

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

MONDAY, 27 MARCH 2006  
9.40 A.M.  
TRIAL

TRIAL CHAMBER I

|                                 |   |
|---------------------------------|---|
| Before the Judges:              | Pierre Boutet, Presiding<br>Bankole Thompson<br>Benjamin Mutanga Itoe |
| For Chambers:                   | Ms Candice Welsch<br>Mr Matteo Crippa                                 |
| For the Registry:               | Ms Maureen Edmonds  |
| For the Prosecution:            | Mr Peter Harrison<br>Ms Shyamala Alagendra<br>Mr Lynn Hintz (intern)  |
| For the Principal Defender:     | Mr Vincent Nmehielle  |
| For the accused Issa Sesay:     | Mr Wayne Jordash  |
| For the accused Morris Kallon:  | Mr Melron Nicol-Wilson<br>Mr Charles Taku<br>Ms Ayesa Touré           |
| For the accused Augustine Gbao: | Mr Andreas O'Shea<br>Mr John Cammegh                                  |

1 [RUF27MAR06 - EKD]

2 Monday, 27 March 2006

3 [The accused present]

4 [Open session]

09:35:45 5 [Upon resuming at 9.40 a.m.]

6 PRESIDING JUDGE: Good morning, counsel. Mr O'Shea or  
7 Mr Cammegh, one of the two -- yes?

8 MR TAKU: Your Honours, good morning.

9 PRESIDING JUDGE: Good morning. Welcome back.

09:46:45 10 MR TAKU: Thank you, Your Honours. I appear for Mr Kallon,  
11 with Mr Nicol-Wilson and Ms Ayesa Touré.

12 PRESIDING JUDGE: We know who you are, you have been here  
13 before. We will not ask you to introduce yourself. Thank you  
14 very much.

09:47:02 15 Yes, Mr O'Shea, we are back in an open session scenario now  
16 because we were informed that you wished to address the Court  
17 this morning. We are prepared to hear you and we would like to  
18 know first what is the nature or purpose of your application this  
19 morning.

09:47:25 20 MR O'SHEA: Thank you very much, Your Honour and I will do  
21 that straightaway. Your Honour, I am making an application to  
22 this Court under Rule 45(E) of the Rules of Procedure and  
23 Evidence. That is, I am making an application to withdraw from  
24 this matter as counsel.

09:47:48 25 Let me say right at the outset that I mean absolutely no  
26 disrespect whatsoever to the Bench in making this application and  
27 it is not my intention to go behind any of Your Honours' rulings  
28 in relation to related matters to this. I believe the Court has  
29 acted prudently, correctly and with the utmost sensitivity in



1 dealing with the events which have unfolded over the last few

2 weeks.

3           However, I find myself in a very difficult position and it  
4 is with great sadness that I make this application. Your Honours  
09:48:31 5 may be aware that I was the first assigned counsel to come to the  
6 Special Court in April 2003. The history of this application is  
7 that this is not the first time this kind of situation has arisen  
8 before the Court.

9           As Your Honours will be aware on 6th July 2004 Mr Gbao  
09:48:58 10 indicated an intention to make an opening statement personally to  
11 this Court, a course of action which the Court was not willing to  
12 allow.

13           On 6 July 2004, Mr Gbao indicated he wished to withdraw his  
14 entire legal team on the basis he did not recognise the Court.  
09:49:19 15 The Chamber issued a ruling and in that ruling on the same date  
16 the Chamber held that it would not entertain that application as  
17 Mr Gbao had not indicated any legitimate reasons as to why there  
18 should be considered to be the most exceptional circumstances in  
19 terms of Rule 45(E). On 23rd November 2004 the Appeals Chamber  
09:49:48 20 upheld the decision of this Chamber that myself and my legal team  
21 shall continue to the finality of the case and overruled  
22 Mr Gbao's application under Rule 45(E).

23           Most recently, in February of this year, Mr Gbao put an  
24 application before this Chamber to replace his legal team for a  
09:50:09 25 Sierra Leonean lawyer. The Chamber considered that matter and  
26 you, Mr President, wrote a letter to the Principal Defender  
27 indicating the intentions of the Court, that the legal team for  
28 Mr Gbao should not be interfered with, that his counsel should  
29 not be dismissed, but that the Court was sympathetic to the idea



1 of bringing a Sierra Leonean lawyer onto the team and recommended  
2 that a meeting take place between one Mr Shears Moses and our  
3 legal team.

4 PRESIDING JUDGE: Moses being suggested by the  
09:50:59 5 Principal Defender?

6 MR O'SHEA: Mr Moses apparently being the name put forward  
7 by Gbao himself and subsequently recommended by the  
8 Principal Defender [indiscernible] for being counsel before these  
9 proceedings.

09:51:13 10 Your Honour, that is the brief history behind this matter.  
11 I have felt both personally and professionally greatly  
12 embarrassed over the last few weeks by the way in which this  
13 matter has taken place. There were things taking place without  
14 my knowledge before I arrived here and then when I arrived here I  
09:51:39 15 had a meeting with Mr Gbao, a meeting at which --

16 JUDGE ITOE: Things like what, please? What things, may we  
17 know?

18 MR O'SHEA: Your Honours, yes. I don't wish to  
19 unnecessarily --

09:51:53 20 JUDGE ITOE: We are in a court of law. We need to know the  
21 facts.

22 PRESIDING JUDGE: Presumably your application is based on  
23 the fact that, and you will suggest to the Court that this  
24 constitutes really exceptional circumstances that would justify  
09:52:07 25 the Court to agree with your submission.

26 MR O'SHEA: Yes.

27 PRESIDING JUDGE: As you have rightfully pointed out, we  
28 have refused to act in accordance with such application in the  
29 past. This was supported by the Appeals Chamber, and therefore,



1 unless you come up with very, very cogent reasons and facts that  
2 would support your application to convince this Court that there  
3 exists now such exceptional circumstances, and I would add to  
4 that Mr O'Shea, for your govern, that I would say given the state  
09:52:47 5 of the trial we are at, the level of the exceptional  
6 circumstances increases as we move along. Because obviously  
7 circumstances that may exist before we move into the trial and  
8 halfway through are -- not that we are halfway through, but we  
9 are certainly well into the Prosecution case. I know you  
09:53:06 10 understand that and I just want to make sure you understand the  
11 position of the Bench on this.

12 It is not to cause unnecessary hardship to you personally,  
13 but we have very, very serious concerns about the direction that  
14 this case is taking, and certainly any decision we make we must  
09:53:23 15 ensure that not only the rights of the accused are properly  
16 protected but at the same time it does not cause any unnecessary  
17 delay in the proceedings. But having said that, we are listening  
18 to you, Mr O'Shea.

19 MR O'SHEA: I will, of course, respect any decision that  
09:53:37 20 comes from this Court, whatever it may be. I am fully  
21 recognizant of the fact that the threshold I must meet is a very  
22 high one. The Rule states that counsel will only be permitted to  
23 withdraw in the most exceptional circumstances, which are quite  
24 strong words. And I know that there has been discussion before  
09:54:00 25 the Appeals Chamber and the Trial Chamber about that concept.

