



Case No. SCSL 2011-01-PT
THE INDEPENDENT PROSECUTOR
-V-
ERIC KOI SENESSIE

STATUS CONFERENCE

Before the Judge:	Justice Teresa Doherty
For Chambers:	Elizabeth Bundnitz
For the Registry:	Elaine-Bola Clarkson Thomas Alpha
For WVS:	Tamba D. Sammie
For the Prosecution:	William Gardner
For the Accused Eric Koi Senessie:	Ansu B. Lansana
For the Principal Defender:	Claire Carlton-Hanciles

1 [Status Conference]

2 [Open Session]

3 [Accused entered court]

4 [Upon commencing at 9.34 a.m.]

5 JUSTICE DOHERTY: Please be seated.

6 Good morning, I'll take appearances, please.

7 MR GARDNER: Good morning, William Gardener and ~~defendant~~
8 counsel for the Prosecution.

9 THE INTERPRETER: Can learned friend counsel put on his
10 microphone, please.

11 JUSTICE DOHERTY: [Microphone not activated] For the
12 Defence.

13 MR LANSANA: Your Honour, Anisu Lansana for the accused.

14 JUSTICE DOHERTY: [Microphone not activated] Thank you,
15 Mr Lansana.

16 MS CARLTON-HANCILES: Officer of Principal Defender,
17 Claire Carlton-Hanciles.

18 JUSTICE DOHERTY: [Microphone not activated] Thank you,
19 Ms Carlton-Hanciles.

20 Can I request that the --

21 THE INTERPRETER: Can Your Honour put on your microphone,
22 please.

23 JUSTICE DOHERTY: [Microphone not activated] Could you move
24 him down a little bit. This monitor is blocking my view. That
25 would be good.

26 We're here this morning [Microphone not activated] for a
27 pre-trial conference in accordance with the provisions of our
28 rules. Can I have --

29 THE INTERPRETER: Your Honour's microphone is not switched

1 on.

2 JUSTICE DOHERTY: [Microphone not activated] I'll proceed
3 with the pre-trial conference in accordance with the - sorry.
4 I've discovered that I've been talking without recording. I'll
5 just start again at the beginning.

6 That this is a pre-trial conference. I have read and noted
7 the contents of the pre-trial briefs by both Prosecution by the
8 Independent Counsel and by counsel for the Defence, and I will
9 proceed in accordance with the provisions of Rule 73 *bis*.

10 First, Mr Ainsu, before I actually go through the list may
11 I actually assume that the accused is still maintaining his plea
12 that has been entered in July 2011?

13 MR LANSANA: Certainly, Your Honour.

14 JUSTICE DOHERTY: Thank you. That's noted.

15 I'll go through the matters in Rule 73 *bis* (B). As I've
16 already noted, there is a pre-trial brief. Have there been any
17 admissions of matters that are not in dispute? None has been
18 filed to the best of my knowledge.

19 Mr Gardner?

20 MR GARDNER: None here, Your Honour.

21 JUSTICE DOHERTY: Mr Lansana?

22 MR LANSANA: None, Your Honour.

23 JUSTICE DOHERTY: I will assume, therefore, that all
24 matters are at issue.

25 Again, I note that there is no statement of contested
26 matters of fact and law. May I assume that situation has not
27 changed?

28 MR GARDNER: That hasn't changed either for us.

29 JUSTICE DOHERTY: Mr Lansana.

1 MR LANSANA: Not for the Defence, Your Honour.

2 JUSTICE DOHERTY: Mr Gardner, you did file a notice giving
3 the outline for each witness you intend to call?

4 MR GARDNER: I did, Your Honour.

5 JUSTICE DOHERTY: Does that situation remain the same?

6 MR GARDNER: Yes.

7 JUSTICE DOHERTY: Very good.

8 And Mr Lansana, I will not ask you on that. I've read your
9 brief, but there is no obligation on the Defence to call evidence
10 and therefore I'll not comment on that until the end of the
11 Prosecution case. I will ask you again then if you wish to call
12 evidence.

13 MR LANSANA: Thank you, Your Honour.

14 JUSTICE DOHERTY: I know that our Rules ask that we get an
15 estimated time of length for each witness, but experience has
16 shown that that's often an exercise in futility, so I'll assume
17 that we'll deal with each witness as they come up.

18 That appears to be the only things that in the pre-trial
19 conference that is a mandatory provision, but I have to consider:
20 have counsel any other matters that they wish to bring to my
21 attention?

22 MR GARDNER: Yes, Your Honour. In the interest of
23 shortening the trial, and in light of Mr Lansana's statement in
24 his brief that he intends to call eight witnesses, and pursuant
25 to Rule 67 I would ask for a list of the witnesses and a summary
26 at the end of this hearing.

27 JUSTICE DOHERTY: Mr Lansana, you've heard the application.

28 MR LANSANA: Yes, Your Honour. Initially, I was thinking
29 that - like you rightly said a while ago - that at the close of

1 the Prosecution's case, there will be an order for the written
2 list of the Defence to be filed, but I have no objections to
3 learned counsel's concern. I share that concern with him,
4 especially in light of the fact that the trial is very short, and
5 in the interest of expediting this process, the whole
6 proceedings, I will oblige him. I would only ask that it be a
7 little later in the day, but not immediately afterwards.

8 JUSTICE DOHERTY: How much time do you require, Mr Lansana?

9 MR LANSANA: An hour or two.

10 JUSTICE DOHERTY: So can I list it safely for close of
11 business today?

12 MR LANSANA: As Your Honour pleases.

13 JUSTICE DOHERTY: I record that as reciprocal disclosure to
14 be filed by close of business today and served.

15 If it's possible to have Mr Gardner served today as well,
16 as you know, Mr Lansana, filing will depend on the time you get
17 it in, whether it can be served this afternoon.

18 MR LANSANA: Your Honour, can it be 2.00 p.m.?

19 JUSTICE DOHERTY: 2.00 p.m. is excellent.

20 MR LANSANA: As Your Honour pleases.

21 JUSTICE DOHERTY: Any other matters?

22 MR GARDNER: Your Honour, two of the Prosecution witnesses
23 have testified before, and are - and as far as I know continue to
24 be - under protective measures, and that's TF1-185 and TF1-516,
25 and I've discussed with personnel how those protective measures
26 that I understand were implemented in the Taylor trial would be
27 implemented here in the courtroom. May I assume that that is the
28 case?

