

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

TUESDAY, 03 MAY 2005  
10.13 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:	Teresa Doherty, Presiding Julia Sebutinde Richard Lussick
For Chambers:	Mr Matthias Reuss
For the Registry:	Mr Geoff Walker
For the Prosecution:	Ms Lesley Taylor Mr Alain Werner Mr Robert Braun Ms Maja Dimitrova (Case Manager)
For the Principal Defender:	Ms Simone Monasebian Ms Claire Carlton-Hanciles Mr Elizabeth Nahamya
For the accused Alex Tamba Brima:	Mr Kevin Metzger Mr Kojo Graham Mr Osman K Kamara
For the accused Brima Bazy Kamara:	Mr Wilbert Harris Mr Mohamed Pa-Momo Fofanah
For the accused Santigie Borbor Kan:	Mr Abibola Manley-Spaine

1 Tuesday, 3 May 2005

2 [Open session]

3 [The accused not present]

4 [TB030505A 10.13 a.m. - AD]

5 [Upon commencing at 10.13 a.m.]

6 PRESIDING JUDGE: Good morning. I note the absence of the  
7 three accused persons. Are we to take it that the situation  
8 yesterday prevails?

9 MR HARRIS: Your Honour, yes. May I begin by saying on  
10 behalf of the entire bar, we are very grateful for the time you  
11 allowed us yesterday and are grateful for your co-operation in  
12 this exercise. It has been a very, very difficult hour. We  
13 returned this morning to pursue another line, hoping that we  
14 would break into the arena and join hands in a spirit of  
15 fellowship. However, we found it impossible so to do. So the  
16 position today, regrettably, is the position yesterday. May I  
17 again, on behalf of the bar, thank you greatly for the  
18 opportunity. We have been able to discuss a number of issues,  
19 and I think we can say with some confidence that we know our  
20 clients a little better now today than we did yesterday.

21 PRESIDING JUDGE: For the purposes of the record I will  
22 note that the accused have opted not to attend Court and the  
23 provisions of the rules apply. I note there are no other  
24 applications and I will therefore request Prosecution to proceed.  
25 Oh, Mr Metzger.

26 MR METZGER: It being the situation that, despite our joint  
27 best endeavours, we are no further forward than we were  
28 yesterday, were the Prosecution to continue, having examined both  
29 my conscience in terms of integrity and other issues, it seems to



1 me that I would be unable to continue to represent Mr Tamba Alex  
2 Brima. In those circumstances I would seek, as is courteous and  
3 proper, the leave of this Trial Chamber to withdraw from this  
4 case as counsel for Tamba Alex Brima. I will not play a further  
5 part in his case unless and until his instructions change.

6 PRESIDING JUDGE: Mr Metzger, I will not invite you to say  
7 anything further until I have heard the stance of other counsel  
8 in the case. I will now invite other counsels who gave  
9 indications yesterday. Mr Harris?

10 Mr HARRIS: Your Honour, yes. My position regrettably, and  
11 I do say very much so regrettably, is the same as my learned  
12 friend Mr Metzger. It is sufficient for me to say just that:  
13 Regrettably it is that position.

14 PRESIDING JUDGE: Mr Manley-Spaine?

15 MR MANLEY-SPAINE: May it please Your Honour. My position  
16 is that I cannot go on in the light of the instructions  
17 yesterday. I wish to add that my position changes in case the  
18 indictee's position changes.

19 PRESIDING JUDGE: I note the presence of the Principal  
20 Defender.

21 MS MONASEBIAN: When your Your Honours deem it appropriate,  
22 I would like to address on this matter. I can do that now or  
23 wait for Your Honours to make additional inquiry or to hear from  
24 the Prosecution. But I would like to make some suggestions if  
25 possible Your Honour.

26 PRESIDING JUDGE: Thank you. Just allow us to consult  
27 before we proceed any further.

28 [Trial Chamber deliberates]

29 [Ruling]



1           PRESIDING JUDGE: We have heard each of the counsel for the  
2 Defence. Counsel are well aware of the provisions of Rule 45(A)  
3 and, in the light of counsels' statements, counsel are requested  
4 to put in writing the relevant applications and explanations. In  
5 the light of this type of case, it may be wise to have them  
6 treated as confidential initially. Counsel can indicate to us  
7 and the Court will then consider that as provided for by the  
8 rules. In the duty of the Court to ensure there is not undue  
9 delay and an expeditious trial, it is important we put a time  
10 limit on such written submissions. We are aware of Mr Metzger's  
11 personal commitments, which will be respected. Is any counsel  
12 willing to give us an indication of how long they need? We  
13 obviously must do this as quickly as is practical.