26 In particular, on 8 December 2005 there was a decision in  
27 the Appeals Chamber with regard to the AFRC case. So I am aware  
28 that the threshold is very high. For my part, Your Honours, I  
29 feel, I am afraid, ethically obligated to make this application





1 no matter how high the threshold may appear to be under the

2 Rules.

3 The matter which I alluded to briefly, which His Honour  
4 Judge Itoe asked for elaboration on, is really a matter more of  
09:54:37 5 discomfort and collateral to the essential reason why I make this  
6 application, but I suppose has some relevance and bearing on the  
7 matter. Before I arrived to court for this trial session it  
8 appears from my inquiries that there have been visits from a  
9 local Sierra Leonean lawyer to the detention centre to visit  
09:55:07 10 Mr Gbao. I have been totally unaware of the existence of these  
11 visits, and for my part, whatever anyone else might say, I find  
12 that totally unacceptable, that somebody who is called to a Bar  
13 in whichever state should be called upon to visit a detainee who  
14 is represented, without counsel who is representing that detainee  
09:55:35 15 being informed of that matter. That was the first level of  
16 stress and discomfort for me.

17 I did receive a copy of a letter from Mr Gbao which  
18 indicated that he wished to replace his legal team. I then had a  
19 conversation with Mr Gbao in which he confirmed that position,  
09:56:02 20 but he indicated that he did not have a difficulty with  
21 Mr Cammegh as opposed to myself. I felt Mr Gbao was quite firm  
22 in his position in our first meeting. However, unfortunately, I  
23 did feel that there was a glimmer of hope. And yet when I  
24 subsequently discussed matters with the Defence office as to the  
09:56:35 25 reasons why I thought Mr Gbao wished to dispense with my  
26 services, those matters, or my conversations with the Defence  
27 office, were immediately reported or misreported back to the  
28 client. The result was that my subsequent meeting with Mr Gbao I  
29 could say that things broke down practically irretrievably



1 between us.

2 That's essentially the history of the matter.

3 PRESIDING JUDGE: Mr O'Shea, I am sorry to interrupt you at  
4 this particular stage. I am just informed that the recording  
09:57:12 5 system has broken down and nothing is being recorded at this  
6 particular time. So it is suggested we adjourn shortly. It is  
7 judged ten minutes and we'll take it from there. This is one of  
8 those technical difficulties that is beyond our control. We need  
9 to have what you say on record.

09:57:35 10 MR O'SHEA: Yes, I will repeat myself.

11 PRESIDING JUDGE: This is very important to you and to us  
12 as well. As I say, we apologise. We will break for this matter  
13 to be rectified and as soon as it is fixed we will come back and  
14 hear the remaining of your application.

09:57:53 15 MR O'SHEA: Thank you very much.

16 [Break taken at 10.52 a.m.]

17 [Upon resuming at 10.07 a.m.]

18 PRESIDING JUDGE: Mr O'Shea, we have been informed that the  
19 problem for the time being is fixed. Don't be surprised if we  
10:13:12 20 have to intervene again to say we still have problems, because  
21 apparently the diagnosis is an ongoing process and it may break  
22 down in two minutes. This is the nature of some of the  
23 difficulties we are having. But having said that, apparently it  
24 is working now. So we will hear you again and please take it  
10:13:34 25 where you were, if you recall where you were in the midst of your  
26 application. Thank you.

27 MR O'SHEA: Thank you, Your Honour. It is always the most  
28 painful submissions that one has to repeat.

29 PRESIDING JUDGE: You can just give us the essence of your



1 introduction and we will take it from there.

2 MR O'SHEA: Yes, I will do so.

3 Your Honour, this is an application under Rule 45(E) of the  
4 Rules of Procedure and Evidence. It is an application that I be  
10:14:04 5 permitted to withdraw as assigned counsel in this case. Let me  
6 say right at the outset that it is an application which I make  
7 with no disrespect whatsoever to you, Mr President, or  
8 Your Honours. I believe that Your Honours have acted in this  
9 matter prudently, correctly and with the utmost sensitivity, and  
10:14:33 10 having regard to the best interests of the client. I also have  
11 no intention of going behind any rulings that Your Honours have  
12 made thus far.

13 I would indicate that this application is distinct from the  
14 application of Mr Gbao, first of all, because it comes from  
10:14:52 15 counsel and not from the accused. And secondly, because my  
16 reasons for wishing to withdraw are different from Mr Gbao's  
17 justifications for wishing to dismiss me. It is an application I  
18 make with sadness, having been the first assigned counsel before  
19 the Special Court, appointed in April 2003.

10:15:19 20 The history of Mr Gbao's wishing to dispense with counsel  
21 is a fairly long one in the context. Mr Gbao first made such an  
22 application on 6th July 2004, where he requested his counsel be  
23 withdrawn. That was an application which this Chamber refused on  
24 the basis that the reason why Mr Gbao wished to do so was because  
10:15:50 25 he did not recognise the legitimacy of the Special Court, and  
26 that that was not a sufficient reason for the purposes of the  
27 exceptional circumstances test under Rule 45(E). That matter  
28 went to the Appeals Chamber and the Appeals Chamber decided on  
29 23rd November 2004 that this Chamber was correct in its ruling



1 that myself and my legal team should continue to the finality of  
2 the case. That is the legal framework within which we are today.

3 On or about 20th February 2006 Mr Gbao put in an  
4 application to this Chamber, again to replace his legal team but  
10:16:25 5 this time for a different reason. This time because he wished to  
6 appoint a named Sierra Leonean lawyer onto the team of Mr Gbao.

7 PRESIDING JUDGE: I think to be more precise, I think it  
8 was a bit more. It was not only to appoint a Sierra Leonean  
9 lawyer, it was to have a Sierra Leonean lawyer to head his team,  
10:16:48 10 which is a substantially different notion.

11 MR O'SHEA: Yes, to head his team and replace his existing  
12 counsel.

13 PRESIDING JUDGE: That's right.

14 MR O'SHEA: This is a matter which the Chamber considered  
10:17:00 15 cautiously over time and you, Mr President, then wrote a letter  
16 to the Principal Defender with the decision that Mr Gbao would  
17 not be permitted to dismiss his counsel, that the Chamber was  
18 sympathetic to the idea of having a Sierra Leonean lawyer on the  
19 Gbao team, and that a meeting should be accorded between the Gbao  
10:17:24 20 team and the said Sierra Leonean lawyer, but that the Chamber did  
21 not think it was a good idea that that lawyer should take the  
22 position of lead counsel or co-counsel or affect the hierarchy  
23 within the team.

24 That is a decision which this Chamber re-emphasised orally  
10:17:45 25 on 24th March, after Mr Gbao made a public statement. It is  
26 Mr Gbao's public statement which is perhaps the turning point in  
27 my application. In that public statement Mr Gbao indicated that  
28 he had no trust and confidence in me; that he had no difficulty  
29 with Mr Cammegh, but that he wished to dismiss my services.





1           PRESIDING JUDGE: But you will remember that in that  
2 statement, not by Mr Gbao but by this Court, we clearly stated  
3 that we have full confidence in you and your ability to properly  
4 act on behalf of this accused, and that we felt that you had  
10:18:34 5 discharged your duty in a most professional way, while he the  
6 accused had decided not to show up in court.

7           This is for the record. I think it is very important that  
8 it be assessed in that perspective. You had acted to represent  
9 him to the best of your ability in difficult circumstances when  
10:18:58 10 it was impossible to get instructions. But based on the limited  
11 information you had at the time, both you and Mr Cammegh did the  
12 utmost to defend him and represent him fairly and to make sure  
13 that his rights at all times were properly protected and  
14 defended. So I think it is important that it be known as well,  
10:19:22 15 To throw in the air that I don't want my lawyer because whatever  
16 it is. That is why I say you need to give very, very cogent and  
17 strong reason as to why, especially in the light of what we  
18 observe to be your performance in this Court, which as I say we  
19 commended you and your colleague for having done your work in a  
10:19:43 20 most professional way. But having said that, please proceed.

