conversation you were having with person number 12.

4 So if you could turn to tab 18, tab 18, binder 2, this is the conversation, 5 July 2004.

5 PRESIDING JUDGE SAMBA: [15:33:55] "2014."

6 MR KARNAVAS: [15:33:58] "2014." Thank you. I don't know why I'm stuck in  
7 that year. I apologise, I'm a little tired.

8 Q. [15:34:07] So if we could -- when you find that document, let me know.

9 A. [15:34:11] I'm in there, your Honour.

10 Q. [15:34:12] If you could go to page number 9 and that is KEN-OTP-0157-3042.

11 A. [15:34:26] In there, your Honour.

12 Q. [15:34:27] Okay.

13 MR STEYNBERG: [15:34:28]

14 [15:34:28] Your Honour, if I may just ask my learned friend to be a little bit careful, if  
15 you look at line 271, that reference there, if you could not repeat that in public session,  
16 please, so we don't have to ask for further redactions.

17 MR KARNAVAS: [15:34:43] Right, okay. Well, I wasn't going to go that far, but I  
18 really appreciate the intervention and the reminder. So thank you very much, sir.

19 Q. [15:34:54] Just this conversation is taking place concerning the laptop, and if you  
20 go to 286, you say:

21 I will come to get my -- my son a laptop then.

22 And then there, person number 12 indicates that's it's around, it's 150.

23 I take it, 150 euro, is that what we're talking about when he says "150"?

24 A. [15:35:27] Yes, your Honour.

25 Q. [15:35:28] Okay. Further down, you say:

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1 He told me that he will send me the money but I told him no. Person number 12  
2 says: What we will do, if they will ask for a receipt, we will buy a receipt book, it's  
3 10 euros.

4 And then you say -- you say: For taxis.

5 PRESIDING JUDGE SAMBA: [15:35:51] I note that you had already put these  
6 questions to the witness in cross.

7 MR KARNAVAS: [15:35:57] Right, but this is ... Right.

8 Q. [15:35:59] Concerning the issue of the laptop, it seems that you were planning  
9 on having the laptop fixed - or whatever - for one price and yet -- and then claim  
10 a larger amount.

11 Was that -- was that the discussion?

12 A. [15:36:21] That was the discussion, but he was asking me to do that. But for me,  
13 I never did it and he took me to -- to where we can maintain -- we can -- they do the  
14 laptops. And I didn't trust it and I took the laptop to MediaMarkt and it was  
15 resetted and that was it.

16 Q. [15:36:49] Okay. All right. Well, I'm in my last binder, just -- so hopefully  
17 we'll -- I'll be finished shortly. I don't know. Hopefully.

18 Okay, if I could take you to tab 45, which is in binder 2, and, this is, I just wanted to  
19 make reference to -- again, this is where you say, if we go to page 12 of this document  
20 and that's KEN-OTP-0160-0620, this is from your conversation with the Prosecution  
21 on 4 October 2021. And here, you're saying that person number 12 told you that he  
22 needed you to jump out of the ICC and that he would give you a lawyer.

23 PRESIDING JUDGE SAMBA: [15:38:14] Which paragraph are you referring to?

24 MR KARNAVAS: [15:38:17] Paragraph 64. Paragraph 64.

25 Q. [15:38:19] And you -- I think you've told us that already, right?

- 1 A. [15:38:21] Yes, your Honour.
- 2 Q. [15:38:25] And the whole idea was for you to seek asylum?
- 3 A. [15:38:29] According to them, your Honour.
- 4 Q. [15:38:31] Well, there were discussions that you were having -- okay?
- 5 A. [15:38:37] I had a discussion, your Honour, yes, but I didn't mean it because I
- 6 knew -- I wouldn't do -- I wouldn't do that.
- 7 Q. [15:38:45] Okay. Well, with the discussion -- that person had gone to a lawyer,
- 8 right?
- 9 A. [15:38:56] Yes, your Honour.
- 10 Q. [15:38:59] And he was in the process of getting asylum or seeking asylum?
- 11 A. [15:39:03] That is what they wanted me to do.
- 12 Q. [15:39:05] Well, is that what he was doing?
- 13 A. [15:39:08] They were doing that, so that they (Overlapping speakers)
- 14 Q. [15:39:11] They were doing that. And they offered to help you with that?
- 15 A. [15:39:16] Yes, your Honour.
- 16 Q. [15:39:17] And you said that you were in agreement to that, that you were -- at
- 17 least you were going along with that, whether you intended to or not is a different
- 18 story, but at least you gave them the impression that you were interested in going in
- 19 that route?
- 20 A. [15:39:32] And then I just left them.
- 21 Q. [15:39:36] You gave them the impression that you also wanted to seek asylum.
- 22 A. [15:39:41] Because they were already in asylum, so I had to talk like them so that
- 23 I can know what actually -- what was going on.
- 24 Q. [15:39:49] Why did you need to know what was going on? I mean --
- 25 A. [15:39:53] Because they never told me before.

