

Trial Hearing
Witness: KEN-OTP-P-0743

(Open Session)

ICC-01/09-01/11

1 International Criminal Court
2 Trial Chamber V(a) - Courtroom 1
3 Situation: Republic of Kenya
4 In the case of The Prosecutor v. William Samoei Ruto
5 and Joshua Arap Sang - ICC-01/09-01/11
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera-Carbuccia
7 and Judge Robert Fremr
8 Trial Hearing
9 Thursday, 22 January 2015
10 (The hearing starts in open session at 9.42 a.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
15 Court officer, please call the case.
16 THE COURT OFFICER: (Interpretation) Thank you, your Honour.
17 Situation in the Republic of Kenya, in the case of The Prosecutor versus
18 William Samoei Ruto and Joshua Arap Sang, ICC-01/09-01/11.
19 We are in open session.
20 PRESIDING JUDGE EBOE-OSUJI: Thank you.
21 Appearances, have they changed?
22 MR STEYNBERG: Good morning, your Honours. One change for the Prosecution.
23 We are joined this morning by intern Mostafa Hassan.
24 MR NARANTSETSEG: Good morning, your Honours. No change. Thank you.
25 PRESIDING JUDGE EBOE-OSUJI: Thank you.

Trial Hearing
Witness: KEN-OTP-P-0743

(Open Session)

ICC-01/09-01/11

1 MR KIGEN-KATWA: Good morning, your Honours. No change in Mr Sang's
2 team.

3 PRESIDING JUDGE EBOE-OSUJI: Thank you.

4 MS ALAGENDRA: Good morning, Mr President, your Honours. For the record,
5 Mr Ruto is not present today, but the Defence team remains the same.

6 PRESIDING JUDGE EBOE-OSUJI: Thank you. Mr Ruto having been excused for
7 today and tomorrow by the Chamber and he will be in court on Monday and
8 Tuesday.

9 Yes, Mr Steynberg -- sorry, before we continue, Mr (Redacted) are you there?

10 MR (Redacted): (Via video link) Good morning, Mr President. I am.

11 PRESIDING JUDGE EBOE-OSUJI: Thank you. We note your appearance on the
12 record as well.

13 Witness, welcome back. We are in open session and Mr Steynberg will continue.

14 In open or in private?

15 MR STEYNBERG: Good morning, your Honours, again. Your Honours, the good
16 news is I certainly will be finished before the morning break.

17 PRESIDING JUDGE EBOE-OSUJI: That's good news.

18 MR STEYNBERG: The possibly not so good news for our visitors is unfortunately
19 that's going to have to be conducted in private session.

20 PRESIDING JUDGE EBOE-OSUJI: All right. We have to go into private session,
21 members of the public. We have to do this from time to time to safeguard the
22 identity of the witness, a protected witness who is testifying.

23 We will go into private session now.

24 *(Private session at 9.44 a.m.) Reclassified as open session

25 THE COURT OFFICER: (Interpretation) We are in private session, your Honour.

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: Thank you.

2 WITNESS: KEN-OTP-P-0743 (On former oath)

3 (The witness speaks English)

4 (The witness gives evidence via video link)

5 QUESTIONED BY MR STEYNBERG: (Continuing)

6 Q. Good morning, Mr Witness. As you probably heard, I will be finished with
7 you shortly and if I can ask you please to listen carefully to the questions and try to
8 answer as accurately as you can the questions that I put to you, I think we will be able
9 to finish this up within the next hour or so, all right?

10 PRESIDING JUDGE EBOE-OSUJI: You can proceed, Mr Steynberg.

11 MR STEYNBERG:

12 Q. Mr Witness, I would like to return to a question I brought up yesterday morning
13 and that is in respect of evidence you gave a few days ago regarding the punishment
14 of PNU supporters. Do you recall that you told the Court that PNU supporters,
15 including yourself, had been punished?

16 A. Yes, your Honour.

17 Q. Could I just get some details from you regarding the punishment that you
18 received. Let's start with the time frame. When did this take place?

19 A. It was after the post-election violence, your Honour.

20 Q. And which month and which year? Can you at least clarify that?

21 A. I may not be able -- I'm not in a position to recall the month, but the year
22 was 2008, your Honour.

23 Q. And can you recall perhaps how long it was after the post-election violence had
24 ceased, had stopped, (Redacted)

25 A. It was almost after a month, approximately after a month.

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

- 1 Q. And (Redacted)
- 2 A. At (Redacted)
- 3 Q. And who was -- who was (Redacted)
- 4 (Redacted)
- 5 A. (Redacted)
- 6 (Redacted)
- 7 Q. (Redacted)
- 8 A. (Redacted)
- 9 (Redacted)
- 10 Q. Well, let's just try and focus it a little bit. (Redacted)
- 11 (Redacted)
- 12 A. (Redacted) your Honour.
- 13 Q. (Redacted)
- 14 A. (Redacted)
- 15 Q. (Redacted)
- 16 A. (Redacted)
- 17 Q. (Redacted)
- 18 A. (Redacted)
- 19 (Redacted)
- 20 (Redacted)
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- 22 Q. (Redacted)
- 23 A. (Redacted)
- 24 (Redacted)
- 25 MS ALAGENDRA: (Redacted)

1 (Redacted)
2 MR STEYNBERG: (Redacted)
3 Q. (Redacted)
4 (Redacted)
5 A. (Redacted)
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7 A. (Redacted)
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9 A. (Redacted)
10 Q. (Redacted)
11 A. (Redacted)
12 Q. (Redacted)
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14 A. (Redacted)
15 Q. (Redacted)
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17 A. (Redacted)
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21 Q. (Redacted)
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23 A. (Redacted)
24 Q. (Redacted)
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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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- 3 Q. (Redacted)
- 4 MS ALAGENDRA: (Redacted)
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- 6 MR STEYNBERG: (Redacted)
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- 8 Q. (Redacted)
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- 24 Q. (Redacted)
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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

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- 19 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 20 Thank you.
- 21 We will rise now.
- 22 Court officer, you can bring back the audio, please.
- 23 THE COURT OFFICER: (Via video link) We can hear you again, Mr President.
- 24 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 25 Witness, the Prosecutor has finished his examination of you, and the Chamber will

1 now rise. We know it is five minutes earlier than normal, but we will rise so that
2 when we return in 30 minutes or so the Defence counsel will start asking you
3 questions.

4 Ms Alagendra, is that you to go first or is it Mr Kigen-Katwa?

5 MS ALAGENDRA: I will defer to seniority.

6 PRESIDING JUDGE EBOE-OSUJI: So when we come back, Mr Witness,
7 Mr Kigen-Katwa, counsel for Mr Sang, will start asking you questions. But we will
8 now rise.

9 The Court will rise.

10 THE COURT USHER: All rise.

11 (Recess taken at 10.56 a.m.)

12 (Upon resuming in open session at 11.34 a.m.)

13 THE COURT USHER: All rise.

14 Please be seated.

15 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.

