



Case No. SCSL-2004-16-T
THE PROSECUTOR OF
THE SPECIAL COURT
V.
ALEX TAMBA BRIMA
BRIMA BAZZY KAMARA
SANTIGIE BORBOR KANU

TUESDAY, 26 APRIL 2005
9.23 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:

Teresa Doherty, Presiding
Julia Sebutinde
Richard Lussick

For Chambers:

Mr Matthias Reuss

For the Registry:

Ms Maureen Edmonds

For the Prosecution:

Ms Lesley Taylor
Ms Melissa Pack
Ms Maja Dimitrova (Case Manager)

For the Principal Defender:

Ms Claire Carlton-Hanciles
Ms Haddijatou Kah-Jallow

For the accused Alex Tamba
Brima:

Mr Kevin Metzger
Ms Glenna Thompson
Mr Kojo Graham

For the accused Brima Bazzy
Kamara:

Mr Wilbert Harris

For the accused Santigie Borbor
Kan:

Ms Karlijn van der Voort

1 [TB260405A-JM]

2 Tuesday, 26 April 2005

3 [Open session]

4 [The accused entered court]

09:23:41 5 [Upon commencing at 9.23 a.m.]

6 PRESIDING JUDGE: Good morning. I realise we were to hand
7 down two decisions this morning, and I'm sure you're all waiting
8 in eager anticipation. We have them drafted but not quite
9 finalised. We will complete them as soon as is practicable. In
10 the meantime, we are not able to hand them down this morning.
11 We'll defer.

12 We will proceed on with evidence. Ms Taylor, prior to
13 adjournment, you indicate you had a witness ready to proceed.

14 MS TAYLOR: Yes, Your Honours. That witness is TF1-272.
09:24:29 15 This is the witness who is an international witness who we seek
16 to interpose. Ms Pack will lead that witness in evidence, and
17 she has an application to make in respect of that witness.

18 PRESIDING JUDGE: Thank you.

19 MR METZGER: May it please Your Honours and the Court,
09:24:50 20 there are some matters of great concern affecting the Defence
21 that we would like to bring to the Court's attention at this
22 point in time, with, of course, the Trial Chamber's leave before
23 the next witness is called. And I can start by saying that this
24 has, in fact, nothing to do with the matters that we have raised
09:25:21 25 and upon which we are expecting a decision.

26 The best way that we can put these concerns forward is
27 perhaps by predicating what I have to say by this: Those who
28 instruct us, that is to say, the lay clients, are very concerned
29 about events which have occurred over the weekend. When we had a

1 situation that we were concerned about, namely, on the 9th of
2 March 2005, we adopted the formal procedure of informing the
3 Principal Defender and making a formal complaint to the
4 Registrar, the Registry, about what we considered at the time
09:26:21 5 appeared to be an unwarranted assault on our then now-suspended
6 investigator Mr Brima Samura. I needn't remind this Trial
7 Chamber what happened when we came to Court the following day.

8 We have been in the process with the resources we have
9 available and our international investigator as it were
09:26:48 10 spearheading the collection of evidence or the identification of
11 potential witnesses for the Defence in the interim to the best of
12 our abilities.

13 On Saturday, the 23rd of April, someone who we have a
14 statement from now, but I don't propose to name in open court
09:27:21 15 because in due course we may have to apply for protected status
16 for that particular person, someone who had had to give his name,
17 as I understand it, and details when he attended the premises of
18 the Special Court and, indeed, may well have been a number of
19 persons who took the opportunity of visiting detainees, was

09:27:51 20 arrested by military police at 5.00 in the morning. He was kept
21 for some five hours, having been taken as we understand it to
22 Wilberforce barracks. His premises were searched. That, as this
23 Trial Chamber would understand, caused those of us who are
24 representing these detainees some very grave concerns.

