



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

THURSDAY, 28 JULY 2005
9.20 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:

Teresa Doherty, Presiding
Julia Sebutinde
Richard Lussick

For Chambers:

Mr Simon Meisenberg

For the Registry:

Mr Geoff Walker

For the Prosecution:

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

For the Principal Defender:

No appearances

For the accused Alex Tamba
Brima:

Mr Kojo Graham

For the accused Brima Bazy
Kamara:

Mr Mohamed Pa-Momo Fofanah
Mr Ibrahim Foday Mansaray

For the accused Santigie Borbor
Kanu:

Mr Geert-Jan Alexander Knoops

1 [AFRC28JUL05A-SGH]
2 Thursday 28 July 2005
3 [Open Session]
4 [The accused Kanu was present]
09:18:29 5 [The accused Brima and Kamara not present]
6 [Upon commencing at 9.20 a.m.]
7 PRESIDING JUDGE: I notice two things: We have two of the
8 accused not present in court. That is the first thing I noticed.
9 And the second thing I notice is that the screen has been
09:25:16 10 removed. Mr Fofanah, good morning.
11 MR FOFANAH: Good morning, Your Honour.
12 PRESIDING JUDGE: Mr Fofanah, you are on your feet.
13 MR FOFANAH: Yes. Good morning, Your Honour. I was just
14 going to apologise for the absence of my client Mr Ibrahim Bazzay
09:25:34 15 Kamara. He just called this morning to say that he is unwell and
16 will not be coming to court.
17 PRESIDING JUDGE: Thank you for that advice and we will
18 note it in accordance with Rule 60. Mr Graham, your client.
19 MR GRAHAM: Yes, good morning, Your Honour, I think the
09:25:48 20 situation appears to be the same with my client. He was not in
21 yesterday and I think he is still unwell as we speak.
22 PRESIDING JUDGE: Thank you for that. Again We will note
23 that under Rule 60. Ms Taylor.
24 MS TAYLOR: Your Honour, in so far as the screen has been
09:26:04 25 removed, the next witness to be called is TF1-167. This witness
26 was originally categorised as a category C witness which, of
27 course, includes voice distortion and the screen. However, this
28 witness has already given evidence before Trial Chamber I in the
29 RUF proceedings and on 18th October last year there was an oral

1 change ordered by Trial Chamber I to the protective measures
2 relating to this witness. There is no formal order. It appears
3 in the transcript, Your Honours, which has been filed in this
4 Court and Your Honour page number is 11355, and the protective
09:26:50 5 measures were changed in so far as the learned Presiding Judge
6 ordered the removal of the screen and the removal of the voice
7 distortion, but all other protective measures remained in place.

8 PRESIDING JUDGE: Ms Taylor, if you would just have a seat
9 whilst we read this order, please.

09:27:46 10 It would appear from the ruling, Ms Taylor, that the
11 witness applied because the learned judge said the application of
12 the witness to testify openly.

13 MS TAYLOR: Yes, that is correct. It was an application by
14 the witness himself.

09:28:03 15 PRESIDING JUDGE: And are you indicating to us that he is
16 still of that --

17 MS TAYLOR: That is so. Yes, Your Honour.

18 PRESIDING JUDGE: Okay.

19 [Trial Chamber conferred]

09:30:13 20 MS TAYLOR: Your Honours, forgive me for interrupting your
21 court deliberations. If it is of assistance, before this trial
22 commenced Your Honours issued an order for us to file the
23 protective measures as issued by Trial Chamber I in respect of
24 the witnesses. The annexe that we filed actually noted that the
09:30:32 25 protective measures for this witness were those as varied by
26 Trial Chamber I on 18th October. Therefore, the annexe of your
27 own decision applying protective measures has already applied the
28 varied protective measure, that is the one without the screen and
29 voice distortion.

1 PRESIDING JUDGE: Thank you for that clarification, it is
2 most helpful.

3 JUDGE SEBUTINDE: Ms Taylor, I was just wondering, do we
4 then keep the pseudonym?

09:30:52 5 MS TAYLOR: Yes, we keep the pseudonym.