29 JUSTICE DOHERTY: Yes. Under our Rules those protective

1 measures remain. And for purposes of the Rules, this is a
2 secondary hearing, a second trial, and normally I would have to
3 seek leave of the first protective measure trial to vary them.
4 But if the witness wishes to maintain - and I do recall both of
5 those witnesses, and they were quite anxious to maintain their
6 protective measures - that can be done here in court. Off the
7 top of my head my recollection is that 585 did not have voice
8 distortion, neither did 516, but I would be grateful if you could
9 check that because I would have to give instruction to have those
10 matters put in place.

11 MR GARDNER: 585, Your Honour - can you hear me now?

12 JUSTICE DOHERTY: I certainly can. Thank you, Mr Gardner.

13 MR GARDNER: It's screen, voice, and facial distortion.

14 And 516 - oh, plus pseudonym.

15 516, pseudonym and facial distortion.

16 JUSTICE DOHERTY: I thought there was a variation in The
17 Hague for some of those but obviously I am wrong. If they are
18 still in place, I would ask our CMS to have them implemented.
19 Normally these curtains are also drawn when they give evidence.

20 MR GARDNER: Okay. I think that would give comfort to each
21 of those witnesses, Your Honour.

22 JUSTICE DOHERTY: In your line of witnesses, when were you
23 intending to call those witnesses? Because you do have others.

24 MR GARDNER: Bear with me for one second, Your Honour.

25 585 would be the second witness, and 516 would be the
26 fourth witness.

27 And there is one more issue to raise with respect to
28 protective measures, Your Honour, and that is in the course of
29 preparation for trial, I and the WVS have come to learn that

1 another witness who testified, without measures, at The Hague, is
2 extremely desirous of having protective measures here for a
3 number of reasons that Mr Akimbobola doesn't state but obviously
4 relate to his living in the community. And that witness is a
5 very popular radio announcer.

6 JUSTICE DOHERTY: Will that be an oral application or an
7 application in writing?

8 MR GARDNER: I haven't had a chance to prepare one in
9 writing. I would like to make the motion *ore tenus* if I could.

10 JUSTICE DOHERTY: I will entertain it orally if you wish to
11 proceed, and I will ask Mr Lansana if he requires time to reply,
12 and if he does I will allow him that time.

13 MR LANSANA: Yes, Your Honour. I wish to reply to that
14 one.

15 JUSTICE DOHERTY: All right. I'll hear - are you ready
16 with the application now, Mr Gardner? Because I'll hear it now.
17 I will then allow - Mr Lansana will indicate to me how much time
18 he needs to reply and we can deal with the reply when we next
19 reconvene.

20 MR GARDNER: I think I've basically made my application,
21 Your Honour. I would just ask you to consult with Mr Akimbobola
22 because he has spoken more directly to the witness on the issue
23 than I have.

24 JUSTICE DOHERTY: Does he wish to give oral evidence as to
25 the reasons why the witness requires protective measures?
26 Because as you know, under our jurisprudence there is both a
27 subjective and an objective element in cases relating to
28 protective measures. So I would be prepared to have him sworn
29 now. If he's ready to be sworn, I will hear his evidence as to

1 why this witness requires protection, and then I will either
2 release him from his oath, or I will allow Mr Lansana some time
3 before he cross-examines.

4 MR GARDNER: Thank you.

5 JUSTICE DOHERTY: Do you wish to consult?

6 MR GARDNER: Are you prepared, Mr Akimbobola? Well, I'm
7 prepared to put some questions to him, Your Honour.

8 JUSTICE DOHERTY: All right. We'll have him sworn.

9 Please swear the witness.

10 Mr Lansana, I should say this is sprung on you as much as
11 it's sprung on the rest of us. At the end of the evidence in
12 chief, I will ask you if you require some time to prepare your
13 cross-examination of the witness.

14 MR LANSANA: As it please, Your Honour.

15 JUSTICE DOHERTY: Does the witness require interpretation
16 or will the defendant require interpretation? Are the
17 interpreters in place?

18 THE INTERPRETER: Yes Your Honour.

19 JUSTICE DOHERTY: Please stand to take the oath. And no
20 talking in Court to take the oath, please. Just a moment. Is
21 the witness swearing on the Koran or on the Bible? We must have
22 that on the Bible.

23 WITNESS: THOMAS KONIE AKIMBOBOLA: [On Affirmation]

24 EXAMINATION IN CHIEF BY MR GARDNER:

25 MR GARDNER:

26 Q. Can you hear me okay, Mr Akimbobola?

27 A. I do.

28 Q. Did you a conversation or conversations with Witness DAF?

29 JUSTICE DOHERTY: Just a moment, Mr Gardner. I need the

1 witness's full name, please.

2 MR GARDNER: Dauda Aruna Forni e.

3 JUSTICE DOHERTY: The witness sitting in the witness box.

4 I need his full name.

5 MR GARDNER: Oh. Himself.

6 Q. Please state your name for the Court?

7 A. My name is Thomas Koni e, K-O-N-I -E, Aki mbobol a,

8 A-K-I -M-B-O-B-O-L-A.

9 JUSTICE DOHERTY: Yes. Please proceed.

10 MR GARDNER: Thank you.

11 Q. Mr Aki mbobol a, did you have a conversation or conversations

12 in the last few days with Witness Dauda Aruna Forni e with respect

13 to his desire for protective measures in this trial?

14 A. I do, My Lord.

15 Q. Would you please tell Her Honour the substance of

16 Mr Forni e's request, and when you finish with that I am going to

17 ask you, based on your position and experience in the Witness

18 Victim Section, what is your view with respect to Mr Forni e's

19 request. But if first you could relate the conversation with

20 Mr Forni e.

21 A. I do, My Lord. My Lord, during the past days I have

22 contact with Dauda Aruna Forni e, who is TF1-274, and he explained

23 to me that he need protective measures on the basis that he now

24 resides in Kailahun but is not a native of Kailahun. And he

25 knows that the accused is a very important person within the

26 Kailahun community and that testifying against the accused openly

27 will create a bad blood between himself and other natives of

28 Kailahun town.

29 That was the reasons forwarded to me for his need for

1 protective measures.

