

Case No. SCSL-2004-14-T
THE PROSECUTOR OF
THE SPECIAL COURT
V.
SAM HINGA NORMAN
MOININA FOFANA
ALLIEU KONDEWA

WEDNESDAY 7 JUNE, 2006
10.06 A.M.
TRIAL

TRIAL CHAMBER I

Before the Judges:	Pierre Boutet, Presiding Bankole Thompson Benjamin Mutanga Itoe
For Chambers:	Ms Elena Martin-Salgado Ms Roza Salibekova
For the Registry:	Mr Geoff Walker
For the Prosecution:	Mr Joseph Kamara Mr Mohamed Bangura Ms Miatta Samba
For the Principal Defender:	Mr Lansana Dumbuya
For the accused Sam Hinga Norman:	Dr Bu-Buakei Jabbi Mr Alusine Sesay Mr Kingsley Belle (legal assistant)
For the accused Moinina Fofana:	Mr Arrow Bockarie Mr Andrew Ianuzzi
For the accused Allieu Kondewa:	Mr Charles Margai Mr Ansu Lansana

1 [CDF07JUN06A - MD]
2 Wednesday, 7 June 2006
3 [The accused present]
4 [Open session]
10:06:18 5 [Upon commencing at 10.06 a.m.]
6 PRESIDING JUDGE: Good morning, counsel. Good morning,
7 Dr Jabbi.
8 MR JABBI: Good morning, My Lord.
9 PRESIDING JUDGE: Dr Jabbi, we are back to you. When we
10:07:13 10 adjourned you were to proceed this morning with calling your next
11 witness.
12 MR JABBI: My Lord --
13 PRESIDING JUDGE: Yes, we are just waiting for your next
14 witness. That's where we were when we adjourned the last time.
10:07:33 15 MR JABBI: The position, My Lord, was that we would
16 continue to pursue to obtain materials from number 26 on our core
17 list, with the objective of determining whether we needed to call
18 him as a witness, or whether materials obtained through him would
19 be sufficient for a Rule 92bis procedure.
10:08:12 20 My Lord, I continued pursuing both objectives, as at now,
21 we have not been able to obtain all the materials that would
22 enable us to decide whether we would prefer a 92bis procedure or
23 whether, indeed, we would call the witness directly to give
24 testimony.
10:08:41 25 My Lord, this situation, in addition to a few other aspects
26 of what I have been required to pursue, has led us to prepare a
27 motion which has been filed now, and there is a specific
28 reference to this particular issue in that motion.
29 The situation for present purposes, however, is that we

1 have not come to the point of deciding whether to call 26 to give
2 evidence, or whether to forego that and present materials
3 obtained through him in a Rule 92bis procedure. That is the
4 reason, My Lord, why he is not here today to give evidence.

10:09:48 5 PRESIDING JUDGE: Before I respond to this part of the
6 aspect of your comments, I would like to know, because I do
7 recall that I asked you last time as well, that and inform you
8 that the Court would like to be informed of the status of your
9 witness from Nigeria, One Mohamed, I think it's witness 21 --

10:10:17 10 MR JABBI: Yes, My Lord.

11 PRESIDING JUDGE: General Abdu-One Mohamed, and I indicated
12 to you that I was expecting to be informed, in a detailed way, of
13 the report to be prepared by your legal assistant who had been to
14 Nigeria essentially asking why is it that this witness cannot be
10:10:36 15 heard now and if it was for medical reasons, what are these
16 medical reasons in detailed fashion and when is it that we could
17 hear this witness. So I was expecting to have some information,
18 see some detailed information about that today, as a minimum.

19 MR JABBI: In writing, My Lord?

10:10:53 20 PRESIDING JUDGE: Well, it was last week that we said that.
21 I was hoping that it would be in writing. I can see by your
22 question that it is not in writing.

23 MR JABBI: Well, My Lord, it is, of course -- I spoke to my
24 legal assistant, but I told him, in fact, that if the oral report
10:11:16 25 we present today is not satisfactory, and there's a requirement
26 to put it in writing he should be prepared to put a report in
27 writing. He has reported to me and I thought for today I would
28 only be required to give an oral statement to the effect.

29 PRESIDING JUDGE: Please provide an oral statement and we

1 want that in writing and in as detailed fashion as possible.

