

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

TUESDAY, 25 JULY 2006
2.15 P.M.
STATUS CONFERENCE

TRIAL CHAMBER II

Before the Judges: Richard Lussick, Presiding
 Teresa Doherty
 Julia Sebutinde

For Chambers: Mr Simon Meisenberg

For the Registry: Mr Thomas George

For the Prosecution: Mr Karim Agha
 Mr Charles Hardaway
 Ms Maja Dimitrova (Case Manager)

For the Principal Defender: No appearance

For the accused Alex Tamba Mr Kojo Graham
Brima: Ms Glenna Thompson
 Mr Ibrahim Foday Mansaray (legal assistant)

For the accused Brima Bazy Mr Andrew William Kodwo Daniels
Kamara: Mr Mohamed Pa-Momo Fofanah

For the accused Santigie Borbor Mr Ajibola E Manly-Spain
Kanu:

1 [AFRC_25JUL06_CR]

2 Tuesday, 25 July 2006.

3 [Status conference]

4 [Open session]

5 [The accused present]

6 [Upon commencing at 2.15 p.m.]

7 PRESIDING JUDGE: We've read over the lunch break the
8 urgent joint Defence application for a status conference pursuant
9 to Rule 54 for the Rules of Procedure and Evidence of the Special
14:18:09 10 Court for Sierra Leone. Pursuant to Rule 73(A), rather than deal
11 with this by way of written submissions, we decided to hear the
12 parties in open Court. Can I take it that there's no opposition
13 if we decide to have the status conference here and now? All
14 right. That is so decided then.

14:18:35 15 MR MANLY-SPAIN: May it please Your Honour.

16 PRESIDING JUDGE: Yes.

17 MR MANLY-SPAIN: Your Honour, before we go on to that, I
18 believe I should inform the Court that the witness I should have

19 taken, DAB-079 who went AWOL has now been located by WVS, and
14:19:00 20 that he's been to Kabala because he's unwell, but he has agreed
21 to come back and they will go and take him, but he will require
22 medical treatment immediately he arrives in Freetown.

23 PRESIDING JUDGE: What does that mean, Mr Manly-Spain?

24 He's still not available to come.

14:19:22 25 MR MANLY-SPAIN: No, but I believe I should inform the
26 Court we have now made contact with him.

27 PRESIDING JUDGE: All right, thank you. We'll go straight
28 to the agenda on the last page of the motion. What is the status
29 or availability of Defence witnesses for the remainder of this

SCSL - TRIAL CHAMBER II

1 trial session?

2 MR GRAHAM: Good afternoons, Your Honours. In respect of
3 the availability of witnesses for this trial session, we
4 respectfully submit that beyond the witness that my learned
14:20:17 5 friend Mr Manly-Spain referred to, we do not presently have any
6 witnesses with WVS who are available to testify any time this
7 week, and we believe some time next week. Your Honours, I might
8 say this has been occasioned by a number of reasons. Firstly,
9 the unexpected pace at which, I believe, the trial has taken
14:20:53 10 place and also secondly, our own projection that the witnesses
11 totalling -- I think our witnesses from both Bombali and
12 Koinadugu District overall was almost about 40 witnesses,
13 overall. Unfortunately, we have not been able to get all of them
14 in this trial session for a number of reasons, some of them
14:21:16 15 family reasons, some of them for reasons of farming and a host of
16 other issues, and that explains -- in doing our projections, we
17 did also fairly look at the time that the number of witnesses
18 that the Prosecution also called during the first eight weeks of

19 their case, just by way of our own -- what we believe were fair
14:21:40 20 underlying projections that would guide us in terms of the number
21 of witnesses we would call this session. I believe we've called
22 26 witnesses -- I stand to be corrected -- excluding the first
23 accused, Mr Tamba Brima. The Prosecution, I believe, during the
24 first eight weeks of their case had called in 18 witnesses. That
14:22:07 25 is not to say we are justifying the unavailability of witnesses
26 presently, but just for your information to know some of the
27 guidelines we looked into in trying to arrange the number of
28 witnesses for this session. Having said that, we are still
29 working in the sense that we hoped that after the witnesses from

SCSL - TRIAL CHAMBER II

1 Koinadugu, the next line of witnesses would be coming in from the
2 Kono District. I mean, we've been working on that concurrently
3 whilst also trying to get the witnesses from Bombali and
4 Koinadugu, also to come here and testify. It has not been a bit
14:22:47 5 easy. Your Honours, for example, some of the witnesses from
6 Koinadugu who were here for confirmation and verification of
7 their statements ended up testifying, because of some of the
8 constraints that we were facing, some of them had reason to
9 complain, but we explained to them the circumstances and also the
14:23:05 10 need for us to also fairly meet what we believe are the genuine
11 expectations of the Court so far as the trial timetable is
12 concerned and the calling in of witnesses. We are not sitting
13 down. We are working very hard. Indeed, our teams are moving
14 out. On Friday, three teams --
14:23:27 15 PRESIDING JUDGE: But why Friday? It is only Tuesday, you
16 have run out of witnesses and you're waiting until Friday.
17 MR GRAHAM: Your Honours, we do not anticipate that the
18 witnesses from Kono will be able to testify this session.

