

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

THURSDAY, 06 APRIL 2006  
9.55 A.M.  
TRIAL

TRIAL CHAMBER I

Before the Judges:	Pierre Boutet, Presiding Bankole Thompson Benjamin Mutanga Itoe
For Chambers:	Ms Candice Welsch Ms Sidney Thompson
For the Registry:	Ms Maureen Edmonds
For the Prosecution:	Mr Peter Harrison Ms Shyamala Alagendra Mr Mark Wallbridge (Case Manager)
For the Principal Defender:	Ms Haddijatou Kah-Jallow
For the accused Issa Sesay:	Mr Wayne Jordash
For the accused Morris Kallon:	Mr Charles Taku Mr Melron Nicol-Wilson
For the accused Augustine Gbao:	Mr Andreas O'Shea Mr John Cammegh

1 [RUF06APR06A - SGH]

2 Thursday, 06 April 2006

3 [Open session]

4 [The accused present]

09:42:05 5 [The witness entered court]

6 [Upon commencing at 9.55 a.m.]

7 PRESIDING JUDGE: Good morning all. Is the witness  
8 the 92bis witness that we discussed yesterday?

9 MS ALAGENDRA: Yes, Your Honour, that's right.

09:55:56 10 PRESIDING JUDGE: Is the witness available now?

11 MS ALAGENDRA: The witness is available, Your Honour, but  
12 before that the Prosecution would like to make a motion for a  
13 closed session, Your Honour.

14 PRESIDING JUDGE: Very well. We would have liked to have  
09:56:13 15 been informed of that yesterday if there was an intent for a  
16 closed session.

17 JUDGE ITOE: Because we have the gallery which is there for  
18 special purposes, so this Court would have wanted to know.

19 PRESIDING JUDGE: As we discussed the procedure for today,  
09:56:24 20 I think it was an important motion that we be informed. You are  
21 looking at your paper, Mr Harrison. Maybe you had in the past  
22 indicated that, I don't know. If that was the case, fine. But,  
23 given the discussions that took place yesterday, there was  
24 certainly no indication that any of that would be in closed  
09:56:40 25 session. But, in any event, if that is the case, we need to hear  
26 that in a closed session so we will go into a closed session to  
27 see if this closed session is warranted or not.

28 MR O'SHEA: May I also note that we would be grateful if we  
29 are told this beforehand so we can have an opportunity to think



1 about it.

2 PRESIDING JUDGE: Well, as I say, I don't know if -- I have  
3 no recollection. Certainly that was not raised yesterday. This  
4 is an --

09:57:09 5 MR O'SHEA: What I'm saying, Your Honour, is that we  
6 haven't been told, regardless of whether the Chamber has been  
7 told, and it would be helpful if we were.

8 PRESIDING JUDGE: I know there is a motion that has been  
9 filed by the Prosecution about certain witnesses, one of these  
09:57:21 10 witnesses has already testified, but --

11 JUDGE THOMPSON: [Overlapping speakers] doesn't relate to  
12 the one about to testify now.

13 PRESIDING JUDGE: Indeed, all I am saying and suggesting is  
14 that we need some co-operation from the Prosecution on these  
09:57:39 15 matters. I think it is of the utmost importance that these kind  
16 of issues and matters be addressed properly when it is the time  
17 and that all parties be adequately informed of these matters.

18 MR O'SHEA: Can we have the witness out while this debate  
19 is going on, because it's contentious.

09:58:16 20 PRESIDING JUDGE: Yes. We apologise, there's a sudden  
21 technical problem we need to dispose of before.

22 In the meantime can we be informed as to why this  
23 information was not relayed yesterday or any time before why we  
24 were to proceed in a closed session?

09:59:35 25 MR HARRISON: We were under the understanding that the  
26 Court was aware of it, because this Court had made the order for  
27 closed session.

28 PRESIDING JUDGE: For this witness?

29 MR HARRISON: Yes. That this Court knew that there was



1 closed session. There was an order made. I have got copies if I  
2 can hand them up.

3 PRESIDING JUDGE: What's the decision?

4 MR HARRISON: 11th May 2005. It is an order made, the  
09:59:56 5 title is, "Decision on the urgent and confidential Prosecution  
6 application to vary protective measures regarding witnesses  
7 TF1-104 and TF1-084."

8 PRESIDING JUDGE: So you are saying that this witness we  
9 have already ordered that this witness be heard in closed  
10:00:19 10 session?

11 MR HARRISON: That is true, but it was a specific decision  
12 for Trial Chamber II.

13 JUDGE ITOE: That is, it's Trial Chamber II which ordered a  
14 closed session proceedings, as such, for the witness?

10:00:34 15 MR HARRISON: I can hand up the copies here.

16 PRESIDING JUDGE: I remember now, because this is a witness  
17 that was on the witness list with protective measures granted by  
18 this Court. When that witness was heard in Trial Chamber II,  
19 they ordered closed session at that particular time.

10:00:46 20 MR HARRISON: No, this Trial Chamber ordered it.

21 PRESIDING JUDGE: And we made that order for Trial Chamber  
22 II.

23 MR HARRISON: Correct. That is what the decision says.

24 PRESIDING JUDGE: Yes. That is for Trial Chamber II. The  
10:01:01 25 fact that something may be in closed session in Trial Chamber II  
26 does not necessarily mean it is in closed session for this  
27 Chamber. I don't know, maybe the substance of the evidence of  
28 this witness is absolutely different in that respect and  
29 therefore there is no requirement. I cannot assume, Mr Harrison,



1 that because that has happened in the other chamber, that it will  
2 apply here and hence we knew of it. You may have assumed things  
3 that were not there.

