



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

THURSDAY, 21 SEPTEMBER 2006
3. 32 P. M
STATUS CONFERENCE

TRIAL CHAMBER II

Before the Judges:

Ri chard Lussi ck, Presi di ng
Teresa Doherty

For Chambers:

Ms Carolyn Buff

For the Registry:

Ms Advera Kamuzora

For the Prosecution:

Mr Karim Agha
Mr Charles Hardaway
Mr Michael Brazao (Case Manager)

For the accused Alex Tamba
Brima:

Ms Glenna Thompson
Mr Ibrahim Foday Mansaray (legal assistant)

For the accused Brima Bazy
Kamara:

Mr Mohamed Pa-Momo Fofanah

For the accused Santigie Borbor
Kanu:

Mr Geert-Jan Alexander Knoops
Mr Silas Cherkera
Ms Anne-Marie Verwi el (legal assistant)

1 [AFRC21SEP06A - CR]

2 Thursday, 21 September 2006

3 [The accused present]

4 [Status Conference]

15:30:53 5 [Open session]

6 [Upon commencing at 3.32 p.m.]

7 PRESIDING JUDGE: Before we start the status conference,
8 you will note that Justice Sebutinde is not here. We have made a
9 formal order which has been filed in the Registry pursuant to
10 Rule 16(A), to the effect that we've decided it's in the
11 interests of justice to continue with the trial in her absence
12 for a period not more than five working days. She will, in fact,
13 be back well before then. She is on official Court business in
14 The Hague.

15:33:37 10
15 Now, we've -- we've been served by the Defence with a
16 document, during the break. I think, this being a status
17 conference, we'll call on the Defence to enlarge upon that
18 document, if they wish to. I think the Defence knows the
19 document I'm talking about; it's a list of common witnesses, TRC
15:34:03 15
20 witnesses, expert witnesses and Kanu individual Defence
21 witnesses. Did you want to say anything further on that
22 document, or should we take it as it stands?

23 MR KNOOPS: Your Honour, if the Court pleases, I have a
24 short addition to make for the Court with respect to the list
15:34:28 20
25 provided to the Chamber. As announced before the break, I had a
26 meeting with one of the witnesses on the list, that's TRC-03, and
27 you will find in brackets that his appearance was not confirmed
28 at the time of the filing of this document. The meeting actually
29 led to confirmation of TRC-03, and we suggest that that witness,

1 TRC-03, could be interviewed, indeed, on the 9th of October.

2 With respect to TRC-01 --

3 PRESIDING JUDGE: Well, when you say "interviewed," that's
4 a matter for you, but when he comes to Court is the important
15:35:48 5 thing.

6 MR KNOOPS: Yes, you're right, Your Honour, I'm sorry;
7 examined in Court. Yes, sorry. With respect to TRC-01, it's now
8 being scheduled, that hearing in Court, for the 10th of October.
9 I just received information from his secretary that his testimony
15:36:13 10 in Court could also be delivered on the 16th of October, being at
11 not 100 per cent sure whether TRC-01 is back from his journey on
12 the 10th, but we're waiting for confirmation. But at least he
13 has confirmed to testify in Court. So, I would like to make a
14 small reservation as to -- as to the exact date, either the 10th
15:36:40 15 or the 16th.

16 And with respect to the individual witnesses, you'll find
17 at the bottom of the formula of the document provided to the
18 Chamber, it's for the Kanu Defence team, still not a final list,
19 we are still reviewing the list, so it could be very likely be
15:37:11 20 possible that the list could be reduced till five or even ten
21 witnesses, but that's not sure. This is the situation as it
22 stands from the Kanu Defence team.

23 With respect to the suggested dates for examination in
24 court of the experts, I would like to stress that these are
15:37:42 25 suggested dates, and I was informed by my learned friend for the
26 Prosecution that we might suggest the examination of the military
27 experts to be scheduled a week later, but perhaps my learned
28 friend from the Prosecution may elaborate on that suggestion.
29 But all the witnesses, expert witnesses on the list, have

1 confirmed their availability during that period and, also, their
2 willingness to appear in Court.

3 These are my additional submissions, Your Honour, for the
4 Kanu Defence team, in regard of the list provided to the Chamber.

15:38:30 5 PRESIDING JUDGE: Yes, thank you, Mr Knoops. Well, as far
6 as the Brima Defence and the Kamara Defence is concerned, I refer
7 you to the document you filed on 21st of August 2006, which is a
8 joint Defence disclosure of individual witnesses for the first
9 and second accused, do I take it that the details in that
15:39:01 10 document still stand, or are there going to be a review of those
11 witness lists?