21           MR O'SHEA: I am very grateful and I am sure Mr Cammegh is  
22 very grateful for that indication, Your Honour.

23           JUDGE THOMPSON: As you continue along those lines in fact  
24 it seems you're making an application to withdraw your  
10:20:05 25 representation here as assigned counsel and you've alluded to the  
26 fact of the public statement by the third accused of lack of  
27 confidence in your professional competence and the  
28 Presiding Judge in fact has just given sort of his own assessment  
29 from the Bench perspective of that professional -- of that



1 statement. It would seem to me in trying to resolve the issue -  
2 in other words, determining whether there is merit in your  
3 application as you go along - to satisfy me, and I'm speaking for  
4 myself, to what extent, based on the jurisprudence, would such a  
10:21:06 5 public statement of an accused person as to lack of confidence in  
6 his lawyer be a criterion or valid or otherwise consideration in  
7 assisting the Court to come to a resolution of the matter. If  
8 you know of any jurisprudence elsewhere where that has been given  
9 any weight. That's my own -- if you can, now or later, it would  
10:21:35 10 be helpful to me, speaking for myself.

11 MR O'SHEA: Yes.

12 JUDGE THOMPSON: But I didn't really mean to interrupt the  
13 rhythm of your application. Thank you.

14 MR O'SHEA: Yes. Your Honour, the position with regard to  
10:21:48 15 the jurisprudence is that on a national level in my jurisdiction,  
16 the jurisdiction of the United Kingdom, these matters are usually  
17 dealt with on the basis of the ethical code of conduct of counsel  
18 and very rarely become a matter of judicial consideration. There  
19 have been exceptional cases where that has happened but,  
10:22:15 20 generally speaking, because the trials are not as long and  
21 complicated as the trial we are dealing with here, these are  
22 matters which are usually dealt with outside the courtroom in  
23 national jurisdictions, certainly in my own jurisdiction. It has  
24 been generally understood that once a client has indicated very  
10:22:36 25 clearly that he has no trust and confidence in this lawyer that  
26 it is the ethical duty of that lawyer to withdraw.

27 PRESIDING JUDGE: Indeed. That is quite standard practice.  
28 I don't think it is disputed in national systems. But you will  
29 concede that the post taken by international tribunals - I'm not



1 talking only of this Court - is in that respect substantially  
2 different. From the top of my head I know some cases, ICTR, for  
3 example, where courts have refused to agree to this because it  
4 could be a scheme, for example, to simply delay. I am not saying  
10:23:12 5 it is in this case here.

6 JUDGE ITOE: A scheme in fact to disrupt the proceedings  
7 and to put a block, you know, on the expeditiousness that this  
8 Tribunal wants to impact on these trials. We are on the 66th  
9 witness and I feel very concerned about the departure of counsel  
10:23:38 10 who has been defending an accused up to the 66th witness and the  
11 impact it might have.

12 And let me say this, I want to say this and I want to go on  
13 record, I had said it the other day: Even if Mr Shears Moses  
14 were the most intelligent lawyer in the world, he would not at  
10:23:58 15 this point in time be capable of taking over the defence of this  
16 client. He cannot. Even if we credited him with being the most  
17 brilliant lawyer in the world. I wouldn't do that anyway. I'm a  
18 lawyer, but I don't think I would arrogate myself with the  
19 competence of taking over the defence of a counsel when 66  
10:24:21 20 witnesses of the Prosecution have been heard, examined and  
21 disposed of. This is my worry and I'm sure it's the worry of  
22 this Chamber.

23 MR O'SHEA: Yes, and Your Honour makes a very fair point  
24 and that's why I say that I have no criticism whatsoever of  
10:24:40 25 Your Honours' ruling of 24th March. It's a very considered and  
26 proper ruling in the circumstances. The jurisprudence on this  
27 matter before the international tribunals supports what  
28 Your Honours say. There is a decision, I believe, Barayagwiza in  
29 the ICTR.



1 JUDGE THOMPSON: Yes, that's what I'm looking for. I'm  
2 looking for some guidance.

3 MR O'SHEA: There is also the decision in the case of  
4 Nzirorera. Nzirorera was a case where the accused wished to  
10:25:12 5 change his legal counsel.

6 JUDGE THOMPSON: In other words, what was the response of  
7 the Tribunal?

8 MR O'SHEA: The response of the Tribunal was that there was  
9 no proper basis upon which the counsel should --

10 PRESIDING JUDGE: It's in the rarest of cases that courts  
11 have ever agreed in mid-course of a trial to the replacement of a  
12 counsel, as such. That's why the threshold is so high.

13 JUDGE THOMPSON: The reason I ask this is because you  
14 yourself in the course of your application have said it was that  
10:25:40 15 public statement that triggered off your application and that was  
16 why I pushed you to the position of saying if that was what  
17 triggered it off, I need to be guided on the basis of the  
18 jurisprudence as to which other tribunals have allowed such a  
19 factor to be considered a valid or overriding factor in  
10:26:04 20 determining the issue that you have brought before us. For me  
21 it's quite a neat legal question.

22 MR O'SHEA: In international tribunals there is no case  
23 where such a confirmation has been made. Probably the closest  
24 case to the current situation, although the facts are different,  
10:26:24 25 in my submission is the Milosevic case because the Milosevic case  
26 was a case where counsel himself, as opposed to the accused --  
27 there were a number of cases where the accused made the  
28 application but in the Milosevic case the application came from  
29 counsel, Mr Steven Kay, and he made the application on the basis





1 that his professional code of conduct did not permit him to  
2 continue with a client who had indicated that he did not wish to  
3 be defended by him. In that case the Trial Chamber ruled against  
4 that application.

10:27:01 5 PRESIDING JUDGE: And appointed him as court appointed  
6 counsel.

7 JUDGE THOMPSON: Precisely.

8 MR O'SHEA: And appointed him as amicus counsel and then,  
9 later, as defence counsel when there were difficulties during the  
10:27:11 10 course of the trial.

11 PRESIDING JUDGE: Which supports our position. Obviously  
12 at the stage where that application was being made the Milosevic  
13 trial has progressed to a stage where it was felt that if he were  
14 to be removed -- counsel were to be removed at that time or  
10:27:25 15 replaced it would have caused certainly at that time a very, very  
16 important delay in the proceedings. But, Mr O'Shea, it is not to  
17 take that part away from your presentation, but in your first  
18 time when we experienced some technical difficulties you had  
19 indicated that you were feeling both professionally and  
10:27:47 20 personally embarrassed by this situation.

21 MR O'SHEA: Yes.

22 PRESIDING JUDGE: The situation being, in particular, this  
23 public statement of Friday of last week. You expanded a bit on  
24 this to say, to give to the Court -- and if you are still able to  
10:28:02 25 and are prepared to restate that part. Simply because, as you  
26 know, the record, if in existence, is bleak.

