



Case No. SCSL-03-02-PT
THE PROSECUTOR OF
THE SPECIAL COURT
V.
ALEX TAMBA BRIMA

22 JULY 2003
11.00 A.M

HEARING ON HABEAS CORPUS
APPLICATION

Before the Judge:

Benjamin Itoe

For the Registry:

Ms Musa Kamara
Ms Mariana Goetz

For the Prosecution:

Mr James Johnson
Mr Nicholas Browne-Marke

For the accused Alex Tamba
Brima:

Mr Terrence Michael Terry

For the Attorney General:

Mr Joseph G. Kobba

1 [SCSL- 03- 06- PT]

2 [ALEX TAMBA BRIMA]

3 Tuesday, 22 July 2003

4 [Defence Motion for leave to issue a writ of
15:47:05 5 habeas corpus ad subjiciendum]

6 JUDGE ITOE: The applicants, Jim Johnson, with him,
7 Mr Nicolas Browne-Marke, for the respondents. Are there any
8 further appearances?

9 MR KOBA: My Lord, Mr Koba, represents the Honourable
15:48:06 10 Attorney-General and Minister of Justice.

11 JUDGE ITOE: I didn't hear from you in the earlier case.

12 MR KOBA: My Lord, I was watching you. As soon as the
13 representations were finished, I didn't want to interject,
14 because that is what happened.

15:48:20 15 JUDGE ITOE: Sorry, I was wondering if you were present.
16 Now I know you are present.

17 MR KOBA: I am here, My Lord.

18 JUDGE ITOE: Mr Doba.

19 MR KOBA: Koba, K-O-B-A.

15:48:44 20 JUDGE ITOE: Well, I'll complete my records, even in the
21 earlier case; okay?

22 The applicant in these proceedings, Tamba Alex Brima,
23 stands charged by the Prosecutor of the Special Court of Sierra
24 Leone and is currently remanded in custody on a 17 count
15:50:00 25 indictment, dated 3 March 2003, preferred against him, and
26 charging him with divers crimes, committed against humanity and
27 international humanitarian law in the territory of Sierra Leone;
28 crimes which come within the context of the provisions of
29 Article 1 of the agreement between the United Nations and the

1 government of Sierra Leone, creating the Special Court for Sierra
2 Leone on the one hand, and also those of Articles 1, 2, 3, 4, 5,
3 6 and 7 of the Statute of the said Court on the other.

4 Because the applicant considers his detention illegal, his
15:52:45 5 counsel, Terence Martin Terry, on 28th May 2003, filed a motion
6 in the Registry of the Special Court for leave for the issue of a
7 writ of habeas corpus, as well as for the order of a writ of
8 habeas corpus ad subjiciendum, releasing the applicant from his
9 present detention, which he considers unlawful and illegal,
15:54:21 10 pursuant to Rule 54 of the Rules of Procedure and Evidence of the
11 Special Court of Sierra Leone and under the Habeas Corpus Acts of
12 1640 and 1816.

13 The motion was brought against the following respondents:
14 The director of prisons of the Republic of Sierra Leone; the
15:56:07 15 officer-in-charge of the special detention facility in Bonthe;
16 and any other official who might, at the time, have been holding
17 the applicant in custody.

18 Having been designated pursuant to Rule 28 of the Rules of
19 Procedure and Evidence to adjudicate on this matter and,
15:57:31 20 considering the urgency of the application, I issued an order on
21 18th June 2003, granting leave for the writ of habeas corpus to
22 be filed, but no immediate date was fixed for the hearing of the
23 substantive matter for two reasons: The first being the
24 prolonged but justified absence of learned counsel for the
15:58:27 25 applicant, Mr Terry, who was out of the jurisdiction and,
26 secondly, the necessity, in my opinion, for the submissions so
27 filed to be served on the honourable and learned Attorney-General
28 and minister of justice of the Republic of Sierra Leone, the
29 state to reach the accused seeks to be released if the

1 application were granted.

