

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

THURSDAY, 17 APRIL 2008
9.50 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

For the Registry:

Ms Maureen Edmonds
Ms Advera Kamuzora

For the Prosecution:

Mr Charles Hardaway
Mr Vincent Wagona
Mr Reginald Fynn

For the accused Issa Sesay:

Mr Wayne Jordash
Ms Sareta Ashraph

For the accused Morris Kallon:

Mr Charles Taku
Mr Kennedy Ogeto
Ms Tanoo Mylvaganam
Ms Lois Mbafor

For the accused Augustine Gbao:

Mr John Cammegh
Mr Scott Martin

1 [RUF17APR08A-BP]
2 Thursday, 17 April 2008
3 [Open session]
4 [The accused present]
09:47:07 5 [Upon commencing at 9.50 a.m.]
6 [The witness entered the Court]
7 WITNESS: ACCUSED MORRIS KALLON [Continued]

8 PRESIDING JUDGE: Good morning, learned counsel.
Morning,
9 everyone. We'd resume the session. Mr Cammegh, I'm not
mistaken
10:01:08 10 at all, I couldn't be, if I say it's your turn.

11 MR CAMMEGH: Yes, it is my turn. Your Honour, I hope a
12 message conveyed itself to you through the court officers just
13 now to the effect that I would appreciate some time. I don't
14 really want to go into detail as to why. I think some

comments I
10:01:29 15 made some time during the last session might have foreshadowed
16 it, but before I commence my cross-examination there are some
17 issues I want to be entirely sure of, some instructions I want

to
18 be entirely sure of, and I would rather not say any more at
this
19 time. But I hope Your Honours will trust me that I feel I

would
10:01:50 20 benefit from an hour before I start, just to clarify and

21 reconfirm my position and my instructions.

22 PRESIDING JUDGE: So you are asking that the matter be
23 stood down for one hour?

24 MR CAMMEGH: Please, yes. I should say this: That I --

a

10:02:13 25 message was conveyed to me last night to the effect that Mr
Gbao

26 would appreciate speaking to me and I've -- as I said, I hope
27 Your Honours will trust my judgment and I feel this is very
28 important, and it wouldn't be any more than an hour.

29 PRESIDING JUDGE: Well, we are -- the Chamber is
sensitive

for 1 to your request and it's also very sensitive to the necessity
2 you to consult with your client before pursuing the
3 cross-examination of this witness.

4 MR CAMMEGH: Yes, sir.

10:04:28 5 PRESIDING JUDGE: In the light of that sensitivity, we
are 6 granting your application and we are standing down this matter
7 for -- for one hour. We will resume the session at 11.

8 MR CAMMEGH: Thank you.

9 PRESIDING JUDGE: And we will go on without any further
10:04:48 10 break. There will be no break when we start off until it's 1
11 o'clock.

12 MR CAMMEGH: I would appreciate that.

13 PRESIDING JUDGE: The matter is stood down.

14 MR CAMMEGH: Thank you.

10:05:03 15 PRESIDING JUDGE: For one hour and we'll resume the
session 16 at 11 a.m., please.

17 [Break taken at 10.05 a.m.]

18 [RUF17APR08B - BP]

19 [Upon resuming at 11.06 a.m.]

11:17:09 20 PRESIDING JUDGE: Mr Taku, I see you on your feet.

21 MR TAKU: Yes, I have an objection to raise, prior to my
22 colleague commencing his cross-examination, sir. He has just

23 given to me now copies of statements. One of the statements,
24 Your Honours, is that of Major ~~xxxx~~ who testified here before
11:17:37 25 Your Honours.

26 PRESIDING JUDGE: Yes.

27 MR TAKU: And he had opportunity to cross-examine him to
28 lay the nature of his case and he didn't do that and this is a
29 witness statement. He didn't file it; we had received a copy

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1 only now. He had been directed that all the evidence he
intended
2 to lead in the case will be filed and the parties given
notice.
3 This my colleague did not do. I just received these copies
now.
4 And beside, Your Honours, these statements were never taken
from
11:18:09 5 Mr Kallon.
6 MR CAMMEGH: I'm sorry to interrupt; in Mr Kallon's
7 interest, more than anybody else, I haven't made any
application
8 yet to put any documents in and perhaps rather than alerting
the
9 Bench to documents which might be to the prejudice of certain
11:18:26 10 parties, a ruling ought to be made if a ruling is going to be
11 required, as to whether or not those documents go before
12 Your Honours anyway. So my proposal is that we start, and if
13 there comes a time when I want to cross-examine Mr Kallon on
14 certain documents, then I shall make an application. With
11:18:45 15 respect, I say that Mr Taku's objection is a little premature.
16 PRESIDING JUDGE: Well, Mr Taku, let us start and see
how
17 we move.
18 MR TAKU: I have no objection, Your Honours, but I
wanted
19 just to say that he cannot disclose documents to be used for
this

11:19:06 20 purpose now, two minutes ago.

21 PRESIDING JUDGE: Let us -- let us start and then we see
22 how we proceed. Yes, Mr Cammegh, may we start, please.

23 CROSS-EXAMINED BY MR CAMMEGH:

24 MR CAMMEGH:

11:19:34 25 Q. Good morning, Mr Kallon.

26 A. Morning, John.

27 Q. I want to remind you of this. You need no reminding. I
28 represent Augustine Gbao. It's not my purpose or intention to
29 align myself with any of the Prosecution allegations as

against

1 you but as I'm sure you would appreciate, it is my firm
intention
2 to attempt to absolve my client as far as I can and I preface
the
3 cross-examination with those comments, because I hope it can
be
4 accepted they are sincerely held views by me. Can we start,
11:20:19 5 please, with just some preliminary issues?

6 PRESIDING JUDGE: And of course, Mr Kallon, let me say
7 this: It is counsel's right to represent to the best of his
8 ability the interests and to protect the interests of his
client.

9 But where in doing so it goes beyond and seeks to compromise
your
11:20:47 10 own interests it is for you to take a position accordingly as
to
11 how you perceive the questions which will be put to you. Do
you
12 understand this.

13 THE WITNESS: Yes, sir, My Lord. Thank you very much,
sir.

14 MR CAMMEGH:.

11:21:04 15 Q. And you should also of course be aware, Mr Kallon, that
my
16 cross-examination, as is proper, is based on instructions.
And I
17 hope that is understood by all. Now, I want to start with
some
18 preliminary matters, if I may. And in fact, let us begin with

19 early 1999. Approximately February or March of 1999. To your
11:21:43 20 knowledge, is it correct that Augustine Gbao was detailed to
go
21 to Makeni by Sam Bockarie at around that time in order to
assist
22 in putting the law and order of Makeni under better control?
23 A. No, I only saw Gbao. It was not known to me whether he
was
24 sent by Sam Bockarie to come and put law and order in control.
11:22:08 25 Q. That was never discussed between the two of you?
26 A. No.
27 Q. Okay. Did you subsequently become aware of that after
28 Gbao's arrival?
29 A. No. The only thing I knew of Gbao was he was the chief
of

1 security.

2 Q. Yes. I understand -- and correct me if I am wrong --
but
3 between --

4 PRESIDING JUDGE: Mr Cammegh, what year did you say?

11:22:34 5 MR CAMMEGH: I said early -- I think I said February or
6 March.

7 PRESIDING JUDGE: February or March?

8 MR CAMMEGH: In the area of -- in 1999.

9 PRESIDING JUDGE: 1999.

11:22:45 10 MR CAMMEGH:

11 Q. Now, as the Court has heard on several occasions now,
there
12 was a fallout between Issa Sesay and Superman. And would I be
13 right in suggesting that relations between Sesay, yourself,
maybe
14 even Augustine Gbao on one hand and Superman on the other hand
11:23:14 15 were not particularly good in the early part of 1999?

16 A. Yeah.

17 Q. Would it also be fair to suggest that --

18 JUDGE BOUTET: Mr Cammegh, just so I understand what
this
19 question means, I'm not sure if you put the three of them,
Sesay

11:23:33 20 Kallon and Gbao together with Superman or --

21 MR CAMMEGH: No, I was drawing a distinction.

22 JUDGE BOUTET: -- is in between themselves?

three 23 MR CAMMEGH: I was drawing a distinction between the

24 defendants in this trial on the one hand and Superman on the
11:23:47 25 other.

26 JUDGE BOUTET: That's what I want to understand. Thank
27 you.

28 MR CAMMEGH:

because 29 Q. And perhaps there's not much need to go into detail

1 other witnesses have rehearsed this time and time again but,
so
2 far as the three of you were concerned, was it jointly your
3 opinion that Superman was not -- was not adhering to law and
4 order as he ought to have done?

11:24:12 5 A. Yeah. As I testified before here, when Superman and his
6 men came from Koinadugu, they met myself and Mr Sesay have
7 already captured the township of Makeni, and things were under
8 complete control; no housebreaking, no nothing. But
immediately
9 Superman and his group arrived, they started doing this.

11:24:35 10 Q. Yeah. Okay. Now I understand your answer that you were
11 not informed by anybody as to why Augustine Gbao arrived but,
is
12 it your evidence that Gbao became involved in trying to uphold
13 law and order in the time before the group of you left in
April
14 of '99?

11:24:56 15 A. Yeah, we all that came from Kono axis to Makeni.

16 Q. I should have said March '99. I'm corrected by Mr
Jordash.

17 A. That order came from Kono enter Makeni under the command
of
18 Mr Sesay.

19 Q. Yes.

11:25:13 20 A. We all were fighting to put law and order in place.
21 Q. And by the time that the -- as we heard there was a
fight.
22 There was a major incident concerning Superman and Sesay but,
by
23 the time that happened, was it your impression that Sesay,
24 Kallon, Gbao had made great progress in the institution of law
11:25:36 25 and order in Makeni Township?
26 A. Yeah.
27 Q. And is it also your recollection that after you left in
28 approximately March, and you went to Magburaka, I think; is
that
29 correct?

1 A. Yeah.

2 Q. Did the law and order of Makeni deteriorate following
that
3 time, now Superman was in sole charge of the town?

4 A. Actually, I was not present in Makeni.

11:26:05 5 Q. No.

6 A. But the fleeing civilian from Makeni, they said there
were
7 series of harassment of RUF soldier, headed by Superman in
Makeni
8 Town.

9 Q. Yes. The Court has heard evidence that, essentially,
11:26:25 10 Makeni was retaken from Superman I think in October of 1999;
do
11 you agree?

12 A. Yeah.

13 Q. Did you go back to live in Makeni then or did you stay
in
14 Magburaka?

11:26:35 15 A. I was in Magburaka every day coming to Makeni but I no
used
16 to sleep there.

17 Q. Okay. And were you at this time now the senior RUF
18 commander in the area?

19 A. Where?

11:26:48 20 Q. The Magburaka/Makeni axis?

21 A. No.

22 Q. Who was?

23 A. At that time now we have reunited with Superman. Mr
Sesay

24 himself, Sam Bockarie, we all were together now.

11:27:04 25 Q. All right. Of course, the Court has also heard that

26 attempts were made at reconciliation towards the end of that

27 year; disarmament was in the air, wasn't it? There was a
general

28 will to end the conflict after the peace accord; do you agree?

29 A. Yeah. As I told you before this Court, Mr Sankoh
himself

1 went to Makeni together with Mr xxxx and xxxx, they
2 pronounced this.

evidence

3 Q. Can I say, Mr Kallon, that I accept entirely your

4 as to your conduct at this time in furtherance of disarmament.

11:27:55
May

5 Clearly, I have to question you about the UNAMSIL incident of

to

6 1 and 2, but I want to make this clear: That certainly prior

--

7 that date you were actively involved in bringing the conflict

8 the armed conflict to a close. Can I make that clear. Now, I

the

9 think you told the Court that in April of 2000 you attained

11:28:21

10 rank of brigadier; is that right?

11 A. Yeah.

--

12 Q. Were there any other brigadiers in the Makeni/ Magburaka

senior

13 I put it the axis -- around that time or were you the most

14 commander at that time?

11:28:36

15 A. There were Brigadier Kailondo.

16 Q. Your assignment was what, by April of 2000, please?

group

17 A. As I told this Court, April 2000 I was acting battle-

18 commander.

19 Q. Okay. Now, Augustine Gbao I think was, by then, a
colonel;

11:29:07 20 is that right?

21 A. Yeah. Colonel in rank.

22 Q. Okay. He was still the overall security commander;

23 correct?

24 A. Yeah.

11:29:16 25 Q. Was he still the chairman of the Joint Security Board at
26 that time?

27 A. Yeah.

28 Q. Okay. And was he still the chief of the IDU?

29 A. Yeah.

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1 Q. Right. But will you agree with me on this: That he was
2 not a fighter. He -- his involvement was more in what I think
3 General ~~xxxx~~ described as a ground commander role than
anything
4 concerning military; would you agree?

11:29:58 5 A. Actually, all area that were trained by Foday Sankoh
were
6 trained at combatant. Yeah. Even if you were a heading unit
you
7 are still an officer, yeah.

8 Q. But it's not your evidence, is it, that August Gbao
9 actually took part as a combatant in any military action
himself?

11:30:21 10 A. No, he fought. He fought the war.

11 Q. Oh, he did fight?

12 A. Yeah.

13 Q. Oh, I see.

14 A. I knew he fought the war.

11:30:27 15 Q. Okay. Where do you say he fought, for example?

Bunumbu,
16 A. If you ask him, he can tell you he fought in Lah,
17 and -- but, from 1994 to 1998, he and myself were not together
18 for me to able tell the target he fought.

19 Q. Okay. Fair enough. Well, I understand your evidence on
11:30:53 20 that. As of April of 2000 -- actually, no, let me go back a

in 21 little bit. Because I just want to establish Gbao's position
22 the RUF in 1999. Do you agree with this, that by the end of
doesn't 23 1998, Sam Bockarie -- if you don't know, please say. It
24 matter I appreciate the two of you weren't together in '98.
11:31:25 25 But --

26 PRESIDING JUDGE: Mr Kallon, how do you spell spell Lai?
Lai, 27 You said Lai and in Bunumbu. Bunumbu I know the spelling.
28 how do you spell that?
29 THE WITNESS: L-A --

1 PRESIDING JUDGE: Yes.

2 THE WITNESS: -- H.

3 PRESIDING JUDGE: L-A-H.

4 THE WITNESS: Yes, sir.

11:31:39 5 PRESIDING JUDGE: Lah is where? Is it in Kailahun area.

6 THE WITNESS: Yes, My Lord, by Moa River.

7 MR CAMMEGH:

8 Q. Incidentally I should formally put to you that Mr Gbao
9 denies ever being a combatant - an active combatant?

11:31:55 10 MR TAKU: Your Honour, we object to these comments.

11 PRESIDING JUDGE: No, you cannot. You cannot. He is
12 putting it to him.

13 MR TAKU: He has to put it to him.

14 PRESIDING JUDGE: Yes. Yes. Yes, he can put it to him
11:32:04 15 that Gbao was never a combatant. Putting it to him is
different
16 from making a comment. So it depend on the choice Mr Cammegh
is
17 making.

18 MR CAMMEGH: That is Mr Gbao's case. I hear what you
said
19 and I'll move on.

11:32:26 20 PRESIDING JUDGE: Are you putting it to him that Mr Gbao
21 was never a combatant.

22 MR CAMMEGH: Yes, I'll confirm the position.

23 Q. I'm simply putting to you, Mr Kallon, that August Gbao
24 never took up arms in the conflict. Did you agree with that?

11:32:41 25 A. I told you from 1991 to 1994 --

26 Q. Yes.

27 A. -- I knew he was a combatant but from 1994 to 1999 he
and myself were not in one territory of RUF operation.

28
29 Q. I think we -- that settles it. We can move on from
that.

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1 I was going to ask you about the end of 1998. Now, I think
2 it's -- it's not controversial, is it, that from '96 to '90 --
3 the end of 98 Augustine Gbao was based in Kailahun District;
do
4 you agree?

11:33:21 5 A. Yes.

6 Q. Thank you. Is it according to your knowledge that the -
7 towards the end of 1998 Sam Bockarie was rather dissatisfied
with
8 Augustine Gbao's performance and summoned him to Buedu; did
you
9 hear about that?

11:33:40 10 A. No.

11 Q. Okay. Did you hear that Augustine Gbao as a kind of
12 reprimand or punishment was sent at the end of 1998 to brush
the
13 Bunumbu to Kono highway?

14 A. I only heard that through your cross-examination in this
11:34:00 15 Court.

16 Q. All right. Which lead us in to 1999. Do you agree that
it
17 was in about February of '99 that Gbao went to Makeni to base
18 there?

19 A. I think around that time.

11:34:14 20 Q. All right. I don't think it's controversial, is it,
that

21 at all times you were senior to him in rank; is that so? From
22 1996 onwards, let's say?

23 A. Yes.

24 Q. And therefore, just so we get the command structure
right,

11:34:39 25 at no stage could he either issue orders to you from '96 to
2000;

26 would you agree?

27 A. Let me make that clear to you.

28 Q. Yes.

29 A. I do not agree directly on that. He and myself were not

1 carrying the same rank but the assignment he were carrying
from 2 1996 January, he was the overall security commander for the
3 entire RUF.
4 Q. Yes.
11:35:07 5 A. And everywhere I was he has his representative.
6 Q. Yes.
7 A. So he was not giving me order, neither I was giving him
8 order.
9 Q. I see.
11:35:17 10 A. He make his report directly to the leader at given time.
11 Q. Do you agree with the content of some of my
12 cross-examination in this case that when certain findings were
13 reached by, for example, the Joint Security Board he didn't
have 14 power to order anybody in a higher authority or a higher rank
11:35:47 15 than he; he simply had a power to report and recommend? Those
16 are words I've used frequently. Would you agree with that?
17 A. Yeah. Like, Sam Bockarie commit crime, he has no order
to 18 recommend punishment. He can only recommend to the leader.
19 Q. Yes.
11:36:11 20 A. And he always make his complaint or his report to the
21 leadership.
22 Q. Yes.

23 A. Yeah.

24 Q. But similarly if he saw, for example, Brigadier Kailondo
11:36:24 25 doing something wrong -- let's just imagine a situation where
soldiers 26 Brigadier Kailondo has decided to take a platoon of RUF
27 into the bush on a very questionable mission. Augustine Gbao
28 would not have the power to order him not to do so, would he,
29 because August Gbao was a far lower rank?

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1 A. No, but as a Joint Security chairman, he has the right
to
2 call the Joint Security and make any investigation on that
3 alleged mission.

4 Q. Yeah. But if Kailondo -- Brigadier Kailondo is taking a
11:37:11 5 platoon of men to let's say attack an overwhelming force, and
CDF 6 just imagine the situation, an overwhelmingly strong force of
to
7 out of the jungle somewhere, Gbao would have no power to say
Kailondo 8 Kailondo: I, Colonel Gbao, are ordering you Brigadier
9 to desist and come back to Makeni and not get involved in that
11:37:35 10 attack. He wouldn't have that power, would he?

11 A. No.

12 Q. No.

13 A. Well, let me explain something. If it is a crime
Kailondo
14 has committed there, he has right as the Joint Security
chairman
11:37:51 15 to make sure and caution Kailondo.

16 Q. And to report the matter?

17 A. To the leadership.

18 Q. And maybe even the Security Board?

19 A. Yes.

11:37:59 20 JUDGE BOUTET: If I may intervene here, so I understand

first
21 what you -- the scenario: The question that was put to you
22 was Kailondo, as a brigadier, goes on a mission to commit
crimes.
23 Let's put it this way; whatever crimes. Gbao was the chief of
24 security. Can he stop him? And is it part of his duties or
11:38:23 25 responsibility to stop him?
26 THE WITNESS: My Lord, Gbao is not with Kailondo when he
27 commit these crimes.
28 JUDGE BOUTET: No.
29 THE WITNESS: But if the report meet Gbao -- if his --
one

1 of his unit representative MP, IDU, G5 or any of these unit
who
2 he had as a boss, if they make any kind of report, he has
right
3 also to forward that report to the leadership, but he cannot
stop
4 Kailondo not to do this.

11:38:50 5 JUDGE BOUTET: So you're saying that even though he is a
doing
6 chief of security he has no authority to stop anybody from
report.
7 anything. The only thing he could do is investigate and

8 Is that what you're saying?

9 THE WITNESS: Yeah. The only person he can stop, the
one
11:39:04 10 he above in rank, but he cannot stop pressing that above him
in
11 rank, My Lord.

12 JUDGE BOUTET: Okay. That's fine. Thank you.

13 MR CAMMEGH: Thank you, Mr Kallon.

14 Q. I just want to return to 1999. I want to cover this as
11:39:19 15 quickly as I can. You served a document in your evidence
which I
16 think we're all familiar with from some time ago. It's the
17 salute report of 26 September 1999. You are familiar with
this
18 document?

19 A. Yeah.

11:39:31 20 Q. And, of course, it's addressed to Foday Sankoh. It's
from

21 Major General Sam Bockarie. Forgive me, Your Honours, I
22 forget --

23 JUDGE BOUTET: What's the exhibit number?

24 MR CAMMEGH: I need help with this, I'm afraid, from the
11:39:49 25 Court Management because I didn't note it down.

26 MR TAKU: Exhibit 35, Your Honours.

27 MR CAMMEGH: 35, I'm grateful.

28 Q. Now, this report was prepared, as I said, on 26
September

29 1999. It's a long report. It's 14 pages long --

1 PRESIDING JUDGE: Prepared on the?

2 MR CAMMEGH: 26 September 1999.

3 Q. So it's around the time that Superman was removed from
4 Makeni; probably just before; would you agree?

11:40:44 5 A. No, Superman was not removed from Makeni in September
1999.

6 Superman and RUF, plus myself, and Gbao, we removed the SLA
that

7 were with him, Superman, in Makeni out of Makeni. We all
8 remained there.

9 Q. Right.

11:41:03 10 A. He used to visit Makeni, go back to Lunsar.

11 Q. Yes.

12 A. Yeah.

13 Q. But Superman was no longer in control of Makeni after
14 September or October '99, was he?

11:41:13 15 A. He was the battle group.

16 Q. I see. It wasn't -- it wasn't Sesay or anybody else who
17 had the nominal control by then?

18 A. Sesay was the boss for Superman but Superman was the
19 immediate man everybody look up to as a battle group in
Makeni.

11:41:33 20 Q. Right.

21 A. Once Sankoh has resolved the internal problem among
22 ourselves, yeah.

Makeni 23 Q. Right. So how long did Superman continue to visit
24 after October of 1999?
11:41:48 25 A. Superman was having his own residence in Makeni, at the
disarmed, 26 same time he has residence in Lunsar, yeah. Until he
27 if I'm not mistaken late December to early January 2000, yeah.
28 Q. Would you agree with this, please, that -- a number of
and, 29 commanders of varying ranks are referred to in this document

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in
is

1 of course, the entire Makeni situation is brought up-to-date
2 this document. The killing of Rambo and what have you. There
3 no mention of August Gbao in this report, is there? His name
4 doesn't appear?

11:42:33 5 A. Unless you make me to peruse I cannot just say no now.

6 PRESIDING JUDGE: That can be a matter for submissions.

7 MR CAMMEGH: Yes.

8 PRESIDING JUDGE: Since it is already an exhibit.

9 MR CAMMEGH:

11:42:44 10 Q. And similarly, Mr Kallon, you I think exhibited some
11 photographs the other day taken in -- is it Magburaka?