16 Witness, welcome back.

17 Before we proceed, the court officer will not be reading out the evidence numbers of
18 the documents the Prosecutor tendered as the last act in his examination in light of
19 the length of the list. The court officer will make a filing indicating the evidence
20 numbers for those documents.

21 We will proceed.

22 Witness, Mr Kigen-Katwa will start his cross-examination of you. Remember what I
23 told you earlier, to listen carefully to the questions of the lawyers, understand the
24 questions before you start answering and answer briefly, to the point, but fully and
25 wait for the next question. Remember, the lawyers are doing their work. They're

1 not here to abuse you through questioning and, as I had assured you earlier, the
2 Judges would not allow that to happen.

3 Mr Kigen-Katwa, we are in open session.

4 MR KIGEN-KATWA: Mr President, I'm okay to proceed in open session for the time
5 being.

6 PRESIDING JUDGE EBOE-OSUJI: All right. Proceed.

7 QUESTIONED BY MR KIGEN-KATWA:

8 Q. Good morning, Mr Witness.

9 A. Good morning.

10 Q. Now, as you've heard my name is Katwa-Kigen. I will be cross-examining you
11 in behalf of Mr Sang. And I will start my cross-examination by reminding you, you
12 had made some -- you had made a statement to the Prosecution and I have particular
13 reference to the first two statements. You recall that, Mr Witness?

14 A. I am not getting you clearly, your Honour.

15 Q. Mr Witness, as a basis of your testimony, the Prosecution interviewed you, and
16 you made some allegations against Mr Sang, isn't it? You recall that?

17 A. Yes, I do, your Honour.

18 Q. Now, my question is more to this effect, Mr Witness: It is true that in all the
19 allegations you made against Mr Sang in earlier statements, they were in the nature of
20 things that you say Mr Sang said at the station, isn't it?

21 A. I have not understood the last part, your Honour.

22 Q. Mr Witness, what I'm asking you is all the things you said Mr Sang did are in
23 the nature of what, according to you, he said from Kass FM station, isn't it?

24 A. Correct, your Honour.

25 Q. Now, Mr Witness, in support of the things you said Mr Sang had said, did you

1 give the Prosecution any audio of what Mr Sang had said at the station?

2 A. I'm not understanding the meaning -- or, rather, what -- what the Defence is
3 meaning by "audio."

4 Q. Mr Witness, the basis of your testimony as we've just agreed is what Mr Sang
5 said at the radio station, and my question is whether you heard any recording of what
6 Mr Sang said in support of what you told the Prosecution as being what Mr Sang
7 said?

8 A. Your Honour, when you talk about "recording," what do you mean?

9 Q. I am talking about recording of what Mr Sang said at the radio station, what
10 you heard him saying, any recording of what you heard him say in support of what
11 you said in your statement. Do you understand me?

12 A. Do you mean if I could have -- I could -- I could have given the Prosecution the
13 tapes or anything like that?

14 Q. Exactly, Mr Witness, yes.

15 A. No.

16 Q. Thank you, Mr Witness. Now, you have confirmed that you did not give the
17 Prosecution any audios or any recordings in form of tapes or CDs. May I ask you,
18 did the Prosecution show you any recordings of Mr Sang's programmes?

19 A. Your Honour, no.

20 Q. Thank you, Mr Witness. And in the course of the many interviews you had
21 with the Prosecution, do you recall any one instance when you sat down with the
22 Prosecution to listen to any recording of Mr Sang's programme?

23 A. Your Honour, no.

24 Q. Lastly on that issue, Mr Witness, after you had told the Prosecution the things
25 you said Mr Sang said at the station, did they put to you this question that if you

Trial Hearing
Witness: KEN-OTP-P-0743

(Open Session)

ICC-01/09-01/11

1 could give them a recording of Mr Sang's programme in support of any of those
2 things you had said Mr Sang had done?

3 A. No. And, your Honour, may I know something from what Mr Defence is
4 saying?

5 Q. Yes.

6 PRESIDING JUDGE EBOE-OSUJI: Go on.

7 THE WITNESS: That is when he asked me about the recordings I am wondering
8 how I could get those recordings in any manner he's stating from the --

9 PRESIDING JUDGE EBOE-OSUJI: Let's do this, Witness. What you're saying is
10 that you did not record -- you did not give the Prosecution any recording; is that what
11 you said?

12 THE WITNESS: Yes --

13 PRESIDING JUDGE EBOE-OSUJI: All right. Let's just leave it --

14 THE WITNESS: -- your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: Let's leave it at that for now. Thank you.

16 MR KIGEN-KATWA:

17 Q. Now --

18 PRESIDING JUDGE EBOE-OSUJI: Because you remember what I told you earlier,
19 when lawyers -- when we are in the public session, and we are in the public session
20 now, the lawyers know what questions they are asking you and they generally have
21 an idea of what answer you may be able to give to those questions. If you started
22 adding something else they have not asked you, you may run the risk of revealing
23 your identity. So it is for that reason that I will remind you again to just listen to the
24 question and answer it, okay?

25 THE WITNESS: Thank you, your Honour.

1 PRESIDING JUDGE EBOE-OSUJI: If you do feel a real need to add something, again,
2 indicate and then we'll see if we can go into private session. You have asked to add
3 something, but also we want to make sure that we don't get into a situation where
4 you and the lawyer are asking each other questions that may not really be what the
5 answer -- or the question that the lawyer asked you calls for by way of an answer.
6 Do you understand?

7 THE WITNESS: I do, your Honour.

8 PRESIDING JUDGE EBOE-OSUJI: Thank you.

9 Mr Kigen-Katwa, proceed.

10 MR KIGEN-KATWA:

11 Q. Now, Witness, I want to move on to a different issue and the first question
12 I want to ask you is: Would you be in a position to recognize Mr Sang's voice if you
13 heard it?

14 A. Yes, your Honour.

15 Q. Now, I will play an audio and I request you to listen keenly for two things:

16 The first one is the voice and the second one is the date.

17 But before we do that I would request the court officer in the remote location to make
18 available to you the transcription and translation, reference KEN-D11-0012-0024,
19 which is at tab 16 of our bundle. The audio we will be playing is
20 KEN-D11-0012-0023.

21 And, your Honours, we will start with the time stamp 02 -- 2.24 to 2.47.

22 PRESIDING JUDGE EBOE-OSUJI: Is this already part of the exhibits in this case?

23 MR KIGEN-KATWA: No, it's not an exhibit, Mr President. And we are going to
24 page 0025.

25 I request the court officer in the remote location to confirm he's been able to pull up

Trial Hearing
Witness: KEN-OTP-P-0743

(Open Session)

ICC-01/09-01/11

1 the transcript and translation and made available to the witness page 1, paragraph 1,
2 ERN number 0012-0025.

3 THE COURT OFFICER: (Via video link) The document is up on the screen,
4 paragraph 1.

5 THE COURT OFFICER: (Interpretation) Are the documents public?

6 MR KIGEN-KATWA:

7 Q. Mr Witness, may I kindly request you to follow with your finger the Kalenjin
8 version of what -- you will listen to the audio, if you could follow it on the transcript,
9 then we will look up the English translation, the first paragraph.