27 MR O'SHEA: I will do so, Your Honour. I think it's an  
28 important part of the history of my decision to make this  
29 application. But before I do so, let me just wrap up on the



1 jurisprudence issue by reminding Your Honours of what the Appeals  
2 Chamber in the Special Court for Sierra Leone said on 8th  
3 December 2005 --

4 PRESIDING JUDGE: This is the AFRC decision?

10:28:38 5 MR O'SHEA: This is the AFRC decision. It is the decision  
6 on Brima, Kamara Defence Appeal Motion Against Trial Chamber II  
7 Majority Decision on Extremely Urgent Confidential Joint Motion  
8 for the Reappointment of Kevin Metzger and Wilbert Harris as Lead  
9 Counsel for Alex Tamba Brima and Brima Bazzy Kamara, decision of  
10:28:58 10 8th December 2005. At paragraph 76 of that decision on page 43  
11 of the transcripts the Appeals Chamber indicates, when reminding  
12 itself of Rule 45(E), it says the following:

13 "The severity of this sub-rule reflects the gravity of  
14 abandoning a client charged with a serious crime and facing  
10:29:22 15 a lengthy prison sentence if convicted. It is not a rule  
16 that applies to only to war crimes courts. The most  
17 exceptional circumstances test is found in many codes of  
18 conduct for barristers in common law countries.

19 Essentially it is a core professional duty imposed on all  
10:29:38 20 who defend persons accused of serious crime. No matter how  
21 inconvenient to their lives or how detestable their client,  
22 or how sick they are, or how threatened they feel, a  
23 barrister must stick with a client to the end of the a  
24 trial."

10:29:54 25 So I am well aware of the fact that the test --

26 PRESIDING JUDGE: But you have to look at it in the  
27 perspective of the factual background that led to that decision.  
28 This is a decision where the lawyers in that case had submitted  
29 that they had to resign because they'd been threatened. So this



1 is -- I don't think the facts in the AFRC and applying 45(E) are  
2 to do with confidence or lack of confidence by the accused  
3 themselves to his lawyer. I don't think that was the case.

4 MR O'SHEA: That's absolutely correct, Your Honour. The  
10:30:26 5 facts were very different. I only cite that passage, being a  
6 passage of the Appeals Chamber interpreting Rule 45(E), to  
7 indicate how high the threshold has been set.

8 PRESIDING JUDGE: Indeed. Let it be said that we have no  
9 doubt about that.

10:30:38 10 MR O'SHEA: Yes, and I am recognizant of the fact that I  
11 have to meet a very high threshold in this matter. Your Honours  
12 have indicated that you would like me to elaborate on why I feel  
13 personally and professionally embarrassed in this matter.

14 PRESIDING JUDGE: Yes.

10:30:56 15 MR O'SHEA: Your Honours, leading up to this particular  
16 trial session my knowledge of the situation was as it had been  
17 for a number of months previously. That Mr Gbao was taking his  
18 position that he was not recognising the court, that he would not  
19 appear in the proceedings and that was essentially the basis upon  
10:31:21 20 which he did not wish to have lawyers. I can indicate as a  
21 development to that that Mr Gbao was not at all happy with the  
22 fact that after the Chamber had ruled against him I refused not  
23 to appear in court subsequently, which led to a situation,  
24 gradually, where Mr Gbao's wish not to have his lawyers became  
10:31:47 25 more personal than it had been hitherto.

26 So I did not -- I was not aware of the fact that there was  
27 correspondence going on between the Principal Defender and the  
28 Trial Chamber. I was not aware of the fact that there were  
29 visits by a local lawyer to the detention centre of the



1 Special Court which were taking place in my absence. In fact, it  
2 appears that there are two local lawyers that have visited  
3 Mr Gbao; one Mr Shears Moses and one Mr King. This is  
4 information that I have gathered by virtue of inquiries from the  
10:32:25 5 chief of the detention centre.

6 PRESIDING JUDGE: Just to make sure, you say that there was  
7 correspondence between the Principal Defender and the Chamber.

8 MR O'SHEA: Yes.

9 PRESIDING JUDGE: It all originated by a handwritten letter  
10:32:39 10 by your client, Mr Gbao, to the Chamber. So that's how it  
11 started off, and eventually the Principal Defender was asked to  
12 look into the matter.

13 MR O'SHEA: Yes. I should say that that was the first  
14 point at which I became aware that something was going on in that  
10:33:01 15 I was sent a copy of the letter which Mr Gbao had written to  
16 Your Honours where he had indicated that he wished to replace his  
17 legal team, myself and TNT Solicitors, who, as Your Honours will  
18 know, have already -- or Mr Girish Thanki has already departed  
19 for reasons of personal health from the team. So that was the  
10:33:31 20 first indication I received.

21 I was not informed of the fact that anybody of legal  
22 qualification was visiting my client in the detention centre. I  
23 was not informed of that fact and I felt that I should have been  
24 informed.

10:33:49 25 When I came to Sierra Leone for the status conference the  
26 first sort of indication I got as to what really had been going  
27 on was a letter written by the Principal Defender to Mr Gbao  
28 which was handed to me about 10 minutes before the matter of  
29 Mr Gbao's legal representation was dealt with in the detention





1 centre and I read that letter before I got on my feet. And I  
2 indicated to His Honour Judge Thompson that I had seen the  
3 correspondence, but at that point I didn't realise that I in fact  
4 had not seen all the correspondence.

10:34:25 5 PRESIDING JUDGE: This was at the status conference.

6 MR O'SHEA: That was at the status conference where  
7 Mr Nmehielle was present and he showed me a copy of the letter  
8 which he sent to Mr Gbao in which he indicated he was against the  
9 idea of the replacement of the legal team, but that perhaps  
10:34:44 10 Mr Shears Moses could possibly be appointed as a co-lead counsel.  
11 That was the letter which I saw.

12 PRESIDING JUDGE: As a co-lead counsel.

13 MR O'SHEA: Well, there was one line in that letter which  
14 said possibly Mr Shears Moses could be appointed as a co-lead  
10:35:00 15 counsel.

16 PRESIDING JUDGE: And the letter you're making reference to  
17 now is the letter by the Principal Defender to the Chamber?

18 MR O'SHEA: No, I did not see the letter by the  
19 Principal Defender to the Chamber. The only letter I saw which  
10:35:11 20 was shown to me during the status conference was the letter from  
21 the Principal Defender to Mr Gbao.

22 PRESIDING JUDGE: You had mentioned, if I may direct you as  
23 well, that in your professional embarrassment other than the fact  
24 that two local lawyers had seen your client without your  
10:35:31 25 knowledge, you mentioned something about the Principal Defender  
26 at that stage when queried by my brother Justice Itoe about this  
27 and you were asked to expand on that. Would you please repeat  
28 that again for the record. We just wanted that to be repeated.

29 MR O'SHEA: Certainly. First and foremost, I should



1 indicate with regard to these visits that at the time of the  
2 status conference, and immediately thereafter, I still had no  
3 knowledge of these visits.

4 The point at which I learnt of these visits was by accident  
10:36:07 5 in a car when I was speaking to Ms Haddi Kah-Jallow informally,  
6 something like a week or a week and a half, after the status  
7 conference. She had indicated to me that a lawyer had gone down  
8 to the detention centre and I asked, "Well, how did that come  
9 about? How was it facilitated?" At which point it was indicated  
10:36:36 10 to me that it was the defence office that had facilitated those  
11 visits.

12 I think that is the point at which I became quite disturbed  
13 professionally in what was happening in relation to my team and  
14 my client. I began to feel that things were happening to the  
10:36:58 15 exclusion of my knowledge in a manner which never should have  
16 happened.

17 I had a meeting with the client on the first day or I think  
18 on the day of the status conference or immediately after the  
19 status conference. The client indicated to me his position that  
10:37:18 20 he'd set out in his letter very clearly, that he wished to  
21 replace his legal team and that he wished to have a  
22 Sierra Leonean lawyer. But he did also indicate to me that he  
23 had no difficulty with Mr Cammegh.