12 A. Yes.

13 Q. And when were they taken?

14 A. Some were taken in June; some were taken July; some were
11:43:01 15 taken in September.

16 Q. Of which year?

17 A. 1999. Some were taken October.

18 Q. I don't think August Gbao featured in any of those
19 photographs, did he?

11:43:15 20 A. No.

21 Q. You'd agree that --

22 PRESIDING JUDGE: You're referring to Exhibit 343?

23 MR CAMMEGH: Yes.

a 24 Q. You'd agree, would you, that the photographs did feature
11:43:24 25 number of RUF commanders?

26 A. Yeah, few commanders and many juniors.

27 Q. You listed them and many juniors indeed. All right.

28 A. If I may, those commander who feature in that
photograph,

29 those were the commander who actually was promoting for peace

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1 actually, if you see.

2 Q. Right. And would, logically speaking, it mean then that
3 those photographs contain the faces of the military
commanders,
4 the combatant commanders whose support of course would have
been

11:44:06 5 necessary in order to promote peace rather than civilians; is
6 that right?

7 A. No, not just the military. You can even see a
journalist's
8 face on that photograph also.

9 Q. I accept that. But --

11:44:17 10 A. So he was purely civilians.

11 Q. But, as a matter of commonsense, would you agree that in
12 order for a demilitarisation, if I can use that word, to take
13 place, it requires the support of the military commanders, the
14 combatant commanders, more than anybody else, doesn't it?

11:44:38 15 Because they are those who are in command of the fighting men?

16 A. Yeah. And they were the one who facing the firing in
case.

17 Q. Exactly. And those are the ones, of course, who issue
18 orders to their subordinates not to fire another shot?

19 A. Yeah.

11:44:54 20 Q. And my point is this: That by virtue of the fact that

doesn't 21 August Gbao didn't feature in any of those photographs,
22 that reinforce my suggestion that, at that time, he had no
23 influence over military activities at all; would you agree?
24 A. I cannot accept that action because Gbao was an RUF
senior
11:45:18 25 officers, colonel in the rank, you know.
26 Q. Yeah.
27 A. He get right to stop any junior commander under him.
Let
28 me just explain something, My Lord. An RUF was in this
setting.
29 We have Vanguard. We have the junior forces. Gbao fell in
the

were
what
1 Vanguard position. Why the junior forces who were -- some
2 colonel, lieutenant-colonel, they fell in the junior forces,
3 we call position, and Gbao was having right to command any of
4 those junior forces. And if the junior forces failed to take
11:45:59 5 command from me he was having right to take any military
action.

6 Q. Did it --

7 A. Like any other Vanguard.

available
8 Q. Did it surprise you that he didn't make himself
9 for those photographs in that case?

11:46:21 10 A. Say again?

himself
11 Q. Did it surprise you that he didn't appear to make
12 available for the taking of those photographs or, rather, I
13 should say make himself available for those gatherings that
were
14 pictured?

11:46:36 15 A. Yeah, but that reason known best to him, actually.

16 MR CAMMEGH: Forgive me a moment, Your Honour, I've just
17 mislaid something.

18 PRESIDING JUDGE: Mr Cammegh, let me understand what you
19 are trying to establish here. You are saying that because

11:47:29 20 Mr Gbao did not feature anywhere in the entirety of what we

21 normally labelled as Exhibit 343, he therefore was not part of
22 the fighting forces of the RUF; is that what you are saying?

23 MR CAMMEGH: Yeah. I think it would be a bit farfetched
24 for me to rely on photographs to establish that as a fact, but
11:47:54 25 I'm simply making the observation.

26 PRESIDING JUDGE: But you made the suggestion, you know.
27 You did suggest to him, to this witness, you know, that
because
28 he wasn't -- wouldn't it be true that it reinforces your
position
29 that Gbao was not a fighter?

1 MR CAMMEGH: Well, yes. My position is --

2 PRESIDING JUDGE: You made the suggestion, didn't you?

3 MR CAMMEGH: Yes. I think actual words I used --

4 PRESIDING JUDGE: You did.

11:48:13 5 this

MR CAMMEGH: The words I used were, I think, doesn't

6 the

lend weight to my suggestion that August Gbao wasn't amongst

7 number of military commanders, and I emphasised the word

8 provides

"military" or "combatant." It simply, in my submission,

9 evidence that Mr Gbao was not amongst the commanders of the

11:48:40 10

combatants at that particular time.

11 yes.

12 PRESIDING JUDGE: That is why I wanted to have the --

13 That is why I wanted to have the --

14 JUDGE THOMPSON: Let me join the Presiding Judge and say

15 of

that if pressed further, doesn't that question open up a line

11:48:57 15

speculative cross-inquiry?

16 MR CAMMEGH: Not necessarily, in my submission.

17 invitation

18 JUDGE THOMPSON: But it could be perceived as an

19 number

to speculate because there could be an infinitely various

19 of reasons why he may not have appeared to take those

11:49:17 20

photographs, among which may be one of those.

21 MR CAMMEGH: Yes.

22 JUDGE THOMPSON: And -- yes.

23 MR CAMMEGH: I followed it up, of course, with the
24 question: Were you surprised that Mr Gbao did not appear at
11:49:31 25 those gatherings, and we have the witness's answer. It's an
26 observation that, in my submission, is properly made, does not
27 require further explanation but may be cause for some comment
in
28 final submissions. That really is as far as I want to take
it.

29 JUDGE THOMPSON: Yes. Quite. I mean, I could see the

1 point of trying to lay the foundation for some submission of
law 2 or submission of mixed law and fact on this.

3 MR CAMMEGH: I did not intend to go that far. It was
comment 4 merely an observation which may, as I say, call for some
11:50:04 5 in due course; not today.

6 JUDGE THOMPSON: No. Right.

7 PRESIDING JUDGE: Because, you know, why I asked this is
witness 8 because of what I also perceive from the response by this
9 when he says, you know, that he doesn't share that view. And

11:50:22 10 that he was a senior -- a senior RUF commander, a colonel, a
any 11 Vanguard, and that, you know, he could issue instructions to
12 inferior officer and even punish, in the event of his
13 instructions not being respected to the letter. That is why I
14 came back to that, you know, because I wanted to create to see

--
11:50:49 15 I mean, how that plays out, you know, in his participation,
you 16 know, in -- in combat activities or his being one of those --

17 MR CAMMEGH: I entirely see Your Honour's point, but can
I 18 just say this: I basically just reminded Mr Kallon of two
19 exhibits which he has relied on: First, the salute report;

11:51:21 20
Kallon,

20 secondly, the photographs. I've established through Mr
21 anyone will see for themselves, that there is no reference to
22 Mr Gbao's --

23 PRESIDING JUDGE: In the salute report?

24 MR CAMMEGH: -- name -- well, Mr Kallon rightly said he
11:51:35 25 would need to read it again, but I'm offering it for
inspection.

26 My case is no reference to Augustine Gbao in the salute
report.

27 PRESIDING JUDGE: That's why I said it would come up in
28 submissions.

29 MR CAMMEGH: That's right. And moreover, no -- no
picture

got

first

11:52:34
not

reference

something.

case

11:52:56
20

1 of him amongst those photographs. Now, the fact that we've
2 some photographs is probative of nothing by itself. The only
3 reason I comment, or asked Mr Kallon to comment on them, is
4 because it supports or it illustrates, it lends weight, to a
5 contention which we make, which is that August Gbao, through
6 1999, was not one of those commanders who would have been
7 in line to be consulted or themselves to issue orders down the
8 line in terms of disarmament. There were other commanders and
9 Mr Kallon very helpfully listed the names exhaustively in his
10 examination-in-chief. So, Your Honour, all I seek to do is
11 prove something by reference to the salute report and
12 to the photographs it simply lent --

13 PRESIDING JUDGE: You are seeking to establish

14 MR CAMMEGH: It lends weight to --

15 PRESIDING JUDGE: I mean, otherwise you wouldn't have
16 raised it, Mr Cammegh.

17 MR CAMMEGH: Well, Your Honour, it lends weight to my
18 and my case is familiar to everybody.

19 PRESIDING JUDGE: Yes. Yes.

20 MR CAMMEGH: Which is, in the words I think of General

21 ~~xxxx~~, Mr Gbao was a ground commander in Makeni, with specific
22 duties which were separate from militaristic ones. I think it
23 was ~~xxxx~~ who said that; I might be wrong.

24 PRESIDING JUDGE: Again, that depends on what
distinction

11:53:11 25 you want to create between what militaristic activities are
and

26 what ground command works are. I mean, it is -- I mean, we're
27 going into an exercise, you know, because to be involved in
28 combat, I do not think it necessarily, you know, have to

always

29 be -- once you are part of the -- of the structure, I mean,

how

1 do you perceive that?

think

2 MR CAMMEGH: The term "ground commander" was held for
3 the -- defined by the witness in particular. As I said, I

11:53:49
description

4 it was General ~~xxxx~~, and I don't want to paraphrase his
5 evidence. Suffice to say I was very happy with the

6 that he attributed to Colonel Gbao in his capacity as ground
7 commander and what I am doing here is simply illustrating two
8 items which might lend weight to that witness's analysis.

9 PRESIDING JUDGE: Anyway, I'll stop there.

11:54:08
that

10 JUDGE BOUTET: I'm not sure that this is exactly what

ground

11 witness said about military operations and [Indiscernible]

what

12 commander, but, whatever it is, I don't have this evidence in
13 front of me. I'm saying you are trying to paraphrase, but

you

14 you are saying, I'm not sure it's exactly what he said, but

11:54:26

15 are saying, essentially, that he established some differences
16 between front commander, if I can put it this way, and ground
17 commander, whatever it may mean.

simply,

18 MR CAMMEGH: Yes. I mean, just to put things very

19 Your Honours, I will be suggesting in due course that the
absence
11:54:42 20 of Gbao's name from this document, the absence of his face
from
21 these photographs, particularly bearing in mind the
circumstances
22 in which those particular photographs were taken, what was
going
23 on at the time, would be surprising if Augustine Gbao was a --
24 and I'll use the phrase loosely -- a military commander.
11:55:03 25 JUDGE BOUTET: [Indiscernible] really, but I think what
you
26 are trying to say is he had no military function, per se.
27 MR CAMMEGH: That's what I'm trying to say.
28 JUDGE BOUTET: Yes. Okay. We'll see.
29 MR TAKU: Your Honours, we object to my colleague

1 continuing this line. First, it's calling for speculation,
for
2 the witness to speculate about what Gbao thought about. It
all
3 depends if he shared the objectives for which these pictures
were
4 taken. We all know the definition of combatant and a
combatant
11:55:31 5 is not necessarily someone who take the gun. People, radio
6 operators, people who go on scouting mission or whatnot, for
7 military operation, Your Honours, I can understand --
8 PRESIDING JUDGE: Mr Taku, that is okay. You know, all
of
9 you are on -- you are all very much carrying out an exercise
11:55:50 10 which we are still expecting, you know, in your final briefs
and
11 in your submissions. I think that what Mr Cammegh is saying,
and
12 what you would say in reply to that, has its proper place in
13 submissions. We wouldn't like to open up a combat, you know,
14 forum here between the second accused and the third accused.
11:56:17 15 That is it. So, Mr Cammegh, you may proceed, please.
16 MR CAMMEGH: Yes, thank you.
17 Q. You mentioned the name Kailondo earlier on, Mr Kallon;
is
18 he now dead?
19 A. I can't really confirm that, because he went back to his

11:56:38 20 country. Whether he is alive or dead, I can't confirm it.

21 Q. Suffice it to say you haven't seen him for many years; I

22 think that's the case, isn't it?

23 A. No, from 2002 I have not set eye on him.

24 Q. Okay. During the months of the -- let's call it the
split

11:57:02 25 between Sesay and yourself on one hand and Superman on the
other

26 who was Kailondo allied to; Superman or your side?

27 A. At that time he allied himself with us, with the side I

28 was.

29 Q. Okay. Can you give us a brief insight into his
character?

1 Was he --

2 PRESIDING JUDGE: Mr Cammegh this is about what time
frame 3 when Kailondo was --

4 MR CAMMEGH: March of '99.

11:57:36 5 PRESIDING JUDGE: -- there was a time this witness said
6 that after some time he decamped and allied himself with
7 Superman.

8 MR CAMMEGH: The period is March to October.

9 PRESIDING JUDGE: March to October.

11:57:45 10 MR CAMMEGH: Yes.

11 Q. Was Kailondo --

12 PRESIDING JUDGE: March to October what year, please.

13 MR CAMMEGH: '99.

14 Q. Was Kailondo quite a strong headed man? Was he a very
11:58:09 15 independent man?

16 THE WITNESS: Yeah, throughout the war he was very
arrogant 17 officer [Indiscernible].

18 Q. Yes.

19 A. Who unless would fix hand before ever he come under
11:58:22 20 control.

21 Q. Was he the sort of person who would prefer to do as he
saw

others? 22 fit rather than follow the recommendations or orders of

23 A. Say that again.

24 Q. Was he someone who would sometimes ignore the
11:58:38 25 recommendations or orders of others and pursue his own line
26 instead?

27 A. Yeah, something like that.

28 Q. Was he someone who you would describe as occasionally
29 reckless?

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1 A. Yeah.

2 Q. And you say that in May of 2000 he was a brigadier; is
that

3 right?

4 A. Yeah.

11:59:01 5 Q. What about Komba Gbundema? Can you tell us about him?
of

6 Sorry I'll try and make it simpler. Between March and October

7 '99 was he allied with Superman or was he allied with Issa and

8 yourself?

9 A. He was with Superman group.

11:59:22 10 Q. Right. What rank did he hold in May of 2000.

11 A. May of 2000 he was a colonel.

12 Q. Now, I want to ask you the same questions about his
general

13 character, if I may. Was he someone who was easy to command?

14 A. No. Because especially in May he was taking his direct

11:59:51 15 order from Foday Sankoh. So any other commander who give him

16 order he cannot take until he inquire from Foday Sankoh.

17 Q. So from -- sorry, what was the date? From April?

18 A. From May.

19 Q. From May?

12:00:07 20 A. Yes, from April. Yes, from April.

21 Q. Yes, I think you said April. So would it follow then
that

if 22 if we return to this scenario that I put forward earlier on,
was 23 you as a brigadier in April discovered Kailondo, who you say
men 24 also a brigadier, going off into the bush with a platoon of
12:00:33 25 ostensibly to take part in what you saw as a foolish mission,
26 could you have stopped him?
27 A. Yeah.
28 Q. You could have done?
29 A. I can stop him, if he fail then I will report him and I

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One

1 often stop him even when he was brigadier, I was brigadier.

2 time there were harassment in one nightclub in Makeni --

3 Q. Right.

4 A. -- Disco Vijem.

12:01:01

5 Q. Yes.

6 A. -- even to the extent took RPG.

7 Q. Yes.

8 A. -- that he will launch in the disco.

9 Q. Yes.

12:01:07
recognise

10 A. -- and when I met him I stop him. He could not

11 me. I report to him to Sankoh because when Sankoh came from

12 Lome, it was -- he has the habit of calling certain, certain

13 officers from Makeni to visit him in Freetown. So all those

14 officers who were coming to Sankoh, they were no longer taking

12:01:31

15 order.

very

16 Q. Right. So you're describing a man who -- I mean, the

17 act of offering to fire an RPG into a nightclub isn't

18 particularly rational, is it?

19 A. Yeah.

12:01:44
to

20 Q. And these irrational out -- was he a man who was prone

21 irrational violent outbursts like that?

22 A. I used to see his character.

23 Q. Was he a man who was prone to acting without
authorisation

24 on the spur of the moment?

12:02:05 25 A. Umm, I want to remind you, he was the authority on the
26 ground Makeni. He was the actual commanding officer there.

27 Q. Yeah.

28 A. Yes. He was receiving all order from Sankoh directly.

29 Q. But the question I'm really driving at is this: Could
he

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1 almost in the flick of a switch just do something crazy like
2 that, firing a -- offering to fire an RPG into a nightclub?

3 A. I saw that happen. That's why I talk about it.

4 Q. And of course, it's commonsense isn't it? If someone
12:02:39 5 decides to act on the spur of the moment like that, it's very
6 difficult --

7 PRESIDING JUDGE: Does that not say everything about him

8 Mr Cammegh.

9 MR CAMMEGH: Yes, perhaps it does. Perhaps it does.

12:02:52 10 Q. Let me now move to Komba Gbundema. You've -- I think
you

11 have an insight into Kailondo's character. Komba Gbundema you

12 say was a colonel. Can you think of any -- I mean how long
had

13 he been based in Makeni by 1 May 2000?

14 A. Who Komba?

12:03:10 15 Q. Yeah.

16 A. Actually Makeni he was having residence there but his
base

17 was Kamakwie, yeah.

18 Q. Now, you said that you would have the power to report
him

19 for misbehaviour. Can you think of any --

12:03:29 20 PRESIDING JUDGE: That's Komba.

21 MR CAMMEGH: Yes.

22 Q. Can you think of any incidents where Komba Gbundema did
23 misbehave in the first few months of 2000?

24 A. Yeah.

12:03:42 25 Q. Can you give those examples?

26 A. Yeah. There's a reception in Makeni called Manikala.
27 There were an old lady who own a house but a very nice house.
28 Komba Gbundema went with his troop and remove the people the
29 owner of the house from his own house -- from their own house

and

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this
1 he occupied this house. When this -- I came to visit Makeni
2 complain reached me I went to Komba Gbundema to release this
3 house back to the owner. He failed to do so. And I send a
4 report to Sankoh that Komba Gbundema even all instruction have
12:04:23 5 been given for all RUF to go and occupy Teko Barracks he is
still
6 in the habit of occupying the civilian houses. That was one
of
7 the thing I can remember.
8 Q. Did you take any action yourself? Did you report him
or?
9 A. Yeah when I report him when the instruction came he
vacated
12:04:42 10 from the house. The people reoccupied the house.
11 Q. Was he a hot tempered man, Komba Gbundema?
12 A. Yeah, he -- he appearance can tell.
13 Q. His appearance can tell?
14 A. Yeah.
12:05:00 15 PRESIDING JUDGE: What you are saying is that he was a
16 hot-tempered man, Mr Kallon. Is that what you're saying?
17 THE WITNESS: Yes, sir, because if someone is hot-
tempered
18 person when they appear here the way of him doing things you
can
19 know, My Lord, as experience.

12:05:18 20 MR CAMMEGH:

21 Q. And what about yourself, Mr Kallon? At that time did
you
22 have a reputation with anybody in the RUF as having a hot
temper
23 or acting on the spur of the moment?

24 A. Myself?

12:05:35 25 Q. Yes?

26 A. No. I was always there to implement RUF law and order.

27 PRESIDING JUDGE: You were the Sparrow that you were.

28 THE WITNESS: Yeah, My Lord.

29 MR CAMMEGH:

1 Q. And just to make it clear, I am not suggesting that you
2 were anything other than that. Now, I want to turn to the
3 disarmament question. The disarmament -- the issue of
4 disarmament I think followed the Lome Peace Accord; do you
agree?

12:06:10 5 A. Yes, sir.

6 Q. And I don't want to go into the Lome Peace Accord but I
7 think it's -- it's fair to say, isn't it, that concessions
were
8 to be offered to the RUF in various areas?

9 A. Yeah, there were message from Sam Bockarie from Sankoh
to

12:06:30 10 Sam Bockarie to inform all RUF the positions agreed in Lome
for
11 RUF to hold, ministry, parastatels and so on and so for.

12 Q. And is this right, that, by April of 2000, there was a
13 certain amount of disenchantment within the commanding ranks
of

14 the RUF who felt that in return for the disarmament that was
12:06:59 15 being proposed, there was still no sign that any political
16 concessions were being granted to the RUF; is that a fair
17 summary?

18 A. Take that again, please.

19 Q. I'm sorry. I'm suggesting this: That by April of 2000,
12:07:19 20 although the disarmament process had been instituted, certain
21 commanders within the RUF were disenchanted because they felt

had 22 that the political concessions that had been offered by Lome

23 not yet arisen; do you agree?

24 A. Yes. Including Sankoh himself because when he came to
12:07:47 25 Makeni he utter that in April. The occasion I was appointed
26 acting battle-group commander.

time 27 Q. Would it be fair for me to suggest this: That by the
28 the MILOBS appeared on the ground, and by the time various DDR
29 camps in the Bombali area had been set up, the -- there was a

1 great deal of suspicion amongst the command of the RUF as to
what
2 was about to happen?

3 A. At the initial, no. Because the information Mr Sankoh
give
4 everyone of us was that 17 April the RUF -- he was going to
come
12:08:25 5 and start the disarmament in Makeni.

6 Q. Yeah.

7 A. Yeah. So everybody would think that territory were
hoping
8 to see that day.

9 Q. Yes.

10 A. Yeah.

11 Q. Now I want to make this clear: That by late April,
12 Augustine Gbao -- I won't make it clear -- it's for you to
answer

13 the question. I'll suggest this: By late April, is this
right,
14 that Augustine Gbao had become a vociferous opponent of giving
up

12:08:58 15 any arms until there was at least some sign that the
provisions
16 of Lome were going to be honoured; is that right?

17 A. I don't know about that.

18 Q. I mean, were you aware that Augustine Gbao was fairly
upset
19 that, as he saw it, the RUF were being asked to give all the

12:09:20 20 concessions but the RUF hadn't really received anything by
then
21 in return?
22 A. No, actually Augustine Gbao and myself do not discuss
that
23 and he did not tell me that.
24 Q. And, as 1 May approached, would this be fair, Mr Kallon:
12:09:45 25 That certain senior RUF based in Makeni and Magburaka were
26 becoming very tense, and very nervous about the propriety of
27 giving up weapons, at that particular time?
28 A. Actually, on 1 May, it was only Makeni I saw that sign
from
29 the commanding officer Kailondo. As I told this Court, right,
I

He 1 met him right at the Independence Square. He was shirtless.

2 tied the shirt on his waist, shouting that they will not take
could 3 this. They will not take that. Trying to approach him, he

4 not recognise my presence. So myself, I left that day, so --

12:10:35 5 PRESIDING JUDGE: Because you saw him wagging his gun?

6 THE WITNESS: Yes, sir, My Lord.

7 PRESIDING JUDGE: And you were afraid and you were not
8 armed?

9 THE WITNESS: Yes, My Lord.

12:10:47 10 MR CAMMEGH:

appearance 11 Q. I heard what you had to say about that alleged

041 12 in Independence Square the other day and, of course, it was

13 who had suggested, as you reminded us the other day, that it
was

14 Augustine Gbao and you corrected him and said it was in fact

12:11:08 15 Kailondo standing bare-chested at the Independence Square. I

16 just want to ask you about that. Can you be sure, Mr Kallon,

17 that that occurred before the incident at Makump or is it

18 possible that could have occurred after -- after you had heard

19 that the Zambians had been detached to go towards Makeni?

12:11:31 20 A. No, this happened before the Zambian incident, on the

21 highway between Makeni and Lunsar at Makump.

almost
your
12:11:54
the

22 Q. Because -- all right. Well, I'm suggesting that it
23 certainly happened after the Makump incident but if that's
24 answer, I'll leave it there.
25 A. Let me just say something?
26 Q. Yes.
27 A. The problem started on 1 May, as far as I'm aware. And
28 adoption of the Zambian happened on 3 May.
29 Q. Yes. All right, I'll move on. Now, your case, as I

Makump 1 understand it, is that you did not attack the DDR camp in
2 on 1 May at all?