1 Q. [15:39:56] But why did they need to tell you before?

2 A. [15:39:56] They wanted to put me in trouble with the VWU so I can be  
3 chased -- so I can be like them.

4 Q. [15:40:03] So they were evil people?

5 A. [15:40:06] Yes, your Honour.

6 Q. [15:40:08] Okay. If I could -- if you could look at tab 6, tab 6.

7 A. [15:40:14] The same binder?

8 Q. [15:40:16] Binder number 1. This is a conversation that took place on 7 July and  
9 if I could direct you to page -- to binder -- tab -- tab 6, and I would like you to refer to  
10 line 20, and it's KEN-OTP-0155-5313, and if you're there, let me know.

11 A. [15:41:07] I'm here, your Honour.

12 Q. [15:41:08] And if you could get to -- go to line 656, you say:

13 "It would be better if the children were here; who will she leave them with?"

14 And then he says: "Yes. They'll [have] come by that time."

15 And you say: "Yes."

16 Okay. Then further down, 662: "OK. If I get the papers, it'll be easy. I'll just  
17 meet your contact person and leave these ones."

18 Now, there are other discussions, but let me just see if I can -- you know, if we can  
19 resolve this issue.

20 You at least were telling these people, whether you intended to or not is something  
21 else - only God knows what you intended because we can't read your mind - but you  
22 were trying to let them believe that you wanted -- you wanted to seek asylum as well,  
23 right?

24 A. [15:42:08] Yes, because I wanted to know what -- exactly what they want from  
25 me.

1 Q. [15:42:12] Right. And then you were telling them also, that once you got your  
2 papers - and by that, meaning, once you got papers to settle, say in The Netherlands  
3 or wherever you were seeking asylum to --

4 A. [15:42:28] No, the --

5 Q. [15:42:30] Let me -- let me finish my question.

6 PRESIDING JUDGE SAMBA: [15:42:32] Madam Witness, wait for the lawyer to put  
7 his question, then you can answer, okay?

8 THE WITNESS: [15:42:40] Okay, your Honour.

9 MR KARNAVAS: [15:42:41]

10 Q. [15:42:41] Now once you had your papers, you would be able to bring your  
11 children here and then you would say, "OTP, bye-bye." Basically that's what you  
12 were telling them, were you not?

13 A. [15:42:52] That is what I was telling them, but they know very well it's not  
14 possible like that.

15 Q. [15:42:58] Okay.

16 A. [15:42:59] They knew it themselves. It's not possible like that, so I was just  
17 saying for the sake.

18 Q. [15:43:04] All right. Well, let me -- I will quickly -- with the Court's indulgence,  
19 I would like to just take a minute to go through and see whether I need to hit this any  
20 harder or whether I'll just leave it at that, but I think the point is more or less made.

21 (Pause in proceedings)

22 MR KARNAVAS: [15:44:48]

23 Q. [15:44:48] I think all of what I had planned to cover with you, you pretty much  
24 acknowledged that you had, at least, communicated to them --

25 A. [15:44:02] Yes, your Honour.

1 Q. [15:44:03] -- that were you to get your papers, that is, for asylum, that you were  
2 going to leave the ICC. You had no more -- you had no further use of them.

3 Basically, that's what you were telling them.

4 A. [15:44:17] No, your Honour. It doesn't mean like that.

5 Q. [15:44:24] I -- okay, I'd just put my binder away, but it's right here, I have it, I  
6 can go through all of these. So let me ask you the question again, did you or did you  
7 not communicate to them on the phone - when you were being listened into without  
8 you knowing - that once you got your papers, you were going to leave the ICC?  
9 Leave the OTP? Isn't that what you told them?

10 A. [15:44:48] I told them, your Honour, but I never leaved.

11 Q. [15:44:54] I know you never left, but that's what you told them.

12 A. [15:44:57] Yes, your Honour.

13 Q. [15:44:58] And you told them when you thought nobody was listening into you,  
14 other than the gentleman that -- with whom you were speaking?

