



Case No. SCSL-2004-14-T
THE PROSECUTOR OF
THE SPECIAL COURT
V.
SAM HINGA NORMAN
MOININA FOFANA
ALLIEU KONDEWA

WEDNESDAY, 22 JUNE 2005
9.41 A.M.
TRIAL

TRIAL CHAMBER I

Before the Judges:

Pierre Boutet, Presiding
Bankole Thompson
Benjamin Mutanga Itoe

For Chambers:

Ms Sharelle Aitchison
Ms Roza Salibekova

For the Registry:

Ms Maureen Edmonds

For the Prosecution:

Mr Joseph Kamara
Mr Mohamed Bangura
Mr Kevin Tavener

For the Principal Defender:

NO APPEARANCES

For the accused Sam Hinga
Norman:

Dr Bu-Buakei Jabbi
Ms Clara da Silva (legal assistant)
Mr Kingsley Belle (legal assistant)

For the accused Moinina Fofana:

Mr Andrew Ianuzzi

For the accused Allieu Kondewa:

Mr Yada Williams
Mr Virgil Chong (intern)

1 [HN220605A - CR]
2 Wednesday, 22 June 2005
3 [Open session]
4 [The accused Norman not present]
09:41:02 5 [The accused Fofana not present]
6 [The accused Kondewa not present]
7 [Upon commencing at 9.41 a.m.]
8 PRESIDING JUDGE: Good morning, Mr Prosecutor. Good
9 morning, Defence counsel. We are back in Court this morning to
09:43:11 10 hear whatever comments/application that the Prosecution had about
11 the documents it is seeking to introduce. That's where we left
12 off on Monday. Indications were that you intended to seek the
13 admission of these documents, if I am right, pursuant to Rule
14 92bis. That's where we left off. You were to meet and discuss
09:44:05 15 with your colleagues from the Defence. So where are we?
16 Mr Kamara, you are the one dealing with this matter?
17 MR KAMARA: Yes, Your Honour.
18 PRESIDING JUDGE: Good morning.
19 MR KAMARA: Good morning. Actually, we are unable to have
09:44:27 20 discussions with the Defence, but we were informed that they are
21 opposing the entire piece of the document.
22 PRESIDING JUDGE: So?
23 MR KAMARA: We are going to seek the introduction of this
24 document into evidence and we are making the argument to this
09:44:55 25 Court.
26 PRESIDING JUDGE: Have you complied with the provisions of
27 92bis(C) at this time? I was under the impression on Monday that
28 the time prescribed may be causing some difficulties. I'm just
29 raising the issue. I'm not more familiar than that, other than

1 the fact that mention was made of it either this week or last
2 week.

3 MR KAMARA: You're very correct, Your Honour. There was
4 short service --

09:45:29 5 JUDGE ITOE: We were proceeding on the understanding that
6 the Defence would not raise any objections as to your not having
7 respected the time limits.

8 MR KAMARA: Yes.

9 JUDGE ITOE: So they need ten days and then they need five
09:45:48 10 days to reply.

11 MR KAMARA: The Defence have not raised objections as to
12 that. The objections were as to the admission.

13 JUDGE ITOE: We will hear the Defence on this.

14 MR KAMARA: Thank you, Your Honour. In the light of that,
09:46:08 15 we are trying to rest the case for the Prosecution, that's why we
16 are coming with this motion at this point in time.

17 PRESIDING JUDGE: But before we hear whatever you may have
18 to say, we will ask Defence counsel if they have any objection
19 not on the substantive nature of the application but on the --

09:46:34 20 MR KAMARA: The timing.

21 PRESIDING JUDGE: -- the timing.

22 MR KAMARA: Very well.

23 PRESIDING JUDGE: Counsel for first accused?

24 MR JABBI: Your Honour, we have a joint position on this
09:46:48 25 matter in the Defence. Mr Yada Williams, learned counsel for the
26 third accused, would kindly oblige on our behalf.

27 PRESIDING JUDGE: Mr Williams?

28 MR WILLIAMS: Yes, sir.

29 PRESIDING JUDGE: You heard my comments. We are not

1 dealing at this stage with the substantive nature of the motion
2 or the application. My understanding of Mr Kamara's comments was
3 that the Defence, if they have any comment to make, would direct
4 those comments to the substantive nature. It would appear that
09:47:36 5 the Defence would have no objection to the timing prescribed
6 under 92bis(C) that's what I'm putting to you at the moment.