12 MS THOMPSON: Your Honour, on behalf of the Brima Defence
13 team, there is already a review. In fact, there was one since
14 yesterday. The individual witness -- the witness list for the
15:39:18 15 Brima Defence will be cut short. I cannot, at this stage, give
16 an exact figure but I can say that it will be cut short, and it
17 will be certainly less than half of those which we have
18 submitted. That is an ongoing process at the moment, as the case
19 progresses. That's what we have been doing but it will
15:39:44 20 certainly -- we'll probably finish it by next week.

21 What I also should say is that those summaries which have
22 not yet been disclosed, because I think there's still some
23 outstanding summaries for Brima individual witnesses, will be
24 disclosed, certainly by Monday. They are being done, as I speak,
15:40:05 25 in the office. That's as far as the individual witnesses are
26 concerned.

27 Also, I should add that on the dropped common witnesses,
28 one more was actually added this morning. It's not there. I
29 think it's one of the -- I can't remember if it is DAB something,

1 I can't remember the exact pseudonym, Your Honour -- but we will
2 inform the Court in due course, but one more certainly was added
3 to that list.

15:40:38 4 JUDGE DOHERTY: Ms Thompson, I noted your joint response,
5 filed yesterday, to the Court's directive under Rule 73 *ter*.
6 Does what you're telling us now, plus what Mr Knoops said -- is
7 telling us now -- does that supersede the document you filed
8 yesterday?

15:40:56 9 MS THOMPSON: It does, Your Honour. Because that document
10 contains a longer list of witnesses, and those witnesses have
11 since been reviewed, names as well as content of their statement,
12 some of them are merely repetitive and perhaps serve no further
13 evidential value. And, therefore, that's one of the reasons why
14 they will be cut.

15:41:16 15 JUDGE DOHERTY: So I will not put any great emphasis on
16 that reply?

17 MS THOMPSON: No, Your Honour, not yet.

18 PRESIDING JUDGE: All right. Did you want to add anything,
19 Mr Fofanah?

15:42:09 20 MR FOFANAH: Well, just in line with what my colleague for
21 the Brima team has said, we filed a joint response and, out of a
22 list of 39 individual witnesses, we've already dropped 21 and we
23 are still looking at the 18 to see how to trim down the 18,
24 further down, so that we have just a limited number of witnesses
15:42:37 25 that will fit the Court's timing for an expeditious trial.

26 As to the common witnesses, I think the position remains
27 the same for both the first and third accused as well as the
28 second; that's all I have to say.

29 PRESIDING JUDGE: Thank you, Mr Fofanah. I understand this

1 document you're referring to was filed yesterday, was it?

2 MR FOFANAHA: Yes, Your Honour.

3 PRESIDING JUDGE: Yeah. I don't know how it escaped my
4 attention but Justice Doherty has seen it. I wouldn't have asked
15:43:14 5 the question I did had I had the document in front of me. Thank
6 you to the Defence team Mr Knoops?

7 MR KNOOPS: Yes, Your Honour, if I may. With respect to
8 the -- one of the questions of the Honourable Judge Doherty --
9 that the response we filed yesterday, when it concerns the
15:43:38 10 arguments, we still believe that the arguments are accurate.
11 Only, indeed, it's perfectly correct that you say that the
12 underlying data are actually superseded by this list. So, in our
13 view, yesterday, the arguments we put yesterday in the joint
14 motion actually are reinforced by the fact that, in addition to
15:44:01 15 that, these witnesses are additionally deleted from the ones who
16 were mentioned yesterday in the motion based upon a further
17 review today. But, when it concerns the substance of the motion,
18 we believe the arguments are still accurate for the Honourable
19 Chamber to make a decision on that reply we filed to the Chamber
15:44:24 20 yesterday. Thank you.

21 JUDGE DOHERTY: I understand. I recall your arguments,
22 Mr Knoops.

23 PRESIDING JUDGE: Yes. Did you want to add something,
24 Mr Agha?

15:44:36 25 MR AGHA: Yes. Firstly, Your Honours, the Prosecution
26 would like to thank the Defence for providing this very helpful
27 breakdown of witnesses, or common witnesses, et cetera, which may
28 be left.

29 But, looking at the list, it would seem that, at this point

1 in time, there are no common witnesses at the witness house as of
2 now. It is hoped, and this is in respect to the order of call,
3 that DBK-111 will complete his cross-examination tomorrow. Then,
4 all being equal, DAB-033 may then be well enough to give his
15:45:18 5 evidence.

