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

WEDNESDAY, 26 APRIL 2006
9.15 A.M.
PRE-DEFENCE CONFERENCE

TRIAL CHAMBER II

Before the Judges:	Richard Lussick, Presiding Julia Sebutinde Teresa Doherty
For Chambers:	Mr Simon Meisenberg Ms Carolyn Buff
For the Registry:	Ms Maureen Edmonds
For the Prosecution:	Mr Karim Agha Mr James Hodes Mr Charles Hardaway Ms Martine Durocher
For the Principal Defender:	Ms Claire Carlton-Hanciles
For the accused Alex Tamba Brima:	Mr Kojo Graham Ms Glenna Thompson
For the accused Brima Bazzy Kamara:	Mr Andrew William Kodwo Daniels
For the accused Santigie Borbor Kanu:	Mr Ajibola E Manly-Spain Ms Karlijn van der Voort (legal assistant)

[AFRC26APR06A-RK]
Wednesday, 26 April 2006
[Pre-Defence Conference]
[Open session]
[The accused present]
[Upon commencing at 9.15 a.m.]

PRESIDING JUDGE: Good morning. We have considered the written documents that you have filed in relation to your contentions as to what should be disclosed and what shouldn't. We'll start first with the Prosecution. Anything you wanted to add to what you have already said in that document?

MR AGHA: Yes, Your Honour, there is actually one particular matter and that relates to the question of protective measures.

Now, yesterday afternoon, the Defence have filed a motion for protective measures in respect of all of their witnesses and my learned friends inform me that there is an annexe yet to follow. Now, as Your Honours have noted in our notice of the disclosure which we would hope to receive, we have indicated what we believe to be reasonable time scales of seven days. Now, if the Court would be minded to grant that seven-day time limit, we, ourselves, would need to make a reply to the protective measures motion, which we would hope to do today or tomorrow. But in return, the Defence would probably itself make reply to that before the Bench actually made a ruling.

So our submission is that so that we are in a position to know the identities of the witnesses, that this Bench may be minded perhaps to grant an interim order that the identities of all the witnesses be disclosed to the Prosecution, subject to a

final ruling on the actual written motions, so that the Prosecution, may in the meantime, carry out its investigations so that it may be in a position to cross-examine the witnesses and test the evidence of the Defence, and without unnecessary
09:23:08 delaying the trial. Because as we indicated in our motion, although this honourable Bench felt the date we suggested of the start of the trial, the 5th of June, was perhaps a little longer than the Bench had hoped for, it was in fact, as the Prosecution submitted at the status conference, in line with the period of
09:23:34 the 30 days which the Prosecution believed would be necessary in order to adequately prepare for its testing of the evidence.

So ultimately to enable us to keep on track in terms of the timing, we would request that, should this Bench be minded to grant the 7 days, we would also have the ability to know the
09:24:01 names and identities of the defence witnesses so that we may carry out our investigations and not further delay the matter.

We have also, on a separate issue, in our notice requested that this Honourable Chamber grant orders for a few matters which are not expressly covered in 73ter. These orders, however, we
09:24:31 submit are closely related to what the Court has expressly the power to grant under 73ter and indeed, has the power to grant under Rule 54. And these are such matters, as we've indicated in our notice, as the list of call up until the recess, because if, let us say, we get a list of 30 witnesses but we do not know the
09:25:01 order, that may very well impinge upon our investigative time. We have also requested written witness statements of the Defence, and the reason why we've done that is because in this instance, the Chamber is expressly empowered to grant the disclosure of those witness statements.

The Prosecution submits that Rule 73 is, at least in part, there to enable the Trial Chamber to enable the defence part of the trial to run smoothly, expeditiously and in a focussed manner. And the submission of the Prosecution is that should these defence statements be disclosed, we would not perhaps face a delay of disputes over summaries; it would save the Defence time in that they could just give us the statement and carry on the investigation, because a large part of their submissions is shortage of time; it would also enable perhaps the Prosecution to agree to certain facts in those statements and also indicate areas which are not really relevant to the issue at hand; it would also, importantly, enable the Chamber to assess under Rule 73(D) whether or not the witness list was excessive, based on too many witnesses producing facts.

09:26:38 So all the reasons and all the orders which we seek are set out in our notice and this honourable Trial Chamber will see that they boil down today, at today's hearing, to three fundamental issues: That is, the timing of disclosure which we indicated was seven days; the fact that this also ties in with protective

09:27:06 measures because we would at least need to know the identity; and finally what may be disclosed under Rule 73ter.