7 MR WILLIAMS: We have not read the provisions of 92bis(C),
8 My Lord.

9 PRESIDING JUDGE: So it is the position of Defence counsel,
09:48:02 10 all accused, that the time prescribed under 92bis(C) has to be
11 complied with and has it been complied with, as far as you are
12 concerned?

13 MR WILLIAMS: We are insisting on 92bis(C) and it has not
14 been complied with.

09:48:22 15 PRESIDING JUDGE: How is it that it has not been complied
16 with? When were you first notified, if notified at all?

17 MR WILLIAMS: Your Honour, Thursday of last week.

18 PRESIDING JUDGE: I want to know a bit more precisely. As
19 you know, 92bis(C) says it shall give ten days' notice to the
09:48:50 20 other party. When was the notice given; if it was ten days, and
21 if there is any an objection, it must be submitted within five
22 days.

23 MR WILLIAMS: Your Honour, we were served with a document
24 on Tuesday of last week.

09:49:34 25 PRESIDING JUDGE: Which means you would have been served
26 with the documents on the 14th, Tuesday of last week?

27 MR WILLIAMS: That's so.

28 PRESIDING JUDGE: So you are saying you're not waiving
29 these requirements. Ten days will be the 24th, which is

1 tomorrow?

2 MR WILLIAMS: Ten days will be Friday morning.

3 PRESIDING JUDGE: Pardon me, the 24th, which is Friday.

4 I'm misreading my calendar. Mr Kamara, you've heard the -- thank

09:50:18 5 you, Mr Williams, for the time being.

6 MR KAMARA: Your Honours, I guess I got the position

7 wrongly. Our understanding was that in the course of the

8 discussions with the Defence was that they were going to agree on

9 the substance and not on the procedure. Even if we were to go

09:50:37 10 under the procedure per se the fact that we are coming today and

11 not on Friday --

12 PRESIDING JUDGE: It doesn't mean to come on Friday. The

13 rule is very clear. They have to be given a notice of ten days.

14 JUDGE ITOE: It's ten days.

09:50:57 15 PRESIDING JUDGE: Then if they have an objection, they need

16 to submit it within five days following that. It doesn't mean on

17 Friday they are going to be ready. They have five days.

18 Presumably they will notify you and us whether they are ready

19 within that five days and, within that five days, it doesn't

09:51:15 20 necessarily mean we are ready to hear it. The time prescribed,

21 as I see it, as it would appear to me, is to allow the parties to

22 look at whatever it is you are trying to introduce at this

23 particular moment to give them time to sift through that. We

24 have been given a copy and, just by the look of it, it's many

09:51:36 25 hundreds of pages. I don't think you can expect anybody to go

26 through that in five minutes or even a day.

27 JUDGE THOMPSON: You ought to understand them to be saying

28 as a matter of law they are not prepared to waive any

29 non-compliance with 92bis, as a matter of law.

1 MR KAMARA: I agree. The provisions are quite clear on it.
2 It's just the understanding we had. Now they are clear they are
3 not compromising on that, I want to invite your Lordships to --

4 JUDGE THOMPSON: You say they have indicated to you they
09:52:11 5 were going to waive their rights on 92bis?

6 MR KAMARA: My understanding of the discussions was that it
7 was admission issues and not on procedural issues.

8 JUDGE THOMPSON: The point we've now reached --

9 JUDGE ITOE: Procedural issues have something to do with
09:52:29 10 admission issues, which are tied up with the issue of the time
11 limits, which are set for the taking on of these applications.

12 PRESIDING JUDGE: Mr Kamara, we are not prepared to
13 entertain any substantial arguments on the substantive nature of
14 this application at this particular moment, given what is
09:52:49 15 prescribed. I know you were about to say but we could apply the
16 prescription of the rules to shorten the timing.

17 MR KAMARA: That is what I was going to say. Your
18 Lordships can use your inherent jurisdiction in shortening the
19 rules. These are not short documents.

09:53:05 20 JUDGE ITOE: You want us to ambush the Defence?

21 MR KAMARA: No, not ambush the Defence. These are
22 documents --

23 JUDGE ITOE: If the Defence is not ready, they are not
24 ready.

09:53:15 25 MR KAMARA: Yes, Your Honour, but these are documents
26 they've had already since April of last year.

