

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL-2004-15-T
TRIAL CHAMBER I

THE PROSECUTOR
OF THE SPECIAL COURT
v.
ISSA SESAY
MORRIS KALLON
AUGUSTINE GBAO

Tuesday, 11 January 2005
9.45 A.M.
TRIAL

Before the Judges:

Benjamin Mutanga Itoe, Presiding
Bankole Thompson
Pierre Boutet

For Chambers:

Ms Candice Welsch

For the Registry:

Mr Geoff Walker

For the Prosecution:

Mr Peter Harrison
Ms Boi-Tia Stevens
Mr Robert Braun
Mr Mark Wallbridge

For the Principal Defender:

Mr IF Mansaray(intern)

For the accused Issa Sesay:

Mr Wayne Jordash
Ms Sareta Ashraph
Ms Chloe Smythe

For the accused Morris Kallon:

Mr Shekou Touray
Mr Melron Nicol-Wilson

For the accused Augustine Gbao:

Mr Andreas O'Shea
Mr John Cammegh

1 Tuesday, 11 January 2005
2 [Open session]
3 [Upon commencing at 9.45 a.m.]
4 [Accused Sesay and Kallon entered
5 court. Accused Gbao not present]
6 MR WALKER: This is Tuesday, 11 January 2005, case number
7 SCS-2004-15T, The Prosecutor against Issa Hassan Sesay,
8 Morris Kallon and Augustine Gbao, which is listed for
9 trial.
10 PRESIDING JUDGE: Good morning learned counsel and all the
11 court staff. The Chamber would like to seize this
12 opportunity to welcome all learned counsel, staff, the
13 interpreters and all those who are the major players in
14 the trials to this third session. And, first of all, to
15 wish every one of you a very prosperous 2005 in the hope,
16 of course, that we proceed faster than we have done in
17 the past. The same wishes for a prosperous new year go
18 not only to yourselves, but to your entire families as
19 well and we hope that we will make more progress than we
20 have done before and every one of you learned counsel can
21 count on the understanding of the Tribunal to resolve
22 matters of common interest and even matters on
23 contentious grounds in order to ensure that justice is
24 done to all and sundry. This said, I think we would
25 proceed. We do not know -- yes.
26 MR HARRISON: Yes, My Lord, we are prepared to proceed with
27 what will be the 19th witness for the Prosecution.
28 PRESIDING JUDGE: The 19th witness.
29 MR HARRISON: If I can just indicate for the record that with

1 the Prosecution this morning is Mr Robert Braun,
2 B-R-A-U-N who will be --
3 PRESIDING JUDGE: Mr Robert?
4 MR HARRISON: Braun, B-R-A-U-N, who will have conduct of the
5 19th witness. And also present for the Prosecution is
6 Mr Mark Wallbridge, W-A-L-L-B-R-I-D-G-E.
7 PRESIDING JUDGE: Wallbridge?
8 MR HARRISON: That's correct.
9 PRESIDING JUDGE: Mark.
10 MR HARRISON: Correct.
11 PRESIDING JUDGE: M-A-R-K?
12 MR HARRISON: Correct. The Prosecution witness is TF1-304 and
13 will be giving his evidence in Kono.
14 PRESIDING JUDGE: TF1.
15 MR HARRISON: 304.
16 PRESIDING JUDGE: Yes.
17 MR HARRISON: And unless there are matters which my friends on
18 the other side would like to raise, I believe we are
19 prepared to have the witness commence his testimony.
20 PRESIDING JUDGE: You say he will be testifying in Kono?
21 MR HARRISON: That's correct.
22 [Accused Sesay raises his hand]
23 PRESIDING JUDGE: Can counsel see the -- I see two hands up
24 over there.
25 THE ACCUSED SESAY: Yeah, I want to talk to the judges.
26 [Inaudible]
27 PRESIDING JUDGE: Mr Jordash, never mind, he can to talk us,
28 there is no problem. Yes, I saw another hand up. Yes,
29 okay. Let us go -- yes. Yes, Mr Sesay, I have the

1 indication from you that you would like to talk to the
2 judges directly and that you would not want to talk to
3 the judges through Mr Jordash your lead counsel. You may
4 proceed. Is that what you intend to do?

5 THE ACCUSED SESAY: Yes, sir.

6 PRESIDING JUDGE: You want to talk to the judges directly and
7 not through your counsel?

8 THE ACCUSED SESAY: No, sir, My Lord, I want to talk to the
9 judges directly.

10 PRESIDING JUDGE: You can go ahead, but please be brief.

11 THE ACCUSED SESAY: Thank you, My Lord. Good morning, sirs.

12 PRESIDING JUDGE: Good morning.

13 THE ACCUSED SESAY: To the Trial Chamber of the Special Court.

14 PRESIDING JUDGE: And happy new year to you too.

15 THE ACCUSED SESAY: I wish you the same, sir.

16 PRESIDING JUDGE: Thank you.

17 THE ACCUSED SESAY: To the Trial Chamber of the Special Courts
18 composed of Your Honours.

19 PRESIDING JUDGE: If it's a document we will not allow you to
20 read the whole document. You may just submit it,
21 summarise it and submit it, please.

22 THE ACCUSED SESAY: My Lords, it's just -- it's not a
23 document, I am just summarising something I want to say
24 because this is my life.

25 PRESIDING JUDGE: Okay, but is it contained in a document to
26 begin with?

27 THE ACCUSED SESAY: My Lords, I have not a statement to read
28 to you, I can't read to you, My Lord, I can't memorise
29 everything that's why I just put it on paper.

1 PRESIDING JUDGE: Will you be prepared to hand those papers
2 over to the Tribunal?
3 THE ACCUSED SESAY: My Lord, I would just prefer to read it,
4 sir. Very shortly, sir, with all due respect, sir.
5 PRESIDING JUDGE: Yes, sit down, sit down.
6 MR HARRISON: With respect to Mr Sesay, the Prosecution would
7 like to suggest to the Court that there is nothing within
8 the rules that would allow an accused at this point in
9 time to make any kind of statement, whether it be
10 extemporaneous or otherwise. There is, of course, an
11 opportunity for an accused to make as full a statement as
12 he wishes at the beginning of his case. Mr Sesay
13 actually chose to make his statement immediately
14 following the Prosecution's opening and I am suggesting
15 to the Court that at this point in time there is nothing
16 in the rules that would allow an accused, such as
17 Mr Sesay, to make a statement to the Court at this time.
18 PRESIDING JUDGE: Well, we have taken note of that. We have
19 taken note of that, but we want to just know what
20 Mr Sesay has to say. Mr Sesay, what would you want to
21 say please?
22 THE ACCUSED SESAY: Yes, sir, My Lord, just to composed of the
23 -- composed of their Honours, Justice Benjamin Itoe --
24 PRESIDING JUDGE: No, no, we are not interested in that.
25 THE ACCUSED SESAY: Thank you very much, sir. Thank you very
26 much, sir. Your Honours --
27 PRESIDING JUDGE: If you are reading -- we are not going to
28 take time to listen to a statement, you know, which you
29 are reading.

1 THE ACCUSED SESAY: My Lords -- My Lords --

2 PRESIDING JUDGE: Summarise that statement and let us get
3 along or you submit it for us to look at it and then we
4 we'll be able to know what to do. You have heard the
5 objection from the Prosecution. Notwithstanding that,
6 you know, we --

7 THE ACCUSED SESAY: My Lord, My Lord, according to the Statute
8 of the Special Court, Article 17, My Lord, this is the
9 right of the accused.

10 PRESIDING JUDGE: I know your rights, that is why we are
11 allowing you to talk, we know your rights, you don't need
12 to --

13 THE ACCUSED SESAY: -- [inaudible] there was no winner, no
14 loser. You should listen from our own side of story too,
15 sir. With all due respect, sirs.