2 I accordingly made an order to this effect and this, in
3 execution of the inherent discretion of the Court to make an
4 order which, even though not specifically solicited or provided
15:59:47 5 for under the law is, as is the case here, is in consonance with
6 the overall objectiveness of fostering the perpetration of the
7 rule of law and of the due process. In so doing, I have taken
8 cognizance of the fact that Rule 65(B) of the Rules on bail
9 contains these provisions and that since applications touching on
16:00:42 10 either bail or on habeas corpus, if granted, produce the same
11 effects of releasing the accused to the State of Sierra Leone, it
12 was inequitable -- it was equitable, fair and in conformity with
13 legal norms to order that the Attorney-General be served with and
14 heard on the application for habeas corpus, a procedure which I
16:01:58 15 agree and appreciate, is not provided for by the Rules of
16 Procedure and Evidence of the Special Court.

17 Following the order, the submissions of all the parties
18 were served on the learned and honourable Attorney-General for
19 him to submit on issues raised therein and eventually to appear
16:02:19 20 or to be represented at the oral hearing of the application and
21 this, following my decision, to hold such a hearing pursuant to
22 the provisions of Rule 73 in addition to the submissions which
23 have been filed by the parties in open Court.

24 At the hearing on 15th July 2003, counsel representing the
16:02:46 25 parties, including the Attorney-General's office, made
26 submissions and arguments to sustain their respective arguments,
27 their respective cases. For the applicant, his counsel,
28 Mr Terry, based his arguments on the illegality of the detention
29 of his client on the following grounds:

1 1. That the name of the person detained is not the same as
2 the person mentioned in the indictment and, further, that his
3 identity was mistaken as he did not, as alleged in the
4 indictment, join the Sierra Leone Army in 1985 and never rose and
16:04:08 5 could not of course have risen to the rank of a staff sergeant.
6 The applicant contends that, to that extent, the indictment so
7 approved was, and continues to be, fundamentally flawed, invalid
8 and tantamount to a miscarriage of justice.

9 2. That the warrant of arrest is, for these same reasons,
16:04:54 10 also invalid. In this regard counsel for the applicant, during
11 the hearing, submitted that the said warrant does not amount to
12 warrant of arrest against the accused as it does not contain a
13 specific order for the arrest of the applicant, but the warrant
14 of arrest was not served on the applicant on the date of his
16:05:54 15 arrest by any competent authority.

16 3. That the indictment is defective in that no prima facie
17 case was established against the applicant before it was approved
18 and signed by the Judge and that this works in violation of the
19 provisions of Article 47 of the Rules of Procedure and Evidence
16:06:32 20 of the Special Court.

21 The respondents, in their arguments in reply -- the
22 respondents in reply to the Defence motion for leave to issue a
23 writ of habeas corpus have canvassed the following arguments:

24 1. That the Defence motion should be rejected on the
16:07:15 25 grounds that neither the Statute, nor the Rules of Procedure and
26 Evidence of the Special Court make provision for writs of habeas
27 corpus and that the writ of habeas corpus is unknown to the
28 procedures of the Special Court.

29 2. The respondents further argued that the Court -- that

1 if the Court were to decide that the Defence motion will be dealt
2 with as a motion under Rule 72 or 73 challenging the lawfulness
3 of the accused's detention such a motion should be rejected on
4 its merits for the following reasons:

16:07:56 5 1. That the contention of the provisions of section 47 of
6 the Rules have been violated is unfounded, as all what is
7 required to respect these provisions have been done by the
8 respondents, who filed the indictment for approval by the
9 designated Judge. The respondents, in any event, contend that
16:09:05 10 the applicant failed to demonstrate in what sense and in what way
11 the provisions of Rule 47 had been violated.

12 On the issue of whether the indictment is flawed ex-facie,
13 because it erroneously disclosed the applicant -- that the
14 applicant joined the Sierra Leonean Army in 1985 and rose to the
16:10:12 15 rank of a staff sergeant, the respondents in reply argue, in
16 effect, that the issue of the veracity of a fact pleaded in an
17 indictment relate to and, in fact, touches and borders on
18 examining the merits of the case and that this can only be
19 determined by the Trial Chamber after hearing the totality of the
16:11:27 20 evidence.

21 On the warrant of arrest, which the applicant contends is
22 flawed, for reasons as his counsel, Mr Terry, submitted in open
23 Court that it did not specifically order the arrest of the
24 applicant whose identity is contested, the respondents canvassed
16:12:15 25 the argument that the said warrant, dated 7 March 2003, is
26 clearly and unambiguously entitled "Warrant of arrest and order
27 for transfer and detention."