6 JUDGE SEBUTINDE: We keep the pseudonym.

7 MS TAYLOR: All other protective measures are in place.

8 JUDGE SEBUTINDE: Okay.

9 PRESIDING JUDGE: For the purposes of record, we note that
09:33:26 10 the order of Trial Chamber number I on 18th October 2004 on the
11 application by the witness himself for variation of protected
12 measures originally granted to him. We note that the varied
13 order is now incorporated into an order of this Court. The
14 matter shall now proceed without the screen or voice distortion,
09:33:48 15 but all other protective measures are to remain.

16 MS TAYLOR: As Your Honour pleases.

17 Your Honour, yesterday, before we rose, I indicated that
18 there was a preliminary issue that I wished to raise and it
19 concerns the calling of this witness, although this witness is
09:34:07 20 ready to be called. If I may take two steps backwards to explain
21 the issue.

22 Pursuant to the order of Your Honours, the Prosecution
23 filed a core witness list of witnesses to be called in this
24 trial. That list comprised 63 witnesses. We have now done 48 of
09:34:28 25 those witnesses, although that comes with a qualification, I
26 should perhaps say 47 or 47 and a half, depending on what happens
27 to the evidence of TF1-157.

28 Your Honours will have noticed that on various occasions it
29 has been difficult to have witnesses present, but we have done

1 our best to bring the witnesses to Freetown.

2 I have indicated in discussions with my learned friends
3 that after a review of the evidence so far in the trial and also
4 for some other reasons as like illness and some latent

09:35:03 5 unwillingness of some witnesses to give evidence, the Prosecution
6 will be dropping a number of witnesses from that core list prior
7 to the end of this session, part of the recess, the Prosecution
8 will file a renewed core witness list before the Court. In

9 saying that I will also note that that may not be the end of the
09:35:22 10 matter and, without meaning to be presumptuous at all, there are
11 a number of decisions pending before the Chamber that might well
12 affect the number of witnesses that the Prosecution calls or we
13 might even have to add witnesses to the list depending on the
14 decisions we are waiting on from Your Honours.

09:35:38 15 Be that as it may, my learned friends and I have had some
16 discussions so that everyone knows where the Prosecution is
17 travelling and we are obviously getting towards the end of the
18 Prosecution case.

19 This witness that we are about to call is what I might call
09:35:57 20 a large witness, in the sense that it is anticipated that his
21 evidence will take some time. And I am in no means suggesting
22 that some evidence is more important than others, that, of
23 course, is a matter only for Your Honours. What I can say is
24 that some witnesses require more attention by counsel than do
09:36:17 25 other witnesses.

26 The best estimation of the Prosecution is that we will be
27 about three days in-chief with this witness. In discussions with
28 my learned friends, they believe that if we are three days
29 in-chief with this witness, this witness will not be completed

1 prior to the recess and we have had some discussions about that.
2 All parties share some concern that this witness might be split
3 over five weeks and the reasons for that are obvious.

4 Because we have travelled so far through the witness list
09:36:57 5 and there will be a number of witnesses who now will not be
6 called, if this witness is not called today, the Prosecution is
7 not in a position to call any other witness prior to the recess.
8 We have other witnesses ready to go from September, but it is not
9 possible to call them now. Part of that is because they are
09:37:16 10 again larger witnesses and there are three international
11 witnesses that have been lined up to come in September; the
12 Prosecution has done its level best to judge the speed of the
13 trial, sometimes we go very quickly sometimes we do not. So I
14 raise this issue because it is a concern shared by the
09:37:33 15 Prosecution and the Defence that if we call this witness today,
16 the witness will be split over five weeks. We have some concerns
17 about that. I do not make an application that we do not call the
18 witness, the witness is here and ready to go, but we jointly
19 share some concerns. We raise those concerns for consideration
09:37:52 20 by Your Honours and we are in Your Honours' hands as to whether
21 we proceed with this witness today or we do not, bearing in mind
22 that if we do not, then the Prosecution is not in a position to
23 call any other witness until September.

