

## **Paul Gicheru: The untold story of the man facing trial at The Hague**

### **Leaked Version**

**By John Kamau**

Before Eldoret-based lawyer Paul Gicheru lurched into William Ruto's case at the International Criminal Court, the former prosecutor, Fatou Bensouda, had pegged her hopes on several key prosecution witnesses.

Then Mr Gicheru embarked on what the ICC calls the "witness corruption scheme", and soon witnesses started withdrawing in quick succession. Some recanted their statements. Others disappeared.

Now the ICC and its Pre-Trial Chamber have laid bare the case facing Mr Gicheru. While court documents adversely mention Deputy President William Ruto as one of the people in the scheme of things, the ICC has not demanded Mr Ruto's appearance.

In 2015, the Prosecutor, frustrated with the Kenyan case, named Mr Gicheru as one of the men behind the witness interference plot. Gicheru fought back attempts to have him extradited to The Hague, with High Court judge Luka Kimaru quashing the warrant of arrest issued by Justice Ekaterina Trendafilova on both the lawyer and Mr Philip Kipkoech Bett.

But in November 2020 Mr Gicheru, 51, surprised many when he turned himself in to Dutch authorities to face accusations at the ICC which carry a prison sentence of up to five years. He is facing 16 counts.

On Thursday last week — July 15, 2021 — the ICC Pre-Trial Chamber, while confirming the charges against Mr Gicheru, said it “is convinced that between April 2013 and January 2014, Mr Gicheru offered various witnesses (millions of shillings) in cash installments in exchange for withdrawing as Prosecution witnesses in the Ruto and Sang case”.

The decision on the confirmation of the charges only serves to determine whether the Prosecutor’s case should proceed to trial.

The Pre-Trial Chamber also found that besides Mr Gicheru, there was Mr Silas Simatwo, from Amaco Insurance, a Mr Maiyo, Mr Bett, a Mr Yebei and Mr Walter Barasa, who acted together to undermine the prosecution’s case against Ruto and Sang.

Whether this intriguing case will affect Mr Ruto’s political fortunes depends on how the case will progress and the demands that will be made by the Prosecutor.

Interestingly, Ruto’s former lawyer at the ICC, Karim Ahmad Khan, is now the prosecutor but has recused himself from the Kenyan cases.

The Prosecution, according to documents tabled at the Pre-Trial Chamber, plans to reveal the level of witness interference in the Ruto case and claims that the Deputy President was privy to what was happening.

While both Mr Ruto and President Uhuru Kenyatta had been charged at The Hague with crimes against humanity, the case against Mr Ruto was only vacated “without prejudice to their prosecution afresh in the future”. The majority noted at the time that Mr Ruto had “profit(ed) from the interference (of witnesses) by the falling away of several key witnesses that the Chamber found to have been interfered with”.

On March 13, 2015, Trial Chamber V(B) terminated the proceedings against Mr Kenyatta upon the Prosecution’s notice of withdrawal of charges due to insufficient evidence.

The Pre-Trial Chamber in the Gicheru says there was a well-planned scheme to induce the witnesses in the Ruto case that involved a first contact with a person who already knew the witness, a meeting with Mr Gicheru, making of an offer, and, finally, intimidation of the witness.

In order to prosecute its case, the prosecution has divided the group of offenders into ‘managers’ and ‘intermediaries’ of the common plan. The Pre-Trial Chamber has also found that “the (managers) also had a particular proximity with Mr Ruto and seemed

to enjoy a special status in comparison with other members of the common plan organisation”.

Mr Simatwo is identified in the Chamber ruling as “in charge of the treasury” and that “several witnesses refer to them as the ‘core’ of the common plan organisation, or ‘the people’ working for Mr Ruto in order to corrupt witnesses”.

Mr Simatwo is also identified as the head of the African Merchant Assurance Company, “an insurance company to which Mr Ruto was a shareholder”.

The Pre-Trial Chamber was told that Witness P-0341 was sent abroad to look for witnesses and was to be given a “car, another farm, a plot in town and Sh5 million”. The Chamber has been told that “Mr Ruto... was happy that P-0341 had agreed... not to attend ICC meetings anymore”.

It was after this meeting that P-0341 was told that Mr Gicheru “would be the focal point now” and “would deal with everything”, according to court records.