09:28:20 25 Accordingly, once we had that information on Saturday, we had to
26 decide what we were going to do about it.
27 Having obtained a statement from this individual, we
28 decided that we would adopt our usual stance, which is to make a
29 formal inquiry about what had happened, and to see whether we

1 could be assisted in carrying out our duties using our best
2 endeavours to ensure fairness in these proceedings and to
3 defend -- represent our clients as best we could. So we were
4 considering writing the necessary letters to the relevant organs
09:29:13 5 of this Court.

6 There was, however, an outside dimension, and that is this:
7 Our information is that the military police attended upon this
8 potential witness's address having been informed - we were
9 told - by State House that they ought so to do. It appears to be
09:29:47 10 the case that military police were apparently looking for
11 ammunition or military uniforms. That appears to be at the
12 moment the reason that was given. This Trial Chamber will
13 understand that in the circumstances of this case, it causes us
14 very grave concern. But the matter doesn't end there.

09:30:17 15 On Sunday, the 24th of April, a clerk to one of our local
16 counsel suffered the same fate, except to say, in fairness, the
17 information we have at present is that he was not arrested, but
18 he was not free to go anywhere during the time that the military
19 police were at his premises to the extent that when he needed to
09:30:45 20 go to the convenience, he had to be accompanied. Again, premises
21 were searched. This morning, we have not seen Mr Manley-Spaine.
22 We tried contacting him yesterday. I am sure that he has not
23 found himself in this position, but we are very concerned indeed
24 because we are simply speaking -- seeking to assist the course of
09:31:14 25 justice. And counsel themselves are concerned, let alone our lay
26 clients who fear very greatly that they are not in a position
27 where they're having a fair trial; and further and above that -
28 well, perhaps all-inclusive - that there appear to be outside
29 agencies that are involved - and I use that term advisedly - with

1 the collection of evidence for the Defence in this case.

2 I raise those matters, I hope, as fairly and as bluntly as
3 I can, and I know that in due course my learned friend Mr Harris
4 has a few words to add on this matter. We are not at the moment
09:32:21 5 fully in a position where we are asking for this Court to do
6 anything particular. Because in our respective but humble
7 experiences, this is something that really does cause us very,
8 very grave concern.

9 PRESIDING JUDGE: Mr Metzger, before you sit down, there's
09:32:52 10 two matters I wish to clarify.

11 MR METZGER: Yes.

12 PRESIDING JUDGE: Have you anything within your immediate
13 knowledge that indicates that the actions on the part of the
14 military police are related to the trial? That's number one.

09:33:05 15 And I'm concerned to hear the words coming from you that the
16 accused feel they are not having a fair trial. In what way do
17 they feel they are not having a fair trial?

18 MR METZGER: Your Honour, if I can put it in this way: If
19 they believe that in amassing evidence on their behalf, there is
09:33:30 20 interference, and interference from the State, which I accept at
21 this point in time is really in terms of a general allegation
22 based on the rather serious circumstances that we have sought to
23 put before you. But it is clear in our respectful submission
24 that we have been interviewing potential witnesses.

09:34:04 25 I can say, for example, on the 15th of March of last year
26 when we didn't sit, all lead counsel, a representative of the
27 Principal Defender's office went to barracks at Makeni to speak
28 to military personnel, largely speaking, officers, because it was
29 our view that we were likely to get evidence from people who may

1 have known our lay clients served perhaps in the same platoons or
2 teams as they had. And obviously, it has been our intention,
3 bearing in mind that we have sought through, I believe it was
4 Trial Chamber I by the Knoops' team, cooperation from the
09:35:09 5 Ministry of Defence and other organisations in order to access
6 records and records that might indicate postings, for example,
7 where our clients may have been. It was our hope to be able, in
8 relation to the alibi portion of the -- the alibi defence that we
9 propose to put forward to be able to call evidence in support of
09:35:31 10 that. And it seemed to us that a good way of doing that would be
11 to get serving soldiers who may have been present at the time.

12 So it has been very clear that we were reaching out,
13 perhaps for the first time - again because we have not
14 necessarily had the logistical advantages that have been
09:36:01 15 available to others - and that has resulted in an increased
16 amount, we would say, of people in the armed forces contacting
17 our teams and coming forward so that witness statements could be
18 taken.