27 JUDGE THOMPSON: The difficulty is that this is quite a
28 bundle of material. Even if they have had it since April, memory
29 not being infallible, we, the judges, too, would like to go

1 through them again. There are going to be all kinds of
2 technicalities about the question of their admissibility. And
3 any amount of indecent haste would, clearly, frustrate the
4 interests of justice. I think it is proper that we follow the
09:53:48 5 rules with great scrupulousness. They say they are not waiving
6 their right, and the question of admission, of course, is a
7 substantive issue, but we are at the procedural level.
8 Therefore, in other words, what are you going to do? They say,
9 "We are insisting on having compliance with 92bis in respect of
09:54:16 10 the notice".

11 MR KAMARA: Yes, Your Honour, but in the interest of
12 fairness and the expedition of the trial, the Defence have been
13 crying all along of the trial, expedition, expedition. Here we
14 are today, we are trying to expedite the trial in the sense that
09:54:32 15 these documents that have been filed with the court.

16 PRESIDING JUDGE: Mr Kamara, we are not prepared to use and
17 invoke our inherent power to impose a specific limitation on the
18 time prescribed. You can argue whatever you want, but we are not
19 prepared to do it this morning. I should also mention to you, if
09:54:47 20 that is the case, what is it that you waited until last week to
21 invoke 92bis and give notice when that decision on the judicial
22 notice was rendered on 16 May? We all are at the last moment now
23 and everybody has to rush to try to meet some timeline.

24 MR KAMARA: Your Honours, this is not a rush in the sense
09:55:06 25 that at the end of our case, where we are today, it's the time we
26 take a look at the entire picture that we presented to the Court
27 and we find it expedient now to put together these pieces to
28 provide a complete picture.

29 JUDGE THOMPSON: That is a substantive aspect. That is not

1 an issue, really. Nobody is trying, in fact, to fetter your
2 Prosecutorial discretion in what you do to wind up your case. Of
3 course, as very accomplished Prosecutors, we expect you to do the
4 finishing touches, refine everything before you close your case.

09:55:47 5 That's not the issue now. The issue is, clearly, we have quite a
6 large bundle of material that, in my own judgment, needs to be
7 painstakingly gone through with regards to the question of
8 admissibility. To force upon us a situation whereby
9 expeditiousness demands that we should now rush through what
09:56:15 10 really requires some painstaking effort would seem, to me, to be
11 a kind of an attempt to do things, with the greatest respect, in
12 a not too tidy manner.

13 PRESIDING JUDGE: And just to reassure you, we are not
14 prepared to impose and use our inherent power to impose any
09:56:38 15 specific limitation on the Prosecution that would deprive the
16 Prosecutor of their ability to bring whatever evidence and
17 information they think is required for the purpose of
18 establishing the counts that are in existence at this particular
19 moment. If that is your fear, let me tell you that is not our
09:56:57 20 intent this morning.

21 JUDGE ITOE: Was that what you wanted to rely on? You
22 wanted to rely on our inherent -- rather, on our exercise of the
23 powers to limit the times that have been imposed? Is that what
24 you wanted to rely on? For us to embark on the substantive
09:57:16 25 hearing of this matter?

26 MR KAMARA: Partly, Your Honours.

27 JUDGE ITOE: Partly. And the other partly, what?

28 MR KAMARA: The other part is the expedition of the trial.

29 JUDGE ITOE: Expedition. Well we are all very conscious of

1 that. We need to move expeditiously, but like my learned brother
2 pointed out, we need to move expeditiously and neatly.

3 MR KAMARA: Your Honours, if I may suggest here that the
4 Court can hear their arguments and then defer their decision to a
09:57:50 5 later date in a sense that they can make an indicative
6 decision as we've already had.

7 JUDGE ITOE: How do you want us to hear arguments when your
8 colleagues on this side are saying they are not ready? The
9 provisions of 92bis have not been complied with. How do you
09:58:07 10 expect us to take on arguments? Is that neat?

11 JUDGE THOMPSON: And those are the circumventions that you
12 propose that I find clearly unacceptable. Really, they go to the
13 issue of procedural irregularity. Remember, the Court is guided
14 by rules and procedures, and flexibility in our approaches to
09:58:28 15 issues does not mean that we throw away the entire concept of
16 procedural tidiness and regularity. Certainly you would not
17 advocate that?