Now, as I have mentioned there are a few areas which are not strictly covered by the rule but we believe are closely related to it, and indeed the Court has the power to grant them

09:27:32 under Rule 54. I have already mentioned earlier the order of call, but we would also consider which would be highly important and I believe something which could be dealt with quite quickly, certainly within seven days, whether the Accused themselves will testify. Because as they would need to testify first, that would

have an impact on the call of witness. Now the rule itself indicates that a list of witnesses should be given, but the Prosecution has requested that these be broken down into common witnesses or experts, so that in that way it would help actually
09:28:12 structure the Defence case. And that to be fair to all the accused, the common witnesses ought to come after the accused, should they choose to testify, because in that case, we would not like to see one of the accused unfairly prejudiced because he chose not to have a witness who he would like to be called as
09:28:36 common, but isn't called as such and therefore he has the ability to cross-examine when in fact he should only have the ability to lead. These matters we consider are very interrelated to the orders which can be specifically passed under Rule 73.

We would also further add that in order to expedite the
09:29:01 trial, it would be exceedingly helpful if we could also have copies of the exhibits, once they are in the possession of the Defence. The reason being, is we can then, hopefully quite expeditiously, test the question of their authenticity, as provided in the rule. Because obviously if we can't see them, we
09:29:26 cannot look into the question of authenticity.

So essentially the submissions of the Prosecution are based on those three foundations which is: The consideration of time so that we can have the trial commence on 5th June; so that the Prosecution, as well as the Defence, in terms of equality of arms
09:29:50 has adequate time to prepare to test the evidence of the Defence; and that sufficient orders are made at this conference, either under Rule 73ter or under Rule 54, to enable the trial to move smoothly along without undue hindrance until the recess. The Prosecution would request that the Court grant orders in respect

of the matters and time frame set out in its notice which are indeed the orders which it seeks today. Thank you, Your Honours.

PRESIDING JUDGE: Thank you.

Who is speaking for the Defence?

09:30:36 MS THOMPSON: Good morning, Your Honours. Your Honours, first of all may I just say we rely on the reply to the orders sought, the joint reply to the orders sought which was filed yesterday and which I believe Your Honours have. May I also say that we oppose what my learned friend has just asked for, which

09:30:59 is a disclosure at this stage of the names of all the witnesses. In my respectful submission that defeats the whole purpose of our motion for protective measures as made under Rule 69 of the rules, and in any event Rule 69 makes provision for sufficient time before a witness is called.

09:31:25 We object to the seven days that is being asked for in any event. As my learned friend also mentioned, witness statements, that we should disclose the full witness statement as opposed to summaries. Your Honour, we did go into some detail in our joint reply so I need not belabour that point. If Your Honours are

09:31:59 minded to look at section 2.5, paragraph 17 through 20, that goes into some detail as to why, in our respectful submission, we should actually disclose summaries, adequate summaries, and we have relied upon the decision in Trial Chamber I in the CDF case. And Your Honours in our respectful submission there is nothing

09:32:30 different here which would indicate that this Trial Chamber should depart from Trial Chamber I.

My learned friend has made his submissions on the platform that it would be the -- in the best interests of the defence case and the smooth running of defence case. I thank my learned

friend for thinking about the Defence, but I would say that we do have the interests of our clients at heart, and we do not intend to delay this process any more than he wishes to see it delayed. We have a date of 5th of June and that is what we are working towards.

09:33:12

We are aware of that time and that time is of the essence and we are do not wish to delay, and in fact we did give an explanation as to why the annexes weren't filed yesterday to the protective measures to my learned friends. They were well aware of what happened yesterday, which is regretted. Your Honours, if you could just bear with me so I can ask my learned friends if there is anything more I need to add.

09:33:28

[Defence counsel conferred]

MS THOMPSON: Your Honour, I think that is -- I said we rely on what we filed yesterday. Most of this I'm sure can be worked out between our team and theirs. I don't see any reason why we shouldn't be able to work some of these details out. As I said, we rely on what we filed yesterday. Unless Your Honours wish me to add anything else, I think that's ...

09:33:56

PRESIDING JUDGE: Just one thing, Ms Thompson, when do you think those annexes will be filed?