16 PRESIDING JUDGE: Mr Jordash, may we hear you, please?

17 MR JORDASH: May I take -- I am not sure that there is that
18 much between Mr Sesay and Your Honours. If I could just
19 have a very quick word with him and explain what it is
20 Your Honour is precisely allowing him to do. I think
21 that might expedite things.

22 JUDGE THOMPSON: Have you been briefed on what he wants to
23 talk to the Court about, the judges about?

24 MR JORDASH: No.

25 JUDGE THOMPSON: Would it not be wise for you to consult with
26 him, because I am definitely inclined that we should take
27 a short break and give you some chance to consult with
28 him, because the momentum which we came with was to get
29 on with this trial and I think we need to be assured that

1 nothing coming from that side is likely to act as a
2 constraining influence on our endeavours to do justice
3 expeditiously and fairly. So, perhaps I think it would
4 be wise that we should give you some chance.

5 MR JORDASH: Well, Your Honours --

6 JUDGE THOMPSON: Since you say you are in the dark.

7 MR JORDASH: Well, I would not put it quite like that. The
8 content I don't know.

9 JUDGE THOMPSON: Yes, quite right.

10 MR JORDASH: But if I could just have one minute, I think I
11 might be able to at least explain to him what Your
12 Honours have said he can do. It will only take one
13 minute.

14 PRESIDING JUDGE: That's all right, we will give you five.

15 JUDGE THOMPSON: Yes.

16 PRESIDING JUDGE: What we are saying, as I said before, is
17 like my learned colleague has said, is that we want to go
18 along with these trials and we want to move faster than
19 we did before we started this morning. And I do not
20 think that we are in a frame of mind to be embarked on
21 avenues, you know, which would make us prolong these --
22 the taking of this evidence more than it would be
23 necessary. So we will rise for five minutes and we will
24 allow you to consult with Mr Sesay who should, of course,
25 know that we are very conscious of your rights under
26 Article 17. We will never abuse your right under Article
27 17, not this Chamber, but you should not also
28 over-exaggerate your rights, you know, under Article 17
29 to delay the proceedings or to abuse the process. The

1 Court will rise for five minutes, please.

2 [Break taken at 9.58 a.m.]

3 [Resumed at 10.02 a.m.]

4 PRESIDING JUDGE: Yes.

5 MR JORDASH: Your Honours --

6 PRESIDING JUDGE: We are resuming the session, yes.

7 MR JORDASH: Your Honours, I am very grateful for the time.

8 Could I, on behalf of Mr Sesay, request a further three
9 or four minutes' indulgence where Mr Sesay would like to
10 say something. They are his own words, his own private
11 words. They are contained on a piece of paper, but I
12 have seen at least from a distance the number of sheets
13 and there are very few notes on there, and what he would
14 like to say would last no more than two or three minutes.
15 I would pray for Your Honour's indulgence in this matter,
16 it will not hold up proceedings and I do respectfully
17 submit it will actually help to expedite proceedings.

18 JUDGE THOMPSON: You give that assurance that it will help to
19 expedite proceedings and not impede the due
20 administration of justice.

21 MR JORDASH: Your Honours, I believe so.

22 JUDGE THOMPSON: Thank you.

23 PRESIDING JUDGE: Mr Jordash, you are asking for another three
24 minutes to --

25 MR JORDASH: For Mr Sesay.

26 PRESIDING JUDGE: To consult.

27 MR JORDASH: No, no, for Mr Sesay to say what he would like to
28 say. It is written on paper, but, as I have said, it is
29 very, very brief from what it appears to me and Mr Sesay

1 assures me it will take him no more than three to four
2 minutes.

3 JUDGE BOUTET: I would like to know, before we move in that
4 direction, if we are to move in that direction, what is
5 the substance and purpose of what Mr Sesay has to say,
6 and if it is a statement challenging again the
7 jurisdiction or the authority of this Court we are
8 absolutely not prepared to hear anything of that nature.
9 So that is why we would like to know, before we make a
10 decision of that nature, without asking necessarily him
11 to submit the documents if it is not all written down,
12 but we would like to know the substance of it, so we are
13 in a better position to respond to you and to his
14 request.

15 MR JORDASH: The exact content, I don't know.

16 JUDGE BOUTET: No, but the substance, what is the nature of
17 it?

18 PRESIDING JUDGE: In fact, what my colleague is saying is that
19 we are not prepared to resurrect issues which are already
20 res judicata.

21 MR JORDASH: Well, as Your Honour --

22 PRESIDING JUDGE: That is our stand on this matter and that is
23 why he is asking for the substance of what Mr Sesay wants
24 to tell the Court about. We don't want to embark on a
25 futile exercise.

26 JUDGE THOMPSON: In other words, adding my voice to that, if
27 it's anything to do with the legitimacy and the
28 jurisdiction of this Court we are saying that it does not
29 lie in his mouth to raise that issue now, the issue

1 having been laid to rest by an appellate chamber, and we
2 would consider it obstructive of the course of justice if
3 any attempt is made, whether in the context of some
4 political statement or protection of his rights, to raise
5 over and over again the question of the legitimacy or
6 jurisdiction of this Court over the charges and the
7 accused persons in respect of our mandate.

8 MR JORDASH: Well, Your Honour --

9 PRESIDING JUDGE: Let me say, Mr Jordash, in fairness to you
10 you are not -- although you find yourself caught in this
11 exchange, these are matters which should ordinarily have
12 been raised during the status conference, I would
13 imagine. I don't know why they were not raised then
14 yesterday when the status conference was being held. In
15 any event, I don't want you to provide a reply to this.
16 We would grant your application and rather we are asking
17 him, you know, to give us the substance, you know, what
18 does he want to say? In one word, what does he want to
19 say?

20 MR JORDASH: Your Honours may recall at the beginning of this
21 trial Mr Sesay did say a very few words and made it clear
22 that he did not challenge the legitimacy of this Court.
23 That position has not changed. He has been accepting the
24 legitimacy of the Court and he intends to continue to do
25 so. What he would like to talk about very, very briefly
26 is his rights as he sees them.

27 JUDGE THOMPSON: Yes, Mr Harrison.

28 MR HARRISON: The Prosecution would like to try to give some
29 assistance to the Court on this point.

1 JUDGE THOMPSON: Yes.

2 MR HARRISON: I appreciate the Court recognises an accused
3 ought to be treated fairly, but part of that concept is
4 within the constraints of the drafters of the legislation
5 imposed upon the Court, imposed upon counsel and imposed
6 upon an accused, and I want to reiterate that my reading
7 of the Rules and the Statute is that there is no
8 opportunity for an accused to make an application without
9 some prior notification and without it being in writing
10 by way of a motion that he wishes to address the Court.

11 JUDGE THOMPSON: We take your point but, of course, we are
12 moving outside that strait-jacket approach which you are
13 proposing and saying to ourselves that the doctrine of
14 fundamental fairness enlarges our jurisdiction beyond the
15 rules that are promulgated and in this regard we are
16 giving him leave on the plea and assurance of learned
17 counsel for the first accused, who is an officer of the
18 Court, that he just wants to make a statement about his
19 rights as he sees them.

20 MR HARRISON: But what the Prosecution wishes to remind the
21 Court of is this --

22 JUDGE THOMPSON: Yes.

23 MR HARRISON: Without a principal basis for the application it
24 will be difficult to respond should future applications
25 be made next week, the following week, next month, on a
26 similar --

27 JUDGE THOMPSON: You can rest assured that this Court is very
28 sensitive to any attempts to be obstructive to impede the
29 due administration of justice and to delay this process.

1 MR HARRISON: You have my point.

2 JUDGE THOMPSON: Yes.

3 MR JORDASH: I am sorry to leap to my feet. Just for the
4 completeness of this discussion, I would submit that Rule
5 54 in any event gives Your Honours a wide discretion to
6 make decisions which are necessary for the conduct of the
7 trial.