14           MR METZGER: May we just confer?

15                                 [Defence counsel confer]

16           MR METZGER: We are grateful to the Court for the  
17 opportunity to confer. It is the consensus -- although there is  
18 some doubt it -- we hope that by Thursday morning, maybe 10  
19 o'clock, we should have been in a position to put a composite and  
20 full document before the Chamber. But we would ask that any such  
21 document initially be confidential, under seal and ex parte. It  
22 would then be a matter for the Chamber to decide, once it has  
23 considered the matters that are raised therein, whether it wishes  
24 to have an inter-parties hearing as a result of that.

25           PRESIDING JUDGE: Before I consult with my learned  
26 colleagues, one matter springs to mind, and that is the fact that  
27 you say "ex parte". Obviously Prosecution has some right of  
28 reply and how can they reply if it is ex parte?

29           MR METZGER: I have thought of that. It seems to me that



1 any business of Defence counsel in the representation of their  
2 client and explanation to the Court may very well of necessity  
3 involve dealing with matters pertaining to privilege, and to  
4 which the Prosecution have no right whatsoever to know.

5 PRESIDING JUDGE: Sorry, Ms Monasebian, I did not intend to  
6 ignore you.

7 MS MONASEBIAN: I will not be addressing on the suggestions  
8 I had earlier sought as I see that is premature. But what I  
9 would just like to simply offer to Your Honours is that pursuant  
10 to Article 24 of the Directive of Assignment of Counsel, it is  
11 initially within my purview for Defence counsel to make that  
12 request to me ex parte. So, I think that Mr Metzger's suggestion  
13 that this be done on an ex parte basis is in keeping with the  
14 spirit of Article 24, that would say that the counsel would come  
15 to the Principal Defender or, if the Principal Defender denies  
16 the request, the judges -- because there is that remedy as well  
17 in Article 24 -- to hash this matter out. Now, I think the  
18 Prosecution does have a right to address as to whether withdrawal  
19 should or should not be had overall legally, as Ms Taylor did  
20 yesterday. What I don't think that the Prosecution has a right  
21 to do is to see the factual basis, only Your Honours. Then Your  
22 Honours could summarise them to the extent that Your Honours deem  
23 appropriate before counsel for the Prosecution would address.  
24 But the facts, I think, are rightly only before Your Honours and  
25 myself. Thank you.

26 PRESIDING JUDGE: Thank you, Ms Monasebian. I will invite  
27 counsel for the Prosecution. There are two issues before us:  
28 One is the issue of time. We have heard counsel for the Defence  
29 and the other is the issue --





1 MS TAYLOR: Thank you, Your Honours. As to the issue of  
2 time, I would suggest that the time frame be far more expedited  
3 than Thursday morning. In fact, I would suggest by close of  
4 business today. The applications need to be made. What the  
5 applications need to satisfy Your Honours of, if they are to be  
6 successful, is that the most exceptional circumstances can be  
7 made out. In circumstances where my learned friends have said  
8 that they have been in this position since at least the weekend,  
9 it should be possible to do a written application setting out the  
10 matters.

11 PRESIDING JUDGE: I realise, Ms Taylor, you did address on  
12 the meaning et cetera and we will, of course, hear you when it  
13 comes to the substantive issue. I am now dealing (a) with the  
14 time, and you have addressed me on that.

15 MS TAYLOR: Yes.

16 PRESIDING JUDGE: And you have heard counsel -- Mr Metzger  
17 and the Principal Defender -- on the other matter, which I could  
18 indicate I can see there is valid -- the question of  
19 confidentiality between lawyer and client is a valid one.

20 MS TAYLOR: Certainly, the Prosecution would not seek to  
21 look at any material that relates to lawyer-client privilege. At  
22 the same time, it is important that some material is given to the  
23 Prosecution if we are to reply in a meaningful way.

