

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

Tuesday, 1 AUGUST 2006
9.20 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Richard Lussick, Presiding Teresa Doherty Julia Sebutinde
For Chambers:	Ms Carolyn Buff Ms Evelyn Campos Sanchez
For the Registry:	Mr Geoff Walker
For the Prosecution:	Mr Karim Agha Mr Charles Hardaway Ms Maja Dimitrova (Case Manager)
For the accused Alex Tamba Brima:	Mr Kojo Graham
For the accused Brima Bazy Kamara:	Mr Andrew William Kodwo Daniels
For the accused Santigie Borbor	Mr Ajibola E Manly-Spain

2 Tuesday, 1 August 2006

3 [The accused present]

4 [The witness entered court]

5 [Open session]

6 [Upon commencing at 9.20 a.m.]

7 WITNESS: DAB-023 [Continued]

8 [The witness answered through interpreter]

9 PRESIDING JUDGE: Mr Witness, I'll remind you that you are
10 still on your oath that you took yesterday.

11 Now, I think when we adjourned yesterday it was at the
12 point we had reached where there was an objection to a question
13 asked in chief. There was an objection asked, lodged, regarding
14 a question asked in chief by Mr Graham, and Mr Graham was going
15 to have a look at the indictment.

16 MR GRAHAM: Yes, good morning, Your Honours and, indeed,
17 we've had a look at --

18 PRESIDING JUDGE: Good morning.

19 MR GRAHAM: -- the indictment and at this point I do not
20 have any further questions for the witness, Your Honours.

21 PRESIDING JUDGE: Thank you, Mr Graham. Anyone else in
22 chief before we move to cross-examination?

23 MR MANLY-SPAIN: Yes, Your Honour, I have a few questions
24 for the witness.

25 EXAMINED BY MR MANLY-SPAIN:

26 Q. Good morning, Mr Witness?

27 A. Yeah, good morning.

28 Q. Can I go on? Yes, Mr Witness, yesterday when you were
29 giving evidence you mentioned that during the period of the AFRC

1 you were attached as bodyguard to somebody you referred to as
2 FAT; do you remember?

3 A. Yes.

4 Q. Do you recall the rank of this person that you referred to
5 as FAT?

6 A. Yes.

7 Q. What was his rank?

8 A. He was a captain.

9 Q. Thank you, Mr Witness. You narrated how you left Freetown
10 until you arrived at Masiaka; do you remember?

11 A. Yes.

12 Q. After arriving at Masiaka, did you ever see this person who
13 you referred to as FAT again?

14 A. Yes.

15 Q. Where did you see him again?

16 A. It was at the place where SAJ Musa, sorry, Johnny Paul was
17 trying to address the troops about the fact that AFRC was not
18 resisting any no longer before he left for the village where he
19 was.

20 Q. So you saw him at Masiaka?

21 A. Yes.

22 Q. Did you see him anywhere else during the period you have
23 narrated to this Court?

24 A. Yes, I did see him somewhere.

25 Q. How many places did you see him; if could you remember?

26 A. Well, I saw him for up to -- I saw him at three places.
27 Yes.

28 Q. Please tell the Court.

29 A. Yes. I can recall a place like Eddie Town.

1 Q. Yes. Tell the Court the other two places you remember
2 seeing him?

3 A. I can remember Benguema.

4 Q. Yes; where else?

5 A. I can remember in Freetown here, on 6 January, when we
6 entered until we withdrew.

7 Q. Do you remember, Mr Witness, whether at the time you were
8 in Freetown, when you saw this person referred to as FAT, whether
9 he did anything, in Freetown?

10 A. FAT? Yes.

11 Q. What do you remember him doing?

12 A. FAT came to State House and decided to take men to go
13 towards this New England Ville, where that SLBA station is.

14 Q. Thank you very much. Mr Witness, I want you to go to your
15 travels to Mongo and Kurubonla, whilst you were going towards
16 Kono. Remember you said you passed through Mongo and Kurubonla;
17 is that so? After you left Kabala.

18 A. Yes.

19 Q. When you arrived at Mongo, did you meet people in Mongo
20 other than the citizens, the ordinary civilians living in Mongo?

21 A. The civilians who were in the town, I met them there.

22 Q. I'm asking you about people other than the civilians who
23 lived in the town?

24 A. Yes. Those who were running away from Kono area, trying to
25 seek refuge around those areas, because I, when I left Kabala,
26 during those times, I asked civilians how Kurubonla was and they
27 told me Kurubonla -- civilians were in Kurubonla and it was
28 through those people who were leaving Kono to come and seek
29 refuge in those areas that I asked.

1 Q. After you had gone to Kurubonla did you at that time meet
2 any other people, apart from the people of Kurubonla, in
3 Kurubonla?

4 MR AGHA: Your Honour, he's just answered that. He said he
5 met people who were leaving Kono.

6 MR MANLY-SPAIN: No, Your Honour, I asked him specifically
7 about Mongo.

8 PRESIDING JUDGE: He was talking about Mongo, Bendugu I
9 took it.

10 MR MANLY-SPAIN: Thank you.

11 Q. Yes, please explain.

12 A. Yes. When I reached -- when I left Mongo, and arrived at
13 Kurubonla, I met other people at Kurubonla who were not born
14 there. They were not citizens of Kurubonla. They had come from
15 Kono just to seek refuge in Kurubonla.

16 Q. Thank you, Mr Witness. Mr Witness, you spoke about SAJ
17 Musa promoting Pikin and somebody else; where were you then when
18 this promotion took place?

19 A. I was in Kurubonla Town then.

20 Q. Mr Witness, apart, sorry, were you present when it was
21 done?

22 A. Yes.

23 Q. Apart from this promotion made by SAJ Musa, did you witness
24 any other person in the troops that you were with making
25 promotions in any other place apart from Kurubonla?

26 A. Apart from Kurubonla, I don't think I experienced any other
27 recommendation.

28 Q. Did you experience any other promotion by SAJ Musa or any
29 other person you were with?

1 A. No.

2 Q. Thank you, Mr Witness. Mr Witness --

3 A. Yes.

4 Q. -- do you know whether at the time you were with Savage, in
5 Kono, whether there was any other group of SLAs operating in
6 Kono?

7 MR AGHA: Leading question, Your Honour, I'd object.

8 PRESIDING JUDGE: I'll allow it. Go ahead.

9 MR MANLY-SPAIN:

10 Q. Thank you.

11 A. Would you please repeat the question?

12 Q. My question, Mr Witness, whether at the time you were with
13 Sergeant Savage, whether you knew whether there was any other
14 group of SLAs operating in Kono, apart from Savage's group?

15 A. No. No SLA was in Kono. It was the RUF who were in charge
16 of Kono.

17 Q. Thank you. Mr Witness, you said that SAJ Musa organised
18 the men in Colonel Eddie Town to march to Freetown; is that so?

19 A. Yes.

20 Q. At that time, do you know whether, did you know whether SAJ
21 Musa was a married man?

22 A. Well, yes.

23 Q. Was he a married man?

24 A. Yes.

25 Q. Did you know whether he had children?

26 A. Yes.

27 Q. How did you know that, Mr Witness?

28 A. Well, I can remember again when SAJ Musa lined up the
29 troops, after we had left Colonel Eddie Town, when we were

1 deciding to come to Freetown, he lined us up and tried to address
2 us on how his wife, his children were at Pademba Road and that we
3 should turn around and look around us to see our families that
4 were with us. If we would be comfortable with the fact that his
5 wife Tina, and his children, Small Musa, who were at
6 Pademba Road, if that is comfortable for us, for us not to fight
7 hard to reach Freetown, for him to be able to free his families.
8 Then we told him that "Papay, it will be possible for you to
9 reach Freetown and get your family where."