28 On the applicant's argument that his arrest was flawed
29 because the said warrant of arrest was not served on him, the

1 respondents contend and seek to rely on the declaration dated
2 31st May 2003, of Morie Lengor, a police investigator in the
3 Prosecutor's office, who declared that the warrant was duly
4 served on the applicant before he was arrested.

16:14:14 5 On the allegation that the rights of the applicants have
6 been grossly violated, the respondents argue that his rights, as
7 guaranteed under Article 17 of the Statute, have been properly
8 respected -- have been properly respected.

9 The respondents contend that the Special Court cannot apply
16:14:43 10 the procedure of habeas corpus because it does not form part of
11 the judiciary of Sierra Leone, nor is it a Sierra Leonean Court.

12 Replying to this particular argument, amongst others,
13 counsel for the applicants, Mr Terrence Terry, submits on the
14 contrary that the Special Court for Sierra Leone clearly falls
16:15:14 15 under all other courts in Sierra Leone and that, to that extent,
16 it falls under the supervisory jurisdiction as an adjudicating
17 body of the Supreme Court of Sierra Leone to which habeas corpus
18 can, as provided for under section 125, Rule 1991, Constitution
19 of the Republic of Sierra Leone, which states as follows:

16:16:35 20 "The Supreme Court shall have supervisory jurisdiction over
21 all other courts in Sierra Leone and over any adjudicating
22 authority and, in the exercise of its supervisory jurisdiction,
23 shall have power to assume such discretions, orders or, rather,
24 to issue such directions, orders or writs, including writs of
16:17:01 25 habeas corpus, orders of certiorari, mandamus and prohibition as it
26 may consider appropriate for purposes of enforcing or securing
27 the enforcement of its supervisory powers." This agreement, the
28 respondents submit, should be -- this argument, the respondents
29 submit, should be rejected.

1 In making this submission, they rely on the provisions of
2 sections 10 and 11 of the Special Court Agreement 2002,
3 Ratification Act 2002. Section 10 of that Act reads:

4 "The Special Court shall exercise the jurisdiction and the
16:21:39 5 powers conferred upon it by the agreement in a manner provided in
6 the Rules of Procedure and Evidence of the International Criminal
7 Tribunal for Rwanda in force at the time of the establishment of
8 the Special Court as adapted for purposes of the Special Court by
9 the Judges of the Special Court as a whole."

10 Section 11(ii) of the same Ratification Act provides as
11 follows: "The Special Court shall not form part of the judiciary
12 of Sierra Leone."

13 In his arguments in Court, Mr Terry, counsel for the
14 applicant, argued and urged me to hold and declare that the
16:25:21 15 provisions of section 11(ii) of the 2002 Ratification Act,
16 insofar as they are contrary to or inconsistent with the
17 provisions of section 125 of the Constitution of Sierra Leone
18 should, to the extent of that inconsistency, be declared
19 unconstitutional and a fortiori null and void. Mr Terry goes
16:25:52 20 further. He urged me to stay these proceedings and to state a
21 case to the Supreme Court of Sierra Leone for a directive on what
22 he calls this important constitutional question.

23 It is in the background of these arguments that I will
24 embark on examining the merit or demerits of the application
16:26:18 25 before me.

26 On the preliminary issue of the propriety of the Special
27 Court entertaining an application for habeas corpus, a fact which
28 surfaces in the proceedings as a preliminary objection by the
29 respondents to this application, I would like to observe that

1 this historic common law writ is founded basically on the
2 principle that no individual should be subjected to an illegal
3 detention.

4 Indeed, one of the most deplored breaches of human rights
16:26:55 5 today is the violation of the liberty of the individual, which is
6 guaranteed, not only by the provisions of Article 3 of the
7 Universal Declaration of Human Rights but also by practically all
8 democratically inspired constitutions of countries in the world
9 and particularly those of member states of the United Nations
16:29:08 10 organisation.

