



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

THURSDAY, 25 MAY 2006
11.06 A.M.
STATUS CONFERENCE

TRIAL CHAMBER II

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| Before the Judges: | Richard Lussick, Presiding Julia Sebutinde Teresa Doherty |
| For Chambers: | Mr Simon Meisenberg Ms Carolyn Buff |
| For the Registry: | Mr Geoff Walker |
| For the Prosecution: | Mr Karim Agha Mr Charles Hardaway Ms Martine Durocher Ms Maja Dimitrova (Case Manager) |
| For the Principal Defender: | NO APPEARANCE |
| For the accused Alex Tamba Brima: | Mr Kojoo Graham Ms Glenna Thompson |
| For the accused Brima Bazy Kamara: | Mr Mohamed Pa-Momo Fofanah |
| For the accused Santigie Borbor Kanuu: | Mr Ajibola E Manly-Spain Ms Karlijn van der Voort (legal assistant) |

1 [AFRC25MAY06A - CR]

2 Thursday, 25 May 2006

3 [Open session]

4 [Status Conference]

5 [The accused Kanu present]

6 [The accused Brima and Kamara not present]

7 [Upon commencing at 11.06 a.m.]

8 PRESIDING JUDGE: Good morning. We note that the accused
9 are not in Court. Somebody has told me that they are on their
11:08:17 10 way. All right, all, this is a scheduled status conference. The
11 need for it arose out of the Defence not complying with certain
12 orders we made on 17 May. I notice that there has been a filing
13 by the Defence or two filings since then. Is there anything that
14 the Prosecution wanted to raise?

11:08:17 15 MR AGHA: Yes, Your Honours, we would actually like to
16 revert back to the orders which were made at the last status
17 conference and just address the Court on a couple of the issues
18 which arose there.

19 Firstly, I'm pleased to report that we have had numerous
11:08:19 20 meetings and correspondence with the Defence counsel and we are
21 working on getting summaries which are more sufficient from the
22 prospect of the Prosecution. So, progress is being made there.
23 I'm also pleased to report that we've now had the disclosure of
24 the first 17 defence witnesses in order of call, giving
11:08:19 25 identifying data as per the Court's order. So, albeit a little
26 bit belated, we now have that in hand, so that matter has been
27 cleared.

28 The only issue I wish to raise with this Court regarding
29 the identifying data is that pursuant to this Court's order, the

1 Defence are only obliged to provide us with date of birth and, I
2 believe, occupation. Now, bearing in mind our 21-day rolling
3 disclosure obligation, which isn't always met on time, we would
4 request this Court humbly if the Defence could also be ordered to
11:08:20 5 provide us with the village and chiefdom in which all of their
6 witnesses reside. We had approached the Defence for this to try
7 and see if we could come to some arrangement. Unfortunately, we
8 were unsuccessful, so we would seek an order in that regard this
9 morning.

11:08:42 10 Now we come to the more problematic issue, which is the
11 summary of the first accused. Now, as this Trial Chamber is
12 aware. We are entitled to 21 days disclosure. Unfortunately,
13 this has been breached twice and we only received, I believe at
14 10.20 this morning, what the Defence regard as a summary for the
11:09:10 15 first accused. Even if the summary was indeed sufficient or can
16 be taken as a summary, we only have 11 days in which to prepare
17 for our cross-examination of the first accused. Now, the first
18 accused is clearly going to be a pivotal witness in this case, so
19 we would really need the time in which this learned Court granted
11:09:30 20 us to prepare for his cross-examination. That, however, is a
21 separate point because we've only received this summary of the
22 first accused's evidence and having just glanced through it, but
23 without any great detail, it is the submission of the Prosecution
24 that it is still in breach of this learned Court's order to
11:10:00 25 provide a summary, because the learned Court had ordered that a
26 summary of the facts on which each witness will testify.

27 Now, if one were just to briefly look at the summary we
28 have been provided with, the Prosecution says it is indeed not a
29 summary of facts on which the accused will testify. Rather, it

1 is a pleading of denial. A summary, in the submission of the
2 Prosecution, as with the other summaries which were being
3 provided by the learned Defence counsel ought to speak about the
4 evidence which the first accused intends to lead, to give the
11:10:47 5 Prosecution some opportunity to explore that evidence. Indeed,
6 that has been the case in the other Defence summaries, albeit as
7 the Prosecution would submit, inadequate.

