

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

FRIDAY, 31 MARCH 2006
12.12 p.m.
DECISION

TRIAL CHAMBER II

Before the Judges:	Richard Lussick, Presiding Julia Sebutinde Teresa Doherty
For Chambers:	Ms Carolyn Buff
For the Registry:	Mr Geoff Walker
For the Prosecution:	Mr Jim Johnson Mr Karim Agha Mr Jim Hodes Mr Charles Hardaway Ms Nina Jorgensen Ms Martine Durocher Ms Maja Dimitrova (Case Manager)
For the Principal Defender:	Ms Claire Carlton-Hanciles
For the accused Alex Tamba Brima:	Ms Glenna Thompson Mr Koj o Graham Mr Prudence Aci rokop
For the accused Brima Bazy Kamara:	Mr Andrew William Kodwo Daniels Mr Mohamed Pa-Momo Fofanah
For the accused Santi gie Borbor Kan u:	Mr Aji bol a E Manly-Spain

1 [AFRC31MAR06A - CR]
2 Friday, 31 March 2006
3 [Decision]
4 [Open session]
12:01:56 5 [The accused not present]
6 [Upon commencing at 12.02 p.m.]
7 PRESIDING JUDGE: We still have a minute or two that
8 enables us to say good morning, ladies and gentlemen. I will
9 take appearances first. For the Prosecution, you can announce
12:02:51 10 all the appearances, perhaps, Mr Hodes.
11 MR HODES: Yes, Your Honour, Jim Hodes on behalf of the
12 Office of the Prosecution. To my left, the new senior trial
13 attorney on the keep, Mr Karim Agha and to my right, a new member
14 of the team, Mr Charles Hardaway.
12:03:16 15 PRESIDING JUDGE: Yes, thank you. Will the other two
16 counsel be taking part in the trial at some stage, I take it?
17 MR HODES: Probably not. Unless they want to, they are
18 more than welcome to. I can introduce them as well, Mr Jim
19 Johnson is the Chief of Prosecutions and Ms Nina Jorgensen is our
12:03:38 20 legal adviser.
21 PRESIDING JUDGE: For those new members of the Prosecution
22 team, welcome to the Court. I see the old faces for the Defence.
23 I will start from my left. Mr Fofanah, you are appearing for
24 Mr Kamara?
12:04:06 25 MR FOFANAH: Yes, Your Honour.
26 PRESIDING JUDGE: Mr Daniels?
27 MR DANIELS: Mr Daniels, that is correct.
28 PRESIDING JUDGE: I note that Mr Daniels is --
29 MR DANIELS: The lead counsel.

1 PRESIDING JUDGE: Yes, and you are accompanied by
2 Mr Manly-Spain --
3 MR DANIELS: No, Mr Manly-Spain is --
4 PRESIDING JUDGE: I beg your pardon, Mr Manly-Spain is for
12:04:38 5 Kanu.
6 MR MANLY-SPAIN: Yes, Your Honour.
7 PRESIDING JUDGE: And Mr Graham with Ms Thompson for the
8 accused Bri ma.
9 MR GRAHAM: Yes, Your Honour.
12:05:07 10 MR MANLY-SPAIN: May it please, Your Honour, I wish to
11 apologise for the absence of lead counsel, Mr Knoops. He was
12 here but had to go back to Holland due to personal reasons. I
13 believe he wrote a letter informing the Court.
14 PRESIDING JUDGE: Yes, thank you, Mr Manly-Spain. We did
12:05:25 15 actually get a letter from Mr Knoops explaining that he had some
16 personal problem that he had to attend to. Thank you.
17 I note that none of the accused are here today. It's only
18 a matter of delivering a decision, in any event. Can I take it
19 that they simply chose not to come along?
12:05:57 20 MR GRAHAM: Yes, Your Honour, in the case of the first
21 accused, Mr Bri ma, we were expecting him in Court this morning.
22 I don't know why he's not here this morning. I believe we can go
23 on.
24 PRESIDING JUDGE: Yes, thank you. The reason I brought
12:06:13 25 that up, is their presence is not absolutely essential, but, of
26 course, I need to be satisfied that nothing has happened to keep
27 them away from Court if they wanted to come to Court, and that's
28 why I would like to hear from counsel that it's just a matter of
29 their choice and nothing has prevented them from coming.