It all seems to have started in April 2013, when the witness corruption scheme was laid. The first payment to P-0397, according to the Chamber, was for Sh1 million.

In a heavily redacted ruling, the Chamber says that on or about April 20, 2013, the key witness was “visited” by a person —whose name has been redacted — and it was explained to him “that there was a group of persons working for Mr Ruto who were instructed to

identify ICC witnesses and offer them money in exchange for their withdrawal as Prosecution witnesses.”

According to the Chamber records, the witness was introduced to Mr Gicheru on or about April 26, 2013 and he spoke to the witness “privately.”

“(The Witness) told Mr Gicheru that he was an ICC witness, to which Mr Gicheru added that he had heard,” the chamber quotes filings by the Office of the Prosecutor in file KEN-OTP-0125-0434-R01.

“Mr Gicheru asked P-0397 to assist him by withdrawing as a witness against Mr Ruto. Mr Gicheru told P-0397 that Mr Ruto wanted P-0397 to identify other Prosecution witnesses and bring them to him (Mr Gicheru),” the file notes.

At first, according to the Chamber evidence, the witness requested for Sh10 million after Mr Gicheru asked him to “state his price in exchange for his withdrawal”. During the discussion, Mr Gicheru was joined by another person, whose name is also redacted, and Mr Gicheru explained to the witness that the person “must be consulted regarding the money to be paid to witnesses”.

Mr Gicheru is alleged to have explained to the witness “that Mr Ruto had given him and (the person whose name is redacted) the authority to pay witnesses”.

After negotiations, the Chamber has heard, the witness was promised Sh5 million, “which Mr Gicheru

promised would be paid in cash”. As they parted, Mr Gicheru gave the witness a business card. He “in turn handed it to Prosecution investigators”, according to the Chamber.

A day after Mr Gicheru privately spoke to the witness, he is said to have paid a cash instalment of Sh600,000. While the witness had been warned not to deposit the money into his bank account “to avoid detection by the ICC people”, the witness kept Sh100,000 and deposited Sh500,000.

“He did so as he was afraid of getting robbed,” says the OTP filings quoted by the Chamber.

A week after this initial payment, Mr Gicheru, according to Chamber filings, introduced the witness to a lawyer who was to prepare an affidavit for the ICC. The chamber now says “(the witness) signed a letter giving (the lawyer) the power to act for him before the ICC on this matter.

On the same day, (the witness) also signed an affidavit stating that he no longer intended to “testify against any accused persons” before the ICC, which the Chamber understands to include Mr Ruto and Mr Sang, and wished to withdraw his testimony against them”.

Some eight months after the affidavit was sent to the Prosecution by the lawyer, whose name is still redacted, Mr Gicheru is now said to have met the witness on December 7, 2013 and asked him if he was still in touch with the ICC. The Prosecutor alleges that

Mr Gicheru “accused him of wanting, along with other individuals, to send Mr Ruto to jail. Mr Gicheru became aggressive; indicating that he believed (the witness) was trying to have him arrested by the ICC”.

According to the filings, “the meeting ended when Mr Gicheru was calmed down by the second man and (the witness) left the meeting”. As a result of this exchange, (the witness) felt that he was in danger and could be killed.

When another witness, named P0516, disappeared on July 6, 2014 on the day he was scheduled to meet ICC officials regarding his in-court testimony, the Trial Chamber in the Ruto and Sang case was forced to issue a summons for his appearance before it declared him a hostile witness.

This Witness 2, identified as P0516 in court papers, told the ICC during Ruto’s case that the evidence that he had provided in his original witness statement was false, and that he had been told by a person, whose name is now redacted, on what to say. He also, under oath, testified that he did not know a lawyer named Paul Gicheru.

But the prosecution says that it was Mr Gicheru who directed a person, whose name is redacted, to locate Witness 2. And since this person said he was not in good terms with this particular witness, they instructed (Prosecution Witness P-0397) to locate and bring him to the group on the promise that he would receive additional money.

According to the court filings, P-0397 told (Witness 2) that he could get money, such as Sh500,000, but that he had to meet and talk with Mr Gicheru first. (Witness 2) agreed to P-0397's proposal to meet Mr Gicheru and they had a private discussion.

