

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

FRIDAY, 1 FEBRUARY 2008
9.45 A.M.
TRIAL

TRIAL CHAMBER I

Presiding

Before the Judges:

Benjamin Mutanga Itoe,
Bankole Thompson
Pierre Boutet

For Chambers:

Ms Peace Malleni
Mr Felix Nkongho
Mr Colin Smith

For the Registry:

Mr Thomas George

For the Prosecution:

Mr Charles Hardaway
Mr Vincent Wagona

For the accused Issa Sesay:

Mr Wayne Jordash
Mr Jared Kneitel
Ms Sally Longworth

For the accused Morris Kallon:

Mr Kennedy Ogeto

For the accused Augustine Gbao:

Mr John Cammegh
Mr Scott Martin

1 [RUF1FEB08A-DEB]
2 Friday, 1 February 2008
3 [Closed session]
4 [The accused present]
5 [Upon commencing at 9.45 a.m.]
6 [The witness entered Court]
7 WITNESS: DIS-297 [Continued]
8 [The witness answered through interpreter].
9 [At this point in the proceedings, a portion of the
10 transcript, pages 2 to 10 extracted and sealed under separate
11 cover, as the proceeding was heard in a closed session]
12
13
14
15
16
17
18
19
20
21
22
23
24
25

26
27
28
29

SCSL - TRIAL CHAMBER I

Page 11

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 [Open session]

2 MR GEORGE: We are in open session now.

3 PRESIDING JUDGE: We will resume the trial in a public
4 session. This is the ruling of the Chamber in respect of the
5 closed session application made by learned counsel Mr Jordash
6 the first accused.

10:26:01
for

7 Consistent with the general requirement that criminal

Rule

8 proceedings ought to be conducted in public, as enjoined by

9 78 of the Rules of Procedure and Evidence of this Court, and

10:26:20

10 taking into consideration Article 17(2) of the Statute of the

the

11 Court, but exceptionally as authorised by Rule 79(A)(ii) of

in

12 said Rules, and the need to protect witnesses as provided for

Mr 13 Rule 75, this Chamber, on the application of learned counsel
to 14 Jordash, for the entirety of the testimony of witness DIS-297
10:26:51 15 be held in closed session did, by way of an exceptional
16 procedure, grant the said application for reasons advanced in
17 support thereof.

18 We did proceed to record the evidence of this witness in
19 its entirety in a closed session and, at the end of it, that's
10:27:21 20 the ruling that was made to grant Mr Jordash's application.

we 21 Madam Witness, we have come to the end of your testimony, and
22 would like to thank you for coming to assist the Tribunal with
23 your testimony, and we wish you all the best in the pursuit of
24 your profession, and a very safe journey back to wherever you
are 10:28:02 25 staying now. Thank you, and bye-bye.

26 THE WITNESS: Thank you, sir.

27 [The witness withdrew]

28 PRESIDING JUDGE: Mr Ogeto, I see you are on your feet.

29 MR OGETO: Yes, My Lords, good morning.

SCSL - TRIAL CHAMBER I

1 PRESIDING JUDGE: Good morning.

issue 2 MR OGETO: Yesterday, I indicated that there was an
3 that I wanted to raise before the Chamber.
4 PRESIDING JUDGE: Yes.
10:29:17 5 MR OGETO: I don't know if I can do that now before the
6 next witness.
7 PRESIDING JUDGE: You may, Mr Ogeto.
8 MR OGETO: My Lords, this relates to the decision of the
9 Chamber that was delivered yesterday in relation to our motion
10:29:29 10 challenging defects in the indictment. My intention is not to
11 challenge that position, My Lords, but a number of
observations
12 that I thought I should put on the record in regard to that
13 motion.
14 PRESIDING JUDGE: In regard to our decision?
10:29:47 15 MR OGETO: In regard to your decision.
16 PRESIDING JUDGE: We don't accept that. You have the
right
17 to appeal. If you want to appeal, you appeal against it. We
18 don't accept any observations on any ruling that we have made.
19 MR OGETO: It's, My Lords, my intention is not even to
10:30:00 20 appeal but I just wanted to put it on the record.
21 PRESIDING JUDGE: Then you better keep quiet about it,
if
22 you don't want to appeal. If you want to make any
observations
23 on that motion, your option is to appeal and not to make any
24 observation, and if you want to appeal we will grant you leave
to
10:30:16 25 appeal. I can tell you that straightaway. We will grant you
the

decision.

26 leave to appeal. But not to make any comments on that

comment

27 MR OGETO: Can I then comment on the Prosecution motion
28 that was filed, My Lords. There was a motion filed by the
29 Prosecution after we filed our motion, and can I make a

SCSL - TRIAL CHAMBER I

Page 13

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 on that?

2 PRESIDING JUDGE: [Inaudible]. Go ahead.

10:30:53
the

3 JUDGE THOMPSON: Isn't there a recognised procedure when
4 the Prosecution files a motion for the Defence to adopt? The
5 procedures are quite clear and I would have thought that if

the

6 Prosecution has filed a motion before the Chamber there is --

7 standard procedure is for the Defence to respond in writing.

8 MR OGETO: We were not permitted to respond, My Lords.

9 JUDGE THOMPSON: In writing?

10:31:15
that

10 MR OGETO: Yes, we did the response in writing. And

11 response -- it wasn't --

12 JUDGE THOMPSON: In other words, there was probably some
13 indication that the response, the document, was not properly
14 filed; isn't that the idea?

10:31:24 15
address,

MR OGETO: What happened, that's what I wanted to

16 My Lords.

17 JUDGE THOMPSON: Have you found out from the Registry
why

18 the response was not?

19 MR OGETO: The response was not allowed because the
10:31:35 20 position of the Chamber came before we could file any response
to

21 that motion, and we were still within time to respond to the
22 Prosecutor's motion. So, in effect, a decision was made by
the

23 Chamber partly based on the submissions of the Prosecution's
in
24 the motion.

10:31:53 25 JUDGE THOMPSON: Wouldn't it have been proper for you to
26 investigate from the Registry as to what went wrong, rather
than
27 asking us here to get involved in really what could have been
28 some filing difficulty or filing deficiency?

29 MR OGETO: No, it's not a matter really for the Registry

SCSL - TRIAL CHAMBER I

Page 14

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 because by the time we wanted to file our response to that
motion

-- 2 a decision had already been made by the Chamber in the absence

3 [The witness entered Court]

4 PRESIDING JUDGE: Can you leave the witness out, please.
10:32:29 5 Keep her out for now, please. We will call her in.

6 [The witness stood down]

7 MR OGETO: My Lords, the motion was filed on 29 January
8 2007 [sic], and my understanding is that the Defence had three
9 days within which to file a response. Now, we did attempt to
10:32:53 10 file a response yesterday within time but at the time we went
to

11 file that response a decision had already been made by the
12 Chamber, which decision had considered the submissions made by
13 the Prosecution in the absence of our response.

14 PRESIDING JUDGE: Is that not a proper ground of appeal?
10:33:16 15 That's a very valid ground of appeal, so why don't you appeal?
16 We'll give you the leave to appeal and then you pursue the
17 matter.

18 JUDGE THOMPSON: Wouldn't it have been better to search
the
19 Rules and see what remedy you have when a situation like that
has
10:33:32 20 arisen, and that you feel that perhaps something has been done
21 that may well be granted as irregular, procedurally irregular.
22 The Rules are so extensive.

23 MR OGETO: That's what I wanted to address, My Lord.

24 JUDGE THOMPSON: I was wondering whether perhaps it
would
10:33:51 25 not be more appropriate to address it in writing because I'm
not
26 sure whether we are prepared here to pronounce ex cathedra,
from

27 the Bench.

28 PRESIDING JUDGE: I am not prepared to entertain any
29 arguments on this because there's a Court decision on this.

And

SCSL - TRIAL CHAMBER I

SESAY ET AL

Page 15

1 FEBRUARY 2008

OPEN SESSION

are,
to
as
1 if you are raising grounds which as valid as you think they
2 you may proceed an appeal, and I say we'll grant you the leave
3 appeal, and we can even say the hearing should be accelerated
4 it was in the recusal motion.

10:34:25 5 JUDGE THOMPSON: I would say, in fact, even though the
6 learned Presiding Judge has said we will grant you the leave
7 appeal, I'd rather say subject to possible review on the part
8 of
9 some of the Judges here, of the motion --

10:34:48 10 PRESIDING JUDGE: I'm saying this because we've been
11 generous to granting, and I don't like coming back to sitting
12 review my own decision anyway.

Lordship 12 JUDGE THOMPSON: I merely meant to just remind His

13 that I am eminently aware of Rule 73ter.

14 MR OGETO: My Honours --

10:35:03 15 JUDGE BOUTET: If I may, Mr Ogeto, on this. I don't
think

16 we have all the facts at this particular moment now you are
17 raising. I know we issued the decision yesterday or the day
18 before --

19 MR OGETO: Yes, My Lords.

10:35:14 20 JUDGE BOUTET: The day before yesterday.

21 MR OGETO: It was yesterday, My Lords.

22 JUDGE BOUTET: Anyhow, maybe in the morning yesterday.

23 MR OGETO: It was in the afternoon, My Lords.

24 JUDGE BOUTET: We signed it in the morning; maybe you
got

10:35:24 25 it in the afternoon.

26 MR OGETO: I got it in the afternoon, yes, My Lords.

27 JUDGE BOUTET: But you are talking of a motion that had
28 been filed by the Prosecution --

29 MR OGETO: Yes.

SCSL - TRIAL CHAMBER I

SESAY ET AL

Page 16

1 FEBRUARY 2008

OPEN SESSION

1 JUDGE BOUTET: -- on a matter relative to that
particular

2 motion that you yourself had filed, but I don't have enough of
3 the background to be able to discuss that [indiscernible] at
this
4 particular moment, so I will just say, maybe as was suggested,
if
10:35:40 5 you put it in writing, we will look into it and see what to
do.

6 You're talking not of your motion, you're talking of the
motion
7 that has been filed by the Prosecution almost at the same time
8 that you filed your own motion.

9 MR OGETO: And the motion by the Prosecution which was
10:35:54 10 essentially relied on by the Chamber to make a decision on my
11 motion.

12 JUDGE BOUTET: Yes.

13 MR OGETO: Yes, My Lords.

14 JUDGE THOMPSON: It's my view, too, that if there has an
10:36:05 15 irregularity, the best thing is to come in by motion and ask
us
16 to correct, if we think we went wrong, to correct what we have
17 done wrong or to grant whatever remedy. If we don't agree

18 you we don't agree with you. I think it's better to do that,
19 because I find myself, as my other brothers, in a difficulty,

in
10:36:25 20 a quandary here, to even respond in a constructive way to
21 whatever complaint you may have.

22 MR OGETO: If I didn't raise this, My Lords, you would
not
23 have known that I have a problem. And I hope I am not
24 committing --

10:36:37 25 JUDGE BOUTET: We know now --

26 MR OGETO: -- a sin by pointing out what I think is an
27 irregularity which affects the rights of my client.

it 28 JUDGE BOUTET: You, as I say, suggested, you may raise
29 in a motion and we'll look into it.

SCSL - TRIAL CHAMBER I

Page 17

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 MR OGETO: And I am grateful, My Lords.

2 JUDGE BOUTET: But we caution you: We are not to review
3 our decision that we had issued, but you know our concern. I
4 mean, the decision that has been made has to do with your
motion 10:37:03 5 not the motion filed by the Prosecution, so you have to be
able 6 to differentiate between the two.

7 MR OGETO: The problem I have My Lords --

8 JUDGE BOUTET: I know -- I know your problem.

9 MR OGETO: The problem I have is that the decision that
10:37:13 10 Your Lordships have made was essentially based, in my
11 understanding, based on the submissions made by the
Prosecution 12 in the absence of --

13 JUDGE BOUTET: Make a submission, make a motion on this
and

14 we'll look into it. If that is the case, make a motion, then
10:37:31 15 file a motion and we'll look into it.

16 MR OGETO: I am much obliged, My Lords.

17 PRESIDING JUDGE: May the witness be brought in please.
Mr

18 Jordash, this is your 27th witness. 27th, yes.

19 MR JORDASH: Yes, I think it is. And it's DIS-255. The
10:37:58 20 language is Mende.

21 [The witness entered Court]

22 PRESIDING JUDGE: Yes; can you swear the witness in,
23 please.

24 WITNESS: DIS-255 [Sworn]

10:40:15 25 [The witness answered through interpreter]

26 PRESIDING JUDGE: Yes, Mr Jordash. You may proceed,
27 please.

28 MR JORDASH: The first application I'd like to make is
an

29 application to vary the protective measures. The witness has

SCSL - TRIAL CHAMBER I

Page 18

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 indicated she'd like to give her testimony in public. I spoke
to

2 her this -- well, Mr Kneitel, our legal assistant, spoke to
her

3 last night and she confirmed that she would like to give the
4 evidence in public. I spoke to her this morning and she
10:40:49 5 reiterated that hope. In my respectful submission, the
witness
6 should be entitled to do so if she wishes. She's from
Kailahun.
7 Her evidence will concern a very specific part of the
Prosecution
8 evidence. She is not an insider and the witness is, I would
9 respectfully submit, in a good position to be able to assess
10:41:25 10 herself whether giving evidence in public is likely to cause
her
11 problems. She has concluded that it is not. And, therefore,
I'd
12 request that she be allowed to give evidence in public.
13 JUDGE BOUTET: Mr Jordash, not to make any comment on
your
14 application per se, it's only -- my concern is, and I agree
that
10:42:01 15 whatever we can do in the public forum should be done, but why
is
16 it that you felt necessary to make blanket application for all
17 these people? I mean, I have not heard anything from you this
18 morning that would indicate to me that the witness situation
is
19 different today than it was two weeks or three weeks or a
month
10:42:19 20 ago when you made application for all of these prospective
21 measures.
22 MR JORDASH: Well, we made the application in the first
23 instance, I think, in around I think February of 2006; I think
24 that's the approximate date, and witnesses that we've seen in
the
10:42:42 25 preceding years have always expressed a huge desire to give

their 26 evidence without their identities being revealed. I think
27 subjective fears were significant.

had 28 In addition to that I think that most Defence witnesses
29 heard that the Prosecution witnesses had given evidence in
large

SCSL - TRIAL CHAMBER I

Page 19

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

That, 1 part without their identities being revealed, and if I can
concerning 2 respectfully say, there had been an expectation created in the
3 wider community that this is how the Court would operate.
4 also, from what I observed, seemed to inform witnesses
10:43:29 5 their own subjective fears. In addition to that, I'd seen
suggest 6 nothing at that stage, in terms of objective evidence, to
7 that the security situation in the provinces was significantly
8 different to what it had been at the time the Prosecution had
9 made their applications and, at the time, the Prosecution
10:43:52 10 continued to maintain their position in relation to protective
11 measures all the way up to August of 2006. And so we, taking
12 into account the subjective fears and the lack of information
13 suggesting there had been a change in the objective situation,

14 felt we were obliged to make that blanket application.