6 Now, there is a block of nine, undropped, AFRC common
7 witnesses. They say they haven't arrived yet in Freetown. Now,
8 we don't know whether or not they will, indeed, arrive in
9 Freetown this week, or, indeed, over the weekend, and I note that
15:45:39 10 the first two on the list have been there as part of the first 49
11 filed on 10 May. So, essentially, for five months now, these two
12 witnesses have not arrived to testify to give evidence.

13 The Prosecution would actually be seeking some orders in
14 respect of this witness list and how these witnesses should be
15:46:09 15 treated, to try and assist us in arranging an order of call for
16 Monday. Because if there are no common witnesses here for
17 Monday, then one would assume that we have moved to the witnesses
18 of the first accused. Therein lies another problem because, as
19 my learned friend has mentioned, the witness for the first
15:46:31 20 accused has a list, I believe, of -- at this moment, it stands at
21 26 listed, and we only have 11 summaries. So that's less than 50
22 per cent, and there is an order of call for those witnesses, but
23 we may not have the summary, depending on which witness is
24 called. Likewise, we notice that, for the second accused, he has
15:46:58 25 18 listed and only five summaries.

26 Coming back to the main point on the witnesses, the common
27 witnesses which remain outstanding, and have not, as yet, arrived
28 in Freetown, the Prosecution would seek an order that any of the
29 nine outstanding common witnesses that arrive next week should be

1 called first, in order of call. Secondly, that any of those nine
2 who do not report to give evidence by the end of next week, being
3 Friday, 29 September, be dropped from the witness list and only
4 be allowed back on the witness list on a showing of good cause.

15:47:50 5 The third order, which the Prosecution would look for, is that if
6 none of the common witnesses have arrived over the weekend, that
7 the next witnesses in order of call be those listed on the first
8 accused's witness list, and only those for which summaries have
9 been given should be allowed to be called in that order.

15:48:21 10 PRESIDING JUDGE: I can see the reasoning behind the
11 proposed orders, Mr Agha, but I have a feeling that you're being
12 a bit premature about this. I think we should see what
13 eventuates over the weekend. After all, Mr Knoops did say that
14 there was a mission going out to bring these witnesses in and
15:48:44 15 that, depending on the success or otherwise of that mission, the
16 Defence would then make some assessments as to whether some of
17 the common witnesses ought to be dropped. What was your last
18 point?

19 MR AGHA: The last point is on the order of call. In a
15:49:05 20 sense, that if --

21 PRESIDING JUDGE: I beg your pardon. You were referring to
22 the fact that some of the witnesses do not -- in the particular
23 witness list, don' have summaries of fact.

24 MR AGHA: Of the first accused.

15:49:23 25 PRESIDING JUDGE: That's another reason why I'm saying
26 perhaps you may be a little premature. I just heard Ms Thompson
27 say that certain summaries of facts will be provided this
28 afternoon. I'm just thinking that, perhaps, Monday may be a
29 better time to make these applications, when they have the

1 situation in hand.

2 MR AGHA: Yes, I fully appreciate, Your Honour, and I can
3 do that then. I am really alerting the Court to the fact that I
4 have to distribute the work amongst my team and our investigators
15:49:56 5 to look into the witness who may be coming and, if we don't know,
6 it may prompt us to request an adjournment, which we don't really
7 want to do. But we are in the position we don't know who's
8 coming or even what they're going to say, so our hands are tied
9 very much in this regard.

15:50:13 10 PRESIDING JUDGE: I understand that. Please go ahead and
11 finish the proposed orders you will be seeking, but as long as
12 you appreciate we'd want to see the situation that develops over
13 the weekend before we do make any orders.

14 MR AGHA: Yes, indeed, Your Honour. You could always
15:50:29 15 reserve until what happens over the weekend. So, the third order
16 we would seek is that, if the common witnesses do not come, or
17 the ones that are held first, the first in the order of call
18 should be that of the first accused, based on the order of call
19 which has been provided, with a caveat that only those witnesses
15:50:52 20 for whom summaries have been provided can be called.

21 Those were the three orders the Prosecution was looking for
22 and may be appropriate, depending on the developments over the
23 weekend, but we'd also like to humbly remind the Trial Chamber
24 that we're very much awaiting a decision on the urgent
15:51:19 25 Prosecution motion for relief in respect of violation of the
26 Trial Chamber's order of 26 April 2006.

27 PRESIDING JUDGE: Yes, we're aware of that.

28 MR AGHA: Which, in fact, deals with many of these issues.
29 This is all that the Prosecution would have to say, save that, if

1 my learned friend Mr Knoops can accommodate me, it would be
2 preferable for the Prosecution if the Defence military expert
3 witness could come in the week of 16th October.