19 PRESIDING JUDGE: Why do they have to be from Kono. Don't
14:23:42 20 you have any witnesses in Freetown.

21 MR GRAHAM: Your Honours, we do have witnesses in Freetown.
22 Indeed, we have worked a lot on the witnesses in Freetown.
23 Except with Freetown the issue has been the witnesses also
24 wanting to meet with the accused persons. We've got the policy
14:23:58 25 guidelines from the Registrar, and we've made some headway in
26 terms of trying to arrange for some of these witnesses to meet
27 some of the accused persons this past week. We do not know what
28 the schedule will be for next week, but we are not absolutely
29 ruling out the possibility that we may hopefully also get some

SCSL - TRIAL CHAMBER II

1 witnesses from Freetown, but it is difficult to say that with a
2 high level of certitude because of the fact that we have been at
3 it and it has not been easy at all. Your Honours, we are saying
4 Friday, also, because of the logistics involved in arranging for
14:24:38 5 transportation. You normally would need two days' notice to be
6 able to do that. Of course, Your Honour, we are sending them to
7 Kono --

8 JUDGE DOHERTY: To be able to do what, Mr Graham? To do
9 what? To be able to do what? You said to be able to do that.

14:24:54 10 What are you talking about?

11 MR GRAHAM: To be able to get -- we need to give two days'
12 notice to transportation.

13 JUDGE DOHERTY: But last Thursday you told us a similar
14 story. Why did you not give the two days' notice last Thursday.

14:25:12 15 MR GRAHAM: Your Honours, as I'm saying, the witnesses
16 coming in from Kono, they are not ready to testify simply because
17 we need to confirm and verify most of the statements that we have
18 taken from them. That is the main problem with the witnesses

19 from Kono.

14:25:33 20 JUDGE SEBUTINDE: Mr Graham, on a number of occasions,
21 various Defence counsel have expressed logistical difficulties
22 that you are experiencing accessing your witnesses upcountry,
23 problems which we think, really, do not fall within the province
24 of the Bench, but, rather, fall within the province either of the
14:25:54 25 Defence office or directly with the Registrar to address. You,
26 nonetheless have addressed them to us on a number of occasions,
27 as your reasons for not being able to proceed as quickly as you
28 would like to. However, we are just wondering, from -- if you
29 look at the summaries from witness 39 up right to witness 49, all

SCSL - TRIAL CHAMBER II

1 these are apparently witnesses not from upcountry. They are from
2 Freetown and Western Area. Now, without appearing to tell you
3 how to conduct your case, we're just wondering the logic of you
4 complaining that you have difficulty to access upcountry
14:26:33 5 witnesses and not displaying the fact that you are trying to
6 access these ones that are in Freetown. We don't understand
7 that.

8 MR GRAHAM: Your Honours, I'm entirely in line with what
9 you are saying. Indeed, we have spent a great part of the time
14:26:53 10 whilst this trial has been going on working on witnesses in
11 Freetown. Your Honours, I've said, it is a unique and difficult
12 problem with witnesses in Freetown, because that should have been
13 our natural order of choice in circumstances.

14 JUDGE SEBUTINDE: And I have not understood the difficulty
14:27:09 15 with the Freetown witnesses. What is the difficulty, exactly?

16 MR GRAHAM: Your Honours, I said earlier that our key
17 witnesses in Freetown who we are ready to -- we hoped were ready
18 to testify suddenly have requested that they meet with accused

19 persons before they come into Court to come and testify.

14:27:29 20 JUDGE SEBUTINDE: And what is difficult about that?

21 MR GRAHAM: Your Honours, I must inform you that, of

22 course, the Registrar has policy guidelines which regulates the

23 visits of protected witnesses and accused persons. It allows

24 only one visit at a time. They're visiting hours are also

14:27:49 25 restricted from 2.00 to 4.30. I'm sure these are some of the

26 operational constraints in terms of how many can see them for

27 them to have enough time to be able to discuss and talk about

28 what they need to do for them --

29 JUDGE SEBUTINDE: Surely, since the Defence opened its

SCSL - TRIAL CHAMBER II

1 case, Mr Graham, you want us to believe that you have not had
2 time for these Freetown witnesses to speak to their colleagues,
3 the accused persons, until now?