3 A. Not at all.

4 Q. As I understand it, your case is that earlier that
morning,

12:12:39 5 you visited that camp with 041 and can you remind us of the
6 purpose of that visit?

7 A. I can repeat what I said. My friend in Magburaka, by
the
8 name of Bobor Kanu, was about to open his pub.

9 Q. Yes.

12:13:03 10 A. And he wanted for use -- to use my -- my musical set. I
11 told him no. If you use this now overnight I will not get my
12 customer. But I have a friend in Makeni, he has a musical
set,

13 who was 041. So I came and took 041 together with this music
14 cassette and brought him to Makeni. So the next morning, on 1

12:13:27 15 May, he and myself were in my car with my uncle, one late
16 Mr Jalloh, and my driver Wamende. We drove, we reach to
Makump

17 DDR camp. I saw Mr Andrew Kanu, who was one of our senior,
18 senior party supporter in Makeni. He was working with NCDDR.

I

19 break --

12:13:53 20 PRESIDING JUDGE: Mr Kanu, mister who Kanu?

21 THE WITNESS: Andrew Kanu, My Lord. I break to greet
him.
22 Greeted him. The Mammy Queens, who were also RUF party
23 supporter, saw me. They started waving to me. So I decided
not
24 to just wave to them but to walk to them. While going to them
I
12:14:12 25 met the carpenter workshop. I told him, I make a remark:
This
26 bed you are making it is not for pig, it's for human being.
27 MR CAMMEGH:
28 Q. Yes.
29 A. And they brought a sample of the bed from Port Loko, DDR

Loko 1 camp, but they were not making it as exact as that of Port
2 DDR camp. That was the reason I break at that DDR camp.
3 Q. I follow. And I should say this: I'm not necessarily -
-
4 well, I'm not in a position to contradict your evidence that
you
12:14:42 5 went to see Mr Kanu there that morning. I'm not saying that
that
6 did not happen. Can I just -- you mentioned --
7 PRESIDING JUDGE: You say Mr Kanu was an uncle to a
friend
8 of yours whose name is?
9 THE WITNESS: No. Mr Kanu was a senior RUF party
supporter
12:15:00 10 in Makeni and he was working with NCDDR at the DDR camp, My
Lord.
11 The uncle I mentioned was Mr Jalloh, who were with me in the
car.
12 MR CAMMEGH:
13 Q. You mentioned that you had a pub. You told us about
your
14 stock and a little more about your pub the other day. Will
you
12:15:36 15 agree with me on this, please: That Augustine Gbao didn't own
16 any particular hostelry or pub or restaurant or anything of
that
17 nature, did he?
18 A. It was a business. I interested in doing it. I did not

19 see him own one. Maybe he might have it other location of RUF
12:15:57 20 but Makeni, Magburaka, I did not see him own one.

21 Q. And will you agree with something I put to several
22 Prosecution witnesses and, indeed, I remember that 371 did
agree
23 with this: That Augustine Gbao was a modest man who wasn't
24 particularly interested in material possessions; would you
agree
12:16:19 25 with that?

26 A. What do you mean? No, I don't think so.

27 Q. Well, for example, Augustine Gbao was never seen driving
a
28 4x4 that belonged to him, things of that nature. He was a
modest
29 man; correct?

were
not
No,
1 A. I cannot say that. And every one of us in the RUF, we
2 using the captured vehicle from ECOMOG. That time, we were
3 going in any car garage to buy modest car or function car.
4 My Lord.

12:16:55 5 Q. And in fact the car that Augustine Gbao had -- I grant
you
6 he had a driver, I suggest, by the name of Ibrahim -- but the
car
7 that he would be driven around in, I wrongly put it earlier in
8 the trial as a Datsun, it was actually a Toyota Tercel, wasn't
9 it, a small, a very small four-door vehicle?

12:17:15 10 A. Yeah, I saw him with that Toyota Tercel.

11 Q. And would frequently break down, hence the need for him
to
12 be driven around by someone called Sheku, who I think acted as
a
13 mechanism from time to time; do you agree?

14 A. The actual mechanic I knew for RUF in Makeni was
Ibrahim,

12:17:36 15 actually. Ibrahim. I don't know Sheku or maybe that Ibrahim
is
16 Sheku. I don't know.

17 Q. Okay. Returning to your visit to the DDR camp that
morning
18 I want to -- forgive me a moment, Mr Kallon. As you've
reminded

the 19 us you -- you visited the camp that morning. Can you give us
12:18:43 20 approximate time that you visited that morning, just roughly?
21 A. As I told you, it was from 10, 11, within that time.
22 Q. Right. And forgive me if you've already answered this
23 question, but was your primary purpose for visiting there to
see 24 your friend, Andrew Kanu?
12:19:02 25 A. Actually, it was not a plan for me to visit this camp,
but 26 the camp is situated right on the road.
27 Q. It was on your route?
28 A. On the road.
29 Q. Yeah.

1 A. Makeni/Magburaka highway.

2 Q. Yes.

3 A. So, while passing, I saw Mr Andrew Kanu.

4 Q. Okay.

12:19:19 5 A. And he was a man of respect, and so on and so forth,
within

6 the RUF.

7 Q. And you mentioned the Mammy Queens?

8 A. Yes.

9 Q. Now, you remember that 041 testified in 2006, and it's

12:19:36 10 right, isn't it, that he talked about your visit to the camp.
He

11 was in the car with you?

12 A. Yeah. Yes.

13 Q. And I think --

14 MR TAKU: Your Honours, my colleague knows very well he
can

12:19:54 15 ask any question on the evidence-in-chief exactly what the

16 witness said in chief, and with your permission he could

17 inquire

18 into other areas. But sincerely, it cannot be his duty, and

19 he

will

bring about a conflict and he should be reminded, you've done

so

12:20:16 20 many times, about the necessity to respect Rule 82 in the
joint
21 trial and my colleagues -- my colleagues should also respect.
22 There is jurisprudence here on that from actually other
23 tribunals, and my colleagues will know, that it is not his
duty
24 to impeach the testimony of this witness, except the witness
in a
12:20:39 25 way testified against his client. He never mentioned --
26 PRESIDING JUDGE: But it is cross-examination.
27 MR TAKU: Exactly, Your Honour. It is cross-
examination.
28 But --
29 PRESIDING JUDGE: Is he not entitled to impeach him, if
he

1 so wishes, the testimony of this witness?

2 MR TAKU: Your Honours -- well, the jurisprudence lays
the
3 rules on issues that were adduced in chief. In particular, if
he
4 said anything that is adverse to his client, he can go to it,
but
12:21:07 5 he cannot do it, it's for the Prosecutor in this case,
6 Your Honours, and that's my --

7 PRESIDING JUDGE: What you are saying is that he did not
8 impeach -- he did not incriminate --

9 MR TAKU: In no way, Your Honour.

12:21:21 10 PRESIDING JUDGE: -- his client.

11 MR TAKU: He didn't even mention his name. Even once,
he
12 did not, Your Honour.

13 PRESIDING JUDGE: So he cannot at this stage, you know,
14 incriminate him. I mean, let's use the word "impeach" his
12:21:35 15 character.

16 MR TAKU: Exactly, Your Honours. And he cannot even say
17 things that may be potential conflict because Rule 82,
18 Your Honours, says that if there's a substantial conflict that
19 may be prejudicial to a co-accused Your Honours will
intervene,
12:21:51 20 in order to direct --

21 JUDGE BOUTET: What's -- 82 you say?

22 MR TAKU: 82 of the Rules, Your Honours. Rule 82 of the
23 Rules.

24 JUDGE BOUTET: I have looked at 82. It doesn't say that
to
12:22:02 25 me, but anyway.

26 MR TAKU: Joint and separate trials.

27 JUDGE BOUTET: Yes. Yes.

28 MR TAKU: In joint trials, each accused shall be
accorded

29 the same right as if he were being tried separately. The
Trial

under 1 Chamber may order that person, the accused, during the --

2 Rule 48 be tried separately if it considered it necessary in
3 order to avoid a conflict of interest that may cause serious
4 prejudice to an accused or to protect the interests of
justice.

12:22:26 5 In other words, if he has to inquire further with
6 intention -- if his intention is to impeach the account of
7 Mr Kallon, then Your Honours will be -- will making their
8 application for severance at this point in time, we are quite
9 conscious of that, and we said nothing, not even once about
12:22:42 10 Mr Gbao.

tell 11 He has the possibility to come and testify himself and
12 his own side of the story and to call witnesses, but it is not
a 13 duty. The Prosecutor can do that. He can impeach this
witness

14 because we impeached the testimony led by his witnesses. But
the

12:22:58 15 co-accused in the joint trial, Your Honour, cannot come here
and
16 try to impeach, especially he can only go as far as the
17 evidence-in-chief went and, in particular, it's in the
18 evidence-in-chief, there was something said that will
compromise

19 the interests, direct interests of his client.

12:23:14 20 So far we didn't mention his name once and he
041 21 cross-examined the Prosecution witnesses, he cross-examined
 22 who was here, and the problem is he didn't even put these
 23 questions to him. He seek to cross-examine the witness and
the 24 evidence of 041. He didn't cross-examine him on this. He had
 25 the opportunity to do that when he was here. He could
12:23:30 25 challenge
 26 his account of events. He didn't do that, not even once. How
 27 can he attempt to do it through Mr Kallon?
 28 JUDGE BOUTET: We don't even know the question. All we
 29 know at this juncture is he's made reference to 041, that he

1 testified in this Court, but what is the question to be? I
mean,
2 I have not heard it yet. Maybe you know, Mr Taku, I don't.
3 Anyhow.

4 MR TAKU: Your Honours were saying that if he pursue the
12:24:03 5 cross-examination in the manner that it portrays a potential
6 conflict of interest, we will make another application. I
just
7 want to put him on notice on this, Your Honours. At least
8 Your Honours have said so many times that it's a joint trial
but
9 the people are tried separately. If Mr Kallon were tried
12:24:21 10 separately, this opportunity, this situation would not arise,
of
11 trying to impeach, he said, to impeach him. But let him go
12 ahead, Your Honours. If he does that I will raise the
objections
13 and I will re-ask the opportunity for us to file a motion so
that
14 we lay arguments on this issues for your Lordships to
determine.

12:24:43 15 JUDGE THOMPSON: Now, as Justice Boutet just said, I,
quite
16 frankly, I've been listening very carefully myself and I find
17 myself in a judicial quandary since it seems as if you are
being
18 pre-emptive and nothing has happened yet to engage my own
19 judicial intellect on this matter, to apply my mind to it.

12:25:06 20 MR TAKU: Thank you, Your Honour.

21 PRESIDING JUDGE: As you have said, you've considered
that

22 he can continue so, Mr Cammegh, you may continue.

23 MR TAKU: Yes, Your Honour, he can continue but if he
24 crosses the line I will make the application.

12:25:20 25 PRESIDING JUDGE: We have you on record as having said
26 that. I mean, we are in an adversarial process and you can
come

27 in at any time in defence of the interests of your client.

28 Yes, Mr Cammegh, you may continue, please.

29 MR CAMMEGH:

1 Q. I'm simply going to ask you this Mr Kallon or ask you to
2 confirm this: That 041 himself mentioned the visit to Makump
3 that the two of you paid and I think it's right, isn't it,
that
4 041 even talked about the fact that the beds weren't fit for
12:26:02 5 pigs, or something like that. That was the sort of comment
that
6 was made; is that right?

7 PRESIDING JUDGE: Let's come to that. I mean, is that
not
8 again a matter, you know, which if 041 is already on record as
9 having said, you know, something, are you wanting -- are you
12:26:17 10 seeking to confirm what 041 said and for what purpose?

11 MR CAMMEGH: Simply trying to establish the consistency,
12 Your Honour. I do hope that I'm allowed to conduct this
13 cross-examination without -- and I'm not criticising Your
Honour
14 here but --

12:26:35 15 PRESIDING JUDGE: No, no, no, no, no,. You bet watch,
you
16 better watch your reaction Mr Cammegh. We have been on very
very
17 peaceful waters --

18 MR CAMMEGH: Yes.

19 PRESIDING JUDGE: -- you know, up to now and I suppose
you

12:26:43 20 know that you would be -- you have a lot of reverence, you
know,
21 in whatever you do as far as the Chamber is concerned. I
think
22 the Chamber is entitled to asking certain questions --
23 MR CAMMEGH: Of course.
24 PRESIDING JUDGE: -- or clarifications or to making, you
12:26:55 25 know, certain comments.
26 MR CAMMEGH: I'm not --
27 PRESIDING JUDGE: And it's not a question of you're
being
28 allowed.
29 MR CAMMEGH: I'm not directing --

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1 PRESIDING JUDGE: You're being granted the latitude,
2 you've been granted all the latitudes and you will still be
3 granted the latitude to conduct your cross-examination.

4 MR CAMMEGH: I'm grateful for that and Your Honours
should

12:27:10 5 know that I'm not addressing that comment --

6 PRESIDING JUDGE: Because you were flaring up, you know.
7 We know, we have been here for years and we know ourselves
very

8 very well and that's where I'm coming from. So you may
proceed,

9 please, and let us not waste time arguing. Let us proceed,
12:27:22 10 please.

11 MR TAKU: Your Honours.

12 PRESIDING JUDGE: No no no no no.

13 MR TAKU: I'll rise again.

14 PRESIDING JUDGE: No no no please. Please. Mr Cammegh,
12:27:30 15 you may proceed, please.

16 MR CAMMEGH: What I was going to say is this, Your
Honour

17 and with your leave I must be heard. I do object to
unnecessary

18 objections and interruptions to my cross-examination.

19 PRESIDING JUDGE: It is not for you to determine whether
12:27:41 20 objections are unnecessary or not. It is for the Court to
21 determine whether objections are necessary.

22 MR CAMMEGH: It's not me who is [indiscernible] --

23 PRESIDING JUDGE: It's, it's -- the somebody who is in
24 control here is the Chamber.

12:27:51 25 MR CAMMEGH: Yes.

26 PRESIDING JUDGE: If an objection is unnecessary and
27 vexatious we will step in.

28 MR CAMMEGH: Yes.

29 Q. Mr Kallon can you tell this Court why the name Andrew

Kanu

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1 never appeared in any cross-examination during the Prosecution
2 case? 041 and 042, neither were asked about Andrew Kanu being
at 3 the DDR camp were they?

4 MR TAKU: Your Honours, may we be heard. We object
12:28:18 5 Your Honours. What question was asked or not asked in the
6 Prosecution's case cannot be put to Mr Kallon now why the name
7 was never mentioned or mentioned. It is not subject of
8 cross-examination, sir. He should address the Court on that

9 he feels it's necessary. Mr Kallon was not the one asking the
12:28:36 10 questions was not the one doing the cross-examination. In the
11 case Your Lordships have the record of what 041 said and
12 Your Lordships will be in the position to evaluate the

evidence
13 but to ask Mr Kallon why the name never featured, Your
Honours,
14 to say [Indiscernible] is preposterous. It's not a question
that
12:28:51 15 we asked to this man. He didn't do the cross-examination
16 himself.

17 MR OGETO: My Lords, if I may I just briefly.

18 PRESIDING JUDGE: Yes, please Mr Ogeto.

19 MR OGETO: That question, My Lords, should be overruled
for
12:29:02 20 relevance. It is not relevant at all.

21 PRESIDING JUDGE: Thank you. Yes, Mr Cammegh.

fairly

22 MR CAMMEGH: Your Honour, I'm simply asking it's a

clear

23 anodyne question I would submit. Mr Kallon made it quite

his

24 in his testimony the other day in which the full context of

12:29:28

25 defence to UNAMSIL became clear for the first time despite my

26 requests in the last session and the name Andrew Kanu was

be a

27 obviously a relevant part of it. I'm simply and there might

28 completely innocent explanation for this but I'm certainly

why

29 entitled to ask the question whether Mr Kallon is aware as to

Mammy

1 the name of Andrew Kanu or for that matter the visit to the

2 Queens was never put to witnesses 041, 041 travelling --

3 PRESIDING JUDGE: Does he take responsibility for those
4 questions not being put to 041.

12:30:04 5 MR CAMMEGH: Well, Your Honour --

6 PRESIDING JUDGE: Would you say he really takes
7 responsibility for the Prosecution not --

8 MR CAMMEGH: Your Honour I'm not going to press this too
9 hard. Where I come from that's a perfectly proper question

12:30:16 10 bearing in mind of course that the defendant is aware of the
case

11 against him and that he is capable of offering instructions to
12 counter that case. Now, Your Honours may say that it's an
13 observation that should be reserved for comment in the closing
14 submissions, if that's Your Honours ruling I'll abide by that

but

12:30:35 15 in my submission it's a perfectly fair question because the
16 introduction of that name into the defence at this late stage

is

17 something of a surprise. I'll say no more than that. I'll

abide

18 entirely by Your Honour's ruling but in my submission, and I

19 don't want to provoke any more excitement but in my submission

it

12:30:59 20 is a proper question at this stage.

21 PRESIDING JUDGE: Why?

22 JUDGE THOMPSON: Learned counsel why is there a

23 presumption that the first -- this particular witness should
know

24 why the Prosecution did not put that question.

12:31:16 25 MR JORDASH: No, no not --

26 JUDGE THOMPSON: Why is it -- yes.

27 MR CAMMEGH: My inquiry, Your Honour, is that there are
two

28 witnesses who the Prosecution called who would surely be in a

29 position to give evidence -- or testify as to Mr Kallon's
visit

1 to Mr Kanu in the DDR camp.

2 JUDGE THOMPSON: Yes.

3 MR CAMMEGH: The first one is 041 because his evidence
was

4 he was actually travelling in a car with Mr Kallon and Mr
Kallon

12:31:44 5 has confirm that. The second one was the abducted man 042,
who

6 was in the camp all of that day and my simple question is: Is
7 there any reason that Mr Kallon knows of -- and again there
might

8 be a perfectly innocent explanation -- as to why those --
neither

9 of those witnesses were cross-examined on that basis by his
team

12:32:13 10 at that time.

11 JUDGE THOMPSON: Let me grant that is valid. But isn't
12 there also the other side of the coin that the way that
question

13 is framed can in fact amount an invitation to speculate.

14 MR CAMMEGH: Well --

12:32:27 15 JUDGE THOMPSON: Would you, would you -- what would be
your

16 response if I say that? Accepting the validity of your own
17 analysis.

18 MR CAMMEGH: Unfortunately -- well, the answer is this:

19 Unfortunately we won't know that until we receive the answer.
As

12:32:41 20 I said there might be a completely innocent answer.

21 JUDGE THOMPSON: Yes.

22 MR CAMMEGH: If the answer is a speculative one then
23 Your Honours know what to do with it but in my respectful
24 submission it is a proper line of inquiry and of course --

12:32:51 25 JUDGE THOMPSON: And there's no rule of impermissibility
26 forbidding it in this case.

27 MR CAMMEGH: No, and the defendants or the witness's
answer
28 of course would have to be final on that issue.

29 JUDGE THOMPSON: Yes.

1 MR CAMMEGH: But in my submission, it is a fair question
2 drawn from circumstances which perhaps demand some inquiry;
3 namely the introduction of Kanu's name into evidence a long
time
4 after relevant Prosecution evidence was tendered on this
issue.

12:33:24 5 PRESIDING JUDGE: For what purpose? For what purpose?
6 Incidentally, whilst you -- I don't want to get into this, you
7 know. Are you seeking to impeach his credibility, you know,
as
8 far as his evidence is concerned, the evidence of Kanu and the
9 rest of them.

12:33:43 10 MR CAMMEGH: Well, as I've already made -- and this is
the
11 point which I should have made just now. I am in no position
to
12 suggest to Mr Kallon that he is not telling the truth. I've
made
13 it clear to Mr Kallon already that as far as I'm concerned it
may
14 well be the case that he visited the DDR camp earlier that
day.

12:34:05 15 And that Mr Kanu -- I'm simply raising the inquiry now if that
is
16 the case that they went to meet Mr Kanu there are two
witnesses
17 041 and 042 who were perfectly placed to testify as to that to

There 18 Mr Kallon's benefit. And that's the inquiry I'm making.
19 might be a perfectly innocent answer to the question. I don't
12:34:32 20 know yet. If the answer is not -- does not appear to be as
one
lend 21 would hope it to be, then perhaps there would be -- it would
I'll 22 weight to any impeachment that might follow. Your Honours,
23 leave it there. I'm not going to pursue the issue.
24 PRESIDING JUDGE: Yes, yes, let -- you leave it there.
12:34:55 25 Let's listen to Miss Mylvaganam, you know, she was on her feet
26 even though she is taking maybe for strategic reasons a
27 background position, she is still counsel in this case. Yes,
28 Miss Mylvaganam, can we hear from you, please.
29 MS MYLVAGANAM: I'm grateful, My Lord. My Lord, the

1 purpose of the question is designed to impeach credit. It's
an
2 attack on credibility through the back door. And in the
absence
3 of instructions or a case to put which goes to impeach the
4 defendant's credit, then I'm afraid my learned friend is
taking
12:35:31 5 unfair advantage. There is no purpose in this cross-
examination
6 apart from impeaching credit and if you seek to impeach the
7 credit of a witness you do so for a purpose. If the defendant
8 had implicated and given implicative evidence against the
9 defendant that my learned friend represents, there would be a
12:35:58 10 proper purpose to his cross-examination. In the absence of
such,
11 it really seems as if, with respect to him, it's a sneaky way
of
12 impeaching credit. One shows one's colours. If you have
13 instructions to attack a witness you do so. That is the
14 established rules of the game in the jurisdiction that both he
12:36:25 15 and I come from.

16 PRESIDING JUDGE: Thank you.

17 MR TAKU: Your Honour.

18 PRESIDING JUDGE: Can we -- can we please -- we will not
19 hear you, Mr Taku, on this. We've heard your team
sufficiently

12:36:39 20 on this. Yes.

21 PRESIDING JUDGE: Mr Cammegh, the Chamber will not allow
22 that question to be put to the witness. These are matters
which
23 would be taken in the final submissions of the parties. If
you
24 wish to make that an issue, well, fair enough and then all the
12:38:54 25 parties would address it at that point in time.

26 MR CAMMEGH: Yes.

27 Q. Now, Mr Kallon, my case on UNAMSIL or the UNAMSIL
28 incidence, or Mr Gbao's case, I should say, is this: That
where
29 it is alleged that -- or by Colonel ~~xxxx~~, 165, and where it
was

1 alleged by 042 that Gbao came to the camp that afternoon, we
2 accept that evidence --

If

3 PRESIDING JUDGE: Do we need to preface it with this?

4 you accept the evidence, we'll leave it. You put the question

12:39:56 5 that's

5 which you have to put to him. If you accept the evidence,

which

6 fine. We'll address that for addresses. Put the question

7 you have to put to the witness and let's move on.

8 MR CAMMEGH:

12:40:21 10

9 Q. Did you hear anything to the effect that Mr Gbao went to
10 the camp on 1 May?

11 PRESIDING JUDGE: That is a very good question.

to

12 THE WITNESS: Until I left Magburaka that morning I went

13 Makeni and returned back, I did not hear that Mr Gbao went to

14 that camp. I did not hear that.