18 MR KAMARA: No way, I wouldn't advocate that. The only
19 point I am making here, Your Honours, is the fact that strict
09:58:47 20 adherence to the technicality of rules should not inhibit the
21 Court from --

22 PRESIDING JUDGE: Yes, but technicality here is important,
23 because if this timing has been prescribed, especially when you
24 look at the pile of documents that you are trying to introduce at
09:59:02 25 this particular moment, technicality would require anybody to
26 look through these arguments and try to ascertain what it is you
27 are trying to introduce. Ten days may not even be sufficient.
28 It depends what it is. If it was a one-page document I would say
29 maybe a day would be sufficient.

1 JUDGE THOMPSON: It is not even technicality. It is
2 equality of arms. Both sides have a right to examine these
3 documents. The Prosecution has had the benefit of looking at
4 them over and over again. The Bench didn't know that they be
09:59:37 5 received on 92bis or 89C and we, in a way, are slightly taken by
6 surprise and to be able to make any constructive legal
7 contributions to the process, I'm sure that you don't want to
8 entrap us.

9 MR KAMARA: No way, Your Honour, I don't want to do that.

10:00:01 10 JUDGE ITOE: Let me be very, very frank. The Chamber was
11 very prepared to go on, to listen to your arguments.

12 MR KAMARA: Yes.

13 JUDGE ITOE: If, and only if, the Defence said they were
14 waiving their right to the ten days and the five days and so on
10:00:20 15 which are provided for under that. Now there is an objection, we
16 cannot --

17 MR KAMARA: In that case, Your Honour, I ask your
18 indulgence for a short break. We might have to confer further
19 with the Defence and take further instructions.

10:00:36 20 MR WILLIAMS: Your Honour, it would appear from the way my
21 learned friend is couching his argument, we have not shown any
22 magnanimity to them.

23 PRESIDING JUDGE: That is not quite the same.

24 MR WILLIAMS: They would not be prepared to shift, to
10:00:54 25 compromise. Your Honour, we actually wrote to them on the 16th
26 of this month, My Lord, which was about two days after we were
27 served, telling them if they were to provide us with the written
28 submissions as to the relevance of the document as required by
29 the rules, we would be prepared to waive the provision of

1 92bis(C). My Lord, they did not get back to us. I mean, we were
2 definitely prepared -- this is a burden on them, My Lords, as is
3 required by 92bis(B) to show not only the relevance, but our - if
4 these things are --

10:01:48 5 MR KAMARA: Mr Williams, I am sorry, talk to Mr Ianuzzi.
6 We did provide arguments to the Defence, I think, a week ago. We
7 provided a summary of arguments to the Defence, together with
8 copies, to enable them to come --

9 JUDGE ITOE: To which Defence?

10:02:03 10 MR KAMARA: We forwarded it to the Defence for the second
11 accused.

12 JUDGE ITOE: Did you forward it to the third?

13 MR KAMARA: No, we were made to understand that they would.

14 MR IANUZZI: If I could be helpful here. We engaged in
10:02:15 15 some informal discussions with Mr Tavener last week. On Thursday
16 of last week, counsel for the first accused sent an email to the
17 Prosecution indicating that they would waive the ten days' notice
18 requirement if formal submissions were filed with the Court
19 outlining the reasons and the basis for submissions under 92bis.
10:02:38 20 The following day, counsel for the second accused sent a similar
21 email. We received a draft from the Prosecution on Friday, but
22 it didn't outline the specifics and it wasn't filed with the
23 Court. That's where we stand.

24 MR KAMARA: I was making an application for a short stand
10:03:00 25 down for --

26 PRESIDING JUDGE: What does short stand down mean for you?
27 Half an hour, an hour?

28 MR KAMARA: Half an hour, Your Honour.

29 PRESIDING JUDGE: Very well, the Court will adjourn for

1 half an hour till 10.30.

2 [Break taken at 10.01 a.m.]

3 [On resuming at 10.34 a.m.]

4 PRESIDING JUDGE: Yes, Mr Kamara.

10:35:54 5 MR KAMARA: Thank you, Your Honours. We've had meaningful
6 discussions with our learned friends on the other side.
7 Unfortunately, we are unable to get a consensus.

8 PRESIDING JUDGE: So what is your position?

9 MR KAMARA: The timetable starts running on Friday, from
10:36:07 10 our understanding and that five days thereafter, they have to
11 respond, and based on the response, if we desire to reply, we do.
12 That might affect the calendar.