10:44:19 15 But, it has come to our attention though some Defence
16 witnesses, such as this witness, and there was one previous to
17 this, this session, whose number I forget, that some of the
18 witnesses feel as though they, on the one hand, are in a place
19 where there is a great deal of support for the RUF as an

10:44:48 20 organisation and, two, I think there's a thought in some
21 witnesses' minds that what they have to say they would like
the
22 people in Sierra Leone to know about.

23 So taking their own particular knowledge, localised
24 knowledge, balanced against their desire for the truth to come
10:45:14 25 out to the public, Defence witnesses are beginning to
consider,
26 and in some cases like this witness, request that they be
allowed
27 to give evidence in public.

28 So we take it now on a witness-by-witness basis and ask
our
29 witnesses would you like to. And if I'm frank with the Court,

SCSL - TRIAL CHAMBER I

Page 20 SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 which of course I am, we in some ways try to encourage it
because

kind

2 we feel that what witnesses are saying to us indicates some

that

3 of objective change in the security situation, and we feel

for

4 the more of the Defence case in the public the better it is

10:45:58

5 the accused. So that's, I hope, is an answer to Your Honour's
6 question.

comments

7 JUDGE BOUTET: It does and I'm reassured by these

8 because I do recall vividly, and based on the objection of the

9 Prosecution at the time of applying for the closed session, in

10:46:12 10
didn't

10 your own words, in a sort of a blanket way. Although they

11 apply for all of these witnesses, as you know, it's been -- I

12 don't have any percentage in mind, but it's not all of them so

--

13
recollection,

13 but it was a bit different for the Defence, to my

coming

14 because you applied for all of them to be. And now you're

10:46:34 15
But I

15 out and saying: Well, some of them should not be anymore.

certainly

16 had to be -- to understand what was going on, and I'm

position

17 reassured by your comments that you are reassessing your

18 in this respect. Thank you.

10:46:51 20

19 JUDGE THOMPSON: Let me ask one question: Have you been
20 reading the security advisory yourself?

Vahidy,

21 MR JORDASH: No, but I do speak to the likes of Mr

22 the head of the Witness and Victim Service and --

in

23 JUDGE THOMPSON: Because it would seem as if the trend,

24 terms of the security advisory, is towards this kind of
10:47:08 25 relaxation of any kind of national tension, apart from the
26 regional situation, to make us feel that things are getting
27 better and better.

28 MR JORDASH: Yes.

29 JUDGE THOMPSON: I thought that might have been part of

SCSL - TRIAL CHAMBER I

Page 21

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 your -- which would give the objective position.

2 MR JORDASH: Well, there's certainly lots of information
3 out there. I mean, only before I came to Sierra Leone the
4 English newspaper, The Observer, put Sierra Leone as one of
the

10:47:35 5 hot spots to visit this year so, in terms of information out
6 there, suggesting an objective change in the security
situation,

7 I think there is growing information.

8 JUDGE THOMPSON: Very well. Thanks.

9 JUDGE BOUTET: A hot spot, what is the meaning of hot
spot,

10:47:51 10 in your language there? "Hot" in the sense of dangerous?

11 MR JORDASH: No, no. "Hot" in the terms of a holiday
12 destination, the beaches and so on. Maybe the Special Court.

13 PRESIDING JUDGE: Your application is granted and the

14 measures are varied. I think the screen, she is allowed to
10:48:17 15 testify in open. All we need to do now is remove the screens
16 behind her, so she can be properly viewed by the public before
17 whom she's testifying.
18 MR JORDASH: Thank you.
19 PRESIDING JUDGE: What is she saying?
10:49:06 20 THE WITNESS: I speak only Mende. I speak Mende.
21 PRESIDING JUDGE: Yes. We have been informed that you
will
22 testify in Mende. There is no problem. You will testify in
23 Mende, Madam. There is no problem.
24 THE WITNESS: Okay.
10:49:23 25 PRESIDING JUDGE: And those of us who don't ever speak
nor
26 understand Mende would take the benefit of the translation of
27 what you will be saying, so we'll follow everything that you
will
28 be saying in Mende through a translator or through an
29 interpreter.

SCSL - TRIAL CHAMBER I

Page 22

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 THE WITNESS: Okay, I have it. Can I start?

2 PRESIDING JUDGE: No, don't start yet. Your lawyer will

3 start you off.

4 THE WITNESS: Okay.

10:50:16 5 EXAMINED BY MR JORDASH:

6 MR JORDASH:

7 Q. Madam Witness.

8 A. Yes.

9 Q. I know you're nervous, but do just relax. There's no

10:50:32 10 problem; okay.

11 A. Okay.

12 Q. I'm going to ask you some questions.

13 A. Okay.

14 Q. They will be translated to you, and you should answer
the

10:50:50 15 questions and listen carefully to the question.

16 A. Okay.

17 Q. If you don't understand a question, ask me to repeat it.

18 A. Okay.

19 Q. Okay?

10:51:13 20 A. Okay. I've got you.

21 Q. Can you give your full name, please, to the Court?

22 A. Yes.

23 Q. What is it?

24 A. I am xxxxxxxx

10:51:40 25 Q. Do you know if that's xxxxxx If you don't know,

26 that's fine.

27 A. Me?

28 Q. Yes.

29 A. I don't know.

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 Q. What's your second name, please?

2 A. xxxxxxxxx

3 Q. Are you able to tell the Court when you were born?

4 A. No, I don't know the time. I don't know the date of my
10:52:34 5 birth. I can't remember.

6 Q. Do you know approximately how old you are?

7 A. Yes.

8 Q. How old are you, approximately?

9 A. I think I'm 40 years.

10:52:57 10 Q. Did you ever go to school?

11 A. No, I did not go to school.

12 Q. Are you married, Madam Witness?

13 A. Yes.

14 Q. And can you tell the Court what your husband's name is,
the

10:53:35 15 one you're married to today?

16 A. Yes.

17 Q. Who is it?

18 A. He's called xxxxxxxx.

19 PRESIDING JUDGE: xxxxxxxx what?

10:53:59 20 THE WITNESS: xxxxxxxxxxxx

21 MR JORDASH:

you, 22 Q. Now, I want to take you back to before the war. Did
23 before the war, know a man called Aruna Fatoma?
24 A. Yes.
10:54:51 25 Q. And did you -- do you know when you met him? How many
days
26 or weeks or months before the war began?
27 A. No.
28 Q. Do you recall where you met Aruna Fatoma for the first
29 time?

SCSL - TRIAL CHAMBER I

Page 24 SESAY ET AL
1 FEBRUARY 2008 OPEN SESSION

1 A. Yes.
2 Q. Where was it?
3 A. xxxxx
Town.
4 Q. Just so that we're clear, was this before the war or
during
10:55:39 5 the war?
6 A. Not before the war; a little time before the war.
7 Q. Okay, let's rewind a little. Where were you living
before
8 the war?
9 A. I was in Giema when the war started.
10:56:07 10 Q. Is that your home town?

11 A. Giema?

12 Q. Yes.

13 A. Yes.

14 Q. So you grew up in Giema, did you?

10:56:24 15 A. Yes.

you 16 Q. And so you were in Giema when the war started, and did

17 meet Aruna Fatoma?

18 A. Yes.

19 Q. And you met him in Giema. What was he doing in Giema,

when 20 you met him?

21 A. When we met each other?

22 Q. Yes.

23 A. He was a town commander.

24 Q. And at that time were you working? Did you have a job?

10:57:21 25 A. Like, which kind of job?

26 Q. Well, were you doing anything? Any work of any kind at

27 that time?

28 A. Oh, yes, I was a farmer. I used to farm.

29 Q. Are you able to say how long it was after the war

started

SCSL - TRIAL CHAMBER I

1 that you met Aruna Fatoma?

Aruna 2 PRESIDING JUDGE: I thought she had said that she met

3 Fatoma slightly before the war; I don't know.

4 MR JORDASH: Let me try and get some clarification. I

10:58:09 5 think there is a bit of confusion.

6 Q. Madam Witness.

7 A. Yes.

8 Q. You were in Giema before the war and you were also there

9 when the war started?

10:58:30 10 A. Yes.

11 Q. At what stage did you meet Aruna Fatoma? Was it before

the 12 war or after the war started?

13 A. The war had just started; that was the time.

14 Q. Do you know if there were any Gios in Kailahun at the

time 15 you met Aruna Fatoma?

16 A. No.

17 Q. Do you know if the Gios had come to Kailahun and had

then 18 gone back to their home at the time you met Aruna Fatoma?

19 A. No.

10:59:29 20 Q. Did you experience the Gios where you were in Giema?

21 A. When I was in Giema?

22 Q. Yes. Did you meet any Gios?

23 A. I did not meet any Gio.

24 Q. Do you know -- are you able to estimate how many years

it 11:00:08 25 was after the war started when you met Aruna Fatoma?

26 PRESIDING JUDGE: What's your question, Mr Jordash?

27 MR JORDASH: How many years after the war started was it
28 when the witness met Aruna Fatoma.

29 PRESIDING JUDGE: We're coming back to the same
question.

SCSL - TRIAL CHAMBER I

Page 26

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 MR JORDASH: I'm just trying to --

2 PRESIDING JUDGE: You earlier -- sorry. Remove her
3 earphones; remove her earphones please. I just want to make a
4 comment, you know, before she continues.

11:00:50 5 THE WITNESS: I have removed it.

6 PRESIDING JUDGE: From what I got in the notes, she said
7 she met Aruna Fatoma slightly before the war. When you put
the
8 second question, she said she met Aruna Fatoma just when the
war
9 started.

11:01:09 10 MR JORDASH: Yes.

11 PRESIDING JUDGE: Now we are onto a third stage, you
know,
12 of the question. How many years after the war started did she
13 meet Aruna Fatoma.

14 MR JORDASH: Well, the way I had taken it was that the
11:01:25 15 first question she hadn't either received the question clearly
or
16 hadn't understood it. The second question had been more
clearly
17 put and she'd answered it. But I can see the difficulty and
18 I'll -- the third time lucky, maybe.

19 PRESIDING JUDGE: Yes. Let her put back her earphones
and
11:01:42 20 then you can -- you may proceed please.

21 MR JORDASH:

22 Q. Madam Witness.

23 A. Yes.

24 Q. When I asked a question concerning when you'd met Aruna
11:02:24 25 Fatoma, your answer was not clear, so I'm going to ask it
again.

26 A. Ask me.

27 Q. Did you meet Aruna Fatoma before the war started or
after
28 the war started?

29 A. It was on the day the war started; that was the time we

SCSL - TRIAL CHAMBER I

Page 27

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 met.

2 MR JORDASH: Can I just take instructions, please?

3 Mr Kallon, I think, is a Mende speaker, and there's been
4 concerns raised about the translation and the translation that
11:03:54 5 the witness is receiving as opposed to the translation that
the
6 English speaker like me is receiving. As difficult as it is
to
7 raise, I feel as though I have to raise it, given the
8 difficulties that this witness appears to be having with the
9 question. So I raise the point. And I don't know who's
11:04:28 10 translating in the booth but I do know that the female
translator
11 translating to me is excellent, and the suggestion has been
that
12 that translator translate to the witness, so as she benefits
from
13 that excellence. Sorry to --

14 JUDGE BOUTET: Yeah, but translation does not
necessarily
11:04:57 15 work this way. I mean, she may be excellent from Mende to
16 English but not necessarily from English to Mende. It's not a
17 two-way street.

18 MR JORDASH: I worked with the female translator, I
19 recognise her voice, and she's my first choice always
translating
11:05:17 20 into Mende and back. But I'm sorry to raise it. I know it's
not
21 nice to have to critique anyone, but it's our case, and the
22 witness is entitled to interpretation of -- the accused is
23 entitled to the best evidence on the record.

24 JUDGE THOMPSON: But isn't the proficiency in
translation a
11:05:43 25 matter for the head of the translation unit? Of course, one
26 would recognise that there are degrees of proficiency, but

27 wouldn't it be a matter really which they will determine also
28 having regard to other considerations.

29 I mean, I'm not in fact saying that you are foreclosed
from

SCSL - TRIAL CHAMBER I

SESAY ET AL

Page 28

1 FEBRUARY 2008

OPEN SESSION

1 making any observations as to the accuracy or otherwise of the
2 translation, but the issue of proficiency should really be for
3 them and for them to determine.

4 MR JORDASH: Well, I -- I know from my experiences that
11:06:20 5 there is a difference in proficiency between some of the
6 translators. I also know that that difference can make a huge
7 difference.

8 JUDGE THOMPSON: Yes.

9 MR JORDASH: I also know that, in my experience with
female

11:06:39 10 witnesses, they prefer often female translators. And so I
would

11 also -- whilst I accept completely Your Honour's comments -- I
12 would respectfully ask the Court on a different basis to have
the

13 female translator called Hawa translate directly to this lady,
14 who I know is particularly nervous, and more nervous than I've

11:07:09 15 seen most.

a 16 JUDGE THOMPSON: And you say that the nervousness may be
17 function of this lack of gender parity, or something?

18 MR JORDASH: It may well -- it certainly would help, I
19 think, in my view, knowing this particular witness, to have a
11:07:23 20 female interpreter irrespective of proficiency, so that's my -
-

that 21 JUDGE BOUTET: But, I mean, if what you're claiming is
22 one of the interpreters does not provide accurate translation
as 23 such, as you know, the official record of the Court is in
24 English, so if what you are suggesting is to make the change

but 11:07:47 25 we are the record that is inaccurate because of that change
what
26 are we gaining?