24 PRESIDING JUDGE: Mr O'Shea, again, I'm sorry to interrupt  
10:37:36 25 you. It would appear we are still experiencing some other  
26 technical difficulties. Let me just ascertain with the court  
27 officer if it is the case. If that is the case, we may have to  
28 stop again because of this. It is important we have you on  
29 record. We do have a stenographer, as you know, but the system



1 of audio-visual is important because this is the exact recording  
2 of what you're saying and what is happening in court. Madam  
3 court officer?

4 MS EDMONDS: I don't know of any problems, Your Honour, but  
10:38:12 5 I'll check.

6 PRESIDING JUDGE: If it is okay for now. Let us know what  
7 is happening. Mr O'Shea, apparently we are still --

8 MR O'SHEA: We're all right. Thank you, Your Honour. I  
9 can't, in any sense, say that that meeting with the client was a  
10:38:29 10 positive meeting. It was quite clear that the client was quite  
11 adamant in his position. However, I did ask the client to  
12 elaborate to me his reasons or his motivations or his  
13 difficulties with me, which he did say, and urged him to  
14 reconcile for the sake of his case. His reaction to me was he  
10:38:55 15 would see what the decision of the Trial Chamber was and take a  
16 position when he received that decision. I felt that while, as a  
17 whole, the meeting was not that positive, there was at that stage  
18 a glimmer of hope that I could get things back on track with the  
19 client, but I was not sure. That was only a personal perception.

10:39:17 20 Immediately after that meeting, Your Honours will know that  
21 there is this novel concept in this Court of a defence office  
22 where there are lawyers who are there to assist in the process in  
23 a role I can say slightly more than administrative and, in that  
24 context, there were certain things which were conveyed to me by  
10:39:39 25 the client which I felt it was important for the Defence office  
26 to know.

27 PRESIDING JUDGE: What do you mean by this? I must say, I  
28 would like to be enlightened of what you mean by this very last  
29 statement.



1 MR O'SHEA: Yes. Well, Your Honours, I can't elaborate to  
2 a full extent because I obviously do have a position of legal  
3 privilege with the client.

4 PRESIDING JUDGE: Absolutely, and we are not asking you --

10:40:08 5 MR O'SHEA: I cannot report everything the client says to  
6 me to the Chamber. What I can indicate was that I felt there  
7 were certain things I did have a duty to say to the Defence  
8 office and a professional duty. The Defence office, it would  
9 appear, repeated my words or, I should say, from my perception of  
10:40:28 10 my subsequent meeting with the client perhaps misreported my  
11 words to Mr Gbao. Because when I then had my second meeting with  
12 Mr Gbao, Mr Gbao was I can only put it as completely furious with  
13 me because of things that he said I had said to the Defence  
14 office or defence officers. At that point, I can say that the  
10:40:56 15 relationship, in a sense, irretrievably broke down between me and  
16 Mr Gbao.

17 So that is the history of the matter and I felt a great  
18 degree of personal and professional discomfort at the way things  
19 had unraveled. Then I decided to reserve my professional  
10:41:19 20 position with regard to this case and the Chamber until the  
21 decision of the Chamber came out and to see what would be the  
22 reaction of Mr Gbao and how that reaction would develop. So I  
23 didn't want to act precipitously.

24 As I have indicated, in my own jurisdiction, in my own code  
10:41:51 25 of ethics, it is understood that in these kinds of circumstances  
26 I have an ethical obligation to withdraw from the case. I think  
27 in the context of this international tribunal it has to be put as  
28 this: my national ethical obligation is to make this request to  
29 the Chamber.





1           PRESIDING JUDGE: Indeed, and we do appreciate your  
2 dilemma, if I can put it this way.

3           MR O'SHEA: Thank you, Mr President.

4           JUDGE ITOE: If I may, Mr O'Shea, I appreciate your  
10:42:22 5 forthrightness with the Court and your professionalism to bring  
6 forward this matter on the table of the Trial Chamber. I just  
7 want to know, in the letters, in your interactions with the  
8 accused and the Principal Defender, is there any accusation  
9 against you of having been in breach of your professional  
10:42:48 10 obligations against your client, or is there any mention or  
11 reference to a misconduct which may have motivated your client --  
12 I wouldn't say as per this stage because I think it would be  
13 necessary for us to hear the Principal Defender because he  
14 appears to be the principal actor on this issue, which is very  
10:43:19 15 cloudy. It is very, very cloudy, I must say. But right now,  
16 were you told of any professional misconduct or any failure to  
17 live up to your professional obligations, given your legal  
18 services contract?

19           MR O'SHEA: Well, the accused has views upon that. The  
10:43:34 20 accused believes that I have not lived up to my professional  
21 obligations. The accused believes he was misled by the first  
22 Principal Defender, Mr John Jones, who had essentially --

23           JUDGE ITOE: The Chamber has said that it is not satisfied  
24 that you have not lived up to your professional obligations.  
10:43:53 25 This is our view.

26           MR O'SHEA: Yes. Well, the accused holds the view that he  
27 was misled by Mr Jones on the fact that I was sold to him as an  
28 expert in the field of amnesty. He feels I did not live up to my  
29 professional obligations with regard to dealing with that issue



1 of amnesty and the Lome accord. The accused also feels I have  
2 not lived up to my professional obligations with regards to the  
3 indictment. The accused feels I should have done more to ensure  
4 that he was re-arraigned on the whole indictment, which he feels  
10:44:28 5 it was his right. So, from the accused's perspective, there are  
6 matters that he is not happy about on my dealing with this case.

7 With regard to the Principal Defender, the  
8 Principal Defender recorded in a response which he wrote to a  
9 letter from me and Mr Cammegh, which was copied to Your Honours,  
10:44:53 10 that it had never been suggested by the Defence office or the  
11 Chamber that we had not -- I cannot remember the exact words now,  
12 but that we had not acted properly or that we had in any way  
13 acted below our professional expectations.

14 PRESIDING JUDGE: This letter you are making reference to  
10:45:15 15 is a recent correspondence?

16 MR O'SHEA: Yes.

17 PRESIDING JUDGE: As a result of this application by the  
18 third accused?

19 MR O'SHEA: There was a letter we wrote on 13 March,  
10:45:22 20 Mr Cammegh and myself.

21 PRESIDING JUDGE: And it is a response to that letter.

22 MR O'SHEA: And there was a response to that letter. It is  
23 in that response there is one line in the letter which  
24 acknowledges the Defence office has never suggested that we have  
10:45:37 25 not acted with the professionalism that we were supposed to.

26 PRESIDING JUDGE: In all of what you are saying, it is  
27 clear, as alluded to by my learned brother Justice Itoe, that the  
28 Principal Defender has played a role that we need to know more  
29 about and it is probable we will call him to come here to this



1 Court to tell us a bit more of the background of this because we  
2 were getting concerned on what the Principal Defender's office  
3 seemed to be doing lately, as such, arrogating to himself or his  
4 office certain responsibilities that would appear to go well  
10:46:21 5 beyond what we perceive to be his role and function. Having said  
6 that, in fairness to him and all his office, we may ask to have  
7 him to come and explain to this Court the background and to give  
8 the full picture for the record, if only for that, and to know  
9 his position in these matters.