19 We cannot say clearly for certain that these matters are
09:36:19 20 connected. But the level of coincidence in our collective
21 experience is so high as to raise more than mere suspicion that
22 someone, somewhere or a body of people, for whatever reasons, are
23 trying to rattle persons who may want to offer themselves as
24 witnesses in this case.

09:36:47 25 Might I also add that that is compounded or that compounds
26 the outstanding issue in relation to the investigators and wives,
27 and that was why I predicated what I had to say, Your Honours, by
28 the fact that we made a complaint on the 9th of March. And on
29 the 10th of March, everything, including our complaint that had

1 gone to the Principal Defender's office and then been sent out to
2 the Registry, was in the hands of the Prosecution. We had not
3 even received a reply to our complaint. It is those matters that
4 we understand has affected the perception of our lay clients so
09:37:42 5 significantly. And perhaps in all the circumstances of the case,
6 one may place one's self, if one can, in their position,
7 understandably so. I don't know if I can assist the Trial
8 Chamber in any other material particular.

9 JUDGE LUSSICK: Yes, Mr Metzger. Certainly what you're
09:38:05 10 saying has the potential for very serious consequences. But can
11 I take it at the moment that you and the Defence team are
12 continuing your inquiries and that you're not asking for any
13 particular order at the moment, apart from the fact that we ought
14 to note our concern. But that depending what you do learn, you
09:38:34 15 perhaps might be making a formal application at some stage?

16 MR METZGER: We are, of course, inviting the Trial Chamber,
17 if it feels so able, to note its concern. But from my point of
18 view, we're asking for a little bit more than that at the moment.
19 Fearless though we may be, and investigations continue though
09:39:02 20 they may be, as I have already indicated, we note the absence of
21 one of our number. We are very concerned and would like to know
22 if there has been an escalation of events because we are now
23 aware of things that happened on Saturday and Sunday. We don't
24 know yet what has happened, and we would feel uneasy at this
09:39:27 25 point in time to continue straight into, as it were, the
26 continuation of a trial because -- how can I put it best?

27 Certainly speaking for myself, I cannot say that I am
28 sufficiently calm and in a state of mind to continue at this
29 particular point in time. And certainly, we hope that this

1 morning we will be able to contact the relevant parties, those
2 that we are still waiting to hear from, to hear what has happened
3 since and that may allay, to some small extent, the outstanding
4 fears or concerns, I should properly say, that we have.

09:40:27 5 [Trial Chamber confers]

6 PRESIDING JUDGE: Mr Metzger, before I invite the
7 Prosecution to comment on what you've said, if they can, we would
8 seek to clarify what redress, if any, you're seeking from the
9 Court at this particular minute.

09:42:33 10 MR METZGER: I think Mr Harris would like to --

11 PRESIDING JUDGE: You have indicated that. We have not
12 lost sight of that.

13 MR METZGER: Yes.

14 MR HARRIS: May it please you. The order the Defence would
09:42:52 15 refer you to is Rule 54 of the Rules, and it says this -- it's
16 very short, so I'll read it. It says: "At the request of either
17 party or on its motion, a Judge or a Trial Chamber may issue such
18 orders, summonses, subpoenas, warrants, and transfer orders as
19 may be necessary for the purpose of an investigation or the
09:43:18 20 preparation or conduct of the trial." The words "or conduct of
21 the trial," of course, is relevant to the parties which have been
22 raised.

23 Your Honour, there are -- these are very troubling moments,
24 if I may say so. I'm rather disturbed by the absence of my
09:43:44 25 learned friend who I've sought to find since yesterday. In view
26 of the difficulties which have arisen over the weekend, we are
27 not entirely sure how his interests and that of his client will
28 be properly protected today. I know that the -- there
29 was -- there is a member of their team present. But if I may say

1 so, she has no further information than we have. That concerns
2 me a great deal.