10 Q. Thank you very much. Mr Witness --

11 A. Yes.

12 Q. -- can you estimate the number of fighters, the total
13 number of fighters you left Kurubonla with?

14 A. That one, I can't count people one after the other to give
15 you the exact number of people, but the people were many.

16 Q. Did you, when you left Eddie Town, have with you any
17 civilians?

18 A. Yes.

19 Q. And do you know who these civilians were?

20 A. Well, I only knew that there were civilians who had been
21 arrested from various attacks, that we used to carry out and
22 bring them to camp. They were with us and we took them as
23 families. They were not civilians but I can know personally but,
24 through the attacks, they were bringing them in, so I knew that
25 they were civilians that we were trying to bring together. Yes.

26 Q. You recall that you said that some people from your group
27 attacked Lunsar, and that you personally went on that attack?

28 A. Yes.

29 Q. Apart from Lunsar, did you go on any other attack?

1 A. Yes.

2 Q. Can you please tell this Court?

3 A. Like Rogberi, the bridge to cross over and Masiaka, which
4 is at the junction where the road is leading to Makeni and Bo,
5 and the other leading to Freetown.

6 Q. Mr Witness, just to go towards the end of my
7 cross-examination, my examination-in-chief, may I ask you: You
8 said that when you were with Savage, Savage killed 47 people and
9 these people were brought to him by one RSM. Do you know the
10 name of this RSM?

11 A. Yes.

12 Q. What is the name of the RSM?

13 A. It was RSM Tee.

14 Q. Thank you. And is it the same RSM Tee whose name you, or
15 designation you spelt for us yesterday as T-E-E?

16 A. Yes.

17 Q. Thank you. Mr Witness --

18 A. Yes.

19 Q. -- do you know where Savage is presently?

20 A. Yes.

21 Q. Where is he?

22 A. Well, Savage, the information that I am receiving about
23 Savage is that he is at Pademba Road.

24 Q. What about Staff Alhaji? I want to ask you because at one
25 stage you called him Staff Alhaji and --

26 JUDGE SEBUTINDE: Mr Manly-Spain, do we understand
27 Pademba Road to mean Pademba Road Prison?

28 MR MANLY-SPAIN:

29 Q. You mean Pademba Road Prison? Thank you, Your Honour?

1 A. It's not the Pademba Road. It's the prison itself that I'm
2 talking about; the Pademba Road Prison.

3 Q. Okay.

4 A. Okay.

5 Q. Mr Witness, you referred to at one time Staff Alhaji and at
6 another time Staff Alhaji Bayo. Are they one and the same
7 person; Alhaji and Alhaji -- Staff Alhaji and Staff Alhaji Bayo?
8 Were you referring to the same person?

9 A. Yes.

10 Q. Thank you. Do you know, Mr Witness, where
11 Staff Alhaji Bayo is presently?

12 A. Right now, as I'm sitting here, talking to this Court, I do
13 not know where he is.

14 Q. Mr Witness, finally, I want you to go to Masiaka. You told
15 us that at Masiaka Johnny Paul Koroma told you that the AFRC was
16 no more, or words to the effect that -- and that you should all
17 go and find some place to hide; is that so?

18 A. Yes.

19 Q. And you also told us that at that time Johnny Paul Koroma
20 was the commander, was in command of the SLAs that were at
21 Masiaka?

22 A. He was the chairman for AFRC. He was the chairman for
23 AFRC.

24 Q. On, after that date, did you come across Johnny Paul Koroma
25 again?

26 A. No.

27 Q. From that time on, did you and the other SLAs who were at
28 Masiaka, take orders from any other person?

29 MR AGHA: It's a leading question, Your Honour. I'd object

1 to that.

2 PRESIDING JUDGE: I'll allow that. That's barely leading,
3 Mr Agha.

4 MR MANLY-SPAIN:

5 Q. Yes, Mr Witness.

6 A. Yes. It was SAJ Musa who was the commander who was with
7 the SLAs.

8 Q. Finally, was that the situation that SAJ Musa was the
9 commander from whom you took orders until his death at Benguema?

10 A. Yes. Yes.

11 MR MANLY-SPAIN: That will be all. Thank you very much,
12 Mr Witness.

13 THE WITNESS: Okay. Thank you too.

14 PRESIDING JUDGE: Mr Agha?

15 MR AGHA: Your Honour, as I indicated yesterday, I
16 will be applying for an adjournment in my cross-examination.
17 There are two applications I'd like to make this morning and also
18 a response, if that's permissible.

19 The first application --

20 PRESIDING JUDGE: Response to what?

21 MR AGHA: Well, there was a motion filed yesterday, which
22 technically the Defence are now in breach of.

23 PRESIDING JUDGE: I see. All right. Well, let's deal with
24 them one at a time then.

25 MR AGHA: So, the first application is for an adjournment
26 until Thursday morning to enable the Prosecution to prepare for
27 cross-examination.

28 As Your Honours are aware, one of the purposes of
29 cross-examination is to test the evidence of the witness. Hence,

1 both the Prosecution and Defence are given adequate time to carry
2 out their investigations into the witness for credibility and the
3 truth of his evidence that he is likely to give, in terms of
4 reliability.

5 By order of 9 May, the Prosecution was given 21 days
6 rolling disclosure of identities, so that it could indeed carry
7 out those investigations, based on the summaries provided.

8 In most cases the Prosecution has received far less than 21
9 days' disclosure of Defence witnesses' identity. For instance,
10 the Koinadugu witnesses, the first of which started after eight
11 days of his identity being disclosed. Nevertheless, the
12 Prosecution has been reluctant to request adjournments and has
13 tried to plough on wherever possible.

14 Indeed, the Prosecution appreciates the difficulties which
15 my learned friends have been facing in producing witnesses, in
16 recent weeks, and which has been well-aired before this Trial
17 Chamber. But the Prosecution should not be prejudiced on account
18 of the Defence's non-compliance with this Court's orders.

19 On the status conference on 28th July, or 26th, I
20 apologise, I brought to the Court's attention my fear that the
21 Prosecution may need to seek adjournment for insider-type
22 witnesses for whom we need time to investigate.

23 The submission of the Prosecution is that this witness's
24 evidence falls squarely within that bracket. The identity of
25 this current witness was released to the Prosecution on 21 July,
26 that is less than 10 days ago, along with 18 other witnesses. He
27 is listed as number 37 on the list and we did not receive formal
28 notification that he was coming to give evidence until the
29 morning of the status conference on 26 July, approximately five

1 days ago. Until that time we were investigating on the same
2 summary which Your Honours have before you which largely deals
3 with Kono.

4 On the evening of 26 July, following the status conference,
5 this summary was added to by another small summary of about 12
6 lines including SAJ Musa's muster parade at Masiaka. Only at 6
7 p.m. on Sunday evening did we receive a further additional
8 summary indicating that the witness would deal with Tombodu and
9 Savage, SAJ Musa and Kurubonla, Colonel Eddie Town and Freetown
10 and then in the scantiest of detail. The Prosecution therefore
11 seeks an adjournment to investigate the new evidence which in
12 essence is scant in detail, the Prosecution heard about late, and
13 for the first time in reality, yesterday morning.

14 The Prosecution relies on the Presiding Judge's observation
15 on the status conference of 25 July and I will just read that
16 very briefly, in part. It says: "As I say you have 10 witnesses
17 in Freetown. I would look into the possibility of getting them
18 or witnesses from the nearest district and if the Prosecution is
19 in any way prejudiced by not having enough notice we can still
20 hear the evidence-in-chief of those witnesses."

21 So the submission of the Prosecution is that we be allowed
22 to adjourn our cross-examination until Thursday morning and that
23 in the meantime the evidence-in-chief of other witnesses can be
24 heard. So that is the first application.