10 (Playing of the audio excerpt KEN-D11-0012-0023)

11 MR KIGEN-KATWA:

12 Q. Witness, are you -- are we together?

13 A. We are together, your Honour.

14 Q. Thank you.

15 (Playing of the audio excerpt KEN-D11-0012-0023)

16 MR KIGEN-KATWA:

17 Q. Witness, could you follow that?

18 A. Yes, I follow.

19 Q. Now, my first question is: Do you recognize the voice of the person speaking?

20 A. Your Honour, I do.

21 Q. Who is it, Mr Witness?

22 A. Your Honour, it is the voice of Mr Joshua Arap Sang.

23 Q. Thank you. I would like you also to tell the Court if you could see the date of
24 that programme from what he just said.

25 PRESIDING JUDGE EBOE-OSUJI: See or hear?

1 MR KIGEN-KATWA: Sorry, I meant hear, not see.

2 Q. Mr Witness, did you hear he mentioned a date?

3 A. Your Honour, I did hear.

4 Q. Could you give the Court the date you heard?

5 A. It is 12th of --

6 PRESIDING JUDGE EBOE-OSUJI: Witness, don't look at the screen now. Let's
7 play that audio again. Forget the screen for now and listen to the audio to what is
8 being played and what you hear and then you can tell us whether you hear the date.

9 MR KIGEN-KATWA:

10 Q. Mr Witness, if you could just listen, keep your eyes off the screen. I want you
11 to listen. Number one is I want you to be able to tell us the date and the second one
12 is what time of the day it is in terms of whether it is morning, evening or at night.

13 (Playing of the audio excerpt KEN-D11-0012-0023)

14 MR KIGEN-KATWA:

15 Q. Now, Witness, were you able to get the date?

16 A. Yes, I did, your Honour.

17 Q. Which day is it -- which date is it?

18 A. 14 October 20 -- 2007.

19 Q. And which day of the week is it?

20 A. It is Friday.

21 Q. And what time of the day did he say?

22 A. Evening.

23 Q. Now, Witness, I want you to listen closely again on the date. I'm okay with the
24 day of the week and the time. I would like you to listen closely again on the date
25 itself. We will play it again.

1 (Playing of the audio excerpt KEN-D11-0012-0023)

2 MR KIGEN-KATWA:

3 Q. Witness, did you get the date?

4 A. No.

5 PRESIDING JUDGE EBOE-OSUJI: What part of the date, Counsel, do you want the
6 witness to listen out for; day, month or year?

7 MR KIGEN-KATWA: Month, Mr President.

8 PRESIDING JUDGE EBOE-OSUJI: Month?

9 MR KIGEN-KATWA: Yes.

10 PRESIDING JUDGE EBOE-OSUJI: All right.

11 Witness, listen again and see if you can tell the lawyer the month.

12 MR KIGEN-KATWA: Mr President, could I ask one question before I ask -- before --

13 PRESIDING JUDGE EBOE-OSUJI: Yes.

14 MR KIGEN-KATWA:

15 Q. Mr Witness, could you confirm in Kalenjin the month of October would
16 be -- how would you say the month of October in Kalenjin?

17 A. Arawetap taman.

18 Q. And, Mr Witness, you will confirm the spelling for that is A-R-A-W-E-T-A-P,
19 and the second word is T-A-M-A-N, isn't it?

20 A. Your Honour, can you repeat the first one, the first word?

21 Q. Yes, please. A-R-A-W-E-T-A-P, isn't it?

22 A. Yes, I -- I do.

23 Q. Okay. Now, could you let us know how would you say the month of
24 December?

25 A. Arawetap taman ak aeng'.

Trial Hearing
Witness: KEN-OTP-P-0743

(Open Session)

ICC-01/09-01/11

1 Q. Thank you, Witness. The spelling of that would be A-R-A-W-E-T-A-P, the
2 second word would be T-A-M-A-N, the third word would be A-K, and the last word
3 would be A-E-N-G then apostrophe.

4 Now, Mr Witness, as the Court has already said, we will listen to the date again. My
5 concern would be the month. I would very much request that you listen closely to
6 the date and particularly pick out the month.

7 (Playing of the audio excerpt KEN-D11-0012-0023)

8 MR KIGEN-KATWA:

9 Q. Mr Witness, may I request you again to let us know if you were able to get the
10 date and please tell us what date you heard, if you did?

11 A. The date is 14th of December 2007.

12 Q. Thank you very much, Mr Witness.

13 Now, I will take you to another time stamp on the same audio. And I request the
14 court officer to take you to page 0012-0109, the traditional pagination page 85. The
15 time stamp we seek to play is 2.05.27 to 2.06.16, and that is at page 108 to 109, the
16 Kalenjin version of it being at page 0108 into page 0109.

17 PRESIDING JUDGE EBOE-OSUJI: What was the native pagination?

18 MR KIGEN-KATWA: It is page 84 into page 85, your Honours.

19 I request the court officer in the remote location to let us know if he's been able to get
20 the page up.

21 THE COURT OFFICER: (Via video link) The document is up on the screen at
22 page 84, ERN 0012-0108.

23 MR KIGEN-KATWA:

24 Q. Now, Witness, I would request you to go to the last paragraph where it is
25 marked on the page "Transcription" and starting with the word with the spelling

1 K-O-N-G-O-I. And if you could follow with your finger as the audio is being played,
2 Mr Witness.

3 (Playing of the audio excerpt KEN-D11-0012-0023)

4 MR KIGEN-KATWA:

5 Q. Witness, were you able to follow the transcription as the audio was playing?

6 A. Yes, I did, your Honour.

7 Q. Now, Witness, I will read slowly in English what we just heard and I will
8 request you to let us know if in your view that's a fair translation of what you heard
9 in Kalenjin.

10 "Thank you very much. I have been with Joshua Kutuny - ODM candidate for
11 Cherangany, I was with Philip Meli Matelong - NARC candidate in ODM, Eldoret
12 South."

13 Spelling for Cherangany, I think the -- first of all we start with Kutuny, Kutuny is
14 K-U-T-U-N-Y. "ODM candidate for Cherangany." And Cherangany spelling is
15 C-H-E-R-A-N-G-A-N-Y. "I was with Philip Meli Matelong." And Meli is M-E-L-I,
16 and Matelong is M-A-T-E-L-O-N-G. "NARC candidate," and NARC is N-A-R-C in
17 capital, "in ODM Eldoret South; and I was with Moses ..." --

18 PRESIDING JUDGE EBOE-OSUJI: Now you're continuing with the quotes, right?

19 MR KIGEN-KATWA: Yes, Mr President, I proceed with the quote, and it says this:
20 "... and I was with Moses Lesonet, ODM candidate, Eldama Ravine."