24 PRESIDING JUDGE: Certain materials were put before the  
25 Court yesterday. In any event, I have noted both your replies  
26 and we will just confer to --

27 MS TAYLOR: Your Honour, there is just one more thing --

28 PRESIDING JUDGE: Sorry.

29 MS TAYLOR: -- in relation to the time aspect, if I may.



1           PRESIDING JUDGE: Yes.

2           MS TAYLOR: I realise that it is a tangential issue, but  
3 with this process to be adopted there will obviously be some time  
4 that Your Honours will need to consider the matter and to provide  
5 a ruling. My concern is simply for the witnesses. We have had  
6 the current witnesses sitting out in the witness room in what  
7 are, quite frankly, quite cramped circumstances for a number of  
8 days now, and we have brought to Freetown quite a number of  
9 witnesses from all over the country. Those witnesses do have  
10 their own difficulties; it is often very inconvenient for them to  
11 be in Freetown -- they have farms, they have children and they  
12 have other family members that they need to look after. In terms  
13 of the time line, certainly some of the witnesses who are, if I  
14 may say, imminent in the order have been here for quite some  
15 time -- in excess of six weeks often. They are beginning to  
16 express a desire that they go home at least for a short period of  
17 time to deal with some domestic issues. If we had a time frame  
18 then those needs can be accommodated and they can be brought back  
19 to Freetown at the appropriate time.

20           PRESIDING JUDGE: Thank you, we will bear that in mind.

21                           [Trial Chamber deliberates]

22                           [Ruling]

23           PRESIDING JUDGE: We have considered the submissions of all  
24 of the parties involved. We will allow the Defence counsel to  
25 file their submissions by Thursday at the opening of the  
26 Registry. We are trying to remember if that is 9.00 or 9.30.

27           MR WALKER: Nine o'clock, Your Honour.

28           PRESIDING JUDGE: Nine o'clock. Thank you, Mr Court  
29 Attendant. Prosecution will file the reply by Friday at 2.00



1 p.m., and, if appropriate, may include a reply pursuant to Rule  
2 24 of the rules. Sorry, I have corrected myself three times on  
3 this draft: It is Article 24 on the Assignment of Counsel -- and  
4 I correct myself yet again. The application from counsel shall  
5 be under seal, confidential and ex parte. The Principal Defender  
6 is at liberty to file any submission which the Principal Defender  
7 thinks relevant in the light of the situation.

8 MS TAYLOR: Your Honour, if I may just clarify. If the  
9 submissions are to be under seal, ex parte and confidential, is  
10 the Prosecution going to receive anything?

11 PRESIDING JUDGE: We have discussed and considered that (a)  
12 there are points of law that are relevant to this, and, Ms  
13 Taylor, you ably indicated those to us yesterday. And also  
14 several matters arose yesterday on points of fact which are  
15 relevant to the application, and again you referred to those. We  
16 consider that there is material there that will permit the  
17 Prosecution to answer.

18 MS TAYLOR: If Your Honour pleases, thank you.

19 MS MONASEBIAN: Your Honour, perhaps I misunderstood. If  
20 it is my understanding that the Defence is not going to be  
21 providing the Prosecution with a document at nine o'clock on  
22 Thursday morning, and the Prosecution is merely going to rely on  
23 the record to date to respond, then it might be a suggestion to  
24 have both parties reply at nine o'clock on Thursday morning,  
25 because the Prosecution will not be waiting for something from  
26 the Defence and Your Honours would have more time to review both  
27 of those materials. Just a suggestion. Thank you.

28 PRESIDING JUDGE: Ms Taylor, in the light of the Principal  
29 Defender's very practical point --



1 MS TAYLOR: The Prosecution is willing to assist the Court  
2 in that matter.

3 PRESIDING JUDGE: We are very grateful, because whilst  
4 these things should not be rushed, the duty to have an  
5 expeditious trial is always before us. I will therefore amend  
6 the record to reflect an amendment to the order that Defence and  
7 Prosecution file by Thursday at opening of the Registry at 9.00  
8 a.m. I am grateful for that assistance. We will resume the  
9 Court on Friday morning at 9.15 a.m. Mr Attendant, please  
10 adjourn Court until Friday at 9.15 a.m.

11 [Whereupon the hearing adjourned at 10.41 a.m.,  
12 to be reconvened on Friday, the 6th of May  
13 2005, at 9.15 a.m.]

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