8 JUDGE THOMPSON: Well precisely, we don't want to be placed in
9 any judicial strait-jacket. The doctrine of fundamental
10 fairness in cases like this gives us a very wide
11 discretion, of course, provided we exercise the
12 discretion judiciously and judicially. Yes, we will hear
13 your client.

14 THE ACCUSED SESAY: Yes, My Lordships. I, Mr Issa Hassan
15 Sesay, first accused and interim leader of the RUF
16 [inaudible] --

17 PRESIDING JUDGE: You have three minutes to do that. Three
18 minutes.

19 THE ACCUSED SESAY: RUF [inaudible] yes I submit this
20 following points. One, that Lome Peace Agreement
21 concluded and signed on 7 July 1999 between the
22 Government of Sierra Leone, the Government of Sierra
23 Leone and RUF/SLA, represented by His Excellency
24 President Ahmed -- President Alhaji Ahmed Tejan-Kabbah on
25 behalf of the fighting forces of the Government of Sierra
26 Leone on the other hand, and by Mr Foday Sankoh on the
27 other hand, representing fighters and members of RUF/SL
28 was concluded on the sole basis of no winner no loser.
29 That Article 9(2)(iii) of the Lome Peace Agreement

1 clarified stated that there was absolute amnesty and free
2 pardon granted to all those who did whatsoever in the
3 conflict that took place in Sierra Leone from 1991 to the
4 7 July of 1999. Three, that --

5 JUDGE THOMPSON: Learned counsel, would you advise your client
6 to sit down.

7 THE ACCUSED SESAY: My Lord -- Lord Thompson --

8 JUDGE THOMPSON: Learned counsel --

9 THE ACCUSED SESAY: Lord Thompson [inaudible] again --

10 JUDGE THOMPSON: Would you advise your client to sit down --

11 THE ACCUSED SESAY: [Inaudible] Lord Thompson.

12 JUDGE THOMPSON: -- or we will ask the security people to --

13 THE ACCUSED SESAY: [Inaudible]

14 JUDGE THOMPSON: -- get him out, exclude him from the Court.
15 Would you advise him to sit down while I address the
16 issue.

17 THE ACCUSED SESAY: Well --

18 JUDGE THOMPSON: Would you let your client know -- would you
19 let your client know that it is not part of judicial
20 culture or tradition for judges to succumb --

21 THE ACCUSED SESAY: My Lord, in this Court I am not
22 [inaudible] they did not serve me indictment -- I was not
23 [inaudible]

24 JUDGE THOMPSON: Would you take him out. Would you take him
25 out of the Court.

26 THE ACCUSED SESAY: This is not the right of the [inaudible]
27 before the Trial Chamber.

28 JUDGE THOMPSON: Would you exclude him from this Court, remove
29 him straight away?

1 THE ACCUSED SESAY: If you don't want to listen [inaudible].
2 JUDGE THOMPSON: And the judges cannot -- let him know that
3 judges will not succumb to --
4 THE ACCUSED SESAY: [Inaudible] My Lord.
5 [Accused Sesay removed from court]
6 JUDGE THOMPSON: Yes. Let your client know, Mr Jordash, that
7 judges are not here to succumb to threats, intimidation
8 and unmeritorious --
9 THE ACCUSED SESAY: I will not take no further part in trial,
10 My Lord.
11 JUDGE THOMPSON: -- unmeritorious challenges by clients. We
12 are not here to do that. Exclude him from the Court, his
13 conduct is obstructive and clearly calculated to impede
14 the due administration of justice. It is time for this
15 Court to emphasise that we stand on the side of the rule
16 of law and not the rule of anarchy.
17 PRESIDING JUDGE: We will rise for ten minutes and resume
18 sitting after ten minutes.
19 [Break taken at 10.14 a.m.]
20 [Resuming at 10.44 a.m.]
21 JUDGE THOMPSON: Learned counsel for the first accused, you
22 have the floor.
23 MR JORDASH: Your Honours, thank you. Could I respectfully
24 invite Your Honours to adjourn to allow myself and
25 Mr Sesay's legal team to have a consultation with him?
26 Could I also say this at this stage, that I have had a
27 very short conference with him and what he wanted to say
28 was not a challenge to this Court. I know that the
29 preliminary parts of it may have sounded as though he was

1 leading in that direction, but I think it was more a

2 reflection of his --

3 PRESIDING JUDGE: Frustrations or so? Are we here to look

4 into political frustrations?

5 MR JORDASH: No, not political frustration, I think

6 frustrations with his position that he takes the view

7 that he did what was requested of him by such people as

8 President Kabbah.

9 PRESIDING JUDGE: Mr Jordash, is that not politics? Are we

10 here sitting as a court of politics or a court of law?

11 Anyway, what adjournment do you -- how much -- what is

12 the length of the adjournment you want?

13 MR JORDASH: I think an hour would suffice.

14 PRESIDING JUDGE: Right. Is there any other application on

15 the floor? Mr Touray, Mr O'Shea, Mr Cammegh, is there

16 any other application on the floor?

17 MR TOURAY: Your Honour, I think the position of my client is

18 more in support of Mr Sesay's action this morning.

19 PRESIDING JUDGE: So you may also associate yourself with the

20 application of Mr Jordash?

21 MR TOURAY: Yes, I believe so, yes.

22 PRESIDING JUDGE: Yes.

23 MR HARRISON: The Prosecution takes no position on the

24 application, I would just like to make two comments for

25 the record, if I could. They are very brief. The first

26 is that my observation was that at the time Mr Sesay had

27 put his hand up and wished to indicate his desire to

28 address the Court, Mr Kallon also had his hand up, I

29 assume expressing a similar desire to address the Court.

1 And secondly, upon the order being given that Mr Sesay be
2 removed from the courtroom, I observed Mr Kallon to wish
3 to leave at the same time. I understood that the order
4 did not apply to him in any way, but I am inviting Mr
5 Touray, if at all possible, to indicate to us, or to the
6 Court, rather, if in fact Mr Kallon does wish to make a
7 statement and, if so, what the nature of that statement
8 might be.

9 JUDGE THOMPSON: Yes, I think it is appropriate to hear from
10 learned counsel for the second accused.

11 MR TOURAY: Your Honour, I don't know what Mr Kallon intends
12 to say.

13 JUDGE THOMPSON: You don't know?

14 MR TOURAY: I don't know. But perhaps during the break --

15 JUDGE THOMPSON: You will be able to find out. Yes, you are
16 not inviting us to draw any --

17 PRESIDING JUDGE: Well, counsel, you know what our sentiments
18 are, what our feeling is on the issues raised, and so,
19 you know, if we are granting the break or, rather, the
20 adjournment we would expect that you would talk to your
21 client on the same lines as Mr Jordash would during this
22 break.

23 MR TOURAY: Yes.

24 JUDGE BOUTET: I would like to add to what my brothers and
25 colleagues have stated that not only will we not accept
26 challenges to the Court on questions that have to do with
27 jurisdiction that have been disposed of, but we will not
28 accept political statement of any nature. We are a court
29 of law and we are here to adhere to the rules of law and

1 will do so in accordance with the rules of procedure as
2 we have them before this Court. So Mr Sesay may not be
3 pleased with his situation, but we are here to try to
4 make sure that his rights are fully protected, he is an
5 accused and we will follow the process that is in place
6 for this Court just like any other tribunal as such. And
7 I would like him to understand that and we are not
8 prepared to engage into discussions of that nature with
9 him because I know, Mr Jordash, that you are a very
10 experienced counsel, you have already discussed these
11 kinds of matters with him, and I am sure in your
12 discussion to come you will emphasise that to him as
13 well. So maybe, as you say, he was not trying to
14 challenge the jurisdiction of the Court, but the tone and
15 the approach he was taking was clearly of a political
16 nature and we are not prepared to hear that. Whether he
17 likes it or not, whether or not the President at the time
18 made a promise or no promise is none of our concern. We
19 are concerned with charges that have been duly accepted
20 by this Court and this is what we are going to be
21 proceeding with.