27 PRESIDING JUDGE: And if I may ask: Is it --

28 JUDGE BOUTET: I'm not objecting to you, I'm just making
29 this is an observation. I mean, yes, maybe the witness will

SCSL - TRIAL CHAMBER I

Page 29

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 understand better, but we may not understand, and therefore we

2 may have a skewed transcript or record. So that's -- I mean -

3 MR JORDASH: I know. I'm completely with Your Honour.

4 PRESIDING JUDGE: Is -- I mean, which translation,
really?

11:08:21 5 What part of her testimony is questioned, you know, in terms
of

6 the translation that has been provided? Is it what she has
said

7 in its entirety or just a portion of it?

8 MR JORDASH: Well --

9 PRESIDING JUDGE: Because this is important. I mean,
we've

11:08:39 10 been listening to this witness, and she's on record as having
11 provided certain responses, you know, to questions that have
been

12 put. I mean, is it -- well, you mentioned Mr Kallon. Is Mr
13 Kallon questioning the entire responses she's given to
questions

14 that have been put to her?

11:09:01 15 MR JORDASH: Well, I think --

16 PRESIDING JUDGE: I don't know.

17 MR JORDASH: -- I think -- well, I'm not sure, but I do
18 know, I think the general observation is that the translation
has

19 not been coming across clearly. So rather than it pointing to
a

11:09:22 20 particular sentence which has been misinterpreted, it's the
lack

21 of clarity in the translation.

22 And I've just received a note from -- I recognise this
as I

23 think Mr Gbao's writing -- "The word 'met' in Mende means
'love,'

24 so tell your lawyer that the literal meaning of 'met' of the
11:09:53 25 typical Mende word is 'love.' Therefore the word 'met' might
26 have confused the issue." So, I think this is a good example
27 that if words are -- single word --

28 PRESIDING JUDGE: Is she now trying -- is it that the
29 evidence should be that the first day she loved Aruna Fatoma
was

SCSL - TRIAL CHAMBER I

Page 30

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 on the day, the very day when the war started?

2 MR JORDASH: Well, we don't know.

3 PRESIDING JUDGE: Those are questions which have to be
4 asked.

11:10:21 5 MR JORDASH: Well, the questions which have to be asked,
6 with translators who ask them properly, and frankly, to have
any
7 inferences drawn against a witness when the translation is not
in
8 a general sense or in relation to specific sentences not up to
9 what it should be, it would be unfortunate for the process and
11:10:50 10 unfortunate for the accused.

11 And whilst I will not win any friends for saying it, in
my

12 view, some of the Mende translators are not proficient enough
to
13 be able to ask questions clearly and translate them clearly.
And
14 I know that is going to make me unpopular with the translation
11:11:18 15 booth but my job --

16 PRESIDING JUDGE: It's not a question of unpopularity,
Mr
17 Jordash. I mean, if -- it's your professional duty to point
it
18 out if a particular mode of translation is affecting the
rights
19 of your client. It is important. I mean, you can't shove it
11:11:36 20 under the carpet because you want to please anybody.

21 MR JORDASH: No, exactly. And we, and my team has
pointed
22 it out to the translation unit on several occasions, and I am
23 sure it affects witness's testimony.

24 JUDGE THOMPSON: And they are trained to take the
11:11:58 25 constructive criticisms in good part. It's part of their
26 training, so I don't see the need to be that apologetic about
it,
27 because they know the difficulties of language, particularly
when
28 we are in a kind of multicultural linguistic sort of --

29 MR JORDASH: Yes. If I may just address His Honour
Judge

SCSL - TRIAL CHAMBER I

1 Boutet's comments: I think, why I suggest it could be done in
2 this way, that the female interpreter Hawa translate to the
3 witness is that -- I'm not suggesting that -- well, firstly,
this
4 witness's testimony is not complicated. So the -- what she
will
11:12:42 5 say can be interpreted relatively easily, and I'm not
suggesting
6 that the Mende interpreters cannot convey this witness's
7 testimony into English sufficient to convey it accurately.
8 Now whether that's the case with more complicated
issues,
9 it's not for me perhaps to say, but I'm confident that the
Mende
11:13:10 10 interpreters, whoever they may be in the booth, can
interpreter
11 from Mende to English sufficiently that the record reflects
the
12 substance and thrust and tenor of the evidence with this
witness.
13 So my concern is really getting the question as clearly
conveyed
14 to the witness and I'm confident Hawa can do that. So I leave
it
11:13:34 15 in Your Honours' hands, but I would request that Hawa be
allowed
16 to interpreter to the witness.
17 PRESIDING JUDGE: Again, that puts us in some difficulty
as
18 to the choice, you know. Will the choice of the interpreters
and
19 the translators now become a matter to be dictated upon by

11:13:57 20 learned counsel or by the translation booth itself, you know,
21 because we have other remedies, if we see that a translator is
22 not up to the task.

you
23 I mean, if the only quarrel is with when the witness,
24 know, met or first met or first loved Aruna Fatoma, that does
not

11:14:26 25 appear to me to be very, very fundamental in terms of the
26 evidence she's given so far. Or is it -- I come back to my
27 question: Is it the entirety of the evidence that she has
given
28 that is being challenged? Is that what is put to question in
29 terms of the inaccuracies that we are attributing to the

SCSL - TRIAL CHAMBER I

Page 32

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 translation? I don't know.
2 MR JORDASH: Well, to be honest, I can only answer in
this
3 way: One, I've been concerned with Mende interpreters; two,
the
4 complaint that's been put to me from the accused was a general
11:15:04 5 one and generally the accused, if it's more specific to a
6 specific sentence, would convey that; and three, perhaps the
best
7 way to ask and find the answer to this is to ask the witness

8 whether the translation is coming across very clearly to her.

9 But I now -- now the cat is out of the bag, I would

11:15:31 10 reiterate that, in my experience with some of the Mende
11 interpreters, the translation is difficult, as it's been of a
12 general sense. The sentence for Mende --

13 PRESIDING JUDGE: Is what we are saying being translated
to
14 her?

11:15:51 15 MR JORDASH: To who, sorry?

16 PRESIDING JUDGE: To the witness.

17 JUDGE BOUTET: What we are saying now.

18 PRESIDING JUDGE: What we are saying now. What we have
19 been saying?

11:15:59 20 MR JORDASH: About the translation?

21 PRESIDING JUDGE: The booth. Can you provide us a
reply?

22 Are you translating?

23 THE INTERPRETER: No.

24 PRESIDING JUDGE: You are not translating what is being
11:16:08 25 said to her.

26 THE INTERPRETER: No.

27 PRESIDING JUDGE: You are not translating what is being
28 said to her?

29 THE INTERPRETER: No, we are not translating.

1 PRESIDING JUDGE: Right. Okay. That's all right.

2 MR JORDASH: So --

3 JUDGE THOMPSON: Mr Jordash, treating this incident as
an
4 isolated one, perhaps some kind of viable solution can be
found.

11:17:03 5 But treating it in a sort of systemic context it, speaking for
position 6 myself, it does put the Bench in an extremely invidious
7 to want to come in with some kind of policy directives on this
and 8 matter, having regard to the organic structure of the Court,

9 the translation unit is supposed to be able to provide the
11:17:30 10 services at the level that is highly desirable and meets the
difficulty 11 expectations of the interests of justice. This is my

I 12 really. And then we're sympathetic to this kind of thing and
13 know, of course, my background too as a teacher, that there
are 14 these difficulties in language and problem, but that solutions

11:17:54 15 that are found to individual cases be a little more structured
to 16 dealing with the problem as it is then for us, the Judges, to
17 come and play some invidious role here in directing how things
18 should be done generally.

19 MR JORDASH: I'm not asking Your Honours to intervene to
11:18:17 20 that extent, just that to intervene in this particular case.

I

has

21 think in the past the difficulties have been dealt with behind
22 the scenes, through my team requesting other interpreters and
23 been dealt with through, I think discussions between the
24 stenographers, the translators and the lawyers.

11:18:43 25
witness

25 In this instance I would ask, given this particular
26 and her nervousness, that Your Honours intervene in this
27 instance.

28 JUDGE BOUTET: But there appears to have been a change
29 already in the translators' booth because the last voice we've

SCSL - TRIAL CHAMBER I

Page 34

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 heard was a male voice, not a female voice, responding to our
2 question so --

11:19:20

3 MR JORDASH: Well, I think responding -- well, I don't
4 know. I don't know who's translating. I know Hawa is
5 translating to me, but I don't know who's translating to the
6 non-English speakers. So I don't know if --

her

7 PRESIDING JUDGE: Maybe she's back to where you wanted
8 to be. Who knows: Can the translation booth confirm that?

9 THE INTERPRETER: Yes.

11:19:41 10

10 PRESIDING JUDGE: Well --

11 THE INTERPRETER: That's been sorted out.

12 PRESIDING JUDGE: It has been sorted out, even before
the

13 Court took a stand on it.

14 THE INTERPRETER: Yes. Yes, Your Honour.

11:19:52 15 PRESIDING JUDGE: And you think you are right in the
face

16 of the controversy, where the Court has not taken a stand on
it,

17 you proceed to doing what has not been authorised by the
Court?

18 Anyway, let's get along. But I would like to -- I hope that
the

19 contests, you know, or rather, what is contested in terms of
the

11:20:21 20 translation is not such as has fundamentally affected the
21 evidence that the witness has given so far. I don't know.

22 MR JORDASH: And, Your Honours, if I may start again on
the

23 issue of when and hopefully we can --

24 PRESIDING JUDGE: Okay.

11:20:38 25 JUDGE BOUTET: Where it appears to be not in dispute,
when?

26 MR JORDASH: Yes.

27 PRESIDING JUDGE: Yes, when, because we have three
28 responses as to when they met; slightly before the war?

29 MR JORDASH: Or fell in love.

1 PRESIDING JUDGE: Or fell in love, yes.

2 MR JORDASH:

3 Q. Madam Witness.

4 A. Uh-huh.

11:21:07 5 Q. If the question does not come across clearly to you you
6 must tell us.

7 A. Go over that one. Which question did you ask?

8 Q. Right. But what I'm saying before we start again is if
the
9 question does not come across clearly to you, please ask me to

11:21:32 10 repeat it.

11 A. Yes.

12 Q. Okay. So, sorry to ask the question again, but it needs
to
13 be cleared up.

14 A. Okay.

11:21:51 15 Q. Did you meet -- when was the first time you saw and
spoke

16 to Aruna Fatoma? Was it before the war or after the war had
17 begun?

18 A. The war had already started that same year.

19 Q. And when you first saw and spoke to him, were you in
Giema?

11:22:27 20 A. I was in Giema.

21 Q. And was Aruna Fatoma already the town commander when you
22 first saw and --

23 A. Yes.

24 Q. And were you doing your farming around that time?

11:22:50 25 A. Yes.

met 26 Q. Did you become friendly with Aruna Fatoma after you'd

27 him?

28 A. Yes.

29 Q. And what kind of relationship did you have with Aruna

SCSL - TRIAL CHAMBER I

Page 36

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 Fatoma after you'd first seen and spoken to him?

2 A. We are moving together as friends.

that? 3 Q. When you say "moving together," what do you mean by

4 A. What I mean by that, what I mean by that, we were in the

11:24:06 5 same town. We were working together, finding food together.

6 Q. How long did you move together as friends?

7 A. I think it was up to six months; full six months.

8 Q. Did there come a time when the relationship changed from

9 friends?

11:24:53 10 A. Yes.

11 Q. Can you explain to the Court how that happened?

12 A. Ask again.

13 Q. Did something make the relationship change from being
14 friends?
11:25:19 15 A. Yes.
16 Q. What was it that made the relationship change?
17 A. He abandoned me.
18 Q. Okay. Let's go back a bit to that six months.
19 A. Let us go back a bit?
11:25:51 20 Q. Yes.
21 A. Within those six months we were together, we were in the
22 same town, we were together.
23 Q. I want to try to understand what you mean as you were
24 together. Were you living together or living separately?
11:26:27 25 A. I was living my own house.
26 Q. Did Aruna Fatoma, when you met him or after you met him,
27 ask you or propose anything?
28 A. After we have met?
29 Q. Yes. I'm just trying to understand the type of

SCSL - TRIAL CHAMBER I

Page 37

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 relationship you had with him in that six months. I don't --
2 A. The type of relationship?
3 Q. Yes.

4 A. He asked me to xxxxxxxx to him.

11:27:27 5 Q. And what did you say?

6 A. Yes. I told him that we should be looking ourselves for
7 now. After the war, we would get xxxxxx.

8 Q. So when you said "yes" to his proposal for xxxxxxxx, what
9 did that mean to you about your relationship with him?

11:28:03 10 A. Concerning our relationship?

11 Q. Yes. He asked you to get xxxxxx and said that --

12 A. Yes, yes.

13 Q. And you said -- what did you say to him specifically in
14 relation to the request? Were you happy about the request?

11:28:38 15 A. At first I was happy about it.

16 Q. Why were you happy about it?

17 A. At that particular time, I was xxxxxxxxxxxxxx.

18 Q. Explain a bit more. You were happy because you were
19 xxxxxxxxxxxx and what did that mean?

11:29:15 20 A. It means men were looking for food for their wives.

21 Q. Go on.

22 A. If a woman was without a husband, you could not get food
to
23 eat.

24 Q. So did you agree to Aruna Fatoma's proposal?

11:29:53 25 A. Yes. At first I said "yes."

26 Q. So were you together after that time, after you'd said
27 "yes"?

28 A. After I have said "yes," yes.

29 Q. Were you together as xxxxxxxxxxxx after you'd said "yes"?

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 A. Yes.

2 Q. And after you'd said "yes" and you were together, did he
3 carry out any responsibilities towards you?

4 A. Apart from getting food for us?

11:31:00 5 Q. So he used to get food for you; did he do anything else?

6 A. No, we were finding food for ourselves, farming
together.

7 Q. Did you consider him your xxxxxx

8 A. Go over that one.

9 Q. Well, after he had asked you to be his -- to get
married,

11:31:40 10 and after you'd said "yes" and he was helping you to get food,

11 you were moving together, did you consider him your xxxxxxxx
at

12 that time?