10:46:37 10 MR O'SHEA: In fairness to the Principal Defender, I can  
11 say he has always indicated to me that he has done everything  
12 within his power to try and reconcile me with Mr Gbao. Certainly  
13 in terms of the correspondence I received from him and the  
14 correspondence he sent to Mr Gbao, he has made it very clear he  
10:47:03 15 is against the idea of replacement of legal counsel. However, I  
16 do have to say I have suffered a great deal of personal stress --

17 JUDGE THOMPSON: Notwithstanding that the other palliating  
18 comment by you in respect to the Principal Defender's position,  
19 it does not necessarily dispel some of the lingering doubts in  
10:47:27 20 the minds of the Bench that perhaps some legal misconception  
21 about the institutional role of the Principal Defender within the  
22 Court may well have been a contributory factor to the problems  
23 you may have experienced. Therefore, notwithstanding your own  
24 eagerness to diminish any possible responsibility here, I think  
10:47:57 25 the Court should be treated with candour. To say that perhaps  
26 the misconception as to the institutional role of a  
27 Principal Defender in such delicate matters where the assigned  
28 counsel may well have been a contributory factor, and perhaps  
29 need to be clarified by this Bench once and for all to avoid a



1 repetition of situations of this nature, which are really posing  
2 this Court with a lot of difficulty in complying with the  
3 mandates that we have and particularly having regard to the  
4 overriding norm to proceed expeditiously with these trials.

10:48:44 5 MR O'SHEA: Indeed, Your Honour. I myself was struck by  
6 what I perceived to be a misconception on the part of the Defence  
7 Office as to the proper role in this kind of matter. This was a  
8 matter which was clear to -- it was clear to everybody that there  
9 was a strained relationship between the lawyers and Mr Gbao and  
10:49:13 10 it required a high degree of sensitivity. A degree of  
11 sensitivity which Your Honours have shown in the way you have  
12 come to your ruling of 24th March, but a sensitivity which I have  
13 felt has been lacking in other quarters. It has caused me, the  
14 way in which I have been dealt with by various parties, not the  
10:49:37 15 Chamber, but by various parties -- has caused me a great deal of  
16 stress.

17 So my application to withdraw from this case is based on my  
18 ethical position that I have a client who has indicated in no  
19 uncertain terms that he wants absolutely nothing to do with me.  
10:50:02 20 He will not co-operate with me, he will not provide me with  
21 instructions, he will not communicate with me. He wants to have  
22 absolutely nothing to do with me. I have indicated to the  
23 Chamber some of the factors which may have contributed towards  
24 that feeling for my part --

10:50:25 25 JUDGE THOMPSON: Let me interject for my own enlightenment.  
26 Now that you stress that aspect, do you know whether this  
27 client's position, which really was canvassed earlier on in this  
28 Court that he does not recognise the jurisdiction of this Court  
29 is still the same? If you don't know, don't answer, but I'd be





1 interested to find out.

2 MR O'SHEA: Well, I personally haven't been in  
3 communication with the client. The implication of the client's  
4 attendance in court would appear to suggest that there may have  
10:51:04 5 been a modification in his position. I don't know to what  
6 extent.

7 JUDGE THOMPSON: It may well be approbating and  
8 reprobating.

9 MR O'SHEA: Your Honour, I really don't know. It's a  
10:51:16 10 matter that I have not had the opportunity to --

11 JUDGE THOMPSON: Just out of curiosity I would like to know  
12 because when you say that here is a client who is saying that he  
13 absolutely doesn't want you to represent him, I would like to  
14 know also what is his locus, a court that he has said he does not  
10:51:34 15 recognise at all. But I will just leave it at that. I merely  
16 thought I should raise what to me is a very important question  
17 for me and I will let it rest and not put you to any further  
18 inquiry in terms of --

19 MR O'SHEA: Thank you.

10:52:06 20 JUDGE THOMPSON: But I thought it something worth thinking  
21 about.

22 MR O'SHEA: Mr Cammegh has indicated that he would like to  
23 say a few words on this matter and when he does he may be able to  
24 enlighten the Court further. It is not something I have  
10:52:18 25 specifically asked Mr Cammegh and I don't know if Mr Cammegh has  
26 specifically asked it to the client. I think for our part it's a  
27 matter we felt best left alone probably.

28 JUDGE THOMPSON: Thank you.

29 MR O'SHEA: So, Your Honours, of course I am aware of the



1 very high threshold. I have -- whatever Mr Gbao may say, I have  
2 always done what I felt not necessarily was in his wishes, which  
3 is perhaps another matter he's not so happy about. I have not  
4 always acted according to his wishes, but I have always done what  
10:52:52 5 I have felt is in his best legal interests. Whatever decision  
6 this Chamber reaches I will accept and if my application is  
7 refused I will bear no grudges against anybody and I will  
8 continue to act in his best interest. But it seems to me that in  
9 circumstances where the client has picked out one individual on  
10:53:22 10 his team who happens to be not only the assigned counsel but also  
11 the lead counsel and said, "I wish nothing to do with that man, I  
12 have no trust and confidence in him," and when it comes to the  
13 point where it appears to be a position that it would take a  
14 great deal to change, in all fairness I have no other option than  
10:53:45 15 to make this application to the Court on ethical grounds.

16 PRESIDING JUDGE: We understand your position.

17 MR O'SHEA: Thank you.

18 PRESIDING JUDGE: Mr Cammegh, you wish to add a few words  
19 as suggested by Mr O'Shea.

10:54:00 20 MR CAMMEGH: Just a few words, if I may.

21 PRESIDING JUDGE: It's in response to Justice Thompson's  
22 question?

23 MR CAMMEGH: I will deal with that to a degree. I would  
24 like to preface my comments with the following: I mean no  
10:54:16 25 discourtesy and disrespect to the Chamber who, I agree with  
26 entirely Mr O'Shea, have acted properly and sensitively. I  
27 emphasise sensitively throughout, particularly during the last  
28 few turbulent weeks. I would also like to say this: I think in  
29 the manner of his exposition to you just now, Mr O'Shea has



1 demonstrated amply precisely what he has to offer in terms of the  
2 defence of his client. I am referring in particular to his  
3 ability to state legal argument in a concise way, drawn upon a  
4 wide range of knowledge that I cannot possibly match. That is  
10:55:08 5 why our team ascribes to largely different functions. I cannot,  
6 in all fairness, claim to be an expert when it comes to putting  
7 together, for example, a 98 bis motion or at the appeal stage.  
8 It is for that reason that I am afraid -- and I don't want to  
9 sound as if I'm be obstructive, but I want to make this  
10:55:33 10 absolutely clear. There is no way in which I would be willing to  
11 stand in Mr O'Shea's shoes as assigned counsel in this trial.

12 JUDGE ITOE: There is no way?

13 MR CAMMEGH: I would not wish to be considered as assigned  
14 counsel in this trial should Mr O'Shea withdraw. But I have to  
10:55:55 15 go further than that and say that I would also have to consider  
16 my position in relation to further representation of Mr Gbao. It  
17 is not something I could decide overnight. It is something that  
18 I would have to give a great deal of thought to.

19 When I started this case myself I had no idea that I would  
10:56:18 20 still be involved nearly two years later and, unlike both  
21 Mr Jordash and Mr O'Shea, I have tried to juggle a practice at  
22 home with a practice here. The financial and, I should say,  
23 personal loss that I have had to suffer over the last two years  
24 has been enormous. But I feel I have a responsibility here and  
10:56:41 25 that is why I have continued. That is why Mr O'Shea and I are  
26 the team that we are.