2 MR JABBI: Thank you, My Lord.

3 My Lord, the report of the legal assistant is that the
4 proposed witness explained that he was not able to make himself
10:12:05 5 available to testify this session, because he is already billed
6 to leave his country for treatment outside the country and that
7 he is leaving this week; that he will be away up to well into
8 July and, by end of July, he would have been back in his country,
9 and, therefore, he can make himself available early in September
10:12:54 10 2006. But he is very willing to testify on behalf of the first
11 accused.

12 Those are the only constraints, the medical situation
13 keeping him away from doing so during this trial session.
14 Briefly, My Lord, that is the report, orally. I am sorry, for
10:13:27 15 the --

16 PRESIDING JUDGE: I will wait to see the written
17 explanation in addition to that and I will refrain from making
18 any additional comment for now. Suffice to say that the session
19 didn't start yesterday. We have been in session for seven weeks.
10:13:44 20 We are in the sixth week as of now. There were some other times
21 that this witness may have been called but in any event we will
22 keep this for some other time. You said you filed a motion. We
23 will look at the motion. I have been informed indeed that the
24 first accused has filed a motion and it was served upon us this
10:14:05 25 morning, and so we can expedite this particular motion, we will
26 shorten the time for response and reply, and we will issue a
27 direction about that later this morning.

28 MR JABBI: My Lord, let me just -- not the motion -- let me
29 just make one comment on that.

1 JUDGE ITOE: Dr Jabbi, you say he is coming back to his
2 country in July?

3 MR JABBI: Some time in July, My Lord. Let me just make
4 one comment in connection to the report and in relation to the
10:14:41 5 observation Your Honour, made just now. It wasn't yesterday that
6 this session started and that witness could have been called
7 earlier. My Lord, what we had always explained was that his
8 state of health, if I may only put it that way, his state of
9 health was such that even access to him, when the legal assistant
10:15:03 10 went for the first time, was difficult, and he was not able to
11 travel with the legal assistant to certain places where he
12 thought he would have to go before he could take any decision on
13 coming, so he could not certainly have travelled to Sierra Leone
14 before now.

10:15:28 15 PRESIDING JUDGE: May I suggest to you that if that was the
16 case, that you clearly explain that in the report you will be
17 filing.

18 MR JABBI: Yes, indeed, My Lord.

19 PRESIDING JUDGE: So the Court has the full and complete
10:15:42 20 description and the circumstances that have existed that would
21 have caused these difficulties to bring this witness to this
22 trial up until this moment.

23 MR JABBI: We will do that, My Lord.

24 PRESIDING JUDGE: So I take it that you have no witnesses
10:15:57 25 this morning?

26 MR JABBI: No, My Lord. None physically available now.

27 PRESIDING JUDGE: How many witnesses do you have left on
28 your list, Dr Jabbi, aside from this witness from Nigeria?

29 JUDGE ITOE: And your number 1.

1 MR JABBI: My Lord, we, on the core list, we have two
2 witnesses apart from the Nigerian witness. In addition to him is
3 three on the core list already.

4 PRESIDING JUDGE: We are talking core list. As you know,
10:16:56 5 the position of the Court is quite clear as to the back-up list
6 and how it is to be used and when it is to be used so our
7 position hasn't changed today from what it was last week, so we
8 are talking of core list of witnesses.

9 MR JABBI: My Lord, my suggestion only related only to the
10:17:24 10 core list.

11 PRESIDING JUDGE: I would like to tell you as well that as
12 there has been reference to witness number one on more than one
13 occasion that you are quite aware that the decision of the Bench
14 has not been filed yet.

10:17:38 15 MR JABBI: Yes, indeed, My Lord.

16 PRESIDING JUDGE: But I want to inform you that that
17 decision will be filed at the latest by Tuesday next week.

18 MR JABBI: Thank you very much, My Lord.

19 PRESIDING JUDGE: And you will be in a position to clearly
10:17:51 20 see what the situation is, which I will accept you may not be in
21 a position to assess as we speak, but that decision will be filed
22 at the latest by Tuesday next week.

23 MR JABBI: Thank you for that.

24 PRESIDING JUDGE: But we are still in this part of your
10:18:10 25 session which is due to end next Friday. And between now and
26 then, as such, we will deal with your motion that has been filed,
27 and certainly by next week, we will be in a position to discuss
28 in greater details and with more precision what is and what is
29 not, with reference to witnesses to be called and the situation

1 as to when and if your case is to be closed.

