

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL-2004-14-T
TRIAL CHAMBER I

THE PROSECUTOR
OF THE SPECIAL COURT
V.
SAM HINGA NORMAN
MOININA FOFANA
ALLIEU KONDEWA

FRIDAY, 19 NOVEMBER 2004
9.50 a.m.
TRIAL

Before the Judges:

Benjamin Mutanga Itoe, Presiding
Bankole Thompson
Pierre Boutet

For Chambers:

Ms Sharelle Aitchison

For the Registry:

Ms Maureen Edmonds
Mr Geoff Walker

For the Prosecution:

Mr Mohamed Bangura
Mr Kevin Tavener
Ms Leslie Murray (intern)

For the Principal Defender:

Mr Ibrahim Yillah
Mr Kingsley Belle.

For the Accused Sam Hinga Norman:

Mr John Wesley Hall

For the Accused Moinina Fofana:

Mr Arrow Bockarie
Mr Andrew Ianuzzi.

For the Accused Allieu Kondewa:

Mr Charles Margai
Mr Yada Williams

1 Friday, 19 November 2004

2 [The three accused not present]

3 [Open session]

4 [Upon commencing at 9.50 a.m.]

5 PRESIDING JUDGE: Good morning, learned counsel. We're
6 resuming our session and in this regard the Chamber will
7 be delivering its ruling on the application by the
8 Prosecution for the testimony of witness number TF2-017
9 to be heard in closed session. This will be done by our
10 brother, the Honourable Judge Boutet.

11 [Ruling]

12 JUDGE BOUTET: Thank you, Mr Presiding Judge. This is the
13 oral ruling on the application for the hearing of the
14 testimony of witness TF2-017 in closed session.

15 PRESIDING JUDGE: I hope we are in an open session, are we?

16 MR WALKER: We are, Your Honour.

17 JUDGE BOUTET: Mindful of Article 17(2) of the Statutes which
18 provides that the accused shall be entitled to a fair and
19 public hearing subject to measures ordered by the Special
20 Court for the protection of victims and witnesses, and
21 pursuant to Rules 75 and 79 of the Rules of Procedure and
22 Evidence of the Special Court, the Trial Chamber rules
23 that: considering the arguments presented by both
24 Prosecution and Defence, considering the information
25 provided to the Court in support of this application, and
26 considering that there is no objection to such
27 application by the second and the third accused, the
28 entire testimony of witness TF2-017 will be held in
29 closed session.

1 This exceptional measure is required for this
2 witness, because as an insider witness the nature of his
3 evidence is such that, if it is heard publicly, it will
4 reveal his identity and it could expose him and his
5 family to threats and retaliation. Furthermore, he is
6 well known on account of the position he holds in his
7 community. This witness is particularly at risk because
8 of the peculiar facts known to him and on account of the
9 incidents that he has been involved in. The Trial
10 Chamber therefore believes that if any part of his
11 evidence is heard publicly, it would lead to his
12 identification and compromise his safety and security and
13 that of his family as well. That concludes this ruling.
14 Thank you.

15 Before we move to the closed session, I would like
16 to respond in part to you, Mr Margai, about another
17 matter which has nothing to do with closed session. It
18 was the issue of support to the Defence Office for a
19 photocopy machine. I have asked the Principal Defender
20 to look into this matter and to report. I've had some
21 discussion. I ask her to file a report and then on
22 Monday we will have this report publicly and will comment
23 on it. At this time we are concerned, as much as you
24 are, by the fact that the Defence is still waiting for
25 such a piece of equipment that has been outstanding for
26 months, but before going to further comments on this, we
27 will wait for the report to be filed.

28 I thank you for having raised this issue again and
29 I'm a little disturbed to see that you have to raise it

1 so many times before any action is taken. But we will
2 deal with that on Monday. This is just to let you know
3 that we have not forgotten about this matter.

4 MR MARGAI: Thank you, My Lord.

5 JUDGE BOUTET: Are you prepared, Mr Prosecutor, to proceed
6 with the evidence of your witness?

7 MR BANGURA: Very much so.

8 PRESIDING JUDGE: May we have an update on the health status
9 of witness TF2-008?

10 MR BANGURA: Up to the time of leaving the office this morning
11 for Court, we had not received any report from the VWS
12 about his condition. But as at last night there was hope
13 that he would have gotten better by today, but we don't
14 know what has been the position overnight. I am informed
15 that in fact he has been suffering from malaria and an
16 ulcer as well. I don't know how much attention he has
17 had at this time for these conditions.