27 Now, it's perhaps for others to decide or for others to  
28 determine or investigate what has been going on. But I must echo  
29 Mr O'Shea's comments and sentiments. I, for my part, also have



1       been under a tremendous amount of stress this session. I have  
2       been in the embarrassing position of having to ask to leave court  
3       which is something I would never have dreamt of doing at home and  
4       nor would I have been allowed. So I am grateful to Your Honour  
10:57:27 5       for your forbearance in order that I can take instructions from  
6       my client. It has placed intolerable strain on the both of us.

7               I have to say that since I arrived on 27th February, which  
8       was later on the day of the status conference, it appears that  
9       events have unfolded in which our position has become  
10:57:58 10       destabilised. I should say, to be fair to the Defence Office and  
11       to the Principal Defender himself, there is no suggestion  
12       whatsoever that they have gone out of their way to introduce  
13       lawyers to Mr Gbao. My understanding is that Mr Shears Moses was  
14       put forward by Mr Gbao. So I want to make that absolutely clear.

10:58:26 15              I really don't want to take up any more of this Court's  
16       time. I echo what Mr O'Shea has said, I support his position.  
17       But, with the greatest of respect to the Bench, I must repeat  
18       that I do not wish to apply to become assigned counsel in this  
19       case and if Mr O'Shea leaves I'm afraid to say there is a  
10:58:46 20       possibility that I may feel compelled to do the same. I would be  
21       in an invidious position were I to take over the reigns of a  
22       trial which His Honour Justice Itoe has pointed out quite  
23       rightly, 65 or so witnesses, nearly two years in, to educate and  
24       instruct another lawyer as to where we are and where we go from  
10:59:13 25       here. It is ironic indeed that Mr O'Shea had already secured the  
26       services of a South African lawyer for the next session when I  
27       know that I can't be here for any more than two, possibly three,  
28       weeks and yet all this has blown up.

29              By the same token, I of course respect Mr Gbao's wishes.





1 If he wants a named lawyer, that is something that has to be  
2 considered. But I am afraid, if you put all of these together in  
3 the mix, Mr O'Shea and to a large extent I have been placed  
4 between a rock and a hard place. There we are. Circumstances  
10:59:50 5 have taken place which are deeply regrettable. I don't know if  
6 any other counsel want to say any words on this matter. I leave  
7 it to them.

8 PRESIDING JUDGE: Mr Cammegh, before you sit down. You  
9 know our position as I stated on Friday as to an additional  
11:00:12 10 resource to be added to your team as such, whether it is  
11 Mr Shears Moses or any other from Sierra Leone as such. We were  
12 quite open to that suggestion and we were prepared to support --

13 MR CAMMEGH: As are we.

14 PRESIDING JUDGE: -- such a proposition.

11:00:32 15 MR CAMMEGH: As are we. I should make this clear: That  
16 neither Mr O'Shea nor I -- no, I will put it differently. We  
17 would welcome the addition of a competent local lawyer within the  
18 hierarchy as I think recommended by Your Honours.

19 PRESIDING JUDGE: Yes.

11:00:47 20 MR CAMMEGH: Unfortunately, that doesn't meet with the  
21 approval of Mr Gbao who would like a named lawyer in a certain  
22 position at the very least in a tripartite hierarchy, if you  
23 like --

24 JUDGE ITOE: Please, talk to us clearly. When you say he  
11:01:04 25 doesn't want that lawyer, he wants that lawyer in a certain  
26 position, what do you mean? What are you really saying,  
27 Mr Cammegh?

28 MR CAMMEGH: I think I am right in saying that Mr Gbao  
29 would prefer that that lawyer operate with a similar degree of



1 authority with myself and indeed Mr O'Shea if Mr O'Shea remains.  
2 Of course one of the complications that we all have to wrestle  
3 with, and it's not one that is right for me to go into here but  
4 it's the budgetary considerations. I am sure Your Honours are  
11:01:38 5 all aware of what that means.

6 But I repeat neither Mr O'Shea nor I would have had any  
7 difficulty at all in a third lawyer being added in a certain  
8 position. As I have just indicated, that had been sorted out,  
9 that had been arranged with a gentleman from South Africa. Now,  
11:01:58 10 given Mr Gbao's preference, obviously we have to examine that.  
11 But it cannot be that this team can operate efficiently and in  
12 Mr Gbao's best interests if things are upset to the degree which  
13 they have been.

14 PRESIDING JUDGE: I agree, but, as you know, our position  
11:02:19 15 has been stated very, very clearly. On Friday on behalf of the  
16 Chamber I responded to the Principal Defender as to what we were  
17 prepared to approve and essentially saying that we were not  
18 prepared to approve any change in the leadership of his defence  
19 team. We are prepared to see some addition, but not to disturb  
11:02:39 20 the existing team.

21 MR CAMMEGH: And I think Your Honours know we were very  
22 grateful for that. Unfortunately, for want of a better word,  
23 selling that is not easy at all.

24 JUDGE ITOE: I think somewhere along the line there was a  
11:02:58 25 recommended meeting between you and Mr Shears Moses.

26 MR CAMMEGH: Yes.

27 JUDGE ITOE: Has that meeting taken place?

28 MR CAMMEGH: It hasn't taken place yet. I stated to the  
29 Principal Defender on Friday evening before today's events took



1 place that we would be willing to have a meeting. Unfortunately  
2 Mr Shears Moses has not troubled to contact us either personally  
3 or through the Defence Office since our arrival in Sierra Leone.

4 PRESIDING JUDGE: Thank you. Thank you, Mr Cammegh. We  
11:03:45 5 appreciate your comments.

6 MR JORDASH: Would Your Honours mind if I just add my  
7 voice? Not to the merits of the application, but I think I can  
8 speak on behalf of the whole of the Sesay team, myself and my  
9 co-counsel, Sareta Ashraph, and our legal assistant,  
11:04:03 10 Chantal Refahi, who have as colleagues been privy to discussions  
11 with Mr O'Shea and have observed his conduct through the trial  
12 sessions, and especially during this trial session which for  
13 reasons he has alluded to has been particularly difficult. We as  
14 a team can offer our unqualified support to the way in which he  
11:04:33 15 has conducted himself in relation to Mr Gbao. We have seen,  
16 through difficult circumstances, Mr O'Shea act with what we  
17 consider integrity and honour, the present application being an  
18 example of that, and we consider as a team that he has acted at  
19 all times with due regard to Mr Gbao's case and the best  
11:05:02 20 interests of his case.

21 I would simply add to that that if the Court requires any  
22 assistance from our team as to the history of this matter as  
23 we've seen it unfold, and also any assistance in relation to the  
24 defence office and its institutional role, perceived or  
11:05:26 25 otherwise, then we would be most happy to provide that  
26 assistance. But in the short term, we simply offer our  
27 unqualified support to the way in which Mr O'Shea has conducted  
28 himself.

29 PRESIDING JUDGE: We thank you very much for your comments.



1 It is very much appreciated, Mr Jordash, and indeed we may take  
2 your offer as to submissions on the role of the  
3 Principal Defender's office, but we will wait, we will not ask  
4 you that at this particular moment. Yes, Mr Nicol-Wilson?

11:06:02 5 MR NICOL-WILSON: Your Honour, we would also like to add  
6 our voice to this discussion. I would not want to repeat what  
7 Mr Jordash said about Professor O'Shea because I might be  
8 speaking from a position of being one of his former students in  
9 South Africa. So I would rather look at issues from a  
11:06:21 10 professional perspective rather than that of a professor and a  
11 student.