3 The next matter to which I simply wish to refer at this
4 very troubled moment in our very short life, of course, is the
09:44:48 5 matter which I have referred you to on the last occasion when we
6 last met. And I was quite properly, if I may say so -- may I
7 begin by saying that I was -- there was an inquiry whether I have
8 any sufficient respect for the Tribunal. May I just say that my
9 respect for this Tribunal is absolute and sincere.

09:45:22 10 And the Trial Judge quite properly asked me about a motion.
11 Indeed, we have a filed a motion about inviting you to review the
12 position, and that is dated the 11th of March of 2005, a copy of
13 which I indeed have in my bundle. And the final paragraph of
14 that motion does, in fact, invite you to reverse the decision
09:45:54 15 which you have made pursuant to Rule 77(C)(iii). ^

16 There is one other matter which has raised its head since
17 yesterday, and both teams have been trying to grapple with it
18 since yesterday with great urgency. And in fact, until rather
19 late in the evening yesterday, we were still attempting to take
09:46:30 20 charge of it. I am not certain whether we have. But I shall
21 just read you the substance of a document which I have been
22 instructed by those we represent to read to you. In fact, it
23 is -- it says this, dated the 24th of April 2005. And it is to
24 the Defence counsel, the AFRC.

09:47:03 25 And it says: "Dear Sir or Madam," this letter - in fact,
26 it's directed to the Court - this letter is not directed to be
27 disrespectful to the Court or the Judges. "We have been detained
28 unlawfully since the 10th day of March, the 29th day of May, and
29 the 17th day of September 2003 respectively and on trial starting

1 the 7th day of March 2005. To help us to go through the long
2 trial and being locked up is the presence of families in jail and
3 at court. In March 2005, the Court made a decision to deny us
4 our basic human rights and/or constitutional rights to see our
09:48:12 5 families and to have an investigator to help us build our
6 defence. We have tried to deal with the decision of the Court in
7 our own ways. We have reached a breaking point and cannot
8 continue any more with all our human rights being taken from us.

9 "We do see how we could continue without the love of our
09:48:50 10 families [sic]. We would rather not come and suffer twice over
11 by" -- I begin again. "We would rather not come and suffer twice
12 over by not seeing our families when we are in court with the
13 pressures that all that brings. We have spoken to our families
14 and told them we cannot go on any longer. It is because of that
09:49:26 15 that we are refusing to attend the court. Yours without
16 bitterness," and it is signed by the three defendants. And it is
17 copied to the Trial Judge, the Registrar, the Principal Defender,
18 the detainee families; filed.

19 May I say we grappled with the news yesterday, and the
09:49:56 20 defendants are here today. May I equally say that the
21 developments of the recent past was explained to them in detail.
22 They knew something of what had gone on on the weekend, and that
23 had a sobering effect on the one hand, but a rather disturbing
24 effect on the other upon them. Their body language to me,
09:50:32 25 speaking simply as an observer, seems to suggest that they would
26 succumb to the advice given by those who represent them today to
27 attend. I fear that I cannot hold out any great hope of not
28 having to return to the contents of the final paragraph of this
29 letter.

1 PRESIDING JUDGE: Mr Harris, you made certain comments,
2 submissions on Friday. And as a result of that, I made certain
3 inquiries. And I have been informed that there have been no
4 curtailment on the visits of the families of the three accused,
09:51:25 5 and those visits and the rights of visitation within the rules of
6 the detention have been exercised regularly. However, in the
7 light of what you said, I will now direct those in charge of the
8 detention centre to furnish this Chamber with a list of those who
9 have visited the three accused. I say that perhaps prematurely
09:51:49 10 having been unable to consult with my learned sister and brother,
11 but I am concerned. There appears to be a difference of opinion.

12 MR HARRIS: Your Honour, I think the substance of their
13 complaint is not the visits or the opportunity to visit by the
14 families at the detention facility. The force of their
09:52:08 15 complaint, as I understand it, is their absence when they look
16 behind me. That brings us back, I hope, to the observation which
17 was so ably made on the last occasion about whether we lodged a
18 motion for you to return to the interim order you made of March.