13 A. At that time, yes. I considered him as my husband.

14 Q. At that time do you know how he considered you?

11:32:08 15 A. At that time?

16 Q. At that time.

17 A. He himself considered me as xxxxxxxxx

18 Q. I know this is a personal question, but please answer it:

19 Did you consider anyone else at that time your husband?

11:32:42 20 THE INTERPRETER: Your learned, can you take the
question
21 please?
22 MR JORDASH:
23 Q. You considered him your xxxxxxxx and he considered you
his
24 xxxxxxx Do you know at that time whether you considered anyone
--
11:33:01 25 A. Yes, at that moment I considered him as xxxxxxxx. After
26 the war we would have got xxxxxxx.
27 Q. Okay. Let's move on then. So how long was it that --
how
28 long was it that he considered you his xxxx
29
30 and you considered

SCSL - TRIAL CHAMBER I

Page 39

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 A. Within that time, it was up to four months we were
2 together, and I considered him to be my xxxxxxx because I was a
3 xxxxxxxxx when the war came.
4 Q. During that time was he a good xxxxxxx from your
11:33:55 5 perspective?
6 A. Very well.
7 Q. Did you get to know his family or -- and his friends
during
8 that time?

9 A. At that time his mother was alive; he was living in
Baima.

11:34:35 10 Q. Did you get to know his mother?

11 A. Yes.

12 Q. What was her name?

13 A. Her name is Mesi.

14 Q. Mesi?

11:34:52 15 A. Yes.

16 Q. Now, what -- did something happen to bring about a
change

17 in your xxxxxxxxp with him?

18 A. Yes.

19 Q. What happened?

11:35:18 20 A. He xxxxxxxx me.

21 Q. Do you know WHY he xxxxxxxx you?

22 A. He took another xxxxxx.

23 Q. Do you know what her name was?

24 A. Her name is Hawa.

11:35:51 25 Q. How did you find out about him taking Hawa?

26 A. How I came to know about it?

27 Q. Yes.

28 A. When -- when he xxxxxx me he went and took another
xxxxxx,

29 and even his parents told me.

SCSL - TRIAL CHAMBER I

SESAY ET AL

1 Q. Did you know Hawa before he took her as his xxxx

2 A. I did not know her.

3 Q. So did you continue moving with him at all, or did that
4 stop?

11:36:51 5 A. It stopped but --

6 Q. It stopped but?

7 A. I took another xxxxx.

8 Q. And who was that that you took as another husband?

9 A. His name is xxxxxxxx

11:37:47 10 Q. Now, I will ask you about what happened then in a
moment,

11 but just before we leave the subject of xxxxxxxxxx --

12 A. Yes, yes.

13 Q. -- before we leave the subject of your xxxxxxxxxx
14 relationship with Aruna Fatoma --

11:38:06 15 A. Yes.

16 Q. -- when you were his wife, did you help him with
anything?

17 A. Help him in what way?

18 Q. Well, did you have any duties or responsibilities as his

19 xxxxxx

11:38:28 20 A. Yes.

21 Q. Do you mind telling us what they were?

22 A. Yes.

23 Q. What were they?

24 A. If you are -- if you are a wife you have to prepare food
11:38:54 25 for your husband; you have to wash his clothes; those are some
of

26 the responsibilities.

27 Q. Did Aruna Fatoma have a farm?

28 A. When we were xxxx xxxxxx he had no farm.

29 MR JORDASH: I notice the time, Your Honour. I don't
know

SCSL - TRIAL CHAMBER I

Page 41

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 if you want me to continue?

2 PRESIDING JUDGE: The Chamber will recess, please. We
will
3 rise.

4 [Break taken at 11.40 a.m.]

12:18:17 5 [RUF1FEB08B - LK]

6 [Upon resuming at 12.08 p.m.]

7 PRESIDING JUDGE: Yes, Mr Jordash.

8 MR JORDASH: Thank you.

9 PRESIDING JUDGE: You may continue please.

12:18:24 10 MR JORDASH:

11 Q. After -- let me start that again. How long after Aruna
12 Fatoma xxxxxx you and took a xxxxxx was it before you met
13 and took up with --

14 PRESIDING JUDGE: I just wanted to remark that that
screen

12:18:46 15 there, that blind there is not fully rolled up for the witness
to
16 be clearly seen. Normally it is better rolled up, you know.
17 MR JORDASH: It's an odd place to have a curtain given
18 where the witness is sitting; it obscures the witness.
19 PRESIDING JUDGE: That's right. That's what I am
referring
12:19:11 20 to, yes.
21 MR JORDASH: I think they are new curtains.
22 PRESIDING JUDGE: Yes, they are.
23 JUDGE BOUTET: I think Mr George made them at home.
24 PRESIDING JUDGE: Yes, indeed.
12:19:21 25 JUDGE BOUTET: I have a poor sense of observation, I had
26 not noted they are new.
27 MR JORDASH: Mr George has been boasting about them all
28 around the Court.
29 JUDGE BOUTET: He didn't come our way. That's fine.

SCSL - TRIAL CHAMBER I

Page 42

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 PRESIDING JUDGE: I didn't - I hope he didn't win the
2 contract to provide them. [Off the record]
3 Off the record, please.
4 MR JORDASH: I think we are stuck with that situation.

12:20:20 5 PRESIDING JUDGE: Yes, please, let's proceed. They will
6 take care of that later.
7 MR JORDASH:
8 Q. xxxxx Witness, let's pick up where we left off. You
told
9 us that Aruna Fatoma had xxxxxxxx you and took up with a new
12:20:38 10 xxxxxxxx?
11 A. Yes.
12 Q. And how long after that was it when you took up with
Morie
13 Bockarie Foyah?
14 A. It was up to four months.
12:20:59 15 Q. And during that time what had your xxxxxxxx been like
16 with xxxxxxxx?
17 A. At that time? I have told you, at that time he had
18 xxxxxxxx me.
19 Q. But did you still see him in Giema?
12:21:32 20 A. Yes, I used to see him.
21 Q. Now, when you took up with xxxxxxxxxxxx, was there
22 a time when Aruna Fatoma reacted to that?
23 A. Yes.
24 Q. What happened?
12:21:57 25 A. He went and reported to the office that we should be
26 stripped naked and beaten.
27 Q. Sorry, xxxxxxxx reported to which office?
28 A. MP.
29 Q. Did xxxxxxxx say why you should be reported to the

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 office and stripped naked and beaten?

2 A. Yes.

3 Q. What was the reason given?

4 A. He said I was xxxxxx and that I have taken another

12:22:50 5 xxxxxx

6 Q. And was there a law against this?

if

7 A. That one, I don't know whether there was any law, that

8 you xxxxxx, and she takes another husband, is not lawful.

9 I don't know anything about that.

12:23:28 10 Q. And After Aruna Fatoma had reported that this should

11 happen, did it happen?

12 A. Yes, it did happen.

13 Q. Could you explain what happened?

14 A. When he reported?

12:23:52 15 Q. Yes.

16 A. We were flogged; my husband and myself, we were flogged.

17 Q. Where were you flogged?

18 A. At Giema.

19 Q. Whereabouts in Giema? Was this inside or outside?

12:24:18 20 A. In the heart of -- in the playground, in the heart of

21 Giema.

22 Q. In the playground; is that what you said?

23 A. Yes.

24 Q. So was this outside? Was this in public, outside?

12:24:50 25 A. It was in public. There were a lot of people; there
were

26 civilians.

27 Q. And he'd reported that you should be stripped naked; did

28 this happen?

29 A. We were stripped naked and flogged.

SCSL - TRIAL CHAMBER I

Page 44

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 Q. Did any of your relatives respond and complain?

2 A. I had a relative, but he was not around then. He could
not

3 complain because that was wartime.

4 Q. Did anyone complain about the actions of xxxxxxxx?

12:25:45 5 A. Nobody volunteered, complained, because they were afraid
of

6 him.

7 Q. Why were they afraid of xxxxxxxxxx

8 A. The reason why they were afraid of him?

9 Q. Yes.

12:26:11 10 A. Because he was a town commander and he was moving with
the

11 soldiers.

12 Q. Now, after you and xxxxxxxx had been flogged,
13 did you remain in Giema?
14 A. Yes, I was there for some time.
12:26:44 15 Q. Then did you stay or did you leave at any point?
16 A. I was there for one week; both of us.
17 Q. Did you leave to go somewhere after one week?
18 A. Yes.
19 Q. Where did you go?
12:27:07 20 A. We went to xxxxxxxx.
21 Q. Who's "we"?
22 A. We went; xxxxxxxx and myself.
23 Q. Why did you leave your home town to go to xxxxxxxx?
24 A. I was afraid of him.
12:27:35 25 Q. Afraid of who?
26 A. xxxxxxxx
27 Q. And how long did you stay in xxxxxxxx
28 A. In xxxxxxxx we spent about three years there.
29 Q. And did you have any children with xxxxxxxxxx

SCSL - TRIAL CHAMBER I

Page 45

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 after leaving Giema?
2 A. Yes.
3 Q. How many?

4 A. There are four of them.

12:28:59 5 Q. And did you get xxxxxxin any ceremony to xxxxxx
6 xxxxx at any time?

7 A. xxxxxxxxxxxxxxxx
8 Q. Yes.

9 A. When we returned, the parents met and arranged it.

12:29:35 10 PRESIDING JUDGE: When they returned where? From
Liberia?

11 MR JORDASH:

12 Q. Did you get xxxx when you returned from xxxxx

13 A. When we returned from Liberia; when we returned from
14 Liberia to Giema.

12:29:58 15 Q. Do you remember the year when you returned to Giema?

16 A. The year when disarmament took place. I cannot recall
the
17 month. That was the year xxxxxxxxxxx
18 Q. Thank you. And let me ask you a few more questions
about

19 xxxxxxxxxxxxxxxx.

12:30:31 20 A. Ask me; I will answer the one I know.

21 Q. Have you ever heard of Aruna Fatoma having a brother who
22 was killed by the RUF? Have you ever heard of that?

23 A. No. No. No. I don't -- I have not heard of that, and
I
24 don't know.

12:30:58 25 Q. Was Fatoma Aruna, from what you saw, a popular town
26 commander with the civilians?

27 A. Fatoma?

28 Q. Yes.

29 A. Civilians were not too happy about him, but they were

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 obliged to.

2 Q. Why were they not happy about him?

3 A. Any fighter, everybody was afraid of any fighter.

4 Q. Was he a fighter or a civilian?

12:32:03 5
differentiate

A. When I met him as a town commander, I cannot

6 his position as town commander, as fighter or civilian; that I

7 don't know.

8
Sesay?

Q. Okay. When you were in Giema, did you ever see Issa

9 A. Me, at that time I was at Giema?

12:32:39 10
after

Q. Yeah. At the time you were at Giema before leaving

11 being flogged and going to Liberia, in the time you were in

12 Giema?

13 A. That is the time you are asking me about?

14 Q. Let me just ask it again so we are clear.

12:33:03 15

A. Yes.

16
Liberia with

Q. From the time the war started, to the time you went to

17 XXXXXXXXXXXX, during those -- that time, did

18 you ever see Issa Sesay?

19 A. I have never seen him. I don't know him. I cannot even

--

12:33:26 20 I have never ever seen him by his picture. I cannot identify
him

21 even by his picture.

22 Q. So you wouldn't even be able to identify him today? You
23 don't know him?

24 A. No. Even if I see him, I would not be able to recognise
12:33:43 25 him. Every since I was born I have never seen him, not even
his

26 picture.

27 Q. Thank you. And just so that we are clear: Before --
had

28 you ever heard about him before you left to go to Liberia with

29 xxxxxx

SCSL - TRIAL CHAMBER I

SESAY ET AL

Page 47

1 FEBRUARY 2008

OPEN SESSION

1 A. Even when -- even when before the war arrive, came, I
have

2 not even heard of his name; I have not even heard about him.

3 Q. Did you hear of his name before you left Giema to go to
4 Liberia?

12:34:21 5 A. Not even about his name before I left for xxxxxx.

6 Q. Thank you. Let me just ask you about some -- to have a
7 look at some photographs. I forget the exhibit number, I do
8 apologise.

9 PRESIDING JUDGE: 281A and B.

12:35:13 10 MR JORDASH: Your Honour, thank you.

11 Q. Just have a look at the photographs; there is a second
one

12 behind the photograph.

13 A. There are two of them.

14 Q. Yes. Do you recognise?

12:35:36 15 A. I have seen both of them.

16 Q. And just so we are clear: Do you recognise the person
in

17 the photograph?

18 A. The picture that they have given to me?

19 Q. Yes. Who is it?

12:35:54 20 A. Yes, this is my picture.

21 Q. Right. Do you remember when the photograph was taken?

22 A. This picture?

23 Q. Yes.

24 A. I cannot remember.

12:36:08 25 Q. Fair enough.

26 JUDGE BOUTET: This year, five years ago? Ten years
ago?

27 MR JORDASH:

28 Q. How long have you been in Freetown on this trip, madam?

29 A. It is about two or three weeks now that we have started.

SCSL - TRIAL CHAMBER I

time? 1 Q. And did anyone come to take your picture during that

2 A. Yes.

3 Q. Can you remember what his name was?

4 A. I don't know his name.

12:37:05 5 Q. Okay. Let me ask you about some other people.

6 A. Okay.

7 Q. Do you know a man called xxxxxxxx?

8 A. Yes.

9 Q. How do you know xxxxxxxx?

12:37:39 10 A. xxxxxx is my brother.

11 Q. When you say "brother," what's his relationship to you?

12 A. His father is -- my father is his uncle.

13 Q. Do you know where xxxxxx lives presently?

14 A. Today?

12:38:23 15 Q. Yes. His village.

16 A. Yes.

17 Q. What is the village?

18 A. Borbu Gao.

19 Q. Thank you.

12:38:42 20 A. Okay.

21 Q. Do you know someone called xxxxxxxx

22 A. Yes.

23 Q. How do you know him?

24 A. xxxxxxxx is my sibling.

12:39:01 25 Q. What does that mean, to be your sibling?