11 It is my opinion that because the right to liberty is too
12 sacred to be violated by any authority, whichever and whoever he
13 may be, that the courts faced with and called upon to rule on
14 applications of this nature, in whatever form they may be brought
16:30:02 15 before them, should, for reasons based on a universal resolve and
16 determination to uphold by all lawful means, respect by all and
17 sundry, in all circumstances, these entrenched fundamental rights
18 entertain such applications and refrain from dismissing them
19 merely on technical pretext or niceties, and to refuse to enter
16:30:34 20 or for them to be entertained.

21 This is the philosophy that has guided me in granting the
22 application ex parte on 18th June 2003 for leave to file the
23 substantive application for the issue of a writ of habeas corpus.
24 In so doing, I agree with the submission of the respondents that
16:32:00 25 the procedure for granting the writ of habeas corpus features no
26 way in the Rules of Procedure and Evidence which are applicable
27 to the Special Court, but because of the imperatives of ensuring
28 the respect of human rights and liberties, which equally
29 justifies my stand, I equally justify my stand to entertain this

1 application by assimilating it to a motion brought under
2 section 73 of our Rules of Procedure which, like in this case,
3 with a single judge of the High Court of Judicature holding the
4 applications for writs, hearing and handling of applications for
16:32:49 5 writs of habeas corpus confers on a single judge of the Trial
6 Court, of the Trial Chamber, designated under Rule 28 of the
7 Rules of Procedure to handle issues of this nature after hearing
8 the parties in open Court.

9 In the case of *Radoslav Brdanin v the Prosecutor*, an
16:34:32 10 application -- in the matter of an application for the issue of
11 the writ of habeas corpus, in favour of the applicant, the Trial
12 Chamber of ICTY, on 8th December 1999, composed of Judge Antonio
13 Cassese, presiding, Florence Ndepele Mwachande Mumba and
14 David Hunt, all judges had this to say:

16:35:10 15 "This Tribunal has no powers to issue writs in the name of
16 any sovereign or other head of state but the Tribunal certainly
17 does have both the power and the procedure to resolve a challenge
18 to the lawfulness of detainees in detention."

19 This decision was preceded by that of *Jean Bosco*
16:38:05 20 *Barayagwiza v the Prosecutor*, where the Appeals Chamber made the
21 following remarks:

22 "Although neither the Statute nor the Rules specifically
23 addressed writs of habeas corpus, as such, the notion that a
24 detained individual shall have recourse to an independent
16:39:40 25 judicial officer for a review of the Detaining Authorities Act is
26 well-established by Statute and Rules."

27 In the light of the above analysis, I hold that the
28 applicant's writ for habeas corpus is properly before me and
29 this, notwithstanding the objection of counsel for the

1 respondents, Mr Browne-Marke, based on the failure of the
2 applicant to file a proper substantive writ after he had obtained
3 leave to file same.

4 In this regard, I would like to observe that a careful
16:41:04 5 examination of the application to file a writ of habeas corpus
6 reveals clearly, as in this case and as it is permissible at
7 times, to couple the application for leave with a substantive
8 application and to file and serve them at the same time since the
9 leave for applications is hardly, in matters of this nature,
16:41:31 10 refused at a preliminary level.

11 Turning now to the merits and substance of this
12 application. One of the very hot issues -- one of the very hotly
13 contested issues in this matter is whether, as Mr Terry, counsel
14 for the applicant, contends the Special Court is part of the
16:43:00 15 judicial hierarchy of the Courts, as we find under the provisions
16 of the Constitution of the Republic of Sierra Leone.

17 It should be recalled here that the Special Court was set
18 up by resolution number 1315/2000 of the Security Council, dated
19 14th August 2000, and an agreement signed in Freetown between the
16:43:50 20 United Nations and the Government of Sierra Leone, to which is
21 annexed the Statute which forms an integral part of the said
22 agreement.

23 It should be recalled that the Special Court was created
24 because of the deep concern expressed by the Security Council at
16:44:13 25 the very serious crimes committed within the territory of Sierra
26 Leone, against the people of the Sierra Leone, and the United
27 Nations and associated personnel, and the need to create an
28 independent Special Court to prosecute persons who bear the
29 greatest responsibility for the commission of serious violations

1 of international humanitarian law and crimes committed under
2 Sierra Leone law.

3 It should be noted that Article 1(ii) of the agreement
4 setting up the Special Court stipulates as follows:

16:46:38 5 "The Special Court shall function in accordance with the
6 Statute of the Special Court for Sierra Leone. The Statute is
7 annexed to this agreement and forms an integral part thereof."