8 Now, if we are to look at annexure A which forms the filing
9 which was filed this morning, and if the learned judges have a
11:11:09 10 copy of that by way of example, if we run through a few parts of
11 it, you may get the gist of what I'm suggesting. Firstly, it
12 says that his biographic data in the indictment, as well as his
13 rank in the Sierra Leone Army is wrongly stated; that he was not
14 a member of the group which staged the coup and ousted the
11:11:35 15 government of President Kabbah; that he was not in direct command
16 of AFRC/RUF forces in Kono District; that he was not in direct
17 command of AFRC/RUF forces which conducted armed operations
18 throughout north, east and central areas of Sierra Leone; that he
19 was not in command, et cetera.

11:11:59 20 Then, if you turn to the second page: They did not at any
21 time act in concert with Charles Ghankay Taylor; that he did not
22 share a common plan; that he did not participate or assist a
23 joint criminal enterprise; that by his acts or omissions he's not
24 individually criminally responsible pursuant to various articles
11:12:15 25 of the Statute; that he bears no command responsibility; that he
26 did not engage in acts designed to terrorise the civilian
27 population.

28 Now, it is the Prosecution's submission that that summary
29 takes us no further forward regarding the evidence which the

1 first accused is going to lead. It is merely a blanket denial of
2 the allegations raised against him in the indictment. Indeed, in
3 the Defence pre-trial brief, the first accused alluded to the
4 defence of alibi, but in this blanket denial, we have no mention
11:12:54 5 of any alibi. In short, we don't know from this summary what his
6 case is, what evidence he's going to lead. So our submission is
7 that is not a sufficient summary at all. It is certainly
8 insufficient or inadequate, bearing in mind these three pages are
9 to consume 40 hours of testimony.

11:13:18 10 What the Prosecution would suggest, if this Learned Trial
11 Chamber is minded to go down this route, is: The Prosecution
12 does not believe it will have an adequate summary, or a summary
13 of any kind to allow it to cross-examine the witness by 5 June
14 when the trial will start. Now, we're already down to 11 days,
11:13:50 15 so even if we get something better or something which can be
16 called a summary, we'll be down to three or four days. We would
17 then be forced into a position to seek an adjournment, which is
18 not what the Prosecution would like to do at all. What we would
19 submit is that the way forward may be for this honourable Court
11:14:15 20 simply to pass an order that the first accused may give his
21 evidence, if he so chooses, without giving a summary and that his
22 evidence then be adjourned 14 days after it's completed or 21,
23 indeed, would be better pursuant to the order of this Court so
24 that the Prosecution can then actually see what his evidence is
11:14:42 25 and prepare for cross-examination based on that evidence. That
26 is the submission of the Prosecution with respect to this
27 summary. Perhaps it's a way out in which we can actually
28 commence the trial on time without to-ing and fro-ing on the
29 issues of summaries as the clock ticks down. Thank you,

1 Your Honours.

2 PRESIDING JUDGE: Anybody from the Defence? Before I call
3 on the Defence, I notice only one of the accused is here. Do
4 counsel have reason to believe the other two won't be coming, or
11:15:26 5 they simply haven't been produced from the detention facility?

6 MS THOMPSON: Your Honour, my information was that they
7 weren't coming. I was surprised to hear someone was coming. Our
8 information was certainly that our client isn't coming and I
9 think Mr Kamara is not coming as well.

11:15:45 10 PRESIDING JUDGE: I see. So the other two have simply
11 waived their right to attend?

12 MS THOMPSON: Yes, Your Honour.

13 PRESIDING JUDGE: All right. We'll proceed with the status
14 conference. Yes, Ms Thompson.

11:15:55 15 MS THOMPSON: May I, first of all, on behalf of all three
16 teams apologise to the Court and my learned friends from the
17 other side for the deadlines that we missed. I hope that the
18 Court will accept that this was in no way -- that the Defence was
19 not doing this deliberately or acting in disrespect to this
11:16:22 20 Court, and in disregard to the orders made by this Court. We

21 have now found, as the Court -- we do owe the Court some
22 explanation as to why those delays occurred. Firstly, regarding
23 the witness summaries which were not filed on time, I'm sure my
24 learned friends on the other side know that sometimes we have to
11:16:52 25 change witness orders and we had some difficulty which we became
26 aware about after the last Court hearing. This was communicated
27 to my learned friends on the other side at a meeting and there
28 was agreement that it would be filed on a particular date, which
29 was stated in the letter filed by my learned friends.

1 Unfortunately, this could not be done and perhaps on our side, we
2 should have communicated this to the other side in time. We
3 didn't, and for that I apologise, but at the same time, I think
4 my learned friends could easily have picked up a phone and said,
11:17:29 5 "You were said you were going to do this, why didn't you do it?"
6 I don't think it necessitated a motion, in actual fact. Be that
7 as it may, we have to apologise to the Court.