15 A. [15:45:06] Yes, your Honour.

16 Q. [15:45:07] Okay. Now a couple of quick points, if we could go to tab 11, binder  
17 1.

18 A. [15:45:30] In there, your Honour.

19 Q. [15:45:33] Okay, all right. And if I could turn your attention to page 6, and it's  
20 KEN-OTP-15 -- 0157-4094. If you have it, let me know.

21 A. [15:46:00] I'm in there, your Honour.

22 Q. [15:46:01] Okay. And line 181, okay? Or line 180. He asks you, person  
23 number 12:

24 "I thought you were coming to testify about what happened?"

25 And this is a conversation that was taking place on 27 June 2014.



- 1 And you say: "I didn't witness a lot that happened really."
- 2 Do you see that?
- 3 A. [15:46:33] I see, your Honour.
- 4 Q. [15:46:36] And that was -- was that a lie or was that truthful when you're saying,
- 5 I didn't see a lot of what happened?
- 6 A. [15:46:45] I say that, your Honour, but he was there when during post-election
- 7 violence and I was there and all of us, we witness what was happening. So for him
- 8 asking me that, that I had to say that.
- 9 Q. [15:46:59] Really?
- 10 A. [15:47:00] Because it was -- everybody saw what happened, Your Honour.
- 11 Q. [15:47:03] Mm.
- 12 A. [15:47:04] So he was there and he's asking me and he knows what happened.
- 13 Q. [15:47:10] You're saying here, "I didn't witness a lot that happened really." And
- 14 it seems that you're saying, I don't even know why I'm in this case, because later on
- 15 you're saying you (Overlapping speakers)
- 16 A. [15:47:22] Not true, your Honour. Not true.
- 17 Q. [15:47:24] Well, "The lady doth protest too much, methinks".
- 18 A. [15:47:31] It's not true, your Honour.
- 19 Q. [15:47:32] Okay. All right. So let me just go to the last one, I think we're
- 20 exhausting everything by now.
- 21 And if we could go to tab 16.
- 22 A. [15:47:53] Which binder, your Honour?
- 23 Q. [15:47:56] It's binder number 2. This is the last document I will show you, so
- 24 everybody can breathe a sigh of relief. It's dated 11 July 2014. So it's tab 16.
- 25 A. [15:48:17] I'm in there, your Honour.

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- 1 Q. [15:48:18] Okay. And if we go page 15, 0157-2568.
- 2 A. [15:48:31] In there, your Honour.
- 3 Q. [15:48:33] You say at line 496:
- 4 "You know people at home are getting money every week."
- 5 He says: Yeah.
- 6 Next page, on page 16, KEN-OTP --
- 7 PRESIDING JUDGE SAMBA: [15:48:46] Did you say -- which page?
- 8 MR KARNAVAS: [15:48:52] It's --
- 9 THE WITNESS: [15:48:53] Page 15.
- 10 MR KARNAVAS: [15:48:54] I just read from page 15, which is KEN-OTP-0157-2568
- 11 and now, if we go to --
- 12 PRESIDING JUDGE SAMBA: [15:49:05] We're talking about tab 16?
- 13 MR KARNAVAS: [15:49:08] Tab 16.
- 14 PRESIDING JUDGE SAMBA: [15:49:09] And page 15.
- 15 MR KARNAVAS: [15:49:12] And page 15, and I'm at line 496, that's what I read.
- 16 496.
- 17 PRESIDING JUDGE SAMBA: [15:49:26](Microphone not activated)
- 18 MR KARNAVAS: [15:49:26](Overlapping speakers) It's at the bottom. It's at the
- 19 bottom. It's the last --
- 20 PRESIDING JUDGE SAMBA: [15:49:30(Microphone not activated) ... My page 15 is
- 21 KEN-OTP-0157-2427. Is that what you have?
- 22 MR KARNAVAS: [15:49:41] No, that's what I -- okay. Is this tab 16, your Honour?
- 23 PRESIDING JUDGE SAMBA: [15:49:47] Yes, Mr Karnavas.
- 24 MR KARNAVAS: [15:49:49] Well, obviously, I -- it's one of those things where again
- 25 I have to apologise and it's -- I must have mis -- put the wrong tab number. My

1 apologies.

2 (Pause in proceedings)

3 PRESIDING JUDGE SAMBA: [15:50:21] I mean, let's just confirm that the witness  
4 has the correct document at least so that we make progress.