4 MR HARRISON: Clearly it's the Prosecution's error for  
10:01:37 5 assuming that the Court was apprised of this matter and we  
6 indicate our regret in having failed to make it abundantly clear.  
7 If can just make it clear, though, this is a 92bis witness.

8 PRESIDING JUDGE: Yes.

9 MR HARRISON: So the transcript was in closed session. The  
10:01:50 10 Prosecution does not have any questions and because we have a  
11 closed session transcript and an exhibit which was sealed in  
12 Trial Chamber II pursuant to the order of this Trial Chamber, we  
13 are simply under the understanding that it was appropriate to  
14 seek closed session for this.

10:02:12 15 PRESIDING JUDGE: I will stop you right here, Mr Harrison,  
16 for the simple reason that I don't think we are in the closed  
17 session scenario yet. I am just awaiting the confirmation of  
18 that, so to avoid any misunderstanding on what you may or may not  
19 say in this respect, so we we'll just wait.

10:02:32 20 In the meantime, you have copies of that decision with you.  
21 Can you have those available to the Bench and maybe give a copy,  
22 if you have, to the Defence.

23 JUDGE ITOE: I think this is an appropriate moment to again  
24 reiterate our stand on this matter and that, you know, a decision  
10:02:54 25 or a measure ordered by Trial Chamber II does not necessarily  
26 bind this Chamber. We may differ in our reasoning just as we may  
27 distinguish their circumstances from ours given the independence  
28 of the two Chambers. This what I wanted to bring to the  
29 attention of counsel on an issue as delicate as this.





1 MR HARRISON: But what I was trying to explain is it is a  
2 decision of this Trial Chamber. It is not a decision of Trial  
3 Chamber II.

4 MR TAKU: Your Honours, may I say something? Thank you.  
10:03:54 5 Yes, Your Honours, I would just like to remind the Prosecution  
6 that the parties, even though it may be the decision of this  
7 Trial Chamber, the parties differ and the circumstance of the  
8 witness may have changed. So was it for him to bring a fresh  
9 application before Your Honours to consider whether the  
10:04:11 10 circumstances still apply or they have changed.

11 PRESIDING JUDGE: Yes, Mr Taku, we understand that and that  
12 is why I think we have rectified the situation now with the  
13 Prosecution acknowledging that they should have informed the  
14 Court beforehand. This is why there is this application this  
10:04:27 15 morning. So we will take it from there and --

16 MS EDMONDS: Court is now in closed session.

17 PRESIDING JUDGE: Thank you.

18 [At this point in the proceedings, a portion of the  
19 transcript, pages 7 to 42, was extracted and sealed under  
10:04:34 20 separate cover, as the session was heard in camera.]

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1 [Open session]

2 PRESIDING JUDGE: Now we are back in open session. I wish  
3 to reiterate the decision of the Court about the closed session,  
4 the application that was made by the Prosecution to have the  
11:33:37 5 evidence of Witness TF1-081 to be heard in closed session.

6 We disposed of it by deciding not to vary the decision  
7 which had been issued before. The Court considered the  
8 submission made, considered the decision that had been granted by  
9 this Chamber on 11 May 2005 granting a closed session for the  
11:34:04 10 evidence of this witness. The Court considered as well the  
11 provisions of Rule 75(F) that provides once protective measures  
12 have been ordered in respect of a witness or victim in any  
13 proceedings before the Special Court, such protective measures  
14 shall continue to have effect mutatis mutandis in any other  
11:34:28 15 proceedings before the Special Court unless and until they are  
16 rescinded, varied or augmented in accordance with the procedures  
17 set out in this Rule, and we ruled that we were not prepared in  
18 these circumstances to vary or rescind that order and, therefore,  
19 proceeded in a closed session for the cross-examination of that  
11:34:47 20 particular witness.

21 In case there is any doubt as to the documentation that has  
22 been filed, obviously the transcript, as well as Exhibit A and B,  
23 are to be sealed, these containing information that was disclosed  
24 in closed session in Trial Chamber II. These two exhibits must  
11:35:34 25 be sealed.

26 We have reached the end of this particular session at this  
27 moment. It is time to adjourn to the next trial session. For  
28 the information of all concerned, and I know you are aware of the  
29 dates that have been set out, the Court is adjourning to 19 June



1 2006 at 10 a.m. for a status conference to be held in this  
2 courtroom. The trial itself is to start the next day on 20 June.  
3 The Court is adjourned to that next session. Thank you very  
4 much.

11:36:25 5 [Whereupon the hearing adjourned at 11.36 a.m.,  
6 to be reconvened on Monday, the 19th day  
7 of June 2006, at 10.00 a.m.]

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EXHIBITS:

Exhibit No. 104A	18
Exhibit No. 104B	18

WITNESSES FOR THE PROSECUTION:

WITNESS: TF1-081	15
CROSS-EXAMINED BY MR JORDASH	19
CROSS-EXAMINED BY MR NICOL-WILSON	20
CROSS-EXAMINED BY MR O'SHEA	21