4 MR GRAHAM: Your Honours, I -- for the sake of I mean,
14:28:29 5 emphasis, I'm saying that these are some of the problems,
6 Your Honours. I, with great respect, do not know how else I can
7 put it clearer than to say that these are just the difficulties
8 of the witnesses. You talk to them, they make commitments, you
9 make arrangements, and then you go in and then it is a different
14:28:51 10 story altogether.

11 PRESIDING JUDGE: I still can't understand, though, these
12 Freetown witnesses, they have the opportunity to speak to the
13 accused counsel. I would presume that their evidence would be
14 unwavering, whether they spoke to the accused or not. Are you
14:29:11 15 saying their final evidence cannot be assessed until they get
16 their story straight with the accused?

17 MR GRAHAM: Your Honours, some of the Freetown witnesses,
18 indeed, who are in here since we put their names here have come

19 again to tell us they are not going to be able to testify. I
14:29:28 20 mean, we are trying to reconfirm some of these new developments
21 which happened just last week, and that relates entirely to some
22 of the Freetown witnesses whom we have in the first 49 summaries
23 that we submitted to this Court, and that was en masse. Indeed,
24 prior to coming here, lead counsel for Mr Kamara, and myself,
14:29:57 25 were on our way to Waterloo to go and try and address some of the
26 new developments relating to these witnesses.
27 PRESIDING JUDGE: I know you filed a list, but without my
28 having to refer to it, how many witnesses from Freetown had you
29 contemplated calling?

SCSL - TRIAL CHAMBER II

1 MR GRAHAM: Oh, Your Honours, we did not contemplate
2 probably calling more than ten witnesses from Freetown, if I'm
3 being conservative.

4 PRESIDING JUDGE: What if we adjourn these hearings until
14:30:33 5 Thursday morning? How many of those Freetown witnesses could you
6 have ready to give evidence?

7 MR GRAHAM: Your Honours, with great respect, as I said,
8 our core witnesses in Freetown, indeed, had a group meeting
9 yesterday and for whatever reason informed us that they were no
14:30:49 10 longer willing to testify. The fall-out after our contact with
11 them to find out what their reason was the request that they need
12 to talk to the accused persons. That is the difficulty we face.

13 PRESIDING JUDGE: What is the reason they gave for wanting
14 to talk to the accused persons before they could give any
14:31:14 15 evidence?

16 MR GRAHAM: Well, Your Honour, they spoke about their need
17 for them to discuss, if I'm right, their stories, or the account,
18 or their testimony that they are coming to give here in the

19 Court, you know, to -- and that is the difficulty. It has been
14:31:34 20 stressful, but we've kept at it. We feel very uncomfortable
21 being in this situation because not the least, we do respect the
22 expectations of the Court. We've not rested at all in this
23 regard.

24 PRESIDING JUDGE: All right. You mean to say you have ten
14:31:56 25 witnesses from Freetown, and if we give you a day to approach
26 them, not one of them would be ready by Thursday morning? We
27 just want to see where this trial is going, Mr Graham. Is that
28 what you're saying?

29 MR GRAHAM: Your Honours, we could well make another good

SCSL - TRIAL CHAMBER II

1 faith effort. We have no objections whatsoever in making a good
2 faith effort after these proceedings and then report back to the
3 Court in respect of that. Indeed, we've been working on that.

4 PRESIDING JUDGE: We're not interested in any more reports,
14:32:28 5 just some witnesses. We're interested in some Defence witnesses.

6 We think you've had ample time and we're not happy with the way
7 you've used that time. Now, put aside Freetown. Look at all the
8 other witnesses yet to go. If we gave you a day off tomorrow to
9 go and get somebody, could you have some witnesses ready by
14:32:49 10 Thursday morning?

11 MR GRAHAM: Your Honours, in the circumstances, I must
12 respectfully say that it would be difficult for me standing here
13 to just make that projection without seeking a further
14 consultation with our legal assistants and investigators who, as
14:33:07 15 we speak, are also addressing this very problem that we stand
16 here before you.

17 PRESIDING JUDGE: You see, it is very wrong of the Defence
18 to say, "Well, we have called 26 witnesses," and then think that

19 you can sit back on your laurels and not bother calling any more
14:33:26 20 until the next trial session. That's not how to run a trial.

21 MR GRAHAM: Indeed, not at all. Your Honours, with great
22 respect, we have never perceived the circumstances in that way at
23 all. We haven't at all.