2 Q. Does that complete your answer?

3 A. Yes, My Lord.

4 Q. Would you please tell the Court, based on your years of
5 experience and dealing with witnesses who request protective
6 measures, whether in your judgement this is a valid request and
7 worthy of the Court's granting it?

8 MR LANSANA: Your Honour, I hate to interrupt, but I wish
9 to object to that line of questioning. Counsel is treating the
10 witness, more or less, as an expert witness. He's asking for his
11 opinion. What I think is appropriate in the circumstance is that
12 he asks for the fact of what transpired between that witness that
13 seeks protection and the witness here and not his opinion as to
14 what he thinks appropriate in the circumstance, whether he thinks
15 that it is allegedly his concern or not. That, to me, is an
16 opinion that can only be given by an expert and he is not an
17 expert here.

18 Secondly, he seeks to usurp the powers of the Court. He is
19 not in a position to say whether that request is legitimate or
20 not. It's the purview of the Court based on the circumstances.

21 JUSTICE DOHERTY: Do you reply to the objection,
22 Mr Gardner?

23 MR GARDNER: I'm sorry, Your Honour?

24 JUSTICE DOHERTY: Your reply to the objection?

25 MR GARDNER: I don't believe that the burden on the
26 Prosecution in seeking a protective measure is to establish
27 factually that there has been any contact between the witness and
28 the defendant. And as to Mr Akimbobola's expert opinion, whether
29 it's called "expert" or not, it's my understanding - as a novice,

1 I admit - under the Rules that the WVS, of which Mr Akimbobola
2 has a prominent part, is specifically tasked under the Rules with
3 both witness protection and assessment of need for witness
4 protection. So I believe it's fair game for him to testify as he
5 has.

6 I would add, Your Honour, on the subject of contacts
7 between the witness and the defendant, that in my pre-trial brief
8 I cited not one, but three instances of inappropriate contacts by
9 Mr Senessie of Prosecution witnesses after they had given
10 statements to investigators or to me. During the course of my
11 preparation, I learned of a fourth inappropriate contact with
12 still another witness, and I informed Mr Lansana of that by
13 e-mail yesterday. So Mr Senessie is now batting four out of five
14 on contacting these witnesses, and I think that makes a prime
15 facie case for protective measures.

16 I have no further questions for Mr Akimbobola.

17 JUSTICE DOHERTY: Sorry, I have to deal with this objection
18 first. If you wish to have a seat, I'll write something
19 ex tempore quickly on it.

20 [Chamber and Registrar confer]

21 JUSTICE DOHERTY: Mr Lansana, just to save a bit of time,
22 could you refer to me to which number our Rule is that deals with
23 expert witnesses?

24 MR LANSANA: Your Honour --

25 JUSTICE DOHERTY: I've just found it. 94, is it? 94 *bis*?

26 MR LANSANA: Your Honour, yes.

27 MR GARDNER: Yes, Your Honour.

28 JUSTICE DOHERTY: Thank you.

29 MR LANSANA: And I'll also be referring the Court to

1 protective - protected witnesses - protective measures for
2 witnesses.

3 JUSTICE DOHERTY: I'm only dealing with the objection at
4 this point.

5 MR LANSANA: As it pleases Your Honour.

6 JUSTICE DOHERTY: There is an objection to a question being
7 asked of the witness on the basis that he is not an expert and
8 the question requires expert opinion to answer it. I refer to
9 the provisions of our Rule 94 concerning objections to experts.

10 The case law of this Court is that a person may be an
11 expert by virtue of their experience as well as their training or
12 education. I refer here to the case of The Prosecutor v. Brima
13 et al concerning the status of Edna Bangura. I don't have the
14 exact decision name off the top of my head.

15 As the Appeals Chamber of this Court has ruled, again it's
16 in the case of The Prosecutor v. Taylor, re TF1-150, it shows
17 that decisions concerning protective measures must have an
18 element of both subjective and objective evidence to be
19 considered.

20 I am of the view that the conditions in Kailahun as they
21 affect witness TF1-274 and the accused are relevant matters that
22 matters that I must take into account.

23 I will therefore ask that the witness informs me how long
24 he's been with - How long his experience in witness protection
25 is? my first question; and my second question, as to whether he
26 has visited Kailahun?

27 Can you please answer those questions from the Bench,
28 Mr Akimbobola.

29 WITNESS: Yes, My Lord. I've been with the Witness

1 Protection Unit for the past eight years and five months. In
2 addition, I've been trained by the London Metropolitan Police on
3 witness protection. I've also have adequate training from
4 Justice Worldwide Organisation on witness protection.

5 JUSTICE DOHERTY: Is that your answer? You wish to say
6 something else; please continue.

7 WITNESS: The second part of your question --

8 JUSTICE DOHERTY: Please.

9 WITNESS: -- during the past one year I've paid about three
10 or four visits to Kailahun town.

11 JUSTICE DOHERTY: Thank you. In the light of those
12 answers, I consider the witness has the required experience to
13 enable him to answer the questions put, and I overrule the
14 objection.

15 Please proceed and maybe put the question again,
16 Mr Gardner, for purposes of record and recollection.

17 MR GARDNER: At home, Your Honour, the Court Reporters
18 would be used to my faulty memory and used to my asking to have
19 my own question read back, but I can struggle through rephrasing
20 it.

21 Q. Mr Akimbobola, could you please give your opinion to the
22 Court, based to your experience in witness protection generally,
23 and specifically with respect to the Kailahun area, whether the
24 request for a protective measure for Dauda Aruna Forni'e's
25 testimony is a sound request and worthy of the Court's granting
26 it?

27 And before you answer, let me ask you whether you - no, I'm
28 sorry, go ahead. You can answer the question as it is.

29 A. Yes, My Lord. The reason - the reason forwarded by

1 TF1-274, in my opinion, is a valid reason for him to be accorded
2 protective measures.

3 JUSTICE DOHERTY: Thank you.

4 Please proceed, Mr Gardner.

5 MR GARDNER:

6 Q. Mr Akimbobola, in your experience, have witnesses who have
7 been similarly situated to Mr Fornie then been afforded
8 protective measures by the Court?

9 A. Come again?

10 Q. In your experience, have there been other witnesses in the
11 cases with which you are familiar where the witness would have a
12 protective measure ordered by the Court where the witness was
13 roughly in the same circumstance as Dauda Aruna Fornie?