25 PRESIDING JUDGE: All right. We will deal with that first.
26 Does the Defence have any objection to that application?

27 MR GRAHAM: Good morning, Your Honours. Your Honours, we
28 have a few submissions in response to what my learned friend has
29 said before this Court this morning.

1 Regarding the evidence that has been given by the witness,
2 we submit that the evidence is not entirely new. Your Honours,
3 the OTP has led evidence through its witnesses. Testimony which
4 is replete with accounts of what happened in Tombodu, the role of
5 Savage and Staff Alhaji. Their witnesses have also given
6 evidence in this Court as to Superman's command position in Kono.

7 Your Honours, further, I humbly submit that the Prosecution
8 have had three or more years to investigate these matters which
9 is the subject matter of the testimony before this Court. Your
10 Honours, I do not know what they are going to investigate now.

11 PRESIDING JUDGE: Mr Graham, just so that I understand you
12 fully, you are saying virtually that because the Prosecution has
13 called evidence, virtually, the Defence doesn't need to give any
14 notice of any witnesses they call because the Defence, the
15 Prosecution, has already raised the evidence; is that what you
16 are saying?

17 MR GRAHAM: That is not what I'm saying, Your Honours.
18 That is not what I'm saying.

19 PRESIDING JUDGE: Well, that's what it sounded like to me.
20 You've said that the Prosecution witnesses have given evidence on
21 these matters, and it seems to follow from your argument that,
22 therefore, the Defence can call any evidence it likes to be on
23 the same matters without giving the Prosecution notice of exactly
24 the content of each Defence witness's statement. Have I got you
25 right there or not?

26 MR GRAHAM: Your Honours, with great respect, I think that
27 you have not got me right. My submission was that the matters
28 which my learned friend has referred to, in respect of the
29 additional information, which has been provided to them within

1 the past few days, these are some of the matters which also come
2 up when these witnesses come in and then we talk when new matters
3 come up, and as and when they come up we communicate this
4 information to our learned friends on the other side. Your
5 Honours, they have not told this Court the harm or injury that
6 they have suffered as a result of receiving the additional
7 summaries, as at the time that they claim they received that.

8 But, Your Honours, the point still remains that the
9 evidence which has been led in this Court is not new. I mean,
10 the OTP has led substantial evidence as to what happened in
11 Tombodu. The issue of the credibility of the witness, Your
12 Honours, I believe can be tested through cross-examination. Your
13 Honours, these are the comments that I have to make in respect of
14 the submission. Your Honours, also, the issue of adjournment
15 also affects our Defence strategy as well because, Your Honours,
16 the outcome of the cross-examination by the OTP, to a certain
17 extent, also impacts the testimony of the witnesses that follow,
18 in terms of the order and it also impacts our Defence strategy to
19 a great extent.

20 And, Your Honours, it is also our humble submission that if
21 the Defence, sorry, the OTP is requesting an adjournment in
22 respect of this matter, then we also be allowed to also have an
23 adjournment in respect of calling witnesses because, Your
24 Honours, as I've said, we are also still struggling with the
25 issue of getting witnesses in here before this Court under great
26 stress. We have another witness coming in after this witness.
27 And, Your Honours, there are problems associated with the --

28 PRESIDING JUDGE: Let's not go into those problems again,
29 Mr Graham. Stick to this application, please.

1 MR GRAHAM: So, Your Honours, I mean, that is my
2 submission. I leave it in Your Honour's hands. But these are
3 the submissions from the Defence in respect of what my learned
4 friend has submitted before the Court this morning.

5 JUDGE DOHERTY: Mr Graham, you have not refuted or
6 commented on the times given by Mr Agha of the notice and the
7 summaries. I presume therefore you do not dispute those?

8 MR GRAHAM: Yes, Your Honours. Once again the content of
9 these summaries, as I said, related to evidence which has been
10 led by the Prosecution in this Court. The issue of Savage, and
11 his role in Tombodu, has been led before this Court. Your
12 Honours, that is why I was saying that if the Prosecution says
13 that they need time to investigate the issue is that it is my
14 humble submission that what exactly are they going to
15 investigate? Because they knew the matters that he referred to,
16 that were served to them over the weekend, the issue of this
17 evidence in Kono, has been led by the OTP before this Court.

18 PRESIDING JUDGE: But you -- go ahead.

19 JUDGE SEBUTINDE: Mr Graham, I just want a clarification:
20 Apart from the summary for this witness that was filed with a
21 large document on 25 May we, on the Bench, have received one more
22 additional summary of this witness -- I'm not sure of the date as
23 to when this was filed; is it just one more additional or two
24 additional summaries?

25 MR GRAHAM: I think there are two.

26 JUDGE SEBUTINDE: With respect to witness 023?

27 MR GRAHAM: Two additional summaries.

28 JUDGE SEBUTINDE: Could you just give us the dates of when
29 those were disclosed?

1 MR GRAHAM: Your Honours, I believe one summary was filed
2 in response to an order that was made here in this Court, given
3 as a deadline to file all additional summaries. In respect of
4 the, I think an additional summary that was served over the
5 weekend, relating to the testimony that the witness was going to
6 give regarding Tombodu.

7 JUDGE SEBUTINDE: So you can't specify the dates when these
8 were disclosed?

9 MR GRAHAM: Your Honours, I know on Sunday, this past
10 Sunday, the second summary was served on the OTP this Sunday.
11 This past Sunday. Your Honours, I'm not quite certain about the
12 date. I can reconfirm. My learned friends inform me that I
13 think the first additional summary was filed on Thursday.

14 MR AGHA: The first additional summary which is this one
15 and deals with Masiaka was filed on 26 July, after the status
16 conference, when it was first indicated that this witness would
17 be one of the four witnesses who, at that time, the Defence
18 suggested they may be calling and, of those four who were
19 indicated, two have now been dropped, or at least not being
20 called within this batch.

21 We then received the final summary, roughly at 6 p.m. on
22 Sunday evening, which arrived in our office, and it goes far
23 beyond -- or let me just give this Honourable Court an example of
24 the summaries is my second application.

25 This learned Court has heard the evidence which this
26 witness has given in respect of his leaving Savage, going to
27 Colonel Eddie Town promotions, Freetown, et cetera. All the
28 summary says, and this is received at 6 p.m. Sunday evening:
29 "Witness will testify that later he joined SLA troops in

1 Koinadugu District and eventually made his way with the fighting
2 forces to Colonel Eddie Town and then to Freetown. Witness will
3 testify about injuries he sustained on his leg during movement to
4 Freetown, the treatment he received at Kono hospital, in
5 Freetown, and his retreat to Makeni and Bombali District."

6 Now my learned friend seems to be indicating that because
7 we lead evidence we ought to be able to cross-examine.

8 PRESIDING JUDGE: I am not -- well, this can come in your
9 reply.

10 MR AGHA: In my reply.

11 PRESIDING JUDGE: But I am not sure --

12 MR AGHA: But that in short is what it amounts to.

13 MR GRAHAM: Your Honours, if just by way of further
14 comment. I think that the inadequacy of the summaries ought to
15 be looked at in two context. In the sense that first, Your
16 Honours, if there is matter in the statements or interview notes
17 that we have, which we don't disclose in the summaries, that
18 raises an issue of inadequacy but, Your Honours, if we talk to
19 the witnesses when they come in, and additional matters come up,
20 which are not contained in the original statements, then we
21 disclose that to the OTP as and when it comes. You know, I
22 think, Your Honour, that is a distinction that I think that we
23 ought -- we can give them the summaries that we have in the
24 witness list.

25 PRESIDING JUDGE: All right, we are getting off the track
26 here. That is going to be the subject of the next submission
27 with Mr Agha. We are dealing now with the Prosecution
28 application for an adjournment until Thursday morning.