12:40:40 15

15 MR CAMMEGH:

16 Q. Right.

17 A. Only in this courtroom I hear that.

18 Q. Okay.

world

19 MR CAMMEGH: Your Honours, with the best will in the

12:41:04 20

20 there is really, in my submission, no way I can proceed, in

21 fairness to Mr Kallon, unless I put my case. And it's not my

22 case I'm putting; it's Mr Gbao's case on instructions. And in
23 order to afford Mr Kallon every opportunity to respond in a
way
24 that would avoid any conflict, I have to put the case. I
really
12:41:32 25 don't see any way around it. It's a matter for Your Honours,
but
26 that's the way I see it.
27 PRESIDING JUDGE: We are saying that it's -- there's no
28 point putting across the obvious because it whiles time. If
you
29 are putting your case, it's a matter for submissions, which

1 should be distinguished, you know, from questions and should
be
2 put on the cross-examination to a witness.

3 MR CAMMEGH: Very well. I will do the best I can.

4 PRESIDING JUDGE: Please do, Mr Cammegh.

12:42:14 5 MR CAMMEGH:

6 Q. Mr Gbao's instructions are, Mr Kallon, that having been
for
7 some time arguing, and no doubt behaving in quite unsociable
8 manner at the DDR camp, he saw a black Mercedes arrive from
the
9 Makeni direction. Did you -- or do you know anything about a

12:42:44 10 black Mercedes arriving from the Makeni direction and pulling
up
11 near to where Mr Gbao was standing outside the DDR camp
entrance?

12 A. Which of the days are you referring and the time,
please?

13 Q. 1 May at approximately 2 o'clock in the afternoon.

14 A. No, I don't know about that. I was not within that end.

12:43:13 15 Q. All right. What I --

16 JUDGE BOUTET: Did you say, I'm sorry, did you say that
17 Mr Gbao at that time was standing outside the main -- DDR
18 entrance --

19 MR CAMMEGH: The entrance to the DDR camp at Makump.

12:43:28 20 JUDGE BOUTET: At 2 p.m. on --

21 MR CAMMEGH: Around 2 p.m.

22 JUDGE BOUTET: Okay. Thank you.

23 THE WITNESS: As I told you, I left in the morning
around

24 10, I think 11 I return back, and I did not come that day
again

12:43:43 25 in Makeni.

26 MR CAMMEGH:

27 Q. Yes. I understand that is your case, Mr Kallon. Mr
Gbao's

28 case is that the truth is something different from that?

29 A. That's his own case.

1 Q. Of course. And I repeat: I do not suggest that you did
2 any of the things inside the camp that have been alleged for
the
3 simple reason that my -- Mr Gbao's case is that he was not
there
4 after the Mercedes arrived. I'll ask you a question now and
12:44:21 5 forgive me for the short speech. Mr Kallon, were you not in
fact
6 in that Mercedes?

7 A. No.

8 Q. I suggest that you were. I suggest, secondly, that you
9 were accompanied by two men; one of them was Kailondo?
12:44:48 10 PRESIDING JUDGE: The witness said that he arrived at 2
in
11 the afternoon?

12 MR CAMMEGH: Yes. I'm sorry, Your Honour, no, the
vehicle
13 arrived about an hour later, so this would be at about 3
o'clock.

14 Q. I suggest that the vehicle contained, along with
yourself,
12:45:12 15 Kailondo and Komba Gbundema. Now, is there any truth in that,
16 Mr Kallon, so far as you're concerned?

17 A. No. Myself, Kailondo, Komba Gbundema never arrived that
18 very day, 1 May, in one vehicle, no.

19 Q. What I further suggest is this, because I have to put my
12:45:38 20 case to you to be fair to you: The three of you jumped out of

21 the car and marched into the camp; any truth in that?

22 A. No, your instruction wrong.

23 Q. All right. One of you, almost certainly Kailondo, was
24 firing a gun into the air as the vehicle arrived?

12:46:12 25 A. As I told you, I was not there. Probably Kailondo was
26 having Benz car blue but my own, as TF-041, and talk before
this

27 Court, it was blue/black and that very morning it was myself,
my

28 uncle, my driver and 041. My driver is a civilian, my uncle
was

29 a civilian, while returning, so Kailondo and myself and Komba,

1 no. Probably, when I returned back, they came there because I
2 heard that they went as far as Magburaka.

made

3 PRESIDING JUDGE: But there's an allegation which is
4 that there was firing and so on, but you say that you were not
5 there.

12:46:55

6 THE WITNESS: Yes, My Lord.

7 PRESIDING JUDGE: There was firing at Komba Gbundema,
8 Kailondo -- was it Kailondo, Mr Cammegh?

12:47:06

9 MR CAMMEGH: Yes. I'm not suggesting that Mr Kallon
10 discharged a weapon.

it

11 PRESIDING JUDGE: No, you didn't suggest that. You said
12 was Kailondo.

13 MR CAMMEGH: I'm putting that it was Kailondo.

your

14 PRESIDING JUDGE: And his response is what? What is
15 response?

12:47:41

16 THE WITNESS: My Lord, I say myself and Kailondo never
17 arrived a vehicle on that day on 1 May and I am not --

18 PRESIDING JUDGE: So you never saw Kailondo -- you could
19 not have seen Kailondo discharging a weapon on that day?

12:47:41

20 THE WITNESS: At DDR camp, no, My Lord.

21 JUDGE BOUTET: Did you say that Kailondo had a black

22 Mercedes?

black

23 THE WITNESS: I said maybe but myself, I never used a

24 Mercedes car, no, sir.

12:47:45 25 JUDGE BOUTET: So you don't know?

26 THE WITNESS: I don't know.

27 MR CAMMEGH:

165

28 Q. At page 29 of his evidence-in-chief, on 29 March 2006,

29 said that -- and I must emphasise his evidence was entirely

1 hearsay -- but he said that you arrived from Makeni to the DDR
2 camp to join Gbao, and that you were firing on the ground.
Can I
3 say I don't suggest that you were firing on the ground. But
on
4 the same page, 165 suggested that Mr Gbao tried to cool you
down.
12:48:32 5 Again, I appreciate you're saying you were not there, Mr
Kallon,
6 but I have to go through these questions. Is there any truth
in
7 that allegation, that Gbao was trying to calm you down?
8 A. You mean the reading you did just now?
9 Q. Yes, from 165.
12:48:46 10 A. No. Gbao and myself never met around DDR camp.
11 Q. All right. What I suggest happened thereafter was that
12 Gbao left --
13 PRESIDING JUDGE: Again, let me say -- let me say here:
14 You are in cross-examination. Are you seeking to impeach the
12:49:14 15 credit, you know, of this witness -- of this -- of the accused
purpose?
16 person who is a witness now in this matter, and for what
17 MR CAMMEGH: Not at this precise moment, Your Honour.
I'm
18 putting my case and I'm making sure that the ground is being
laid
19 as to what I might choose to do next.

12:49:35 20
emphasised

PRESIDING JUDGE: You see, because we've always

21 here the doctrine of fundamental fairness.

22 MR CAMMEGH: Yes.

23 PRESIDING JUDGE: And I am --

24 MR CAMMEGH: Can I deal with that, Your Honour?

12:49:42 25

PRESIDING JUDGE: Yes.

26 MR CAMMEGH: It's fair if I'm in --

27 PRESIDING JUDGE: Because I'm saying this: Well, let me

28 tell you why I'm saying this because I don't think that the

29
the

second accused at any time really incriminated your client in

nature

is

12:50:26
to

there

to

It

12:50:52
pursue

a

defendant.

exchange

12:51:16
case.

1 course of his evidence and that's why I'm intrigued by the
2 of the questions which are being asked, and which I ordinarily
3 should expect from the Prosecution. You know, this is why I'm
4 intrigued. We have all done the job you are doing now and one
5 bound to be intrigued. But, this said, you may go on. I have
6 make these comments because I think in practice, you know,
7 are certain basic -- some basic norms of practice that we have
8 adhere to.

9 MR CAMMEGH: Your Honour, can I briefly deal with that.

10 is fair that I should be able to not only put my case, but
11 my case according to my instructions and my duty to act in my
12 client's best interest, and bearing in mind of course this is
13 multi-handed trial. This is not a trial of a single
14 And I think as his Honour Judge Boutet commented in an
15 we had in the last session these things sometimes happen. If
16 you're asking whether I'm impeaching Mr Kallon right now the
17 answer is no, I'm simply establishing his responses to my
18 Now --

19 MR TAKU: Your Honours --

12:51:32 20 PRESIDING JUDGE: No, no, no. Can he finish, please,

21 Mr Taku?

22 MR CAMMEGH: Your Honour, if I'm in possession of
23 instructions which are to the disadvantage of a co-defendant,
24 whether that co-defendant has overtly attacked my client or

not,

12:51:58 25 if those instructions are relevant to the proper pursuant of
my

26 client's defence I have to put them. Am I to acquiesce, when
it

27 is our case that the one witness who has entered the witness
box

28 in this trial, who is alleged to have been there on both May 1

29 and May 2, Mr Kallon is the only witness and, therefore, is
the

1 only witness who could potentially absolve Mr Gbao in
2 circumstances where, of course, even the Prosecution case goes
no
3 further than to -- well, I can't say that.

4 What I can say is the Prosecution case makes no
reference

12:52:41 5 to Mr Gbao in the camp after Mr Kallon arrives. But of course
6 the Prosecution case doesn't stop there. The Prosecution case
is
7 founded equally on joint criminal enterprise. The Prosecution
8 case is that later on 1 May -- and I'll say persons unknown
9 because I'm in no position to accuse Mr Kallon of doing
anything

12:53:06 10 in that camp -- but the Prosecution case is that persons
unknown
11 went into that camp, beat up and abducted Mr ~~xxxx~~, 042, and
12 went back the next day, assaulted another man, and, in the
course
13 of that, another man was shot dead.

14 Murder is one of the counts on the indictment in
relation

12:53:33 15 to the UNAMSIL incident. Now, I heard Mr Kallon's evidence
the
16 other day, and with some surprise, because the nature of a
17 certain cross-examination that came toward the end of the last
18 session led me to expect that perhaps some other defence, some
19 sort of self-defence, or something like that, might be run or
led

12:53:55 20 by the Kallon team, but that transpired not to be the case;
the

21 case is mistaken identity.

22 Now, it's for me on instructions to pursue in
23 cross-examination, through any relevant witness, Mr Gbao's
case

24 that he left immediately after the first shots were fired.
And

12:54:16 25 unfortunately, there is no will in the world, on my part, to
wish

26 to impugn Mr Kallon but, unfortunately, he is the only person
27 who, according to Mr Gbao, has come into this room over the
last

28 four years who is in a position to say that he, Mr Gbao, was
not

29 there. Now --

1 PRESIDING JUDGE: Right. Mr Cammegh, I've made the
2 comment. I've heard you. You may continue. You know, let's
be
3 through with this.

4 MR CAMMEGH: Thank you. I think it's right that I make
my
12:54:46 5 position clear.

6 PRESIDING JUDGE: You may continue. I've made the
comment
7 which I think is pertinent. You've -- you may continue. I
was
8 just -- I'm intrigued by the way -- the route, you know, you
are
9 taking. But, having made the comment, you know, you may
proceed.

12:55:08 10 MR CAMMEGH: Thank you.
11 Q. Mr Kallon, I'm sorry, I'm not quite sure where you got
to,
12 but my suggestion is this: Almost immediately after Gbao
spoke
13 to you, he got back in the Toyota Tercel with his colleagues
and
14 he left the scene. Now, what's your response to that?

12:55:35 15 A. I told you several times now, see, myself and Gbao never
16 come in contact with one another.

17 Q. All right.

18 A. So if -- what he told you not true.

ask 19 Q. Finally, before we move on to a different tack, can I
12:55:57 20 you to confirm this, if you are able: That Augustine Gbao did
21 not return to the DDR camp from that moment at all. Can you
22 comment on that?
23 A. I cannot.
Kallon; 24 Q. All right. Can I just offer you this scenario, Mr
12:56:45 25 it's not my client's instructions, it's a scenario which
26 nevertheless perhaps is worthy of comment and it's this: As
you 27 know, the Gbao case is that you did go there with those -- at
28 least those two men?
29 A. No.

1 Q. Is it possible that this happened? Let me relate a
2 scenario to you: Is it possible, in fact, that you went there
3 because you had heard that there was trouble at the camp and,
in
4 view of the prevailing tension, you, out of loyalty to your
12:57:22 5 colleagues, went there in what you thought might have to be a
6 rescue mission; is that possible?
7 A. Is the question to me?
8 Q. Yes.
9 A. No, I do not go there in that circumstances as you have
put
12:57:36 10 it.
11 Q. All right.
12 A. Not so it happened, [Indiscernible].
13 Q. Let me just follow this possible scenario through, and I
14 emphasise again this is not coming from Mr Gbao, it is not
coming
12:57:46 15 from anybody other than myself. Is it possible that, in fact,
16 what happened when you arrived was that your two colleagues,
17 whose characteristics you've described fully before this Court
18 this morning, basically went on the rampage, not only outside
19 their own control, but outside your control as well?
12:58:11 20 A. But, Mr Cammegh, I have told you over and over, I do not
go
21 to that camp with these gentlemen.

22 Q. All right.

23 A. When I met them at the Independence Square, Kailondo in
24 particular, after I was trying to approach him, he ignore me.
I
12:58:29 25 left him in Makeni and drove off to Magburaka. So the
scenario
26 you are putting actually I'm not in position to answer it to
you,
27 no.

28 Q. Okay. I'll wrap up the scenario with this last portion,
if
29 I may. Is it not in fact the case that, rather than admit
that

1 you were there, admit that things got out of hand outside your
2 control, you're afraid that would not be believed by this
Court,
3 so you put together a different defence?

4 MR TAKU: Objection, My Lords.

12:59:03 5 PRESIDING JUDGE: Yes.

6 MR OGETO: That question is completely out of the normal
7 rules of cross-examination. It is irrelevant and it is -- it
8 amounts to harassing the witness, My Lord.

I 9 MR CAMMEGH: Well, Your Honour, I'm horrified if I felt

12:59:22 10 was harassing Mr Kallon but there is a case in England called
11 Lucas and it is perhaps known to his Honour Judge Thompson,
that
12 it's quite common that in jury trials, juries are invited,
where
13 it's been suggested that a defendant has lied in his
testimony,

14 to consider why he has lied. And juries are addressed -- or
12:59:49 15 directed in fact by judges that you may feel that the witness
or

16 the defendant has lied in relation to his defence but don't
17 discount the possibility that such lies may occur where an
18 innocent defendant has felt it necessary, through reasons of
19 personal embarrassment, through reasons of bad behaviour that
he

13:00:15 20 doesn't want to be exposed, or simply because he doesn't think

21 that his defence is credible, that he may have made up a
22 different defence, albeit an innocent man. That is the
rationale
23 behind that question.

24 If it's an incorrect question I'll withdraw it. But I'm
13:00:36 25 simply offering Mr Kallon the opportunity to perhaps furnish
this
26 Court with details which, though different from the account
that
27 he has given, are nevertheless worthy of consideration and
amount
28 to no blameworthiness on his part. That's all I seek to do.

29 MR OGETO: My Lord even assuming what Mr Cammegh is
saying

1 is true, what has he got to do with it? Of what benefit is it
to
2 his client? What are these questions helping in advancing his
3 client's case? Absolutely nothing. They are all meant to
harass
4 Mr Kallon and nothing else.

13:01:21 5 MR CAMMEGH: Well, Your Honour, it really isn't my style
to
6 try and take unfair points. I'll answer Mr Ogeto's point in
this
7 way: I've already said that it is my case that Mr Kallon was
8 there on May 1 and again on May 2. I am in no position to
ally
9 myself with the allegations specifically put by the
Prosecution.

13:01:48 10 The reason I am attempting, or I am exploring the
11 possibility that Mr Kallon was there, through Mr Kallon, is to
12 lay the foundation or -- well, no. Let's put it a different
way.
13 It is because of Mr Gbao's case. He is the only person in
this
14 trial who can absolve Mr Gbao of presence after the Mercedes

13:02:25 15 arrives. And if Mr Kallon were -- I know it's speculative but
if
16 he had been just now willing to adopt that scenario, which is
not
17 a farfetched one, I might add, it wouldn't amount to an
admission
18 of guilt on his part. It would amount to evidence against

has 19 Gbundema and Kailondo, two individuals who Mr Kallon himself

13:02:51 20 already told this Court were going to --

21 PRESIDING JUDGE: But it will impeach his credibility,
22 wouldn't it?

23 MR CAMMEGH: Your Honour, it may do but, as I've just --

24 PRESIDING JUDGE: Even if it doesn't amount to his
13:03:01 25 [overlapping speaker].

26 MR CAMMEGH: Absolutely right.

27 PRESIDING JUDGE: Yes.

28 MR CAMMEGH: But, Your Honour, benefit of the doubt,
that's

29 what that case Lucas that I just cited is all about. And the

1 reason I have to put this scenario is because I want -- the
very
2 last thing what I want is to create any conflict with Mr
Kallon.
3 It's the last thing that Mr Gbao wants. But the purpose of
this
4 cross-examination is not -- and I will bang on until kingdom
come

13:03:28 5 if I need to -- it is not to impugn or implicate Mr Kallon.
It
6 is because he is the only man, on my instructions, who can
7 absolve my client.

8 PRESIDING JUDGE: You may not intend it, but supposing
it
9 is creating -- giving rise to consequences which you do not
13:03:47 10 intend, particularly in a situation, you know, where in his
11 defence -- I mean, he said it -- we have it that he was not
12 there. You are putting across scenarios where he says he was
not
13 there.

14 MR CAMMEGH: Well, Your Honour, the reason I've put
that,
13:04:02 15 offered this scenario to Mr Kallon at this stage and that
there
16 is some --

17 PRESIDING JUDGE: You expect him now to say he was there
18 and that he accepts --

But 19 MR CAMMEGH: I don't know. I don't know, Your Honour.

13:04:12 20 the reason I'm doing it -- there has actually been some
thought

21 put to this which is that the next step that I regrettably
feel I

22 have to take is to ask the Bench to allow me to put two of the

23 Board of Inquiry statements before Mr Kallon -- whether or not

24 they become exhibits in the case is something which should be

13:04:33 25 decided later -- and ask --

26 PRESIDING JUDGE: Mr Taku, can you sit down please.
Let's

27 finish with -- I know it's a very troubling situation but, you

28 know, I think we all have to keep our nerves in this.

29 MR CAMMEGH: I think it's right for me to say that I

1 have --

2 PRESIDING JUDGE: We all have to keep our nerves and --

3 MR CAMMEGH: I have this morning discussed this in some
4 depth with Mr Taku and it shouldn't be a surprise. But,

13:05:02 5 Your Honour, I don't want to have to attempt to lay before --
lay

6 statements of individuals who were present before Mr Kallon.

But

7 I may now have to do so, bearing in mind Mr Kallon's answers,

in

8 order to illustrate what I say is the case, which is that Gbao

9 was not heard of after the car arrived. Can I just say this:

13:05:32 10 It's -- it may be a by-product of what I'm trying to do that

11 Mr Kallon will be damaged. I'm sorry about that. We've been

12 here for nearly four years and we've avoided anything like

this,

13 but I will not run my defence with one hand tied behind my

back.

14 And, Your Honour, if I'm in possession of information

efficiently

13:05:55 15 supplied by the Prosecution, which is exculpatory for my
client,

16 am I not legally -- am I not morally obliged to attempt to lay

it

17 before the Court? The trial has been conducted, so far as

these

18 three defendants are concerned, with remarkable dignity since

19 2004. I'm very sorry that this has arisen but, Your Honour, I

13:06:18 20 cannot stand or spend four years of my life in this Court and
bring 21 leave here knowing that I haven't done everything I can to
22 this Chamber's attention to what I say is salient and relevant
23 evidence on Mr Gbao's behalf. That's why I'm doing it. And I
24 think it's important that I make that clear, so all parties
are

13:06:38 25 aware that this is not some cynical, you know, ploy or --
trying
26 to think of the right word. It's not just a cynical attack on
27 Mr Kallon for gratuitous reasons; very far from it.

28 MR TAKU: Your Honours, with permission.

29 PRESIDING JUDGE: Yes.

1 MR TAKU: Your Honours, I'm taken aback when my
colleague
2 says that he wants to present Mr Gbao's case through Mr Kallon
3 because he is the only person who can absolve Mr Gbao. Mr
Gbao
4 has several options, Your Lordships. He can take the oath,
swear
13:07:26 5 and present his case. And he is the best witness for himself.
6 He should make that choice right now if he has not made that.
It
7 is not Kallon. Kallon limited himself to, under the Rules, to
8 the case against him.
9 Secondly, Your Honours, Kallon has given certain
answers.
13:07:50 10 The principle of finality demands that if Kallon says no, no,
no,
11 I was not there, he lies there. It is not on the co-accused
to
12 constitute himself into the role of the Prosecutor, in order
to
13 prove the contrary. He talks about the Board of Inquiry
report.
14 Your Honour, this again is another attempt to get you to
reverse
13:08:08 15 yourself through the back door. You took judicial notice of
the
16 Board of Inquiry report but other than that the name of Kallon
17 should be expunged from it.

back

18 Now, what my colleague wants to do now is through the
19 door attempt to ask you to reverse yourself on that particular
13:08:22 20 instance. It cannot be exculpatory evidence for him on a
21 document that you have taken judicial notice of. His client
can
22 get there and say anything he wants to. Furthermore, Your
23 Honours, to bring before Your Honours statements of people who
24 have testified here -- they testified --

13:08:45 25
at

 JUDGE BOUTET: I'm not sure what you are talking about
26 this juncture, so, I mean, you are also now in the speculative
27 realm, because I don't know what you are talking about, in
terms
28 of judicial notice, he said, but I haven't seen what he is
29 talking about. He says he may have to produce. Well, I don't

1 know what these statements are, so you are now arguing about
the
2 contents of the statements and what the statements are all
about.

3 I don't know.

4 MR TAKU: Well, Your Honours --

13:09:03 5 JUDGE BOUTET: Now, you are talking about judicial
notice.

6 I don't know what judicial notice of statements we have taken.

7 I mean, you are now taken -- I'm really taken aback by your

8 comment, so I -- to understand what you are trying to argue,

9 Mr Taku, I mean, I need to know what you are talking about. I

13:09:18 10 don't know.

11 MR TAKU: Okay. Let me repeat myself, Your Honours,
with

12 your permission. My colleague says, according to him, that

13 Mr Kallon is the only man in the world who can absolve his

14 client.

13:09:27 15 PRESIDING JUDGE: But we have heard, we have heard you
up

16 to that.

17 JUDGE BOUTET: Yes, that, I don't have any problem.

18 PRESIDING JUDGE: We say it is only on the statement --

19 JUDGE BOUTET: The document you are talking about. I
don't

13:09:33 20 know what documents they are. They have not been tabled. We

21 don't know. It's at this stage, at least for myself, I don't
22 know what it's all about. It may be or may not be. I don't
23 know.

24 PRESIDING JUDGE: We will wait --

13:09:45 25 JUDGE BOUTET: So if you are to argue about these
26 documents, as a minimum, we should be told what these
documents
27 are. I don't know.

28 MR TAKU: We'll wait until he produces the documents. I
29 will make the argument, Your Honours. But for the statement
made

1 repeatedly this morning, that Kallon is the only man who can
2 absolve his client, Kallon does not have that duty, does not
have
3 that obligation. His client has several options, governed by
the
4 Rules and the Statute to have the courage, get there, take the
13:10:12 5 oath and tell Your Lordships his own side of the story. He
has
6 to make that choice if he wants to.

