

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL-2004-16-T  
TRIAL CHAMBER I

THE PROSECUTOR  
OF THE SPECIAL COURT  
V.  
ALEX TAMBA BRIMA  
BRIMA KAMARA  
SANTIGIE KANU

MONDAY, 14 MARCH 2005  
2.15 P.M.  
TRIAL

Before the Judges:

Teresa Doherty, Presiding  
Julia Sebutinde  
Richard Lussick

For Chambers:

Mr Simon Meisenberg

For the Registry:

Ms Maureen Edmonds

For the Prosecution:

Ms Lesley Taylor  
Ms Millicent Stronge (intern)

For the Principal Defender:

Ms Claire Carlton-Hanciles

For the accused Alex Tamba Brima:

Mr Kevin Metzger  
Ms Glenna Thompson  
Mr Kajo Graham

For the accused Brima Kamara:

Mr Wilbert Harris  
Mr Mohamed Pa-Momo Fofanah

For the accused Santigie Kanu:

Mr Geert-Jan Alexander Knoops  
Ms Carry J Knoops-Hamburger  
Mr Abibola Manley-Spaine  
Ms Karlijn van der Voort (legal assistant)

1 Monday, 14 March 2005

2 [Open session]

3 [The accused entered court]

4 [On commencing at 2.15 p.m.]

14:15:43 5 PRESIDING JUDGE: Good afternoon, counsel. Is there a representative  
6 of the Principal Defender in Court? Thank you.

7 We requested the presence of a representative of the Principal  
8 Defender to clarify what the present status quo is concerning a new  
9 investigator for the Defence team. Could you advise us.

14:16:13 10 MS CARLTON-HANCILES: Your Honour, the Brima Defence team has already  
11 been offered -- we have a list of investigators in the office. But from  
12 speaking to the client directly, he prefers not to have an investigator  
13 assigned in the face of the fact that he still wants the investigator who  
14 has been suspended for now.

14:16:43 15 The Kamara Defence team has already almost completed recruitment for  
16 the reassignment of another investigator. Thank you.

17 PRESIDING JUDGE: Thank you, Ms Carlton-Hanciles.

18 There has been no mention of the accused's Kanu's position.

19 Mr Knoops, do you have anything you wish to say regarding your  
14:17:25 20 investigator? As I understand, you were sharing an investigator.

21 MR KNOOPS: Thank you, Your Honour. Your Honours, our position is  
22 that we are still working with the same investigator, Mr Sylvanus, that our  
23 position is still that the investigator's information is to a certain  
24 extent shared with the other Defence teams. So we are in a position to  
14:17:55 25 continue to work with the current investigator, although the remarks I made  
26 last week are still topical in the sense that we are -- of course, to a  
27 lesser extent than the other teams, but we are lesser handicapped than the  
28 other teams. But on the other hand, we, as mentioned last week, we intend  
29 to share the information we get.

1 For Your Honours' information, we filed a request to potentially  
2 obtain an additional investigator, preferably from outside of Sierra Leone,  
3 which is able to assist the Defence further in investigation purposes, but  
4 that is just for your information. But it is not for us an absolute  
14:18:49 5 condition to continue with the case of Mr Kanu as such.

6 PRESIDING JUDGE: Thank you, Mr Knoops.

7 MR KNOOPS: You're welcome.

8 PRESIDING JUDGE: It would appear, Mr Metzger, that two of your  
9 colleagues have something in place, but there is a hiatus with your  
14:19:11 10 situation. Can you tell us what it is.

11 MR METZGER: I think Ms Carlton-Hanciles for the Principal Defender,  
12 as she told you, went directly to my lay client as regards the situation  
13 concerning an investigator. Can I first of all inquire -- I think we are  
14 in open session.

14:19:35 15 PRESIDING JUDGE: Yes, we are.

16 MR METZGER: Might I first of all say that the issue insofar as  
17 Mr Brima is concerned isn't as clear-cut perhaps as it seems. The  
18 dismissal, suspension of an investigator who has done a great deal of work  
19 since about December of last year means that even if we were to get an  
14:20:04 20 investigator today, that investigator would need to be briefed on any  
21 proofs that we have obtained thus far, matters in relation to alibi that  
22 may apply, and be given information as to areas so that that investigator  
23 can then go and do legwork in parts that are outside of Sierra Leone -- I  
24 beg your pardon -- outside of Freetown. Although, of course, for the  
14:20:34 25 moment, we are dealing with events on or around the 6th of January of 1999.  
26 So that may well be limited to Freetown.

27 But by way of example, the last witness that we heard from, TF1-023 I  
28 believe it was, gave evidence relating to, shall we call it, a journey that  
29 started in or around the Waterloo area and ended - I'm not exactly sure

1 where as I stand here - but through Lumpa, Four Mile, Mile 38, Benguema,  
2 and other places. So it is wide terrain to cover which has already,  
3 largely speaking, been covered by the investigator we already have.

4 Whilst from a purely professional point of view one would be inclined  
14:21:38 5 to try and make the best of a bad situation, find an investigator and then  
6 go through all those steps with him, Mr Brima's Defence would nevertheless  
7 be handicapped because we would not be in a position, first of all, to  
8 carry on straight away. Secondly, one must, of necessity, by virtue of the  
9 fact that there is a pending investigation against Mr Brima -- as I  
14:22:07 10 understand it, this information is now in the public domain so I can say it  
11 in open court, against Mr Brima's former or -- difficult to say, the  
12 suspended --

13 PRESIDING JUDGE: [Microphone not activated]

14 MR METZGER: Yes -- individual, it makes it very difficult for us  
14:22:25 15 acting professionally to continue on a case on the information that that  
16 person has brought to us because we don't know what's going to happen in  
17 relation to the investigation, and we cannot prejudge that particular  
18 issue.