29 MR GRAHAM: Yes. Your Honours, I think I've made my fair

1 submissions in that regard. We will leave that entirely --

2 PRESIDING JUDGE: I'm a little bit staggered by your
3 approach, Mr Graham. Firstly, the identity of this witness,
4 here, was released less than 10 days ago, and summaries were
5 being served on the Prosecution as late as Sunday. And it's only
6 Tuesday now. Do you say that is perfectly excusable on behalf of
7 the Defence, that the Prosecution should have no come-back about
8 time to prepare?

9 MR GRAHAM: Your Honours, that is not my submissions. Your
10 Honours, I am saying that -- I submit that I do not believe that
11 they have suffered, I mean, any harm or injury.

12 PRESIDING JUDGE: Well, you say that because they've led
13 evidence on these districts and events. But are you saying that
14 they should have anticipated that a witness such as 023 would be
15 called and they should have anticipated the content of this
16 witness's evidence and, therefore, are unreasonable in asking for
17 an adjournment to prepare to cross-examine this witness?

18 MR GRAHAM: Your Honours, I leave that entirely in the
19 hands of the Court.

20 PRESIDING JUDGE: Well, what is your basis for asking for
21 an adjournment yourself on behalf of the Defence? Is that in
22 pure retaliation?

23 MR GRAHAM: Certainly not, Your Honour. Certainly not.
24 Certainly not.

25 PRESIDING JUDGE: Why would you need an adjournment simply
26 because the Prosecution wants an adjournment until Thursday
27 morning to prepare to cross-examine?

28 MR GRAHAM: Your Honours, I did submit that the issue of
29 the cross-examination of the witness, the outcome of the

1 cross-examination, may also impact our decision whether to call
2 witnesses that may follow this very witness who is before this
3 Court. And, Your Honours, probably that would have been the
4 subject matter of a separate submission before this Court. I
5 hold my horses and probably address this issue of the next
6 witness at the appropriate time.

7 PRESIDING JUDGE: We don't need to hear from you in reply,
8 Mr Agha. We will grant the application. The cross-examination
9 of this witness will be deferred until Thursday morning; that's 3
10 August.

11 MR AGHA: Thank you, Your Honours.

12 PRESIDING JUDGE: Well, now, I think we should allow this
13 witness to leave before we go onto the next submissions.

14 Mr Witness, your cross-examination --

15 THE WITNESS: Yes.

16 PRESIDING JUDGE: -- your cross-examination by the
17 Prosecution is going to be deferred until Thursday of this week.
18 That is Thursday, 3 August, the day after tomorrow. So you will
19 be required to come back into this Court to give evidence at 9.15
20 on Thursday. In the meantime, you are not permitted to discuss
21 your evidence, or this case, with any other person. Now, if you
22 will just sit there, the Court attendant which make arrangements
23 so that you can be taken from the Court.

24 [The witness withdrew]

25 PRESIDING JUDGE: Now, you have another application,
26 Mr Agha?

27 MR AGHA: Yes, Your Honour. This second application is for
28 the Court to order the Defence to hand over the statement of the
29 Defence witness so that we may test his credibility. I have

1 already requested this from the Defence a couple of times
2 yesterday but, as yet, have received no positive response. So
3 unless they are now prepared to say that they will give it then I
4 needn't make this application.

5 PRESIDING JUDGE: Yes; the Defence wish to respond to that
6 application?

7 MR GRAHAM: Yes, Your Honour.

8 MR AGHA: Well, actually, Your Honour, I'm just asking
9 whether they would or they wouldn't because if they are not going
10 to then I would make the submissions as to why we would like it.

11 PRESIDING JUDGE: Well, that's what I was referring to.

12 MR GRAHAM: Your Honours, I would ask my learned friend to
13 make his submissions in that regard for a formal order for the
14 statements and we will respond to that.

15 PRESIDING JUDGE: Go ahead, Mr Agha.

16 MR AGHA: Thank you, Your Honours. Now, as I've mentioned,
17 the Prosecution would seek an order from this Court for the
18 disclosure of the Defence witness statement so that we may test
19 the credibility of the witness. We rely on the fact that so much
20 fresh information has been provided this morning, from the
21 witness, that we would require the statement to test the
22 credibility of the witness. The Prosecution does not consider
23 that the new information provided to us at 6 p.m. on Sunday is
24 either sufficient for notice for us to prepare, and hence our
25 adjournment application, and it's insufficient in detail.

26 This comes back again to the sufficiency of summaries,
27 which we've traversed time and again. The Prosecution submits
28 that it falls well short of the requirements of Rule 73ter which
29 provides that a summary of facts on each witness will testify.

1 That is the obligation of the Defence, to provide a summary of
2 facts on which each witness will testify. And indeed, this
3 Honourable Court, in making an earlier order, had asked for the
4 Defence to review their summaries.

5 Now, notwithstanding that, not only are we getting these
6 summaries very late, but they are also very scant in their
7 detail. Now, the new areas which would include, and which are
8 not covered in any of the three summaries we received, are the
9 fact that the witness was a vigilante before joining the army.
10 Secondly, his deployment in Kono as a vigilante. Thirdly, his
11 deployment in Kono prior to the coup. Fourthly, killing of
12 soldiers by civilians during ECOMOG intervention. Fifthly,
13 numerous detailed killings at Tombodu. Sixthly, Commander 05 in
14 Koinadugu. Seventhly, attack on Mongo Bendugu. Eighthly, march
15 to Colonel Eddie Town. Nine, muster parade at Colonel Eddie Town
16 addressed by SAJ Musa. Ten, Junior Lion handing over charge to
17 SAJ Musa. 11, AFRC members in custody at Colonel Eddie Town.
18 12, SAJ Musa restructuring battalions, naming battalions at
19 Colonel Eddie Town. 13, attack and advance on Lunsar, Mile 38,
20 and Waterloo. 14, attack on Benguema. 15, death of SAJ Musa.
21 16, 05 taking over command on SAJ Musa's death. 17, attack on
22 Freetown. 18, witness's visits to State House. 19, not seeing
23 AFRC members at State House. 20, the communication systems
24 referred to. 21, jet attacks on Freetown. The use of drugs,
25 promotions by SAJ Musa, et cetera.

26 Now, this was very detailed evidence, the latter part of
27 which is very germane to the case itself. Now, the Prosecution,
28 in regard to requiring the witness statement of the Defence,
29 would refer to the decision of Tadic, which was cited by this

1 Trial Chamber in a similar situation that arose on the basis of
2 deficiencies in witness summaries, on 11 July 2006, and which led
3 to this Honourable Court ordering that the statement be hand
4 over.

5 Now, if I would just briefly read from that judgment, the
6 germane parts, which are - the issue was addressed in a case, in
7 the ICTY case of Tadic, the case being Prosecutor v Tadic IT
8 911A, Appeals Chamber judgment, majority decision of 15 July
9 1999, at paragraph 319 and following. The ICTY's Appeal Chamber
10 held as follows: "There is no blanket right for the Prosecution
11 to see the witness statement of a Defence witness. The
12 Prosecution has the power only for disclosure of a statement
13 after the witness has testified, with the Chamber retaining the
14 discretion to make a decision based on the particular
15 circumstances in the case at hand." The ICTY Trial Chamber goes
16 on to explain at paragraph 326 that it is because the power of a
17 Trial Chamber to order the disclosure of a prior Defence witness
18 statement relates to an evidentiary question: Namely, the
19 Prosecution's ability to test the credibility of Defence
20 witnesses. It should be left to the discretion of the Chamber,
21 depending on the circumstances of the case in hand, to order
22 disclosure only after the examination-in-chief of a particular
23 Defence witness, upon a showing of necessity by the Prosecution.

24 Now I will refer to the order passed by this Court itself
25 pursuant to that judgment on 11 July. "In the present case, in
26 the light of the witness's testimony in chief, we are satisfied
27 that the summary produced by the Defence is insufficient to
28 enable the Prosecution to prepare for cross-examination and
29 properly test the evidence of the witness. Accordingly, we order

1 the Defence to disclose the witness statement to the Prosecution
2 forthwith."