21 Now, the spelling for Lesonet is L-E-S-O-N-E-T, and Eldama Ravine is -- I think it has
22 gotten. I'll proceed with reading with the quote:

23 "Thank you, family. Thank you, family. I am Joshua Arap Sang, wishing you a
24 nice weekend filled with joy. Take care of your voter's card. If you have lost your
25 voter's card, rush and obtain another one. Go and get a voter's card if you have lost

1 one, don't just sit at home. Go and get voter's card. There is still chance to get one
2 if you have lost it. But if you have never cut one, just wait until 2012. But if you
3 have lost your voter's card, if it got burnt, got spoilt...run now to the registration
4 office and be given another voter's card in a time of less than one hour. Immediately.
5 So that we can guard our nation. Thank you, family. May God protect you.
6 Continue enjoying our programs."

7 Witness, may I ask you if that's a fair translation of what you heard in Kalenjin?

8 A. Maybe to what I got from you there's one part which was not clear, starting
9 from "Matelong."

10 Q. Do you want me to read the English translation, or do you want to listen to the
11 audio?

12 A. Go to the English translation.

13 PRESIDING JUDGE EBOE-OSUJI: Play it first, Mr Kigen-Katwa. Let's hear the
14 audio again.

15 MR KIGEN-KATWA: I'm obliged, Mr President.

16 (Playing of the audio excerpt KEN-D11-0012-0023)

17 MR KIGEN-KATWA:

18 Q. Now, Witness, I will read again very slowly what you just heard. It says this:

19 "Thank you very much, I have been with Joshua Kutuny - ODM candidate for
20 Cherangany, I was with Philip Meli Matelong - NARC candidate in ODM, Eldoret
21 South; and I was with Moses Lesonet, ODM candidate, Eldama Ravine. Thank you,
22 family. I am Joshua Arap Sang, wish you ..." -- "... wishing you a nice weekend filled
23 with joy. Take care of your voter's card. If you have lost your voter's card, rush
24 and obtain another one. Go and get a voter's card if you have lost one, don't just sit
25 at home. Go and get a voter's card. There is still chance to get one if you have lost

Trial Hearing
Witness: KEN-OTP-P-0743

(Open Session)

ICC-01/09-01/11

1 it. But if you have never cut one, just wait until 2012. But if you have lost your
2 voter's card, if it got burnt, got spoilt...run now to the registration office and be given
3 another voter's card in a time of less than one hour. Immediately. So that we can
4 guard our nation. Thank you, family. May God protect you. Continue enjoying
5 our programs."

6 And the question I was asking you, Mr Witness, is is that a fair translation of what
7 you heard in Kalenjin?

8 A. Your Honour, may I in this case know the meaning of "fair"? That part of a
9 "fair translation."

10 PRESIDING JUDGE EBOE-OSUJI: What he means is whether what you heard him
11 read out now in English as far as you can say is what you heard Mr Sang say on the
12 audio.

13 THE WITNESS: Your Honour, there's one part which was not correctly translated,
14 or his translation does not bring the meaning in which the audio expresses.

15 PRESIDING JUDGE EBOE-OSUJI: And what is that part?

16 THE WITNESS: I'm just going to -- I can repeat. The -- that sentence from bottom
17 beginning with "So that we can ..."

18 MR KIGEN-KATWA:

19 Q. Mr Witness, your concern is these sentences, these two last sentences -- three
20 last, three last sentences, "So that we can guard ..." --

21 A. (Indiscernible) Only that one part.

22 Q. And you want to listen to the English translation, or do you want me to play the
23 audio?

24 A. I want to listen to the English translation.

25 PRESIDING JUDGE EBOE-OSUJI: All right.

1 THE WITNESS: I've got what the audio has said.

2 PRESIDING JUDGE EBOE-OSUJI: All right. First let's get the English version read
3 over to the witness again. Let's see first if he can tell us what's wrong with it.

4 MR KIGEN-KATWA:

5 Q. Now, Witness, these are the words: "So that we can guard our nation. Thank
6 you, family. May God protect you. Continue enjoying our programs."

7 Is that the area you're concerned with?

8 A. Yes, though you have extend it. It was only one sentence, "So that we can
9 guard our nation."

10 The translation there does not actually mean the meaning from the audio --

11 Q. Okay, Witness.

12 A. -- according to my understanding, your Honour.

13 Q. Okay, Witness. Could I request that you confirm if what I will spell is the
14 equivalent in Kalenjin, first of all, for the Court.

15 PRESIDING JUDGE EBOE-OSUJI: Let's first -- Witness, are you saying it does not
16 bring out the meaning? Can you tell us what your own understanding tells you?

17 THE WITNESS: From my own under -- from my own understanding, your Honour,
18 is that it should be that "So that we can guard our region," not "nation."

19 PRESIDING JUDGE EBOE-OSUJI: Thank you.

20 Mr Kigen-Katwa, proceed.

21 MR KIGEN-KATWA:

22 Q. Now, Witness, could you confirm the equivalent of what you are concerned
23 about, and what you are concerned about is "So that we can guard our nation." The
24 Kalenjin equivalent is, and I will spell the four words: The first one is A-S-I, the
25 second one is K-O-B-I-I-T, the third word is K-E-R-I-P, and the last word is E-E-M-E-T.

1 That is the equivalent, isn't it, Mr Witness?

2 A. Exactly, your Honour.

3 Q. Now, your concern is that the word E-E-M-E-T should mean a region rather
4 than a nation, isn't it?

5 A. Exactly, your Honour.

6 PRESIDING JUDGE EBOE-OSUJI: So what you are saying is the word, okay,
7 "eemet" or E-E-M-E-T means "region." What is the word for "nation" that you know
8 in Kalenjin?

9 THE WITNESS: Is that a question to me, your Honour?

10 PRESIDING JUDGE EBOE-OSUJI: Yes, Witness. What word --

11 THE WITNESS: (Overlapping speakers)

12 PRESIDING JUDGE EBOE-OSUJI: -- what word in Kalenjin -- what word in
13 Kalenjin translates to "nation"?

14 THE WITNESS: There is no exact word for the nation, but it could be that ongerib
15 eemet nnyo bo Kenya, that could imply the nation. But "eemet" implies the Nandi
16 region, or as for this case Kalenjin region.

17 PRESIDING JUDGE EBOE-OSUJI: All right. I want you to say again the words
18 you said in Kalenjin that you said would be used to mean nation because it did not
19 come out on the transcript. Say it slowly and see -- take a pen - and Mr Kigen-Katwa
20 will also help us here - so we can write it down as you say the words that will
21 translate into "nation."

22 THE WITNESS: Your Honour, because it refer -- there's this word "our," what the
23 counsel has said "our nation," it should be eemet nnyo bo Kenya. That is "eemet" is
24 actually what I had said "region." "Nnyo is "our." And now to mean the whole
25 country, "bo Kenya."

