

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

MONDAY, 7 NOVEMBER 2005
9.20 a.m.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Teresa Doherty, Presiding Julia Sebutinde Richard Lussick
For Chambers:	Mr Simon Meisenberg Ms Carolyn Buff
For the Registry:	Mr Geoff Walker
For the Prosecution:	Mr James C Johnson Ms Wambui Ngunya Mr Alain Werner Ms Maja Dimitrova (Case Manager)
For the Principal Defender:	Mr Ibrahim Foday Mansaray
For the accused Alex Tamba Brima:	Ms Glenna Thompson
For the accused Brima Bazzy Kamara:	Mr Mohamed Pa-Momo Fofanah
For the accused Santigie Borbor Kanuu:	Mr Ajibola E Manly-Spain

1 [AFRC07NOV05A - SV]

2 Monday, 7 November 2005

3 [Open session]

4 [The accused present]

5 [Upon commencing at 9.20 a.m.]

6 PRESIDING JUDGE: Good morning, counsel. Ms Ngunya, I see
7 you're there at the front but you have some colleagues with you,
8 both of whom I recognise but I will take appearances, please.

9 MS NGUNYA: Thank you, Your Honour. My immediate right is
10 Mr James C Johnson.

11 PRESIDING JUDGE: Good morning, Mr Johnson.

12 MS NGUNYA: And Alain Werner.

13 PRESIDING JUDGE: Thank you. I note we have a witness in
14 the witness box. Is this witness --

15 MS NGUNYA: Your Honour, this is TF1-023. She is here for
16 her cross-examination this morning. With Your Honours'
17 permission I would like to raise a preliminary matter. During
18 the last session which concluded on 10th March 2005, Witness
19 TF1-023 was heard in closed session. I would like to clarify
20 with the Court whether it will continue in closed, in which case
21 my application will be premature or if it will be in open
22 session. I have raised this issue with defence counsel already
23 and they have indicated to me they will have no objection with
24 the evidence continuing in closed session.

25 PRESIDING JUDGE: Ms Ngunya, there's been no application to
26 open the session and I would consider that that closed session
27 should continue unless the previous ruling is changed or varied.

28 MS NGUNYA: Much obliged, Your Honour.

29 PRESIDING JUDGE: In the light of the fact that it has been

1 several months since she gave evidence I think it's appropriate
2 that the witness be resworn.

3 Mr Court Attendant, perhaps it would be more appropriate to
4 close the Court before we reswear the witness. For the purposes
5 of record, I note that it was a closed session, therefore this is
6 not a new application.

7 Ms Ngunya, I'm just trying to clarify my recollection, my
8 learned colleague has just reminded me. Was the witness's
9 evidence in closed session or did the matter of the closed
10 session only arise when the allegation made by the witness was
11 brought forward in the afternoon of 10th March.

12 MS NGUNYA: Your Honour, some of the evidence was --
13 actually all the evidence from the afternoon of March 10th was in
14 closed session following the incident of the contempt
15 proceedings.

16 PRESIDING JUDGE: So in effect the evidence-in-chief was
17 not in closed session.

18 MS NGUNYA: That is incorrect, Your Honour. Half of the
19 evidence-in-chief was in closed session.

20 PRESIDING JUDGE: Very well.

21 MR FOFANAH: May it please Your Honours, just to assist the
22 Court a bit. I have with me here a transcript of 10th March 2005
23 which clearly indicates that the witness ended her testimony in
24 open session but then Your Honours resumed later to discuss the
25 issues relating to the contempt shortly after during the session
26 of the 10th. Probably page 5 of that transcript would be useful.

27 PRESIDING JUDGE: Thank you, Mr Fofanah, we have in fact
28 just been reminded of that as well. It would appear, Ms Ngunya,
29 that I have been somewhat premature in what I've said. I've been

1 reminded, as Mr Fofanah says, that in fact we did not go into
2 closed session -- only after the allegations by the witness were
3 raised. Those allegations in turn led to a contempt hearing
4 which has been heard and disposed of. Therefore the original
5 application for a closed session did not relate to matters of
6 evidence-in-chief but to the allegation and since that has been
7 eliminated or dealt with, then any application for a closed
8 session for cross-examination would have to be dealt with as a
9 separate issue. In the light of -- and you have not -- because I
10 cut you short you did not make that application. So I would
11 invite you to make it now if that's what you intend to do, of
12 course.

13 MS NGUNYA: Your Honour, that is what I intend to do. Your
14 Honour, on 10 March 2005, and I'm referring to page 24 of the
15 transcript, Your Honours directed that the session shall be
16 closed to protect this witness. Your Honours, I'm relying on
17 section 79(A)(ii) of the Rules of this Court. This witness has
18 been threatened in the past and I believe it is in the interests
19 of justice to err on the side of caution rather than to expose
20 this witness to a situation like she faced in March this year.
21 Your Honours, the Prosecution submits that by being in closed
22 session does not in any way detract from the Defence carrying on
23 their cross-examination and this application is brought only in
24 the light of the safety of the witness. That is all, Your
25 Honour.

