

**SPECIAL COURT FOR SIERRA LEONE**  
OFFICE OF THE PROSECUTOR  
FREETOWN - SIERRA LEONE

Before: Judge Teresa Doherty, Presiding Judge  
Judge Julia Sebutinde  
Judge Richard Lussick

Registrar: Mr Robin Vincent

Date filed: 4 April 2005

**THE PROSECUTOR**

**Against**

**ALEX TAMBA BRIMA  
BRIMA BAZZY KAMARA  
SANTIGIE BORBOR KANU**

CASE NO. SCSL - 2004 - 16 - T

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**ANSWER TO THE JOINT DEFENCE REQUEST TO INSPECT LOCUS IN QUO  
CONCERNING EVIDENCE OF WITNESS TF1 - 024**

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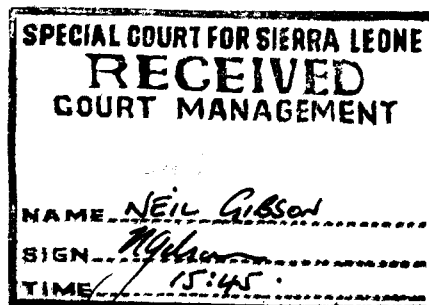
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1. On the 14<sup>th</sup> of March 2005 a Confidential Joint Defence Request to inspect locus in quo concerning evidence of witness TF1-024 (the “witness”) was filed<sup>1</sup>.
2. In this motion the Defence referred to the testimony of the witness who testified on March 7 and 8 about incidents he witnessed when he was detained in the kitchen of the State House in Freetown<sup>2</sup>.
3. Disputing the accuracy of the descriptions of the kitchen made by the witness during his testimony the Defence requested the Trial Chamber to endorse an inspection of the *locus in quo*, i.e. the premises of the State House in Freetown<sup>3</sup>.
4. The Prosecution submits that the Defence Request is without merit. Indeed the Defence has had during the cross-examination of the witness the opportunity to challenge the accuracy of the description of the kitchen made by the witness. The proper channel for a further challenge of the testimony of this witness by the Defence should be through their own case.

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<sup>1</sup> “Confidential Joint Request to Inspect *Locus in Quo* concerning Evidence of Witness TF1-024” filed on March 14 2005.

<sup>2</sup> Confidential Joint Request, paras. 1-4

<sup>3</sup> Confidential Joint Request, para. 8

## I. THE TESTIMONY OF TF1 - 024

5. On the 7<sup>th</sup> of March 2005 the witness testified that he had been locked by rebels inside the kitchen of the State House in Freetown during 4 days and was able to look during his detention through one of the windows of this kitchen. He testified about events he had seen while looking through this window<sup>4</sup>.
6. Counsel for the first Accused cross-examined the witness and asked him questions about the location of the kitchen within the State House, about the number of windows in the kitchen, about his ability to determine that this room was a kitchen and about the view one can see from the window through which the witness was looking<sup>5</sup>.
7. The answers given by the witness to the first three questions were not challenged by counsel for the first Accused. Counsel challenged the witness on the view one can observe through the window and put twice to the witness that his answers did not reflect the reality.<sup>6</sup>
8. Counsel for the second Accused asked the witness to describe the size of the kitchen. The witness replied that he “*didn't get the size of the kitchen*”. No further questions were asked by counsel for the second Accused on the size of the kitchen<sup>7</sup>.
9. Counsel for the third Accused did not ask any specific questions of the witness on the kitchen of the State House<sup>8</sup>.
10. The Prosecution did not re-examine the witness<sup>9</sup>.
11. The Bench asked the witness several questions about the size of the kitchen as well as the distance from the window of the kitchen up to a place outside the building of the State House about which the witness had testified earlier.<sup>10</sup>

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<sup>4</sup> Transcript, 7 March 2005, pp. 43-53

<sup>5</sup> Transcript, 7 March 2005, pp. 70-72

<sup>6</sup> Transcript, 7 March 2005, pp. 70-72

<sup>7</sup> Transcript, 8 March 2005, p. 3

<sup>8</sup> Transcript, 8 March 2005, p. 17-31

<sup>9</sup> Transcript, 8 March 2005 p. 31

<sup>10</sup> Transcript, 8 March 2005 pp. 31-33

**II. LEGAL CONSIDERATIONS AND DISCUSSION**

- 12. The Defence have their opportunity to cast doubt upon and challenge the accuracy of the testimony of a Prosecution witness during cross-examination. This is the meaning and effect of Rule 85 of the Rules of Procedure and Evidence<sup>11</sup> and of the jurisprudence of the ICTY on the provisions of that Rule<sup>12</sup>.
- 13. Rule 85 has been interpreted strictly by Trial Chamber I in this Court<sup>13</sup>.
- 14. As previously noted TF1-024 was cross-examined at length; it was the choice of counsel for the second and third Accused not to challenge the description that the witness gave of the kitchen of the State House in Freetown<sup>14</sup>.
- 15. Counsel for the first Accused decided only to dispute the assertion made by the witness according to which he could see grass from the window of the kitchen. The witness was not confronted by counsel on that point with photographs, models or plans but was simply told that it was not possible to see grass from that window but only a parking lot<sup>15</sup>.
- 16. None of the other assertions made by the witness about the kitchen were challenged during cross-examination: the fact that the kitchen is located in the basement of the State House, that it has three windows and that there were at the time pots and

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<sup>11</sup> Rule 85 of the Rules of Procedure and Evidence states as follows: “(A) Each party is entitled to call witnesses and present evidence. Unless otherwise directed by the Trial Chamber in the interests of justice, evidence at the trial shall be presented in the following sequence: i) Evidence for the prosecution; ii) Evidence for the defence; iii) Prosecution evidence in rebuttal, with leave of the Trial Chamber; iv) Evidence ordered by the Trial Chamber. (B) Examination in chief, cross examination and re-examination shall be allowed in each case. It shall be for the party calling a witness to examine him in chief, but a Judge any at any stage put any questions to the witness”.