8 The second issue, which my learned friend has already been
9 alluded to by my learned friend which was the subject of his
11:17:52 10 application today, is Mr Brima's summary. That summary was ready
11 to be filed on 19 May, as had been ordered by this Court.

12 Indeed, I personally drafted the summary based on what I know and
13 what Mr Brima had told me since the beginning of this trial.

14 That summary was left for Mr Brima to look at and then left to be
11:18:18 15 filed when I left the Court complex. Unfortunately, there then
16 arose a misunderstanding as to the client's concept of what he
17 needed to disclose, which, without breaching any counsel-client
18 privilege went as far as whether Mr Brima would be testifying
19 before this Court at all.

11:18:43 20 We knew that time was against us, and that was why lead
21 counsel filed what he filed on Friday we knew there was some more
22 work to be done in order for us to get a summary. But whatever
23 else, it is some sort of summary, in any event, to this Court.

24 This is what was filed this morning. We are now at a point where
11:19:12 25 we are getting some written instructions which we will use to at
26 least lead him in evidence. I think I can safely say to the
27 Court that we are making good progress on that front.

28 Specifically what my learned friend has said today, it is
29 true it is a denial of the indictment. I still maintain that it

1 is a summary, at least as best a summary we could get at this
2 point. From the cross-examination - I know my learned friend
3 wasn't here, but I'm sure he's read the transcripts - it is quite
4 obvious what Mr Brima's case and his defence has been throughout.
11:20:04 5 It is for my learned friend, it is for them to put their case to
6 him when he comes to cross-examine. I'm not sure there is
7 anything new that this Court will learn, because there is no
8 strange defences coming out. It has been put to each and every
9 witness that is giving evidence for the Prosecution.

11:20:26 10 As far as the suggestion is concerned, I leave that
11 entirely for the Court to decide. We make no observations on
12 that, save to say that we continue to work with Mr Brima. It is
13 long; it is difficult at times. We -- at the risk of flogging a
14 dead horse, this has been laboured before this Court. The
11:20:50 15 Defence works under enormous constraints and has to balance
16 putting together an effective, good case, as well as judicious
17 management of this case with the lay clients. We even have to
18 act in all capacities, counsel, secretary, administrator,
19 whatever, we don't have the same resources and back-up like my
11:21:12 20 learned friends do and from time to time, we do miss deadlines.

21 On this occasion that wasn't the case but, all of that factored
22 in, we just crave the Court's indulgence and ask the Prosecution
23 that when these things happen, we have established a good line of
24 communication and, speaking for myself, Your Honours, I wouldn't
11:21:31 25 like to see what we had at the beginning of this trial when
26 relations between both sides were pretty strained and we were
27 urged time and time again by the Bench to have a working
28 relationship. I can say towards the end that we had such a
29 relationship, to the extent it became social. I would not like

1 to see us go down the road where we were last year. So I say it
2 openly for my learned friends on the other side: If there's
3 anything that we're breaching, we are only a phone call away.
4 You can speak to us, but the strident motions and accusing us of
11:22:03 5 playing cat and mouse with the Court, I think it was a bit harsh.

6 Reading it again, it accuses or brands us as professionals
7 of being time-wasters, stallers, if one might even go so far
8 sometimes even being dishonest, because we agree to do something
9 and then it doesn't happen. But it doesn't happen because we are
11:22:25 10 disregarding or disrespecting the Court. It happens because
11 certain things over which we have who control just dictates these
12 things. Perhaps on this occasion I can hold my hand up and say
13 we could have communicated better, maybe earlier to the other
14 side, and say this couldn't be done by this day; we agree what
11:22:42 15 couldn't be done by this day. For that I apologise. I hope that
16 we can find a way forward from here.

17 As I say again, the issue with Mr Brima's summary, we have
18 filed what we have at the moment. We continue to work with him.
19 We know we have to because we are aware of the deadline and we
11:22:59 20 know that on 5 June, come what may, this case has to start.
21 There is no going beyond that.

22 As far as the Prosecution's suggestion is concerned, I
23 leave that entirely to the Court's discretion. I make no
24 comments or observations about that. Unless Your Honours wish me
11:23:16 25 to say anything further, that's all I wish to say.

26 PRESIDING JUDGE: Thank you, Ms Thompson.

27 JUDGE DOHERTY: Ms Thompson, were you speaking on behalf of
28 all counsel?

29 MS THOMPSON: I was indeed, your Honour, yes.

1 JUDGE DOHERTY: According to my notes, counsel for the
2 Prosecution asked for identification of the village and chiefdom
3 of your witnesses; do you wish to respond to that submission?