22 PRESIDING JUDGE: I would like to say here that the Court will
23 keep its promise to uphold the law. I do not know
24 whether politicians would make the same engagement, you
25 know, to uphold their promises which are made at
26 particular moments. In any event, that is not our
27 concern. What the politicians are doing or have done is
28 not our concern. We are here with you and the
29 Prosecution to ensure that the law is upheld.

1 JUDGE THOMPSON: Let me say in addition that I, certainly in
2 speaking for myself and I am sure for my brothers, that
3 we are perfectly comfortable with the professionalism
4 that you are showing in these matters and nothing that we
5 say here in response to what is going on reflects on you.
6 It is just that the Court believes that perhaps,
7 recalling some quotation somewhere, that once to every
8 man a nation comes the moment to decide and this Court is
9 now deciding that the rule of law is what guides it on in
10 its process and we need to make that commitment over and
11 over again. It cannot be right that accused persons
12 should dictate how the Court should proceed. We have our
13 rules and procedure and if we think that what they intend
14 to do is outside the ambit of our rules, even though
15 sometimes we use our discretion to allow this, I think
16 they ought to respect the rule of law. If an accused
17 person does not respect the rule of law, then, of course,
18 it speaks volumes.

19 MR JORDASH: May I say on Mr Sesay's behalf just two things?
20 One, I do believe he respects the rule of law and
21 anything that happened today I do not believe is a
22 indication otherwise. But I would say on his behalf
23 this, that it is a long time to be in detention. He has
24 been in detention for 22 months and I think it must be
25 extremely difficult to sit waiting to have a word, your
26 word, to put your version across to the Court, and I
27 think what we saw today is more a reflection of that
28 frustration than it is any challenge the Court, the rule
29 of law or issues of that nature. It is simply, I think,

1 Mr Sesay having had far too much time to sit and ponder
2 what it is he is going to say and hope that perhaps he
3 might be able to say some of the more important things to
4 him at this stage. So I do submit that that is really
5 what happened today.

6 PRESIDING JUDGE: Well, we would like you to inform him, you
7 know, that he has -- I mean if he is anxious, we want to
8 abridge his anxiety, you know, to make sure we come to
9 the case of the Defence as soon as we can. And it is
10 only during the case of the Defence, if we ever get there
11 at all, that he will be able to bring up all these
12 frustrations. He cannot be bringing them up prematurely
13 because they are obstructive and he would not -- he is in
14 a sense prolonging his detention which he is already
15 complaining about. So, in any event, I don't think we
16 should -- we will not [inaudible] ourselves on this and
17 we think -- the Tribunal thinks that we should grant you
18 the adjournment, not just for one hour, but for the next
19 three hours because we intend that, you know, that the
20 two lawyers, or the Defence teams involved, should
21 consult their clients adequately before we resume the
22 session in the afternoon. So, we would be adjourning to
23 2.30 p.m. and we hope that at that stage we should be
24 able to go on with the proceedings as we are indeed
25 determined to go on with the proceedings at 2.30 p.m.

26 MR JORDASH: Thank you.

27 PRESIDING JUDGE: Thank you. So the Court will adjourn and
28 resume at 2.30 p.m. please.

29 [Recess taken at 10.55 a.m.]

1 [HS110105B.]

2 [Open Session]

3 [Upon resuming at 2.49 p.m.]

4 PRESIDING JUDGE: Yes, learned counsel, we are resuming the
5 session. And we needed to adjourn at this time to allow
6 time for counsel to consult with their clients on certain
7 issues on the understanding that we're resuming at 2.30
8 to proceed. And we're here to proceed.

9 Yes, Mr Jordash.

10 MR JORDASH: Just to say that I'm very grateful to the time
11 that Your Honours gave us this morning. I know Mr Sesay
12 would like to put forward a letter in which his views are
13 expressed.

14 JUDGE THOMPSON: And learned counsel for the first accused,
15 does that have your concurrence, the production of the
16 letter? Does it have your concurrence?

17 MR JORDASH: The letter that's been drafted with the
18 assistance of the team, yes, it does.

19 JUDGE THOMPSON: All right, okay. Learned counsel for the
20 Prosecution, what's your response to the request?

21 MR HARRISON: Not having seen the letter, it's difficult to
22 give you any guidance, but I would like to point out it
23 may well be a letter containing certain admissions. If
24 it's the case, the Prosecution is always going to rely
25 upon that, and perhaps Mr Sesay ought to consider that.

26 JUDGE THOMPSON: All right. Learned counsel, what's your
27 response to his reply? Would you --

28 MR JORDASH: I wouldn't have drafted a letter with admissions,
29 unless I was prepared to make those admissions.

1 JUDGE THOMPSON: But would it be fair that learned counsel
2 should look at the letter since you've seen the letter?
3 It seems to me right that the Prosecution should have a
4 look at the letter before they formulate their position
5 on that, except if there's any particular reason why the
6 procedure which I'm recommending is not appropriate.
7 MR JORDASH: My learned colleague is just taking very brief
8 instructions.
9 JUDGE THOMPSON: Okay.
10 MR O'SHEA: Your Honour, while that's happening, may I just
11 indicate we're having some technical difficulties with
12 our earphones. It was cutting out, and now we're not
13 getting any sound at all.
14 JUDGE THOMPSON: Will the technical experts see if they can
15 correct the alleged shortcoming that we're having here.
16 JUDGE BOUTET: Mr O'Shea, is it all the time or --
17 MR O'SHEA: What I'm finding is that I'm hearing sort of half
18 of the word --
19 JUDGE THOMPSON: Could it be the condition of my voice because
20 of the Harmattan?
21 MR O'SHEA: Unless you're one of the cyberbeings.
22 JUDGE THOMPSON: Well, perhaps we should have some help from
23 the technical experts here to see how we can improve the
24 situation.
25 JUDGE BOUTET: Mr O'Shea, are you the only one or your
26 colleague also has the same problem?
27 MR NICOL-WILSON: It's the same.
28 PRESIDING JUDGE: I should have complained earlier because my
29 earphones are very uncomfortable. I don't know where are

1 the other ones I've been using.

2 JUDGE THOMPSON: Is there someone who will help us? All
3 right.

4 PRESIDING JUDGE: Yes, so where are we now?

5 JUDGE THOMPSON: Mr Jordash, we're in your hands.

6 MR JORDASH: The letter expresses Mr Sesay's views. It isn't
7 evidence as such. It isn't intended to be evidence as
8 such. It doesn't deal with issues relevant or directly
9 probative of the --

10 JUDGE THOMPSON: Go ahead, yes.

11 MR JORDASH: -- of the allegations. And to that extent -- to
12 --

13 JUDGE THOMPSON: It's not directly probative.

14 MR JORDASH: I've just had instructions given to me. I think
15 I'm going to have to withdraw my application for that
16 letter to be put forward, and perhaps, if I may just
17 leave you in Mr Sesay's hands because I think perhaps
18 what he has to say is confidential to him.

19 JUDGE BOUTET: What's the -- I fail to follow you now. What's
20 the suggestion? What's the -- are you still saying that
21 Mr Sesay will provide us with a written letter or
22 document of a sort? But what are we supposed to do with
23 this document? Because your last comments leave me with
24 some uncertainty as to what we should do with the
25 document. If we take this document, we have to mark it
26 as an exhibit. If we do, it becomes an exhibit.
27 Whatever weight we may accord to it is a different issue.

28 JUDGE THOMPSON: Without detracting from the cogency of the
29 observation of my learned brother, perhaps the

1 preliminary question to dispose of at this stage is
2 whether the Prosecution should see the letter before we
3 move to the next stage, if the letter is to be received
4 in evidence. Perhaps we should dispose of that
5 preliminary difficulty first. And it was at that point
6 in time that you left me hanging.