- 1 PRESIDING JUDGE EBOE-OSUJI: Now spell it. Spell the first -- were there three
2 words you said there, eemet nnyo Kenya? Was that what you said?
- 3 THE WITNESS: Yes.
- 4 PRESIDING JUDGE EBOE-OSUJI: All right. Let's say the -- let's spell the first
5 word. Can you spell it for us?
- 6 THE WITNESS: Your Honour -- your Honour, I do think that you are comfortable
7 with eemet because it is there already.
- 8 PRESIDING JUDGE EBOE-OSUJI: All right. That is E-E-M-E-T, is that it?
- 9 THE WITNESS: Yes.
- 10 PRESIDING JUDGE EBOE-OSUJI: All right.
- 11 THE WITNESS: And then --
- 12 PRESIDING JUDGE EBOE-OSUJI: The rest. The next word.
- 13 THE WITNESS: It could be N-N-Y-O or N-Y-O depending on the pronunciation and
14 how a particular person has known the words.
- 15 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 16 THE WITNESS: B -- the next word, B-O, and then the last one Kenya, K-E --
- 17 PRESIDING JUDGE EBOE-OSUJI: Yeah, we know how to spell Kenya.
- 18 THE WITNESS: -- N-Y-A.
- 19 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 20 Mr Kigen-Katwa, proceed.
- 21 MR KIGEN-KATWA: Mr President, would you like me to restate the spelling?
22 I think the transcript didn't quite get it exactly the way the witness had said.
- 23 PRESIDING JUDGE EBOE-OSUJI: All right. Why don't you then restate the
24 spelling.
- 25 MR KIGEN-KATWA: He had said the first one is we use the word which is already

1 there, E-E-M-E-T, then the next word is N-Y-O, and in the alternative N-N-Y-O, and
2 then the next word is B-O, then the last one is Kenya.

3 Q. Now, Witness, may I ask you would you confirm that in the Kalenjin
4 transcription and the way you heard it there was no use of the word "Kenya"?
5 PRESIDING JUDGE EBOE-OSUJI: Isn't that his problem, part of it at least?

6 MR KIGEN-KATWA: Mr President, could I make a correction, first of all. At
7 line 5 -- line 4, the first -- the second -- the joining word was supposed to be N-Y-O
8 with an alternative of using N-N-Y-O.

9 Q. Now, Witness, I will ask you the question again: You said that it should have
10 the -- that it should have -- it should state the country Kenya in the sense that the
11 word "Kenya" should be there?

12 A. Your Honour, if the meaning has to be "nation," then Kenya has to be there, and
13 if Kenya is not there, then "eemet" will mean region.

14 Q. Now, may I ask you, Witness, what is the exact equivalent in Kalenjin of the
15 word "nation"?

16 A. Your Honour, that is what I had just said, that there's no particular word for
17 "nation." Rather it has -- some words has to be combined together -- together to
18 bring the word under -- the understanding of the word "nation."

19 Q. Okay. And as a fair person that I know you are, would you agree that from
20 time to time the country is referred to using that word E-E-M-E-T?

21 A. Not so, your Honour, because when a Nandi refers -- says eemet, it is actually
22 that region that is being occupied by Nandis -- or, rather, the Kalenjins, so the -- the
23 word "eemet" cannot by its own describe the country or nation.

24 Q. (Redacted)

25 A. (Redacted)

1 MR KIGEN-KATWA: Mr President, I think I will leave that issue. We will argue
2 on the meaning in a separate forum.

3 THE WITNESS: Your Honour, there is another word -- sentence which is actually
4 not clear to me. I had said from the Meli -- along the line of Meli Matelong, that is
5 the NARC candidate in ODM. That part is not clear because that is the party, ODM
6 is a party, so NARC in ODM is what is making me get confused.

7 PRESIDING JUDGE EBOE-OSUJI: Can we play that bit again for him.

8 Mr Kigen-Katwa, also, so that this sort of exercise does not confuse the witness, not
9 only this one but others, if there is an obvious mistake in transcription, a mistake
10 that's obvious, you need to point it out and it is reflected in the reading, not reflected
11 in the sense of continuing with the mistake, but rather reading it in the correct way
12 because we are dealing with a transcription, so one can assume that the audio may
13 not have had that mistake in the native language in which the witness is listening
14 it -- listening to the audio. You know what I mean?

15 MR KIGEN-KATWA: I do, Mr President, and the Court will recall that from time to
16 time I have made concessions when our transcription or translation is mistaken. I
17 will also concede --

18 PRESIDING JUDGE EBOE-OSUJI: For instance, I'm looking here at -- if you look at
19 the seventh line from the bottom of the English paragraph. If you read six words
20 into it, I'm not sure that that is what it should mean in context. The word "cut" that
21 appears there. I don't know if that's what he says, but it may well mean something
22 different that again -- you see what I mean there?

23 MR KIGEN-KATWA: I do, Mr President. This one is being too faithful to the
24 translation because that's what it means when he is talking in Kalenjin. To obtain it
25 means to cut it.

1 PRESIDING JUDGE EBOE-OSUJI: To cut it?

2 MR KIGEN-KATWA: Yes.

3 PRESIDING JUDGE EBOE-OSUJI: All right.

4 MR KIGEN-KATWA: But in English it would probably be phrased differently.

5 PRESIDING JUDGE EBOE-OSUJI: Yes, that's the point. So if -- but just let's keep
6 things like that in mind so that the witness is not confused, not only this one, but
7 others.

8 MR KIGEN-KATWA: I'm obliged, Mr President.

9 Q. Now, Mr Witness, you said you are also concerned about the sentence which
10 talks of Philip Meli Matelong, NARC candidate in ODM, isn't it?

11 A. Yes, your Honour.

12 Q. And you said -- could you explain to the Court what your concern is? We will
13 play the audio very shortly.

14 A. Your Honour, it has said NARC candidate in ODM, but in the other language
15 that the audio is playing is that he is the NARC candidate in the region of ODM. So
16 to me those are two different words.

17 Q. Let me just capture exactly what you've said again. That according to you it
18 should say this: That the audio is playing is that he is a NARC candidate in the
19 region of ODM.

20 A. Exactly. "NARC candidate eng' komastap ODM."

21 Q. Excellent. So your concern is the way the word K-O-M-A-S-T-A-P was
22 translated?

23 A. No. It was actually translated, but what -- what the whole thing means
24 for -- your Honour, it shows that they are -- which regions, political region,
25 non-political regions and this NARC candidate was in the region that had been

1 specified to be region of ODM.

2 Q. Now, Mr Witness, can the word -- can that word K-O-M-A-S-T-A-P mean side?

3 A. It can, your Honour.

4 Q. And you confirm the way it has been translated is that Philip Meli Matelong
5 was contesting as a NARC candidate in ODM?

6 A. That is it, but the context in whichever language it was written in, if it is
7 Kalenjin or Nandi, it does not show that NARC was an affiliate party of ODM.

8 Q. Okay.

9 A. It is actually described NARC party as an intruder, it has intruded into the
10 ODM region. And the biggest thing there is the komastap ODM, who had given
11 boundaries of political parties that -- let me put it this way: Who had said that this
12 side belongs to the ODM and the other side belongs to other parties.
13 MR KIGEN-KATWA: Mr President, I will correct what is at page 56, line 19. I said
14 side, S-I-D-E, and not sight, S-I-G-H-T.