5 MR KARNAVAS: [15:50:30] Right. I truly apologise for this, your Honour.

6 PRESIDING JUDGE SAMBA: [15:50:34] No worries, Mr Karnavas.

7 (Pause in proceedings)

8 MR KARNAVAS: [15:50:50]

9 Q. [15:50:51] Do you have it, ma'am?

10 A. [15:50:52] Yes, your Honour.

11 MR KARNAVAS: [15:50:53] And your Honour, do you have it?

12 PRESIDING JUDGE SAMBA: [15:50:56] Yes.

13 MR KARNAVAS: [15:50:56] Okay.

14 Q. [15:50:57] So let me -- let's go back to page 15, line 496, you say:

15 "You know people at home are getting money every week."

16 And he says: "Yes."

17 You then say at the next page, page 16, KEN-OTP-0157-2569, you say: "50,000."

18 Line 502: "Every week, they get 50,000 KENYAN money."

19 And then there's some more conversation. And then I want to take it all the way  
20 down to 519, where he says:

21 "But do you want to save something for yourself?"

22 And then you say: "They will give it to me;" they "will not go before they give me the  
23 money."

24 And then line 524: "Do you think I will go without money?"

25 And then you say on 526, you say, your name "will break the world, let me tell you."

1 In other words, if you don't get your money, you will break the world.

2 Can you help us out, what did you mean by that?

3 A. [15:52:21] It was just a say, your Honour, because they know very well that ICC  
4 they don't have money to give out. They knew it very well.

5 Q. [15:52:32] Okay. I have just one last question, no more documents, just one last  
6 question and maybe you can help us out here.

7 Do you think the picture that you have painted for us through your words -- from  
8 your own words, from your conversations when you were not aware that you were  
9 being recorded, that picture, is it sort of the same picture that you were attempting to  
10 paint the first day you came to testify when you were being questioned by  
11 Mr Steynberg?

12 A. [15:53:14] Can you repeat the question.

13 Q. [15:53:15] Okay. When you first came to testify, you projected a certain aura,  
14 a certain image, the first day, and --

15 PRESIDING JUDGE SAMBA: [15:53:30] Mr Karnavas, you mean here or?

16 MR KARNAVAS: [15:53:32] Here, the first day here --

17 PRESIDING JUDGE SAMBA: [15:53:33] Okay.

18 MR KARNAVAS: [15:53:34]

19 Q. [15:53:34] -- when you testified, when Mr Steynberg was questioning you, and  
20 now I'm asking -- now that we've heard -- not just your answers to questions, but also  
21 we've heard your own words -- or you have heard your own words during  
22 conversations you had when you did not know you were being tape-recorded --

23 A. [15:53:56] But I --

24 Q. [15:53:57] -- what would you -- allow me the courtesy. Would you say that  
25 you've painted the same picture through your words and through the image you

1 were trying to project when the Prosecutor was questioning you?

2 A. [15:54:15] Your Honour (Overlapping speakers)

3 MR STEYNBERG: [15:54:18] Your Honour, I'm going to object to that question.

4 What image was the witness trying to project? That's not been established. It's not  
5 a fact on the record. That's my learned friend's editorialisation and his assumption,  
6 but it seems to me that's an entirely improper question.

7 MR KARNAVAS: [15:54:33] Well, if I may -- if I may, very briefly, I know it's getting  
8 close. One of the -- one of the aspects of a trial and one of the aspects of assessing the  
9 evidence is for the judge to assess the demeanour of the witness, or to factor that in as  
10 part of assessing the evidence, the demeanour of the witness. So whether I use the  
11 word "image" or "demeanour", it is the same thing.

12 So I think it's a perfectly fine question to ask. She came in with one demeanour on  
13 direct examination when she -- after being proofed by the Prosecution for several  
14 days, and now we have heard her words and I just simply want to know whether  
15 those words that we -- whether we should have the same impression of her after  
16 hearing those words in comparison to the impression that she was trying to give  
17 through her direct examination when she first appeared. That's the question. If  
18 she's able to answer it.

19 PRESIDING JUDGE SAMBA: [15:55:49] All right, couch the question for the witness  
20 to hear --

21 MR KARNAVAS: [15:55:53] Okay.

22 PRESIDING JUDGE SAMBA: [15:55:54] -- and answer, please.

23 MR KARNAVAS: [15:55:54] All right. I thought it would be a lot easier.

24 Q. [15:55:58] But let me put it to you this way, when you first came and you gave  
25 your evidence, when you were being questioned by the Prosecutor, you projected

1 a certain image for the Court?