14 A. Yes, My Lord.

15 MR GARDNER: No further questions, Your Honour.

16 JUSTICE DOHERTY: Thank you, Mr Gardner.

17 Mr Lansana, I have indicated to you that you didn't have
18 prior notice of this. It was a matter that I brought on. You
19 are at liberty to seek some adjournment to seek instructions, or
20 you are at liberty to cross-examine now.

21 Please tell me what your preference is.

22 MR LANSANA: Your Honour, I'll ask for a minute to steer a
23 middle course. I will just ask for a few moments to consult.

24 JUSTICE DOHERTY: Very well. I will allow that. Perhaps
25 it's appropriate, since you wish to consult your client, that we
26 adjourn briefly to allow you to consult him properly in private.
27 I am sure Mr Gardner would not object to that.

28 MR GARDNER: Not at all.

29 JUSTICE DOHERTY: Very well.

1 What I will do, Mr Lansana, is I'll adjourn now, and in
2 let's say 15 minutes I will ask the Clerk of the Court to check
3 with you whether you've had enough time or you require more time.

4 MR LANSANA: That's a very reasonable proposal, Your
5 Honour.

6 JUSTICE DOHERTY: Well, we'll adjourn for 15 minutes,
7 provisionally, and we will check. I'll ask the Clerk of Court to
8 check.

9 Mr Akimbobola, you are actually under oath at the moment.
10 As you appreciate, you should not discuss your evidence with
11 anyone else, but you are at liberty to leave the witness box if
12 you so wish to move around a little, but do not discuss your
13 evidence with anyone else.

14 If there are --

15 WITNESS: Thank you, Your Honour.

16 JUSTICE DOHERTY: -- no other matters, we will adjourn
17 temporarily. Adjourn the Court, please.

18 [Break taken at 10.12 a.m.]

19 [Upon resuming at 10.19 a.m.]

20 MR GARDNER: Your Honour.

21 JUSTICE DOHERTY: Yes, Mr Gardner.

22 MR GARDNER: May I raise one preliminary matter before we
23 proceed. When I was raising this issue with respect to this
24 particular witness a few minutes ago, I referred to him by name
25 because he's been identified in the public record by name, and
26 all of a sudden I was informed that there are members of the
27 media right behind the glass, and I think out of an abundance of
28 caution I should have been using his TF1 number, which is 274,
29 and I would like to make an application ore tenus to have the

1 transcript and the record changed so that "TF1-274" is
2 substituted too for his name. That should put a hold on matters
3 with respect to the press, I hope, at least, until Your Honour
4 rules on the motion for protective measures.

5 JUSTICE DOHERTY: Mr Lansana.

6 MR LANSANA: I have no objections. As a matter of fact, I
7 was thinking along those lines.

8 JUSTICE DOHERTY: I did - obviously, it went through my
9 mind quite a bit as I was listening. The facts of life are that
10 there isn't any protective measure in place for the witness,
11 although I, myself, avoided using his name.

12 Until that is in place, I cannot really order a redaction
13 because it is part of the public record, but I'll hear the - what
14 we will do now is we will not use his name anymore, and I will
15 say to any members of the public or the media that are in court
16 listening: You are not to use the witness's name until I make a
17 ruling on this application, and then I can tell you if you're
18 entitled to use it or not. But for the moment, we are not going
19 to use his name.

20 Mr Lansana, if you're ready to proceed.

21 MR LANSANA: As it pleases Your Honour.

22 CROSS-EXAMINATION BY MR LANSANA:

23 Q. Mr Akimbobola.

24 A. Yes, My Lord.

25 Q. Are you familiar with southeastern Sierra Leone?

26 A. Yes, My Lord.

27 Q. Have you had any incident involving threats to violence or
28 violence against witnesses that testified against Charles Taylor
29 in Kailahun? Can you give us any examples of incidents of

1 violence against witnesses who testified against Charles Taylor
2 in The Hague?

3 A. I don't have any record --

4 Q. Thank you.

5 A. -- concerning violence, but I have records concerning
6 harassment of witnesses.

7 JUSTICE DOHERTY: Mr Lansana, maybe I should advise you
8 that there is a difficulty if two microphones are on at once.

9 MR LANSANA: It takes some getting used to.

10 JUSTICE DOHERTY: It will come to you.

11 MR LANSANA:

12 Q. Now, how many times have you been to Kailahun?

13 A. Between what period to what period?

14 Q. In the past - in the past one or two years.

15 A. Maybe roughly about four or five times.

16 Q. And on each occasion, how long did you stay in Kailahun?

17 A. Approximately about three or four days.

18 Q. And during that time, did you interact with the Kailahun
19 society?

20 A. I do. I worked at Kailahun during my early days in the
21 police force, so I know the area quite well.

22 Q. That's not what I am asking. During those visits -
23 restrict yourself to the past one or two years. During those
24 visits to Kailahun, were you interacting with the society in
25 order to get the beat, the feel of the society?

26 MR GARDNER: Objection, Your Honour.

27 JUSTICE DOHERTY: Yes. What is the objection?

28 MR GARDNER: I have no idea what the "beat and feel" of
29 society means. It's a colloquial phrase that would be difficult

1 to pin down.

2 JUSTICE DOHERTY: It is pretty vague, Mr Lansana.

3 MR LANSANA: I will be --

4 JUSTICE DOHERTY: I am not too sure what it means myself.

5 MR LANSANA: I will be specific.

6 JUSTICE DOHERTY: Thank you.

7 MR LANSANA:

8 Q. Now, when you were in Kailahun town, did you move around
9 sufficiently enough to know the mentality of the people,
10 specifically dealing with their penchant for revenge, for
11 retaliation?

12 JUSTICE DOHERTY: Mr Lansana - I'm sorry, Mr Gardner.

13 MR GARDNER: I have an objection to that question also,
14 Your Honour. Same objection, plus it's asking him to comment or
15 testify on the mindset of an entire population, so it's an
16 inappropriate question.

17 JUSTICE DOHERTY: I was going to remark, Mr Lansana, that
18 that is very wide and, therefore, not really possible to give a
19 precise answer. I think we are all familiar with the fact that
20 communities include leaders, lower down people, church people,
21 and shop keepers and all types of members of the society, so I
22 think you're going to have to be a little more precise in the
23 type of person and how many, et cetera, that he dealt with.