8 Article 14(i) of the Statute provides as follows:

9 "The Rules of Procedure and Evidence of the International
16:48:04 10 Criminal Tribunal For Rwanda obtaining at the time of
11 establishment of the Special Court, shall be applicable *mutatis*
12 *mutandis* to the conduct of legal proceedings before the Special
13 Court."

14 Subsection (ii) of the same Article provides as follows:

16:48:28 15 "The Judges of the Special Court, as a whole, may amend the
16 Rules of Procedure and Evidence, or adopt additional Rules where
17 the applicable Rules do not or do not adequately provide for a
18 specific situation. In so doing, they may be guided, as
19 appropriate, by the Criminal Procedure Act (1965) of Sierra
16:50:19 20 Leone."

21 This underscores the fact that the Sierra Leonean 1965
22 Criminal Procedure Act, which is an emanation of the Sierra
23 Leonean Parliament, is a municipal legislation and an emanation
24 of the legislative bodies in this country. It regulates the
16:52:24 25 procedure and conduct of proceedings in all Courts vested with
26 criminal jurisdiction by the 1991 Constitution, but it is not
27 applicable to the proceedings in the Special Court, even though
28 it equally, like the Sierra Leonean Criminal Court, is vested
29 with an essentially criminal jurisdiction, albeit of an

1 international character.

2 Pursuant to the provisions of Article 14 and to sub(i) and
3 sub(ii) of the Statute, all Judges of the Special Court of Sierra
4 Leone, in a plenary held in London, adopted on 8th March 2003
16:53:26 5 Rules of Procedure and Evidence, which today are applicable in
6 the functioning of the Special Court, very independently of other
7 Rules of Procedure and Evidence and lists still those of the
8 Sierra Leonean (1965) Criminal Procedure Act, and others which
9 are an emanation of the municipal legislative mechanisms of the
16:53:53 10 Republic of Sierra Leone.

11 Viewed from another perspective, the Special Court of
12 Sierra Leone owes its existence, not to the Constitution or the
13 Parliament of the Republic of Sierra Leone, but to the Security
14 Council resolution number 1315/2000 of 14th August 2000 and the
16:55:10 15 international agreement between the United Nations and the
16 Government of Sierra Leone, which set it up.

17 This resolution and agreement are both international
18 instruments which had to come into force, as required by
19 international law and practice, by a ratification instrument of
16:55:31 20 the Government of Sierra Leone. This was what warranted
21 enactment by the government of -- by the Sierra Leonean
22 Parliament of the Special Court Agreement Ratification Act 2000
23 so long after the coming into force of the 1991 Constitution of
24 the Republic of Sierra Leone.

16:55:56 25 From these dates, it can be deduced that the sovereign
26 people and an equally sovereign Parliament of the Republic of
27 Sierra Leone, in enacting the 1991 Constitution, in time of
28 peace, never did, nor could they have enacted or even envisaged
29 constitutional provisions or structures which were supposed to

1 regulate a post-civil war stabilising instrument, which is what
2 the Special Court of Sierra Leone represents today.

3 In interpreting, therefore, the provisions of section 125
4 of the Constitution of the Republic of Sierra Leone or of any
16:57:47 5 other provisions, I am guided, as I always continue to be guided,
6 by the dictum of Lord Herschell, in the case of *The Bank of*
7 *England v Vagliano Brothers*, where the learned Justice Herschell
8 said that I think that the proper course is, in the first
9 instance, to examine the language of the Statute and not to ask
17:05:34 10 what and to ask what its natural meaning is.

11 The natural meaning in this -- the natural interpretation
12 of section 125 and other provisions of the Sierra Leonean
13 Constitution is that these provisions are only meant to apply to
14 the Court of Sierra Leone. And the Courts which come within the
17:06:31 15 definition within the judicial hierarchy of the Constitution of
16 the Republic of Sierra Leone.

17 I therefore hold that the application of section 125 and
18 other sections of the Constitution which have been referred to by
19 learned counsel for the applicant is only limited to courts
17:06:50 20 created by the 1991 Constitution of Sierra Leone and not to the
21 post-1991 creation that owes its existence to an international
22 instrument of the Security Council and an equally international
23 agreement between the United Nations and the Government of Sierra
24 Leone.