1 MR DANIELS: Indeed, I can confirm for Mr Kamara that it is
2 out of choice that he's not coming this morning, as he feels he's
3 ably represented for the delivery of the ruling.

4 PRESIDING JUDGE: Thank you, Mr Daniels.

12:06:48 5 MR MANLY-SPAIN: I have heard no word in respect of
6 Mr Kanu.

7 PRESIDING JUDGE: All right. We are satisfied then that
8 all three accused have impliedly waived their right to be present
9 and we will proceed now to deliver judgment.

12:07:08 10 [Decision]

11 The purpose of today's sitting of the Trial Chamber is to
12 deliver our decision, which is unanimous, on the motions for
13 judgment of acquittal, pursuant to Rule 98, filed on behalf of
14 each accused. The judgment is quite a lengthy one and I don't
12:08:03 15 intend to read the whole judgment. I'm hoping that by the time
16 this Court rises, the judgment will be available to you.

17 I am sure that counsel for the accused have explained to
18 them the nature of a decision of a Trial Chamber under Rule 98.
19 Nevertheless, I stress that a ruling by the Trial Chamber under
12:08:35 20 Rule 98 that there is evidence capable of supporting a conviction
21 on a particular charge does not necessarily mean that the Trial
22 Chamber will, at the end of the case, return a conviction on that
23 charge.

24 Trial Chamber II, seized of the various Defence motions for
12:09:12 25 judgment of acquittal and noting the Prosecution response and the
26 Defence replies; and mindful of the scheduling order on filing a
27 motion for judgment of acquittal issued by the Trial Chamber on
28 30th September 2005; mindful also of the provisions of the
29 statute of the Special Court for Sierra Leone, in particular,

1 Articles 1, 2, 3, 4, 5, 6 thereof and the provisions of the Rules
2 of Procedure and Evidence of the Special Court, in particular,
3 Rule 98; mindful, again, of the provisions of international
4 instruments on International Humanitarian Law relating to armed
12:10:05 5 conflict, war crimes and crimes against humanity, hereby decides
6 as follows based solely on the written submissions of the parties
7 pursuant to Rule 73(A) of the Rules.

8 We then go into the procedural background of this case. I
9 am quite sure counsel are all familiar with that and there is no
12:10:33 10 need to read it out here.

11 The next issue we deal with is the applicable standard
12 under Rule 98 of the rules. We do go into that at some length.
13 I can say to counsel I am not going to read out the whole of our
14 findings on that section, except to say that there are no
12:10:51 15 surprises and we find that our amended statute that was amended
16 on 14 May 2005 to become roughly parallel to the ICTY statute
17 does not in any way change the standard of review to be applied
18 by the Trial Chamber in its Rule 98 exercise, which therefore
19 remains that set out and repeatedly applied by these Trial
12:11:31 20 Chambers in the Jelisić appeals judgment.

21 Without going into the rationale of that judgment, we say
22 that the factual findings in this decision in relation to the 14
23 counts in the indictment are reached using the above-mentioned
24 Rule 98 standard, namely, whether there is evidence, if believed,
12:11:56 25 upon which a reasonable tribunal of fact could be satisfied
26 beyond reasonable doubt of the guilt of the accused on the
27 particular charge in question.

28 We next come to a section dealing with the arguments that
29 were raised in locations in the indictment, over which the

1 Defence has raised issue. The first section there is the
2 locations in respect of which the Prosecution led no evidence.
3 We give our reasons for coming to this conclusion that we have
4 made note of the Prosecution concessions with regard to the
12:12:45 5 various locations for which no evidence was adduced, in our view,
6 for the reasons stated in the judgment that is sufficient to
7 cover the situation. We have made no specific orders in relation
8 to those areas.

9 The locations, the names of which are spelt differently, we
12:13:08 10 have pointed out the language differences, the differences in
11 pronunciation, and have come to the conclusion that if, in fact,
12 a town name had a different name to some people, then the Defence
13 had ample opportunity to raise any doubts about evidence relating
14 to given locations through cross-examination.

12:13:39 15 The next issue we dealt with is the greatest responsibility
16 requirement. We deal there, to some extent, with the drafting
17 history of that provision, that's Article 1.1. We come to the
18 finding that the evidence of the Prosecution, which is discussed
19 in detail in other sections of this decision, but having examined
12:14:19 20 that evidence, we find that there is evidence, if believed,
21 capable of establishing not only that the accused Alex Tamba
22 Brima, Brima Bazzy Kamara and Santigie Borbor Kanu were all
23 senior members of the AFRC, but that during the periods alleged
24 in the indictment, they were all implicated in serious crimes
12:14:49 25 committed in seven of the 11 districts of Sierra Leone. I
26 emphasise that there is evidence to establish that, if that
27 evidence is believed.