24 MR LANSANA: Yes, Your Honour. That is the difficulty this
25 witness has with specific - with regard to what he's testifying,
26 his opinion, as to the security situation that this witness is
27 in. But I'll - I would rephrase my question, Your Honour.

28 Q. Now, Mr Akimbobola, I'll be specific: Did you find the
29 Kailahun community as a security - having a security problem?

1 Did you notice any security problem?

2 JUSTICE DOHERTY: Mr Lansana, that's a bit wide too, with
3 respect. Let's bear in mind Kailahun is very close to the
4 border, and it's been at the centre of the unfortunate problems
5 here. So when you say "find the community problems," you could
6 be looking at smuggling or cross-border exchanges between tribal
7 groups, so I think a little - hone in a bit more on a precise
8 matter that is relevant to this situation.

9 MR LANSANA: As Your Honour pleases.

10 Q. I'll --

11 JUSTICE DOHERTY: Excuse me, Mr Gardner, could you please
12 switch off your microphone, as it causes problems in the
13 transcript.

14 MR LANSANA:

15 Q. You are aware that the accused - one of the conditions the
16 accused had for securing bail is that he reports at the police
17 station on a daily basis; is that correct?

18 A. Yes, My Lord.

19 Q. And are you aware that he's been - he's not been in breach
20 of that undertaking?

21 A. Yes, My Lord.

22 Q. Are you also aware that the accused and Witness TF1-274
23 have been interacting in Kailahun; they have been meeting? Are
24 you aware of that?

25 A. I cannot say, My Lord.

26 Q. When TF1-274 informed you that he needed protection, did
27 you - did you ask him, protection from whom specifically?

28 A. From the people of - from the people of Kailahun town.

29 Q. And are you aware that TF1-274 is a popular man in

1 Kailahun? As a matter of fact, he works at Radio Moa. He is a
2 very popular radio announcer.

3 A. Yes, My Lord.

4 Q. And are you also aware that TF1-274 testified against
5 Charles Taylor in The Hague?

6 A. Yes, My Lord.

7 Q. And when he testified he wasn't a protected witness; are
8 you aware of that?

9 A. I do, My Lord.

10 Q. And when he told you that he needed protection, did he tell
11 you that he had any problem with his personal safety after
12 testifying as an unprotected witness against Charles Taylor when
13 he returned to Kailahun?

14 A. He has no objection with the trial of the Charles Taylor,
15 but what he told me is that the accused person is a very
16 important person in Kailahun and is not a native of Kailahun, and
17 that being that the accused is a very important person, if he
18 testify against the accused openly, it will become a stigma for
19 him in Kailahun town.

20 Q. We will come to that later. You have not actually answered
21 my specific question. Did the witness tell you that he had any
22 personal safety problems after his testimony at The Hague against
23 Charles Taylor?

24 A. None, My Lord.

25 Q. Not at all?

26 A. No.

27 Q. And you - and you agree with me that the Taylor trial had
28 more - more importance and more tension, if you will, than this
29 contempt trial at all?

1 A. It depends on the perception of others.

2 Q. I don't quite get you.

3 A. It depends on the perception of others.

4 Q. Objectively speaking - or you could even voice your
5 opinion, because you started along your own opinion lines, you
6 agree with me that the Taylor trial was a very, very important
7 trial, and it was known almost by the vast majority of people in
8 Sierra Leone, especially in Kailahun, around the Kailahun
9 township; you agree with me?

10 A. Yes, My Lord. I do agree.

11 Q. And yet TF1-274, who testified against Charles Taylor, had
12 no personal problems, no safety problems, when he returned to
13 Kailahun?

14 A. Yes, My Lord.

15 Q. And he now seeks protection for a contempt trial, yes?

16 A. Because he entertain fear now, not before.

17 Q. I put it to you that TF1-274 seeks protection now because
18 he does not want to - he doesn't want the people to know that
19 he's testifying against a party member?

20 MR GARDNER: Objection, Your Honour. That's argument.

21 JUSTICE DOHERTY: It's cross-examination. It's relevant to
22 the subjective thinking of the applicant, and I will allow that
23 question.

24 MR LANSANA: As it pleases Your Honour.

25 Q. Well, first of all, you know that TF1-274 is in the RUFF
26 party? You know that.

27 A. I don't know whether he's in the RUFF party. I don't know
28 whether he's a member of the party.

29 Q. Now answer the specific question I asked: He doesn't want

1 people to know that he's testifying against Eric Senessie, just
2 that.

3 A. I believe that is a valid reason for his fear.

4 Q. Not that he fears that Senessie would harm him or that
5 Senessie's relations or friends would harm him, but he just
6 doesn't want people to know that he's doing that, just that, to
7 satisfy his - to satisfy his conscience, if you call it that?

8 A. I cannot read into his conscience, but that is a valid
9 reason for his fear.

10 MR LANSANA: Your Honour, that will be all for now.

11 JUSTICE DOHERTY: Thank you, Mr Lansana.

12 Any re-examination, Mr Gardner?

13 MR GARDNER: No, Your Honour.

14 JUSTICE DOHERTY: Thank you.

15 Mr Akimbobola, in answer to a question from Defence counsel
16 that TF1-274 did not want people to know that he was testifying
17 against Eric Senessie, you answered that that was a valid reason
18 for his fear. Why would he not want people to know that? Have
19 you been informed of why he would not want people to know that?

20 WITNESS: If you look at the social setting of the entire
21 country, there is always room for revenge. I believe that is the
22 reason, My Lord.

23 JUSTICE DOHERTY: I have a further question. You mentioned
24 the RUF. For purposes of the record, tell us what RUF stands
25 for.

26 WITNESS: Revolutionary United Front Party.

27 JUSTICE DOHERTY: And is that a political party?

28 WITNESS: It is, My Lord.

29 JUSTICE DOHERTY: And is it still active in the Kailahun

1 area?

2 WITNESS: It is, My Lord.

3 JUSTICE DOHERTY: Thank you. Those were my questions.

4 Questions arising. Mr Gardner, any questions arising from
5 the Court's questions?

6 MR GARDNER: None, Your Honour. I don't.

7 JUSTICE DOHERTY: Mr Lansana, any questions arising from
8 the Court's questions?

9 MR LANSANA: None, Your Honour. Only that I would want to
10 apply that before the protective measures are granted, I would
11 want to cross-examine the applicant for the protective measures.