<sup>12</sup> “Cross-examination, on the other hand, is the examination of a witness by questions by the adversary against whom the witness has testified. The object of cross-examination is twofold, first to elicit information concerning facts in issue, or relevant to the issue favourable to the party on whose cross-examination is conducted, and secondly, to cast doubt upon the accuracy of the evidence-in-chief given against such party”: *Prosecutor v Delalic and others*, “Decision on the motion on presentation of evidence by the accused Esad Lando”, Case No IT-96-21-T, 1 May 1997, paras 1-7.

<sup>13</sup> In Case No. SCSL-04-14-T the Prosecution was not allowed to ask a final question to a Prosecution witness before the start of cross-examination because Prosecution has already announced the end of its examination-in-chief; it was considered that the witness has been tendered to the Defence for cross-examination and that cross-examination should start: transcript, 16 June 2004, p. 23.

<sup>14</sup> Paras 9-10

<sup>15</sup> See above paras 6-7

washing basins inside. Furthermore, no other questions were put to the witness about the architecture, furniture or decoration of the kitchen<sup>16</sup>.

17. Contrary to what is asserted in the Joint Defence Request<sup>17</sup>, explanations and details about the size and volume of the kitchen as well as about the distance between the window of the kitchen and the grass outside the building of the State House were not elicited by the Defence during cross-examination. Indeed Counsel for the second Accused asked the witness about the size of the kitchen but did not pursue his line of questioning when the witness said that he could not remember<sup>18</sup>. This information was obtained from the Bench after the end of the cross-examination by the Defence<sup>19</sup>.
18. Therefore it cannot be disputed that the Defence has had ample opportunity to cross-examine the witness on his description of the kitchen and decided to leave the main part of this testimony completely unchallenged.
19. The Defence should not be allowed to re-open the door and further challenge Prosecution witness TF1-024 on his description of the kitchen in the State House or on any other matters. As the ICTY Trial Chamber explained in the *Celibici Case*: “without something new, a party has the last word with his own witness”<sup>20</sup>.
20. According to Rule 85 of the Rules of Procedure and Evidence<sup>21</sup>, the proper channel for the Defence at that stage to put opposing arguments relating to the testimony of the witness should be through its own case.
21. This principle was reasserted by the ICTY Trial Chamber in the *Kvočka et al* case when dealing with a different issue (as to whether the Defence was entitled to ask additional questions raised by Judge’s questions):

“The Trial Chamber decided that, in principle, the parties may not retake the floor after the Judges except where there has been an obvious material error with respect to the characterization of the testimony given by a witness, or

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<sup>16</sup> See above paras 5-10

<sup>17</sup> Confidential Joint Request, para 2

<sup>18</sup> See above para 9

<sup>19</sup> See above para 12

<sup>20</sup> *Prosecutor v Delalic and others*, “Decision on the motion on presentation of evidence by the accused Esad Lando”, Case No IT-96-21-T, 1 May 1997, para 30.

<sup>21</sup> See above footnote 11

where the witness has provided new information detrimental to the accused. Otherwise, the parties must put forward any opposing arguments through witnesses, closing arguments, or written submissions”<sup>22</sup>.

22. Counsel for the first Accused has apparently agreed with this principle: in answering a question from the Bench he confirmed that he may later seek leave to recall TF1-024 subject to further disclosure as regard to this particular witness as opposed to another one<sup>23</sup>.

## V. CONCLUSION

23. For the reasons given above, the Joint Defence Request should be dismissed.

Dated this 4<sup>th</sup> day of April 2005

In Freetown,

Sierra Leone

For the Prosecution,



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Luc Côté  
Chief of Prosecutions



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Lesley Taylor  
Senior Trial Counsel

<sup>22</sup> *Prosecutor v. Kvočka, Judgment*, Case It-98-30/I-T, Trial Chamber, 2 November 2001, para 794.

<sup>23</sup> Transcript, 7 March 2005, pp. 88-89

**PROSECUTION INDEX OF AUTHORITIES**

*Prosecutor v Delalic and others*, “Decision on the motion on presentation of evidence by the accused Esad Lando”, Case No IT-96-21-T, Trial Chamber, 1 May 1997.

<http://www.un.org/icty/celebici/trialc2/decision-e/70501DE2.htm>

*Prosecutor v. Kvocka*, “Judgment”, Case IT-98-30/I-T, Trial Chamber, 2 November 2001.

<http://www.un.org/icty/kvocka/trialc/judgement/kvo-tj011002e.pdf>