13 PRESIDING JUDGE: Well, if it affects the calendar, we will
14 have to adjust the calendar. It is not with pleasure that I say
10:36:28 15 this this morning, because we were hopeful, as you were, that
16 everything would be finished this past Tuesday. As I say, we are
17 not prepared to impose some closure against the Prosecution that
18 may have an impact on their ability to do the case as they wish
19 to do it.

10:36:47 20 MR KAMARA: Yes, Your Honour. And so we wonder whether we
21 will be able to come sometime in the first week of July and
22 submit the arguments.

23 PRESIDING JUDGE: We will. But, I would like to point out
24 to you, and the Defence, given the way it is moving at this
10:37:01 25 particular moment, we will ask you to provide, in writing, the
26 arguments you're going to put forward and we'll ask the Defence
27 what, in fact -- we are asking you to more or less comply with
28 the Defence request that you put in writing your argument,
29 because it will be helpful to us as well to understand what it is

1 and when I say arguments, not only arguments in law, any
2 authority you may have to support that, as well as identifying --
3 it is not only to have a bundle like this; I want to know in the
4 bundle if it is page 225 you're relying on or all of these pages
10:37:37 5 and why? In other words, try to assist us in making a decision
6 on these matters, in as much as you can.

7 MR KAMARA: Yes, Your Honour, we will definitely do that.

8 PRESIDING JUDGE: If you can do that within the 10 days, it
9 would be to the advantage of everybody, including this Court.

10:37:53 10 MR KAMARA: And that it does not affect the timing as it is
11 going.

12 PRESIDING JUDGE: No. We'll ask the Defence within the
13 five days that they have to do the same, in that they submit in
14 writing to you and to the Court their position and then we'll
10:38:06 15 come back in Court. We're planning to come back into Court on
16 5th July to hear arguments, if we think we need arguments at that
17 time.

18 MR KAMARA: Good, good. The Defence has already been
19 provided that, so Your Honours we'll forward a copy and file a
10:38:28 20 copy with the Court.

21 PRESIDING JUDGE: My brother Justice Thompson reminds me
22 that I should make it clear as well that this is not only the
23 wish of the Court, but this is an order that it shall be complied
24 with, in case there is any doubt as to whether it should be done
10:38:47 25 or not, so it should be understood that you shall provide your
26 arguments, in writing, along the lines I have described with
27 supporting documentation, if any, and authorities. And clearly
28 identifying whatever it is. As I said, I look at the bundles, as
29 such. There is reference at the top of something, but where is

1 it?

2 MR KAMARA: There are indications, there are lines that
3 we've extrapolated as directed by the Appeals Chamber. They are
4 underlined.

10:39:22 5 JUDGE THOMPSON: Because we don't want to go into the
6 substantive aspects of the issue, just to make sure that
7 everything is done in such a way as to facilitate a clear
8 understanding of the Bench. This is a very important part of
9 your case, and we need to follow you as carefully as possible and
10:39:43 10 painstakingly so that we understand what this dimension is all
11 about.

12 PRESIDING JUDGE: On that very issue, I would like to
13 clearly understand - I'm looking here at the one that you have,
14 92bis and 89(C). It says: "Report of the UN Secretary-General
10:40:04 15 on 11 February 1998". I'm using that as an example. Presumably
16 looking at that, you will be asking that the whole of the Report
17 of the UN Secretary-General of 5 February 1998 be admitted in
18 evidence, meaning the totality of that report. If that is not
19 the case, I want to know in that report which section, portion
10:40:25 20 that you're looking at. That's really what we're asking you.

21 MR KAMARA: Your Honour, that's not the case. It's not the
22 entire report. The portions that we are particularly interested
23 in have been underlined. We will show the page and the lines.

24 JUDGE THOMPSON: Perhaps to the object of, you know,
10:40:42 25 seeking that kind of exercise of the Court's discretion in
26 admitting the particular document, because we need to know what
27 is the purpose of doing that. I mean, it's sometimes not just
28 that you're bringing in a document, but I think it's important
29 that we know what is the object behind the application to admit a

1 particular document or a bundle of documents.