12 JUSTICE DOHERTY: Now, he hasn't been called to give
13 evidence. I'll ask Mr Gardner if he's going to call him to give
14 evidence. And if he's not going to call him, then you're going
15 to have to apply to call him.

16 Mr Gardner, counsel for the Defence wishes to question the
17 applicant TF1 - I'm presuming now we are talking about TF1-274?

18 MR LANSANA: Yes, Your Honour.

19 JUSTICE DOHERTY: Are you going to call the - just a
20 moment. Let me first release the witness.

21 Mr Akimbobola, that is the end of your evidence. We thank
22 you for your evidence, and you're welcome to sit in court or go
23 about your business as you wish to do.

24 WITNESS: Thank you, My Lord.

25 The witness withdrew

26 JUSTICE DOHERTY: Now, Mr Gardner, to deal with what
27 Mr Lansana has said, he wishes to cross-examine the applicant
28 himself. Now, the applicant himself is not here in Court. He
29 hasn't been sworn. He's not been subject to

1 examination-in-chief, so I can't grant that order or application.

2 So can you tell us what your intentions, if any, are?

3 MR GARDNER: I had no intention of calling the witness,
4 Your Honour. In fact, I haven't even yet had an opportunity to
5 explore with either the witness or with Mr Akimbobola exactly
6 what kind of protective measure the witness would feel
7 comfortable with. I am hopeful that simply the use of a
8 pseudonym in court, combined with what I understand to be the
9 procedure where he has his back to the audience, would suffice.
10 And if that's the case, I don't know why there would be any
11 reason for an examination. But if there is, Mr Lansana certainly
12 could explore it with the witness when he comes to testify,
13 because until then there will be no need to decide the issue.

14 JUSTICE DOHERTY: Mr Lansana, the practical facts of life
15 are that the applicant is not going to be called to give
16 evidence, and it appears to me your options therefore are to
17 apply for a witness summons, or not to pursue it. If he's not
18 here, you can't cross-examine him. It's as simple as - until
19 he's sworn and brought before the Court.

20 MR LANSANA: Yes, Your Honour. I understand that. But in
21 the event that he is called, I would have to renew that
22 application.

23 JUSTICE DOHERTY: Renew the application?

24 MR LANSANA: In the event that he is called. If he's
25 eventually - I don't know whether --

26 JUSTICE DOHERTY: My --

27 MR LANSANA: -- counsel is saying that he's not going to
28 call him at all or he's going to --

29 JUSTICE DOHERTY: My understanding is that he's certainly

1 listed as a witness in the pre-trial brief, that he will be
2 called. But for the purposes of this succinct application for
3 protective measures, he will not be called. That's my
4 understanding of the situation.

5 MR LANSANA: Your Honour, because there are certain issues
6 that have been brought before this Court that I want to put to
7 this witness before he's given protective measures.

8 JUSTICE DOHERTY: Well, are you thinking of bringing
9 evidence in rebuttal? Because I'm not quite sure what's
10 happening. Usually these sort of applications, as you know, are
11 usually made in writing. But in the present circumstances, I
12 have entertained it orally. I am not clear what steps you wish
13 me to take.

14 MR LANSANA: Your Honour, I understand the situation. I
15 would leave it, and I would leave everything for addresses when I
16 am addressing on the issue. As it please, Your Honour.

17 JUSTICE DOHERTY: Mr Gardner, have you any other witnesses
18 you wish to call in support of the application before the Court?

19 MR GARDNER: No, Your Honour, and I would also affirm Your
20 Honour's speculation. The witness will testify at the trial.

21 JUSTICE DOHERTY: Does either counsel wish to make
22 submissions before I consider this application?

23 MR LANSANA: Certainly, Your Honour.

24 JUSTICE DOHERTY: Well, since you're for the Defence, I'll
25 hear you first, Mr Lansana.

26 MR LANSANA: Obligated, Your Honour.

27 Your Honour?

28 JUSTICE DOHERTY: Please proceed.

29 MR LANSANA: Thank you, Your Honour.

1 Your Honour, much as this application has come as an
2 ambush, but I would address it --

3 JUSTICE DOHERTY: I'm sorry, I didn't quite hear you,
4 Mr Lansana. Could you please repeat what you said.

5 MR LANSANA: No, I was just saying that much as this
6 application has come as an ambush, I would treat it --

7 JUSTICE DOHERTY: Mr Lansana, I am not sure that I can
8 agree with that. You were invited to --

9 MR LANSANA: Yes, yes, Your Honour. Not that I minded.
10 It's just a misstatement of fact. I would withdraw that. I
11 would - I am just saying that I would like to be thorough, but I
12 would proceed.

13 Your Honour, this application, to my mind, is unfounded.
14 It lacks the requisite basis for the granting of protective
15 measures by this Court, by this Chamber. It does not satisfy the
16 circumstances under which protective measures can be ordered by
17 this Court under Rule 69 of the Rules of Procedure and Evidence.

18 Your Honour, I will specifically refer this Court to Rule
19 69(A) of the Rules. It reads, with your leave, Your Honour:

20 "In exceptional circumstances, either of the parties may
21 apply to a Judge of the Trial Chamber or the Trial Chamber to
22 order the non-disclosure of the identity of a victim or witness
23 who may be in danger or at risk."

24 Two issues here, Your Honour: What exceptional
25 circumstances have the Prosecution adduced before this Court that
26 relates to TF1-274? What exceptional circumstances? To my mind,
27 they have not stated any exceptional circumstances other than his
28 desire to be protected and the rather poor or lame fear he has
29 that he did not even substantiate to the witness from the WVS.

1 Not one.

2 Secondly, what is the danger or risk that he is in? Danger
3 and risk from whom? And, Your Honour, when I was cross-examining
4 the witness from WVS, I specifically asked him whether he's aware
5 that this applicant had testified at the Taylor trial
6 unprotected. He answered in the affirmative. Secondly, I asked
7 whether he told him if he has been in risk of personal danger -
8 at risk of personal danger or whether he'd had any threat of
9 violence, and the answer was no.

10 And, Your Honour, the accused has been in Kailahun all this
11 while since he's been granting bail. He's been behaving himself,
12 comporting himself very well. And I say this without any fear of
13 contradiction. There have been no adverse police reports about
14 him, nor have there been any adverse police reports about his
15 friends or relations in Kailahun touching and concerning TF1-274,
16 or, as a matter of fact, any other potential witness for the
17 Prosecution.