09:34:12

MS THOMPSON: They should be filed -- we're still looking for the key. They're in a locked cupboard and for some reason over the recess the key got misplaced. We're still looking for the key, but we will have to break open the cupboard and so we're looking at the latest much later today or first thing tomorrow morning, but we're hoping to be able to do it by today, by the end of today.

09:34:30

PRESIDING JUDGE: I take it you put forward the defence

position on these issues. Is there anything else anybody else from the defence team would add?

MR GRAHAM: Good morning, Your Honours. Just by way of an addition to what my learned friend said, Your Honour, we are working very hard to get our witness statements, but then of course there are the practical issues where we're going to have serious problems with the disclosure of the names and addresses of the some of the witnesses now.

So just for purposes of emphasis I think that the protective measures, the motion that has been filed will provide a proper framework for some of these issues to be resolved. On the other side, I think that we can also work together with our learned friends on the other side to resolve a lot of issues. But I think we have a common ground on the need for this trial to start and the issue of expediency. So I believe inasmuch as we are here before you today and some orders are going to be made, I think we should also get together as well and try and fine tune some of these things so we can get a better working arrangement and move on as we all intend to. Thank you, Your Honours.

PRESIDING JUDGE: Thank you, Mr Graham.

MR AGHA: Yes, Your Honour, if I may just respond very briefly. On the issue of protective measures, perhaps I wasn't making myself entirely clear regarding the interim measure which we were perhaps seeking today is that -- There has been no mention in the protective measures motion that there's any fear that the Prosecution would interfere with witnesses or disclose the information or misuse it in any way regarding the witnesses. So the interim order we would be seeking is that until such time as a final decision is made on the protective measures motion

that the names be disclosed to the Prosecution, and addresses et cetera, under the basis that these will be confidential to the Prosecution and used only for investigative purposes and not released to the public.

09:37:00 In this way we can ensure that we can carry on with our investigations and not prejudice the witnesses, otherwise once the -- as Your Lordships can see, the annexures need to be filed hopefully today, we'll need to reply and then a reply from the Defence and a decision from yourselves will consume time. 09:37:20 Whereas what the Prosecution is suggesting and, indeed, submitting is that we can be trusted to at least keep those names and addresses confidential within ourselves and not be made public. So that at least we can carry on with our investigations.

09:37:39 The other area we would just like to reply to briefly is on witness statements and their production as opposed to summaries. Now, as Your Honours are aware, this Trial Chamber is not bound by any rulings of the other Trial Chamber. And, in fact, the other Trial Chamber has not excluded the ability, or indeed the 09:38:06 power to order the Defence to disclose witness statements of the defence witnesses.

Indeed, it has, constant in these orders, reiterated that it may be minded to do so. And in fact, in that particular case, it has led to some element of delay and difficulties on the part 09:38:28 of the Prosecution vis-a-vis obtaining sufficient information to allow us to investigate and fully test defence evidence. So again, I would stress the importance of that issue for the Prosecution. We would -- obviously we will work closely with the defence team and come to as many agreements and arrangements as

we can. But we would actually prefer to see that all matters which are decided today are actually given in written order form with date deadlines, so that then they can be revisited at the next hearing, just in case the Prosecution and my learned friends
09:39:13 are not able to reach a decision, or are not clear on what actually has been decided at various transcripts.

Now this is a reply of the Prosecution on this particular issue and before signing off, I would like to hand you over to my learned friend, Mr James Hodes, who would like to address the
09:39:36 Court very briefly -- or later. Thank you.

MS THOMPSON: Your Honours, whilst I know there is no right of reply, I seek leave to mention something which my learned friend mentioned, in reply to what my learned friend mentioned.

PRESIDING JUDGE: Ms Thompson, if we were running the trial
09:40:13 itself, certainly, there would be no right of reply, but this is a pre-Defence conference and I would like to thrash out as many matters now between the parties as we can. So we won't stand on formalities.

MS THOMPSON: Thank you, Your Honour. Your Honour,
09:40:23 firstly, might I just say that it is true that we have not said anything in the motion about mistrust of the Prosecution and we would make that allegation. We have no evidence of that no more than the Prosecution had any evidence of potential Defence malfeasance when we were served with unredacted statements. We
09:40:44 were not served originally with statements of all the information about each witness and, in my respectful submission, the same should go for the Defence.