3 So, the Prosecution submission is that we would seek an
4 order, at the Trial Chamber's discretion, on the basis of the
5 lack of detail contained in the summary and, indeed, not
6 fulfilling the requirements of 73ter, so that we can properly
7 cross-examine the witness on his credibility. We believe the
8 necessity arises because of the late notice we've been given and,
9 therefore, our very small chance of properly investigating the
10 credibility and reliability of the witness, and also the fact
11 that so many new issues, which are germane to the case, have been
12 raised so that we would like to see, in terms of credibility,
13 whether these have been covered in the original statement. So
14 that is the submission of the Prosecution.

15 PRESIDING JUDGE: Yes. Just one legal point: You refer to
16 the requirements of 73ter. In fact, there are no requirements in
17 73ter failing the Court -- a Court order along those lines.
18 73ter, by itself, does not impose any obligations on the Defence.
19 It's up to the Trial Chamber to make orders in accordance with
20 the matters indicated in 73ter so what you are really referring
21 to, I take it, is the order made by this Court to disclose --
22 pursuant to Rule 73ter.

23 MR AGHA: That is exactly right, Your Honour. And the
24 further order was passed which asked the Defence to again review
25 their summaries so that they were adequate.

26 PRESIDING JUDGE: I see. Yes. Well, does the Defence wish
27 to reply to that submission?

28 MR GRAHAM: Yes, that is so, Your Honours. Thank you, Your
29 Honours.

1 Your Honours, my learned friend on the other side has given
2 24 detailed points which he presupposes are contained in the
3 statement or interview notes of the witness which has not been
4 disclosed by way of the summaries that have been given to the
5 OTP. Your Honours, we have no objection to this Court reviewing
6 the interview notes and the statement of the witness in order to
7 determine whether the 24 detailed points that are contained in
8 the -- mentioned by my learned friend -- actually contained in
9 the witness statement of the witness.

10 Your Honours, they've just been granted an adjournment by
11 the Court, to enable them to have additional time to investigate
12 the evidence which has been given before this Court.

13 Your Honours, by way of the law, I submit that both Trial
14 Chamber I and II have held that under the ordinary meaning of
15 Rule 73 of the statute of the Court, the Prosecution has no right
16 to the disclosure of Defence witness statements.

17 Conversely, there is no obligation on the Defence to
18 produce Defence witness statements to the Prosecution. Your
19 Honours, disclosure in respect of witness statements is a
20 discretionary exercise by the Court upon prima facie evidence
21 that failure to disclose such Defence witness statements will
22 result in the Prosecution suffering either undue or irreparable
23 prejudice.

24 Your Honours, we submit that the Prosecution has not shown
25 that they have suffered undue or irreparable prejudice in respect
26 of this matter. They've sought an adjournment before this Court
27 which has been granted.

28 Your Honours, when this issue in respect of disclosure of
29 Defence statements arose before the trial, this Trial Chamber,

1 the application was based on the fact that there were
2 discrepancies between the summaries, and the witness testimony,
3 and the Prosecution then argued, I believe, that the summaries
4 were inadequate and at variance with the witness's evidence in
5 this Court. Your Honours, that, we humbly submit, is not the
6 submission of the Prosecution today.

7 Your Honours, we believe that the fact that there are no
8 discrepancies, the Prosecution is not saying there are
9 discrepancies between the testimony of the accused before this
10 Court, and the additional summaries that were provided, and Your
11 Honours, we believe that the issue of the inadequacy of the
12 summaries, vis-a-vis the testimony that has been given by this
13 witness. It's our humble submission that a substantial portion
14 of the detailed testimony that has been given by this witness,
15 before this Court, is not contained either in the interview notes
16 or the witness statement, some of the details, the 24 detailed
17 points my learned friend has referred to, and we humbly submit
18 that the Trial Chamber may review the documents before making an
19 order in respect of that, particularly in respect of the 24
20 detailed points.

21 Your Honours, in respect of this very witness -- Your
22 Honours, before I go on, I believe that the Prosecution should
23 just go beyond, they should go beyond just the assertion that the
24 summaries, beyond the assertion that there is a vast difference,
25 in terms of information contained in the additional summaries,
26 vis-a-vis the testimony given by the witness in this Court.

27 They must show undue or irreparable prejudice and, Your
28 Honours, we submit that that has not been done and these are our
29 humble submissions in respect of the application made by my

1 learned friend this morning before the Court.

2 PRESIDING JUDGE: Yes, Mr Graham. Forgive me, I think I
3 missed an earlier point of yours. You mentioned that you don't
4 object to the Court seeing the interview notes?

5 MR GRAHAM: Yes, that is what I was submitting.

6 PRESIDING JUDGE: But there is a statement as well, isn't
7 there? Apart from the interview notes?

8 MR GRAHAM: Well, there is a statement and then there is
9 the interview notes, Your Honour.

10 PRESIDING JUDGE: I see. But what you are saying, in
11 addition, is that a lot of the evidence on those 24 points
12 mentioned by Mr Agha wasn't given to the Defence either?

13 MR GRAHAM: Yes. The detailed nature of some of the
14 atrocities, some of the events in Tombodu -- he mentions for
15 example his association with Savage. He doesn't go into very
16 much detail in the statement in respect of what we've heard
17 before this Court, and that is just the distinction I was trying
18 to make, that the summaries may -- of course we do admit that in
19 the past some of our summaries haven't been very adequate in
20 respect of what we have contained in the witness statements, and
21 we've tried to provide additional summaries. But beyond that we
22 are saying that there ought to be a clear distinction between
23 information which is contained in the witness statement, which is
24 not put in the additional summaries, and then information which
25 is given by a witness in this Court which is not contained in the
26 summary. In that regard, we cannot give what we don't have, but
27 if you talk about inadequacies, we do admit that in the past we
28 have fallen short and we have tried to give the additional
29 summaries at times after the period given by the Court. But in

1 such times, in respect of this particular witness, that is why I
2 am saying we have no objections if the Court could even review
3 that it would put it into context as to the nature of the 24
4 detailed points that have been mentioned, and the extent to which
5 information was provided in respect of these matters in the
6 statements. And that is our humble submission this morning.

7 PRESIDING JUDGE: Thank you, Mr Graham. Do you wish to
8 reply to that, Mr Agha?

9 MR AGHA: Yes, I would, Your Honour, and, as Your Honours
10 are aware, unlike the Defence, the Prosecution only has the
11 summaries to go on and it's only on the summaries on which it can
12 prepare to test the evidence of the witness, both in terms of
13 credibility and reliability. So we are relying on those
14 summaries to at least address, in reasonable detail, the points
15 which the witness will testify to. Indeed, pursuant to this
16 Court's order 73ter, the facts on which the witness will testify.

17 Now, we accept it may be that some of these facts may come
18 out later but, nevertheless, when they are discovered they should
19 be given to us in the detail of the facts which are discovered,
20 because during proofing I am sure these areas may well be
21 explored, and not in all cases but they just come out on the
22 witness stand regarding trips to Colonel Eddie Town, promotions,
23 attacks on Mongo, Bendugu. This kind of information could have
24 been provided to the Prosecution beforehand.

25 So the Prosecution would submit it's a question of degree
26 in such cases and the degree of 24 points, at least 15 of them
27 are quite substantial, would justify the handing over of the
28 witness statement to the Prosecution and interview notes.

29 And on a matter of law, the Prosecution would submit that

1 73ter is often referred to and a particular test about
2 irreparable harm. Now the Prosecution believes there needs to be
3 a distinction drawn between that test and the test as laid down
4 in Tadic. The reason being is that Rule 73ter deals with the
5 handing over of witness statements before the witness testifies
6 in chief and, indeed, even before the witness testifies in chief,
7 the Trial Chamber has the power to order witness statements to be
8 handed over. And I will read the final part of Rule 73ter which
9 reads. "The Trial Chamber or the said judge may order the
10 Defence to provide the Trial Chamber and the Prosecutor with
11 copies of the written statements of each witness whom the Defence
12 intends to call to testify."