7 MR JORDASH: I beg your pardon, Your Honour.

8 JUDGE BOUTET: I agree entirely with this. We're still at
9 that stage.

10 MR JORDASH: Certainly, could I just receive final
11 instructions from Mr Sesay.

12 JUDGE THOMPSON: You may.

13 MR JORDASH: Thank you.

14 [Defence counsel and the accused confer]

15 JUDGE THOMPSON: Proceed, learned counsel.

16 MR JORDASH: The letter I was referring to is a letter which I
17 do not have instructions to now put forward in Court. My
18 instructions effectively at this stage limit me to, on
19 this issue, saying nothing further.

20 JUDGE THOMPSON: In other words, putting it slightly
21 differently, you are withdrawing any application to
22 produce a letter which your client intends this Court to
23 receive as an exhibit. Or is that an overstatement of
24 your position? Because, I mean, cast in the form of how
25 we do business in this Court, if you were inviting the
26 Court to receive the letter, you were, in fact, in a
27 sense applying to this Court on behalf of your client or
28 your client was applying to this Court to receive in
29 evidence a letter allegedly embodying his statements or

1 something that he wants to tell Court.

2 MR JORDASH: Mr Sesay would like to address you. I think I
3 can put it no more bluntly than that. I don't have
4 instructions to address you on this issue. And so
5 Mr Sesay would like the opportunity to do so.

6 JUDGE THOMPSON: So the whole idea of a letter disappears from
7 the radar screen, so to speak?

8 MR JORDASH: Well, Mr Sesay has a letter. He would like to
9 address you about it. He would like to address you
10 orally about it. In the event that that's not possible,
11 as I understand it, he would like the letter to be
12 submitted.

13 JUDGE THOMPSON: Well, I can tell you what I understand. I
14 understand some kind of ambivalence about this whole
15 thing, and probably would, as I say, it may reflect the
16 kind of difficulty you have in trying to put forward your
17 own position, as you understand it, in the light of your
18 client's position in a very professional way, and I can
19 assure you that I understand the difficulty. But
20 speaking for myself, I don't think this Court should act
21 on something in respect of which we're not quite clear as
22 to what -- whether we're following the correct procedure
23 in terms of what the objective of this exercise is.

24 [The Trial Chamber confers]

25 JUDGE THOMPSON: Learned counsel for the first
26 accused -- learned counsel for the first accused, again,
27 before we apologise, a side conference here, I was, in
28 fact, moving along with you trying to appreciate the
29 difficulty you have in putting forward issues here which

1 may themselves become so tricky because of the penumbra
2 surrounding them. And it would seem to us perhaps that
3 the best way to proceed is to have you produce the letter
4 and Court will receive it on the condition that we will
5 not be hearing any oral commentaries or analysis or
6 statements from your client in respect of that letter.

7 MR JORDASH: Your Honour, could I just take brief instructions
8 to clarify that Mr Sesay understands that.

9 JUDGE THOMPSON: Thank you.

10 [Defence counsel and the accused confer]

11 JUDGE THOMPSON: Yes, learned counsel. Go ahead.

12 MR JORDASH: I'm afraid we haven't been able to resolve --

13 JUDGE THOMPSON: Yes.

14 MR JORDASH: -- and maybe ten minutes might assist. I know
15 that's really treading on the Court's indulgence, but I'm
16 in a position where I have to apply for a ten-minute
17 adjournment.

18 PRESIDING JUDGE: Mr Jordash, the Tribunal appreciates the
19 efforts you're making, you know, in this drama that is
20 not created by you. We would very much appreciate it.
21 But I think the Tribunal wants to address itself to
22 Mr Sesay and to inform him that we are very conscious of
23 his rights, Your Honour, under Article 17 of the Statute.
24 And the Court is out to protect his rights at all costs.
25 But in so doing, we would not tolerate obstructionist
26 tendencies or obstructionist techniques or comportment.
27 We would unnecessarily delay these proceedings.

28 Let Mr Sesay understand that much as we respect his
29 right, much as his rights in Article 17 are concerned, he

1 cannot take this Court hostage. Nobody can take this
2 Court hostage. We want to proceed fairly. We want to
3 proceed judicially. So please let him understand us.
4 And I think there is a limit to which the rights under
5 Article 17 can continue to be asserted by an accused, and
6 there's an extent to which Court will continue to be held
7 hostage to these pleas. We will grant that adjournment
8 for ten minutes, but we would want to be very clear on
9 record and would want Mr Sesay to understand that much as
10 we respect his rights, he should also respect the rights
11 of the Court and the rights of the Prosecution.

12 JUDGE THOMPSON: Let me just add a short point to what the
13 learned Presiding Judge said: The rights of the accused
14 person as far as I understand them do not include the
15 right to abuse the process of the Court. This Court has
16 been more than charitable and liberal in its response to
17 the rights of the accused persons, and I join my learned
18 brother in saying that at no point in time will this
19 Court succumb to any attempt to hold it hostage.

20 JUDGE BOUTET: I would like to add one comment to these
21 comments: The rights under Article 17 do not, and I
22 underline "do not" include the right to delay these
23 proceedings unnecessarily. And furthermore, the rights
24 under Article 17 does not give an accused to speak out at
25 any time when he wishes to do so. There is a Court
26 process. And there's a rule of law and a procedure, as
27 you know, Mr Jordash, I speak it to you because you are
28 counsel of record, I know you know this, but maybe
29 Mr Sesay does not know this. The case for the Defence

1 comes after the case for the Prosecution is over. And
2 it's not over yet. And it's obvious with these kind of
3 delays it will take more time for the Prosecution to put
4 their case in. It's only at that time that Mr Sesay
5 either through you or personally can do whatever
6 presentation and arguments that he wishes to do. We're
7 not there. And this is in full complete respect of his
8 rights under Article 17. Article 17 does not allow an
9 accused to do what he's doing now. We are trying to bend
10 the rules, make accommodation for him, but he cannot
11 claim that these are rights under Article 17 in any
12 stretch of the imagination. Thank you.

13 PRESIDING JUDGE: Yes, please.

14 MR HARRISON: The Prosecution just has a suggestion on how we
15 might proceed. I understand there's a written document
16 which the Prosecution has not seen. Instead of referring
17 to it as an exhibit, which may be somewhat of a misnomer
18 because there's no witness here and we can't really admit
19 anything without a witness being present --

20 JUDGE BOUTET: I disagree with you.

21 PRESIDING JUDGE: I disagree with you. Let us not delay these
22 proceedings. Let us rise for 10 minutes and allow
23 Mr Jordash to consult with his client. The Court, to
24 quote my learned brother here, is bending the Rules in
25 order to ensure that we are not perceived as being biased
26 in the case of the accused person. Otherwise, we know
27 where the Prosecution stands, and when the Prosecution
28 raises an objection on this issue, we understand. But we
29 are only using our inherent powers to do what we are

1 doing.

2 JUDGE THOMPSON: And we invite the Prosecution to join us in
3 our chambers.

4 PRESIDING JUDGE: We shall rise for ten minutes, and then
5 resume in order to proceed with this case.

6 [Break taken at 3.14 p.m.]

7 [Upon resuming at 3.27 p.m.]

8 MR JORDASH: Thank you very much.

9 PRESIDING JUDGE: We have not yet called the session to order.

10 MR JORDASH: I beg your pardon.

11 PRESIDING JUDGE: Yes, Mr Jordash, we're resuming the session.
12 You may proceed.

13 MR JORDASH: Thank you very much for the time. Mr Sesay would
14 like to hand in the letter, the letter which he has
15 drafted. I'm in Your Honours' hands as to the procedure
16 Your Honours want to follow. I know the Prosecution
17 would like to see it. I know Mr Sesay's real interest is
18 that Your Honours see it. And so I suspect Mr Sesay
19 would be happy to show it to the Prosecution if that's
20 the route by which it reaches Your Honour.