26 A. His father is my uncle; we are all siblings.

27 Q. Do you know someone called xxxxxx
28 A. Yes, I know him.
29 Q. And how do you know him?

SCSL - TRIAL CHAMBER I

Page 49

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 A. xxxxxxxx is my sibling also.
2 Q. What's his relationship to you?
3 A. He also is my father's nephew.
4 Q. Do you know someone called xxxxxxxx?
12:40:08 5 A. Yes, I know her.
6 Q. How do you know her?
7 A. I know her. His -- her father and my father are
brothers,
8 so we are siblings.
9 Q. Do you know where xxxxxx lives presently?
12:40:40 10 A. Yes.
11 Q. Where is that?
12 A. She is in Giema.
13 Q. I don't know if I asked you this question, but do you
still
14 live in Giema?
12:41:01 15 A. Yes, I still live in Giema.
16 Q. A personal question, madam: Were you ever raped in the
war

17 by any RUF?
18 A. Never during the war; no RUF raped me.
19 Q. Thank you.
12:41:40 20 A. Okay.
21 Q. Let me ask this: Have you seen --
22 A. Okay.
23 Q. -- have you seen Aruna Fatoma since the war or since the
24 time you left to go to xxxxx
12:42:03 25 A. When I returned from xxxxxxxxxx, yes, I have seen him
once.
26 Q. Where did you see him?
27 A. Mende Kelema.
28 Q. Did he react to seeing you?
29 A. Yes.

SCSL - TRIAL CHAMBER I

Page 50

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 Q. What was his reaction?
2 A. When I came, he couldn't recognise me. He turned to
look
3 at me and he went back; I didn't see him again.
4 Q. So when you say he couldn't recognise you, what does
that
12:42:52 5 mean? Can you explain that a bit further?

also

6 A. He could not recognise me. He saw me from afar and I
7 saw him from afar. Then he went to where I could not see him.
8 Up to the time I left to the place, I did not see him.

9 Q. Okay. So I have got no further questions. Thank you,
12:44:01 10 madam. There will be some questions from others, I think.
Thank
11 you.

12 A. Okay.

13 PRESIDING JUDGE: Yes, Mr Ogeto, any questions?

14 MR WAGONA: My Lords, I have no questions for Madam

12:44:44 15 xxxxxx.

16 PRESIDING JUDGE: No questions.

17 THE WITNESS: Who, me?

18 PRESIDING JUDGE: No, no, not you, madam.

19 THE WITNESS: Okay.

12:45:00 20 PRESIDING JUDGE: Yes, Mr Cammegh.

21 MR CAMMEGH: Your Honour, I have no questions either.

22 Thank you.

23 PRESIDING JUDGE: Whose witness is this?

24 MR WAGONA: My witness.

12:45:20 25 PRESIDING JUDGE: Yes, Mr Wagona.

26 MR WAGONA: Yes, My Lord, I have a few questions.

27 PRESIDING JUDGE: Yes, you may proceed, Mr Wagona.

28 MR WAGONA: Thank you, My Lords.

29 CROSS-EXAMINED BY MR WAGONA:

RUF

1 Q. Good afternoon, Madam Witness.

2 A. Good afternoon. Good afternoon, sir.

3 Q. Now, at the time before you left Giema for Liberia, the

4 were in Giema; is that correct?

12:46:05 5 A. Yes, sir.

6 Q. And at that time, if a woman was without a man it was

7 difficult to get food; not so?

8 A. Yes, sir.

9 Q. And so every woman was expected to be with a man; not
so?

12:46:47 10 A. Yes.

11 Q. And so the women of Giema had no choice but to accept to
be

12 a wife of a combatant; not so?

13 MR JORDASH: Objection. Perhaps the witness could take
her

14 headphones off.

12:47:20 15 PRESIDING JUDGE: Yes, let her take her headphones off.

16 MR JORDASH: Of course I'm in Your Honours' hands as to
17 whether Your Honours would find such a question and an answer,
if

18 given, to be a useful answer. But, asking a woman to speak on

19 behalf of all women in Giema, whether they had a choice to be

12:47:45 20 with a man, it's, in my respectful submission, an invitation
to

21 speculation. The answer, if given, would be prejudicial and

my 22 probative of nothing and, respectfully, it is a question which
23 learned friend really ought not to ask. It's not a question
24 designed to elicit evidence; it's a question designed to
elicit a
12:48:17 25 prejudicial answer which can be quoted on the transcript and,
if
26 I may say so, quoted on the transcript in a way which is not
27 straightforward or fair.
28 JUDGE THOMAS: Even if it's a productive line of
29 questioning, it could be a matter of inference. It could be a

SCSL - TRIAL CHAMBER I

Page 52

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

in 1 long shot, which ever you want to go with such an answer, you
2 know. I mean, I'm a little intrigued myself that we should --
3 fact, such a question should be asked and the answer being
4 considered binding on the Tribunal.
12:48:57 5 I think it could very well be, from the answer that she
inferential 6 gave to the previous question, we can take it as an
7 thing. If he says, if the witness has agreed that if a woman
was 8 without food, she would need a husband, then the question that

extension,

12:49:23 10
go

9 you asked would seem to me to be some kind of logical
11 if you want it to be that, to stretch it as far as you want to
12 with it, as a matter of inference, rather than as a factual
13 evidentiary issue. That's the way I would look at it.

12:49:46 15
men

what

14 MR JORDASH: I would look at it in that way, in that my
15 learned friend can ask questions and establish the facts. Why
16 would women -- what would they need and what were they with
17 for and, from that, Your Honours can draw an inference as to
18 their --

a
Prosecution

12:49:59 20

19 JUDGE THOMPSON: Yes, could draw an inference. I think
20 foundation has been laid for some inference that the
21 might want the Tribunal to draw to come from that.

ask
experience,

12:50:16 25

would

22 MR JORDASH: From a fact --
23 JUDGE THOMPSON: And that's the way I see it, yeah.
24 MR WAGONA: My Lord, I can say that my intention was to
25 the question, for the witness to answer based on her
26 what she saw, and experienced at [indiscernible] in Giema.
27 JUDGE THOMPSON: But how many -- what kind of survey
28 she have conducted? Could she speak for every woman? She may
29 have a limited experience of two or three.

MR WAGONA: Then, My Lord, it --

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

of

just a

given?

12:50:53
not

help

a

my

12:51:20

before

question

12:51:47

1 JUDGE THOMPSON: The question of choice -- the question
2 choice being a personal subjective thing, isn't that where the
3 argumentative aspect comes in, and where this thing can be
4 matter of inference from the previous answer that she has
5 It is possible to argue, as a lawyer, that, if a woman does
6 have food, she would need to have recourse to a husband to
7 her do that. Then what? Then you can say it may follow as a
8 matter of logical deduction, but I would have thought that is
9 matter of inference, rather than an evidential issue. That's
10 own random thought on the issue.

11 MR WAGONA: My Lord, then I will put it differently.

12 PRESIDING JUDGE: Okay. The response that you had
13 that question was that, if a woman was without a man at that
14 time, it was difficult for her to get food; that was the
15 you had before you put this question.

16 MR WAGONA: Yeah.

17 PRESIDING JUDGE: Yes. I just wanted to remind you.

18 MR WAGONA: Thank you, My Lord.

on 19 Q. And at that time did -- oh, Madam Witness, could you put
12:52:06 20 your earphones?

21 JUDGE BOUTET: She cannot hear you. Mr Court Officer.

witness 22 PRESIDING JUDGE: Can you help her, please? Or the
23 unit, please. Help your witness, please.

24 MR WAGONA:

12:52:40 25 Q. Witness, at the same time as you got Aruna Fatoma, did
26 women of Giema get RUF men?

27 A. Ask that question again.

28 Q. At the same time that you got Aruna Fatoma, did women of
29 Giema get RUF men?

SCSL - TRIAL CHAMBER I

Page 54 SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

married 1 A. The other women that I left them there, they were
I 2 to their civilian husbands the time I left there; that is what
3 know.

he 4 Q. Now, you said people were afraid of Aruna Fatoma because
12:53:41 5 was a town commander; do you remember?

6 A. Yes.

7 Q. Now, at the time you were there before you left, is it
8 correct that the people of Giema were obedient to Aruna
Fatoma?

9 A. Yes.

12:54:16 10 Q. And Aruna Fatoma worked closely with the RUF; not so?

11 A. Yes.

12 Q. And the MPs also obeyed Aruna Fatoma; is that so?

13 A. Yes.

14 Q. Now, xxxxxxxx, who you say is your cousin, was in the
12:55:00 15 RUF; is that correct?

16 A. Yes.

17 Q. Was he an RUF combatant?

18 A. Who is a combatant? That is an English word; I
understand

19 Mende.

12:55:28 20 Q. Was he an RUF fighter?

21 A. He was Fatoma's deputy the time I left there.

22 Q. And xxxxxxxx, was he in the RUF?

23 A. xxxxxxxx? The time I left there, I did not meet him as a
24 member of RUF, but the time I left, probably he might have
joined

12:56:15 25 them. But the time I was there, he was not with them.

26 Q. And xxxxxxxx, was that a member of the RUF?

27 A. Yes.

28 Q. Was he an RUF fighter?

29 A. She was married to one RUF member, the time I left in

1 Giema.

2 Q. So is it correct --

3 PRESIDING JUDGE: xxxx it is a she, isn't it? Isn't
she?

4 xxxxxxxx?

12:57:11 5 THE WITNESS: xxxxxxxx, yes.

6 MR OGETO: Oh, I'm sorry. I thought it was a man.

7 PRESIDING JUDGE: You thought it was a man?

8 MR WAGONA: Because of the name Kallon.

9 PRESIDING JUDGE: xxxxxxx is a woman.

12:57:26 10 JUDGE THOMAS: Musa would be the masculine.

11 MR WAGONA: Thank you.

12 PRESIDING JUDGE: So xxxxxxx was a member of the RUF
13 and she was married to who?

14 THE WITNESS: She was married to one RUF man the time we
12:57:45 15 went to Liberia.

16 MR WAGONA:

17 Q. Witness, are you able to read and write?

18 A. I cannot read and write.

19 MR WAGONA: My Lords, I have specific questions to put
to

12:58:24 20 the witness relating to DIS-164, and I thought I could write,

21 but, since the witness cannot read or write, it might be

for

22 advisable to go into closed question -- closed session just

23 me to be able to put those questions.

24 PRESIDING JUDGE: Are you through with -- and for what
12:59:04 25 reasons? For what reasons, you know, do you want to move to a
26 closed session? First state the reasons.

27 MR WAGONA: Because I will be referring to --

28 PRESIDING JUDGE: DIS-164?

29 MR WAGONA: Yes. Yes, My Lord, and his present place of

SCSL - TRIAL CHAMBER I

Page 56

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 abode which is closely related to his identity.

2 PRESIDING JUDGE: Are you through with your questions in
3 the open session?

4 MR WAGONA: Yes, My Lords.

13:00:18 5 PRESIDING JUDGE: Yes, Mr Jordash, do you have any
6 objection to this application?

7 MR JORDASH: No objection.

8 PRESIDING JUDGE: Well, let's move into the closed
session,

9 and you will make the application there. Sorry, let's move
into

13:01:04 10 the closed session, please.

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

session]

12 transcript, pages 57 to 61, was extracted and sealed under
13 separate cover, as the proceeding was heard in a closed

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

SCSL - TRIAL CHAMBER I

Page 62

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1

[Open session]

2 MR GEORGE: We are in open session.

3 PRESIDING JUDGE: Thank you. We will now resume the
trial

4 in the public session. And this is the ruling of the Chamber
in

15:16:55 5 respect of the brief closed session made under application of
6 learned counsel, Mr Wagona, for the Prosecution. Consistent
with

7 the general requirement that criminal proceedings are to be
8 conducted in public, as enjoined by Rule 78 of the Rules of
9 Procedure and Evidence of this Court, and taking into

15:17:24 10 consideration Article 17(2) of the Statute of the Court but
11 exceptionally as authorised by Rule 79(A)(ii) of the schedules
12 and the need to protect witnesses as provided for in Rule 75,
13 this Chamber, on the application of Mr Wagona, learned counsel
14 for the Prosecution, for part of the evidence and

15:17:53 15 cross-examination of witness number DIS-255, to be heard in a
16 closed session did, by way of an exceptional procedure, grant
the

17 said application for reasons that were advanced by Mr Wagona
in
18 support of the application.

19 This evidence having been registered, and the ruling
having

15:18:19 20 been delivered in a public session, we would proceed by, Madam
21 Witness, thanking you for coming to --

22 THE WITNESS: Okay.

23 PRESIDING JUDGE: -- assist the Court with your
evidence,

24 and we wish you a very safe journey to your place of abode.
You

15:18:47 25 are still living in Giema?

26 THE WITNESS: Yes, I'm still in Giema.

all 27 PRESIDING JUDGE: We wish you a safe journey back, and
28 the best in the pursuit --
29 THE WITNESS: Amen.

SCSL - TRIAL CHAMBER I

Page 63 SESAY ET AL
1 FEBRUARY 2008 OPEN SESSION

1 PRESIDING JUDGE: May she be assisted out of Court,
please.
2 Mr Jordash, Mr George's blinds have [indiscernible].
3 MR JORDASH: I know, it's amazing what he can do over
lunch
4 time with a needle and cotton.
15:19:32 5 PRESIDING JUDGE: Yes, take her. Take her.
6 [The witness withdrew]
7 MR JORDASH: Your Honours, before the next witness comes
8 in --
9 PRESIDING JUDGE: Yes.
15:19:58 10 MR JORDASH: -- I'm sorry to detain the Court, but I
have
11 an application to make. The application is for disclosure
12 the Prosecution of Rule 68 material. Your Honours will have
13 observed that they did not put to this witness that she is not
14 xxxxxxxxxxxx of xxxxxxxx. I feel like

15:20:44 15 I'm being locked in which suggests -- well, which must mean
one
16 of two things:
17 One is that they have evidence in their position to
point
18 to the fact that this is xxxxxxxxxxxxxxxx
19 and therefore that is evidence which under Rule 68 is
15:21:19 20 exculpatory. It suggests the innocence of Mr Sesay of rape
and
21 murder alternative, and it also mitigates, but largely it
22 suggests his innocence of rape and murder. The alternative --
23 PRESIDING JUDGE: Mr -- in order for us to proceed, do
you
24 find any inconvenience or do you -- is anything wrong with
your
15:22:00 25 making this brief application in writing so that we have the
26 responses in writing and we will rule on this? Because it
27 doesn't appear to impact on the evidence of the next witness
who
28 is coming in.
29 MR JORDASH: Well, not --

SCSL - TRIAL CHAMBER I

Page 64

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 PRESIDING JUDGE: I'm not saying that you cannot make
your

I'm 2 application, or you cannot make your submissions on this, all
3 saying is could it not be done in writing so that we save time
4 and then they will respond and we will give our ruling on
this.