7 Now, actually now, to make his case through the back
door,
8 through Kallon, to absolve his client, he deprives us of the
9 possibility, if his client chooses not to testify, of

13:10:28 10 cross-examining him on that, except we subpoena him, we force
him
11 by subpoena to testify, to question him on those issues. And

I
12 think that's the path he is trying to push us, Your Honours,
and
13 Your Honours, we urge the Court that the Court should put an
end

14 to this, Your Honours, and Mr Kallon, under the Rules and
under
15 the Statute has no obligation, no rules. He is a witness
13:10:46 here,

16 Your Honours, and the principle of finality demands that when
he
17 says no, no, no, my colleague should move to another question.

18 MR CAMMEGH: Can I briefly, and very briefly, respond to
19 that, and ask rhetorically: What kind of practice is it to
run a
13:11:08 20 defence and not put it? My duty -- and it's nothing to do
with
21 courage, people going into the witness box, it's to do with
22 tactical choices based on judgment, and I'm really, I'm sure
23 Your Honours will ignore any suggestion that if Mr Gbao chose
not
24 to testify it would not --
13:11:27 25 PRESIDING JUDGE: We don't want to go there at all. We
26 don't want to go there at all. We don't want to make any
27 comments about that.
28 MR CAMMEGH: No, of course, and I'm grateful for that.
29 What might take courage, however, is actually raising one's
head

1 above the parapet to make the point I have to make my case and
if
2 someone is going to get hurt by that I'm sorry, but I have to
do
3 it. That takes some courage on the part of Mr Gbao. And,
Your
4 Honour, I ask again: What sort of practice or what sort of
13:11:53 5 practitioner would I be if I were to surprise Mr Kallon by
6 acquiescing, staying down, saying nothing and then calling
7 Mr Gbao to stab him in the back when he hasn't had an
opportunity
8 to answer the case that I'm putting? The point, in my
9 submission, is not even arguable.

13:12:09 10 Secondly, and Mr Taku I think has jumped the gun a
little
11 bit because I haven't formally announced any intention to put
any
12 documents in, and I notice the time, and I can decide that
once
13 and for all over the luncheon adjournment. But just so that
14 everybody is aware, Exhibit 190 in this case, the document
that
13:12:30 15 Mr Taku says is -- has judicial notice taken of -- is the
Board
16 of Inquiry report. It's about, I can't remember, 40 or so
pages
17 long. It contains a redaction. I don't seek to go behind
that
18 whatsoever.

19 What I might seek to do is invite the Court to allow me
to
13:12:50 20 ask Mr Kallon questions about some of the contents of the
21 annexes. The annexes have not been exhibited and I've got the
22 judgment, and I'm sure Your Honours are -- will remember that
23 there was a decision, or a very brief judgment issued by you
in
24 writing, in which you allowed the admission of the Board of
13:13:13 25 Inquiry report per se as Exhibit 190 and notably pointed out
the
26 annexes should not be part of that. So yes, these documents
are
27 new. They were served Rule 68, and I can give the entire
details
28 of those when I find them -- I've got them to hand somewhere.
29 PRESIDING JUDGE: But they are not yet in issue anyway.

1 MR CAMMEGH: They are not yet in issue because I haven't
2 asked them to fall into issue. Your Honours might rule I
can't
3 put them in. I don't know. But I will just say this: My
4 intention, if I do ask to put them in, would simply be to
13:13:48 5 reinforce the points I've just been making for Mr Kallon, and
6 that I submit is a fair procedure.

7 PRESIDING JUDGE: Mr Cammegh, what was the question
again?
8 What question did you -- the question to which Mr Ogeto
objected?

9 MR CAMMEGH: I was simply asking Mr Kallon --

13:18:22 10 PRESIDING JUDGE: Yes, you said he was -- he may have
been
11 mistaken or so.

12 MR CAMMEGH: No. The essence of the question was I was
13 asking Mr Kallon if he had ventured an untrue defence to the
14 UNAMSIL issue. In other words, fearful that the true defence
13:18:45 15 would not be worthy of credit, namely, that he went to the
camp
16 with the other two mentioned men, Kailondo and Gbundema, they
17 went berserk and he could do nothing to stop them.

18 PRESIDING JUDGE: He ventured into an untrue defence for
19 fear that?

13:19:05 20 MR CAMMEGH: For fear that the truth of the situation --

21 for fear that a truthful defence would not be seen as
22 creditworthy by the Chamber.

23 JUDGE BOUTET: And the true Defence would be, according
to
24 you, that he was in that car with Kailondo and Komba Gbundema?

13:19:25 25 MR CAMMEGH: Yes and something happened.

26 JUDGE BOUTET: They lost control or they went crazy,
27 whatever it was --

28 MR CAMMEGH: It's a possibility. I can't posit --

29 JUDGE BOUTET: No, but this is one of the hypothetical

1 situations you are putting forward.

2 MR CAMMEGH: Hypothesis, yes.

been

3 JUDGE THOMPSON: Perhaps to add, not that he may have
4 mistaken.

13:20:03 5 MR CAMMEGH: Not that he is mistaken, but that --

6 JUDGE THOMPSON: Fine, that clears it up.

7 PRESIDING JUDGE: Well, learned counsel, we'll recess at
8 this stage for lunch and we'll resume the proceedings at 2.30.
9 The Chamber will rise, please.

13:21:25 10 [Luncheon recess taken at 1.10 p.m.]

11 [Upon resuming at 14.55 p.m.]

with,

12 PRESIDING JUDGE: Yes, learned counsel, we are resuming
13 this session and I say good afternoon to you all to begin
14 and the Court will make a ruling on the admissibility of the

15:07:49 15 whether

16 question that was put by Mr Cammegh to the witness, and
17 it was a proper question or not. And may we defer to our
18 colleague, Justice Boutet to please deliver our oral ruling
19 which
20 will not be written, of course, on this. It will be a brief
21 ruling.

15:08:22 20 allow

21 JUDGE BOUTET: It is the decision of the Court not to
this particular question. It would not be in the interests of

22 justice nor in the interests of all parties that -- the
23 interested parties that we allow this last question. There's
24 been sufficient questions to enlighten the Court as to what
has
15:08:43 25 taken place and to allow this particular question at this
26 juncture would cause some harm and undue prejudice to some of
the
27 parties and as this is a joint trial that we must see to the
28 protection of the interests of all the parties in this trial.
We
29 feel that in the interests of justice that question should not
be

1 asked at this moment.

you

2 PRESIDING JUDGE: Thank you. Yes, Mr Cammegh, please

3 may proceed with your cross-examination of this witness.

4 MR CAMMEGH: Can I just seek clarification on one point?

15:09:19
Does

5 Your Honours I think emphasised the word "at this moment."

6 that mean I have liberty to apply subsequently if I see fit?

7 JUDGE BOUTET: With this particular witness [overlapping
8 speakers].

9 MR CAMMEGH: Yes.

15:09:29

10 JUDGE BOUTET: Not on that particular question.

11 MR CAMMEGH: Very well. Very well. Excuse me.

which

12 Your Honours, I seek at this moment to introduce a document

13 I would like to put before the witness in order to ask certain

14 questions limited in respect to this document, to establish:

15:10:05
the

15 One, that Augustine Gbao did not appear to play any role in

16 incident almost immediately after the arrival of the Mercedes;

17 and two, to isolate one or two inconsistencies with the

what

18 Prosecution witnesses' own testimony. Can I just indicate

19 this is.

15:10:29
the

20 I put -- there are two statements. If I can refer to

21 first one. It's the statement of Major ~~xxxx~~, 042, which is in
22 fact an official document. It was made pursuant to the Board
of
23 Inquiry report which I believe reached its conclusions on 20
24 September 2000. The Board of Inquiry report has already been
15:11:08 25 exhibited before this Chamber as Exhibit 190 as I said earlier
26 redacted in small part. The statement that I propose to put
to
27 the witness now is part of one of the annexes. I believe it
was
28 annex Q. As I said, Your Honours, I've given copies to Court
29 Management for your convenience and hopefully they have made

1 their way to you or shortly will do so.

2 I may be wrong about which annex it was, but -- these
3 documents were -- now, Your Honour, this statement by Major
4 ~~xxxx~~ is undated but if one looks at the Exhibit 190, it's

15:12:21
Inquiry

5 implicit that statement is made pursuant to that Board of
6 appeared to be served upon that board between 17 August and at
7 the latest, 20 September 2000. So I would argue it's a
8 contemporaneous document or as contemporaneous as we can find
9 bearing in mind that this man didn't testify until June 2006
10 before this Court six years later. And it was served on the
11 parties by the Prosecution on 17 May 2006 as exculpatory or
12 potentially exculpatory material pursuant to Rule 68 of the
13 Rules.

proceedings

14 Now, I took the opportunity this morning before

15:13:06
Kallon

15 began to introduce this to Mr Taku. I understand that there's
16 going to be an objection to me putting this document to Mr

17
18
to

17 in order that I can explore my case, which is that Gbao left
18 after a certain point and so I suppose I ought to leave it now

19
15:13:31

19 Mr Taku to raise objection unless Your Honours wish me to lay
20 further ground.

me

21 PRESIDING JUDGE: Yes, the document which we have before

in 22 has 21 paragraphs. Are you relying on all the 21 paragraphs
defending. 23 relation to the interests of your client which you are

24 MR CAMMEGH: No, My Honour.

15:13:56 25 PRESIDING JUDGE: Maybe we should limit the issues so
that

26 even if the Defence team, lead counsel for the Defence team of
is 27 Mr Kallon wants to raise an objection, he should know what he

28 objecting to and we would also want to know on what basis, I
mean

29 on what paragraph, you know, the objection is based.

1 JUDGE BOUTET: And before you answer that particular
2 question as well Mr Cammegh, I would like to know why at this
3 juncture you want to put this statement in when Major xxxx
4 testified in trial and this statement was never put to him or
15:14:34 5 questions about that statement were never put to him. I mean
now
6 he is not in Court and he cannot be afforded the opportunity
to
7 comment whatever it may be on this statement. And you were in
8 Court. I don't know if and how much -- I don't recall -- you
9 have cross-examined the major in question but certainly I
recall
15:14:49 10 him to be a witness.

11 MR CAMMEGH: Unfortunately, Your Honour, I wasn't here
when
12 the major testified.

13 JUDGE BOUTET: [Indiscernible].

14 MR CAMMEGH: Well, I wasn't. And I understand, of
course,
15:15:03 15 that I have to stand or fall ordinarily -- or there's a strong
16 argument to say that I should stand or fall by previous events
17 outside my control. Mr Gbao was represented on that day. And
18 unfortunately, counsel present that day did not put this
19 statement to Mr xxxx.

15:15:29 20 PRESIDING JUDGE: Because that was going to be my second

know, 21 concern. I wanted to first of all know the paragraphs, you
which 22 which you were relying on and I was going to ask a question
23 Justice Boutet has put across, you know, to you.
24 MR CAMMEGH: If Your Honours will let me explain I can
15:15:47 25 hopefully deal with both of those issues in this way.
impugn 26 I seek to ask Mr Kallon about this statement not to
27 Mr Kallon, not to lead evidence against his conduct, but
simply 28 to -- but simply to illustrate the fact that whatever ~~xxxx~~
29 alleged pursuant to beatings and abductions appeared to have

89(B) 1 taken place when Mr Gbao wasn't there. And I refer to Rule
2 and (C) and hand-in-hand, of course, with the doctrine of
3 flexible admissibility. Rule 89(B) and (C) reads inter alia:
In 4 cases not provided for, a Chamber shall apply rules of
evidence 5 which will best favour a fair determination of the matter
15:16:45 before 6 it and are consonant with the spirit of the Statute and the
7 general principles of law. Chamber basically may admit any
8 relevant evidence, weight, of course, being a matter for the
9 Chamber. Now, that is a gateway of entry of evidence into
this 10 case which has been implicitly employed on countless occasions
11 and I simply ask that it's in the interests of justice on this
12 occasion that should be admitted not as I emphasise to lead
13 evidence -- admissible evidence against Mr Kallon, but simply
in 14 order for me to explore the exculpatory nature of this
statement 15 which is twofold: First of all to show that Mr Gbao -- did I
15:17:28 say 16 exculpatory? I hope I said exculpatory. Which is first of
all 17 to demonstrate that the statement written no more than three
18 months after the event indicated that the maximum Gbao
threatened

19 was at the foot of paragraph 3: He refused to believe me and
15:18:02 20 insisted that both his men and weapons must be released to him
21 otherwise he will not move from that occasion -- location, I'm
22 sorry. And in my submission that sentence is relevant because
it
23 doesn't make any reference to any threats to invade the camp,
24 much less do anything else.

15:18:21 25 I would submit that to contextualise what I am seeking
to
26 do, it would be fair for me to put paragraph 3 because I think
27 it's only fair that I have to give a balanced account.
Paragraph
28 3 indicates Colonel Gbao arrived with 25 to 30 armed men. I
29 would suggest that it's fair that I put in paragraph 4, which

1 again isn't particularly happy evidence for Mr Gbao because it
2 says within it all attempts to pacify Gbao failed. It refers
to
3 Gbao's rising anger but those are consonant with my
instructions.
4 Gbao did become very angry. I then ask please that I'm
allowed
15:19:09 5 to put in paragraph 5. Now, this is no doubt the paragraph
that
6 the Kallon team may object to but I emphasise it is to
establish
7 that after 15:00 hours, whatever happens, Gbao is not
involved.
8 Of course, it's implicit in my purpose that I'm seeking to
9 establish that Mr Kallon was there in order to support my
15:19:40 10 contention that by virtue of being there, Mr Kallon is the
only
11 person who is able to speak with authority as to both 1 and 2
May
12 although xxxx only speaks, of course, of 1 May. But the
13 purpose of introducing this document is therefore --
14 PRESIDING JUDGE: You are limiting yourself to
paragraphs
15:20:07 15 3, 4 and 5.
16 MR CAMMEGH: Well.
17 PRESIDING JUDGE: And you are saying, of course,
rightfully
18 so that, I mean, if there has to be any objection at all from
the

19 Kallon Defence team, it will be maybe to paragraph 5.

15:20:27 20 MR CAMMEGH: Your Honour, I think I would like to take
it

21 to paragraph 8 inclusive for this reason: I think it's only
22 right that I should contextualise.

23 PRESIDING JUDGE: Mr Cammegh, if I may ask: I'm looking
at

24 this document. What about, you know, the rule against
15:20:54 25 self-incrimination, you know, an accused person in relation to
26 this document which is a statement that was made by Major ~~xxxx~~
27 and in which maybe it is -- I mean it is you, you know, saying
28 that you don't mind if 3 and 4, you know, are going in but I'm
29 very wary about this because the rule, you know, that relates
--

1 the rule against self-incrimination by an accused person is so
2 fundamental that I'm worried, you know, about paragraphs 3 and
4
3 just as I'm worried about paragraph 5.

4 MR CAMMEGH: Hopefully I can deal with that. This
decision

15:21:40 5 of course has been taken at great length following a great
deal
6 of consultation from Mr Gbao.

7 It is for the Chamber -- if this evidence goes in --
it's
8 for the Chamber to determine whether this is evidence which

9 supports some intention in the mind of Mr Gbao or supports any
15:22:03 10 notion of joint criminal enterprise within Mr Gbao. I would
11 contend that it doesn't. Our contention is that whilst Mr

12 is candid enough to admit that he for want of a better word
13 probably misbehaved outside the DDR camp that doesn't amount

14 actions that followed on. And one of the purposes of
introducing

15:22:26 15 this -- well the primary purpose of introducing this document
is
16 to show that whatever broke out after that Mercedes arrived,
17 Mr Gbao's name does not feature. And just to complete the
18 context of this, if I may, I'm anxious to take it to paragraph

reference 19 for the simple reason that paragraph 8 again makes no
15:22:52 20 to Mr Gbao in relation to the abduction of the named
individuals
21 there.
22 Pursuant to Rule 89, I submit that this is something
which
23 I ought to be at liberty to ask Mr Kallon about. I limit it
24 between paragraphs 3 and 8. I also want to emphasise this:
I'm
15:23:19 25 limiting this cross-examination: One, to the whereabouts of
26 Mr Gbao; two, the whereabouts of Mr Kallon and three,
potentially
27 to derive an inconsistency as between Major ~~xxxx~~ own evidence
28 which I say is illuminated within paragraph 8. I do not wish
to
29 ask Mr Kallon with a view to accusing him of doing anything in

Defence 1 the camp. But this is exculpatory material served on the
2 no doubt by the Prosecution with the issue in mind that this
3 statement is quite clear, that no allegations against Gbao are
4 made after the arrival of that Mercedes and in my view,
consonant
15:24:18 5 with Rule 89, flexible admissibility, consonant with rules
which
6 appear to indicate that evidence led by co-accused cannot be
held
7 against co-accused, I would submit that this is a proper
course
8 and one that Mr Kallon, despite appearances perhaps need not
be
9 concerned about [overlapping speakers].

15:24:43 10 JUDGE THOMPSON: Would you be -- if your analysis is
valid
11 and I'm following it very carefully, would you then if you say
12 that it's not your intention to lead here evidence that may be
13 incriminating of Mr Kallon, then if this document is received
in
14 evidence, would you be asking the Court not to consider
paragraph

15:25:13 15 5 or to have it redacted for the purposes of its probative
value.

I 16 MR CAMMEGH: The difficulty -- I'm asking the Court and
17 completely appreciate this to draw a very fine distinction
18 indeed.

19 JUDGE THOMPSON: But you follow my question.

15:25:31 20 MR CAMMEGH: Yes, I do. And Your Honour, I don't think
I
21 can afford to go that far because the purpose of putting this
22 document to Mr Kallon is that I can -- that I'm therefore able
to
23 put to him in live evidence today it has been suggested that
you
24 were there and by virtue of the fact that you were there, you
are
15:25:57 25 qualified to tell this Court that Mr Gbao wasn't. So I don't
26 think I can go that far. What I can do is I can --

27 JUDGE THOMPSON: In technical language there is an alibi
28 here for him.

29 MR CAMMEGH: Yes.

1 JUDGE THOMPSON: And of course you're saying also in
2 technical language there is an alibi for him.

3 MR CAMMEGH: Yes.

4 JUDGE THOMPSON: And so both of them now have to in a
way
15:26:24 5 determine what to do in terms of that technical position that
6 again you are talking about.

7 MR CAMMEGH: I think I follow. I think it has to go
8 without saying that I do --

9 JUDGE THOMPSON: Because that's how I'm seeing it.

15:26:37 10 MR CAMMEGH: Yes, I think it has to go without saying
that

11 I do on instructions reject Mr Kallon's alibi. I would repeat
12 again and again: I am in no position and Mr Gbao is in no
13 position to agree with any of the specific allegations of
14 wrongdoing against Mr Kallon in this document because Gbao was

15:26:56 15 not there. Whilst I would ask that Mr Kallon's name remained
in
16 this, if it becomes admitted at some juncture, what I would be
17 more than happy for is for the Chamber to redact any reference

18 any wrongdoing alleged by Mr Kallon because, as I've already
put

19 to Mr Kallon, I think this is fairly clear. As far as Mr Gbao

15:27:24 20 was made aware, there were others there, Kailondo and Komba

21 Gbundema, who in Mr Gbao's word went berserk, in Mr -- to
22 Mr Gbao's knowledge completely outside Mr Kallon's control,
which
23 is why I offered the, if you like, the alternative defence
which
24 I'm sorry offended the Kallon team, but I felt it was
necessary
15:27:52 25 that that was put to Mr Kallon in everybody's interest.
26 JUDGE THOMPSON: [Indiscernible] olive branch.
27 MR CAMMEGH: Well, I don't want to [overlapping
speakers].
28 JUDGE THOMPSON: You were not going to tell me.
29 MR CAMMEGH: But, I mean, I reject Mr Kallon's alibi. I
do

1 not hold with the Prosecution's case, however, against Mr
Kallon.
2 I'm in no position to do that. I am, however, in possession
of
3 exculpatory material, exculpatory against my client, which I
have
4 to, I'm under a duty to place before the Court if the Court
15:28:27 5 allows me to. It's absolutely right: This should have been
done
6 two years ago. And I'm not going to say any more about that.
I
7 think Your Honours can --
8 PRESIDING JUDGE: And with a witness who was better
placed.
9 MR CAMMEGH: Yes.
15:28:43 10 PRESIDING JUDGE: To give, furnish explanations and who
was
11 cross-examined as well at the time.
12 MR CAMMEGH: Yes.
13 PRESIDING JUDGE: By your Defence team.
14 MR CAMMEGH: Well, yes, but I think Your Honours
probably
15:28:54 15 can guess how I felt about that, and all I can do is try and
16 right that omission in the best way I can. That's what I'm
17 seeking to do now. And in my submission it doesn't
necessarily
18 have to prejudice the Kallon team insofar as I am not
accepting

19 the contents herein on Mr Gbao's behalf.

15:29:14 20 The witness was cross-examined by the Kallon team. It's
21 quite clear that they never accepted what **xxxx** said, and I'm
22 certainly not going to go behind that, save to aver that
23 Mr Kallon was there. And that's why I want to ask -- ask
24 questions based on this document. And, similarly, with a
15:29:37 25 follow-up document which we will deal with later --

26 JUDGE BOUTET: Yes, the position taken by the Kallon
team
27 at the time, just like you said, was in cross-examining Major
28 **xxxx** they put to him that Kallon was not there, not only to
29 dispute most of what he said in respect of Kallon, but he also

1 disputed the fact that Kallon was there.

2 MR CAMMEGH: Well, that's right, and that is why in my
3 submission my --

4 JUDGE BOUTET: But if I may go beyond that. When Major
15:30:03 5 xxxx was here, I don't know what was put on behalf of Gbao; I
6 have no recollection. I can check on the transcript. But if
7 what you say is what you are trying to rely upon this document
8 for, maybe if that question had been put to xxxx when he was

in

9 the witness box, maybe he could have enlightened the Court

more

15:30:22 10 about whether Gbao was there. Maybe he didn't talk about Gbao
11 anymore because he felt he was not important anymore but maybe
12 Gbao was still there. We don't know.

13 I mean, now, you are tendering a document two years
after

14 the fact that this witness is not here anymore, maybe to give

15:30:35 15 additional explanation on that statement because that issue

was

xxxx

16 not pursued. You are relying on a paragraph there and why
17 made that statement in that way, I don't know, but I would

have

18 been interested -- it would be interesting for the Court's

19 understanding to know why it has been written that way and
maybe

15:30:52 20 this is all he had to say and maybe that's all, the only role

21 that Gbao played is what he is describing there. Maybe that's
22 what it is all about, but I'm not prepared to go as far as you
23 say, you see, because this witness is not talking anymore of
24 Gbao, that he has nothing to do anymore. I don't know. Maybe
he
15:31:09 25 did. That's why I say this is the difficulty now, after the
26 fact, you come with a document like this when the witness is
not
27 here, a witness who testified for a long period of time, when
all
28 this was available, it could have been put to the witness and
it
29 was not. So now, after the fact, we are asked to accept this
as

1 evidence and then left to speculate as to what the meaning is
or
2 not. You understand what I'm saying, Mr Cammegh, I suspect?
3 MR CAMMEGH: Well, I do.
4 PRESIDING JUDGE: And if I may follow up from what my
15:31:37 5 learned brother has said, we have just given a ruling on a
status
6 question that you put to this witness. What would be the
you
7 of this ruling if you insisted -- I mean, how do you think,
8 know, that this ruling should not apply if you had to come in
9 with the provisions or, rather, the contents of paragraph 5 --
15:32:07 10 paragraph 5. Because, although you are saying -- I mean, what
11 you are saying is that you are rejecting Kallon's alibi, if I
12 understand you very well. You are rejecting Kallon's alibi
but
13 we have said, you know, what we have said in the ruling in
this
14 matter, and I don't know where we move from there -- from what
15:32:30 15 you are trying to do -- and the ruling which we have just --
just
16 delivered in relation to a similar issue about whether Kallon
17 should not reflect and admit that he may have -- he may not
have
18 told the truth because if he told the truth, you know, it
would
19 not appear the truth or rather would not appear credible or so
to

15:33:01 20 the Court. I mean --

21 MR CAMMEGH: Well, Your Honour, I think we've actually
22 moved on from that. I'm, with respect, struggling to see the
23 connection between that previous issue and this one. All I'm

24 seeking to do here is put a statement to Mr Kallon which, by
15:33:18 25 virtue of suggesting that he was there on the 1st, while the
26 criminal events took place --

27 PRESIDING JUDGE: This is the problem. This is a
problem.

28 This is a problem. He is -- he has put across an alibi and
the

29 person to whom this should have been -- who should have
answered

1 this question is the witness, you know, who testified on this
2 document and who made this document. He is categorical on
this.