13 So my submission is the irreparable harm test would apply
14 to cases where the Prosecution is asking for the Defence witness
15 statement before the witness has testified, as was the case in
16 CDF. And that, as a matter of law, needs to be distinguished
17 between the position where the witness has given his evidence and
18 the Prosecution would submit that the correct and proper test for
19 that is as laid down by the Appeals Chamber in Tadic and followed
20 by this Honourable Court.

21 So, on that basis, the Prosecution would still press for
22 the witness statement and interview notes to be provided.

23 PRESIDING JUDGE: But what's the law on interview notes;
24 isn't there jurisprudence to say that interview notes are subject
25 to legal professional privilege?

26 MR AGHA: Well, my understanding is that it would depend on
27 whether those interview notes are of internal memorandum or
28 whether they were an additional statement, or the actual category
29 and basis of which those notes were and, indeed, my

1 understanding, and I may be wrong on this and stand to be
2 corrected, is that interview notes in the Special Court need to
3 be handed over and disclosed in the ordinary course.

4 PRESIDING JUDGE: Depending on their status.

5 MR AGHA: Depending on their status.

6 PRESIDING JUDGE: So you want us to go into an
7 investigation of the status of the interview notes for the
8 purposes of your application?

9 MR AGHA: Well, it may simply suffice just to ask Mr Graham
10 the status of those notes whether, indeed, they are of a
11 confidential nature or one would think they would not be, if they
12 were to form a part of a statement or a continuation of a
13 statement or a part of proofing notes because one would have
14 thought they would fall into the same category, especially as the
15 essence of them ought to have been disclosed to the Prosecution
16 as they would have been led in evidence.

17 PRESIDING JUDGE: All right. Thank you.

18 JUDGE SEBUTINDE: Mr Agha, as matters stand now, the
19 Defence has submitted that you have not only the summaries, you
20 now have the testimony of the witness, plus the Court has granted
21 you an adjournment of two days, in which to do your
22 investigations and effectively test the credibility of this
23 witness.

24 You have not addressed by way of reply the submission that
25 you therefore have not really exhibited irreparable prejudice
26 because of these three things: You have the summaries, you have
27 the testimony now on record as it stands, and you have the
28 adjournment. Why do you then need the statement in addition to
29 all this?

1 MR AGHA: Firstly, Your Honour, as I submitted, we don't
2 believe that that is the correct test, irreparable prejudice.
3 And then coming back to the three particular issues you've
4 raised, we've asked for an adjournment of only two days. Now, in
5 ordinary course, we would have asked for a longer period of time
6 but we do not want to delay the trial proceedings more than
7 necessary. There is not a huge amount of investigation which can
8 be done. We need to find out not simply about the testimony of
9 the witness but about the witness because it also goes to this
10 witness: Where was he at the given times? The investigation
11 also revolves around the witness.

12 Secondly, we do have summaries but these summaries are in
13 so little detail that we could carry out hardly any investigative
14 work in preparation for cross-examination until the testimony of
15 the witness came which has taken us by surprise. And, even that
16 testimony, as Your Honours have heard, is quite detailed. It's
17 something which, if the Prosecution cannot have at least some
18 means to test other than two days' investigation it will have
19 suffered prejudice.

20 JUDGE DOHERTY: Mr Graham, in the course of your
21 submission, you referred to the statute, I think; what provision
22 in the statute?

23 MR GRAHAM: 73.

24 JUDGE DOHERTY: Do you mean 73 of the Rules?

25 MR GRAHAM: The Rules of Procedure and Evidence. Sorry,
26 Your Honours. 73ter. Your Honours, I was going to respond
27 quickly on the matter of law that was raised by my learned
28 friend, if Your Honours were going to make a ruling in respect of
29 our submissions.

1 PRESIDING JUDGE: All right. Well, seeing a matter of law
2 has been raised, we will hear you, Mr Graham, but normally you
3 don't have a right to respond.

4 MR GRAHAM: Yes, Your Honours, and I am grateful. In
5 respect of the interpretation given to Rule 73 by my learned
6 friend and the issue, his reference to Tadic, Your Honour, we
7 submit that our learned friend is asking the Court to break
8 completely new grounds on the existing law in respect of the
9 obligation of the Defence to disclose witness statements.

10 Your Honours, we submit that the position of the law is
11 very clear in this matter. It is not an issue of requesting
12 Defence witness statements to test credibility of witnesses.
13 That is certainly not the position of the law. The issue of
14 undue or irreparable prejudice, I think is a key consideration in
15 this respect. Thank you, Your Honours.

16 PRESIDING JUDGE: All right. We will reserve on that
17 briefly. You've got one more thing to go, Mr Agha.

18 MR AGHA: Yes, Your Honour and, thankfully, this is rather
19 brief. It relates to an application which was made yesterday,
20 and it was filed confidentially, so I will be careful in the
21 words I use, so that we may deal with it in open session. But at
22 any rate, at 2.30 yesterday, the Defence, for the first accused,
23 filed for an extension of time to comply with its order of this
24 Court of 26 July to make certain disclosures in respect of a
25 certain Rule of this Court.

26 Now, that has now actually been breached, and this is not
27 the first time in which the learned Defence counsel have moved an
28 application just prior to its expiry so in effect they move into
29 breach and a response becomes infructuous in the sense that if we

1 file a written motion then what they require already be there.
2 So it's not the intention of the Prosecution to file a written
3 motion. It's simply to say that the first accused is in breach
4 of the Court's order of 26 July as the time limit has now
5 expired.

6 The Prosecution opposes the application to extend the time.
7 The Defence have not put forward any good reason why the accused,
8 after making his pleas, some of which were over a year ago,
9 cannot simply name the people he wants to rely on and give their
10 details.

11 He also raised various other defences of the same nature in
12 his evidence-in-chief, which he must have been aware of when the
13 case started, and he must have known in his mind who the
14 individuals concerned were and where they live.

15 So, we do not feel that there is any need for any further
16 extension. In fact, the Prosecution would submit that during the
17 lunch break or any time today the names and details of the
18 persons concerned can be provided.

19 So the Prosecution would seek an order to the right of the
20 Defence to comply with the original order of 26 July, except that
21 it be by 4 p.m. today. Or, otherwise, that if their extension of
22 time is granted, if it is not complied with, only should the
23 Defence be entitled to make the disclosures which they are
24 obliged to after showing good cause why they were not made in a
25 timely fashion, pursuant to the Court's order.

26 PRESIDING JUDGE: All right. For the record, Mr Agha has
27 made a response to a written application for an extension of time
28 made by the Defence.

29 We will deal with that motion by hearing the parties in

1 open Court. Does the Defence have any response to, any reply to
2 Mr Agha's oral response to that motion?

3 MR GRAHAM: Yes, thank you, Your Honours. Your Honours,
4 unfortunately, my co-counsel, Ms Thompson, was handling this
5 matter in respect of the motion that was filed before the Court
6 in respect of this matter, which is the subject matter of the
7 submissions by my learned friend. Your Honours, our humble
8 position in respect of this matter is as is stated in the motion
9 that we filed. We leave that matter as it stands now entirely in
10 the hands of the Court. Except to say that we, as counsel, are
11 doing our best within the circumstances, to comply with the order
12 of the Court and Your Honour, as I said earlier, we are entirely
13 in your hands in respect of this matter.

14 PRESIDING JUDGE: Yes. All right. Well, we are going to
15 adjourn now and we will come back at 11 o'clock.

16 [Break taken at 10.30 a.m.]