17:07:13 25 To crown it all, section 10 of the Special Court Agreement
26 Ratification Act provides that the Special Court shall exercise
27 its jurisdiction and powers conferred upon it by the agreement.
28 Section 11(ii) of the same Ratification Act provides, "The
29 Special Court shall not form part of the judiciary of Sierra

1 Leone. "

2 In the course of arguments in Court, learned counsel for
3 the applicant urged me to state a case to the Supreme Court of
4 Sierra Leone on the constitutional legality of Article 11(xii) of
17:08:36 5 the Ratification Act, which he submitted are unconstitutional
6 insofar as they are inconsistent with the provisions of the
7 Constitution of the Republic of Sierra Leone.

8 In response to this, it is my considered opinion that the
9 jurisdiction of the Special Court is limited to matters that fall
17:09:43 10 under the provisions of the Statute and the agreement and that
11 nowhere in these two mother instruments is the Special Court
12 subjected to the jurisdiction of the Supreme Court of Sierra
13 Leone, nor is it empowered to state cases to that Court or even
14 to get into the gimmicks of examining issues relating to the
17:10:16 15 constitutionality or even adventuring into declaring
16 unconstitutional the sovereign enactment of the Sierra Leonean
17 legislature or acts of its executive organs.

18 I therefore hold from the foregoing analysis that the
19 Special Court, even though created by a special international
17:10:41 20 agreement between the United Nations and the Government of Sierra
21 Leone, and even though by that same international agreement
22 distinguished counsel and judges, judges and jurists of Sierra
23 Leonean origin serve on it, does not, by that fact alone, and
24 *stricto sensu* ^ reduce it to the level of being a Sierra Leonean
17:12:38 25 jurisdiction because, to all intents and purposes, the
26 international jurisdiction -- the Special Court has an
27 international jurisdiction and an international mandate which
28 flows from the Security Council resolution number 1315/2000 of
29 14th August 2000.

1 Having examined the constitutional and jurisdictional
2 issues of this matter, I will now address the most important
3 aspect on which the application for habeas corpus is based; that
4 is, the illegality of the detention of the applicant.

17:14:05 5 In this regard, a very well-known principle was laid down
6 in the case of *Zamil v The United Kingdom*, and there it was
7 decided that the burden of proving the legality of the detention
8 rests on the State.

9 In contesting the legality of the detention, learned
17:14:39 10 counsel for the applicant, Mr Terry, contends that the applicant,
11 in his affidavit, affirms that his name is Tamba Alex Brima and
12 not Alex Tamba Brima, as appears in the indictment filed by the
13 Prosecutor, and subsequently approved by his Lordship Judge
14 Bankole Thompson, pursuant to the provisions of Rule 47 of the
17:15:30 15 Rules of Procedure and Evidence.

16 To buttress this argument, counsel for the applicant
17 alleges that the indictment contained erroneous information in
18 that it alleged his client had joined the army in 1985 and rose
19 to the rank of a staff sergeant. He argues, and has produced
17:16:53 20 documentary evidence of correspondences his chambers had with the
21 headquarters of the Sierra Leonean Army, showing that his client
22 has never been in the Sierra Leonean Army. He therefore contends
23 that the said indictment was fundamentally flawed. He also
24 argues that the warrant of arrest, for similar reasons, was also
17:18:04 25 flawed.

26 On the contested identity of the applicant, I observe from
27 the indictment that it read as follows: "The Prosecutor v Alex
28 Tamba Brima, also known as aka Tamba Alex Brima, aka Gullit."
29 Could this not be interpreted as charging the same applicant

1 before me who admits that his real names are Tamba Alex Brima as
2 alleged in the indictment? Besides, the indictment alleges and
3 attaches another name to the applicant's names; that is, aka
4 Gullit. At no time, either when he was called up with all the
17:19:09 5 names and arraigned before me on 17th March 2003, as well as when
6 he was called up and again appeared before me on 15th July 2003,
7 did he contest the fact that he is also called aka Gullit.