26 PRESIDING JUDGE: I'm entitled to presume that you're
27 making this application as a result of certain matters,
28 instructions given by the witness.

29 MS NGUNYA: Your Honours, I am not permitted to talk to the

1 witness. I am going in light of the proceedings from the last
2 session.

3 PRESIDING JUDGE: Thank you.

4 JUDGE SEBUTINDE: Ms Ngunya, are you saying that in spite
5 of the contempt proceedings having been disposed of, you still
6 think that there's danger to this witness?

7 MS NGUNYA: Your Honours, this is an aside from the
8 contempt proceedings. I believe her security was compromised at
9 the last session and all my application is, I think it would be
10 prudent to not in any way open her up for such a threat and the
11 only reason is for her protection. That is all, Your Honours.

12 PRESIDING JUDGE: Thank you. Defence counsel, is there any
13 reply to this application?

14 MS THOMPSON: Your Honour, my learned friend was kind
15 enough to discuss this with me on Friday, I think it was, and I
16 did say that I'll think about it. The fact is that the contempt
17 proceedings have been over and dealt with. One person's been
18 acquitted, the others have been warned and I'm not sure that this
19 witness' security will be compromised. That's all I think I can
20 say. I think I will leave it for the Court to decide whether
21 this witness ought to continue her cross-examination in -- or
22 start her cross-examination in closed session. Nothing other
23 than words said were the allegations on the last occasion and I'm
24 not sure that really goes as far as compromising her security,
25 but I'd leave it entirely in the Court's hands.

26 PRESIDING JUDGE: Mr Manly-Spain, have you anything to add?

27 MR MANLY-SPAIN: She's spoken for me, your Honour.

28 PRESIDING JUDGE: Thank you, Mr Fofanah.

29 MR FOFANAH: The same, Your Honour.

1 [Trial Chamber conferred]

2 PRESIDING JUDGE: We have heard the application and the
3 reply. We've considered the applications and we are of the
4 opinion that a closed session should be granted and we do so to
5 protect the privacy, security and safety and the identity of the
6 witness. I think possibly, Mr Court Attendant, we may already be
7 in closed session. I will reannounce, if in fact we are I will
8 reannounce that decision in public when we re-open.

9 [At this point in the proceedings, a portion of the
10 transcript, pages 7 to 35, was extracted and sealed under
11 separate cover, as the session was heard in camera.]

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1 [Open session]

2 [Upon resuming at 11.00 a.m.]

3 PRESIDING JUDGE: Ms Ngunya, have you any further matters
4 now for the Court?

5 MS NGUNYA: Your Honour, I do not have any matters right
6 now, but Ms Thompson had mentioned something in the break that
7 she would like to raise.

8 PRESIDING JUDGE: Ms Thompson.

9 MS THOMPSON: Your Honour, on 1st November we were served
10 with 89 different documents totaling about 2,000 pages, which is
11 the Rule 92 bis. The debate we are having actually is the exact
12 interpretation of Rule 92 bis(c) and I bring it to your notice
13 because I would say that each Defence counsel, and I know
14 prosecution counsel as well, the two I have spoken to, have a
15 different interpretation as to when time begins to run and what
16 the time limit is.

17 Your Honour, we seek the Court's clarification and guidance
18 on this because, as I say, from the Defence's point of view it
19 would help us enormously as we're having to cope with about
20 2,000-odd pages of documents.

21 The reading of Rule 92 bis(c) is:

22 "A party wishing to submit information as evidence shall
23 give ten days notice to the opposing party. Objections, if
24 any, must be subjected within five days."

25 On our side of the Court we've debated this and we
26 believe - and I think there is consensus - that the
27 interpretation is that we have 10 days from 1st November when we
28 were served which will expire on 11th November, that is the 10
29 days notice expires then and the five days for objections begins

1 to run from the expiry of that notice which would mean five days
2 from the 11th. That is our interpretation. My learned friend on
3 the opposite side --

4 PRESIDING JUDGE: I'm sure she will make her submission in
5 reply, Ms Thompson.

6 MS THOMPSON: Yes, Your Honour. May I say that if what she
7 is saying is in fact correct, it means that we are, I would say,
8 now in trouble. Your Honour, that is my submission. As I say,
9 we seek the Court's guidance on this.

10 PRESIDING JUDGE: I will ask the Prosecution to reply to
11 that and we will then discuss it. Thank you.

12 MS NGUNYA: Your Honour, Mr James Johnson will be
13 responding.

14 PRESIDING JUDGE: Thank you, Mr Johnson.

15 MR JOHNSON: Thank you, Your Honour. First, yes, we would
16 of course take the opposite interpretation of the rule that the
17 five days and 10 days run simultaneous and that today their
18 objections would be due.