2 MR JABBI: Thank you, My Lord.

3 PRESIDING JUDGE: So if you have no witnesses to call, I
4 don't think we can stay any longer today, or tomorrow, so, as I
10:18:53 5 say, we have work to do as well, and we will have to adjourn.

6 But I would like to ask if there is any comment from other
7 parties before we do so. Mr Bockarie?

8 MR BOCKARIE: None, Your Honour.

9 PRESIDING JUDGE: Mr Margai?

10:19:10 10 MR MARGAI: None.

11 PRESIDING JUDGE: Mr Prosecutor?

12 MR KAMARA: My Lord, except, of course, we've been coming
13 time and time again, if counsel for the defence of the first
14 accused will give us something in return, we will be fine.

10:19:24 15 PRESIDING JUDGE: You have received the motion. You have
16 been served with that motion?

17 MR KAMARA: Yes, My Lord. We have this motion this morning
18 and we are intending to respond to it.

19 PRESIDING JUDGE: As I have indicated, we will shorten the
10:19:37 20 delay for the response in reply. I will ask you as we will be
21 adjourning now in any event so that will give you some additional
22 time to work on this.

23 MR KAMARA: Yes, My Lord.

24 PRESIDING JUDGE: So we want everything to be completed by
10:19:49 25 at the latest Tuesday next week.

26 MR KAMARA: Yes, My Lord.

27 PRESIDING JUDGE: So we will be able to deal with that when
28 we come back into open session next week.

29 MR KAMARA: Yes, My Lord. There is only one more comment,

1 I am sorry, My Lord, that with regards to witness 21. We have
2 heard for the last three weeks that he has a medical condition.
3 My Lord, it is the position of the Prosecution that counsel
4 cannot be speaking about the medical condition of this witness
5 from the Bar time and time again. My Lord, he should bring a
6 medical report for the records of the Court and his legal
7 assistants have been to Nigeria for the second time in a row
8 coming back without any medical report. Even in the workplace,
9 if you are absent from work it is but expected that you come with
10 a sick leave permitting you to be excused from duty. And this is
11 a court of law, the standard is higher. We expect a certificate
12 something certifying from the doctor to show his condition, My
13 Lord.

14 PRESIDING JUDGE: Thank you, Mr Prosecutor. These are fair
15 comments, Dr Jabbi, and I will presumably, based on all of these
16 and what you have filed today, you will be asking some remedy, or
17 some solution to this problem as such. You have to make sure
18 that the filing is as complete as possible to allow the Court to
19 exercise its discretion in this respect, and that includes not
20 only a report from your legal assistant but as well a medical
21 report or certification of the kind that will establish this.

22 MR JABBI: My Lord, I can say right away that we have no
23 way at all, notwithstanding all our inclination to provide it, if
24 we can, but we have no way at all to provide a medical report.

25 PRESIDING JUDGE: Well, your assistant was in Nigeria; why
26 wasn't it possible to --

27 MR JABBI: My Lord, we are dealing with a witness, a
28 prospective witness, the analogy of the workplace that my learned
29 friend used just now is totally inapplicable. He is under no

1 obligation to accept to come and give evidence. In fact, we have
2 to approach him with great caution and circumspection in that
3 regard. If we begin to impose duties and obligations on him in
4 respect of his having to supply a medical certificate we have no
5 concern for his own sensitivities in that regard. We have
6 hesitated to --

7 PRESIDING JUDGE: Dr Jabbi, I am not inviting you to argue
8 your case this morning. I have just suggested to you that you
9 will be seeking some remedy from the Court and therefore you
10 should make sure that the filing is as complete as possible. If
11 you feel that it is not possible, it's not required, this is your
12 position. That is fine. We are going to deal with it when we
13 have to respond to your application next week.

14 MR JABBI: Thank you very much, My Lord.

15 PRESIDING JUDGE: Thank you. In those circumstances, as I
16 said, the decision on the subpoena matter will be filed some time
17 on next Tuesday, at the latest, and in the meantime we will have
18 to adjourn until Wednesday, to resume the hearing of this case
19 next Wednesday, in a week's time. The Court is adjourned to next
20 Wednesday, 9.30. Thank you.

21 [Whereupon the hearing adjourned at 10.24 a.m.,
22 to be reconvened on Wednesday, the 14th day of
23 June 2006, at 9.30 a.m.]

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