4 MS THOMPSON: I forgot to mention that, if you just bear
11:23:49 5 with me for one minute. Your Honour, I think this had been
6 visited before because we had, if my memory serves me right, a
7 request had been made for the addresses of each witness to us,
8 and we had refused that. Some of these villages have four
9 houses. If I tell you the village or the chiefdom where this
11:24:25 10 person is, I might as well just give you the address. We had
11 actually opposed that before. Unless we are bound by the Court,
12 we don't see any reason why we should give out the chiefdom or
13 the village of our witnesses.

14 As I say, in Sierra Leone, and I'm sure in most parts of
11:24:45 15 rural Africa, there is no address as in for so-and-so street, X
16 village, chiefdom. If you say, "I am Pa wherever" or "Mr Sesay
17 from whatever chiefdom", you go in there, you will find him. But
18 there is no address system, as such. If we were to start giving
19 out such data, then we might as well just give out all the
11:25:11 20 details which we had said we were not going to give out. We have
21 no reason to say why we should change our minds now. Because I
22 think that we had been asked as to whether they could approach
23 our witnesses and we had said no.

24 PRESIDING JUDGE: Is it necessary to make a Court order for
11:25:37 25 something like that? Isn't that something that could be resolved
26 by discussion between the parties? Perhaps the Prosecution could
27 identify to you exactly what aspect is hindering them from
28 gaining access to or identifying this person and you could take
29 it from there.

1 MS THOMPSON: Yes, Your Honour, I see no reason why. As I
2 say, my view is that we should actually have some meetings, at
3 least discuss these issues. I don't know where they're going
4 with that but at least if they let us know, then we can come to
11:26:11 5 some common understanding of what it is they want and what we can
6 provide.

7 PRESIDING JUDGE: Thank you, Ms Thompson. I take it that
8 since you were speaking for the whole of the Defence, no other
9 counsel in the Defence team wishes to say anything; is that
11:26:30 10 correct?

11 MS THOMPSON: I believe not, although I think
12 Mr Manly-Spain wants me to say something else. Yes, Your Honour,
13 just lastly on the point about the identifying data which would
14 include chiefdom, I point my learned friends to the order of this
11:27:26 15 Court on 9 May, which I think perhaps says it all. It has to be
16 with our consent or with the leave of the Court. But as
17 Your Honours have asked us to do, and I think we can make some
18 progress there, we will have a meeting on that.

19 PRESIDING JUDGE: Thank you.

11:28:03 20 JUDGE DOHERTY: Mr Agha, you've heard counsel for the
21 Defence reply to your request for an order identifying a village
22 and chiefdom. You haven't told the Court why you require that
23 information. Do you wish to elaborate further, in view of the
24 fact that you are seeking an order?

11:28:25 25 MR AGHA: Yes, Your Honour. We are asking for that
26 information from the Prosecution so it is easier for the
27 investigators for the Prosecution to actually find out and
28 discover where the witness lives, so that they can then instruct
29 their investigators to go to the correct region, so that they can

1 make their inquiries. For example, a witness may be giving
2 evidence about events in Kono, but he may, since those events,
3 since they occurred a number of years ago, now have moved to
4 Freetown. So we can send investigators into the field on the
11:29:01 5 assumption that he's giving evidence about Kono, therefore, he
6 must be in that area when, in fact, he's not.

7 So we are trying to maximise our resources, bearing in mind
8 we have only this 21-day period, which we often don't even have.
9 I would say we are trying to work with the Defence and, as my
11:29:24 10 learned friend mentioned, perhaps we are filing many motions but,
11 on the other hand - I just use this as an example - there is a
12 Court order which requests us, before we can approach Defence
13 witnesses, to either seek the permission of the Defence, or the
14 leave of the Court.

11:29:44 15 So, rather than coming straight to the Court, we seek leave
16 from the Defence, their permission, and that was refused carte
17 blanche without explanation. So in such situations, although we
18 are trying to work with the Defence, we have no option but to
19 file these motions, or otherwise the matter really doesn't go
11:30:03 20 forward. That is why I would reiterate in my submission that
21 really, there has to be a summary of Brima's evidence and to
22 suggest that, through cross-examination we know what his case is,
23 I think would be perhaps giving the Prosecution too much credit,
24 especially bearing in mind that, as I mentioned earlier, in his
11:30:27 25 Defence brief, he mentions alibi, yet in his statement of
26 evidence, he doesn't mention alibi. So really, we either need a
27 proper summary, which I don't believe we are going to have, not
28 on the failings or fault of my learned friends, it's they have
29 difficulties obviously getting instructions and communicating

1 with their client. We feel the only way in which we can get this
2 trial started on time, and make meaningful progress is to do away
3 with the summary, let the first accused come, say what he wants
4 to say and then grant an adjournment.