2 MR KAMARA: Yes, Your Honour. That is why we categorised
3 them differently. Those that are in pursuant to the appellate
4 decision we have indicated, and we were directed to extrapolate
10:41:20 5 information that has been already accepted for its existence and
6 authenticity. And that's what we have done. For those, it is my
7 submission that we need not argue for them. For the others that
8 there may be issues of facts that may be in dispute, then we
9 extrapolate information and then show the relevance of that
10:41:38 10 information.

11 JUDGE THOMPSON: Yes, evidentiary object. That's the point
12 I'm making. Just to go along with you, so we're not left
13 completely groping in the dark.

14 PRESIDING JUDGE: Our order and direction is clearly
10:41:51 15 understood. Presumably you are ready to argue your case this
16 morning, the substantive nature, so you would not need much time
17 to reduce that to writing, file it with the Court and serve your
18 friends on the Defence side with that.

19 MR KAMARA: We will surely do.

10:42:09 20 JUDGE ITOE: How early do you think you will able to be in
21 possession of your submissions on this?

22 MR KAMARA: We already actually have it, Your Honour. It
23 is now just to add a few compliances that the Presiding Judge has
24 referred to in terms of the pages.

10:42:30 25 JUDGE ITOE: And other concerns which have been addressed?

26 MR KAMARA: Yes, by Friday.

27 PRESIDING JUDGE: If it is Friday, it is still within the
28 ten days, anyhow.

29 MR KAMARA: By Friday we should be able to file it with the

1 Court.

2 PRESIDING JUDGE: And we will not give any additional time
3 to the Defence. They will have the five days to comply with the
4 same requests and directions of the Court. We will adjourn these
10:42:53 5 proceedings - that's our intent - to 5th July -- just a second, I
6 just want to make sure that my dates are accurate here. 6th
7 July, pardon me. Which is the Wednesday, at 9.30. Hopefully
8 that will be the last day for the Prosecution.

9 MR KAMARA: We hope so.

10:43:23 10 PRESIDING JUDGE: At that moment, we will see about a
11 calendar, how we make the necessary adjustments.

12 MR KAMARA: For the motion of acquittal.

13 PRESIDING JUDGE: And so on.

14 JUDGE ITOE: We would like to imagine that at least the
10:43:34 15 Defence have been put on notice. It is already very far gone
16 with their submissions on the judgment of acquittal. I'm sure
17 they might even ask for more time. A judgment of acquittal will
18 not necessarily rest on this pile of documents.

19 PRESIDING JUDGE: We don't think so, but it is to be seen.
10:44:01 20 We're not making any decision this morning on this matter, so our
21 comments are only to see what it is we can achieve. Again, on
22 this, if it is possible, and we hope it is possible to still
23 maintain the time prescribed and with some adjustments so we
24 certainly would like to see that any documentation required on
10:44:23 25 the judgment acquittal be filed with the Court prior to the
26 recess that is prescribed from Monday, 8th of August.

27 MR KAMARA: We are still with the same timetable.

28 PRESIDING JUDGE: We will see to make any adjustment, if
29 required, when we proceed on Wednesday, 6th of July.

1 MR KAMARA: Thank you, Your Honours.

2 MR WILLIAMS: Your Honour, do I understand your order to
3 the Prosecution to mean that they should show the relevance of
4 each bit of evidence in those documents that they want to tender,
10:45:04 5 that is, they should show the relevance of each bit of evidence?

6 PRESIDING JUDGE: Well, not necessarily relevance. We want
7 to know what it is. In other words, when they refer to a report,
8 is it the totality of the report? And if it is the totality of
9 the report, they have to tell us why the totality of the report.

10:45:24 10 Or if it is page 25 of that report, because it is has something
11 they're relying upon, well, what is it they're relying upon? It
12 will facilitate not only your work, but our work as well when
13 we're looking at this amount of documentation, we want to know
14 what it is that we should be looking for. That's really what
10:45:42 15 we're asking them. I presume you will argue that all of it is
16 relevant. In other words, if it is not relevant, we don't want
17 to see it.

18 JUDGE THOMPSON: Actually, I was the one who in fact
19 injected the idea of the evidentiary objective. So far as it is
10:46:02 20 intellectually possible, they can indicate, for example, in
21 respect of, say, document A, it may be easier to say all the
22 evidentiary objective is so and so. In respect of document B, it
23 may not be all that easy, so there would be some kind of
24 flexibility here. But where they can say this is the evidentiary
10:46:25 25 objective of this particular document, I think we're entitled to
26 know, because it facilitates the decision-making process, rather
27 than leave, -- sometimes judges are left to speculate.