4 PRESIDING JUDGE: Thank you, Mr Agha. Any reply from the
15:51:55 5 Defence on those matters?

6 MS THOMPSON: Your Honour, save to say the summaries are
7 being worked and those Brima individual witnesses, who are
8 currently in the provinces, contact is being made with them. In
9 fact, we have been trying to, since this afternoon, with a team
15:52:17 10 already up there, so that they will be able to try and locate
11 them and ensure that they make their way to Freetown. But we're
12 hoping to be able to contact them, at least by the end of today,
13 so that they will all make their way to Freetown. In any event,
14 if we were going to have to call them, we will only call those
15:52:37 15 witnesses first whose summaries have already been disclosed, and
16 I know that, on the list, at least four of those individual
17 witness's summaries had been disclosed since July. They are the
18 ones already with the Prosecution. The rest will be disclosed
19 later today.

15:53:06 20 PRESIDING JUDGE: All right. Thank you.

21 JUDGE DOHERTY: Mr Agha, I understand that, as matters
22 progress, you may or may not be renewing this application for
23 these three orders. However, I will anticipate you will be
24 referring me to some jurisprudence that allows me to consider the
15:53:22 25 first and second orders.

26 MR AGHA: Yes, Your Honour, I shall look into that and see
27 if I can find some relevant jurisprudence and, if possible, if
28 these orders can be kept pending. They may, in course, prove to
29 be inluctuous.

1 JUDGE DOHERTY: Yes, we will wait and see what happens.

2 PRESIDING JUDGE: The programme for tomorrow, we'll be
3 hearing the testimony of DBK-111 for cross-examination in the
4 morning, but what other witnesses do the Defence propose to call
15:54:02 5 in the morning, or tomorrow at all, apart from that witness?

6 MS THOMPSON: Your Honour, at the moment, that depends on
7 the recovery rate of DAB something or other. DAB-033. I beg
8 your pardon, Your Honour, I lost the pseudonym there for a
9 minute. DAB-033. I don't know what will happen with the other
15:54:34 10 gentleman, that's DAB-005. They are the only two who were trial
11 ready. At the moment, your Honour, I can't give an answer to
12 that question, without actually speaking to them.

13 PRESIDING JUDGE: All right. Well, another fear we have is
14 that if this mission to bring these witnesses in from the
15:54:59 15 outlying areas, the common witnesses I mean, is successful, WWS
16 does take some time to process them and give them support. What
17 we're wary of is that if they come in late over the weekend,
18 there won't be time to do that. So I'd ask the Defence, as early
19 as possible, to refer the witnesses, if they do come in.

15:55:37 20 You have something more, Mr Knoops?

21 MR KNOOPS: Yes, Your Honour, if the Court may allow me to
22 address the Chamber on the suggestion for the second order the
23 Prosecution has requested for. Also from the perspective of
24 judicial economy, of course the Defence is aware that, once these
15:56:03 25 missions are not successful, the Defence may itself suggest to
26 drop those witnesses. So an order may not be necessary, in the
27 event that the Defence would consent to dropping the witnesses
28 mentioned on this list, of course, presupposed that the missions
29 are not successful. So this may also perhaps solve the whole

1 discussion whether or not to issue an order which is asked for by
2 the Prosecution for the second point, namely, that the witnesses
3 will be dropped in the event before 29 September no witness has
4 arrived. The Defence really wants to stress that we're also
15:56:47 5 mindful to the fact that when these witnesses do the not arrive
6 over the weekend, that we have to reconsider the positions
7 ourselves. That may, of course, evade a judicial order from the
8 honourable Trial Chamber.

9 Secondly, we are willing to accommodate the Prosecution,
15:57:06 10 for sure, with respect to the suggested date of the military
11 expert on the 16th. It is my understanding that the military
12 expert in question is also available the week of the 16th. It
13 might be not a bad idea, in light of the fact that the TRC-01
14 witness may testify on the 16th, once we know for sure what his
15:57:34 15 travelling data are, and we are willing to accommodate the
16 Prosecution in this regard. That's something we could discuss
17 later with the Prosecution. Thank you.

18 PRESIDING JUDGE: Thank you, Mr Knoops.

19 MR AGHA: The Prosecution is much obliged.

15:57:56 20 MR KNOOPS: You're welcome.

21 PRESIDING JUDGE: Thanks to the parties. We'll adjourn the
22 Court now. We'll reconvene at 9.15 tomorrow morning.

23 [Whereupon the Status Conference adjourned
24 at 3.58 p.m.]

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