15:22:39 5 MR JORDASH: In the end I would suggest it doesn't save
6 time except, well, in my respectful submission, it doesn't
7 my time because it takes a long time to draft a motion about a
8 very straightforward point, A point which --

9 PRESIDING JUDGE: You may think it is straightforward,
it
15:22:54 10 may not be straightforward to us because we may not be in a
11 position to rule on this, you know, now, even tomorrow or so.

We
12 mightn't be because it will involve examining your arguments,
13 arguments for the Prosecution and ensuring that we --

14 MR WAGONA: And the evidence.

15:23:15 15 PRESIDING JUDGE: And the evidence also.

16 MR JORDASH: I can make the argument in less than three
17 minutes.

18 PRESIDING JUDGE: No. We want to be thorough in this
19 trial, you know. If you would like to, you know, go with us

on
15:23:29 20 this, you know, we think that it will be neater for you to
come

21 with a [indiscernible]. It doesn't -- even if it is
22 time-consuming it is important for your defence.

23 MR JORDASH: But it is time-consuming in another way,

which
24 is this: That we don't -- it's time-consuming in this sense,
and

15:23:53 25 this is the alternative I was going to put: That either they
are
26 sitting, either the Prosecution is sitting on this exculpatory
27 material or they have independently arrived at the conclusion
28 that Aruna Fatoma's ex-wife is alive. And if that's the case,
29 there is an absolute obligation on the Prosecution --

SCSL - TRIAL CHAMBER I

Page 65

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

You
this
1 JUDGE BOUTET: Well, don't mix the facts, Mr Jordash.
2 have been applying for disclosure. Now you are moving from
3 disclosure to another issue.

15:24:30 4 MR JORDASH: I said two bases, and I just got to the
is 5 exculpatory issue and then I was estopped. What I was saying
are 6 that there were two -- I won't take long, I promise -- there
-- 7 two conclusions to be drawn from the Prosecution's failure to

8 JUDGE BOUTET: The question, you said I'm raising to
make 9 an application for disclosure; that's what you stood up for.

15:25:13 10 MR JORDASH: Yes, and disclosure in two sentences: One,
11 disclosure of the evidence that they have. If they don't have

-- 12 the evidence then they must have independently arrived at that

13 JUDGE BOUTET: But that's a different issue. It's not
14 disclosure, as we understand it on the 66, 68.

15:25:13 15 MR JORDASH: It's disclosure of the case against the
16 accused.

17 JUDGE BOUTET: Well, if this is where you are moving, I
18 will certainly support entirely what the Presiding Judge is
19 saying because we are not prepared to dispose on an
application

15:25:19 20 like that, just like this, this afternoon. No.

21 MR JORDASH: But the point I'm making is this, that, why
22 it's significant, and why the timing of it is significant is,
if

23 it's the second, and they've independently arrived at the
24 conclusion that the case against the accused has been trimmed,
15:25:33 25 and they are not relying upon the allegation, then if it's not
26 ruled -- if the Prosecution don't indicate now, and it is not
27 ruled upon promptly then, because we are in the middle of our
28 Defence case, we, for the first accused, have to continue
29 preparing our case on the basis that we still have to
establish

SCSL - TRIAL CHAMBER I

SESAY ET AL

we
to
in
a
15:26:07
not
now.

1 that this lady was xxxxxxxx, which means for the next two weeks
2 have to continue to investigate, to locate witnesses or speak
3 our present witnesses about this lady, and if the Prosecution
4 fact have decided they are not pursuing that allegation, it is
5 waste of our time and that's the problem with the Prosecution
6 being asked to state their case on this very important issue

7 PRESIDING JUDGE: Yes, Mr Cammegh.

as
Honours

8 MR CAMMEGH: Your Honour, this application concerns me
9 well and I was hoping that I would be heard before Your

15:31:55
Court

10 deliberate because in my respectful submission this is a very
11 important matter, indeed, particularly when one takes into
12 account expediency --

13 PRESIDING JUDGE: Mr Cammegh, please, if we may, the
14 has deliberated.

15:32:11
important

15 MR CAMMEGH: But I have not been heard, Your Honour.

16 PRESIDING JUDGE: We appreciate the fact that it is an
17 important matter, we appreciate the fact that it is an
18 matter --

19 MR CAMMEGH: Yes.

15:32:17
are

20 PRESIDING JUDGE: -- and the Chamber has deliberated and
21 arrived at a conclusion, the decision, that Mr Jordash, and
22 whoever is interested, like you, could file a motion and we
23 ordering an expedited filing of that motion which would be

we 24 examined, in view of the complexity of the situation, so that
15:32:42 25 rule on it, having given due consideration to all the
arguments
26 by the parties. So you may join Mr Jordash in that motion. I
27 will give a ruling on this rather than take so much --
28 MR CAMMEGH: I hear what Your Honour is saying --
29 PRESIDING JUDGE: Yes.

SCSL - TRIAL CHAMBER I

Page 67 SESAY ET AL
1 FEBRUARY 2008 OPEN SESSION

1 MR CAMMEGH: -- and can I just point out the Prosecution
2 are ably represented in this room. They are capable --
3 PRESIDING JUDGE: We have ruled. Mr Cammegh, we have
4 ruled, please.
15:33:11 5 MR CAMMEGH: Your Honours --
6 PRESIDING JUDGE: We have ruled and I suppose that as a
7 learned counsel, you know what a ruling and the decision of
the
8 Court is; you don't argue beyond that.
9 MR CAMMEGH: Your Honour, I am not arguing with the
Bench.
15:33:29 10 PRESIDING JUDGE: Oh, well, they are ably represented,
so
11 they can argue and then we take it on.

12 MR CAMMEGH: I simply --

13 PRESIDING JUDGE: May we continue? May we continue with
14 the proceedings, please? We all are members of very
respectable
15:33:39 15 Bars and legal systems, and I don't think that this can happen
in
16 your Bars and in your system where you practice. It cannot.

17 MR CAMMEGH: Your Honour, where I come from, there is
some
18 cross-party cooperation and that is all we're asking for.

19 PRESIDING JUDGE: Well, it depends on what the Court,
you
15:34:00 20 know, what the attitude of the Court is, and we want to
encourage
21 this cooperation. We have always encouraged it. You've
talked,
22 you know, to across the borders and it is because we want to
make
23 sure that things are well done.

24 I know there is work involved in it, but we have to do
15:34:18 25 things the way we think it should be done. It may take some
26 time, but I think we know the importance of this, and we want
to
27 give due attention, given the importance of the application
which
28 is made by Mr Jordash and which you are reinforcing.

29 MR CAMMEGH: Very well, Your Honour.

SCSL - TRIAL CHAMBER I

1 PRESIDING JUDGE: Thank you.

2 MR JORDASH: Well, I'm -- may I just -- I would like to
3 apply for an adjournment of proceedings until Tuesday, the
reason

4 being, if I may be allowed to set out the reason, the reasons
15:35:01 5 have been set out in a motion drafted some time ago, beginning
of
6 the Defence case, and the reasons are: Lack of resources.

And I
7 have been, we, the Defence for the first accused, have been
8 hovering at the brink of applying for an adjournment on many
9 occasions because of lack of resources. I was coming to Court

15:35:31 10 this morning with the expectation that we would get through
these
11 two witnesses and have to apply for an adjournment because
we'd

12 have an early day. Because the proceedings have taken longer
13 with the witnesses, that might not be necessary but,
14 nevertheless, I was coming with the expectation at the end of
the

15:35:54 15 day I would still be considering an adjournment for Monday,
and
16 that adjournment is still a reasonable -- the application for
an

17 adjournment is still a reasonable possibility, even without
the
18 additional work that Your Honours have just imposed upon the
19 Defence. And, even without the additional work Your Honours
have

15:36:13 20 just imposed upon the Defence, I intend to be at the witness
21 house all weekend trying to get the witnesses ready for next

22 week. I anticipate with great and absolute certainty that the
23 remainder of my team will be in same place, and Your Honours
have

24 now imposed an extra four, five, maybe six hours work on me.
And

15:36:38 25 yet --

26 PRESIDING JUDGE: On a motion as simple as this? At
least
27 the way you have put it.

28 MR JORDASH: It is simple, but it has to be drafted. It
29 can be put orally in about five minutes.

SCSL - TRIAL CHAMBER I

Page 69 SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 PRESIDING JUDGE: And if it has to be drafted it can be
2 drafted in about an hour, because of the secretarial
involvement
3 of such an application. It doesn't need six hours, I don't
think
4 so.

15:37:04 5 MR JORDASH: It has to be looked at. The law has to be
6 looked at. What I was hoping would be that Your Honours would
7 simply ask the Prosecution what their case is? That can take
8 less than five minutes.

9 PRESIDING JUDGE: The ruling of the Court is there.

15:37:17 10 MR JORDASH: I'm not going behind Your Honour's ruling.
11 Your Honours have said we have to do a motion and the
Prosecution
12 don't have to do anything until we do it. And so, what I am
13 saying is that I don't have the time to do it, get the
witnesses
14 ready and be ready for Monday morning for the reasons we have
15 stated time and time again, the reasons which are on record,
15:37:36 on
16 the motion, if we are forced to go ahead on Monday with the
17 witnesses and do this additional work a fair trial is not
18 possible.
19 We cannot keep being piled with work and be expected to
20 cope constantly. We cannot be piled with work and have
15:37:52 arguments
21 in front of the Court about how little resources we have and
none
22 of the arguments be considered. We cannot be ready for Monday
23 with all this work and now with the additional work we cannot
be
24 ready. And I apply, with great reluctance because my client
has
15:38:08 25 been in custody since March 2003, I apply with great
reluctance
26 for an adjournment until Tuesday.
27 PRESIDING JUDGE: Learned counsel, this matter is stood
28 down for a few minutes. We shall rise and resume in the next
29 couple of minutes, please.

1 [Break taken at 3.28p.m.]

2 [Upon resuming at 3.49 p.m.]

3 PRESIDING JUDGE: We are resuming the session, and the
4 Chamber, after deliberation on Mr Jordash's submissions on an
16:00:03 5 application for an adjournment, decides that it will take the
6 evidence of this witness up to 4.45 because our staff who are
7 here have some obligations with the Registrar, and we will see
8 how far we go after we adjourn, if we don't finish, as I
imagine
9 we wouldn't, the matter will be adjourned, the testimony of
this
16:00:47 10 witness will be adjourned to Monday.

11 It is also the Chamber's decision, that the application
for
12 an adjournment to Tuesday is denied because it lacks any legal
13 basis for it to be granted. What it means is that this matter
14 which, with this witness we are taking on now, will be pursued
on
16:01:17 15 Monday and the proceedings will continue as normally as we
have
16 been going on with them. That is the decision of the Chamber.
17 So may the witness be sworn in, please.

18 WITNESS: DIS-226 [Sworn]

19 [The witness answered through Interpreter]

16:03:07 20 PRESIDING JUDGE: Is he sworn on the Koran or on the
Bible,
21 please?

22 MR GEORGE: On the Koran, My Lord.

23 PRESIDING JUDGE: And he will be testifying in Mende?

24 MR GEORGE: Yes, My Lord.

16:03:37 25 PRESIDING JUDGE: Yes, Mr Jordash, you may proceed.

26 MR JORDASH: Yes. And may I apply to go into a closed
27 session, please, to apply to go into a closed session?

28 PRESIDING JUDGE: All right. Court Management, can you
29 please move us into a closed session so that Mr Jordash makes

his

SCSL - TRIAL CHAMBER I

Page 71

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 application?

2 JUDGE THOMPSON: Mr Jordash, is it for the entire
3 testimony?

4 MR JORDASH: No, just for the first five minutes, Your
16:04:26 5 Honour.

6 JUDGE BOUTET: Right. Okay.

7 PRESIDING JUDGE: And this is DIS --

8 MR JORDASH: 226, Your Honour.

9 PRESIDING JUDGE: 226. Thank you.

16:04:41 10 [At this point in the proceedings, a portion of the
11 transcript, pages 72 to 74, was extracted and sealed under

session]

12 separate cover, as the proceeding was heard in a closed
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

SCSL - TRIAL CHAMBER I

Page 75

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 [Open session]
2 PRESIDING JUDGE: Yes, thank you.

3 MR JORDASH:

4 Q. Mr Witness, we are in an open session, so do not mention
16:17:51 5 your name or the specific title --

6 A. Okay.

7 Q. -- or the specific title of the role you had; do you
follow 8 me?

9 A. Okay.

16:18:19 10 Q. I want to try to understand something you said a moment
11 ago. Do you remember --

12 A. Okay.

13 Q. -- a time when Johnny Paul Koroma took over in Freetown,
14 during the war?

16:18:43 15 A. I cannot remember exactly, now. At that time they said,
16 when we were told to go to Daru, that was the time I could
17 recall.

18 Q. Okay. Now, when you went to Daru, how many years after
19 that was it before you became the job, or before you took the
job 20 that you've told us about?

21 A. When we went to Daru, on our return, it was -- it took
us 22 two years.

23 Q. Okay. Do you remember when the disarmament took place
in 24 Sierra Leone?

16:19:59 25 A. I cannot recall that day, but I knew when they were
talking 26 about disarmament.

27 Q. Do you know the name Tukpagbehun?

28 PRESIDING JUDGE: Mr Jordash, pronounce it again.

SCSL - TRIAL CHAMBER I

Page 76

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 Q. Can you pronounce the name?