24 JUDGE SEBUTINDE: Then, Mr Graham, give us your game plan.
14:33:41 25 When do we see the next Defence witness in Court?

26 MR GRAHAM: Well, Your Honours, as I said, we are getting
27 our teams out. We would move on to Freetown, you know, to see
28 what we could hopefully --

29 JUDGE SEBUTINDE: Mr Graham, I'm not asking for logistics

SCSL - TRIAL CHAMBER II

1 and schedules. When do we see the next Defence witness in Court?

2 The next group of Defence witnesses in Court?

3 MR GRAHAM: If I may confer with my learned friends, with
4 your kind indulgence?

14:34:14 5 [Defence counsel conferred]

6 MR GRAHAM: Thank you, Your Honours. Your Honours, in
7 consultation with my learned friends, I am being advised that, I
8 believe, hopefully, on Monday we would endeavour, in the
9 circumstances, to get some witnesses before the Honourable Trial

14:34:55 10 Chamber in order to facilitate further proceedings.

11 PRESIDING JUDGE: Why could those efforts not have been
12 made earlier this week, or over the weekend?

13 MR GRAHAM: Your Honour, we have been making an effort on a
14 daily basis. We have been making the effort on a daily, daily

14:35:15 15 basis. We have not rested at all. I say that with utmost

16 respect. We have not, Your Honours. We have been entirely aware

17 of that and for some time we've seen it coming and to that

18 extent, we have not rested at all. We have not rested at all.

19 We do not cherish the present circumstances in which we find
14:35:42 20 ourselves in.

21 PRESIDING JUDGE: Well, where do you propose these
22 witnesses to come from on Monday?

23 MR GRAHAM: Your Honours, we would get a combination,
24 hopefully, from both Kono and Freetown. We also have one or two
14:36:04 25 witnesses that were also part of the Bombali list who, for some
26 reasons, didn't show up earlier on. That we have also made
27 contact with. I'm hopeful by the end of the day today, we also
28 would have gained some grounds in that respect so we would also
29 be able to add them on to the list of Freetown and Kono, if any.

SCSL - TRIAL CHAMBER II

1 PRESIDING JUDGE: So if we adjourn this status conference
2 until tomorrow morning, you might have some more positive results
3 for us?

4 MR GRAHAM: That is so, Your Honour.

14:36:36 5 JUDGE DOHERTY: Can I ask, Mr Graham, when the Defence
6 opened its case on 5 June, Mr Knoops indicated that he was
7 arranging and inquiring into expert witnesses. Your brief refers
8 to two, possibly three expert witnesses. We have seen no expert
9 reports and what is the status of experts?

14:37:00 10 MR GRAHAM: Your Honours, indeed, you're right. We slated
11 to call in, I think, expert witnesses on, I think, forced
12 marriages. I think one was also going to deal with the military
13 issues relating to the AFRC, and I think we are also
14 getting in -- but I think it has been very difficult. I think
14:37:21 15 with the military expert has been retained -- he is almost
16 completing his report. We have not moved very far in respect of
17 the expert witness for --

18 JUDGE DOHERTY: I also recall a reference to an expert on

19 child soldiers. Again, that was back in June, if not in April.

14:37:41 20 MR GRAHAM: Yes, Your Honours, Professor Knoops has made a

21 number of contacts and he has conducted a number of interviews in

22 Europe. In respect of child soldiers and forced marriages it has

23 been very difficult -- I understand we have got an expert for the

24 child soldiers, but I think I will let my learned friend

14:38:02 25 Ms Thompson probably explain the issues of the expert witnesses.

26 MS THOMPSON: Your Honour, the military expert is on board.

27 The child soldier expert is on board. Forced marriage is not

28 quite on board yet. But, Your Honours, when these experts are

29 identified and they agree to coming on board, there is a process

1 to go through with the Defence office in terms of the contracts
2 they get, how long they're engaged. And that process takes a bit
3 of time. Then, obviously, the remuneration has to be decided by
4 the Defence office and all of that. That process takes some
14:38:45 5 time. That, in fact, was -- there's usually some delay involved
6 before they actually start working. I know that the military
7 expert's report is coming to an end now. That report should be
8 available pretty shortly. I can't give you an exact time period,
9 but I have seen a draft. I know that the final report would be
14:39:07 10 available some time pretty soon. The first -- sorry, the child
11 soldiers, like I said, he's on board. He's started working, and
12 he'll get a report by the deadline, which is 21st August. Forced
13 marriages, that's a hard one, because we've had -- we've spoken
14 to lots of people. Professor Knoops has -- he's referred people
14:39:36 15 to us. We kind of have somebody on board, but I can't actually
16 say with any certainty whether that person will be giving
17 evidence or not. Then there is another one, the demographer who
18 has been identified and the contract will be prepared shortly.