18 I therefore implore this Court, I therefore implore this
19 Chamber, to discount in earnest this application and order that
20 TF1-274 testify unprotected. Thank you.

21 JUSTICE DOHERTY: Thank you, Mr Lansana.

22 Mr Gardner, is there any submission you wish to make before
23 I consider this application?

24 MR GARDNER: Yes, Your Honour, there is. Thank you.

25 With all respect to the Defence, I believe they're overly
26 defensive about the issue. The witness has stated to the WVS his
27 concerns about being publicly identified as having testified in
28 this trial. Not at The Hague, which is a long ways away, but in
29 this trial, right here in Freetown, when he lives in a community

1 where he is not a native member of that community and where the
2 defendant is a prominent member of that community.

3 And he has not said to me or to Mr Akimbobola that he fears
4 that because he testifies openly and by name, that Mr Senessie is
5 going to come and bash him on the head. We are not suggesting
6 that at all.

7 But what he is concerned about, as I understand it, is that
8 if he's publicly identified as speaking, is that he is going to
9 be at risk, in the language of the rule, from either harassment
10 or some opprobrium or some isolation from members of the
11 community who support the defendant.

12 I've only been in that community once, and I certainly have
13 less experience with the entire Taylor business than anybody in
14 this courtroom, but even I know that Prosecution witnesses who
15 testified for Charles Taylor in that case live somewhat as
16 pariahs in their community. I've heard that from every witness.
17 I am not trying to give testimony in the matter. I am just
18 stating what I believe the situation to be.

19 The protective measure that I believe would satisfy the
20 witness, and what I believe would be in the interests of justice
21 and consistent with the Rule, is simply a pseudonym. I can't
22 imagine what prejudice there is that would flow to the defendant
23 from the use of a pseudonym for this witness, and I believe that
24 the Rule has been satisfied.

25 That's all I have, Your Honour.

26 JUSTICE DOHERTY: I've just realised they have moved the
27 clock.

28 Now, we'd normally adjourn for about 30 minutes at the
29 two-hour mark, because that's when the tape runs out. The break

1 is for practical and other reasons. It's now, according to my
2 time, just before 11.00. I think what I will do is I will
3 adjourn now until 11.30 to consider my decision in this matter,
4 and we will reconvene at 11.30.

5 Mr Senessie, you are to remain with the security personnel
6 during that time.

7 Before I do adjourn, I note that this appears to be the
8 only outstanding matter at our pre-trial conference at the
9 moment. That means that we won't have much to do for the rest of
10 the day. Is anybody willing to start early? I know we're
11 scheduled to start on Monday morning. I am not going to resile
12 from that. I am just going to say is it possible to make use of
13 any other time today with starting, or is it not?

14 MR GARDNER: Well, I hate to be in the position of saying
15 no to the Court, but I think that would be very difficult for me
16 for a number of reasons, and I apologise --

17 JUSTICE DOHERTY: No, as I have said, the case was
18 scheduled from 1 May to start on Monday morning, and therefore
19 I'm not going to interfere with that. It was just on the off
20 chance that we could make use of our time. If we can't, then it
21 would be improper for me to force either counsel on in the
22 circumstances, and I won't do it.

23 MR GARDNER: Could I follow up, Your Honour.

24 However, I must say that I have, I hope, as much interest
25 as anyone in moving the trial expeditiously, and we'll be
26 prepared to go Monday at 9.30. Notwithstanding the estimates
27 that I put in the pre-trial brief about the time for the
28 witnesses, I don't think it's going to take a long time for these
29 six witnesses, Your Honour.

1 JUSTICE DOHERTY: Well, certainly having read the pre-trial
2 brief and the Defence brief, there appears to be discrete points
3 of evidence that - but bitter experience has taught us all that
4 sometimes our estimates are not always as realistic as we would
5 like to think.

6 MR GARDNER: Could you tell me, Your Honour, whether there
7 is a daily schedule that you'll try to stick to, or whether
8 you'll sort of play it by ear?

9 JUSTICE DOHERTY: I am one of those Judges that like to
10 start and keep going until the end of the day and just - I don't
11 divide the time up.

12 Many, many years of circuits in remote areas have taught me
13 to use my time as judiciously as possible. So we start at 9.30,
14 we'll break, and we'll just keep going until all the witnesses
15 are finished, both for the Prosecution and for the Defence.

16 MR GARDNER: What time will Your Honour adjourn Court at
17 the end of the day?

18 JUSTICE DOHERTY: I was thinking in terms of around 4.30.
19 But in the event of a witness being part heard and close to the
20 end, it would be my intention to keep going until the witness is
21 finished. I would, of course, liaise with our own Court
22 Management people, because recordings, and so on, have to be done
23 and sometimes practical measures predetermine those issues more
24 than the intention of either counsel or the Bench.

25 MR GARDNER: Thank you.

26 JUSTICE DOHERTY: If there are no other matters, we'll
27 adjourn until 11.30 and return to deal with this.

28 [Break taken at 10.55 a.m.]

29 [Upon resuming at 11.41 a.m.]

1 JUSTICE DOHERTY: Apologies. It took a little longer than
2 I expected.

3 This is an application for protective measures in respect
4 of Witness TF1-274 for a decision. The Court has heard evidence
5 from Mr Akimbobola, an experienced police and witness protection
6 officer, in support of an application on behalf of witness
7 TF1-274 to be granted protective measures, initially of a
8 pseudonym and a screen, though, as I understand it, this may
9 subject to further application.

10 The application is made on the basis that TF1-274 resides
11 in Kailahun, notwithstanding that he is not a native of that
12 area, and the accused is "a very important person in the Kailahun
13 community, and testifying against him will create bad mood, and
14 he believes himself and other natives of Kailahun."

15 Mr Akimbobola points to the social status of the accused
16 and the witness and "the room for revenge." He bases his views
17 on his professional experience and his several visits to the area
18 and considers the application is a valid one.

19 The Defence objects to the application on the basis that
20 TF1-274 gave evidence openly in The Hague against Charles Taylor
21 and on the basis that no evidence has been adduced that he has
22 suffered because of that.

23 Defence counsel further submits that no evidence of
24 violence has been adduced, although Mr Akimbobola spoke of
25 harassment, and hence in his submission there is no risk or
26 danger as provided by Rule 69 of the Rules of Procedure and
27 Evidence, and he stresses that protective measures must be
28 exceptional.