3 Whatever the validity of the denial is another matter. But he
is
4 categorical that, you know, he was not -- he was not there.

15:34:01 5 Notwithstanding what is being said in this document.

6 MR CAMMEGH: But is this not --

7 JUDGE BOUTET: And on this I would add that what you are
8 trying to do is indirectly go against the ruling that we've
just
9 issued. As I said, this is the very same issue. I mean,
rather

15:34:15 10 than asking the question you are trying to tender a document
to

11 say to Kallon, the witness, well, isn't it true that you were
12 there at the time because what you are interested is to have
this
13 witness Kallon to tell you that he was there and the witness
has
14 denied that systematically to say I was not there.

15:34:31 15 In fact, why do you want this document to be introduced
16 through this witness? I mean, why is it important that this
17 witness introduce this document? I mean, the witness is not
the
18 one who wrote this document, it's ~~xxxx~~ statement. So if it
19 is because you say it's relevant, it need not to be introduced

15:34:48 20 through this particular witness.
21 What you want to do is have this witness essentially
22 acknowledge that he was there because this is what this
statement
we 23 says, and the witness says no, and on that issue we have said
24 will not allow that question.

15:35:02 25 MR CAMMEGH: The other issue that this statement raises
is
26 an inconsistency within paragraph 8. This is a separate
issue.
27 This is something that doesn't concern Mr Kallon at all. I
28 mean --

29 JUDGE THOMPSON: An inconsistency between?

1 MR CAMMEGH: Between what the witness xxxx said in --
2 JUDGE THOMPSON: And whose -- and which evidence in
Court?
3 Inconsistency between whose testimony and whose out-of-court
4 statement?
15:35:44 5 MR CAMMEGH: Right.
6 JUDGE THOMPSON: This is the out-of-court statement of
7 xxxx.
8 PRESIDING JUDGE: Major xxxx.
9 JUDGE THOMPSON: The inconsistencies between his
statement
15:35:54 10 and what he said here?
11 MR CAMMEGH: On 20 June, at page 31 --
12 JUDGE BOUTET: Of which year, please?
13 MR CAMMEGH: Of 2006, 042 said -- I think it's lines 13
to
14 20, and I hope I've got this right: "While I was still at the
15:36:15 15 communication centre" -- he is referring to Teko Barracks so
this
16 is after the event -- "Major Maroa and the three soldiers came
17 with the Land Rover escorted by Colonel Gbao. I noticed that
18 Colonel Gbao opening the boot of his car and taking out three
19 rifles."
15:36:33 20 All I seek to illustrate or illuminate is that within
you
21 paragraph 8 there's no reference to that whatsoever. I grant

22 it's not strictly an inconsistency, but it's remarkable that a
23 statement written probably no more than two months after the
24 event doesn't include that very stark evidence. Now, that is
15:36:49 25 really something that could be elicited in my view without
26 harming Mr Kallon at all.

27 JUDGE THOMPSON: Yes, but is it an inconsistency between
--

28 PRESIDING JUDGE: In your view, it doesn't harm Kallon.
29 That's the view you hold, that it doesn't harm Kallon?

SCSL - TRIAL CHAMBER I

1 MR CAMMEGH: Well --

2 JUDGE THOMPSON: But I want to be enlightened.

3 Inconsistency between this statement --

4 MR CAMMEGH: Yes.

15:37:13 5 PRESIDING JUDGE: An out-of-court statement.

6 MR CAMMEGH: Which he wrote --

7 JUDGE THOMPSON: By a witness who testified.

8 MR CAMMEGH: Which is an official document -- yes.

9 JUDGE THOMPSON: A Prosecution witness.

15:37:19 10 MR CAMMEGH: Yes.

11 JUDGE THOMPSON: And what he told the Court here.

12 MR CAMMEGH: Yes. An official document prepared --

13 JUDGE THOMPSON: What's the nexus between him, that
14 inconsistency, and the witness there? What's the value?

15:37:31 15 MR CAMMEGH: Well, I was hoping to introduce it through
16 this witness. I can probably attempt to do it --

17 JUDGE THOMPSON: Why? Why? Is that the standard
18 procedure?

19 PRESIDING JUDGE: That is the difficulty.

15:37:41 20 JUDGE THOMPSON: That's the procedural conundrum here.
Why

21 should this witness introduce a document highlighting

22 inconsistencies between an out-of-court statement of a

23 Prosecution witness and the Prosecution witness's testimony

24 before the Court? Why him?

15:38:00 25 PRESIDING JUDGE: And I would add: A statement which is
26 not made by him. He's not the author of the statement.

27 JUDGE THOMPSON: That's the elementary aspect of it that

I

28 want to be enlightened on.

29 PRESIDING JUDGE: He is not the author of the statement.

SCSL - TRIAL CHAMBER I

2 JUDGE BOUTET: Yes -- -

1 JUDGE THOMPSON: If ~~xxxx~~ were here --

3 PRESIDING JUDGE: Oh, my God he would say --

4 JUDGE THOMPSON: He would clearly want --

15:38:16 5 MR CAMMEGH: If, Your Honour, certainly it would not be
my

6 intention to put paragraph 8 in isolation to Mr Kallon, it's

7 simply the end of a nexus of events which I wanted to ask

8 Mr Kallon about. But can I just ask this rhetorical question:

9 Your Honours are right. There is an alibi that's been --
well,

15:38:35 10 it actually wasn't -- Mr Kallon said that he was elsewhere in
his

11 evidence. Mr Kallon's team has cross-examined various
witnesses

12 on the basis that he wasn't there.

13 Given that my purpose is not to impugn Mr Kallon, but

14 simply to show that Mr Gbao was not there according to this

15:39:08 15 witness at the relevant time, can I ask what is the difficulty
16 with putting this to Mr Kallon? It cannot be held against
him.

17 Even if he -- he refused to concede -- which I have no doubt
he

18 would -- the point is still made, the point is still before
the

19 Court that ~~xxxx~~, at a time almost contemporaneous with events,

15:39:31 20 made it implicitly clear that Gbao had nothing to do with the

21 abduction. That's my point.

22 JUDGE THOMPSON: But why should the burden be on him to
23 disprove what a Prosecution witness had in fact said about the
24 third accused? Why should the burden about on him?

15:39:48 25 MR CAMMEGH: For the simple reason that by absenting
26 himself from the DDR camp, Mr Kallon knows full well that
there
27 is nobody else who has sat before this Court capable of
28 testifying as to what happened on 1 and 2 May. The
Prosecution
29 case has always been that Mr Kallon was there on both days.
My

1 instructions are that Mr Kallon was there on both days. This
2 cannot be new to Mr Kallon.

3 JUDGE THOMPSON: That's fine. But then the difficulty
is
4 this: You are saying the burden can be on him at the risk of
him

15:40:33 5 what? Doing what to his own position?

6 MR CAMMEGH: Well, Your Honour --

7 PRESIDING JUDGE: Of course incriminating himself.

8 JUDGE THOMPSON: Isn't that's what's happening here?

9 PRESIDING JUDGE: Incriminating himself.

15:40:48 10 JUDGE THOMPSON: Yes, at the risk of doing what to
himself?

11 MR CAMMEGH: Your Honour, it's the consequences to Mr
12 Kallon that concern me less than the consequences of me not
being
13 able to explore the quality of some very important exculpatory
14 material which, by virtue of various factors, can find no
other
15 way of coming before the Court.
15:41:06

16 JUDGE THOMPSON: But you can see how the Court is
supposed
17 to --

18 JUDGE BOUTET: Why, I'm sorry, Justice Thompson, I was
not
19 trying to interrupt you. Why are you saying this? I mean, as
15:41:18 20 you know, it's been a very flexible approach about the

21 admissibility of evidence, so why is this document to be
22 admitted, if it is to be admitted, through this witness? I am
at
23 a loss to understand that. He is not the maker of the
document.
24 He does not know about the document. His name is mentioned
there
15:41:35 25 but --
26 PRESIDING JUDGE: The document incriminates him.
27 JUDGE BOUTET: -- it has been given by a witness who was
28 called here to testify. Why is this witness the witness
through
29 whom you have to have this document admitted, if at all? I
mean,

1 as you know you've just pointed to the Rules of Evidence
2 flexibility. We've never said that the Rules are such that
only 3 through a particular witness is a document or any particular
4 document can come in. Absolutely not.

15:42:02 5 MR CAMMEGH: Your Honour, the answer to that is very
6 simple: It was only yesterday that we learned with some
finality 7 as to what the Kallon defence to UNAMSIL was. Now, was I -- I
8 mean, everybody knows the last thing one wants to do in the
9 course of a long criminal trial is to create conflicts.

15:42:22 10 PRESIDING JUDGE: We don't want any conflicts. We don't
11 want any conflicts --

12 MR CAMMEGH: Your Honour, sometimes, sometimes they --

13 PRESIDING JUDGE: -- between the Defence teams. We want
to 14 avoid that as much as possible and we want to ensure --

15:42:31 15 MR CAMMEGH: Your Honour, I can't operate in an
artificial 16 way and nor should I have tried to exhibit this document prior
to 17 today, because it would necessarily have sought to open a
18 conflict at an early stage in a particularly peremptory way,
and 19 you know, if one talks about putting the cart before the
horse,
15:42:51 20 never would there have been a better example of it.

21 The first and only time, in my submission, that it would
22 have been right to open this document up is now, the day after
23 Mr Kallon has nailed his colours to his mast and said with
24 finality: I was not there.

15:43:05 25
opening

been

I'm

the

25 Your Honour, when else could I have done it without
26 up a conflict prior to Mr Kallon testifying? It would have
27 quite wrong. And all I'm doing by -- and another thing that
28 doing here is at least giving Mr Kallon the opportunity to
29 comment on it. Otherwise, what am I to do? Leave it until

1 Gbao case? There would be terrible disapprobation, and quite
2 rightly so at me doing that, because I would essentially be
3 trapping Mr Kallon after he has had the right to respond to it
4 and I go back to my reason, or the rationale of putting this
in.

15:43:37 5 PRESIDING JUDGE: I suppose when it comes to that his
6 Defence team would know how to get out of that.

7 MR CAMMEGH: I'm sorry?

8 PRESIDING JUDGE: I say suppose if it came to that at
that
9 stage -- at the stage of your defence, the Defence team of
15:43:54 10 Mr Kallon himself will now how to manage that situation.

11 JUDGE BOUTET: Mr Cammegh, I mean, whichever way you are
12 trying to do it, Mr Kallon has systematically said, "I was not
13 there. I would not know about anything about that. I did not
go

14 there at that time." You've asked these questions this
morning.

15:44:15 15 He has -- you've asked very specific question. He said, "I
was
16 not there but after, in the afternoon, I don't know, I was not
17 there." You are saying this is not what happened. He was
there.

18 He denies that. So how many times, how much more you want to
put
19 it to him?

15:44:31 20
entitled

21
there,

22
23
24
was

15:44:50 25

26
my

So, I mean, we've let you go that far and you were
to put these questions to him, and he denied having been
so, how much more do you want to pursue this? I mean, this is
his position. "I was not there." And this is consistent, I
would say, with his alibi that -- that he has put forward: I
not there at the time.

MR CAMMEGH: But, Your Honour, this is consistent with
case.

JUDGE BOUTET: I know, I'm not saying it is inconsistent
with your case but --

1 MR CAMMEGH: And therefore --

2 PRESIDING JUDGE: It is very consistent.

3 JUDGE BOUTET: How much more, how much more do you want
to

4 pursue this? He will simply say: I was not there. You are
15:45:09 5 trying to have him to say: Well, maybe I was wrong when I
said I

6 wasn't there and therefore maybe Mr Gbao was -- was there but
he

7 didn't do anything. He is not prepared to say that. He says,
"I

8 was not there. Therefore, I'm not prepared to say anything
about

9 Gbao." I was not there. This is his evidence.

10 JUDGE THOMPSON: Mr Cammegh, what would the Court be
11 missing in terms of the evidence led so far on this issue, and
in

12 terms of your cross-examination, which has been quite
exhaustive

13 and succinct if this document is not received in evidence?
How

14 would the Chamber -- what would the Chamber be missing? What
--

15 15:45:48 it's difficult --

16 MR CAMMEGH: There are two items, apart from my main
reason

17 of trying to get this in which is to show that Gbao wasn't
there

18 after the Mercedes arrived. There are two other pieces.
Look, I
19 want to emphasise: It is a great pity that this wasn't dealt
15:46:02 20 with two years ago and --
21 PRESIDING JUDGE: It's a real pity.
22 MR CAMMEGH: And -- no one is more unhappy about that
than
23 I am, I can assure you, but I do refer to Rule 89, and there
are
24 two particular items which --
15:46:15 25 PRESIDING JUDGE: You know, Mr Cammegh, you know, we
have
26 been very, very faithful and even more generous than Rule 89
has
27 ever provided. On the application of that Rule we've been
28 extraordinarily and extremely generous.
29 MR CAMMEGH: Yes. Your Honour, there are --

1 PRESIDING JUDGE: This particular document, if we honour
it
2 it, presents particular difficulties which you know and which
we
3 have expressed to you.

4 MR CAMMEGH: There are two -- yes. Quite aside from the
15:46:45 5 thrust of my argument which is, as you know, to show that Mr
Gbao
6 wasn't there after a certain point, there is oral testimony
from
7 Mr -- from 042 himself, on 20 June, at page 26, 2006, where he
8 said that Mr Gbao was holding an AK-47 at the time of the
arrival
9 of the Mercedes. That is not contained within this statement,
15:47:12 10 nor is the reference to Mr Gbao opening the boot of a car and
11 taking out three rifles at a later juncture -- I've already
given
12 you that reference.

13 Now those two items have nothing to do with Mr Kallon.
14 Those are subsidiary items and entirely separate. They should
15:47:28 15 have been dealt with at an earlier stage but, in answer to his
16 Honour, Judge Thompson's question, aside from trying to
establish
17 that Gbao wasn't there after the Mercedes arrived, those are
two
18 independent pieces of evidence which -- or, rather, those are
two
19 independent omissions from this document which I would seek to

15:47:48 20 bring to the Chamber's attention in order that they can fully
21 assess the quality of 042's evidence on what Gbao did.

22 So that's what we would be missing aside from the main -
23 from the main point. And if Your Honours are against me
24 introducing this document, I would seek assistance --

15:48:20 25 JUDGE BOUTET: Certainly I do not see how and why you
26 should introduce this particular document through this
particular
27 witness. I see no reason. If, as part of your case later on,
28 you want to call this particular evidence we'll have to make
that
29 assessment, but you are trying to introduce this document now

1 with the evidence of this particular witness Kallon because
you
2 want to put something to Kallon. I mean, otherwise why do we
3 bother about this with the cross-examination of Kallon? I
don't
4 see. I don't see why you are so insistent on having this
15:48:52 5 document in Court while cross-examining Kallon.

6 JUDGE THOMPSON: Speaking for myself I am erring on the
7 side of orthodoxy and legal convention. I don't see how he
can
8 properly put this document in evidence. But of course without
9 prejudice to some other technique which you might adopt at
some
15:49:13 10 stage when you present your case.

11 PRESIDING JUDGE: I think we should call a spade a
spade.

12 MR CAMMEGH: Very well, Your Honour. There is --

13 PRESIDING JUDGE: Kallon -- Kallon is very wary and
14 disturbed of course in the interests of his own defence which
is
15 put across about any attempts, you know, to seek to
15:49:36
incriminate

16 him or to render him or his evidence incredible. This is what
is
17 at stake and I think that I share my colleagues' views, you
know,
18 that he is not the right person to -- through whom this
document

each 19 should be tendered and for reasons which we have -- we have
15:50:11 20 visited here and I think we can put that matter to rest and to
21 say that we cannot admit this document you know, in evidence
of 22 notwithstanding policies -- yes. Notwithstanding our policy
23 extensive admissibility based on Article 89(C) of the Rules of
24 Procedure and Evidence. So that is our stand on the matter.
15:50:42 25 MR CAMMEGH: Your Honour, just finally on this
statement,
it 26 this will probably have to be subject in a written notion, but
27 would nevertheless be my intention to exhibit this at a later
referred 28 point in order to demonstrate the omissions that I just
29 to. These are things that don't concern Kallon at all. That

I
Honours
that
15:51:19

1 could be done with redactions of Kallon's name if necessary.
2 would appreciate some -- I know I'm probably asking Your
3 to act on the hoof but I would appreciate some guidance on
4 because xxxx evidence wasn't tested sufficiently and this
5 provides some material for that to be done.

said

6 PRESIDING JUDGE: Wasn't tested sufficiently? Who has
7 so.

8 MR CAMMEGH: Well, I do, Your Honour.

9 PRESIDING JUDGE: That xxxx evidence was not
10 sufficiently tested.

don't

11 MR CAMMEGH: Yes I do because there are items here that
12 should have been put that weren't and I for the life of me
13 understand why.

view

14 PRESIDING JUDGE: Well that's your view. It's not the
15 of the Chamber.

by

16 JUDGE BOUTET: I'm just looking at the cross-examination
17 the lead counsel at the time and he went quite extensively. I
18 admit that that document was not put to him but why and I mean
19 we're not there to second-guess what counsel do or do not do.
15:51:52 20 And we have to accept what they do.

21 MR CAMMEGH: But the problem is Your Honour, and again I
22 refer to Rule 89. There are things that crept into his oral
23 testimony remarkable items: Gbao loading a car with guns;
Gbao
24 carrying an AK-47 at Makump; they are not here and is it not
fair
15:52:11 25 that the Bench should educate itself as to all relevant
details?
26 What could be more relevant than that.
27 JUDGE BOUTET: The same process is when the witness is
28 there and you have a statement you want to put to him to
29 contradict what he is saying that's the best -- the best
scenario

1 is when that witness is there and he can explain it and he can
2 inform the Court properly. I mean when you come two years
after
3 a fact you say well, this is -- maybe the witness has a proper
4 explanation as to that. I don't know. This is what it's all
15:52:41 5 about. But if you want to introduce this document as an
exhibit
6 in due course as part of your case you can notify the parties
7 they will say if they object or not and we'll see what it is
and
8 make a ruling if need be.

9 PRESIDING JUDGE: But for now it is ruled out, you know,
15:52:55 10 for purposes of these proceedings.

11 MR CAMMEGH: I think we've dealt with that particular
12 statement. Can I seek to introduce another statement,
13 Your Honour.

14 JUDGE BOUTET: Is it the same statement.

15:53:10 15 MR CAMMEGH: No.

16 JUDGE BOUTET: Same nature.

17 MR CAMMEGH: Well, it is.

18 JUDGE BOUTET: Same witness.

19 MR CAMMEGH: It's from a witness, Lieutenant Endeshi
Gideon

15:53:16 20 [phon] who was not invited to testify here and who was present
on

that

21 both 1 and 2 May. I'm afraid the same difficulties arise in

22 he names Kallon as being there on both days. But of course in

23 this case, I have had no opportunity to cross-examine any

24 witness.

15:53:38 25 PRESIDING JUDGE: But he was not called at all so he has

26 not come before the Court. Are we now going to conduct the

27 proceedings on ordinarily -- ordinary on [Indiscernible]

28 statements of witnesses collected, you know, in the course of

29 investigations?

SCSL - TRIAL CHAMBER I

are
In
this
15:54:07 deal
what
15:54:26

1 JUDGE BOUTET: And again for the same reason I say why
2 such statements to be introduced while Mr Kallon is giving
3 evidence in cross-examination if it is relevant to your case.
4 due course when you carry on your case you may seek to have
5 document admitted as an exhibit notify the parties and we'll
6 with it at that time. If you are trying to introduce this now
7 it's because you want to put this to the witness Kallon that
8 is in that statement contradicts what he is saying in Court.
9 This is the only purpose otherwise there is no purpose at this
10 juncture.

11 MR CAMMEGH: I think Your Honours are against me.

12 JUDGE BOUTET: Against you.

13 JUDGE THOMPSON: Speaking for myself I'll apply the same
14 prescription.

15:54:37 and
15
16
17

15 PRESIDING JUDGE: I will too but we're not doing that
16 because we're against you. We're only against the principle
17 not against the person.

18 JUDGE BOUTET: Against you in the sense of what --

15:54:49 the
20

19 PRESIDING JUDGE: Who is doing everything you know to --
20 you know like the French put it, you know, with the nails and
the

21 and the beak you know, defending his client's position and
22 rights. We're not against you, Mr Cammegh.

23 MR CAMMEGH: No, I wasn't suggesting that.

24 PRESIDING JUDGE: Against the principle.

15:55:07 25 JUDGE BOUTET: But we're against what you are
suggesting,

26 yes, if that's what you meant, yes.

I 27 MR CAMMEGH: Well, I should put everyone on notice that

28 will inevitably attempt to seek the admission of these
documents

29 probably by Rule 92 at a later stage. Will Your Honours just

1 give me one minute to gather my thoughts, please.

2 PRESIDING JUDGE: Yes.

3 MR CAMMEGH: I'm not asking for an adjournment; just to
4 reshuffle my papers.

15:56:02 5 Q. Mr Kallon, now that we've got that issue out of the way,
6 I'm afraid I have to come to a rather sharp point but I'll
just
7 pause for a moment.

8 MR OGETO: My Lord, if I may just make a brief
commentary.

9 I'm quite alive to the fact that Your Lordships have made a
15:56:46 10 ruling on this issue. I'm also alive to the fact that we're
not
11 dealing with a jury; we are dealing with competent and
12 professional judges. But it's important to note that Mr
Cammegh
13 has throughout been quoting from -- not really quoting but
making
14 references to these documents and indicating the position of
his

15:57:18 15 client, indicating what the statements --

16 PRESIDING JUDGE: Contain.

17 MR OGETO: -- say -- contain and I'm just --

18 PRESIDING JUDGE: Worried.

19 MR OGETO: -- worried that a lot of prejudice has been
15:57:31 20 caused to my client and, in future, I just hope that we do not

21 encourage this kind of discussions because it's not only
22 admitting documents, but also when you make reference to these
23 documents, the contents of the documents and the record
reflects
24 the contents of those documents, you cause a lot of prejudice
and
15:57:55 25 I'm not saying that that was the intention of my learned
friend,
26 but I find myself in a very difficult situation to deal with
this
27 kind of scenario.