17 [AFRC01AUG06B - MD]

18 [Upon resuming at 11.06 a.m.]

19 PRESIDING JUDGE: Well, we will deal first with the
20 Prosecution application that the Defence disclose the statement
21 of witness DAB-023. In our oral decision, given on 11 July 2006,
22 in respect of witness DBK-094, we dealt with the jurisprudence
23 which we think is applicable to applications of this kind. In
24 the present case we note that the Prosecution application is
25 based on the subject witness testifying to 24 new issues in
26 examination-in-chief.

27 We've taken into account the submissions on behalf of the
28 Prosecution, and on behalf of the Defence, and we find that, in
29 accordance with the applicable jurisprudence, the summaries of

1 fact that have been provided by the Defence to the Prosecution
2 are insufficient to enable the Prosecution to properly test the
3 evidence of the witness.

4 Accordingly, we order that the Defence disclose the witness
5 statement to the Prosecution forthwith.

6 We emphasise that the order applies to the witness
7 statement only and not the interview notes. When we say
8 forthwith, that can be effected at the next rising of the Court,
9 which should be in the coming lunch hour.

10 Now, the next matter we deal with is the application by the
11 Prosecution, I beg your pardon, the application by the Defence,
12 the Brima Defence, requesting an extension of time to file
13 disclosures pursuant to Rule 67(A)(ii) and we note that the
14 application is a confidential application.

15 Again, we've taken into account the submissions made on
16 behalf of the Prosecution and the Defence. We note that the
17 Defence is now not only in breach of Rule 67 but also in breach
18 of a Trial Chamber order made on 26 July 2006. However, out of
19 respect for the rights of the accused, we grant the application
20 in the terms requested by the Defence; that is, that the
21 requested details must be produced by 4 p.m. on Thursday, 2
22 August 2006. No other application for an extension of time on
23 this issue will be entertained.

24 Yes. Now, do the Defence have another witness to call?

25 MR GRAHAM: Yes, Your Honours. We actually during the
26 break spoke to WVS to hold on. The witness is here within the
27 precincts of the Court. She's with WVS in the chamber but, Your
28 Honours, we deem it important to draw your attention to certain
29 developments regarding this witness, who came in the day before

1 yesterday.

2 PRESIDING JUDGE: Which number is that, Mr Graham?

3 MR GRAHAM: I am sorry, Your Honours, that DBK-088, I am
4 sorry. DBK-088.

5 PRESIDING JUDGE: Yes.

6 MR GRAHAM: And, Your Honours, we've tried to work with her
7 in preparing her to come before this Court to give her testimony
8 but, Your Honours, we've observed that the witness, for reasons
9 that we cannot probably professionally comment on, seems not to
10 even recall even basic information that she has had earlier on
11 given in her statement.

12 Your Honours, the potential -- very basic information
13 relating to her biographic data and also key events that she gave
14 in her statement. Your Honour, she is not a hostile witness, she
15 has been very co-operative with us, and with the Defence, in
16 trying to prepare her, but our fears are that her statement and
17 her present state of mind also raises potential issue of perjury
18 in the event that we bring her before this Court.

19 We are very much aware of the issues of time and the need
20 to proceed with this trial expeditiously. That is why we felt it
21 was important at least to lay both scenarios before the Court,
22 one of which is that we have no objections if probably, and we
23 say this with reservation, any professional personnel that the
24 WVS has could also probably talk to the witness to see how
25 probably they could get to her. I don't know exactly what but we
26 are open to that because we have not made a decision to entirely
27 take her off our list.

28 But, in the circumstances, we are being extremely cautious
29 because of the present state of affairs and the potential

1 consequences of her coming to this Court to give testimony which
2 we believe is at great variance with what she has given by way of
3 her earlier statement.

4 So, Your Honour, that is our -- that is the situation with
5 the witness. In the event we are being very cautious. We have
6 had meetings over the break in respect of this very matter, and
7 we, it is our humble submission that at this time we would want
8 to defer the calling of this witness in the hope that one, WVS
9 could also talk to her to see what kind of special assistance
10 could be given to her in respect of her present state of mind, in
11 regard to what she has told us, and what she is telling us now.

12 This is what we have to say by way of witness DBK-088.
13 And, indeed, we've tried since the past two days that she has
14 been with WVS to see whether we could make any headway. It seems
15 we are not at all and we prefer to be cautious in the
16 circumstances.

17 JUDGE SEBUTINDE: Mr Graham, on the summaries that we have
18 on the Bench this witness does not exist. If they do tell me the
19 number.

20 MR GRAHAM: Originally, she came on as DBK-110 and we
21 subsequently filed an amendment with the Court, and I think her
22 new pseudonym is DBK-088. I stand to be corrected about that.

23 MR HARDAWAY: No, that is correct. That would be listed
24 number 40 on the original summary list, Your Honour.

25 JUDGE DOHERTY: Mr Graham, I've heard what you said. I'm a
26 little unclear if you are asking the Court for something, or you
27 are just appraising us of something?

28 MR GRAHAM: Yes, I'm appraising you, because she, indeed,
29 this witness was supposed to be our next witness coming in and

1 we've informed our friends on the learned side, on the other side
2 accordingly, by way of communication. We think it is proper if
3 she is not going to come in for any reason that we communicate
4 that to the Court, in the light of all the issues pending.

5 JUDGE DOHERTY: Thank you.

6 PRESIDING JUDGE: Well, I must confess, Mr Graham, I'm not
7 quite sure what you are saying but, firstly, if you are concerned
8 about the witness being charged with perjury, I presume that all
9 of the statements she gave you were not given on oath. She can
10 only be charged with perjury if she says something that is
11 contrary to what she says under oath.

12 MR GRAHAM: Yes, Your Honour, that is -- I was just, I mean
13 by way of raising some of the potential issues, but the key issue
14 is that on the basic information that this witness has given, in
15 her earlier statement, she either doesn't seem to recall that at
16 all or gives a completely --

17 PRESIDING JUDGE: But you are throwing that back on the
18 Trial Chamber when it's a decision that you must make. It's your
19 decision as to whether you want to call this witness in your
20 case. Are you saying that you are leaving it up to us --

21 MR GRAHAM: No.

22 PRESIDING JUDGE: -- to decide whether you should call the
23 witness in your case?

24 MR GRAHAM: No, Your Honours, not at all. I am sorry, Your
25 Honours, probably I didn't make my point as clear as I ought to
26 have, but my humble submission was that in the present
27 circumstances we do not think it appropriate to call this witness
28 to come and testify before this Court.

29 PRESIDING JUDGE: All right. You are not calling the

1 witness. That gets back to my original question; do you have a
2 witness to call?

3 MR GRAHAM: Yes, Your Honours, we have two witnesses who
4 are coming in. DBK-063, Your Honours, was supposed to have been
5 in this morning. We have reliable information that he is on his
6 way and that we expect him to be here, I mean, by -- hopefully by
7 the time the lunch break is over. And we have also another
8 witness, I'm not very sure about the pseudonym who is also
9 expected in here this afternoon to lodge with the WVS.

10 PRESIDING JUDGE: Yes, we do have a copy of an e-mail I
11 think that was sent by you, and you do name three witnesses.

12 MR GRAHAM: Yes.

13 PRESIDING JUDGE: DAB-023 and then the second one is
14 DBK-110. That is now DBK-088?

15 MR GRAHAM: That is so, Your Honour.

16 PRESIDING JUDGE: And then the third one, you've just
17 mentioned DBK-063.

18 MR GRAHAM: DBK-063 we are certain is coming in today. He
19 was due to have come in yesterday night. Unfortunately, for
20 reasons that he says is personal, came in, left Makeni this
21 morning on his way, but he is confirmed he is on his way to
22 Freetown. I spoke to the WVS during the short break to confirm
23 that he was on his way.