29 The duty of a fair and public - particularly public - trial

1 has been referred to in numerous occasions in this Court, the
2 Special Court when protective measures were canvassed, and most
3 recently during the Taylor trial, and I re-emphasise again the
4 duty to have a public trial. Only otherwise will we be open to
5 suggestions of secret and rigged trials.

6 The other duty imposed upon the Court is provided in
7 Rule 75 of the Rules of Procedure and Evidence, and I quote:

8 "It is to protect and order appropriate measures to
9 safeguard the privacy and security of victims and witnesses,
10 provided that the measures are consistent with the rights of the
11 accused."

12 The Appeals Chamber, as has other courts, have referred to
13 this duty and stressed that it is not one to be taken lightly or
14 automatically. A court is obliged to consider both the witness's
15 own circumstances and his grounds for seeking protection, a
16 subjective element, and the circumstances of the place or of the
17 community in which he lives, the objective element.

18 It is without doubt that TF1-274 did testify openly against
19 Charles Taylor in The Hague. The Hague, to my mind, is not
20 relevant in these days of global communication, but what is
21 relevant is that the accused in that trial was not of the same
22 community or background of the witness.

23 In the instant case, the accused and the witness are of the
24 same small town. The accused is a man of standing in the
25 community. They do not share the same ethnicity, and whilst no
26 evidence that there are ethnic tensions in the community has been
27 adduced, this difference has been stressed sufficiently in this
28 case to allow me to note that the ethnic differences do matter.

29 Risk under Rule 69 is not defined. It may be risk of

1 actual violence of harassment, but in my view it may also involve
2 being shunned, boycotted, or ostracised. Given the comparative
3 standing and background of the accused and the witness, I accept
4 that that risk exists, and accordingly I will allow the
5 application for protective measures and allow TF1-274 to testify
6 with a pseudonym and screen.

7 That is my ruling on this application.

8 MR LANSANA: As it pleases Your Honour.

9 JUSTICE DOHERTY: Thank you, Mr Lansana.

10 As I understand it, that completes the matters before us on
11 the pre-trial conference; am I correct?

12 MR GARDNER: Yes, Your Honour.

13 JUSTICE DOHERTY: Well, the Court will be adjourned then
14 until Monday.

15 The question that I have to now address is what happens to
16 the accused between now and Monday?

17 MR LANSANA: May I be heard, Your Honour?

18 JUSTICE DOHERTY: Yes, of course, Mr Lansana.

19 MR LANSANA: Yes, Your Honour. The Court is reminded of
20 the order granting bail to the accused, and the Defence would
21 implore the Court that that situation continues. I make an
22 undertaking that not only will the accused be present at all
23 times proceedings are on in this Chamber, but also that he would
24 be in prompt attendance.

25 JUSTICE DOHERTY: And where will he be living between now
26 and Monday morning at 9.30?

27 MR LANSANA: Your Honour, I would want the Court to extend
28 the facility that he has been accorded, because at the moment
29 he's at a guesthouse in very close proximity to this court. I

1 would appeal with the Chamber, and also with the Court
2 Management - or whoever is responsible for his accommodation -
3 that that facility be extended.

4 JUSTICE DOHERTY: Mr Gardner?

5 MR GARDNER: Excuse me, Your Honour. I'm having a little
6 difficulty with this machine. It's going to have to be replaced.
7 The speaker works, but the microphone headset cuts in and out.

8 I have no objection to what Mr Lansana proposes for his
9 client, subject, of course, to the same conditions about contact
10 with witnesses.

11 MR LANSANA: Your Honour, I want to assure Mr Gardner that
12 there will be no untoward conduct by the accused with regards to
13 that concern.

14 JUSTICE DOHERTY: Mr Gardner, in your opening remarks prior
15 to the calling of Mr Akimbobola to give evidence, you mentioned
16 interference. Is that the case since July last year?

17 MR GARDNER: I hope I didn't use the word "interference."
18 I didn't mean that word if I did. I meant "contact," and there
19 will be testimony by one witness that subsequent to my interview
20 with the witness in connection with the independent investigation
21 that the witness was approached and asked questions by the
22 defendant as to, Who turned me in? That kind of question.

23 I have been unable to ascertain whether that contact was
24 made before or after the defendant appeared before the Court. I
25 don't believe that it happened after he was ordered to appear
26 before the Court, and therefore I haven't brought it to the
27 Court's attention as a violation of the condition of release. I
28 only brought it to counsel's attention because it was consistent
29 with the type of evidence that other witnesses would bring forth,

1 as reflected in my pre-trial brief and as addressed by
2 Mr Lansana.

3 JUSTICE DOHERTY: Thank you.

4 In the light of the undertaking to the Court by Defence
5 counsel, and the fact there has been no objection by Prosecution,
6 the bail will be extended on the same terms.

7 The accused, Eric Senessie, is to remain at the guesthouse
8 in Freetown. He is not to contact, either by himself or through
9 any other person, any witness or any family member of any
10 witness. He is to appear for hearing at 9.30 on Monday, the 11th
11 of June.

12 Mr Senessie, did you hear what I said? Did you understand
13 what I said? Please stand up. Did you hear what I said?

14 THE ACCUSED: Quite clearly.

15 JUSTICE DOHERTY: And understand it? And do you undertake
16 to adhere to those conditions?

17 THE ACCUSED: Exactly.

18 JUSTICE DOHERTY: Very well. Under the circumstances, I
19 will adjourn - please sit down, Mr Senessie.

20 In the light of my decision and in light - concerning the
21 protective measures on witness TF1-274, and in the light of the
22 applications or references by both counsel, and prior to my
23 decision, I will order the redaction of the name of that witness
24 to be redacted from the preliminary transcript of the hearing
25 this morning.

26 I will ensure that that order is signed. I know it's not
27 prepared now, but I will have it prepared in the course of - as
28 quickly as possible and sign it immediately.

29 If there are no other matters, I will adjourn the Court

1 until 9.30 on Monday morning.

2 Please adjourn the Court.

3 THE REGISTRAR: The Court is adjourned until Monday at
4 9.30.

5 [Whereupon the hearing adjourned at
6 11.57 a.m., to be reconvened on Monday,
7 11 July, 2012, at 9.30 a.m.]

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