28 Given the potentially broad scope of Article 1.1 of the
29 statute, we find that there is evidence, if believed, that is

1 capable of placing each of the three accused in the category of
2 "persons who bear the greatest responsibility" for the crimes
3 charged in the indictment. The fact that there may be evidence
4 indicating the existence of persons who bear "the greatest
12: 19: 13 5 responsibility" other than the accused does not eliminate the
6 possibility that the accused may also be among those who bear the
7 greatest responsibility.

8 We then come to the elements of crimes against humanity
9 pursuant to Article 2 of the statute and we set out the applicable
12: 19: 13 10 law. We then move on to violations of Article 3 common to the
11 Geneva Convention and of Additional Protocol II, pursuant to
12 Article 3 of the statute, we set out the applicable law there.
13 The same goes for elements of other serious violations of
14 International Humanitarian Law pursuant to Article 4 of the
12: 19: 14 15 statute.

16 We then reviewed the evidence adduced by the Prosecution in
17 relation to Counts 1 to 14 of the indictment, we give our reasons
18 and findings and a reference to the evidence in relation to each
19 count, and we come to the final conclusion that on each of the 14
12: 19: 14 20 counts there is evidence upon which, if believed, a reasonable
21 tribunal of fact could be satisfied beyond reasonable doubt of
22 the guilt of each accused.

23 We then have addressed the individual responsibility under
24 the statute, both in respect of Article 6(1) and Article 6(2) and
12: 19: 15 25 we've covered modes of responsibility such as committing,
26 planning, instigating, ordering, aiding and abetting, joint
27 criminal enterprise and criminal responsibility under point 6(3)
28 of the statute which, of course, is superior responsibility.

29 We've come to the conclusion, having reviewed all of those

1 modes of responsibility and in view of our findings on the
2 counts, that the various Defence motions for judgments of
3 acquittal are dismissed in their entirety.

4 There is only one other matter for the business of the
12:19:16 5 Trial Chamber today. As you know, we must commence to schedule
6 the beginning of the Defence case. What we intend to do is fix a
7 date for the status conference. We're going to have a status
8 conference with a view to ascertaining certain matters before we
9 schedule a pre-Defence conference because I'm sure counsel have
12:19:16 10 noted under our Rules of Procedure there are certain enumerated
11 items that can be produced under Rule 73ter, but whether an order
12 is made or not in regard to production is to be made at a Rule
13 73ter conference, which is a pre-Defence conference.

14 This Court is going to be adjourned until next Tuesday.
12:19:54 15 What will take place on that morning, Tuesday, 4 April at
16 9.15 a.m., will be a status conference. The agenda will be quite
17 short. It will be as follows: We want from the Defence at this
18 stage the number of witnesses expected to be called for each
19 Defence team. Secondly, the anticipated length of the Defence
12:20:33 20 case. Thirdly, we will be scheduling a pre-Defence conference.
21 Fourthly, we'll be scheduling a date of commencement for the
22 Defence case.

23 We hope to be able to go into all of those on Tuesday
24 morning. I know both parties have been outside of the Court for
12:20:57 25 some time now. I would assume most of the information we will
26 require to schedule further conferences will be available on
27 Tuesday. We also note that the parties have been effective in
28 getting together and solving the issues and that has been a great
29 saving of time to this Court. All we can say at this stage is

1 that we certainly hope you have been getting together on what
2 obligations rest on the Defence as regards production to the
3 Prosecution. I'm sure the Defence would not be surprised by
4 anything in Rule 73ter and those requirements are fairly standard
12: 21: 53 5 requirements in international courts.

6 Nevertheless, we'll be discussing that in detail on
7 Tuesday. The only other thing I would mention about the status
8 conference on Tuesday is that if there are any other matters you
9 want added to the agenda, it's simply a matter of sending a note
12: 22: 24 10 to our legal officer and, of course, serving a copy of that note
11 on your opponents. I don't think there are any other matters.
12 We'll adjourn the Court until Tuesday morning.

13 [Whereupon the hearing adjourned at 12.25 p.m.]
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