

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL-2004-14-T
TRIAL CHAMBER I

THE PROSECUTOR
OF THE SPECIAL COURT
V.
SAM HINGA NORMAN
MOINI NA FOFANA
ALLIEU KONDEWA

3 March 2005
9.45 a.m.
CHAMBERS MEETING

Before the Judges:

Benjamin Mutanga Itoe, Presiding
Bankole Thompson
Pierre Boutet

For the Registry:

Mr Geoff Walker

For the Prosecution:

Mr Kevin Tavener

For the Accused Allieu Kondewa:

Mr Charles Margai

1 Thursday, 3 March 2005

2 [Chambers meeting]

3 [In camera]

4 [On commencing at 9.45 a.m.]

5 PRESIDING JUDGE: Mr Tavener, Mr Margai, we thought that
6 before we start proceedings, we should have a closed-door
7 meeting, an in camera meeting, you know. Mr Margai and
8 yourself are representing the Prosecution and the Defence
9 in this particular circumstance. I would ask my learned
10 colleague to put on the table the issue.

11 JUDGE BOUTET: The issue we want to raise is serious concerns
12 that we have about ethics and what appears to be a
13 possible conflict of interest for Mr Margai with the
14 witness who is in the witness box at this particular
15 moment. My recollection of what the witness said
16 yesterday is that he met Charles Margai at some given
17 time. I don't know if it was in 1999; maybe. And it
18 would appear to me that the Charles Margai in question is
19 yourself. And this witness - I don't know the exact
20 relationship that existed then between you and him - but
21 obviously you have been party to some activities in
22 relation to this witness and his evidence in court. So
23 that's the concern we have at this particular moment.

24 So there might be a conflict of interest; there
25 might not be. But there's certainly a perception of some
26 possibility of a conflict of interest. And in the
27 interests of justice, we have to raise this with you, and
28 we are seriously concerned about that. But at the same
29 time, we don't want to put you on the hot seat in court

1 and ask you these questions in court and raise these kind
2 of issues with you. So that's why we have asked you so
3 that you come here and we can raise it with you and tell
4 you that we have these concerns at this particular
5 moment. And certainly, we would see that you would not
6 yourself cross-examine that particular witness but have
7 somebody of your team to do it. But we are quite
8 prepared to hear you, Mr Margai.

9 PRESIDING JUDGE: If I may add, if I may add, Mr Margai,
10 it's -- well, these are some of the -- some situations
11 that arise when people have occupied various functions --

12 MR MARGAI: I understand.

13 PRESIDING JUDGE: -- and positions in society, when you have
14 people in one or the other capacity, as you indeed are
15 doing now in your professional capacity, but you will
16 appreciate our stand on this. Because in addition to
17 what my colleague has put across to you, the evidence of
18 this witness talks of a letter which you wrote and which
19 you gave to this witness to go and recover his car. And
20 this car had been taken by the Kamajors.

21 JUDGE BOUTET: According to him.

22 PRESIDING JUDGE: According to this witness had been taken by
23 the Kamajors who said they were sent, you know, by --

24 JUDGE BOUTET: By your guy.

25 PRESIDING JUDGE: By your client to -- to do what they did.
26 And we have it in evidence, you know, that your client
27 had been there earlier on to preside over the graduation
28 ceremony of the initiation of the Kamajors, and that he
29 warned them against looting. So when this man was coming

1 to you to ask for the letter, I am sure he never knew
2 that the car would allegedly be found in the possession
3 of your client.

4 JUDGE BOUTET: And again, it's assuming that it's true. But
5 you see the --

6 JUDGE THOMPSON: This is all --

7 JUDGE BOUTET: -- if you're challenging that you never gave a
8 letter. How can you do that?

9 MR MARGAI: I cannot challenge. The letter was written. In
10 fact, it was a letter directed to my then colleague, the
11 minister, appealing to him to intervene and ensure the
12 vehicle was returned.

13 PRESIDING JUDGE: Which was a very -- as the Minister of the
14 Interior or whatever, that was very, very appropriate.

15 MR MARGAI: That was all I did.

16 PRESIDING JUDGE: But it turns out now, you know, that the car
17 found itself in the hands of your client and --

18 JUDGE THOMPSON: Allegedly.

19 PRESIDING JUDGE: I mean, I'm saying this, you know,
20 allegedly, that it found itself.

21 MR MARGAI: That is not disputed, My Lord. We are not
22 disputing that, from our point of view --

23 JUDGE THOMPSON: What I --

24 MR MARGAI: -- that the car was with Kondewa. We're not
25 disputing that at all. And I'm also not disputing that
26 the letter was written by me. I wrote it to my
27 colleague.

28 PRESIDING JUDGE: So that is --

29 MR MARGAI: That's not in dispute.

1 PRESIDING JUDGE: That is what I wanted to --

2 JUDGE THOMPSON: For my own -- my own short contribution here
3 is that in those circumstances, and even though at the
4 time when you wrote that letter, you were acting in a
5 political capacity, ministerial capacity. Since we are
6 now in the business of justice, do you yourself, in your
7 own mind, doing a lot of professional soul-searching, see
8 any possibility, in cross-examining this witness, of
9 your -- I mean of a conflict of interest here, having
10 dealt with him, albeit in a very charitable and gracious
11 way? I'm just leaving it --

12 MR MARGAI: I can appreciate the concerns of the Bench because
13 I mean, if I were in your position, I'm sure I would have
14 done the same. I don't really see a real conflict of
15 interest. But out of an abundance of caution, I shall
16 ask another colleague of mine to cross-examine. But as I
17 said, we're not disputing the fact that the vehicle
18 was --

19 JUDGE THOMPSON: Let me assure you --

20 MR MARGAI: We are also not denying that the letter was
21 written. In fact, we intend to tender the letter. It
22 was served on us by the Prosecution as being exculpatory.
23 Not so?

24 MR TAVENER: It was served.

25 JUDGE THOMPSON: Let me say we have invited you in Chambers
26 because, one - and my colleagues I'm sure agree - your
27 seniority in the bar; and also the fact that as a general
28 rule, you have been very cooperative with us, even when
29 we disagreed with you very strongly on issues of law.

1 MR MARGAI: That's the beauty of the profession.

2 JUDGE THOMPSON: And not ever sought to do anything to bring
3 the administration of justice into disrepute. So this is
4 the reason we invited you.

5 MR MARGAI: I appreciate it. Out of an abundance of caution,
6 Mr Williams will cross-examine.

7 JUDGE THOMPSON: Okay.

8 JUDGE BOUTET: Fine.

9 MR MARGAI: Thank you very much.

10 PRESIDING JUDGE: And we do not want the gallery -- we don't
11 want to have any publicity for you on this issue. That
12 is why we decided to treat it purely private.

13 JUDGE THOMPSON: As yourself once said, if you were ambitious
14 to come on our side someday, who knows?

15 MR MARGAI: That will only be seriously thought of after 2007.
16 As a last resort.

17 PRESIDING JUDGE: Okay, all right. Thank you.

18 [Whereupon the Chambers meeting adjourned at 9.55 a.m.]

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