24 JUDGE LUSSICK: Well, firstly, Ms Taylor, you gave us some
09:38:17 25 figures of 48 witnesses.

26 MS TAYLOR: Yes, Your Honour.

27 JUDGE LUSSICK: That is excluding TF1-157.

28 MS TAYLOR: That is including TF1-157, it is 47 if we do
29 not.

1 JUDGE LUSSICK: Right. I have got a different number here.

2 MS TAYLOR: Right.

3 JUDGE LUSSICK: I have got 50, including Witness TF1-157

4 and 49 excluding that witness.

09:38:43 5 MS TAYLOR: Right.

6 JUDGE LUSSICK: So one of us is wrong. Perhaps you can go

7 over your figures.

8 MS TAYLOR: I will certainly do so. It may be that the

9 list I looked at has not been updated from the last day. Perhaps

09:38:54 10 it is as simple as that, Your Honour.

11 JUDGE LUSSICK: Well, the only other thing is that before

12 this matter proceeds any further I take it from what you said

13 that quite obviously the Prosecution's point of view is that the

14 preferable way to proceed is not to split this witness's

09:39:14 15 evidence, but to hear it in toto.

16 MS TAYLOR: Yes, the Prosecution's view is that that is the

17 preferable thing to do. Having said that, we didn't want to be

18 in a position of saying to Your Honours that we do not have a

19 witness available when we do.

09:39:28 20 JUDGE SEBUTINDE: Ms Taylor, you alluded to the fact that

21 this witness's evidence may be split over five weeks. Why five

22 weeks?

23 MS TAYLOR: Your Honours, the official recess, during which

24 no filings may be made, is three weeks and Your Honours have

09:39:47 25 issued a scheduling order saying there is an additional two weeks

26 after that period of time. If we concluded this witness's

27 evidence on 4th August -- sorry, 5th August, which is the last

28 sitting day of this session, the first day that Your Honours have

29 indicated that we will sit again is 12th September. That is a

1 period of five weeks.

2 JUDGE SEBUTINDE: So, basically what choice do we have?
3 What choice do we have? The choices are we either hear this
4 witness today --

09:40:13 5 MS TAYLOR: Yes.

6 JUDGE SEBUTINDE: -- or we adjourn.

7 MS TAYLOR: Yes.

8 JUDGE SEBUTINDE: That is what you are saying.

9 MS TAYLOR: They are the choices.

09:40:27 10 PRESIDING JUDGE: Counsel for the Defence have heard -- it
11 is not an application, it is a submission by counsel for the
12 Prosecution. I understand from Ms Taylor that there have been
13 discussions between counsel. Is there anything, observations or
14 additional comments, that counsel for the Defence wish to make
09:40:41 15 concerning this situation?

16 MR KNOOPS: Thank you, Your Honour, for giving us this
17 opportunity. Indeed, prior to this session, we had a small
18 meeting with the Prosecution and during which meeting the same
19 concerns were shared by the Defence in that in our humble
09:41:09 20 estimation Witness 167, when we look to the underlying evidence
21 and statements, is probably more huge than Witness 334. Your
22 Honours may have noticed how much time Witness 334 took,
23 especially from the perspective of the Defence, but my humble
24 submission, even the examination-in-chief may, depending on the
09:41:43 25 evidence given by the witness, take perhaps even longer than
26 three days.

27 So it is the preference of the Defence, we cannot do more
28 than just give our preference, to have this witness not split
29 into two sessions.

1 When it concerns the time to be allocated to
2 cross-examination of this witness it is, of course, very
3 difficult for us to give an estimation in time, but I would say
4 also, considering our experience with Witness 334, that it may
09:42:20 5 take perhaps four or five days at least and this is of course
6 under quite some reservations.

7 PRESIDING JUDGE: Is that four or five days in total or per
8 counsel?

9 MR KNOOPS: Cross-examination in total.

09:42:41 10 PRESIDING JUDGE: In total?

11 MR KNOOPS: Yes. And of course we realise also from the
12 position of the Defence that it is for Your Honours -- well,
13 there are actually two options either earlier recess or continue
14 with the examination-in-chief.