19 [Trial Chamber confers]

09:52:55 20 JUDGE SEBUTINDE: Mr Harris, I've listened to both Defence
21 counsel carefully, and I've tried to see if there is a nexus
22 between the events that Mr Metzger described having transpired
23 yesterday and the day before and the proceedings and conduct of
24 this trial. I still haven't seen it, and I'm hoping that between
09:53:17 25 yourselves you will help this Trial Chamber to establish such a
26 nexus, if indeed there is one. That is one question.

27 The other question is would you, Mr Harris, be in a
28 position to enlighten the Chamber as to the reasons for the
29 absence of Mr Manley-Spaine? Because if you're not able to do

1 that, because I think we will have to call on the Defence office,
2 if they're able to, to address the Chamber if they're aware of
3 the reasons for Mr Manley-Spaine's absence. Because this Chamber
4 is not prepared to speculate or to join anyone in speculation.

09:54:02 5 But what we would really find helpful is facts given to us. So
6 if you could maybe restrict your submissions to the Chamber on
7 the question I've asked previously, namely, the nexus between the
8 two incidents described by Mr Metzger earlier and the proceedings
9 and trial in this Court.

09:54:28 10 MR HARRIS: I think so far as Manley-Spaine is concerned,
11 my learned friend Mr Metzger would return to it. May I deal with
12 the first question you asked.

13 The potential witness who, in fact, has made a statement to
14 us was a soldier, no longer soldier some time now. He was
09:55:02 15 approached to make a statement. He visited the facility.
16 Thereafter --

17 JUDGE SEBUTINDE: What facility?

18 MR HARRIS: He visited the Special Court in that he went to
19 the prison to see and intended to see the detainees or defendants
09:55:29 20 in the case. Thereafter, he was visited by the military police
21 at 5.00 a.m. in the morning. It beggars belief that there is no
22 nexus between his presence here and our contact with them and
23 their visit. It is right to say that the substance of his
24 statement amounts to, and I only refer to one part of it, there
09:55:57 25 was reference to him and his contact with the defendants and the
26 reasons why that was necessary in his case. As I understand it,
27 he declined to give any information as to the reasons why. But
28 his detention of up to five hours and then his release, there
29 could be no other safe conclusion than it is linked with the

1 trial -- this trial.

2 PRESIDING JUDGE: Thank you, Mr Harris.

3 JUDGE SEBUTINDE: I really wanted, yes, to call upon the
4 representative of the Office of the Public Defender to address us
09:56:51 5 just on the issue of the absence of either senior counsel or
6 junior counsel for that Defence.

7 MS CARLTON-HANCILES: I left court a few minutes to go and
8 try to get Mr Manley-Spaine on the phone because we have been
9 trying to get him since yesterday, and even this morning before
09:57:12 10 coming to court. Fortunately, I got him. He told me on the
11 phone that indeed his clerk's residence was searched and that he
12 is traumatised by the whole event. And he feels personally
13 responsible. And that, in fact, if there is need for a medical,
14 he will come along with one. He says he has instructed his clerk

09:57:35 15 to do an affidavit today, and he says that the residence was
16 searched by the Sierra Leone Military Police. And he also says
17 that it's traumatic for the clerk also because he is a civilian.
18 He's not a member of any armed force and that they were searching
19 his residence for arms and ammunition. And that now he feels
09:58:00 20 personally responsible because the clerk as well as his family
21 now feels exposed that for the first time -- throughout the whole
22 period of the war, no military police had ever been to their
23 house. And for the first time, there has been the presence and
24 in the early hours of the morning. And as such, they do not know
09:58:23 25 whether their movements are being watched, et cetera, et cetera,
26 and that yesterday he had to go over to talk to the whole house.
27 But that today he has seen a doctor, but he will come tomorrow.

28 That is what he just informed me when I left court. And I
29 am back to inform Your Honours.

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

2 Mr Metzger, just pause, please. I would like to see if the
3 Prosecution has anything at all to comment before coming back to
4 you.