19 That demographer will be on board. Having said all that,
14:40:02 20 Your Honour, and given what Mr Graham has said, it is our
21 considered view that this, at least Defence case should not take
22 longer than October.

23 PRESIDING JUDGE: Thank you, Ms Thompson. I'm going to
24 move on to the next agenda item. I am not sure if the

14:40:29 25 Prosecution wants to reserve its comments until the end of the
26 agenda or item by item. It doesn't matter.

27 MR AGHA: Which do you prefer, Your Honour, because we may
28 be asking for orders, so perhaps at the end of each item that may
29 be addressed and then finalised.

SCSL - TRIAL CHAMBER II

1 PRESIDING JUDGE: All right. The first item you have
2 there, did you have any submissions?

3 MR AGHA: The first point we actually noted is that the
4 Prosecution wasn't comfortable with this idea of the group of
14:40:59 5 Freetown witnesses sort of meeting together as some kind of group
6 and agreeing in a group fashion to perhaps meet the accused,
7 because we wouldn't like to think that they're being addressed as
8 to what kind of evidence they should give, especially as the
9 number of the witnesses 32 to 49 are, in fact, former SLA or
14:41:21 10 serving SLA soldiers. Just by way of an observation, that in
11 itself concerns the Prosecution.

12 PRESIDING JUDGE: I'm not sure what you can do about that,
13 it is the Defence case, but it is certainly good
14 cross-examination material, isn't it?

14:41:39 15 MR AGHA: It could be useful, Your Honour. But the other
16 point, before coming to the submission, and I think I need to
17 make it now, I'm not sure even if the Defence will be able to
18 bring in witnesses 32 to 49, that would necessarily solve the

19 problem on Monday, let us say, or even Thursday. The reason
14:41:58 20 being is that these witnesses were part of the rolling disclosure
21 which have only very recently been disclosed to us. Now, we've
22 pressed on and done our best for the Koinadugu witnesses when I
23 mentioned we only had eight days to investigate. Now, witnesses
24 32 to 49 are more insider-type witnesses in which we would
14:42:22 25 certainly find it difficult, I suspect, to stand up on our feet
26 and immediately start cross-examining them. So with regard to
27 those witnesses, that may not in itself be a solution if they are
28 brought in, since we've had so little notice of them.
29 PRESIDING JUDGE: Look, we want to keep this trial going

SCSL - TRIAL CHAMBER II

1 rather than sitting in Chambers twiddling our thumbs and
2 wondering when the next lot of witnesses are going to be ready.
3 Now, witnesses 32 to 49, if they are ready to come to court, they
4 can come and give evidence. If you feel, after their
14:42:56 5 evidence-in-chief, that you're disadvantaged, then we can make
6 appropriate orders.
7 MR AGHA: Yes, Your Honour, indeed. Coming back to this
8 concept of witnesses, say, not being here, the Prosecution feels
9 that the Defence has given sufficient time and has not given
14:43:17 10 sufficient reasons as to why witnesses are not available in a
11 timely fashion. The first accused gave evidence for roughly five
12 weeks, about a week of which encompassed an adjournment whilst
13 the Prosecution prepared for cross-examination, based on new
14 evidence arising. In large part, the first accused was led by
14:43:42 15 one Defence counsel. The Prosecution submits the other Defence
16 counsel and their team should have utilised this five-week period
17 to select and prepare the other witnesses on its list. The
18 Prosecution considers the fact that first accused went on longer

19 rather than shorter is actually of benefit to the Defence rather
14:43:59 20 than a burden to them.

21 Now, we would actually be looking for a particular order
22 today based on the fact that these witnesses ought to have come
23 one after the other. Now, on 10 May 2006, the Defence disclosed
24 its first 49 witnesses and summaries in order of call. Now,
14:44:27 25 apart from the first accused, so far 27 witnesses have given
26 evidence and three dropped, so that's about 30. This leaves a
27 total of about 19 remaining witnesses out of the first 49 which
28 were given. The Defence disclosed these witnesses of 49 over two
29 and a half months ago. In fact, on 9 May, which is also nearly

SCSL - TRIAL CHAMBER II

1 two and a half months ago, the Defence itself filed a motion
2 seeking further time to file its final witness list whilst
3 anticipating the necessity of issuing subpoenas. I have those
4 orders with me. They were not, as I say, by the Prosecution,
14:45:22 5 they were by the Defence. This is, as early as 9 May, the
6 Defence were anticipating problems in calling witnesses. This
7 was a part of their motion in which they asked for further time
8 in which to file their final witness list. At paragraph 8 it
9 actually reads, "In this regard, the Defence wishes to indicate
14:45:40 10 that it should be anticipated that several witnesses should be
11 ultimately subject to subpoenas."