8 Since he took the plea as Tamba Alex -- as Alex Tamba
9 Brima, I would like to imagine that it is one and the same
17:19:54 10 person. I would like to imagine, without concluding, that it is
11 one and the same person that the Prosecutor is targeting as Alex
12 Tamba Brima. And even if this creates a doubt in respect of his
13 having served in the army, in the Sierra Leonean Army, I cannot
14 at this stage, as a designated Judge, resolve this issue which I
17:20:33 15 consider properly within the competence and jurisdiction of the
16 Trial Chamber.

17 The Trial Chamber, as I said, would be the rightful venue,
18 place -- the rightful venue to examine evidence on those facts
19 which touch on the indictment and the warrant of arrests during
17:21:06 20 the trial of the applicant.

21 Learned counsel for the applicant also challenged the
22 legality of the warrant of arrest on the basis that it did not
23 contain an order by the judge to specifically arrest Tamba Alex
24 Brima.

17:21:23 25 In this regard, I observe that the relevant provisions of
26 Rules 47(H) and 55 do not consecrate a format for the warrant of
27 arrest.

28 It would appear to me sufficient if, as in the instant --
29 if, as the instant warrant does, specifies the name of the person

1 to be arrested and the said person is identified and arrested
2 accordingly.

3 In any event, having been taken into custody, a mere
4 technical flaw in the warrant of arrest, neither renders the said
17:22:38 5 arrest nor the detention based on that arrest, illegal.

6 On the contention by the learned counsel for the applicant
7 that the approved indictment was flawed in that it was issued
8 ex parte by a Judge when a prima facie case was not established
9 by the Prosecutor, I would like to refer to the relevant portions
17:23:13 10 of the Rules.

11 In this regard, Rule 47 -- in this regard, under Rule 47(A)
12 the Judge is conferred with powers to approve the indictment.
13 Under section 47(C) the indictment shall contain and be
14 sufficient if it contains the name and particulars of the
17:23:38 15 suspect, a statement of each specific offence of which the named
16 suspect is charged, and a short description of the particulars of
17 the offence. It shall be accompanied by a Prosecutor's summary
18 briefly setting out the allegations he proposes to prove in
19 making his case under Rule 47(E).

17:24:06 20 The designated Judge shall, under section 47(E) -- the
21 designated Judge shall review the indictment and the accompanying
22 material to determine whether the indictment should be approved.
23 The Judge shall approve an indictment if he is satisfied that:

24 1. The indictment charges a suspect with a crime or crimes
17:25:03 25 within the jurisdiction of the Special Court; and

26 2. That the allegations in the Prosecution summary would,
27 if proven, amount to a crime or crimes as particularised in the
28 indictment.

29 From the foregoing provisions, it is clear that the

1 applicant -- that the application by the Prosecutor for the
2 approval of the indictment is made to the judge ex parte and that
3 the Judge approves it, as such.

4 The Prosecutor cannot, indeed, at that stage, without
17:26:09 5 having called evidence in Court, establish a prima facie case.
6 Indeed, all this indictment needs to satisfy for approval is what
7 is contained in Rule 47(E) and not the document -- and not that
8 the document so submitted should establish a prima facie case
9 against the accused.

17:26:37 10 Once the Judge, as in this case, is satisfied that the
11 indictment and the facts accompanying it, if proven, amount to
12 the crime or crimes particularised in the indictment, he should
13 without more, like Judge Bankole Thompson did, sign the
14 indictment so submitted by the Prosecutor.

17:27:02 15 Since this argument, like all others relating to the
16 illegality of the applicant's detention, failed to justify the
17 case the applicant wanted to establish in order to secure the
18 immediate release by a grant of a writ of habeas corpus, I
19 accordingly dismiss the application for the issue of a writ of
17:27:26 20 habeas corpus in his favour because the arguments presented by
21 learned counsel for the applicant, Mr Terrence Martin Terry, even
22 though profoundly and very ingeniously presented lack the merits
23 to meet the standards required for the issue of the writ of this
24 nature which, in situations like this, is very, very delicate and
17:27:57 25 particularly when the Prosecution has fully, as in this case,
26 discharged the burden placed on it to justify the legality of the
27 applicant's detention and the risks involved in his being
28 released on the writ of habeas corpus.

29 The application for the issue of this writ is accordingly

1 dismissed. The applicant will continue to be in custody.

2 [Whereupon the Defence motion was adjourned

3 accordingly]

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