2 A. Yes, Tukpagbehun.

3 PRESIDING JUDGE: Tukpagbehun.

4 THE WITNESS: Tukpagbehun.

16:20:39 5 MR JORDASH:

6 Q. How do you know that name? Did something happen there
7 during the war?

8 A. Something happened there. At the end of war something
9 happened there. We cultivated a farm there. The paramount

chief

16:21:02 10 said we should cultivate a farm there, we, the civilians.

11 Q. Now, I want to talk to you about that farm. At what

point

12 was it the paramount chief said you should cultivate a farm
13 there? How close to the --

14 A. At that time the war had come to an end, but they had

not

16:21:35 15 taken the guns from the fighters.

16 Q. And the paramount chief, who was that, who you spoke of

a

17 moment ago?

18 A. His name is Saidu.

19 Q. And where was he a chief?

16:22:07 20 A. He was in Kailahun.

21 Q. And did you know him at that time through your official
22 duties?

23 A. The paramount chief? I knew him.

24 Q. Did you have official duties in relation to him? Did
you
16:22:33 25 associate through those official duties?

26 A. He said we were the people in charge of instructing our
27 companions to go and work.

28 Q. Sorry, who was responsible?

29 A. We, the civilians. There was one Lamin who came here,
he

SCSL - TRIAL CHAMBER I

SESAY ET AL

Page 77

1 FEBRUARY 2008

OPEN SESSION

1 was in charge of the youth, both men and women, we were all in
2 positions;
charge of cleaning the town. We gave them different

3 said you are the ganga. We had the town crier.

4 Q. So how did the paramount chief Saidu send the message to
16:23:47 5 cultivate a farm at Tukpagbehun?

6 A. Whilst we were in town, a letter was sent to us, to the

the 7 deputy, and he invited us and the letter was read to us, that
since 8 paramount chief said that we should go and cultivate a farm
9 the war was now coming to an end.

16:24:19 10 Q. Who was the deputy that you just mentioned? What was
his 11 name?

12 A. His name is Bockarie Sellu.

13 Q. Is that the same man as Pit Sellu?

14 JUDGE BOUTET: No, the chief is Saidu.

16:24:53 15 THE WITNESS: No. Giehun, the speaker for Giehun was
16 called Popay Saidu.

17 MR JORDASH:

read 18 Q. So the paramount chief, Saidu, sent a letter which was
19 to who? Who did the letter get read to?

16:25:04 20 A. They read the letter in the presence of the section
chief 21 and to all of us, we the civilians, who were in the town.

22 Q. And the town you are talking about is?

23 A. Where we cultivated the farm? Giehun, it was in Giehun,
from 24 Tukpagbehun, where we cultivated the farm. The letter came

16:25:35 25 Kailahun and came to us.

26 Q. And once the letter had been read to you, the civilians,
27 and I think you said the section chief, did something in
relation 28 to the contents of the letter?

29 A. They told us that we were to go and cultivate a
particular

Page 78

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

that 1 farm on a particular day. Then, that night, they have said
2 the war had come to an end. We danced throughout that night.
3 The next morning we went to brush. Then the Chief Sellu
brought 4 the food for the work.
16:26:28 5 Q. Let's just slow it down a bit. What did the letter say?
6 A. That we were to make a farm because the war was coming
to 7 an end. That all our people should make a farm. We, the
8 civilians, should make a farm.
instruction 9 Q. And how did you, the civilians, feel about this
16:26:58 10 to make a farm?
11 A. When he told us that, that evening, we danced on a band
12 before we went to brush the next morning. We really danced
that 13 night.
14 Q. Why were you dancing?
16:27:17 15 A. We are farmers, but we were not cultivating any longer.
It 16 was during the war. And when he told us that we should
cultivate 17 a farm, we were very happy and it was for our people, for all
of 18 us.

19 Q. Maybe you've answered my next question: What was your
16:27:42 20 understanding about the farm and who the harvest was going to
go

21 to?

22 A. The rice was, we all decided that because the harvest
was
23 for him, because he gave the seed rice, so he was the owner of
24 it, because he provided all the seedlings. When he told us to
16:28:16 25 cultivate, we told him that even if we cultivate, whatever
26 happened, if you are given some, you will be able to cultivate
27 your own farm.

28 Q. Sorry, if you are given some, if who's given some, they
29 would be able to cultivate their own farm?

SCSL - TRIAL CHAMBER I

Page 79

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

not
1 A. He, Mr Sellu. He told us to cultivate because we did
2 give the rice. We did not have rice at that time. He gave us
3 the rice.

4 Q. So you told us the next day the brushing began; is that
16:29:07 5 right?

6 A. Yes.

7 Q. Who did the brushing?

day 8 A. The youths. All of us, we went to brush. That single
9 we brushed and completed the whole farm.

16:29:25 10 Q. And who decided who should brush the farm?
11 A. Who decided who were to go and cultivate? It was Mr
Sellu
12 who told us to go there. Then we decided and we accepted to
go
13 there.
14 Q. When you accepted to go there, what was the feeling
amongst
16:29:56 15 the people who went there?
16 A. They were happy because there was no confusion.
Everybody
17 was laughing. We brushed and finished that day.
18 Q. After brushing and finishing that day, did anything
happen
19 next in relation to the farm?

16:30:22 20 A. Yes. We brushed and then we set fire to the farm.
21 Q. Who set fire to the farm?
22 A. We went there to go and burn the farm.
23 Q. Who, who went there?
24 A. We, the people, because there were a large number of
people
16:30:58 25 who went to brush, but it is not all of you that would go and
26 burn the farm, because we divided. Some went to go and burn
the
27 farm.
28 Q. Did those who went to burn the farm do this willingly or
29 unwillingly?

1 A. Very well.

2 Q. Why do you say "very well," Mr Witness? Did you observe
3 this?

4 A. Yes, we went there. The fire that we had, we were all
16:31:32 5 happy to take to the farm to go and set fire to the farm. We
6 were all happy to burn the farm and it burnt completely.

7 Q. And the civilians who did the brushing and the burning,
8 from where did the civilians come from?

9 A. All of us we were there. Some came from Mende Bauma.
All
16:32:00 10 of us who were there, when we cultivated that farm.

11 Q. So from Mende, Baoma, any other sections?

12 A. And Giehun because the people from Kailahun came. Other
13 people from Kailahun came.

14 Q. After the farm had been brushed and then burnt, did
16:32:25 15 something else happen to prepare that farm?

16 A. Yes.

17 Q. What happened?

18 A. They brought seedlings. We went to plough. When we
were
19 ploughing the women were cleaning. We were taking the grass
16:32:51 20 among the seedlings.

21 Q. Who did that?

there. 22 A. Women, there were a good number of women. They were
23 Q. Civilians?
24 A. They were civilians, yes.
16:33:14 25 Q. Did they do the work willingly or unwillingly?
26 A. No, they were not forced. All of them went there
singing.
27 I did not see anybody force them, that this -- nobody told me
28 that this what they have done to me that was a very bad thing,
29 no. They did not tell me that.

SCSL - TRIAL CHAMBER I

Page 81 SESAY ET AL
1 FEBRUARY 2008 OPEN SESSION

1 Q. Did they receive anything on the farm?
2 A. We were only ploughing. Then, when we were ploughing,
they
3 would give us food to eat. Mr Sellu was giving the food, so
the
4 women were cooking the food for us to eat on the farm, until
the
16:34:12 5 time we finished ploughing.
6 Q. Did the civilians on the farm have enough to eat?
7 A. The man who was taking food to us, Mr Sellu was taking
food
8 to us, and the women were cooking food for us, to eat.
9 Q. Was there enough for everyone or not?

16:34:36 10 A. He used to take the food to us to eat. Very much. And
11 somebody will say, "I'm full."
12 Q. And, after the rice had been planted, was there a
harvest
13 at some point?
14 A. Yes.
16:35:01 15 Q. How long after the planting was the harvest?
ready
16 A. It took up to three to four months when the rice was
17 to harvest.
18 Q. And during the three to four months, did anyone else
work
19 on the farm?
16:35:24 20 A. Apart from weeding, when the rice was ready to harvest,
21 yes.
22 Q. Who worked on the farm in that three to four months?
23 A. Those who were around the farm, we told them that they
24 should not -- they should be looking after the farm for us, so
16:35:58 25 when the farm, when the rice was ready to harvest, they should
26 come and inform us.
27 Q. Did they do that?
28 A. Yes.
29 Q. Did they do that willingly or unwillingly?

SCSL - TRIAL CHAMBER I

praises,
God.
1 A. Happily, they were willing. They were coming with
2 they were not forcing anybody. Somebody would go and see the
3 farm and when the person came back he will say: Oh, thank
4 There is no problem with the rice.

16:36:30 5 Q. So what happened to the rice when it was harvested?

told
6 A. After the harvest, the barn was in Giehun. Then we
7 harvested all the rice and stored it there. Then the chief
8 us to prepare the food and they will prepare it. Then, after
9 that, the rice was finished.

16:37:02 10 Q. So who harvested the rice and put it in a big barn in
11 Giehun?

When
will
12 A. Women. All of us, we were all going there together.
13 we were harvesting they were tiring. After work, then they
14 carry some and they all -- then we, the men, also, we carry on
15 our heads to bring it to the town.

16 Q. So the civilians carried it on their heads to the town.
17 Did they do this willingly or unwillingly?

are
whatever
18 A. We were doing that happily. We are even dancing. We
19 even coming home dancing, laughing. Because, if you --

16:38:01 20 load of rice you were able to carry, that was what you were
21 expected to carry. What you cannot carry you would not be
22 to carry.

what
23 Q. And when the rice had been put in the barn in Giehun,

24 happened to it after that?

16:38:24 25
take

A. Then, the paramount chief would ask that they should

would

26 some from the barn and then they will carry it. Then they

they

27 give us some. Then after they have taken some from the barn

28 will carry it and some will remain with us.

29 Q. Sorry, it would remain with who?

SCSL - TRIAL CHAMBER I

Page 83

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

people

1 A. He used to give it to the section chief. That, you

2 who are staying here, this rice is yours.

3 Q. By "the people," do you mean civilians?

4 A. Yes, they were civilians. We were there together.

16:39:11 5

Q. Now, apart from rice going to Giehun, did rice go some

6 where else?

in

7 A. The rice that we were harvesting? We used to store it

8 the barn except the one they were preparing and taking it to

9 Kailahun, but ours was stored in the barn.

16:39:54 10

Q. Who took the rice, the other rice, to Kailahun?

11 A. Chief Sellu, who was giving the directive.

12 Q. Do you know who he got the directive from?

13 A. No. That one? I cannot -- I cannot even say anything

14 about that because he would only say: Hey, take this rice to

16:40:09 15 that person and then they will carry the rice there. That was

16 what he was saying. His would be taken to Kailahun.

17 Q. So do you know what happened to the rice that was taken
to

18 Kailahun?

19 A. No, I don't know that.

16:40:25 20 Q. Thank you. Mr Witness --

21 A. Okay.

22 Q. -- from the brushing of the farm to the burning of the

23 hut,
farm, to the rice being planted, harvested, taken to the big

24 big barn in Giehun, were there any men with guns on the farm?

16:40:53 25 A. On that farm, I did not see anybody with a gun. I did
not

26 told
see anybody with gun. No gun. If I saw a gun, I would have

27 for
you. I was afraid of gun, that is the first thing. It was

28 fear of gun that I went into the bushes.

29 Q. Did you see any RUF commanders or fighters on the farm

SCSL - TRIAL CHAMBER I

SESAY ET AL

1 during its --
2 A. Except the Blaima Bedebede I have mentioned his name
3 earlier, when we were going together, when they were cooking
food
4 for us to eat, they were all working, but I did not see
anybody
16:41:42 5 with a gun. I did not see anybody with a gun.

6 Q. So the commanders and fighters were working also? Is
that
7 what you intended to say?

8 MR HARDAWAY: Objection, leading.

9 MR JORDASH: It is not leading. The witness has just --

16:42:03 10 THE WITNESS: I did not see the difference between a
11 soldier or whosoever. We were going there with our children.
I
12 cannot differentiate who was a soldier and who was not. I
don't
13 know that.

14 MR JORDASH:

16:42:14 15 Q. Thank you.

16 A. You're welcome.

17 Q. And finally, the food that was prepared on the farm,
what
18 was the food that was prepared? Was it by Chief Saidu?

19 A. Yes.

16:42:27 20 Q. What was the food?

21 A. Rice; cooked rice. They -- it was rice that they used
to
22 cook.

23 Q. I have got no further questions. Thank you very much,
Mr

24 Witness.
16:42:59 25 A. Okay.
26 PRESIDING JUDGE: Mr Ogeto?
27 MR OGETO: I have no questions for the witness, My
Lords.
28 PRESIDING JUDGE: Mr Cammegh?
29 MR CAMMEGH: Your Honour, I have got no questions.

SCSL - TRIAL CHAMBER I

Page 85 SESAY ET AL
1 FEBRUARY 2008 OPEN SESSION

1 PRESIDING JUDGE: No questions. We just have about nine
2 minutes to go. Mr Hardaway, I imagine you will not be -- you
3 will not wrap up your cross-examination in nine minutes?
4 MR HARDAWAY: No, Your Honour, I won't.
16:44:00 5 PRESIDING JUDGE: Yes. Because of the obligation of our
6 staff, I don't really see any necessity for us to start
because
7 we wouldn't have gone anywhere after we would have started. I
8 think we may stop here and adjourn the proceedings to -- yes,
Mr
9 Cammegh?
16:44:26 10 MR CAMMEGH: Can I just mention a completely unrelated
11 matter, Your Honour?
12 PRESIDING JUDGE: Yes, please.

13
afternoon.

MR CAMMEGH: That has come to my attention this

14

PRESIDING JUDGE: Okay. May I finish?

16:44:34 15

MR CAMMEGH: Yes.

16

PRESIDING JUDGE: Mr Hardaway, you may then start your

17

cross-examination on Monday.

18

MR HARDAWAY: Very well, Your Honour.

19

matter.

PRESIDING JUDGE: To which we are adjourning this

16:44:45 20

MR HARDAWAY: Yes, Your Honour.

21

PRESIDING JUDGE: Right.