28 JUDGE THOMPSON: Let me, with the leave of the Presiding
29 Judge, let me straightaway say that the first part of your

1 commentary, as you said, completely neutralises the concept of
2 prejudice, speaking for myself. I sit here as a professional
3 judge with a very serious commitment to do justice, and I
don't
4 in any way bring a kind of jury perception to these trials.

In

15:58:36 5 fact, if anything else, I take this whole business in a very
6 legalistic way.

7 MR OGETO: Thank you very much, My Lord, for that
8 assurance. It's comforting.

9 JUDGE BOUTET: And, Mr Ogeto, we're no more prejudiced
by

15:59:01 10 these kind of statements than questions put to the accused, so
I
11 mean, when you say you were there, you did this, and the

witness

12 denied that, the simple fact that the question is put to the
13 witness tainting our views? I mean, we are professional

judges,

14 as has been said, and we take it for what it is, as such, and

15:59:12 15 these are arguments and it is not evidence and whatever is not
in
16 evidence we ignore completely. So that's --

17 PRESIDING JUDGE: And, indeed, let me sum it up by
saying

18 that the defence of your client, as far as our records, as far
as

19 the Chamber is concerned, remains what you have put across and

15:59:33 20 nothing more. We are disabusing our minds and we should
disabuse
21 our minds from the possible prejudices that may have been
caused
22 in an attempt to introduce these documents. I won't say
anything
23 further. Yes, Mr Cammegh. And I hope that we can move out of
24 this now.

16:00:15 25 MR CAMMEGH: I hope not to be too much longer.

26 PRESIDING JUDGE: Right.

27 MR CAMMEGH:

28 Q. Mr Kallon, who did the abduction? Who abducted Major

29 ~~xxxx~~, if it wasn't you, who was it?

1 A. Mr Cammegh, to be honest, I don't know.

2 Q. Well, why was it that during the trial your counsel put
it
3 to both Colonel ~~xxxxx~~, 165, and to 042 that the person
4 responsible was AS Kallon. Why was that if you don't know
today?

16:00:48 5 A. I don't know.

6 Q. Well --

7 A. And you -- ~~xxxxx~~ testified in this Court.

8 Q. Yes.

9 A. And 044 also testified in this Court.

16:01:00 10 Q. Yes.

11 A. Their discussion in Teko detention and I believe if you
12 look at the transcript you will see what exactly transpired
13 between the two of them.

14 Q. Yes. Well, I have looked at the --

16:01:12 15 A. So it was not me who abduct ~~xxxxx~~.

16 Q. Right. Why was it that you put -- because you were
giving
17 instructions -- why was it that you alleged to 165 that it was
AS
18 Kallon who did it?

19 A. Yeah, because the name Kallon, they were mistaken the
name,
20 but then the abduction or the problem of UNAMSIL were
16:01:38 happening.

the
took

21 I was not there. And AS Kallon, Colonel AS Kallon was one of
22 Kallons present in Makeni, and the area where this incident
23 place were under the command and control of the commanding
24 officer of Makeni.

16:01:57 25 Q. Yes. But it was put quite unequivocally, wasn't it, to
26 both 165 and 042 that, rather than Brigadier Morris Kallon, it
27 was AS Kallon. And I'm just -- I'm just wondering why it is,
28 Mr Kallon, that you haven't told, or that you didn't give the
29 name AS Kallon to this Court yesterday?

1 A. AS Kallon?

2 Q. Yes.

3 A. I think I mentioned AS Kallon as one of the officers.

4 Q. But you didn't say, but you didn't say --

16:02:26 AS 5 A. Please, excuse me, sir. I told this Court that Colonel

6 Kallon, the overall military adviser, was one of the Kallons
7 presence in Makeni.

8 Q. Yes, I know that, but please try not to avoid the
question.

9 My question is: Why did you not, given what was put to ~~xxxx~~
16:02:48 10 and ~~xxxx~~, why did you not testify yesterday that the person in
11 your knowledge who did the abduction was AS Kallon?

12 MR OGETO: Objection, My Lords. Now, quite clearly,-
13 Mr Cammegh proceeds to attempt to impeach Mr Kallon.

14 PRESIDING JUDGE: Your objection is sustained, please.
16:03:03 15 Let's move along.

16 MR CAMMEGH: Your Honour, I wasn't aware that I wasn't
17 allowed to impeach.

18 PRESIDING JUDGE: Can you proceed, Mr Cammegh? I think
we
19 should move along. We've dwelt on this topic for virtually
the

16:03:27 20 whole afternoon, and I think that -- I thought we were moving
out

like

21 of the surfaces of those troubled waters and I think I would

22 us to get out of that.

23 MR CAMMEGH:

24 Q. You see what's happened, Mr Kallon, I suggest, is that

16:03:44 25 yesterday you more or less repeated the evidence of 041 to the

26 extent that you went on this car journey; you stopped at the

27 camp; you made some comments about the quality of bedding that

that

28 was being made there; very similar to what 041 said. Except

29 when you testified --

1 PRESIDING JUDGE: Is that not a matter for submissions,
2 Mr Cammegh? You know, so that we move out of this. It is a
3 matter, you know, which you can raise in your submissions
about
4 you know --

16:04:19 5 MR CAMMEGH: Okay.

6 PRESIDING JUDGE: What has been said, you know, this way
7 and that way. I think those are issues you can raise in your
8 submissions.

9 MR CAMMEGH: Very well, Your Honour.

16:04:25 10 PRESIDING JUDGE: And not necessarily to confront this
11 witness.

12 MR CAMMEGH:

13 Q. Andrew Kanu, can I return to that subject. Perhaps I
14 raised the name Andrew Kanu prematurely earlier on. Can I ask
16:04:48 15 you again now please why it is that the name Andrew or Bobor
Kanu
16 was not put to 041 or 042? Is there any reason for that?

17 MR OGETO: My Lord, objection once again. That question
18 was raised earlier on and if my recollection was right it was
19 overruled. I recall the Presiding Judge's remarks that it is
not

16:05:09 20 for Mr Kallon to know why the name of that particular person
was
21 not put to the Prosecution witnesses.

22 PRESIDING JUDGE: Yes.

23 MR CAMMEGH: Your Honour, I'm feeling as if I'm being
24 unjustly constrained from conducting my defence and I would

like

16:05:48 25 to refer Your Honours to an authority. It's the case of
Brdanin

26 and Talic which shows -- or rules that -- well, I don't know
if

27 Your Honours have the authorities there. I can hand them up.

28 I'm not sure if they have been handed up yet.

29 Your Honour, I am unfortunately seeking to now impeach

1 Mr Kallon, and I claim that it's my right to do so pursuant to
my 2 instructions.

3 JUDGE THOMPSON: Did you say you have an authority?
Case 4 law authority?

16:06:22 5 MR CAMMEGH: Yes. There's a case, an ICTY case of
Brdanin 6 and Talic. There's also an ICTR case by the name of Pauline
7 Nyiramashuko and Arsene Shalom Ntahobali.

8 JUDGE THOMPSON: What's the ratio --

9 MR CAMMEGH: Do Your Honours have the papers and I can -

-
16:06:57 10 JUDGE THOMPSON: What's the ratio of the case?

11 MR JORDASH: Well, the ratio of the Brdanin decision is
12 really this, and it goes back to -- frankly, it does go back
to

13 my attempt to put certain comments -- documents to Mr Kallon.
14 And it rules as follows: In paragraph 29 of the Brdanin
decision

16:07:19 15 inter alia: A joint trial does not require a joint Defence.
And

16 necessarily envisages the case where each accused may seek to
17 blame the other. The Trial Chamber will be very alive to the
18 personal interest which each accused has in such a case. Any
19 prejudice which may flow to either accused from the --
obviously

16:07:46 20 it's a two handed case there -- either accused from the loss
of
21 the right to be tried without incriminating evidence being
given
22 against him by his co-accused is not ordinarily the type of
23 serious prejudice to which Rule 82(C) is directed. And 82(C)
I
24 can come to in a second.

16:08:05 25 But it continues: "The trial Chamber recognises that
there
26 could possibly exist a case in which the circumstances of the
27 conflict between the two accused are such as to render unfair
a
28 joint trial against one of them but the circumstances would
have
29 to be extraordinary." So what that decision was doing was

82 1 contextualising rule -- in our Court Rule 82(A) and (B). Rule
same 2 reads: "In joint trials each accused should be accorded the
3 rights as if he were being tried separately." And (B), "The
Rule 4 Trial Chamber may order that persons accused jointly under
16:08:48 5 48 be tried separately if it considers it necessary in order
to 6 avoid a conflict of interest that might cause serious
prejudice 7 to an accused or to protect the interests of justice."
8 Now of course what Brdanin and Talic does is state that
as 9 I've just said, for the conflict to be such as to render a
joint 10 trial unfair the circumstances would have to be extraordinary.
16:09:12 11 Now, in my submission not only does that perhaps lend weight
to 12 my attempt to put certain documents to Mr Kallon in order that
I 13 can question him as to Gbao's presence, it also surely allows
me 14 to impeach his credit by reference to either other evidence
given 15 in this trial, or the absence of certain explanations given in
16:09:40 16 evidence following certain allegations put during the
Prosecution 17 case by his lawyers. Your Honour, there is a conflict now I'm

is
18 afraid and it is quite clear that as far as the Gbao Defence
19 concerned, the only way to challenge Mr Gbao's presence at the
16:10:12 20 scene is to put those documents to Mr Kallon which tend to
21 suggest that that is correct.
22 PRESIDING JUDGE: Which documents?
23 MR CAMMEGH: The documents that Your Honours have
already
24 ruled on.
16:10:24 25 PRESIDING JUDGE: You don't come back to them. We've
ruled
26 on them and that ends the matter.
27 MR CAMMEGH: If Your Honour has ruled on that, then
surely
28 by virtue of the ruling in Brdanin I am at the very least
within
29 my rights to isolate certain issues, certain questions,
answers,

four

we

16:11:08

your

16:11:30

was

16:11:36

16:11:50

1 pieces of evidence that this Chamber has heard over the last
2 years which may impeach a witness's albeit the co-defendant's
3 credibility. And I return to my core point. I have no choice
4 other than to try [indiscernible] because Mr Kallon was there,
5 say, and Mr Kallon therefore can say -- tell this Court that
6 Mr Gbao was not.

7 JUDGE THOMPSON: But again you see here of course the
8 authority that you have cited, in fact insofar as the
9 [indiscernible] is concerned, deals with a broad aspect of
10 submission.

11 MR CAMMEGH: Yes.

12 JUDGE THOMPSON: But there was a specific question that
13 put to the witness.

14 MR CAMMEGH: Yes.

15 JUDGE THOMPSON: Which was specifically objected to.

16 MR CAMMEGH: Yes.

17 JUDGE THOMPSON: And it was in that context that I asked
18 whether you had any authority to support the asking of that
19 question in the way it was asked. In fact I was going to come
20 and -- with an intervention to say perhaps that it may well be
21 that the way you formulate the question is what renders it

that 22 objectionable, but not that you do not have a right to put
23 kind of question. And -- but then you've taken us to a much
giving 24 broader compass. I was more or less concerned with your
16:12:13 25 me some authority to say that you can ask the question in the
way 26 it was framed so as to neutralise the objection of learned
27 counsel for the second accused.

28 MR CAMMEGH: You mean the objection to the question.

29 JUDGE THOMPSON: Precisely because you asked why was not

1 the question put. And I'm not sure myself whether the way of
2 formulating that question is not itself what really produces
this 3 irritation.

4 MR CAMMEGH: Yes.

16:12:50 5 JUDGE THOMPSON: And elicits an objection. It may well
be 6 that there may be an innocuous way of asking that question
which 7 can still achieve the result that you are trying to achieve.
8 That's my own random thought on this.

9 JUDGE BOUTET: But in addition to that the objection was
to 10 the question because it was an attempt to impeach the
16:13:09 11 of this witness, and you said that you had authority to
credibility 12 the view that you could impeach the credibility of a co-
support 13 and it is permissible and you have authority to support that,
accused 14 in this kind of scenario of a joint trial.

16:13:28 15 The authority you've cited is just general law about
joint 16 trials, as such. It has little to do with impeaching
credibility 17 of a co-accused unless you've quoted a part that is general in
18 nature but not to the impeachment of a particular co-accused.

19 PRESIDING JUDGE: And somewhere in that decision there
is a
16:13:48 20 mention of -- if I got it very well, if I got your reading
very
21 well, in very exceptional circumstances, you know, that such a
22 practice, you know, is not permissible unless it is -- it
comes
23 within the compass, you know, of very exceptional
circumstances.
24 MR CAMMEGH: No.
16:14:08 25 PRESIDING JUDGE: Somewhere in your reading.
26 MR CAMMEGH: It's the opposite way round. Basically
what
27 --
28 PRESIDING JUDGE: Can you take that reading again, on
that
29 paragraph?

Brdanin

1 MR CAMMEGH: I'll read out the rule and read what
2 says and then hopefully I will deal with his Honour Justice
3 Boutet's point.

4 JUDGE BOUTET: Mr Cammegh, do you have copies of these
16:14:27 5 decisions, or were they made available to the Bench because I
6 would like to read them, if at all possible?

7 MR CAMMEGH: I'm sorry, Your Honour, I thought they had
8 been handed up, but they are here. The relevant paragraph of
9 this Brdanin decision is 29. Can I just put it into context
by

16:15:03 10 just reading to you -- to Your Honours first the rule and then
we
11 can go to 29 and it will make everything I hope a little bit
more
12 clear. Or do Your Honours wish to go to 29 first?

13 PRESIDING JUDGE: I was referring in fact to paragraph
29
14 towards the tail end, you know, where he says that -- what the
16:15:25 15 circumstances would have to be extraordinary. It is not
16 satisfied that the present is such a case. I mean, I just got
17 that -- yes, you may proceed.

18 MR CAMMEGH: Can I, I hope, assist Your Honours by
reading
19 out Rule 82 because I think paragraph 29 has to be read in the
16:15:46 20 light of Rule 82. And Rule 82 reads:

21 "(A) In joint trials each accused should be accorded the
22 same rights as if he were being tried separately.

23 (B) The Trial Chamber may order that persons accused
24 jointly under Rule 48 be tried separately if it considers it
16:16:01 25 necessary in order to avoid a conflict of interest that might
interests 26 cause serious prejudice to an accused or to protect the
27 of justice."

28 So basically what this is driving at is a severance
point

29 but, by the same token, it's alerting itself to the scenario

1 where in joint trials evidence may be given or questions may
be
2 put that tend to incriminate another witness.

3 Now, the point I'm seeking to establish here or
the
4 right that I'm claiming here is that I do have the right to
put
16:16:36 5 certain questions to Mr Kallon, whether they be about the
sudden
6 appearance of Andrew Kanu in evidence or the sudden lack of
7 appearance of AS Kallon. And I, in order to do that, I refer
to
8 paragraph 29.

9 And I just would like to refer Your Honours again, it's
the
16:16:54 10 fourth line of that paragraph, and it says:

11 "A joint trial doesn't require a joint defence, and
12 necessarily envisages the case where each accused may seek to
13 blame the other."

14 Now, I've been trying not to blame Mr Kallon for what
16:17:11 15 happened, but, to the extent that I'm suggesting that his
alibi
16 is incorrect, I suppose it could be said that the word "blame"
17 operates here.

18 "The Trial Chamber will be very alive to the personal
19 interest which each accused has in the case. Any prejudice
which

16:17:28 20
tried

21 without incriminating evidence being given against him by his

22 co-accused is not ordinarily the type of -- the type of
serious

23 prejudice to which Rule 82(C) is directed. Trial Chamber

24 recognises that there could possibly exist a case in which the

16:17:49 25
as

circumstances of the conflict between the two accused are such

26 to render unfair a joint trial against one of them but the

27 circumstances would have to be extraordinary."

28 So, in my submission, what this paragraph 29 envisages
and

29 anticipates is just the kind of situation where, during

mean
particular
would
a
16:18:28

1 cross-examination, some evidence -- and by some evidence I
2 the naming of AS Kallon, the naming of Andrew Kanu in
3 circumstances -- can be given against Kallon essentially, I
4 submit, is no difference between evidence being given against
5 co-defendant by a witness, no difference between that and me
6 putting to Mr Kallon in the witness box evidence which has
7 occurred in this trial which suits my purpose.

16:18:49
here
impeach
so
16:19:14
was
and,

8 And I hope that answers his Honour Judge Boutet's
9 point. I would suggest that it would be a fairly artificial
10 contrast. So what I'm suggesting by virtue of this decision
11 is that, given that I cannot get these statements in, I must
12 surely still have the right to attempt to query, call it
13 if you like, Mr Kallon's credibility on the UNAMSIL issue by
14 reference to certain aspects of the evidence that we've heard
15 far, and the sudden appearance of the name Kanu, when there
16 ample opportunity for it to be named particularly during 041
17 again during 042, is just such an occasion. Just such an
18 instance. And similarly the non-appearance of AS Kallon in
19 testimony yesterday as the alibi is another example of a

16:19:34 20 remarkable, we would say, example of where the Defence appears
to
21 have resiled or fallen back from the way it was being
represented
22 some two years ago through those same two witnesses. And by
23 being allowed to ask those questions, by being allowed to ask
24 those questions, I submit I am thereby free to eventually
suggest
16:20:03 25 to the Chamber that credibility has to an extent been
impeached
26 which would tend to support the case which I am putting
forward.
27 I hope I'm not putting it in too verbose a way but that
28 really is where I'm coming from and that is how I say this
29 decision assists the type of cross-examination, very short
one,

1 there's not much left, but it assists the type of
2 cross-examination that I'm trying to do.

3 JUDGE THOMPSON: And does this decision allow the kind
of

4 impeaching of credibility to the extent of unleashing

16:20:41 5 incriminating evidence against the accused? Is that what
you're

6 saying? I mean, isn't that implied?

7 MR CAMMEGH: Your Honour, well --

8 PRESIDING JUDGE: Before you answer that, are these not
9 issues which could be covered again in submissions as to why,
16:20:56 10 why, why -- as to why, what's his name again, Kanu, Andrew
Kanu

11 was not mentioned, only came up at a later stage, and so on
and

12 so forth?

13 MR CAMMEGH: Your Honour, I've got two answers to that:

14 Firstly, the art of advocacy, whether you are before a Chamber
16:21:18 15 like this or before a jury, is obviously to illustrate issues
16 which tend to support your case. It is unsafe, and I would
17 suggest bad practice, simply to leave it later to a written
18 submission. But moreover this: Would it -- would I not be
19 worthy of criticism if I didn't put these issues to Mr Kallon
to

16:21:42 20 allow him to answer them now?

in 21 I'm interested in his responses. He may be interested
22 extricating himself from the question of the difficulty that I
gives 23 pose. Equally, I might be interested in any answer that he
He 24 which tends furthermore to demand further exploitation by me.
16:22:07 25 may give an answer which might not to me appear credible and
that 26 might demand further clarification. So that is how I answer
27 particular question.

28 But, Your Honour, it really comes to this, and I
29 don't mean to be facetious. I hope Your Honours know it's not

1 the way I would like to operate, but I am very concerned that
the 2 case that I have, the instructions that I have, are given full
3 vent in this courtroom and I'm afraid Mr Kallon, for various
4 reasons I hope I've explained, is the best placed person to
16:22:46 5 answer them.

6 PRESIDING JUDGE: Even when he says he was not there and
7 has said consistently, you know, that he was not there?

8 MR CAMMEGH: Well, he says he wasn't there, Your Honour.
I 9 understand that. But in order to -- but my case is that he
was 10 there and in order to drive at --
16:23:01 11

12 PRESIDING JUDGE: That issue we are going to visit in
our 13 overall assessment of the entirety of the evidence that has
been 14 adduced or would have been adduced in this case.

15 MR CAMMEGH: Yes, Your Honour, but I've got to fulfil my
16:23:19 16 duty by bringing forward evidence via cross-examination which
17 might cast doubt on what Mr Kallon is saying given that my
these 18 instructions are diametrically the opposite. I have to put
19 things. In my submission, it's only fair and proper that I
should put them, and that there is no valid objection.

16:23:38 20 JUDGE THOMPSON: And to be certain, this case that
you've

that 21 cited, the principle there does support your position. Is

22 what you say?

23 MR CAMMEGH: Well, very much so, yes. That's my
position.

24 PRESIDING JUDGE: Even where the question goes to
16:23:53 25 incriminating a co-accused in these circumstances that we find
26 ourselves? You think that this case stands its grounds -- and
27 the grounds for which you've cited it?

28 MR CAMMEGH: Well, I do, Your Honour. There is much
focus

29 I note on incriminating the third accused. I very much regret
if

1 that is -- and I use the word by-product of what I'm trying to
2 do. My job is not to represent the --

3 PRESIDING JUDGE: It's an inevitable by-product.

4 MR CAMMEGH: It is.

16:24:29
know,

5 PRESIDING JUDGE: You have said time and again, you

6 that it is not your intention but the harm is there. Let's be
7 very fair.

8 MR CAMMEGH: Well --

16:24:42
not

9 PRESIDING JUDGE: The harm is there. You may not intend
10 it, but there are certain consequences, you know, which may
11 be intended by your acts.

12 MR CAMMEGH: But, Your Honour, it would --

13 PRESIDING JUDGE: But they are there anyway.

it

14 MR CAMMEGH: -- be entirely artificial. Not only would

16:24:56
if

15 be artificial I would be falling short in my duty to my client

to

16 I don't attempt to put his case, and that is what I'm trying

unity,

17 do. And I think there is a lot to be said for decorum and

but

18 particularly in long trials such as this, between the parties

is,

19 not at the price of justice. Not at the price of what I say

16:25:22 20 on my instructions, the truth. That would defeat the whole
21 purpose of having a trial. Because, you know, if points
aren't
22 argued properly, if evidence isn't laid before the Court, then
23 what value of a verdict?
24 PRESIDING JUDGE: Right. Well, we've heard you. The
16:25:38 25 Kallon Defence team, the case has been cited. What do you --
26 were you given a copy of --
27 MR OGETO: Yes, My Lords. We have just received that.
28 PRESIDING JUDGE: What would be your response to
29 Mr Cammegh's submissions on this issue?

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deal

in

16:26:20

during

What

does

16:26:49

to

being

16:27:20

now

not

1 MR OGETO: First of all, My Lords, this case doesn't
2 with the issue of impeachment, and I do not agree that a party
3 has a general right to impeach a co-accused. Now, as we said
4 the morning, Mr Kallon has not made any allegations that are
5 adverse to Mr Gbao at all. In fact, he did not even mention
6 Mr Gbao in any adverse way during his direct testimony or
7 the cross-examination by Mr Jordash. So it is not clear why
8 Mr Cammegh wants to impeach Mr Kallon. For what purpose?
9 does he gain? How does it advance his case? What prejudice
10 he suffer if he does not impeach Mr Kallon? None at all. So
11 this case, My Lords, does not apply at all. What is happening
12 now is that a lot of prejudice is being caused to Mr Kallon,
13 prejudice that is sufficient actually in certain circumstances
14 request a severance of the trial because if Mr Kallon was
15 tried alone this would not be happening and the Rules give him
16 that right to be tried as if he was alone. What is happening
17 here is extremely prejudicial. I do not see how Mr Cammegh
18 benefits at all from the approach that he is taking. He is
19 advancing his case in any way. The fact that Mr Kallon was

16:27:44 20 there, as he claims, does not help his client at all. So that
we
21 take the position that these questions are irrelevant. These
are
22 questions that are only meant to embarrass Mr Kallon and the
23 Chamber should not allow any further questioning of Mr Kallon
by
24 Mr Cammegh with the sole intention of impeaching Mr Kallon.