12 We on the Kallon defence team side are very concerned about  
13 any issue or ruling which will have the effect of delaying the  
14 proceedings. Our clients have been in detention for over three  
11:06:39 15 years now and we are very much interested in seeing this process  
16 end as quickly as possible. In other words, we do not want a  
17 delay in what appears to be an expeditious trial. We are  
18 therefore very concerned. If any ruling has the effect of  
19 delaying the proceedings we will frown at that decision.

11:07:03 20 That is all I wish to say.

21 PRESIDING JUDGE: Thank you very much. What we would like  
22 to do at this particular stage, though, is we would like to hear  
23 from the Principal Defender. I know he is not in court at this  
24 particular moment but I think his role has been quite important  
11:07:24 25 in this matter. It would be essential for us to know what it is  
26 that has taken place or has transpired. He has had some  
27 correspondence with my office and I think it would be important  
28 for the completeness of the record that he be called here to  
29 explain some of these actions and maybe to file with the Court





1 some of that correspondence so the Court has on record the full  
2 picture what has transpired until this moment.

3 It is 11 o'clock. I don't know where the  
4 Principal Defender is and if he is available at this particular  
11:08:07 5 moment, but we will adjourn and ask our legal officer to contact  
6 his office and see if he can come to this Court shortly. If we  
7 can do that we'll hear him this morning. If not we'll do that  
8 early this afternoon. But we will adjourn now and see if we  
9 can - yes, Mr Harrison, we have not forgotten about you - and we  
11:08:30 10 will see if we can have him come as soon as possible. So just  
11 for your information.

12 Mr Harrison, we didn't ask you for -- are you standing up  
13 to speak on the issue or to some other matters?

14 MR HARRISON: No, if the Court does not wish to hear from  
11:08:45 15 the Prosecution we are not forcing ourself upon the Court. Does  
16 the Court deem it prudent to send the witness home, who is  
17 waiting, today? It is the witness continuing from Friday.

18 PRESIDING JUDGE: I know. We certainly intend to hear this  
19 witness today. The way it is moving, it may be this afternoon  
11:09:08 20 but we have not changed our mind. As you know this application  
21 came unexpectedly this morning, but we haven't changed our mind.

22 JUDGE ITOE: I think he should stay in place because it  
23 could well be this morning. It is eleven, we rise at one. It's  
24 two hours. I don't think we will spend two hours here with the  
11:09:28 25 Principal Defender.

26 PRESIDING JUDGE: Thank you. Mr Harrison, you wish to  
27 speak to the matter which has been addressed to the court? We  
28 don't want to force it upon you but certainly any comment you may  
29 make on this issue would be welcome.



1 MR HARRISON: The only comment the Prosecution wishes to  
2 make is that the Prosecution in general is somewhat taken aback  
3 that members of the Bar would visit persons in a detention centre  
4 knowing that that individual is already represented by counsel  
11:10:01 5 and assigned counsel by the Court. That is the only comment the  
6 Prosecution wishes to make and it is made as a general comment  
7 about questions of professional responsibility.

8 As far as the motion goes, the Prosecution does not take a  
9 position on the motion.

11:10:16 10 PRESIDING JUDGE: Thank you, Mr Prosecutor. So the Court  
11 will recess and we may be back more quickly than expected. If  
12 the Principal Defender is not available this morning we may have  
13 to postpone his presentation, but in the meantime we will keep  
14 you informed. Thank you.

11:10:42 15 [Break taken at 11.05 a.m.]

16 [RUF27MAR06 - CR]

17 [Upon resuming at 11.40 a.m.]

18 PRESIDING JUDGE: Good morning, Mr Principal Defender.

19 MR NMEHIELLE: Good morning, Your Honour.

11:41:15 20 PRESIDING JUDGE: We appreciate that you have responded  
21 that quickly to our request. Unfortunately, we will not hear you  
22 this morning because we feel it would not be to your advantage,  
23 nor the advantage of the Court, that you address the Court  
24 without knowing what has been said in Court. We have asked that  
11:41:34 25 the transcript be prepared as quickly as possible of what has  
26 been said in Court. You read the transcript and then you can  
27 address the Court on these matters. Otherwise we may well not  
28 have the full picture, and we would like to have your comments on  
29 what has been raised especially in light of your role and the



1 role of your office on this matter, as such. I indicated this  
2 morning as well that we would like to have as part of the record,  
3 correspondence between yourself and my office on this matter.  
4 All that to say that we will hear you and have your comments  
11:42:17 5 tomorrow morning at 9.30 when we resume the Court. Yes,  
6 Mr Principal Defender.

7 MR NMEHIELLE: Very well, Your Honour. I do appreciate  
8 that. I just want to inform the Court about some possible  
9 impediments on my way. I had to rush back from the work I was  
11:42:39 10 attending as soon as I got the call. Very well I would love to  
11 read the transcript and to note what transpired in Court.  
12 However, I am billed to travel tomorrow on an official trip to  
13 the United States and I have a meeting with the Management  
14 Committee in the morning as they are visiting, which has been  
11:43:08 15 arranged to accommodate my travelling later in the day. I will  
16 try the best I can to respond to the issues, but if it is  
17 possible, if the transcript can be made available, I would not  
18 mind this afternoon, if possible, to try to respond to the issues  
19 as may have been raised.

11:43:35 20 PRESIDING JUDGE: I cannot answer that at this particular  
21 moment, because we haven't seen the transcript either. But if  
22 the transcript is available by noon, we might be prepared to make  
23 some accommodation. I note that you are to brief the Management  
24 Committee tomorrow morning at 11.15.

11:43:57 25 MR NMEHIELLE: Yes.

26 PRESIDING JUDGE: What we had in mind was to hear you first  
27 thing in the morning at 9.30. We can certainly tell you that we  
28 don't expect that your presence in Court will go beyond an hour.  
29 If it goes beyond that, you and I are both in trouble. So we



1 think that it should be less than that and you will have plenty  
2 of time to leave the Court and go and meet with the Management  
3 Committee. So it's just to alleviate some of your concerns about  
4 the morning.

11:44:24 5 It's still our preference that be 9.30 tomorrow morning, Mr  
6 Principal Defender, but we will see if the transcript -- because  
7 I don't know if the transcript will be ready soon enough for you  
8 to have the time to read it, digest it and then come  
9 well-informed to the Court. We will let you know if it possible  
11:44:43 10 to do that by the end of the afternoon, but for the time being,  
11 we would prefer to see you at 9.30, tomorrow morning.

12 MR NMEHIELLE: Very well. As the Court pleases.

13 PRESIDING JUDGE: Thank you very much, Mr Principal  
14 Defender.

11:44:55 15 So, in those circumstances, we will go back to where we  
16 were with moving into a closed session scenario and proceed with  
17 the cross-examination and we thank you.

18 MR NMEHIELLE: May I request my leave?

19 PRESIDING JUDGE: Yes, certainly. We will go back into the  
11:45:12 20 closed session and continue where we were with the completion of  
21 Mr Jordash's cross-examination of that witness.

22 [At this point in the proceedings, a portion of the  
23 transcript, pages 38 to 114, was extracted and sealed under  
24 separate cover, as the session was heard in camera.]

11:48:23 25

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EXHIBITS:

Exhibit No. 88 75

WITNESSES FOR THE PROSECUTION:

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CROSS-EXAMINED BY MR JORDASH 38

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