28 PRESIDING JUDGE: We are not trying here to impose rigid
29 rules on the Prosecution. What we are trying to ask the

1 Prosecution is to assist us, to work through these documents, the
2 same with the Defence. If you are objecting, presumably it will
3 be based on some arguments, whatever they may be, and if it is
4 arguments that are legal arguments, presumably you are going to
10:47:00 5 be supporting them with case law and some authorities. That's
6 what we want to know. So if your position - I will use that as
7 an example - that article A is not relevant to any of the issues,
8 you should raise that and tell us why.

9 MR WILLIAMS: Your Honours, we are seeking clarification,
10:47:16 10 because we might also come to use 92 when we are presenting our
11 case. For the moment, I need another bit of clarification. My
12 learned friend mentioned a reply after our objections. There is
13 nowhere in the rules that a reply is provided for. They make
14 their submissions and we have five days to raise objections,
10:47:41 15 period.

16 PRESIDING JUDGE: The rule does not speak of filing
17 anything in writing. We are asking that they assist us, and we
18 are asking you to assist us. The rule doesn't speak anything
19 about that at all. It says: "Any party wishing to submit any
10:47:59 20 information shall give ten days' notice to the opposite party."
21 That's all it says. "Objections, if any, must be submitted
22 within five days." That's all it says. So I mean, we are asking
23 both the Defence and the Prosecution to assist us, to essentially
24 tell us in writing what the Prosecution is asking that this be
10:48:15 25 admitted, you're objecting, why are you objecting and to what you
26 raise your objections. If we were to hear all the arguments on
27 the substantive nature of this application this morning, we would
28 ask the Prosecution to argue and ask you to argue and go back for
29 a reply, so, what's the difference here?

1 MR WILLIAMS: Your Honour, might that not affect --

2 PRESIDING JUDGE: The same will apply to you when we get to
3 the Defence case, the same will apply to you, since you raised
4 that.

10:48:52 5 MR TAVENER: Just one matter raised by His Honour Justice
6 Thompson, is it correct to say we obviously don't want to
7 paraphrase what the evidence says, what's contained in the
8 document. Would it be sufficient for your purposes if we
9 identify what part of the document we're relying upon and say it
10:49:08 10 goes to individual criminal responsibility.

11 JUDGE THOMPSON: Precisely. In other words, this whole
12 thing is just to avoid the kind of possibility of things being
13 presented to us in a vacuum. Clearly 92bis and 89(C) envision
14 documents being tendered for particular purposes. That's all I'm
10:49:25 15 asking.

16 MR TAVENER: I thought something different, I just wanted
17 to clarify.

18 JUDGE THOMPSON: That's fair. Precisely.

19 PRESIDING JUDGE: But if the Prosecution deems it necessary
10:49:38 20 to file a reply after the Defence has filed their documentation,
21 I just would like to bring to your attention you may do so, but
22 we are in Court on 6th day of July, so reply or no reply, we have
23 to fit it within that time frame.

24 MR KAMARA: Finally, Your Honours, in terms of style, I'm
10:49:58 25 thinking of doing a chart itemising the documents and then show
26 what aspects of the indictment or the evidential matters --

27 JUDGE ITOE: If it is a matter of style, it is for you.

28 MR KAMARA: If it's convenient for the Court.

29 JUDGE ITOE: No, it's not a question of convenience. It is

1 for you to present this document the way you want to present it.
2 If you want to back it up with whatever charts or whatever, it is
3 entirely a matter for the Prosecution, it is your case.

4 JUDGE THOMPSON: Illustrative evidence. Some call it
10:50:29 5 demonstrative evidence.

6 PRESIDING JUDGE: Whatever you can do, by the Prosecution
7 or the Defence, to facilitate our work, to sift through this
8 documentation, whatever it is, as such, it will be of assistance
9 to the Court, that's all we're asking. How you do it is up to
10:50:43 10 you.

11 MR KAMARA: Thanks.

12 PRESIDING JUDGE: Thank you very much. The Court is
13 adjourned to 6th July at 9.30 a.m.

14 [Whereupon the hearing adjourned at 10.51 a.m.
10:50:52 15 to be reconvened on Wednesday, the 6th day of
16 July, 2005, at 9.30 a.m.]

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