21 JUDGE THOMPSON: Well, learned counsel, excuse me, we can let
22 the learned counsel -- leading counsel for the
23 Prosecution see the document, and then we'll proceed from
24 there.

25 PRESIDING JUDGE: And I want it to be -- to appear clearly on
26 the records that this document has been produced by
27 Mr Sesay for the attention of the judges.

28 MR JORDASH: Your Honours, yes.

29 PRESIDING JUDGE: In this matter.

1 MR JORDASH: Your Honours, yes.

2 PRESIDING JUDGE: It has been produced by Mr Sesay. Please,
3 let the records be very clear on that.

4 Mr Kallon, just wait a while. Okay, just wait a while.

5 Let's finish with this. Okay.

6 JUDGE THOMPSON: Yes, Mr Harrison.

7 MR HARRISON: Yes, I have read the document. It's difficult
8 for me to categorise it in a way which might be helpful
9 to you. I take Mr Jordash's point that if it's handed up
10 to the Court it may well expedite matters. I think the
11 Court may well be seeing the concern that you raised at
12 the very outset when it was ascribed early as Mr Sesay
13 wishing to express some sort of political view. And if
14 you want the Prosecution's assessment of the document, it
15 would be consistent with that.

16 JUDGE THOMPSON: Thank you very much.

17 JUDGE BOUTET: Shall we?

18 JUDGE THOMPSON: We certainly will receive the document in
19 evidence and mark it as Exhibit -- can we know the
20 number? Exhibit?

21 JUDGE BOUTET: 11. Exhibit 11.

22 PRESIDING JUDGE: 11.

23 JUDGE BOUTET: Yeah.

24 JUDGE THOMPSON: Of course, noting the Prosecution's
25 observation on the document, preliminary comments on the
26 document.

27 Anything else?

28 MR HARRISON: There is a concern the Prosecution has about it
29 being an exhibit as well.

1 JUDGE THOMPSON: Yes.

2 MR HARRISON: We object to it being an exhibit.

3 JUDGE THOMPSON: And if the Prosecution objects to it being an
4 exhibit, would the Prosecution therefore, without wasting
5 further time, advise the Court as to how to characterise
6 it.

7 MR HARRISON: I think it can simply be handed up as a motion
8 document that the Court can consider be part of the
9 motion materials. That was going to be my suggestion
10 before the Court rose.

11 PRESIDING JUDGE: We have -- I think we have very wide powers
12 to admit documentary evidence in our proceedings. And I
13 don't think it harms the case for the Prosecution at all
14 if this document is marked as an exhibit. And the only
15 thing I wanted to -- the only diversion I wanted to make
16 at this stage is I saw Mr Kallon on his feet, and I
17 wanted this document which has been put in evidence to be
18 shown to him as well, for him to -- for us to know where
19 we stand because he was asking to talk to us.

20 MR TOURAY: Indeed, Your Honour, we're expecting that, that he
21 sees the document.

22 JUDGE THOMPSON: Now that it's in evidence, he can see it.

23 MR TOURAY: Yes, as Your Honour pleases.

24 JUDGE THOMPSON: Yes.

25 THE ACCUSED KALLON: Yes, Your Honour, I mean, I would like
26 for the Court managers to please read this document to
27 me.

28 JUDGE BOUTET: You mean that --

29 PRESIDING JUDGE: Your lawyer will read it for you and let you

1 know. Your lawyer will read it for you and he will let
2 you know. Can learned counsel read it and tell him?
3 Because we don't want that document -- it is tendered,
4 it's been admitted and we don't want it read.
5 MR O'SHEA: Your Honours, could -- sorry.
6 JUDGE THOMPSON: Yes, Mr O'Shea.
7 PRESIDING JUDGE: Mr O'Shea, please, just a minute. Just a
8 minute, please.
9 Yes, Mr Touray, Exhibit 11 has been read to your client,
10 has been read to him.
11 MR TOURAY: My instructions, Your Honour, is that my client
12 would like to respond.
13 PRESIDING JUDGE: To respond to what?
14 MR TOURAY: To Exhibit 11.
15 PRESIDING JUDGE: Does he have a document to produce? If he
16 has a document to produce, let him produce the document.
17 If he has a document to produce, he too can produce his
18 own document and we will admit it like this other one.
19 MR TOURAY: As Your Honour pleases.
20 PRESIDING JUDGE: He wants to write it now, for us to wait for
21 him to write it? No, we will not wait.
22 MR TOURAY: It has been written already, I believe, and he is
23 just signing it, perhaps.
24 PRESIDING JUDGE: That is his response to Exhibit 11.
25 MR TOURAY: Indeed so, Your Honour.
26 PRESIDING JUDGE: He wants to tender it.
27 MR TOURAY: We wish to tender it on his behalf.
28 PRESIDING JUDGE: Can you show it to the Prosecution, please.
29 Mr Harrison, I hope it's clear enough for you to read. I

1 hope it's clear enough for you. I hope it is clearly
2 written for you to be able to read it.

3 MR HARRISON: It's not that clear. It will take a moment.

4 PRESIDING JUDGE: Okay.

5 MR HARRISON: I wonder if the Court will allow me to take a
6 somewhat different tack since my last one was not
7 successful. I'm suggesting that I turn this over to the
8 Court, that they review it, and then you allow me the
9 opportunity to say why this clearly ought not to be an
10 exhibit.

11 PRESIDING JUDGE: We would like to have your comments on it
12 first of all. Why do you think -- we had indicated a
13 trend. And said that these should be admitted as
14 exhibits.

15 MR HARRISON: These are submissions which a person would
16 normally make at the end of the case trying to persuade a
17 Court why or why not the case has been made out. You're
18 entitled to do this at the conclusion of your case.
19 You're not allowed to do it during the Prosecution case.

20 PRESIDING JUDGE: We have admitted the Exhibit 11.
21 Exhibit -- this document is a follow-up, you know, to
22 Exhibit 11 because he also wanted to speak to the Court.
23 Whether we admit it at this stage or not to me as a
24 matter of fact does not really matter. What I would say
25 at this stage is that document is shown to Mr Jordash,
26 the Defence team of the first accused, you know, so that
27 we proceed. We must proceed because we can't keep
28 turning around.
29 Yes, please.

1 JUDGE THOMPSON: Let me allay the fears. Learned counsel of
2 the Prosecution: I think there are so many ways to
3 approach matters of this nature. And if what you say is
4 valid, it would seem to me that at the end of the day,
5 the question is whether these exhibits or exhibits
6 so-called or not properly so-called do have any probative
7 value at all. And so if you say that particular document
8 embodies mere submissions, it would be for this Tribunal
9 to determine whether submissions traditionally have
10 probative value or not. So all is not lost yet for the
11 Prosecution to address us on whether we need to attach
12 any probative value, if any, to these exhibits.

13 MR HARRISON: A fair point, which I accept.

14 JUDGE THOMPSON: Yes.

15 MR HARRISON: The principal position which the Prosecution
16 would like to suggest to the Court is this, though: It's
17 often the case in most national jurisdiction that
18 exhibits are tendered pursuant to certain rules.

19 JUDGE THOMPSON: Yes.

20 MR HARRISON: Some of those rules are entrenched because of
21 various reasons which are important for trial fairness.

22 JUDGE THOMPSON: Let me just interrupt a bit, and here my
23 interruption is to eliminate the point, that if really we
24 were applying the national principals of admissibility,
25 for example, of Britain, Canada, some other country,
26 Nigeria, Sierra Leone, the point that you're making would
27 be unimpeachably valid. But international Tribunals have
28 taught us to adopt the principle of liberal admissibility
29 of evidence and to weight everything on the probative

1 value. It's on that score which we are very sensitive
2 about, that we are taking this approach. The Prosecution
3 is not prejudiced.