09:58:53 5 MR METZGER: It was just that I wanted to answer the
6 specific question raised by Her Honour Judge Sebutinde. I know
7 that a matter has been raised in relation to Mr Manley-Spaine
8 about the issue of nexus as to the events that have occurred.
9 But I'm content to deal with that after the Prosecution have
09:59:09 10 spoken, if that is the way in which the Trial Chamber --

11 PRESIDING JUDGE: I think Mr Harris has ably addressed on
12 that.

13 Can the Prosecution be of any assistance or have any
14 knowledge of this?

09:59:26 15 MS TAYLOR: Your Honour, I had absolutely no knowledge of
16 this until the matters were raised in court this morning. I am,
17 therefore, in absolutely no position to assist Your Honours. I'm
18 not clear even that there is an application before the Court, so
19 I'm not in a position to even respond to that.

09:59:43 20 PRESIDING JUDGE: The Prosecution has, in fact, restated
21 the question I originally asked and what my learned brother
22 asked, what are you seeking from the Trial Chamber in the
23 immediate -- in the immediate?

24 MR METZGER: Immediately, we are asking for you to note our
10:00:13 25 concerns; and secondly, to stand this matter down for the moment.
26 We will draft a formal Rule 54 motion. And to deal with the
27 question of nexus and how it affects our ability to proceed with
28 this trial, I would like to at this point in time to explain my
29 particular position.

1 I am a Sierra Leonean. I am proud to be Sierra Leonean. I
2 have family in this country. If things like this are happening,
3 it's getting closer all the time. I will not bend. I will
4 defend. I will do my job in this court. But if I tell you that
10:00:54 5 I do not have fears for people who are close to me because of
6 what it seems that is happening, this seems to me to be some sort
7 of warning. I don't know where from, why, and how it's
8 happening. But it needs to stop. Because it is affecting our
9 ability to do this job. We're supposed to be having a trial here
10:01:15 10 that is not being interfered with. It is a major concern.

11 PRESIDING JUDGE: We will retire to consider this situation
12 we now find ourselves in. And the application -- "stand down,"
13 "stand down" is a very open-ended matter, Mr Metzger. Could you
14 be a little more precise.

10:01:54 15 MR METZGER: We will hope to have -- to file a motion by
16 Thursday.

17 PRESIDING JUDGE: Are you seeking to adjourn the Court to
18 Thursday? Is that what you're saying?

19 MR METZGER: We are indeed.

10:02:11 20 [Trial Chamber confers]

21 JUDGE LUSSICK: I don't know if you're in any position to
22 answer that application, Ms Taylor.

23 MS TAYLOR: As to the merits or otherwise for the basis of
24 the application, I'm in absolutely no position to comment. The
10:02:29 25 only concern that I do raise is that the Prosecution has an
26 international witness currently in the jurisdiction. That
27 witness is to give evidence in this trial and also in the trial
28 that is currently proceeding before Trial Chamber I. And it's a
29 question of trying to find time in a way that accords with

1 everyone's rights to hear the evidence of that witness. That is
2 the only concern that immediately springs to mind for the
3 Prosecution. Beyond that, I really do not feel that the
4 Prosecution is in a position to comment.

10:03:01 5 PRESIDING JUDGE: We'll adjourn briefly and consider this.

6 [Break taken at 10.03 a.m.]

7 [TB260405B - CR]

8 [Upon resuming at 11.02 a.m.]

9 PRESIDING JUDGE: The Court has considered and I now read
11:05:01 10 the ruling of the Court. We have considered the allegations
11 brought before us by Defence counsel and their concerns are
12 noted. This Court is constantly conscious of its duties. We
13 will stand the matter down to allow Defence counsel to consider
14 their position. We do so, aware that the Prosecution has brought
11:05:25 15 an international witness. The trial will proceed on Thursday, 28
16 April. The court now stands adjourned until 28 April.

17 [Whereupon the hearing adjourned at
18 11.04 a.m. to be reconvened on Thursday,
19 28th day of April 2005, at 9.15 a.m.]

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