15 Q. Witness, could you confirm for the record that in fact NARC as a political party
16 was an affiliate of ODM?

17 A. Your Honour, that's what I can confirm, but the context does not show
18 that -- does not bring the meaning that NARC is -- was an affiliate party to ODM. It
19 rather shows that NARC has intruded into the ODM territory.

20 Q. Thank you, Mr Witness. My understanding is that that's how you would
21 understand it, that's how you would interpret it, isn't it?

22 A. Your Honour, it might not be -- be me alone. Any other person I think will
23 agree with me as far as the text is concerned.

24 Q. And the NARC we are talking about is N-A-R-C as a political party as opposed
25 to another party which was called NAK, N-A-K, which was an affiliate of PNU. I'm

1 saying that for the record.

2 Witness, lastly on that issue, you now say that it suggests that the word

3 K-O-M-A-S-T-A-P means "the region of ODM"?

4 A. Yeah, and it actually separates the ODM and the NARC, which was its affiliate
5 party from that affiliation.

6 Q. Okay, just wait for my question.

7 A. It shows that -- yes.

8 Q. My question is simply that you are saying the word "komastap"

9 K-O-M-A-S-T-A-P means "region of ODM"?

10 A. Yes, your Honour.

11 Q. Now, Witness, do you -- to you "komastap" means "region"?

12 PRESIDING JUDGE EBOE-OSUJI: Did you hear the question, Witness?

13 THE WITNESS: No, I thought he was still formulating the question because it -- it
14 reached me as if it wasn't complete.

15 MR KIGEN-KATWA:

16 Q. Okay, Witness, I'll ask again. The argument we've had is whether the
17 translation has the effect of talking about ODM region, isn't it?

18 A. Yes.

19 Q. And the reason why you think it suggests ODM region is because the word
20 "komastap" has been used, K-O-M-A-S-T-A-P, isn't it?

21 A. Yes, your Honour.

22 Q. And so you would like it to be understood that your understanding of the word
23 "komastap" is "the region," isn't it?

24 A. Not only "komastap," but the word "komastap" has just meant the whole context
25 rather than discrete -- the whole meaning of the statement that it is actually the region

1 of ODM -- or, rather, territory.

2 Q. May I ask you two last questions on that issue: With reference to that word
3 K-O-M-A-S-T-A-P, Witness, if you're talking about Rift Valley, how would you use it
4 if you're referring to the Rift Valley region?

5 A. Komastap Rift Valley, your Honour.

6 Q. And if you're talking about the Kalenjin region, how would you state it using
7 the same word?

8 A. Komastap Kalenjin, your Honour.

9 Q. Thank you, witness.

10 Now, your Honours, I will want to read into the record the translation of the first
11 audio that we played at time stamp 02.24 to 02.47. Mr President, may I apologise, I
12 should have done that when we listened to the audio. It just escaped me.

13 PRESIDING JUDGE EBOE-OSUJI: Before you do --

14 Witness, the person being referred to as Philip Meli Matelong, did you know who that
15 person is or was? If yes or no, do not tell us how you got to -- just tell me whether or
16 not you recognize that name. Do you know him?

17 THE WITNESS: No, your Honour.

18 PRESIDING JUDGE EBOE-OSUJI: What about do you know of him? Have you
19 ever heard of that name before today?

20 THE WITNESS: Your Honour, no. This is the first time.

21 PRESIDING JUDGE EBOE-OSUJI: Thank you.

22 Proceed, Mr Kigen-Katwa.

23 MR KIGEN-KATWA:

24 Q. And, Mr Witness, do you know somebody by the name Joshua Kutuny from
25 public sources?

1 A. Your Honour, I do know Joshua Kutuny.

2 Q. And you would confirm that at one time he was a member of parliament for
3 Cherangany constituency, having won using ODM party, isn't it?

4 A. Yes, your Honour.

5 Q. You -- would you know also one Moses Lesonet, who contested initially in
6 ODM in the constituency of Eldama Ravine and won?

7 A. Your Honour, that's the name I've just been hearing over the radio.

8 Q. So it is a name you know, you've heard?

9 A. Yes, your Honour.

10 PRESIDING JUDGE EBOE-OSUJI: Are you saying before today you have heard this
11 name over the radio?

12 THE WITNESS: Sorry, your Honour?

13 PRESIDING JUDGE EBOE-OSUJI: Is your evidence that before today you have
14 heard this name over the radio?

15 THE WITNESS: Your Honour, yes, but not in that context. It is actually during that
16 time of elections.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you. That's very good.

18 MR KIGEN-KATWA:

19 Q. You also know that even as we speak today he is a member of parliament
20 representing Eldama Ravine constituency, isn't it?

21 A. Your Honour, I'm not aware.

22 Q. Now, Mr Witness, there was a 22nd audio that we played initially and I asked
23 you about the date. I would like to read the English translation and I would want to
24 request you to confirm if it is a fair translation of what you heard in Kalenjin. And
25 feel free if you would like to have the audio played again to remind you.

1 This is the English translation found at KEN-D11-0012-0025, traditional pagination
2 number 1, paragraph 2.

3 PRESIDING JUDGE EBOE-OSUJI: Do you have that audio handy? Let's play it
4 again.

5 MR KIGEN-KATWA: Yes, Mr President.

6 (Playing of the audio excerpt KEN-D11-0012-0023)

7 MR KIGEN-KATWA:

8 Q. Now, Witness, this is the English translation which I want to request you to
9 confirm if it's fair. "Kalenjin people: This is yet another pleasant evening that we
10 have chanced upon today, Friday, 14 December 2007; during which time we are left
11 with 11 days to Kenya's election - the General Election - which we will make our
12 choices of Councillor, MP and President."

13 Witness, may I ask you, is that a fair translation of what you heard in Kalenjin?

14 A. Your Honour, I think the -- Mr Defence can repeat.

15 Q. Okay, I'll repeat slowly. In English, isn't it, Mr Witness?

16 A. Yeah.

17 Q. "Kalenjin people: This is yet another pleasant evening that we have chanced
18 upon today, Friday, 14 December 2007; during which time we are left with 11 days to
19 Kenya's elections - the General Election - when we will make our choices of
20 Councillor, MP and President."

21 A. Your Honour, yes, it is.

22 Q. Thank you very much, Mr Witness.

23 Mr President, for purposes of my follow-up questions, I will request to go into a
24 private session briefly.

25 PRESIDING JUDGE EBOE-OSUJI: Private session.

1 *(Private session at 12.35 p.m.) Reclassified as open session

2 THE COURT OFFICER: (Interpretation) We are in private session.

3 MR KIGEN-KATWA: Mr President, if the transcript and translation could be
4 removed from the screen to avoid distracting the witness.

