

Case No. SCSL-2004-15-T
THE PROSECUTOR OF
THE SPECIAL COURT
V.
ISSA SESAY
MORRIS KALLON
AUGUSTINE GBAO

THURSDAY, 31 JANUARY 2008
9.48 A.M.
TRIAL

TRIAL CHAMBER I

Presiding

Before the Judges:

Benjamin Mutanga Itoe,
Bankole Thompson
Pierre Boutet

For Chambers:

Mr Felix Nkongho
Ms Sandra Brown
Mr Colin Smith

For the Registry:

Mr Thomas George

For the Prosecution:

Mr Vicent Wagona
Mr Reginald Fynn

For the accused Issa Sesay:

Mr Wayne Jordash
Ms Sally Longworth

For the accused Morris Kallon:

Mr Kennedy Ogeto

For the accused Augustine Gbao:

Mr Scott Martin

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CLOSED SESSION

1 [RUF31JAN08A - DG]

2 Friday, 31 January 2008

3 [Closed session]

4 [The accused present]

5 [Upon commencing at 9.48 a.m.]

6 [The witness entered Court]

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

8 transcript, pages 2 to 25, was extracted and sealed under

9 separate cover, as the proceeding was heard in a closed

session]

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OPEN SESSION

1 [Open session]

the
in
Mr

2 PRESIDING JUDGE: Thank you. Well, we will now resume
3 trial in a public session. This is the ruling of the Chamber
4 respect to the closed session application by learned counsel

11:12:04

5 Jordash for the first accused in respect of this witness -- Mr
6 Jordash, it is DIS what again? DIS --

7 MR JORDASH: 164, Your Honour.

general

8 PRESIDING JUDGE: Thank you. Consistent with the
9 requirements that criminal proceedings are to be conducted in
10 public, as enjoined by Rule 78 of the Rules of Procedure and
11 Evidence of this Court, and taking into conversation Article
12 17(2) of the Statute of the Court, but exceptionally as
13 authorised by Rule 79(A)(ii) of the said Rules, and the need

11:12:38

to

14 protect witnesses as provided for in Rule 75, this Chamber, on

11:13:00 15 the application of learned counsel for the first accused for
the
16 entirety of the testimony of witness DIS-164, to be held in a
17 closed session did, by way of an exceptional procedure, grant
the
18 said application for reasons in support thereof.

19 And, having come to the end of the testimony in closed
11:13:37 20 session, and following the delivery of the closed session
21 testimony decision in an open session, Mr Witness, the Chamber
22 would like to thank you for accepting to come here to assist
it
23 with your evidence in this case.

24 THE WITNESS: Yes, sir.

11:14:07 25 PRESIDING JUDGE: We thank you and we wish you all the
26 best. I suppose you're still the good teacher that you --

27 THE WITNESS: Yes, sir.

28 PRESIDING JUDGE: Well, Mr Witness, thank you very much.
29 We wish you a safe journey, and the best in --

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1 THE WITNESS: Thank you, sir.

2 PRESIDING JUDGE: -- the pursuit of your professional
3 activities. Have a safe journey. You are discharged.

4 THE WITNESS: Thank you, sir.

11:14:49 5 PRESIDING JUDGE: You will wait until you're assisted
out

6 of the Court.

7 [The witness withdrew]

8 [The witness entered Court]

9 PRESIDING JUDGE: Yes, Mr Jordash, you may call your
next

11:16:22 10 witness, please.

11 MR JORDASH: Could I, before I call the next witness,
whose

12 number has at the moment escaped me as has my annotated notes,

13 could I just make a point for the record concerning Rule 68

14 material?

11:16:50 15 In relation to the issue of Monjama and her existence
16 today. And her relationship with Aruna Fatoma, I noted the
17 approach taken by my learned friend for the Prosecution which
was

18 brief and didn't really indicate what their case is now on
that

19 particular issue, but I noted that the reference really was,
in

11:17:40 20 effect, that they appeared not to be disputing who the person
was

21 on the photograph.

22 PRESIDING JUDGE: May this witness be taken out for now
23 please. We never know if -- let her be assisted out. We will
24 ask her in. May the witness be assisted out, please, whilst
Mr

11:18:09 25 Jordash is still addressing us on this issue?

26 [The witness stood down]

27 MR JORDASH: The point I'd briefly want to make is this:

28 That it appeared from my learned friend's approach I expected

it

29 that there would be a challenge of some sort to the issue, and

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1 would become clear what investigations the Prosecution had
2 conducted and the results of the investigation.