12 In conclusion, it also adds, "And the Defence at the same
13 time anticipating the necessity of issuing subpoenas." So it was
14 clearly in the mind of the Defence as of 9 May it may be having
14:46:09 15 problems with some of these witnesses. Indeed, when the
16 Prosecution replied, we stressed that this Honourable Court, in
17 our reply of 15 May -- and I will just read very briefly: "The
18 Prosecution submits in order to prevent possible delays, the

19 Defence should be ordered to file forthwith any motions for
14:46:29 20 subpoenas and any further motions for subpoenas will only be
21 entertained in the future if the trial is satisfied there are
22 acceptable reasons for delay."
23 Now, at that time, a reply was again put in by Defence in
24 response to the Prosecution. This is dated 16 May, which is,
14:46:50 25 again, two months ago. It addresses the issue subpoenas. At
26 paragraph 11, it states, "The Defence respectfully submits that
27 it included the names of the witnesses who will be subject to
28 request to subpoena on its witness list of 10 May 2006."
29 Now, the Prosecution didn't actually see which of those

SCSL - TRIAL CHAMBER II

1 witnesses they anticipated would be subject to subpoena, but,
2 certainly, there were certain witnesses already identified in
3 that category.

4 It goes on further, "Moreover, a request to subpoena will
14:47:25 5 be based on Rule 54 of the Rules. The Defence is still currently
6 negotiating with the Ministry of Defence and its subordinates to
7 come to an agreement with RSLAF members, former SLA members to
8 come forward and testify. The Defence respectfully submits that
9 it will be forced at this stage to bring a motion for subpoena.

14:47:48 10 It might well damage negotiations with the Ministry of Defence
11 and would thus prejudice the affairs of the accused."

12 In paragraph 12, "The Defence thus contends that the
13 Prosecution request in this respect be dismissed. The Defence
14 will continue its current negotiations with the defence ministry
14:48:04 15 and in the case the negotiation will not lead to the ministry to
16 allow its members to testify voluntarily, the Defence will, in
17 due time, file a motion to request the honourable Trial Chamber
18 to subpoena them. This, on the basis of Rule 54 of the Rules

19 and/or any appropriate rule."

14:48:23 20 When this honourable Court made its decision on 17 May

21 regarding this issue of subpoena, it noted that although it may

22 be necessary for the Defence to apply in due course for the issue

23 of subpoenas, no such necessity has been established at this

24 stage.

14:48:41 25 Now, this was roughly two months ago. The submission of

26 the Prosecution is that, as we have now, in fact, run out of

27 witnesses, a necessity has now been established for the issuing

28 of subpoenas. I believe that we have around 19 witnesses left.

29 Many of them fall into the category of former or serving SLA who,

SCSL - TRIAL CHAMBER II

1 the Ministry of Defence, ought to have been approached by now.
2 The Defence has had over two months to contact these witnesses,
3 some of whom are in Freetown, to confirm whether or not they will
4 come as witnesses, or whether or not they can be dropped or,
14:49:24 5 indeed, whether or not, if they refuse to come, a subpoena is
6 required.

7 It is the submission of the Prosecution that this
8 honourable Court should direct the Defence by a given date, and
9 we would suggest 2 August, or certainly before the recess, either
14:49:46 10 to subpoena any witnesses who it wants to come, or indicate to
11 the Prosecution and the Bench those witnesses who it intends to
12 drop. I make this submission because the issuance of a subpoena
13 is not a rubber stamp issue, as we have seen in the CDF case.
14 That in itself could take some time.

14:50:13 15 The Prosecution would submit that the time has now come for
16 the Defence to be ordered to subpoena those witnesses on its
17 list, which it has had two and a half months to consider, or to
18 drop them. That is the position of the Prosecution regarding

19 upcoming witnesses on the list and believes this would also
14:50:35 20 reinforces Article 17(4)(C) of the statute of the right for the
21 accused to be tried without undue delay.
22 And an additional order which the Prosecution would be
23 seeking would be, if there are no more witnesses heard this
24 session, that by 21st August, which is a date on which the final
14:50:57 25 witness list ought to be filed, the first 10 next witnesses in
26 order of call be given to us so that we are in a position to
27 adequately prepare for them as soon as the Court starts after the
28 recess. The object of both these orders seeking to keep the
29 proceedings rolling. Those would be the two orders we'll be

SCSL - TRIAL CHAMBER II

1 looking for regarding the witnesses coming in the near future,

2 Your Honour. Hopefully some may come sooner.

3 PRESIDING JUDGE: Thank you, Mr Agha. Does anyone on the

4 Defence wish to reply to what Mr Agha has submitted?

14:51:49 5 MR MANLY-SPAIN: With regard to the subpoena issue, I'm

6 still going to apply for subpoenas to be issued and the list is

7 being completed at the moment.