5 PRESIDING JUDGE EBOE-OSUJI: Yes, let's remove the document from the screen.

6 MR KIGEN-KATWA:

7 Q. Now, Witness --

8 Probably the court officer could confirm before I proceed.

9 THE COURT OFFICER: (Via video link) I confirm, Mr President. (Indiscernible)

10 PRESIDING JUDGE EBOE-OSUJI: Proceed, Mr Kigen-Katwa.

11 MR KIGEN-KATWA:

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 Q. Now, did you by any chance listen to that audio I've just played to you? Do
4 you remember ever listening to it?

5 A. Your Honour, at that time I actually stopped listening to Kass FM.

6 Q. Now, I would like the first --

7 A. But --

8 Q. Sorry, you wanted to say something?

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 Q. Now, I was asking you -- you said already that you did not listen to this audio
22 because you had stopped listening to Kass FM.

23 Mr President, I would request that the first page of that transcript be pulled up

24 KEN-D11-0012-0024.

25 If the court officer in the remote location could kindly confirm if he's pulled it.

1 THE COURT OFFICER: (Via video link) The first page is being presented to the
2 witness.

3 MR KIGEN-KATWA:

4 Q. Now, Witness, I just want you to confirm that you can see on the face of it that it
5 indicates that the duration of the recording is 2.10.48 on the third column starting
6 with the heading "Translation of Audio." Can you see that?

7 A. I can see it, your Honour.

8 Q. And it also says at the last column "Number of Pages: 85."?

9 A. I have seen it, your Honour.

10 MR KIGEN-KATWA: Mr President, at this point I will request the court officer to
11 pull down the transcription and translation and I apply to have this audio, the
12 transcription and the translation, admitted as an exhibit. I acknowledge that the
13 witness says that he did not listen to this audio and gives the explanation that by that
14 time he had stopped listening to the audio; I however submit that he recognizes the
15 voice of Mr Sang and he also recognizes the names of people mentioned at page 85,
16 and on those premises it is relevant and as an indicia of reliability.

17 Mr President, may I explain that it is very important for us because it directly
18 addresses the question of whether Mr Sang (Redacted)
19 (Redacted) For all those reasons and circumstances, I pray that it be admitted
20 as an exhibit, both the audio, transcription and translation.

21 PRESIDING JUDGE EBOE-OSUJI: Mr Steynberg?

22 MR STEYNBERG: Your Honours, the Prosecution opposes on a number of grounds.
23 In the first instance, according to the metadata of this documents, the source of the
24 document is Mr Sang himself. I have previously objected to the admission of
25 documents the source of which is the accused without proof of the authenticity of

1 those documents.

2 Secondly, as my learned friend has pointed out, the witness has not recognized and
3 has not heard or identified this audio. He is therefore not in a position to assist with
4 the authentication of the document.

5 Thirdly, your Honours, the witness has disputed several places the correctness of the
6 translation that is being recorded in this document, he's only been read two passages
7 and he's disputed three or four translation issues, so the reliability of the document is
8 in dispute.

9 And fourthly, your Honours, as to the relevance of the document, the purpose for
10 which it is admitted, I direct my learned friend's attention to (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 So it would seem that if this is put up as an alibi, it really is not that relevant.

15 So for all of those reasons, your Honour, the Prosecution opposes the admission of
16 this document. It may -- we have no objection to it being granted an MFI.

17 MS ALAGENDRA: Your Honours, we have no objection to the admission.

18 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, your proposition would be
19 simply because the witness recognized the voice of Mr Sang, that pulls the document
20 in?

21 MR KIGEN-KATWA: And also the date and the time, Mr President.

22 The argument as to whether it was logistically possible for Mr Sang (Redacted)
23 (Redacted) is an issue we can
24 take up in argument.

25 May I mention, Mr President, that the morning programme was already presented

1 and is an exhibit. And, Mr President, this audio was available to the Prosecution as
2 early as January 2014. They have had a series of interviews with this witness and the
3 significance of the whereabouts of Mr Sang should have occurred to them in view of
4 the use of that audio.

5 Mr President, the mere fact that it was sourced from Mr Sang -- sorry, Mr President, I
6 said it was disclosed on 8 January 2014; it was actually disclosed on 30 October 2013.

7 And, Mr President, I know the Prosecution have attempted a meeting with one
8 Mr Julius Lamaon. Mister -- your Honour, Julius Lamaon himself has made specific
9 reference to this audio in his affidavit of 8 January 2014 as item number 41 in his
10 affidavit, and the mere fact that it was sourced from Mr Sang does not necessarily
11 mean that it is not genuine.

12 And for purposes of future arguments, Mr President, we would like the Prosecution
13 to be bold enough and tell us if, according to them, the documents and audios
14 sourced from Mr Sang are necessarily false merely because they are sourced from
15 Mr Sang.

16 Mr President, for all those reasons we submit that it is relevant, it has an indicia of
17 reliability and addresses a point directly in issue in this trial. We pray,
18 your Honours, that you do find that we have justified entitlement to have it exhibited.

19 PRESIDING JUDGE EBOE-OSUJI: The object of tendering this is alibi, isn't it?

20 MR KIGEN-KATWA: Yes, Mr President.

21 PRESIDING JUDGE EBOE-OSUJI: The document is not admitted simply because
22 the witness recognized the voice of Mr Sang on the audio and that's sufficient basis to
23 bring in this alibi evidence through this witness. You can mark it for identification.

24 MR KIGEN-KATWA: We pray that it be marked for identification, Mr President.

25 PRESIDING JUDGE EBOE-OSUJI: It will be so marked.

1 THE COURT OFFICER: (Interpretation) Document KEN-D11-0012-0023 will be
2 referenced as follows: MFI-T-D11-00103.

3 Document KEN-D11-0012-0024 will be referenced: MFI-T-D11-00104.

4 Both documents are public.

5 PRESIDING JUDGE EBOE-OSUJI: Proceed, Mr Kigen-Katwa.

6 MR KIGEN-KATWA: Mr President, I would like to make corrections at page 57,
7 line 23. The words missing are affiliate of PNU, affiliate, A-F-F-I-L-I-A-T-E, and
8 PNU is P-N-U for political party.

9 At page 58, line 1, the correction is that the party I was referring to is double N double
10 A -- sorry, capital N capital A and capital K, not NARC, N-A-R-C.

11 PRESIDING JUDGE EBOE-OSUJI: Proceed.

12 MR KIGEN-KATWA: May I explain that NAK, N-A-K, is the affiliate of PNU, and
13 NARC, N-A-R-C, is the affiliate of ODM.

14 At page 66, line 7, the word should be won, W-O-N, not one, O-N-E.

15 At line -- at page 61, line 18, it should be pleasant, P-L-E-A-S-A-N-T, not present.

16 Q. Now, Witness, you -- you will just confirm this if you have recollection. I can
17 take you to the transcript if you don't remember.