24 PRESIDING JUDGE: Mr Graham, there is some confusion here.
25 I think I can straighten it out by saying this: Firstly, do we
26 take it that getting back to witness DBK-088, although it's been
27 put on a list that the Court has, as one of the witnesses that
28 will be called, you have decided not to call that witness?

29 MR GRAHAM: Presently, yes, Your Honour, before this Court

1 today.

2 PRESIDING JUDGE: All right. Now, in relation to the other
3 witness you mentioned, is there any application that you want to
4 make to the Court?

5 MR GRAHAM: Yes, Your Honours. Your Honours, we, I must
6 say that Your Honours we are very much aware, and we take that
7 very seriously, in respect of the disposition of the Court as to
8 how this trial is conducted; the issues of time and expediency
9 Your Honours, we take that matter very seriously, having appeared
10 before you this week and last week, we are very much aware of
11 your sentiments and disposition in this matter.

12 PRESIDING JUDGE: We don't really have any special
13 sentiments or disposition; all we want is for the trial to
14 proceed.

15 MR GRAHAM: That is so, Your Honour, that is so, Your
16 Honour, and it is in the light of that we made the efforts to get
17 in this additional witnesses.

18 Your Honours, we are setting DBK-063 and other witness are
19 coming. We would humbly request, with your kind permission, my
20 learned friend Mr Manly-Spain will be taking the next witness.
21 And he informs me that while the witness comes in this lunch hour
22 he is going to work with the witness in terms of preparing him to
23 come before this Court. So we humbly, with your kind permission,
24 request to have an adjournment until tomorrow morning, when we
25 would have time to prepare these two witnesses to come before
26 this Court tomorrow morning and, Your Honours, I say that with
27 great difficulty, knowing very much the circumstances of
28 witnesses, and Defence calling witnesses to this Court, and the
29 issues arising as well before this Court in respect of that

1 matter. But that is our humble prayer before the Court.

2 PRESIDING JUDGE: Mr Agha?

3 MR AGHA: Your Honour, under the circumstances that the
4 Prosecution really can't make any comment, only that if there is
5 another new witness coming, if we could have disclosed to us his
6 pseudonym by lunch-time today, so that we may start our
7 preparations on that witness to see who it is, and that all
8 additional summaries, if there are to be additional summaries,
9 because I know, I think 063 summary is very nominal, should be
10 provided to us as soon as possible, so that we can avoid the
11 situation that has arisen with the last witness, 0-023, because
12 as yet we haven't received any additional summaries and, as Your
13 Honours can see, it's quite a flimsy summary.

14 PRESIDING JUDGE: Well, Mr Graham, what's the situation?
15 You are saying that this witness, 063, is due any time now?

16 MR GRAHAM: That is so, Your Honours.

17 PRESIDING JUDGE: So, is there a problem calling him after
18 lunch, this afternoon?

19 MR GRAHAM: Your Honours, the witness who is coming in is
20 going to be taken up by my learned friend, Mr Manly-Spain, and,
21 Your Honours, he would need some time this afternoon to prepare
22 the witness to come in tomorrow.

23 I cannot say definitively that he would need the whole
24 afternoon, I must be cautious but, depending on what time the
25 witness comes in, we could begin to do some work immediately. In
26 terms of the timing issues, I am not quite very set in. I don't
27 want to risk to make any promises to this Honourable Court that
28 would turn out to be otherwise. But we could well take steps
29 immediately to provide information as soon as the witness gets

1 in, and I believe that we will do whatever we have to do that is
2 possible to prepare him and if we have time to come before today,
3 we don't have any objections to that, except my friends on the
4 other side would probably need some time. I don't know what
5 their disposition is in respect of this.

6 MR AGHA: Your Honours, what we would suggest as with 023,
7 if he were here at 2.15 we could at least start with his
8 evidence-in-chief and take it from there, and in that way time
9 wouldn't be wasted. So that would be our position and it may be,
10 depending on the evidence that he gives, we may not be seeking
11 any adjournment or other thing that may hold matters up, but at
12 least his evidence-in-chief would have been dealt with.

13 MR MANLY-SPAIN: May it please, Your Honour. My real worry
14 is that this witness might not have arrived by 2.00 this
15 afternoon, and I do not want to ask the Court to reconvene at
16 that time only to adjourn. But if he is here, as my learned
17 friend has said, I will be ready to go on with him.

18 PRESIDING JUDGE: Thank you, Mr Manly-Spain. All right.
19 Well, look, we've decided -- we've taken into account what
20 problems the Defence are going through at the moment, but we are
21 going to adjourn now and we will reconvene after lunch at the
22 normal time, 2.15. We can check the progress of this witness
23 and, if necessary, we can make appropriate arrangements. But we
24 will reconvene at 2.15.

25 [Luncheon recess taken at 11.30 a.m.]

26 [AFRC01AUG06C - MD]

27 [Upon resuming at 2.15 p.m.]

28 PRESIDING JUDGE: Well, before we move on to other
29 business, this morning we made an oral decision in a motion by

1 the Brima Defence requesting for an extension of time to file
2 disclosures pursuant to Rule 67(A)(ii). Am I coming through on
3 this microphone? I'm getting a lot of interference on the mic.

4 What I'm going to say now is by way of a corrigendum. This
5 morning we made an order, in terms of the Defence, the Brima
6 Defence application, and the order sought by them was that the
7 time limit for all disclosures pursuant to Rule 67(A)(ii) be
8 extended to Thursday, 2 August 2006 at 4 p.m.. I seem to recall
9 that this Trial Chamber made an order in those terms but, of
10 course, Thursday is not 2 August 2006, it's 3 August. So that
11 order that we made this morning should read so as extend the time
12 to Thursday, 3 August 2006, at 4 p.m.

13 Now, what's the situation, Mr Manly-Spain?

14 MR MANLY-SPAIN: Unfortunately, Your Honour, we do not have
15 the witness here. When we left Court this morning, two of the
16 officials from WVS went to meet [indiscernible]. They gave us an
17 insight as to why this problem is recurring. The position is
18 that they are still expecting the witness and we will probably be
19 able to carry on with him in the morning.

20 They explained to us that even if he had been here at 1.00,
21 or 12.00 we would not have been able to lead him this afternoon
22 because they said that they needed some time with him, to prepare
23 him, to bed him in, to examine him and to feed him before they
24 would hand him over to us. So that is the position, sir.

25 We are respectfully applying that the matter be adjourned
26 until tomorrow morning, when we will do all we can to have the
27 witness before you.

28 PRESIDING JUDGE: Well, thank you, for that. Anything from
29 the Defence, Prosecution, sorry?

1 MR HARDAWAY: Nothing as relates to that, Your Honour. We
2 are fully aware of the circumstances and difficulties facing our
3 learned friends across the aisle.

4 PRESIDING JUDGE: Thank you, Mr Hardaway.

5 MR HARDAWAY: I do have one other point, Your Honour, not
6 as relates to this matter but in the morning session my learned
7 friend mentioned that after 063 that there was another witness
8 whose pseudonym they did not have. We would just ask that that
9 information be provided to us before the close of business today,
10 so that we may prepare.

11 PRESIDING JUDGE: Well, any problem with that?

12 MR GRAHAM: No problems at all, Your Honour. We will take
13 a note.

14 PRESIDING JUDGE: All right. We will note the Defence
15 undertaking to provide you with that information, Mr Hardaway.

16 All right. Thank you. We will adjourn this Court now
17 until tomorrow morning at 9.15 a.m.

18 [Whereupon the hearing adjourned at 2.23 p.m.,
19 to be reconvened on Wednesday, the 2nd day of
20 August 2006, at 9.15 a.m.]

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WITNESSES FOR THE DEFENCE :

WITNESS: DAB-023 2

EXAMINED BY MR MANLY-SPAIN: 2