19 However, of course, we want to cooperate on this with
20 Defence and we want to proceed along as quickly as we can to get
21 this resolved, to get to where we can discuss these submissions
22 and offer these submissions, because this is really the one thing
23 that is -- probably about the only thing left that is preventing
24 us from closing is getting these submissions in and a decision on
25 these submissions. So whereas our interpretation would be that
26 their five days would be up as of today, we can certainly be
27 flexible here. If Defence could get through these -- I
28 appreciate there is a large volume of paper, however I will say
29 to the extent that we have tried to focus them on that large

1 volume of paper down to much, much less, unfortunately we just
2 had to file some of these documents in their complete form which
3 created for a huge filing and I appreciate that.

4 Again, we are certainly willing to be flexible. We would
5 like to get through this and just get to the point of where we
6 can offer these and get a decision on these potential exhibits.
7 So if possibly Defence thinks that by the end of the week, or
8 maybe by Thursday, we could get their objections and we could
9 possibly schedule a session for very early next week to deal with
10 this and we might be well on our way to closing.

11 PRESIDING JUDGE: Thursday, I think, is the 11th. Is that
12 correct, Mr Johnson?

13 MR JOHNSON: Friday, I believe, is the 11th, Your Honour.

14 PRESIDING JUDGE: Sorry. Ms Thompson, do you wish to reply
15 to that last part of Mr Johnson's response before I discuss it
16 with my learned colleagues?

17 MS THOMPSON: Your Honour, my learned friend's response is
18 based on an assumption that we are wrong and I think we on this
19 side would actually need the Court to clarify first before asking
20 for an extension of time.

21 I will be candid with the Court and say if it expires today
22 then, as I say, we are in trouble. But we do believe that 10
23 days' notice means that it has not yet expired and objections, if
24 any, must be submitted within five days. My interpretation -- I
25 can't see any other reading of it except to say that it is within
26 five days of the expiry of that first 10 days. I'm not sure that
27 the drafters of this would have meant that it run simultaneously.
28 I say this as someone who was involved in the initial draft of
29 this at the very, very beginning when the Sierra Leonean Bar

1 Association was involved in it and I can't recall - because all
2 the others were looked at, all the other tribunals were looked
3 at - that anybody would have meant that the two time periods were
4 to run simultaneously. Your Honour, that is my reply, but, as I
5 say, we seek the Court's guidance on this.

6 PRESIDING JUDGE: Thank you, Ms Thompson. Just allow us to
7 confer, please.

8 [Trial Chamber conferred]

9 PRESIDING JUDGE: We've considered this and we are of the
10 opinion that the ten days and the five days provided in Rule 92
11 bis(c) are cumulative rather than concurrent. Hence notice runs
12 ten days from the date of service, which we understand to be 1
13 November 2005. At the expiry of the ten days, the Defence has
14 five days in which to raise any objection.

15 MS THOMPSON: Grateful, Your Honour.

16 PRESIDING JUDGE: Mr Johnson, in the light of that ruling
17 is there any application or any matter you wish to raise?

18 MR JOHNSON: No, I don't believe so, Your Honour. If we
19 could just schedule something immediately at the conclusion of
20 those days.

21 JUDGE LUSSICK: I was going to suggest that we could name
22 an adjourn date that falls within those rules, but if the parties
23 in the meantime come to any alternative agreement, you can ask us
24 to come back to court earlier.

25 PRESIDING JUDGE: We will mention this case on 16 November
26 2005 at 9.15 and we give liberty to apply before that date should
27 either party wish to apply. Before I -- first, any other
28 matters, counsel, either on the Defence side or on the
29 Prosecution side?

1 MS THOMPSON: None for the Defence, Your Honour.

2 PRESIDING JUDGE: Thank you, Ms Thompson.

3 MR JOHNSON: None, Your Honour.

4 PRESIDING JUDGE: Thank you, Mr Johnson. Before I close
5 the Court until the 16th of November, I will say for purposes of
6 public record that the cross-examination of TF1-023 was held in
7 closed session to protect the witness and I put that on public
8 record. If there are no other matters, we will adjourn the
9 Court, Mr Court Attendant, until the 16th November at 9.15 with
10 liberty to apply.

11 [Whereupon the hearing adjourned at 11.20 a.m.
12 to be reconvened on Wednesday, the 16th day of
13 November, 2005, at 9.15 a.m.]

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WITNESSES FOR THE PROSECUTION:

WITNESS: TF1-023	7
CROSS-EXAMINED BY MS THOMPSON	7
CROSS-EXAMINED BY MR MANLY-SPAIN	18
CROSS-EXAMINED BY MR FOFANAH	22