18 PRESIDING JUDGE: Mr Tavener, was whispering something in your
19 ears.

20 MR BANGURA: Your Honour, we believe that he will be in a
21 position to be in Court by early next week. It is not
22 likely that he will be here today.

23 PRESIDING JUDGE: It would have been so nice if we wrapped up
24 his cross-examination today before taking on this
25 witness, but that is all right. We will now move into a
26 closed session to take the evidence of witness TF2-017.

27 MR MARGAI: My Lord, it is just an observation, and perhaps an
28 appeal to the other side with regard to applications for
29 closed sessions. Your Lordships will observe that in

1 fact the interest of the public is waning, and I believe
2 the essence of this trial is to protect the public
3 against future occurrences. My observation is that when
4 the trial started there was so much interest, whereas you
5 can see now that you can barely count the number of
6 people who are in the gallery.

7 PRESIDING JUDGE: Perhaps that is because they know we are in
8 a closed session, that's why they are not here. We have
9 taken note of it, Mr Margai. It is with a lot of
10 reluctance that we put in place this measure, and it is
11 because the law imposes this obligation on us. We would
12 like the public to understand that, whenever we order
13 these measures, we do not order them lightly; we take
14 into consideration many factors.

15 Whilst we would like the public to participate fully
16 in this process, where it comes to it and we have to do
17 it, we would like them to understand that we are doing it
18 because the law says that we should. We have taken note
19 of your remarks.

20 MR MARGAI: I'm sure they do understand; that's why my appeal
21 is to my colleagues on the other side. If there is no
22 such application, the Court will not find itself
23 constrained to make the order.

24 PRESIDING JUDGE: I would like them to understand, also, that
25 the Court will not grant those applications as a matter
26 of course. We would examine every application on a
27 case-by-case basis. So far, the reasons which have been
28 given have been convincing, and that is why we have
29 granted these applications.

1 MR MARGAI: Conceded, My Lord.

2 MR BANGURA: May I be heard on this point, My Lord? The
3 Prosecution just wishes it to be known that we are also
4 very mindful of the fact that the public has quite an
5 interest in what goes on here. In fact, Your Honour,
6 where it is possible for us not to have measures which
7 prevent the public from following these proceedings, we
8 do ask that these protective measures be lifted, for
9 instance, in the case of the Reverend Father. But as
10 Your Honour has rightly pointed out, there are such
11 situations where --

12 PRESIDING JUDGE: I will call him by name now, Junior Lion,
13 and yet he was very much an insider. He did order
14 [inaudible] to do that. He was as much an insider as
15 others.

16 MR BANGURA: Your Honour, where we can, we will surely do
17 without these measures. I think it is pertinent for me
18 to mention that for the next eight witnesses the
19 Prosecution in this trial will be calling, we will not be
20 seeking any closed sessions for those witnesses.

21 PRESIDING JUDGE: That will be a very healthy development in
22 the right direction, as pointed out by Mr Margai --
23 of course, as expected, not only by the public but by
24 members of the Defence team in all the trials that we
25 have before us. We would now move to a closed session
26 and you should be arranging to get in your witness so
27 that we can proceed. You think he will be how long?

28 MR BANGURA: About three or four hours.

29 [At this point in the proceedings, a portion of the

- 1 transcript pages 7 to 102 , was extracted and sealed under
- 2 separate cover, as the session was heard in camera]

WITNESSES FOR THE PROSECUTION:

WITNESS: TF2-017 7

EXAMINED BY MR BANGURA 7

C E R T I F I C A T E

I, Maureen P Dunn, Official Court Reporter for the Special Court for Sierra Leone, do hereby certify that the foregoing proceedings in the above-entitled cause were taken at the time and place as stated; that it was taken in shorthand (machine writer) and thereafter transcribed by computer, that the foregoing pages contain a true and correct transcription of said proceedings to the best of my ability and understanding.

I further certify that I am not of counsel nor related to any of the parties to this cause and that I am in nowise interested in the result of said cause.

Maureen P Dunn