3 What was apparent to me was that there was a dispute
that
4 the person in the photograph was --

11:19:11 5 PRESIDING JUDGE: Mr Jordash, without, without cutting
you
6 short, if the Prosecution decides to pursue the matter to the
7 extent to which it did, does that call for any comment? I
think
8 it's a matter, you know, that should come subsequently. It is
9 their case it was Aruna Fatoma was a witness for the
Prosecution.

11:19:36 10 You have raised what you consider a reasonable doubt as to the
11 truth of that witness's testimony, which you know. So if the
12 Prosecution did not go further than it did, I do not think
that
13 it really calls for any comment from you at this point in
time.

14 MR JORDASH: It's not so much a comment I'm seeking but
--

11:20:03 15 PRESIDING JUDGE: Yes, yes, yes.

16 JUDGE THOMPSON: And perhaps you should just, in the
17 interest of judicial economy, just answer both of us together.
18 Are you advancing a legal argument at this stage and for what
19 purpose?

11:20:16 20
it.

was

Fatoma

be

11:20:44 25
26
27
28
that

MR JORDASH: What I'm saying is this: I can shortcut
21 If their investigations revealed that indeed the photograph
22 who we say it was, and indeed that that person was the -- not
23 just the named person but had that relationship with Aruna
24 and was alive then that would be Rule 68 material which should
disclosed before we progress with the issue which will be
progressed through witnesses. And that's why I was listening
carefully how my learned friend put his case on the issue
because, if they discovered that through their investigation
29 in any way the Defence position is corroborated it ought to be

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1 disclosed now before we progress with the issue. That's the
2 point I was making.

3 JUDGE THOMPSON: My difficulty really is well, this is

4 really, at this point in time, an evidentiary matter. They
have
11:21:18 5 actually cross-examined and, to the extent, as the Presiding
6 Judge said they consider it proper or fit and, if at this
stage
7 there is some aspect of the matter unresolved, I would
approach
8 it from two perspectives: Either, there's some aspect of the
9 evidence needs to -- further aspects need to come before Court
or
11:21:48 10 there may well be the need for some legal argument as to what
has
11 transpired, and it would be my view that at this stage legal
12 argument would not be called for, and the question of whether
13 there needs to be some further evidentiary clarification is a
14 judgment call for the Prosecution.

11:22:10 15 JUDGE BOUTET: Mr Jordash, may I suggest that if you
want
16 to pursue that particular aspect, as such, that you put that
in
17 the form of a short motion in writing so it will allow the
18 Prosecution to deal with that, and, if need be, we could issue
19 direction that the timeline be restricted. So, I know what
11:22:28 20 you're saying: You're saying, well, if they have gathered now
21 information that will support your position, they still have
22 obligations under 68 to disclose on a continuous basis, as
such.
23 I mean -- it's an issue that's always alive, disclosure, but
how
24 much and so on. So, I say, it might be more easy for the
Court
11:22:50 25 to deal with that issue if you put that in writing and we will
26 give them the opportunity to respond and then see where we go.

haven't

27 MR JORDASH: Well, the only -- I'm hoping just -- I
28 obviously had a chance to speak to the Prosecution about it
29 because I didn't know the approach they were going to take,

but I

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1 only raised it now, as much as anything, for the Prosecution's
2 sake because tomorrow we shall progress this issue.

the

3 JUDGE THOMPSON: The difficulty I have is that even if
4 Prosecution were to say anything, how does that factor into

the

11:23:20

5 evidentiary aspect of the record, if there has been a kind of
6 lacuna in terms of clarify here, I would not necessarily want

to

7 accept what the Prosecution would say viva voce because it
8 doesn't seem to go into the question of evaluation of the
9 evidence. It should come on the legal context by way of some

11:23:42

10 legal argument --

11 MR JORDASH: Well --

12 JUDGE THOMPSON: -- coming from your side.

13 MR JORDASH: I suppose it depends what they found out.

14 JUDGE THOMPSON: Yes. Well, they have not brought it in
11:23:52 15 evidence.

is 16 MR JORDASH: No. But if they found out that what we say
degree 17 right, then the point is simply that they should -- to the
18 that they we're right they should disclose it -- I'll leave it
19 there.

11:24:04 20 PRESIDING JUDGE: It depends on how they pursue the
matter 21 in the evidence.