09:42:59 15 From our perspective, Your Honours, the Defence would be
16 favourable to stopping the trial at this moment in terms of not
17 splitting Witness 167. As we are here now we could use the time
18 as Defence to further prepare our Defence list. We are now
19 heavily involved in compiling our Defence list. And from our

09:43:33 20 humble opinion we could use the time now to further prepare our
21 Defence case and be ready with our Defence list in October. So
22 from our perspective, it will not be a waste of time to conclude
23 the session today, but, on the other hand, we are also ready to
24 continue with the examination-in-chief in terms of being able to
09:44:01 25 follow the examination-in-chief of Witness 167. But in principle
26 we do support the preference given by the Prosecution to ask Your
27 Honours to consider the start of the examination-in-chief of
28 Witness 167 after the recess.

29 I will just briefly look to my colleagues so see if they

1 would like to add something. This is the position of the
2 Defence, Your Honours.

3 PRESIDING JUDGE: Thank you, Mr Knoops, we will consider
4 this. We will consider this off the Bench and as soon as we have
09:44:56 5 reached a decision it will be communicated to you. So we will
6 adjourn temporarily and Mr Court Attendant will advise you as
7 soon as we have reached a conclusion. Mr Court Attendant, please
8 adjourn court temporarily.

9 [Trial Chamber deliberates]

09:45:36 10 [Break taken at 10.40 a.m.]

11 [On resuming at 10.34 a.m.]

12 PRESIDING JUDGE: The ruling of the Court will be read by
13 my learned colleague Justice Lussick.

14 [Ruling]

10:38:11 15 JUDGE LUSSICK: We are told by the Prosecution that the
16 next witness, TF1-167, is an important witness whose
17 evidence-in-chief will be lengthy, at least three days, possibly
18 longer. With cross-examination taken into account the
19 probability is that the testimony of this witness will be
10:38:36 20 interrupted by the five week court recess.

21 The Prosecution states that this would be undesirable
22 without making any application, the Prosecution expresses its
23 preference that the witness's evidence be heard without such an
24 interruption.

10:39:00 25 The complication then arises that if the witness were not
26 called until after the Court recess, the Prosecution does not
27 have any other witnesses available to be called before the Court
28 recess begins.

29 The Defence confirms that having a five week interruption

1 in the testimony of this witness is also undesirable from the
2 point of view of the Defence and it supports the Prosecution's
3 preference as stated.

4 The Defence also makes the observation that should the case
10:39:39 5 be adjourned today it can make good use of the extra time
6 available to prepare the Defence case. In this regard we note
7 that last week the Defence applied unsuccessfully to the Court to
8 allow them an extra day per week away from court for that very
9 purpose.

10:40:03 10 We are most reluctant to call an adjournment at this stage
11 when there are seven possible hearing days left before the Court
12 recess. It is regrettable that the Prosecution has no other
13 witnesses immediately available to give evidence at this stage,
14 but we accept the Prosecution's explanation as to how this came
10:40:24 15 about.

16 We agree with the reasoning of both the Prosecution and the
17 Defence that it is not desirable to have a five week hiatus in
18 the testimony of the Witness TF1-167 and it is, therefore, our
19 view that it would be in the interests of justice to adjourn the
10:40:56 20 Court at this stage to reconvene after the recess as scheduled.

21 Leave is granted to either party to reply in respect of any
22 matter that may arise before the Court recess.

23 PRESIDING JUDGE: If there are no other matters, I will ask
24 the Court attendant to adjourn court.

10:41:24 25 MS TAYLOR: No, Your Honour.

26 MR GRAHAM: Except to say, Your Honours, we are grateful
27 for your decision to grant us this break. We are most grateful.
28 Thank you.

29 PRESIDING JUDGE: Thank you, Mr Graham. Mr Court Attendant

1 please adjourn court.

2 [Whereupon the hearing adjourned at 10.38 a.m.,
3 to be reconvened on Monday, the 12th day of
4 September 2005, at 9.15 a.m.]

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