It is now alleged that during the first or second meeting, Mr Gicheru offered Witness 2 some Sh800,000 in exchange for his withdrawal as a witness from the main case. "Mr Gicheru met with P-0516 approximately four or five times and paid him a total of at least Sh500,000," the Chamber has been told.

After Witness 2 withdrew as a prosecution witness, the court filings state that "he stopped going to (name redacted) to receive money, despite being paid less than originally promised, because it was becoming dangerous". P-0397 has now told prosecutors that he did not receive his part for introducing Witness 2 to Mr Gicheru.

While confirming the case against Mr Gicheru, the Chamber says it finds the allegations regarding Mr Gicheru's payments to (Witness 2) in exchange for withdrawing as a prosecution witness are corroborated by P-0397 as well as by other witnesses.

It further says that it will assess the credibility of the witness as well as the evidence to draw its own conclusions.

“He seemed not entirely forthright, specifically regarding the extent and purpose of his interactions with Mr Gicheru and his contact with P-0613 (who testified for Prosecution),” the Chamber observes, and says that “those elements support the reliance on portions of P-0516’s statements from (redacted) to the effect that he was promised and paid money by Mr Gicheru to withdraw as a Prosecution witness”.

While Gicheru’s defence has dismissed these witnesses as “unreliable” by referring to the conclusions reached by the Chamber in the Ruto case which dismissed P-0613’s evidence as uncorroborated hearsay, the Chamber notes that this witness’s evidence stems from her phone conversations as well as text messages that she received from unidentified senders from April to September 2013.

The Chamber, by agreeing to rely on her evidence in the Gicheru case, says the judges’ findings in the Ruto case on this witness’s evidence “related to the sufficiency of her knowledge” and that the charges now brought by the prosecutor in this case are different.

“The Chamber will assess the credibility of P-0613 as well as her evidence independently and will draw its own conclusions,” the Judges have ruled. “The Chamber further finds that P-0613 also provides direct evidence of attempts by certain individuals to corruptly influence her decision to testify as a

Prosecution witness, and that parts of her accounts are corroborated by other evidence.”

And on her general evidence, the Chamber says it has found that this witness’s evidence fits the overall pattern that emerges from the evidence regarding how individuals were approached and in turn approached other potential prosecution witnesses to arrange meetings with individuals such as Mr Gicheru in order to offer the prosecution witnesses or potential witnesses money in exchange for their withdrawal and recantation of prior statements given to the Prosecution.

On her credibility, the Judges say that Gicheru’s defence “does not put forward any persuasive factors that would affect the reliability of her statements.

“P-0613’s statements are internally consistent, free of contradictions and, as already mentioned, they are partially corroborated by other evidence,” they found. “Accordingly, the Chamber finds P-0613 credible and her statements reliable.”

It has also emerged that after another witness, P-0604, recanted his evidence at The Hague, after what the prosecutor terms as “improper interference”, he later resumed his contacts with the Prosecution and will now be used in the Gicheru case.

The Chamber has formed the view that this witness “can be, in part, relied upon in the case at hand, including from his statement of 2013”.

According to the Chamber, this witness was introduced to Mr Gicheru and asked to withdraw his statement in exchange for money and was coached on what to say in court by Mr Gicheru and another lawyer.

The ICC judges who have listened to the Gicheru confirmation case say they have now formed the view that this witness, together with two others and “some anonymous actors working individually or in pairs and even competing against each other” attempted to convince witness P-0613 to withdraw as a prosecution witness.

Witness P-0613 learnt about the witness corruption scheme from other witnesses, according to the Chamber. From the court records, this witness was approached by P-0495 and asked to accept a cash offer.

“P-0495 explained that ‘they’ were interested in suspending the main case because it was taking too long and their objective was to stop it. He told P-0613 that she would be provided with government protection so that she could defect and be protected from others too,” the Chamber noted in its ruling.

While this witness never met Mr Gicheru, the Chamber says it is “convinced that Mr Gicheru was

involved in attempts to convince P-0613 to withdraw as a prosecution witness in exchange for financial incentives and other advantages.”

Mr Gicheru, according to the Chamber, met with P-0800 on July 21, 2013 and offered him money “in locating and corrupting other witnesses, notably P-0613”. The Chamber identified Mr Bett as the person who took P-0800 to a meeting with Mr Gicheru in Nairobi.