8 MR GRAHAM: Your Honours, if I may just add that the my

9 learned friend from the other side seems to create the impression

14:52:16 10 from the submissions that we've not been doing anything during

11 the first few weeks when this trial started, and I object to that

12 submission, because I believe, with great respect, we've been

13 doing all that we could. I mean, my learned friend on the other

14 side could well look at the budgetary provisions for both the

14:52:42 15 Prosecution and the Defence and realise that the Prosecution has

16 over \$100,000, at least for the period 2000 and 2005 just to go

17 out and look for witnesses. For us, the Defence, beyond the

18 funding given to our investigators, they did not get any other

19 funding at all for them to go upcountry. To that extent, once
14:53:03 20 they run out of their allowance, they cannot make any further
21 trips, and these are serious constraints. The playing field is
22 certainly not level. Having said that, with regard to the
23 submission my learned friend made with regard to the witnesses,
24 we are, indeed, already in the process of working to make sure we
14:53:20 25 get our next order of 15 witnesses for the next session, beyond
26 whatever we may have in the event we get any witnesses we may
27 have to bring before the Court this session. So it's something
28 that -- we are definitely working in respect of that and we do
29 not have any objections at all to that submission, because it is

SCSL - TRIAL CHAMBER II

1 definitely on our timetable and we intend to give a firm order of
2 the next 15 witnesses for the next trial session. We are working
3 on that, and I think that is in good stride.

4 MR FOFANAH: Your Honours, just one point of further
14:53:55 5 clarification. On the point of Mr Brima's testimony, I just wish
6 to restate that Mr Brima was not a common witness, and we had to
7 prepare to cross-examine him. So, using that period to go out
8 for further witnesses would definitely have strained the case for
9 the second and third accused persons. I think that comment was,
14:54:16 10 again, unfair from counsel on the other side.

11 JUDGE SEBUTINDE: Do we take it, therefore, that the
12 Defence, in principle, has no objection to orders sought by the
13 Prosecution in the terms that they're sought?

14 MR GRAHAM: Your Honours, I must say, in respect of the
14:54:37 15 subpoenas, that is quite -- I must say, we must look at it very
16 carefully, because I do not think it is necessary at this point.
17 These are not witnesses who, I must say, with certitude indicate
18 they wouldn't testify. It is being a game of hot and cold. I'm

19 not saying we have to tolerate that in an open ended manner
14:55:00 20 forever, but I believe we, in the circumstances in which we find
21 ourselves, the constraints, the challenges in having to meet the
22 expectations of the Court, we will do what we have to do. We
23 believe we also support the fact that this trial has to be
24 conducted expeditiously. We would not in any way at a point in
14:55:18 25 time -- if we think that is necessary to facilitate our work, we
26 would not hesitate at all. In the present circumstances, I that
27 think we have to be very careful because we are in the process
28 of --
29 JUDGE SEBUTINDE: Mr Graham, I simply asked a question: Do

SCSL - TRIAL CHAMBER II

1 you accept the application by the Prosecution. Because, you see,
2 Mr Manly-Spain stood up and said, as for the issue of subpoenas,
3 we will definitely subpoena some witnesses. Now, you, on the
4 other hand, are saying that the time hasn't come for that.

14:55:52 5 MR GRAHAM: Yes, Your Honour, thank you. If I may draw a
6 distinction. Yes, we will be making an application for some
7 subpoenas in respect of some witnesses, but not in this category
8 of witnesses. Indeed, our subpoenas will be started at mainly
9 serving soldiers who are currently in the SLA. That is the
14:56:06 10 category I believe my learned friend was referring to. But in
11 respect of current witnesses, I humbly submit that we do not
12 think that this time is the most propitious time to do that,
13 because we are in the process of delicate negotiations to get
14 firm commitments from these witnesses to come before this
14:56:24 15 honourable Trial Chamber. Thank you, Your Honours.

16 MR AGHA: Your Honour, if I may briefly reply. It was no
17 intention of mine to suggest that the other side were not doing
18 any work or being critical of them in that regard. I'm sure much

19 would depend on resources and the other things available. I
14:56:44 20 would still reply.