4 MR HARRISON: But I think the principle which the Court has to
5 turn its mind to for future is: What is to be the
6 practice for tendering exhibits in future. Is it
7 necessary to have witnesses deal with exhibits, or is it
8 not? And if it's the Court's view that it's not
9 necessary to do so, the Prosecution will accept the
10 Court's judgement and conduct its case in that manner.

11 JUDGE THOMPSON: In a proper case, we will make those
12 expositions on the law.

13 MR HARRISON: I'm suggesting this is a proper case because
14 that's clearly a document which ought not to be --

15 JUDGE THOMPSON: When it comes before us in a formal way. But
16 I think under the jurisprudence now, we clearly have the
17 authority to relax the rigid and strict and technical
18 principles of admissibility as they're applicable in
19 national systems.

20 MR HARRISON: Thank you.

21 PRESIDING JUDGE: Mr Jordash, have you seen the document?

22 MR JORDASH: Yes, I have, Your Honour.

23 PRESIDING JUDGE: Have Mr O'Shea and Mr Cammegh seen the
24 document as well? You have no objection to what are the
25 sentiments in the document? Mr O'Shea, you wanted to
26 make some comments a couple minutes ago as the document
27 was circulating. May we now hear you.

28 MR O'SHEA: Thank you, Your Honour. My formal question has
29 been answered by Your Honour in the interim, but I just

1 remind the Court to perhaps the Court will remember a
2 document of not too dissimilar nature in relation to
3 Augustine Gbao was admitted as Exhibit 1, so it's
4 consistent with the Court's practice so far. I mean, I
5 can't see it properly described as a motion either, so
6 it's just a question of finding a way to put it on the
7 record.

8 JUDGE THOMPSON: The document will be received in evidence and
9 marked as Exhibit 12. Excuse me.

10 I think we can now proceed with the Prosecution's
11 case, the next witness, PW19, did you say?

12 MR BRAUN: Your Honour, it's Witness TF1-304.

13 JUDGE THOMPSON: Yes, and this is your 19th witness?

14 MR BRAUN: That's correct.

15 JUDGE THOMPSON: Well, let's proceed.

16 MR BRAUN: Your Honours, before the Prosecution calls the next
17 witness, may I indicate to this Court that after a
18 certain time of my examination-in-chief, I will apply for
19 closed session. This will be for a very short period of
20 time in order to deal with questions which may reveal the
21 identity of this witness. The issue was brought up in
22 yesterday's opening status session, and I also spoke to
23 my learned friends of the Defence, and I understood that
24 they do not oppose to this application of the
25 Prosecution.

26 JUDGE THOMPSON: Thank you.

27 [110105C 3.50 p.m.]

28 JUDGE THOMPSON: In the meantime you can proceed.

29 MR BRAUN: So we call witness 304.

1 JUDGE THOMPSON: The witness will be testifying in which
2 language?
3 MR BRAUN: Excuse me, sir?
4 JUDGE THOMPSON: The witness will be testifying in which
5 language?
6 MR BRAUN: In Kono.
7 JUDGE THOMPSON: Kono.
8 PRESIDING JUDGE: Mr Harrison, you did indicate to us that
9 examination-in-chief will be conducted by Mr Robert
10 Braun.
11 MR HARRISON: That's correct.
12 PRESIDING JUDGE: Is it Braun or Brown?
13 MR BRAUN: It's Braun.
14 PRESIDING JUDGE: B-R-A-U-N?
15 MR BRAUN: Exactly.
16 MR JORDASH: Mr Sesay would like to absent himself from Court.
17 The proceedings, as I understand it, can continue and I
18 will have a conference later today and report back
19 tomorrow morning, but I think the proceedings can
20 continue at the moment.
21 [The witness entered court]
22 PRESIDING JUDGE: This is intriguing. Is Mr Sesay making a
23 particular calendar for himself, as to when he can attend
24 the Court or when he can not attend, even if he does not
25 raise any special reasons for absenting himself from
26 Court? That's the question I'm asking. This is a
27 tribunal and it deserves the respect that we have been
28 giving to Mr Sesay and the defence of his rights. He
29 should not behave as if he wants to walk out when he

1 wants to and to walk in when it suits him. That is my
2 worry, Mr Jordash. And no particular reason has been
3 given to support this application.

4 Therefore, we are refusing the application. He will
5 remain in court. Mr Sesay is fit. Mr Sesay is fit.
6 Unless he decides, you know, to walk out on his own, we
7 would not allow the application for him to leave the
8 Court, because there is nothing to support the fact that
9 he is sick, nor is there any justifying circumstance for
10 him to absent himself from this Court.

11 I think that this Tribunal needs the respect that it
12 requires. It is important that this is perceived and
13 understood by everybody. Because the Tribunal is also
14 doing its very best to ensure that the rights of the
15 accused are respected, I think they should respect the
16 authority of this Tribunal as well. I'm very disturbed
17 by these applications.

18 MR JORDASH: Your Honour, the reasons to me are at the moment
19 unclear, but mindful of the time which has passed today
20 already, rather than seeking an adjournment to try to
21 establish those reasons, I thought better to give voice
22 to Mr Sesay's application and seek the reasons once the
23 Court isn't sitting, and the reasons I would be able to
24 then clarify for Your Honours tomorrow morning. It is
25 simply a time-saving application. The reasons, as I
26 said, I was hoping to be able to assist this Court with
27 tomorrow morning.

28 PRESIDING JUDGE: I have expressed the fears of the Tribunal
29 and I suppose that I have been properly understood and

1 registered on record.

2 MR JORDASH: Your Honour, yes.

3 JUDGE THOMPSON: Yes, counsel?

4 MR NICOL-WILSON: Your Honour, I have been instructed by

5 Mr Kallon to inform you that if Mr Sesay does not attend

6 the proceedings, he will also not be attending the

7 proceedings and he would also like to leave.

8 JUDGE THOMPSON: Of course, in the absence of some cogent

9 reasons why Mr Sesay is seeking leave to absent himself,

10 the Court is entitled to speculate that perhaps what is

11 happening here is a deliberate abuse of the process of

12 this Court, and I am prepared so to speculate. Clearly,

13 at some point in time we need to call a halt to this

14 behaviour and I take it very seriously that a court

15 cannot allow its processes to be violated by anyone,

16 including those who appear before it.

17 So I'm not persuaded that any convincing reason or

18 reasons have been advanced. Perhaps Mr Jordash, in his

19 usual professionally creative style, can see if he can

20 persuade the Bench of some good reason why at this stage,

21 after we have gone through the ritual of admitting some

22 statement from these accused persons, this Court ought

23 not to draw the conclusion that their design was clearly

24 to come and have their statements admitted and then abuse

25 the process of the Court by seeking leave to walk out.

26 That's the lingering doubt in my mind and probably you

27 might be able to persuade me otherwise.

28 MR NICOL-WILSON: Your Honour --

29 MR HARRISON: It is just a question of if the Court would

1 prefer if the witness be excused until this matter is
2 resolved.

3 JUDGE THOMPSON: Thank you for reminding us. Let the witness
4 be excused.

5 [The witness withdrew]

6 JUDGE THOMPSON: Yes, learned counsel, what position do you
7 take?

8 MR JORDASH: I would like to speak to Mr Sesay, but his
9 present position is that he no longer wants to take part
10 in the trial. His position was, as I understood it, that
11 the document once it was admitted, would be simply the
12 first stage, the second stage being that he would
13 continue to cooperate with the Court. That was my
14 understanding until a moment ago. His position appears
15 to have changed.

16 JUDGE THOMPSON: In other words, he's virtually saying that we
17 should be ready to adopt some kind of position of
18 negotiating with him as to how we proceed here. Let us
19 hear counsel for the second accused.

20 MR NICOL-WILSON: Your Honour, I have been instructed by
21 Mr Kallon to inform you that his position is the same as
22 that of Mr Sesay and that he will no longer attend court
23 proceedings.