During the meeting, Mr Gicheru offered to give P-0800 between Sh1.5 million to Sh2 million. From the interaction, P-0800 got the impression that the money was offered in exchange for being loyal to the Gicheru team and agreeing with what they were going to tell him, the court notes.

“During the same meeting, P-0800 was immediately incorporated into plans to interfere with other witnesses. Mr Gicheru asked P-0800 to contact P-0495 and facilitate a meeting between the latter and Mr Gicheru. P-0800 was given travel money by Mr Gicheru to go... and meet with P-0495,” says the court. Gicheru would later take P-0800 to a law firm where he signed an affidavit. The witness has now told the prosecutors that he “signed the last page of the affidavit without ever reading the entire document” and that he “feared negative consequences if he didn’t”.

Initially, the Chamber has noted, this witness had broken contacts with the ICC but in 2014 he resumed the cooperation and testified in November 2014.

Mr Gicheru has also been mentioned by P-0536, who is described by the Chamber as “always straightforward in her statements and interactions with the prosecution”.

The witness, now adopted as credible, had been promised Sh1.4 million and in one conversation the amount was increased to Sh1.6 million. An unidentified person told her that the money would be paid in cash and “meant to start a new life”.

Mr Gicheru is also said to have approached P-0341 and inquired if he was an ICC witness. In May 2013, Mr Gicheru is said to have paid this witness Sh500,000 and asked him not to deposit the money into a bank.

But the witness opened a bank account and deposited Sh300,000 and spent the balance. After that, he was taken to a lawyer and he signed an affidavit of withdrawal from the entire ICC process. He was asked to bring another unnamed witness, make a public statement to the press about his withdrawal and he would be paid Sh5 million.

It is also claimed that Mr Ruto “complained many times to Mr Gicheru” about an issue that has been redacted. The witness continued to meet “almost every day” with Mr Gicheru and between May 9 and July 19, 2013 he signed an affidavit stating that he had no evidence against Mr Ruto and that he was withdrawing from the case.

The ICC notes that a few days later, Mr Gicheru told P-0341 that Mr Ruto was very happy with the affidavit and that P-0341 should receive Sh5 million for that. On that day, however, Mr Gicheru gave him a smaller amount, but superior to Sh20,000.

The court has also been told that Mr Gicheru wanted the man to be Mr Ruto's witness. Gicheru continued to spend money on this witness, according to court records, with most of it banked into the witness' account.

On two occasions, according to the Chamber, Mr Gicheru summoned P-0341 because he was furious that P-0341 had attended a PEV victims meeting and had met with (redacted). Mr Gicheru accused him of interacting with white people who were spies for the ICC.

In total, this witness is reported to have received Sh2 million from Mr Gicheru. It was this witness who brought a former PNU supporter to Mr Gicheru who explained that they were "giving witnesses money to stop assisting the ICC, and that they needed to reach everyone involved in this case since 'the boss', who P-0274 understood to be Mr Ruto, 'wanted no stone left unturned".

"Mr Gicheru also asked P-0274 to give him the names of other OTP witnesses. Mr Gicheru gave P-0274 a phone number from which he said he would call P-0274 in the future. Mr Gicheru also gave him some

money to reimburse him for transport back home. Feeling 'very sceptical about all this', P-0274 reported what had happened to an ICC staff member," the ICC prosecutor has told the court.

The Chamber has now been told that P-0274 received a call from the number and was to meet Mr Gicheru. Scared, the witness switched off his phone.

"When he switched his phone back on, he saw that he had received a new threat from another telephone number. After that, he never dealt with Mr Gicheru again," says the prosecution.

Later, P-0274 was told by an unnamed person that "Mr Ruto wanted to meet him in person."

The Pre-Trial Chamber has now identified Mr Gicheru as a co-perpetrator and has also retained the charges of direct perpetration as requested by the Prosecution.

On the others who are yet to surrender to The Hague, the Chamber says that "by the very nature of their tasks (directly bribing witnesses), it cannot be said that they were mere executors who did not know what the common plan was about.

On the contrary, by the very nature of their action and awareness of the consequences of the implementation of the common plan, they became participants and members of the common plan organisation."