21 A list of 49 were provided. Now, if people are not willing
22 to come, then they should be subpoenaed or dropped. I don't see
23 how one can get around providing a list of 49 that should be
24 rolling where most of those witnesses are in the country, and
14:57:00 25 then be told, "Well, we're not quite ready to call them because
26 we're in a delicate position." The fact of the matter is that
27 perhaps they shouldn't have been on the first 49 in the witness
28 list in the first place.

29 PRESIDING JUDGE: I think that's a decision that the

SCSL - TRIAL CHAMBER II

1 Defence has now reached a point where it's going to have to make
2 some decisions. We're sensitive about the difficulty in
3 subpoenaing witnesses, and we are aware that some witnesses
4 resent very much being subpoenaed and brought to Court. It's
14:57:40 5 quite likely that they wouldn't be as favourable in their
6 evidence if they're forced to come by order of the Court, but it
7 seems to me, at least, that the time has now arrived where a
8 decision will need to be made by the Defence whether to apply for
9 a subpoena or simply, as has been said by Mr Agha, to abandoned
14:58:06 10 the possibility of getting the witness to Court to give
11 favourable evidence. That's something that the Defence will have
12 to consider.

13 It brings us to the second agenda item listed by the
14 Defence, and possibly we've already covered that item. The
14:58:28 15 second agenda item is final witness list ordered to be filed
16 by August 21st, 2006. Is there anything extra the Defence wanted
17 to add?

18 MR DANIELS: Respectfully, our only concern is whether or

19 not the Registry would be open for filing. We believe that will
14:58:49 20 be the vacation period. We don't know if it will have to be
21 amended to the first day the Registry is back in session.
22 PRESIDING JUDGE: I think that is the first day,
23 Mr Daniels.
24 MR DANIELS: I stand corrected.
14:59:02 25 PRESIDING JUDGE: Mr Legal Officer, what's the first day
26 the Registry is open, the official leave period expires on
27 18th August, doesn't it? Yes, that's right, Mr Daniels. The
28 official Court recess ends on August 18th, which is a Friday.
29 Then the Registry is open again for business on the 21st.

SCSL - TRIAL CHAMBER II

1 MR DANIELS: That is in order.

2 PRESIDING JUDGE: There are no other matters concerning
3 that second agenda item, I take it? You've already mentioned the
4 list. I take it you don't have any further submissions?

14:59:46 5 MR AGHA: No, Your Honour, as long as it remains.

6 PRESIDING JUDGE: The third item, I'm greatly hesitant to
7 read out because I've heard enough about it already, but the
8 third item is incomplete state of Defence investigations.
9 Anything that can be possibly added to that from the Defence?

15:00:06 10 MR GRAHAM: No, Your Honours. With great respect, I'm not

11 going to belabour that point. Indeed, it is probably from the
12 wording, but we probably, just by way of information on the way
13 forward, that we are going full steam. We believe that we would
14 utilise very well the upcoming break and hopefully then file

15:00:33 15 our August 21st final order of witnesses. It was more just by

16 way of information rather than to go into a complaint of exactly
17 what our status is, but we are hopeful we will do a lot of work
18 this four weeks and get ourselves out of this present situation.

19 PRESIDING JUDGE: The last item is item D, and that is
15:00:57 20 Defence issues arising out of Article 17 of the statute. What
21 are those issues?

22 MR GRAHAM: Your Honour, the issues, I believe, that has
23 also been taken care of within the milieu of submissions that we
24 have made today.

15:01:25 25 PRESIDING JUDGE: I'll consult with my colleagues, but it
26 seems to me, in view of what the Defence, in particular
27 Mr Graham, has said, that the situation regarding witnesses might
28 be clarified to some extent were we to adjourn now and reconvene
29 tomorrow morning.

SCSL - TRIAL CHAMBER II

1 [Trial Chamber conferred]

2 PRESIDING JUDGE: Mr Graham, you will recall you said

3 earlier on you may have more news for us tomorrow morning. We're

4 going to adjourn until 9.15 in the morning. Possibly the

15:02:42 5 immediate situation of calling witnesses prior to the recess will

6 be made more clear by then. As I say, you have 10 witnesses in

7 Freetown. I would look into the possibility of getting them or

8 witnesses from the nearest district, and if the Prosecution is

9 in any way prejudiced by not having enough notice, we can still

15:03:12 10 hear the evidence-in-chief of those witnesses. So, please look

11 into the situation and be able to tell us tomorrow morning.

12 We'll adjourn until 9.15.

13 [Whereupon the Status Conference adjourned at

14 3.02 p.m., to be reconvened on Wednesday, the

15:03:58 15 26th day of July 2006, at 9.15 a.m.]

16

17

18

19

20

21

22

23

24

25

26

27

28

29

SCSL - TRIAL CHAMBER II