22 JUDGE THOMPSON: That's right. It's a very delicate
23 matter.

11:24:11 24 PRESIDING JUDGE: We have two conflicting evidentiary
25 positions in this case: Monjama is dead, from the evidence of
the 26 Fatoma; Monjama is not dead from the evidence of DIS-164 and
27 photographs.

28 MR JORDASH: Yes.

29 PRESIDING JUDGE: Well, we will wait and see how the

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really 1 Prosecution gets along with the doubt which you have raised in
2 their case on this issue. I think that is the best way of
3 proceeding, rather than multiplying issues which, to me,

4 do not -- should not concern us, you know, for now.

11:24:53 5 MR JORDASH: It's merely to put it on record because
6 obviously if something comes out today or tomorrow, then I
will
7 obviously complain.

8 JUDGE BOUTET: Yes. Well, they are aware of their
9 obligations of -- disclosure obligation. If they fail, well,
you

11:25:06 10 have not -- and never hesitated in the past to take a
challenge
11 on it, Mr Jordash, and I'm sure you will do that. Obviously,
if
12 it's possible to avoid it, it's welcome but we have to trust
that
13 people know what they have to do and their obligations.

14 MR JORDASH: I shall leave it there, Your Honours. Can
I
11:25:27 15 call the next witness who --

16 PRESIDING JUDGE: Do you have your script now?

17 JUDGE THOMPSON: DIS-157?

18 PRESIDING JUDGE: Do you now have your script in front
of
19 you?

11:25:37 20 MR JORDASH: Yes, I have the script but --

21 JUDGE THOMPSON: It's DIS-157.

22 MR JORDASH: -- still no number, but thank you, Your
23 Honour.

24 JUDGE THOMPSON: Yes, you had given us 164, in that
order.

11:25:42 25 MR JORDASH: It's not 157, it's 154.

26 JUDGE THOMPSON: 154.

27 MR WAGONA: But I have 297.

28 JUDGE THOMPSON: 297?

29 MR WAGONA: That's the one that I know of.

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OPEN SESSION

Mr

I

25th

11:26:30

before

11:26:59

11:28:51

to

1 MR JORDASH: Can I just have a moment? Yes. As usual,
2 Wagona is correct. DIS-297. Thank you. I apologise. Could
3 call DIS-297, who will testify in Krio and is, I think, our
4 witness.

5 PRESIDING JUDGE: 25th or 26th? 26th.

6 MR JORDASH: 26th. Not a good start to the day.

7 PRESIDING JUDGE: Never mind. It will get on track
8 the end of the day.

9 MR JORDASH: Don't bet on it.

10 [The witness entered Court]

11 PRESIDING JUDGE: So it's DIS-297; will be testifying in
12 what language?

13 MR JORDASH: Krio, Your Honour.

14 WITNESS: DIS-297 [Sworn]

15 [The witness answered through interpreter]

16 MR JORDASH: I'm afraid I'm going to ask the testimony

17 be in a closed session.

18 PRESIDING JUDGE: In it's entirety?

19 MR JORDASH: I'm afraid so, yes.

11:29:00 20 PRESIDING JUDGE: Well, make the application, you know,
if

21 that's your call, if that's your wish, you should make the

22 application. You are applying for the entirety of the
testimony

23 of this witness to be taken in a closed session?

24 MR JORDASH: Yes. I think we're in an open session; is

11:29:17 25 that right?

26 PRESIDING JUDGE: Yes, we are. If we do, if you are
making

27 the application, then we'll have to -- so are you making the

28 application because we have to know.

29 MR JORDASH: Yes, please. I'd like to, yes.

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1 PRESIDING JUDGE: Right. Okay. We'll then move into
the

2 closed session, please.

3 Mr Jordash, you said this is for the entirety of the

4 witness's testimony?

11:30:07 5 MR JORDASH: Yes, I think it has to be, I'm afraid.

session]

6 [At this point in the proceedings, a portion of the
7 transcript, pages 34 to 102, was extracted and sealed under
8 separate cover, as the proceeding was heard in a closed

9 [whereupon the hearing adjourned at 5.30 p.m.
10 to be reconvened on Friday, the 1st day of
11 February 2008 at 9.30 a.m.]

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WITNESSES FOR THE DEFENCE:

26 WITNESS: DIS-164

26 CROSS-EXAMINED BY MR FYNN

26 RE-EXAMINED BY MR JORDASH

32 WITNESS: DIS-297

33 EXAMINED BY MR JORDASH

33 CROSS-EXAMINED BY MR MARTIN

33 CROSS-EXAMINED BY MR WAGONA