Secondly -- sorry, Your Honour. On this point again, might I just say perhaps -- I don't know, this might become important

depending on the orders that Your Honours make. Some of the statements we have so far, whilst statements which help the Defence are anonymous in that witnesses have refused to give identification details of themselves for fear of reprisals, so it
09:41:40 is something that we have to work on. And as I say, this whole process is, in fact, a work in progress. So if my learned friend is looking for identification details, he may not have all of them, but, in my respectful submission, he should not have any of them at this stage, in trying -- in seeking to make sure that
09:42:07 this process is moved on expeditiously. We also have a duty to ensure that there is fairness to the Defence and fairness also to those Defence witnesses who, if I may say so, have spoken to us under great fear and under a lot of threat or fear of threats and that should never be overlooked, Your Honours, in my respectful
09:42:37 submission. So whilst we may want to move this case forward as quickly as possible, and my learned friends -- I appreciate his position that if these orders are made now and disclosures are made now, it will abridge the time and will shorten the time and prevent delays from happening, we must not overlook the interests
09:43:00 of accused persons and in particular in this instance those who have spoken to the defence, especially in confidence.

PRESIDING JUDGE: Yes, thank you. Unless there is anything more and it looks as though there is something more.

MR AGHA: We would just like to reiterate our position is
09:43:23 that the Prosecution does fully appreciate the need to protect the witnesses statements and identities and in no way would we want to put the witnesses in danger, however, we do believe that in doing it in the manner which we have suggested they would still have sufficient protection until such time as the full

order is made and also enable us through sufficient identifying features to actually allow us to carry on and try and do our investigations and test the evidence. That is all that I would like to add on that issue.

09:44:07 PRESIDING JUDGE: All right. We're going to adjourn now. We will adjourn to 10.15 and we'll come back with some orders.

[Break taken at 9.40 a.m.]

[AFRC26APR06B-RK]

[Upon resuming at 10.37 a.m.]

10:42:34 PRESIDING JUDGE: We are aware that various issues are subject to ongoing discussions between the parties and no doubt will be capable of being resolved on that basis. However, the following are the formal orders which will now be put in place.

Needless to say there will be a written order available

10:43:12 very soon after we rise today.

[Ruling]

Trial Chamber II of the Special Court for Sierra Leone composed of Justice Richard Lussick, presiding, Justice Teresa Doherty and Justice Julia Sebutinde.

10:43:31 Noting the Prosecution's notice of orders to be sought pursuant to Rule 73ter filed on 6 April 2006 and the Defence written response thereto filed on 26 April 2006.

Having heard of the oral submissions of the parties, considering Articles 17(4)(b) and (c) of the Statute and Rule

10:43:58 73ter of the Rules of Procedure and Evidence, the Trial Chamber orders:

1. That the Defence shall file the following materials on or before 10 May 2006:

A. A list of witnesses which each Defence team

intends to call, including:

1, the order in which the Defence teams intend to call the witnesses.

2, the name and or nickname, date of birth, if known, and occupation of each witness.

3, the language spoken by the witness.

4, a summary of the facts on which each witness will testify.

5, the points in the indictment as to which each witness will testify.

6, the estimated length of time required for each witness.

7, an indication of whether the witness will testify in person or pursuant to Rule 92bis.

8, an indication of whether each of the accused intends to testify pursuant to Rule 85(C).

9, an indication of which witnesses are common witnesses.

B. A list of expert witnesses with an indication of when their report will be disclosed to the Prosecution.

C. A list of exhibits the Defence intends to tender, stating where possible, whether or not the Prosecutor had any objections as to authenticity.

2. That a status conference shall be held on 17 May 2006 in order to consider the compliance by the Defence with the above orders.

3. That the Defence case, as ordered at the earlier status conference on 4 April 2006, will open on 5 June 2006,

subject to any further order by the Trial Chamber.

Those are the orders that are now in place. If there is nothing further, we will adjourn.

MR HODES: Your Honour, I just rise to let the Court know that I will be leaving the Court. This will be my last appearance before Your Honours, and it has been a pleasure working both with you and with Defence counsel.

10:47:01

PRESIDING JUDGE: Thank you, Mr Hodes. I am sure I speak on behalf of the whole Court when I say that we appreciate the contribution that you have made to these proceedings, and indeed, it has been a pleasure to have you appear before us.

10:47:18

We will adjourn.

[Whereupon the hearing adjourned at 10.44 a.m.]