2 PRESIDING JUDGE SAMBA: [15:56:11] Which image was that?

3 MR KARNAVAS: [15:56:13] The image that she was trying to project, whatever  
4 image we all received. I got one, you got -- you know, whatever we all perceived.

5 MR STEYNBERG: [15:56:21] I'm sorry, your Honour, to interject again. My learned  
6 friend summarised it quite correctly when he said that demeanour is a matter for the  
7 judge to assess --

8 MR KARNAVAS: [15:56:31] I'll rephrase.

9 MR STEYNBERG: [15:56:32] -- for your Honour to assess.

10 MR KARNAVAS: [15:56:33] I'll rephrase.

11 Q. [15:56:34] Considering -- considering what we've heard from your own words,  
12 the way you describe the OTP, the way you describe the VWU, the excuses that you  
13 gave as to why you were saying what you were saying, do you still maintain that you  
14 are a truthful person and everybody else that has testified differently than you is  
15 lying?

16 A. [15:57:05] Yes, your Honour.

17 Q. [15:57:07] Thank you. I have no further questions.

18 PRESIDING JUDGE SAMBA: [15:57:14] Thank you very much, Mr Karnavas.

19 Mr Steynberg, any re-examination, if any, please.

20 MR STEYNBERG: [15:57:25] Your Honour, I do have some significant questions to  
21 ask this witness, and, unfortunately, I will not be able to do it in three minutes, so ...

22 PRESIDING JUDGE SAMBA: [15:57:32] Can you -- maybe if you advise the Court  
23 how long would you --

24 MR STEYNBERG: [15:57:36] Certainly within one session. I would hope to be able  
25 to finish within about an hour on Monday morning, and it's not only -- it's not only

1 the time I need to put the questions, there's also a number of documents my learned  
2 friend's referred to, which will require me to consult other documents in order to get  
3 to the bottom of some of the issues that have been raised.

4 My learned friend quite aptly used the phrase "vignettes"; that he was going to  
5 present certain vignettes. Now a vignette, as your Honour will no doubt know, is  
6 a small portrait with no background, but unfortunately the background is sometimes  
7 important in order to properly appreciate the facts.

8 So with your Honour's leave, I need to pull together the various facts to illustrate that  
9 background, to put to the witness certain portions that were omitted by my learned  
10 friend in his cross-examination, and, that will, I think it will take me somewhat less  
11 than one session on Monday morning, with your Honour's leave.

12 MR KARNAVAS: [15:58:43] And if I may be heard, your Honour?

13 PRESIDING JUDGE SAMBA: [15:58:46] Yes, Mr Karnavas.

14 MR KARNAVAS: [15:58:50] And depending on what contexts are these vignettes  
15 we -- we hear from the Prosecution, I may -- I may, I'm not saying that I will, but I  
16 may be asking leave -- seeking leave for re-cross-examination. I know that some  
17 judges don't allow that; I appreciate that but depending on what we hear on Monday,  
18 I may be seeking leave - and I only put that out there as a cautionary measure for the  
19 Prosecution to know that - that I might -- that I might be seeking time to rebut his  
20 rebuttal.

21 PRESIDING JUDGE SAMBA: [15:59:24] Well, as we all know as lawyers, we know  
22 that, you know, for re-examination, I expect that what Mr Steynberg will be putting  
23 across to the witness will be new facts that you may have raised, and, you know, so  
24 you may not have to do a re- re-examination, you know.

25 So having said that, Mr Steynberg, if that's your position that you come on Monday,

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- 1 we'll do that.
- 2 And Madam Witness, you have -- today's Friday --
- 3 THE WITNESS: [15:59:50] Yes, your Honour.
- 4 PRESIDING JUDGE SAMBA: [15:59:55] You have quite a few days, it's not like
- 5 yesterday coming here today. So I'm going to caution you.
- 6 THE WITNESS: [16:00:02] Yes, your Honour.
- 7 PRESIDING JUDGE SAMBA: [16:00:03] That you must not discuss your evidence
- 8 with any other person when you leave this courtroom.
- 9 THE WITNESS: [16:00:09] Yes, your Honour.
- 10 PRESIDING JUDGE SAMBA: [16:00:11] Okay?
- 11 THE WITNESS: [16:00:13] Yes, your Honour. Thank you.
- 12 PRESIDING JUDGE SAMBA: [16:00:14] That's said, I think I will adjourn this matter
- 13 and ask that we come for Monday at 9.30.
- 14 So this Court stands adjourned.
- 15 THE COURT USHER: [16:00:25] All rise.
- 16 (The hearing ends in open session at 4.00 p.m.)