18 You already said that you were not regularly listening to Kass FM, isn't it?

19 A. No, not regularly, but it -- it had reached times that I was not listening to
20 Kass FM.

21 Q. And in the year 2008, Mr Witness, were you still listening to Kass by any
22 chance?

23 A. No, your Honour.

24 Q. Is it your position that you didn't listen to Kass FM at all in the year 2008?

25 A. From sometimes in 2007 up to this minute, your Honour.

1 Q. Okay. Now, Mr Witness, in December 2008 did you have any political
2 affiliation? Sorry, I meant December 2007.

3 A. Your Honour, I'm -- I don't understand the question.

4 Q. My question, let me put it very simply: Did you belong to any political party
5 in the period November/December 2007 shortly before the elections of the year 2007?

6 A. Yes, your Honour.

7 Q. And which party were you in, Mr Witness?

8 A. PNU, your Honour.

9 Q. Could you give us particulars, were you a candidate or were you an official in
10 the party?

11 A. I was just a member.

12 Q. And in the period shortly before (Redacted)

13 (Redacted)

14 (Redacted)

15 A. Yes, your Honour.

16 Q. (Redacted) Mr Witness?

17 A. Your Honour, (Redacted)

18 Q. And you were present (Redacted)

19 (Redacted) isn't it?

20 A. Yes, your Honour.

21 Q. Page 70, line 15, the answer was that (Redacted)

22 Now, I'm very interested in presidential results. Were you following the build-up to
23 the announcement of presidential results, Mr Witness?

24 A. I wasn't concentrating to that -- on that, your Honour.

25 Q. And did you notice the point in time when the results of the president were

1 announced?

2 A. Your Honour, that part wasn't clear.

3 Q. I understand you've already said you are not following very closely the process
4 of tallying the results for the presidential candidate, isn't it? That's what you've said,
5 isn't it?

6 A. Yes, your Honour.

7 Q. What I'm asking is if you have a recollection of the time when the results were
8 announced as to who has won as the president?

9 A. Yes, I do, your Honour.

10 Q. Now, you said you were at (Redacted) isn't it?

11 A. Your Honour, I'm getting confused.

12 Q. Okay. This is a separate question from presidential issue. The transcript
13 didn't capture (Redacted) and I'm asking you did you
14 say (Redacted)

15 A. Yes, your Honour.

16 Q. The spelling of (Redacted) if you could confirm, is (Redacted) isn't it?

17 A. Yes, your Honour.

18 Q. Now, in terms of the announcement of the presidential results, did you receive
19 them from Kass FM station?

20 A. I was just told. I -- yeah, I -- I did not receive from the Kass FM station -- radio
21 station.

22 Q. And by the time the results were being announced, were you still listening to
23 Kass FM?

24 A. No, your Honour.

25 Q. When is it that you stopped listening to Kass FM station?

1 A. Though I'm not sure, but it was some times before the campaign started.

2 Q. Which campaign? For a -- campaigns for the 2007 --

3 A. The general --

4 Q. -- general elections?

5 A. Exactly, your Honour.

6 Q. And that would be about June 2007, isn't it?

7 A. I'm not in a position to estimate the specific date.

8 Q. I quite understand that, Witness. I'm not asking for a specific date, I'm just
9 asking for a general estimate of time. I'm happy enough if you could say the month.

10 A. If you -- your Honour, if the -- Mr Defence can -- can remember the day of
11 Sang's official ceremony at Kipchoge Keino Stadium I had actually left it some
12 months.

13 Q. Sang's -- are you talking of a ceremony for Mr Sang?

14 A. Yes.

15 Q. And what ceremony was that?

16 A. That was after the -- the Banana-Orange Referendum.

17 Q. And that referendum is in the year -- that would be on 10 December 2005.

18 Would you -- does that -- does that refresh your memory, December 2005?

19 A. Then approximately some two months back.

20 Q. Let me just tell you again. That ceremony for Mr Sang, and that was Kass
21 launch, was in December 2005. You are saying -- at Kipchoge Stadium. You're
22 saying that is the time that suggests to you you had stopped listening to Kass FM two
23 months earlier?

24 A. Your Honour, I'm -- I'm getting lost.

25 Q. Okay, let me ask you again. My question is very simply this, Mr Witness:

1 When did you stop listening to Kass FM? Just that.

2 A. Yes. I -- that's what I'm saying that two months before the -- Sang's
3 ceremony -- task-giving ceremony, something like that.

4 PRESIDING JUDGE EBOE-OSUJI: Do you remember in what year that ceremony
5 took place?

6 THE WITNESS: It was immediately after the referendum, your Honour.

7 PRESIDING JUDGE EBOE-OSUJI: Immediately after the referendum?

8 THE WITNESS: Yes, your Honour.

9 PRESIDING JUDGE EBOE-OSUJI: How many weeks or months immediately after
10 the referendum was it that the ceremony took place?

11 THE WITNESS: It might not reach a month, your Honour.

12 PRESIDING JUDGE EBOE-OSUJI: Thank you.

13 Mr Kigen-Katwa, proceed.

14 MR KIGEN-KATWA:

15 Q. And for the record, Mr Witness, you would recall that the referendum voting
16 was on 21 November 2005, isn't it? You remember that?

17 A. I actually don't remember, your Honour.

18 Q. Would you remember that it was in November 2005?

19 A. You have just said that it was -- you're just -- you have just mentioned the dates,
20 but then I cannot actually remember. I have just known from you.

21 Q. Okay. Then could you remember that it was towards the end of the year 2005?

22 A. No.

23 Q. When you say "No" you're saying it wasn't towards the end of

24 December -- towards the end of December 2005 or that you do not know at all the
25 time, the dates?

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

1 A. Your Honour, it is that I do not remember well.

2 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, we have to leave it at that for
3 now.

4 MR KIGEN-KATWA: Yes, Mr President.

5 PRESIDING JUDGE EBOE-OSUJI: Yes.

6 MR KIGEN-KATWA: Mr President --

7 PRESIDING JUDGE EBOE-OSUJI: Yes.

8 MR KIGEN-KATWA: -- I assume that my client doesn't need to be in in the
9 afternoon for the status conference?

10 (Trial Chamber confers)

11 PRESIDING JUDGE EBOE-OSUJI: You did apply for him to be excused for the
12 status conference, is that it?

13 MR KIGEN-KATWA: Yes, Mr President.

14 PRESIDING JUDGE EBOE-OSUJI: Yes, the request is granted.

15 MR KIGEN-KATWA: Thank you, Mr President.

16 PRESIDING JUDGE EBOE-OSUJI: All right.

17 (Trial Chamber confers)

18 PRESIDING JUDGE EBOE-OSUJI: Witness, we will be rising now, but for you you
19 are discharged for today, for the rest of today, you will join us again tomorrow
20 morning. This afternoon there is some legal discussions the Judges and the lawyers
21 will need to conduct about the proceedings generally, all right? So you will join us
22 again tomorrow morning.

23 The Court will rise.

24 *(The hearing ends in private session at 1.03 p.m.) Reclassified as open session

25 RECLASSIFICATION REPORT

Trial Hearing
Witness: KEN-OTP-P-0743

(Private Session)

ICC-01/09-01/11

- 1 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
- 2 2013, the version of the transcript with its redactions becomes Public.