24 JUDGE THOMPSON: Thank you.

25 PRESIDING JUDGE: Mr Sesay, you've heard what your counsel has
26 said. Do you confirm that you no longer want to
27 participate in these proceedings -- that you're walking
28 out of the proceedings?

29 THE ACCUSED SESAY: My Lord, with all due respect --

1 PRESIDING JUDGE: I want you to answer my question directly.
2 Much has been said. With all due respect, you have been
3 coming to court, yes, we agree. From today do we
4 understand you to say, like your counsel has indicated,
5 that you no longer want to participate in the proceedings
6 of this Tribunal?
7 THE ACCUSED SESAY: My Lord, I'm a human being. I've been
8 coming to the trial for the past two months -- for two
9 months. And, My Lord, I've been taking part in trial
10 that I was not having before the judges --
11 PRESIDING JUDGE: No, no, look, I don't want you to go any
12 further. Are you participating -- your counsel has said
13 that your position is that you no longer want to
14 participate in these proceedings. Is it true or false?
15 I don't want you to get into any further details.
16 THE ACCUSED SESAY: My Lordship, I'm not challenging your
17 authority, sir.
18 PRESIDING JUDGE: I know you're not. Forget about challenging
19 our authority. Are you participating in the further
20 conduct of these trials or not?
21 THE ACCUSED SESAY: But, My Lord, sir --
22 PRESIDING JUDGE: Please sit down. Mr Jordash --
23 THE ACCUSED SESAY: I'm going to answer your questions.
24 PRESIDING JUDGE: Please, please, you wait. You sit down,
25 please, sit down. Mr Jordash, please, what is the
26 message you gave to this Court?
27 MR JORDASH: As I understood Mr Sesay's position, he has
28 decided not to attend Court any --
29 PRESIDING JUDGE: Any further after the admission of Exhibits

1 11.

2 MR JORDASH: Certainly. But what I would urge upon
3 Your Honours is that Mr Sesay, before Your Honours come
4 to any final decision as to the way to proceed, that
5 Your Honours give him overnight to reflect --

6 PRESIDING JUDGE: No, we are not giving him any overnight.

7 MR JORDASH: I am not asking for an adjournment of the
8 proceedings.

9 PRESIDING JUDGE: No, no, no, we are not giving Mr Sesay any
10 overnight treatment. I want him to answer this question
11 now before this Tribunal, because we can't be playing
12 around with a lawfully constituted court in the interests
13 of defending your own rights; no.

14 MR JORDASH: The only reason I ask Your Honours to allow him
15 overnight is that he has clearly taken a position which
16 has huge consequences, huge significance for the trial
17 for potentially the way he is able to defend his trial.
18 And whilst I don't seek an adjournment of the proceedings
19 that no time would be lost, it would be, I think, in the
20 interest of justice for him to have that reflection.

21 If his position is the same tomorrow, then it is his
22 position and it is his choice and it is his choice which
23 has been reflected on and thought about and we can all be
24 reassured that it is a position which he has taken as a
25 mature, intelligent individual. If he is pushed to make
26 that decision now, his position may not have the
27 necessary reflection which assures us all that it is made
28 intelligently and thoughtfully.

29 As I reiterate, I don't seek an adjournment of the

1 proceedings.

2 [Trial Chamber confers]

3 JUDGE THOMPSON: Learned counsel for the Prosecution, do you
4 have any response to this situation?

5 MR HARRISON: It's only guidance.

6 PRESIDING JUDGE: To Mr Jordash's --

7 MR HARRISON: I think the Court is already familiar with these
8 circumstances or similar circumstances. Rule 60 is the
9 one which governs the Court. The only thing I'd point
10 out to the Court is that you do not have any application
11 before you to dismiss counsel or that counsel wish to
12 withdraw from the record.

13 I can only say that it is my understanding -- it has
14 certainly been my experience that accused in the course
15 of a long trial may choose to absent themselves for a
16 week, two weeks, a month, and then choose to resume
17 attending the Court. I am not sure that that is an
18 entirely inappropriate exercise of an accused's rights
19 whichever they may have. But that is the only guidance I
20 think I can provide the Court.

21 JUDGE THOMPSON: Thank you very much for that guidance.

22 PRESIDING JUDGE: Yes, Mr Jordash, did you have anything else?

23 MR JORDASH: Just following on from what my learned friend has
24 helpfully said, Rule 60(B) in either case dealing with --
25 well, this rule deals with trial in the absence of the
26 accused. As I understand Mr Sesay's position, it isn't
27 that he doesn't want his legal team to continue. It is
28 simply that he does not want to attend certainly today
29 and maybe in the future. 60(B): "The matter may be

1 permitted to proceed if the Judge or Trial Chamber is
2 satisfied that the accused has, expressly or impliedly,
3 waived his right to be present."

4 I do submit he should be allowed to absent himself
5 this afternoon if he chooses to. The situation if it
6 changes insofar as he wishes to no longer be represented
7 by counsel is the next stage, but at this stage the only
8 instructions I have is that he wishes not to be present
9 this afternoon and in the future. He hasn't taken a
10 position as to his legal representatives. We are
11 instructed to stay at this stage.

12 PRESIDING JUDGE: The point is that his absence, depending on
13 the duration, would impact on the status of counsel in
14 this particular case, depending on what we have done
15 before. I think we would rise and consider this matter
16 and resume in the next 10 minutes. The Court will rise
17 for 10 minutes, please.

18 [Break taken at 4.10 p.m.]

19 [Upon resuming at 4.33 p.m.]

20 PRESIDING JUDGE: We are resuming the session.

21 Learned counsel, I think the preoccupation of the
22 Court is to ensure that we proceed expeditiously and
23 surely. Certainly what has happened today does not lend
24 any support to the determination of the Tribunal in this
25 regard. I don't think any sacrifice will be too much if
26 only we'll have to achieve this goal eventually.

27 It is in this regard that the Tribunal has decided
28 to allow Mr Sesay to think of what options he wants to
29 make as far as this trial is concerned, and also to allow

1 Mr Kallon to think and decide on what they want to do.
2 And when I say "what they want to do", it is as to
3 whether they want to continue to appear in court to take
4 their proceedings or to take their trial or not, whether
5 they want to be tried in their absence. We would like to
6 have a clear answer to this tomorrow morning.

7 It is because we want to proceed after we are very,
8 very sure of what options they have made as accused
9 persons. And this, of course, in respect of their rights
10 under Article 17, and their rights as accused persons, we
11 think that it would be fair for the Tribunal, in the
12 interest of fundamental fairness to the accused persons,
13 that they are given time to, as Mr Jordash indeed asked
14 for, to make this decision overnight.

15 We would, therefore, learned counsel for the
16 Prosecution, be granting an adjournment to tomorrow
17 morning in order to have clear options by Mr Sesay and
18 Mr Kallon as to whether they want to be in Court or not.

19 Let me say that in the CDF trial we are proceeding
20 without the accused persons. We do not want to say that
21 we want to do without them. We want them to be present
22 in Court, because their presence assists their counsel in
23 their own interests. When they are absent, they are
24 prejudicing their interests as accused persons, because
25 counsel are left with no proper instructions on which to
26 base and ground their defences in due course.

27 So, on this note, we would be adjourning and we
28 would ask all defence teams concerned to concert with the
29 accused persons and to come up with a very clear option

1 tomorrow morning when we do resume at 9.30. The Court
2 will adjourn and we'll resume sitting tomorrow morning at
3 9.30.

4 [Whereupon the hearing adjourned at 4.38 p.m., to be
5 reconvened on Wednesday, the 12th day of January 2005, at
6 9.30 a.m.]

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C E R T I F I C A T E

We Susan G Humphries, Joanne Mankow and Ella K Drury, Official Court Reporters 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 our ability and understanding.

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

Susan G Humphries

Joanne Mankow

Ella K Drury