11:31:07 5 JUDGE DOHERTY: Thank you, Mr Agha. I am clear on that
6 point. My question was directed purely on this aspect of
7 identifying witnesses but I note what you say, what you are
8 trying to ascertain or determine is the region in which the
9 witness's evidence will relate to?

11:31:22 10 MR AGHA: Yes, and also --

11 PRESIDING JUDGE: Thank you for the clarification.

12 MR AGHA: -- and also where we may find him.

13 PRESIDING JUDGE: I presume there is no further reply to
14 anything raised by Defence counsel?

11:31:48 15 MS THOMPSON: Your Honours, may I just say something
16 regarding the tail end of my learned friend's statement. When he
17 said, "Where we may find him" is my understanding correct --
18 because I think he's asking the Court for an order that we reveal
19 the addresses or at least the village where these people live.

11:32:08 20 Is he then asking the Court for an order also that they may
21 approach these witnesses, because then if he says, "Where we may
22 find him", then the only reason why you would want to find
23 someone is so that you can go and speak to him. So then he would
24 be asking for another order. I'm not clear on what he's asking.

11:32:27 25 I'm clear on the first one, but when he says, "Where we may find
26 him", I'm beginning to think there is a second order there.

27 PRESIDING JUDGE: We are now approaching a stage where the
28 Court is being used as a conduit pipe so that one side talks to
29 the Court and the Court passes it on to the other side.

1 Something Ms Thompson said earlier, which I thought was very
2 pertinent, in the dark early days of this trial, we had
3 Prosecution and Defence who simply would not talk to each other
4 whatsoever, even on the smallest detail. It was left to the
11:33:04 5 Court to decide questions raised on motion rather than brought up
6 by way of discussion between the parties. We certainly wouldn't
7 like to see a regression to those days.

8 Quite obviously, I think some of the matters raised here
9 this morning are capable of being resolved by discussion rather
11:33:32 10 than Court order. A Court order requires a party to do precisely
11 what the order says and nothing more, whereas Prosecution
12 requirements might not be encapsulated in such an order and could
13 be communicated to the Defence who, perhaps, may be able to
14 provide the necessary information. So that is something that the
11:33:58 15 parties ought to consider.

16 we will add until 12.00. That is half an hour. We will
17 come back with some orders. Thank you.

18 [Break taken at 11.30 a.m.]

19 [Upon resuming at 12.13 p.m.]

12:16:44 20 PRESIDING JUDGE: A summary of the accused Brima's evidence
21 was filed this morning. We note it was late, but we note the
22 explanation given by the Defence, and we do not think that the
23 Prosecution was in any way prejudiced thereby.

24 Counsel for the Prosecution considers the summary is
12:17:09 25 inadequate, but we do not. We do not consider that an accused
26 testifying in his own defence must be treated in the same way as
27 any other witness and should be compelled to supply a summary of
28 his proposed testimony. Such an accused is not giving evidence
29 on behalf of another person who has been charged with criminal

1 offences. Rather, he is exercising his right to answer the
2 charges against himself by giving evidence in his own defence.
3 We regard such a right as unconditional. It is not dependent on
4 whether he has first supplied a summary of his proposed testimony
12:17:48 5 to the Prosecution. In fact, had counsel for the accused Brima
6 disputed at the status conference on 17 May 2006 that the accused
7 was obliged to produce a summary of his proposed evidence before
8 he would be allowed to testify, we would not have made the order
9 that we made on that date. That order was an order made with
12:18:14 10 consent of the parties.

11 Having regard to the fact that the Prosecution has led
12 evidence of 14 counts against the accused and has heard the
13 cross-examination of 59 Prosecution witnesses, we have difficulty
14 accepting that, in the absence of a more detailed summary, the
12:18:35 15 Prosecution would have serious difficulty preparing for
16 cross-examination. Nevertheless, should there be some aspect of
17 Brima's evidence that should be said to take the Prosecution by
18 surprise, then we will consider an application at the appropriate
19 time.

12:18:54 20 As to the Prosecution application for an order that the
21 Defence provide the Prosecution with the name of the village or
22 chiefdom where the Defence witnesses presently reside, we are not
23 convinced this is a reasonable request in light of our order of
24 9 May. We, accordingly, decline to make such an order.

12:19:20 25 This case will be adjourned to 5 June 2006 for the opening
26 of the Defence case.

27 [Whereupon the status conference adjourned at
28 12.16 p.m.]
29