19 PRESIDING JUDGE: Mr Metzger, what you're saying appears to me  
14:22:42 20 somewhat different from what Mrs Carlton-Hanciles has said. I noted what  
21 she said is your client wants the suspended investigator. Those are the  
22 words I've recorded. What you're saying is you might be able to make the  
23 best of a bad job, but you wouldn't be able to do it right away. So I'm  
24 not altogether clear on the stand that is intended.

14:23:06 25 Are you asking for time? Or are you saying "we don't want anybody,"  
26 in which case there is of course case law on the question?

27 MR METZGER: Let me make the situation clear. I thought I had.  
28 Mr Brima wants his investigator. I have to act on his instructions. That  
29 is normally the way in which generally when instructed counsel acts. The

1 di ffi cul ty, of course, as I say, looking at it from a purely professional  
2 point of view - that's what I said - one could, with time, redress the  
3 balance. However, I have sought to point out the di ffi cul ties in the way,  
4 the hurd les, in redressing the balance and placing us in a position that we  
14:23:55 5 would have been in on -- last Thursday afternoon but for the di ffi cul ties  
6 that we appear to have encountered.

7 Now, given time, my lay client may be able to see it in that way as  
8 well. But at the moment, his direct instructions are, I want my  
9 investigator. He has done an awful lot of work. He is also at the moment  
14:24:21 10 privy to information that has been given to him by the Defence team and is  
11 technically out there with a cloud over his head and hanging on a very thin  
12 thread to this team. The di ffi cul ties perhaps are very easy to imagine in  
13 terms of that particular person's position and what we do. If there is to  
14 be an investigation, and it is a speedy investigation, he, of course, may  
14:24:53 15 be cleared. And if he isn't for one reason or another, and we are placed  
16 in the position where we have to proceed and the Court says we cannot have  
17 him as an investigator, well, then, at that stage, we would undoubtedly  
18 have to place ourselves in a position of finding someone and finding  
19 someone quickly.

14:25:12 20 PRESIDING JUDGE: Very well. The purpose of this mention this  
21 afternoon is to see the way forward and to try and get the case progressed.  
22 I will ask the Prosecution if they have any comments to make before my  
23 Learned Brother and Sister and I discuss the situation.

24 MR METZGER: I'm very much obliged.

14:25:28 25 PRESIDING JUDGE: Ms Taylor.

26 MS TAYLOR: Thank you, Your Honour. The Prosecution wishes simply to  
27 say the Prosecution is ready to proceed as and when the Bench indicates.

28 [Tri al Chamber deliberates]

29 PRESIDING JUDGE: An adjournment was allowed to today for mention for

1 the sole reason that Defence counsel should have an a replacement for the  
2 investigator who is subject to an order of this Court. I accept the  
3 information from the Office of the Principal Defender. It appears someone  
4 is available. And this Trial Chamber is aware of case law referring to  
14:31:51 5 investigators in other jurisdictions. We consider that the proper concerns  
6 of counsel that have led to the present adjournment have now been  
7 accommodated and that their objections presented today would be properly  
8 cured by allowing further time for briefing and investigations.

9 We cannot prejudice the fair and expeditious hearing of all three  
14:32:19 10 accused before the Court. There are two other accused as well as Brima.  
11 We, therefore, will allow time. We are coming up to a recess. In fact,  
12 the Court is unable to sit on the 18th for reasons of repairs. And we feel  
13 that it would be proper and appropriate that time is given to investigate  
14 and that the matter will be stood over for further hearing until after the  
14:32:51 15 recess; that is, on the 5th of April 2005. Again, for reasons outside the  
16 control of the Court, we cannot sit on the 4th because of the repairs. We  
17 stress again the rights of all accused to a fair and expeditious hearing  
18 and stress to those present in Court that the trial must proceed on that  
19 date.

14:33:23 20 [Trial Chamber confers]

21 PRESIDING JUDGE: Counsel, before adjourning this afternoon, there  
22 are a matter of two motions which appears to us are now ready for  
23 consideration. And subject to -- no, not subject to anything. We intend  
24 to set them down on Wednesday morning, since the Court is not in hearing.  
14:33:48 25 That is the motion by Kanu and Brima to disclose Prosecution materials and  
26 other information pertaining to awards pertaining to Prosecution trial  
27 witnesses. That matter now appears to be ready. And the  
28 Prosecution -- excuse me, the Defence application, Brima, regarding  
29 disclosure in relation to Witness TF1-081. Both those motions are set for

1 hearing on Wednesday morning at 9.15.

2 If there's no other matters to be raised by counsel for the  
3 Prosecution or Defence, the Court will adjourn to 9.15 on Wednesday  
4 morning.

14:34:46 5 MR METZGER: Simply this, Your Honour: In relation to the  
6 investigation which I understand is obviously a matter now that is being  
7 carried out independently, it would be very helpful if we had some  
8 indication as to timetable. Should we seek that through the Registrar's  
9 Office, or does the Trial Chamber have any information in relation to that?

14:35:16 10 PRESIDING JUDGE: The Court has directed the Registrar, and it is now  
11 entirely within his jurisdiction. It would be improper for the Court to  
12 interfere with that.

13 MR METZGER: We're very much obliged.

14 PRESIDING JUDGE: Madam Court Attendant, please adjourn Court.

14:35:31 15 [Whereupon the hearing adjourned at 2.35 p.m., to be reconvened on  
16 Wednesday, the 16th day of March, 2005, at 9.15 a.m. ]

17

18

19

20

21

22

23

24

25

26

27

28

29