22

Prosecution

MR HARDAWAY: And just before Mr Cammegh, the

23

with

does have one housekeeping matter they would like to address

24

addresses

the Court after learned counsel for the third accused

16:45:00 25

the Court on his matter.

26

PRESIDING JUDGE: Right. Mr Cammegh, please, you --

27

MR CAMMEGH: Your Honour, while I was studying my -- all

28

to

the evidence of TF1-108, earlier today, I noticed, or it came

29

certainly

my attention that I have actually made an error during

SCSL - TRIAL CHAMBER I

SESAY ET AL

Page 86

1 FEBRUARY 2008

OPEN SESSION

that
witnesses.

1 one of my cross-examinations, and it's DIS-157, and I think
2 could well have been previously extend to other Sesay

through
16:45:38

3 The mistake is this, and, I'm essentially asking,
4 the Court, for the Prosecution to assist me as to how I should
5 deal with this.

brother
Town
Town

6 I represented 108's evidence to DIS-157 in this way. I
7 implicitly suggested that what 108 had said was that his
8 had been killed during a forced labour march from Kailahun
9 to Giema. Actually, what 108 said was that it was Kailahun

16:46:09
on
of
then

10 to Pendembu. I think I might have repeated that error earlier
11 during the Sesay case to other witnesses, citing Giema instead
12 Pendembu. Now, I'm in the Prosecution's hands. If the
13 Prosecution want me to produce a notice citing each Defence
14 witness in which I have made that error in cross-examination

16:46:32

15 obviously I am happy to do so and alternatively, of course, if
16 the Prosecution are happy to take me at my word that it was an
17 oversight on my part when I simply mistakenly substituted the
18 word "Pendembu" for "Giema" I would hope that --

"Pendembu"

19 PRESIDING JUDGE: So instead of "Giema" you want
16:46:51 20 to be substituted.

allegation,

21 MR CAMMEGH: Yes. I should add this: That 108 was the
22 only Prosecution evidence -- witness -- who made that
23 and it is very discrete. It concerns 108's brother, and it is

24 clear that it could not have been mixed up with anything else.
16:47:07 25 It simply was a slip of the tongue by myself.
26 I'm in the Prosecution's hands. If they will allow me
to
27 just continue now that I have got this mistake on the record,
28 that is what I would prefer. If, however, they prefer me to
put
29 it in written form in a notice, to cover myself in that way,
to

SCSL - TRIAL CHAMBER I

Page 87 SESAY ET AL
1 FEBRUARY 2008 OPEN SESSION

then 1 ensure that when final briefs are prepared there is no error
2 I'm prepared to do that, but I'm in the Court's and the
3 Prosecution's hands as to what I should do.

4 PRESIDING JUDGE: Yes. Well, wouldn't you think that
16:47:34 5 because it would involve, I mean, in the records it might be
6 better for you to serve a proper notice?

7 MR CAMMEGH: Well, I'm happy to.

8 PRESIDING JUDGE: Yes. But let's hear what the
Prosecution
9 has to say on this.

16:47:51 10 MR WAGONA: My Lords, I remember I was in Court and I
can
11 recall what counsel is talking about.

12 PRESIDING JUDGE: Yes.

13 MR WAGONA: My only difficulty is this: Whether the
14 witness's answer would have been different if it was put as
16:48:12 15 counsel would have wanted to put it, that is the difficulty I
16 have.

17 PRESIDING JUDGE: Yes. Mr Cammegh, Mr Wagona says he
was
18 in Court and he's wondering whether the response of the
witness
19 would have been different if it was Pendembu and not Giema?

16:48:34 20 MR CAMMEGH: Well, that is --

21 JUDGE BOUTET: The other way round; right? It should
have
22 been Giema and not Pendembu.

23 PRESIDING JUDGE: No, no, it should have been Pendembu
24 instead of Giema. Instead of Giema it should have been
Pendembu.

16:48:47 25 MR CAMMEGH: 108 said Pendembu. I misrepresented to at
26 least one Sesay witness and possibly more it was Giema.

27 PRESIDING JUDGE: That is Mr Wagona's --

28 JUDGE THOMPSON: Would it also be -- the situation would
29 also be complicated if the witness duplicated the mistake.
You

SCSL - TRIAL CHAMBER I

SESAY ET AL

the
1 say that the witnesses you cross-examined, if they duplicated
2 mistake, so do you know whether that was the case? In other
3 words, they compounded the error. So if you said Pendembu
4 instead of Giema, and then the witnesses themselves repeated
16:49:39 5 following your mistake, made the same mistake --

6 MR CAMMEGH: Well, I think that is Mr Wagona's point.

7 PRESIDING JUDGE: Yes, quite right. That would create a
8 different situation. It would not be easy to deal with,
unless
9 by some kind of -- quite frankly, I cannot think of what would
be
10 the answer here.
16:50:03

11 MR CAMMEGH: All I can say is this: That I think every
12 witness I examined on this subject was introduced to that
subject
13 by way of the brother of 108 who was named -- am I free to use
14 his name?

16:50:23 15 PRESIDING JUDGE: Yes.

16 MR CAMMEGH: I am free to use the name because -- -

17 JUDGE BOUTET: We are in an open session, you know.

18 MR CAMMEGH: Yes, but I -- yes, we are. I will carry on
19 using 108. The brother of 108, were you aware of 108? Were
you

16:50:42 20 aware that his brother was killed on a forced labour march
from

21 Kailahun to Giema?

22 JUDGE THOMPSON: Yes.

23 MR CAMMEGH: That's what I put. Now, there are two
points

24 that arise from that, that might go some way to assuage Mr

16:50:55 25 Wagona's speculative, reasonable speculative concern. First
of
26 all, Giema to Pendembu is a very short distance, indeed; it's
a
27 matter of just a few miles; less than ten. Secondly, the
subject
28 was introduced by way of a named individual, 108, and his
29 brother, so it was a very discrete issue. And one would have

SCSL - TRIAL CHAMBER I

Page 89

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

speculating 1 expected that had the witness, and again I know I'm
2 in saying this, but injecting hopefully a bit of common sense
3 into this analysis, one perhaps might reasonably have expected
4 that although a witness might not have heard of a murder of
108's

16:51:42 5 brother on a march from Kailahun to Giema he may well have
heard
6 the murder of 108's brother on a march from Kailahun to
Pendembu.

7 JUDGE THOMPSON: I see.

8 MR CAMMEGH: It would be a very pedantic witness who,
one
9 might think, who would acquiesce to the murder taking place on
16:52:01 10 the road to Pendembu, rather than --

11 PRESIDING JUDGE: And not on the road leading to Giema.

12 JUDGE THOMPSON: Yes.

13 MR CAMMEGH: Now, I appreciate that this is a knotty
14 problem and it is one that perhaps could only be entirely
cured,

16:52:13 15 I am afraid, by --

16 PRESIDING JUDGE: The crux of that issue is whether the
17 brother was killed at all. I think that is it.

18 MR CAMMEGH: Your Honours see my difficulty.

19 PRESIDING JUDGE: On the way to or from is barely
ancillary

16:52:27 20 to the main issue; the main issue is the killing.

21 MR CAMMEGH: Yes.

22 PRESIDING JUDGE: In the course of transporting luggage,
23 loads from one place to the other. May we, since we are
running

24 short of time, may you carry out a consultation with the

16:52:49 25 Prosecution and see what solution you can come up with on
Monday

26 on this?

27 MR CAMMEGH: Yes.

28 PRESIDING JUDGE: I think we would prefer that you come
up

29 with an inter partes consultation, an inter partes' solution,
I

SCSL - TRIAL CHAMBER I

SESAY ET AL

1 mean, to this, so that we -- well, that is if you feel it is
2 reasonable, but we see where you are coming from. I mean, we

--

3 MR CAMMEGH: The point --

4 PRESIDING JUDGE: There is no reason why he should
accept

16:53:21 5 that somebody was killed if he were going to Pendembu when he
has
6 denied that somebody was killed on his way to Giema.

7 MR CAMMEGH: I just don't want to be -- I don't want to
8 give any appearance of taking what could be either a

fallacious

9 or an unfair point in my final brief, the other side of the
coin

16:53:46 10 is, of course, that this is not corroborated by any other
11 witness, and I want to deal with this in the sense of finality
in
12 the brief and clearly an accommodation has to be reached.

13 JUDGE BOUTET: I think maybe that this evidence is
14 meaningless, too, if it is not factually true. That's what
you

16:54:03 15 are saying.

16 MR CAMMEGH: Well, that is another matter which will
17 probably find its way into a written motion next week. But,
Your
18 Honours see my point. It's potentially difficult.

19 PRESIDING JUDGE: We see your point. I think, Mr
Cammegh,

16:54:17 20 we better leave it at this.

21 MR CAMMEGH: Yes.

22 PRESIDING JUDGE: And maybe by Monday, Tuesday you would

Prosecution 23 have arrived at some inter partes solution with the
time 24 and you will bring it up. Maybe the Prosecution will this
16:54:30 25 take the initiate of communicating to the Chamber the contents
of 26 the accord, but it must have arrived at with Mr Cammegh, who
is 27 pleading for very good reasons, as you can see, that the
records 28 be amended and I'm sure he is open to even providing a note on
29 this, a memorandum on this, so as to put you in a better

SCSL - TRIAL CHAMBER I

Page 91

SESAY ET AL

1 FEBRUARY 2008

OPEN SESSION

1 perspective to appreciate what he wants to put on the record.
2 So, Mr Cammegh, is that all right?
3 MR CAMMEGH: Thank you for your assistance, Your Honour.
4 PRESIDING JUDGE: Right. Yes, Mr Hardaway.
16:55:07 5 MR HARDAWAY: I know the time is short --
6 PRESIDING JUDGE: You are crossing the border.
7 MR HARDAWAY; I know we are crossing the Rubicon as we
8 speak, Your Honour, but this housekeeping matter may actually
9 have an impact on how the Court proceeds next week. I've
spoken
16:55:24 10 with counsel for the first accused, as it relates to this
matter.

11 It deals with the issue of call order.

12 Now, the Prosecution, over the past week, has received
13 lists of the competent -- of the call order of the witnesses
for
14 the first accused and, during the course of that week, and
even

16:55:37 15 beyond, that list has been rather fluid in terms of who's
coming
16 and who's not. And that puts the Prosecution in a bind in
terms
17 of how to assign the cases; who's going to be preparing for
them
18 and, to be honest, the time it takes to prepare for them.

19 Again, this is a concern that I expressed with Mr
Jordash,

16:56:04 20 and I take Mr Jordash at his word that obviously it is not
being
21 deliberate. What the Prosecution would ask, and this was a
22 method that was utilised --

23 PRESIDING JUDGE: And there was some certainty in the
order
24 of calling the witnesses.

16:56:20 25 MR HARDAWAY: Right.

26 PRESIDING JUDGE: Yes.

27 MR HARDAWAY: We would have a list, we would get a list,
28 say, on Monday with a list of five and then, say, maybe
Tuesday
29 evening we get a revised list, and maybe two of those five are

1 gone, maybe three, maybe it's a whole other list, based upon
the 2 information that the Defence has at that time.

3 Today, Your Honour, we received a list, at 10.30,
4 concerning 27 additional witnesses that will be talking
16:56:49 5 specifically about mining in Kono. Now, to be fair, they
stated 6 clearly that there is uncertainty in which order the witnesses
7 will be called and that is because of the argument of lack of
8 resources; that is their particular issue. But, from the
9 Prosecution's standpoint, in terms of being able to prepare,

we 10 would need something a little more solid, and what I would
11 propose, which is what was done in the AFRC case, where a
12 is called and we have not had time to fully prepare to avoid
13 asking for adjournment is to proceed with the direct

examination 14 of the witness and defer, if necessary, from the Prosecution's
15 standpoint, the cross-examination until an acceptable period
16:57:35 15 of
16 time, and then moving on to the next witness and proceeding
with 17 them that way.

18 PRESIDING JUDGE: That disrupts the records. I mean, we
19 want to proceed the way we have been proceeding unless, of
16:57:52 20 course, we find good reason to move away from our practice.

21 MR HARDAWAY: I understand.

22 PRESIDING JUDGE: We are not bound with what was
happening
23 with the AFRC. We are answerable for our own procedures and
our
24 practices here.

16:58:07 25 MR HARDAWAY: I bring that up as a suggestion.

26 PRESIDING JUDGE: If those practices are possible, fine,
27 but, if you find that there would be [indiscernible] on the
28 process here, we might say no. All we would say is maybe for
Mr
29 Jordash to indicate with some certainty about the witnesses
that

SCSL - TRIAL CHAMBER I

Page 93 SESAY ET AL
 1 FEBRUARY 2008 OPEN SESSION

1 are going to be called next week. I'm sure he's provided a
list
2 of about seven; it's one, two, three, four, five, six, yes,
3 seven.

4 MR HARDAWAY: Yes, Your Honour, and again, it's not the
16:58:41 5 fact that we are not getting the list, it's just the fact that
6 the lists tend to be very very fluid, and again, this is just
7 a -- to put the Court on notice that there may be a problem.

8 PRESIDING JUDGE: No. Don't create a problem before
there

9 is one. Mr Jordash has told us that he is going to call these
16:58:57 10 witnesses. We would rely on the documents he's provided to
us,
11 and that is the way I look at it. Don't read in problems when
12 none exists, as yet.

13 MR HARDAWAY: Very well, Your Honour.

14 PRESIDING JUDGE: Right. Learned counsel, we would rise
16:59:18 15 here and adjourn the session to next week, Monday at 9.30. We
Court 16 wish you all a very very pleasant and restful weekend. The
17 will rise, please.

18 [Whereupon the hearing adjourned at 4.59
p.m.,

19 to be reconvened on Monday, the 4th day of
20 February, 2008, at 9.30 a.m.]

21
22
23
24
25
26
27
28
29

WITNESSES FOR THE DEFENCE:

WITNESS: DIS-297 2

CROSS-EXAMINED BY MR WAGONA 3

RE-EXAMINED BY MR JORDASH 9

WITNESS: DIS-255

17

EXAMINED BY MR JORDASH

22

CROSS-EXAMINED BY MR WAGONA

50

RE-EXAMINED BY MR JORDASH

60

WITNESS: DIS-226

70

EXAMINED BY MR JORDASH

72