16:28:13 25 Let me also say, My Lords, that this is not the
only
26 opportunity, as Mr Cammegh says, that he has to put up his
27 case -- to tell the Chamber what his case is.

28 PRESIDING JUDGE: Mr Cammegh says?

29 MR OGETO: Mr Cammegh says --

1 PRESIDING JUDGE: Mr Cammegh says that this is the only
2 witness.

3 MR OGETO: This cannot be the only witness. There were
4 Prosecution witnesses. He had the chance to put their case to
16:28:44 5 the Prosecution witnesses. He has a chance to call his own
6 Defence witnesses and tell the Chamber what his case is all
7 about. He has the chance to call Mr Gbao to tell the Chamber
8 what his Defence is all about. Mr Kallon has his own Defence.
9 He has not even mentioned Mr Gbao. Let him live or die with
his
16:29:01 10 Defence and let Mr Gbao present his own defence. This kind of
11 approach.

12 PRESIDING JUDGE: And live or die with it too.

13 MR OGETO: And live or die with it too, My Lords,
because I
14 don't really see what the Gbao Defence benefits by adopting
this
16:29:19 15 kind of approach. I don't see it at all. This decision that
16 they are citing here, in my humble submission, does not
support
17 the position that they are taking. My understanding of this
18 decision is that the Chamber was dealing with a situation
where
19 there were conflicting defences and where a co-accused, in
trying
16:29:43 20 to impeach the other accused, was benefiting. But in this
case

impeach 21 there is no benefit to be derived by Mr Cammegh trying to
22 Mr Kallon and, in my humble submission, the Chamber should
23 discontinue.
24 JUDGE BOUTET: They claim there is a benefit because
they
16:30:01 25 claim that if your client is lying, therefore, that would put
26 their client in a different scenario, so there is some
benefit.
27 MR OGETO: I don't see how it puts them in a different
28 scenario.
29 JUDGE BOUTET: That's their position.

simply

1 MR OGETO: They are not explaining things. They are

2 saying --

just

3 JUDGE BOUTET: The same -- Mr Ogeto, let me put to you

4 another hypothetical scenario. I mean, you say they can call

16:30:24 5 their client. Yes, they can call their client. Let's assume,

to

6 I'm not saying he will or will not, it's none of my business

7 comment on that, but let's assume for this particular question

did

8 that he were to testify and he says Kallon was there and he

9 this and did that and so on and, therefore, if I follow your

16:30:41 10 theory on this, you say that you would be precluded from

11 challenging Gbao when he says that.

not

12 MR OGETO: But they have already said that Mr Gbao is

13 going to testify.

14 JUDGE BOUTET: I don't know.

16:30:52 15 already

MR OGETO: That is the other difficulty. They have

16 indicated.

not

17 JUDGE BOUTET: Please, please answer my question. I'm

If

18 saying, I'm just putting to you this hypothetical scenario.

19 Gbao were to testify, and he says Kallon was there and this is

16:31:02 20 what he did and so on and, therefore, contradicts your client
in
21 this respect, you would not question him and you would not try
to
22 impeach him; that's what you're saying?
23 MR OGETO: We will cross-examine him.
24 JUDGE BOUTET: And will you try to impeach him on this
16:31:15 25 issue?
26 MR OGETO: It depends on the nature of the answers he
will
27 be giving and --
28 JUDGE BOUTET: And if he says your client Kallon was
there
29 and this is what he did, you will not try to impeach him?

1 MR OGETO: We will impeach him because if he gives that
2 answer --

3 JUDGE BOUTET: Well, this is what they are trying to do.
4 Why is it --

16:31:29 5 not

MR OGETO: But the answers that Mr Kallon has given do

of

6 affect their Defence but if Mr Gbao gives that particular kind

interests

7 answer it will affect our defence and it will be in our

8 to impeach him. There will be reason in that case to impeach

9 Mr Gbao. In this case I do not see any reason why they are

16:31:48 10

trying to impeach Mr Kallon.

11 JUDGE BOUTET: But I thought you were saying that
12 impeaching a co-accused is not acceptable and is not --

Lord,

13 MR OGETO: Not -- I didn't say -- that is not -- My

14 you have misunderstood me. What I meant is you can impeach a

16:32:00 15 that

co-accused in a scenario where the co-accused says something

16 is adverse to your own defence.

17 PRESIDING JUDGE: To your own case.

18 MR OGETO: To your own case. But in a situation where a

19 co-accused has said absolutely nothing that is adverse to your

16:32:18 20 absolutely

own defence, to your own potential defence, there is

21 no reason why you should attempt to impeach him. It doesn't
22 serve any purpose.

unravel

23 PRESIDING JUDGE: Maybe the only persons who would

and

24 the mystery for the Gbao defence when it comes are Kailondo

16:32:37 25
as

Komba Gbundema. I hope that they can be resurrected to appear

alleged,

26 Defence witnesses in the presentation of the Gbao Defence

27 witnesses. I'm just saying that, you know, because it's

came

28 you know, that the three of them were in the same car that

29 and it seems Kailondo -- it is Komba Gbundema.

1 MR TAKU: We are --

2 PRESIDING JUDGE: Please, please, Mr Cammegh,
please,
3 please, maybe you take, since Mr Ogeto -- yes Mr --

4 MR TAKU: I just wanted to --

16:33:10 5 PRESIDING JUDGE: Please be brief because we have to
draw
6 our curtains on this, you know, and move along.

7 MR TAKU: I just wanted to correct something that my
8 colleague said with regard to the question of alibi. If
former
9 counsel in the case, you know, handled this matter properly
the

16:33:29 10 way he would have done, when he came he saw Mr Kallon file a
11 notice of alibi, we have not received one for Mr Gbao with
regard
12 to the UNAMSIL issue and that was filed on 8 May 2007.

13 Therefore, he cannot properly say that he is surprised by the
14 nature of the defence of Mr Kallon in this issue. That's all
I
16:33:50 15 just want to say, Your Honour.

16 MR CAMMEGH: Well, I've been asking the Kallon team for
17 their Defence on UNAMSIL during the last session. They know
that
18 and they know that I never got a reply. I fail to understand
19 Mr Ogeto's argument, and I regret to say it does appear a
little

16:34:09 20 bit disingenuous. It's not relevant that Mr Kallon has said
21 nothing about Gbao. What is relevant is that he appears to
have
22 washed his hands of Gbao altogether. It's what has not been
said
23 about Mr Gbao that offends Mr Gbao. It's the nature in which
24 Kallon has absented himself from the scene in the face of what
we
16:34:31 25 would suggest is very strong Prosecution evidence and has
26 presented a case which takes him far away from the DDR camp
and
27 it is --
28 PRESIDING JUDGE: What is wrong with his adopting that
29 Defence?

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1 MR CAMMEGH: Well, Your Honour, it implicitly by
omission 2 creates a conflict because surely Kallon knows.
3 PRESIDING JUDGE: Because he never said that he was
there, 4 you know, with Gbao. He never said he was at the DDR camp
with 5 Gbao.
16:34:58 6 MR CAMMEGH: But the case led by the Prosecution, the
case 7 by the Defence, is that Mr Kallon was there on both 1 May and
2 8 May.
9 PRESIDING JUDGE: You had the opportunity to cross-
examine 10 at that time, at that point in time, when the Prosecution led
16:35:08 11 the evidence.
12 MR CAMMEGH: But, Your Honour, as I've explained
13 exhaustively, there hasn't been a single witness before this
14 Court who was there on both days. And the Prosecution never
16:35:21 15 called a witness who was in the DDR camp on both 1 and 2 May.
Mr 16 Kallon is the only person equipped with the knowledge to
absolve 17 Mr Gbao, and that's where the -- just the first shafts of
light 18 of a conflict appear. That's why I've been driven to do what

19 I've tried to do. And it's quite disingenuous for the Kallon
16:35:44 20 team to say that we haven't said a bad word about Mr Gbao.
Quite
21 right. They haven't. They haven't said a good word either.
22 It's by omission that I have been forced into this position,
with
23 great reluctance. But I have to put my case. And I'm sorry
if
24 it offends the Kallon team.

16:36:02 25 JUDGE THOMPSON: But let me ask something: Why is their
a
26 duty of disclosure on his part when he did not make the
27 accusation? Why should there be?

28 MR CAMMEGH: On Mr Kallon's part?

29 JUDGE THOMPSON: Yes. Why should there be a burden,
yes, a

not 1 duty of disclosure on the part of the second accused? He did
2 make the accusation against the third accused.

3 MR CAMMEGH: Well, Your Honour --

why 4 JUDGE THOMPSON: It's the Prosecution's accusation, so
16:36:27 5 should he bear this burden of disclosure in the light of his
own 6 Defence?

7 MR CAMMEGH: Well, Your Honour --

8 JUDGE THOMPSON: I was not there, I was elsewhere.

demands, 9 MR CAMMEGH: Yes. We are all -- well, the Court
16:36:36 10 of course, that we put some [Indiscernible] of our expected
good 11 evidence before the Court but, quite apart from that, common
12 practice would suggest that rather than leave it until the
last 13 minute, until we know what the case is, we all know what
mutual 14 cases are, so we all know how to --

16:36:52 15 JUDGE THOMPSON: Yes. Well, I think what he is probably
16 saying now everybody is standing on his own.

17 MR CAMMEGH: Well, that's been what I'm trying to do.

18 That's the position I've been put into and that is the
19 position that unfortunately I have had to --

16:37:01 20 PRESIDING JUDGE: He has put his defence. He stands or

21 falls by it. Mr Gbao, Mr Sesay has put his defence. He will
22 stand or fall by it. So will Mr Gbao as well.

23 MR CAMMEGH: But, to --

24 PRESIDING JUDGE: It's unfortunate, you know, we didn't
16:37:17 25 witness scenery like this in the conduct of the Sesay Defence.

26 MR CAMMEGH: That's right.

27 PRESIDING JUDGE: We did not -- we would have been used
to
28 this sort of a thing, you know, if it ever came up, you know,
but
29 --

Gbao

there

16:37:45
a

that's

16:38:03

are

about

committed

1 MR CAMMEGH: Yes. I have said to this Court that Mr
2 was not intending to testify, and I think I've been very open
3 with that for a long time but, of course, there's a caveat
4 and that is that we've only just heard the Kallon defence and
5 whether Mr Gbao testifies or not will probably have to become
6 moot point again.

7 But can I just go back to the earlier position and
8 one of impeachment. Surely I have the right to attempt to
9 impeach a co-defendant who, by implication, but loud and clear
10 has, in effect, abandoned my client to the Prosecution case in
11 such a way that he is preventing me from asking him --

12 PRESIDING JUDGE: What in fact you are saying, what you
13 saying, Mr Cammegh, is that let's again call a spade a spade.
14 You are saying that, you know, he is wriggling out of it.

16:38:26

15 MR CAMMEGH: Yes.

16 PRESIDING JUDGE: But putting an alternative thesis
17 his presence in the DDR camp and the mischief that was
18 there.

19 MR CAMMEGH: Well, it's a --

16:38:35 20
adopting a

21 similar strategy? I mean, are you compelled to accepting the
22 case by the Prosecution, put across by the Prosecution? I
think
23 it's a question of every accused person raising his own
defence,
24 falling or standing by it, and trying to do as much as it can
to

16:39:02 25
which

26 is sitting very silently and listening to all of you in this.
I

27 mean --

28 MR CAMMEGH: Your Honour, I'm not bound to accept any of
29 the Prosecution case, but we're in the unusual circumstance
that

1 it overlaps with my instructions, I do. And on that note, I
2 think I probably have taken this as far as I can.

3 JUDGE THOMPSON: All I say is that what he is saying is
4 that we're not flocking together.

16:39:35 5 MR CAMMEGH: Yes.

6 PRESIDING JUDGE: I put my case for better or for worse
and
7 that's it.

8 MR CAMMEGH: Yes. Well, I will not be making any
objection
9 should any of my witnesses be impeached by any other team,

16:39:50 10 because that's all part of the game, and that's as it should
be.

11 PRESIDING JUDGE: Pardon me, Mr Cammegh?

12 MR CAMMEGH: I said, Your Honour, that if any of my
13 witnesses find themselves impeached by another Defence team
there
14 will be no objection from me because that's as it should be,
all

16:40:05 15 part of the process.

16 PRESIDING JUDGE: We will wait and see. We will wait
and
17 see. So, this said, I think the question you put to Mr --
18 Mr Kallon is overruled and the objection of Mr Ogeto and you
may
19 -- you may proceed, you know, to -- you may proceed.

if 20 MR CAMMEGH: I note the time, Your Honour, and I wonder

21 it might be a juncture --

a 22 PRESIDING JUDGE: You wanted to have a full, instead of

23 half a glass of water. We will give you time to have one, and
24 the Chamber will recess for a few minutes. We will rise,
please.

17:04:40 25 [Break taken at 4.30 p.m.]

26 [RUF17APR08D-BP]

27 [Upon resuming at 5.02 p.m.]

28 PRESIDING JUDGE: Yes, the proceedings are resumed. May
29 we -- Mr Cammegh.

1 MR CAMMEGH: Yes.

2 Q. Mr Kallon, did you at any stage in the afternoon of the
1st go to the communications centre at Teko Barracks?

3 go to the communications centre at Teko Barracks?

4 A. No, sir.

17:13:47 5 Q. Okay. Just so we're completely clear, after about --
I'm just concerned about the time frame from 3 o'clock in the
6 just concerned about the time frame from 3 o'clock in the
7 afternoon of 1 May until midnight on 1 May. Did you see
8 Augustine Gbao anywhere?

9 A. As I said, no. And I was not within Makeni from 11
o'clock until midnight or to the next day, no.

17:14:20 10 until midnight or to the next day, no.

11 Q. Okay. That's fine. Similarly on 2 May did you at any
12 stage see Augustine Gbao anywhere?

13 A. I was in Masingbi. No, he was not there with me.

14 Q. You did not see him at all on 2 May?

17:14:39 15 A. I was in Masingbi.

16 Q. Okay. In fact, can you remember when was the next time
17 that you saw Mr Gbao?

18 A. I saw Gbao on 3 May.

19 Q. Where was that?

17:14:59 20 A. Right at the office, MP Task Force Office.

21 Q. Back in --

22 A. Makeni.

23 Q. All right.

with 24 A. We all were together when we saw Komba Gbundema coming

17:15:09 25 these captives, the abducted UNAMSIL.

Andrew 26 Q. Right. Now, I'm not going to ask you any more about

27 Kanu or AS Kallon. I want to return now to Komba Gbundema and

28 Kailondo.

29 PRESIDING JUDGE: Did you say Komba Gbundema alone, or

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1 Komba Gbundema and Kailondo?

2 MR CAMMEGH: Komba Gbundema and Kailondo.

3 THE WITNESS: Was with us in the office also.

4 MR CAMMEGH:

17:15:45 5 Q. Mr Kallon, did you --

6 PRESIDING JUDGE: Just for curiosity, now, where is

Komba

7 Gbundema? Do you have any information?

8 THE WITNESS: No, My Lord.

9 MR CAMMEGH:

17:16:00 10 Q. Now, you heard when I was putting my case earlier on
that,

11 Mr Gbao's case is -- leaving you aside for a moment -- the

12 vehicle contained Komba Gbundema and Kailondo, and, as I

13 suggested, Kailondo was firing a gun. I appreciate what you
are

14 saying, you weren't there, but I want to move forward now to 3

17:16:30 15 May when you say you next saw Komba Gbundema and Kailondo;
right?

16 A. Okay.

17 Q. The question is this: Did either Komba Gbundema or

18 Kailondo ever say anything to you which suggested that they
had

19 been in the Makump DDR camp on the afternoon of 1 May?

17:16:53 20 A. The only thing Kailondo -- he said Foday Sankoh give him

21 the authority to attack UNAMSIL.

22 Q. Who said that, Komba or --

23 A. Kailondo.

24 Q. Kailondo said that?

17:17:09 25 A. He said that at the office. Then when Komba Gbundema

26 brought these people, when Mr Sesay say all you people have

27 caused trouble, Kailondo say it was instruction he received
from

28 Foday Sankoh while he was in Kamakwie to come and intercept
the

29 Zambian contingent not to enter Makeni.

1 Q. Right.

2 A. That was what he also said.

3 Q. So you're talking about the Zambian contingent who were
4 sent from Lungi or Port Loko?

17:17:42 5 A. According to the Zambian official who testified, he said
he
6 came from Lungi.

7 Q. Okay. Now I'm focusing on what happened at Makump, and
you
8 can rest assured I'm not going to ask you about anything that
you
9 may have done on the 1st or where you may or may not have been
on

17:18:05 10 the 1st. I want to concentrate now on Komba Gbundema and
11 Kailondo. Was anything said on 3 May in Makeni by either of
12 those two men that suggested that they had been at Makump and
13 that they had been involved in an abduction at Makump on 1
May?

14 A. Okay. This is [Indiscernible] what I heard. I was told
by

17:18:34 15 some RUF combatant that Komba Gbundema and Kailondo, CO Pepe
and
16 many other CO Jah, General Abu Keita they went and attacked
the

17 Makump DDR camp in the afternoon hour and that same group
18 advanced to Magburaka and opened serious firing on the
UNAMSIL,

19 and the UNAMSIL challenged them they could -- not able to

17:19:08 20 overcome those at Magburaka Arab College at the same time the
21 Waterworks, so they returned back to Makeni. So upon my
arrival
22 in Magburaka that was the information I heard.
23 Q. That's Komba Gbundema and Kailondo?
24 A. With those other authority [indiscernible] officers.
17:19:30 25 Q. In Makump on 1 May doing the abduction?
26 A. In Makump.
27 Q. Yes.
28 A. DDR camp?
29 Q. Yes.

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there, 1 A. Really so they said they were the one who attacked
2 yes. Because I was not within there to able to really know
3 whether it true.
4 Q. All right. Now I asked you questions about AS Kallon
17:19:59 5 earlier on, and I just want to be clear about this, and
hopefully
6 this will meet with no objection. Is it your case that -- is
it
7 your understanding now that AS Kallon was not involved in that
8 incident? Or don't you know?
9 A. Mr Cammegh, if I tell you that I know that AS Kallon was
17:20:17 10 involved or was not involved, no. But all I know he was one
of
11 the commanding officer in Makeni.
12 Q. Okay.
13 A. With the position of overall MP commander.
14 Q. All right.
17:20:28 15 A. Adviser.
16 Q. All right.
17 PRESIDING JUDGE: MP Commander or adviser?
18 THE WITNESS: Overall MP adviser. That's why
19 [indiscernible].
17:20:39 20 MR CAMMEGH:
21 Q. Now.

22 JUDGE BOUTET: Just one second. What does that mean
23 "overall MP commander." Was he a commanding officer or was he
in
24 charge, overall MP adviser?
17:20:58 25 THE WITNESS: Yes, My Lord. He was --
26 JUDGE BOUTET: Does that mean that he was the commander.
27 THE WITNESS: Yes, sir. All the Military Police within
the
28 RUF from -- from squad command of MP on to battalion to
brigade
29 level and to the overall commandership of MP he were the
Vanguard

1 who were in charge to control that unit.

MP

2 JUDGE BOUTET: So this is Kallon. When you say "overall
3 adviser," you mean by this he was the overall commander of the
4 MPs?

17:21:33
give

5 THE WITNESS: Yes, sir, but that was the title Sankoh
6 him, overall MP adviser. There were overall MP commander,
7 MP commander and he was the overall adviser for those command,
8 My Lord.

deputy

9 JUDGE BOUTET: Thank you. Sorry, Mr Cammegh.

17:21:52 10

MR CAMMEGH:

given

11 Q. Forgive me. I'm sorry, Mr Kallon. All right. Now,
12 what you subsequently discovered about Komba Gbundema and
13 Kailondo, I don't know the answer to this question, which is

why

14 I'm asking you: Did anything happen to them? Were they

17:22:29 15
in

disciplined in any way? Were they -- did they find themselves

happened

16 hot water in any way with RUF authorities following what

17 at Makump?

sent

18 A. Mr Cammegh, no. According to those people, they were

19 by the leadership of the RUF, both political and military

17:22:44 20 leadership, he was controlling that; he was the chairman and
CIC
Indeed, 21 of the RUF. So they say he was the one who send them.
22 when this thing happened he was stay in control until the 8th.
23 The problem start from the 1st until the 8th before he was
24 arrested. If you look at Exhibit 33, 32 and 34, there were
17:23:11 25 communication from Sankoh until the time he was arrested. The
26 4th, the 5th, there were communication from him.
27 Q. Okay.
28 A. And because he was the one who give those gentlemen this
29 instruction, that's why he do not give any instruction of

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1 arresting them. And who is Morris Kallon or any other officer
to

2 go and arrest them who Sankoh has given his own instruction?
No.

3 Q. Okay. Regardless of who was responsible for the
incident

4 at Makump, do you agree with the evidence that we heard, in
17:23:52 5 particular from General ~~xxxx~~ last session, that along with
you,

6 Augustine Gbao was one of those who played a very full role in
7 the disarmament process?

8 A. Yeah, the time when Mr Sesay became the interim leader,
9 yes, Gbao was one of the lieutenant used during that time to
17:24:18 10 sensitise men.

11 Q. Yes. And if we just turn back the clock a little bit
happened

12 further, and I want to ask you your knowledge about what
with

13 at St Francis's school, the Caritas camp. Would you agree
14 the contention that, first of all, Augustine Gbao was
17:24:53 15 instrumental in trying to set that camp up in early -- I think
16 early 2000? Does that accord with your knowledge?

17 A. Yes.

18 Q. Yes?

19 A. I saw the document approved by Mr Gbao the position of
17:25:14 20 overall security commander for granting or allowing the
Caritas

21 to reopen.

22 Q. Now, did you at any stage -- or were you at any stage in
23 your comings and goings in Makeni and Magburaka accompanied by
24 armed child soldiers?

I 17:25:35 25 A. No, I was not carrying armed -- I mean, child soldier.

26 used to have children in my car actually, but they were not
27 carrying gun and they were not even a trained combatant.

28 Q. Okay. I want to make it quite clear I'm not suggesting
29 that you were. Equally though, Mr Gbao, did you see him with

1 armed child soldiers accompanying him?

2 A. No.

3 Q. No. And it's fair, isn't it, if I was to suggest this,
4 Mr Kallon, that if he did -- or was in the habit of having

child

17:26:15 5 soldiers accompanying him, you would have known about that,
6 wouldn't you, from your day-to-day dealings with him?

7 A. Yes, I should have seen. But I do not see that, yeah.

occurred

8 Q. Mr Kallon, your -- your defence to the events that

we've

9 at Makump, as we all know, is that you were not there, and

17:26:45 10 perhaps gone down that road today sufficiently. This is right

never

11 though, isn't it, that whatever happened on that day, you

12 heard anything to suggest that Augustine Gbao acted alongside

been

13 Komba Gbundema and Kailondo and anybody else who might have

14 involved in that abduction; isn't that right?

17:27:14 15 A. No. I did not hear that -- even when I came back on the

16 3rd. I was not having any information like that that Gbao had

17 taken that, no.

have.

18 Q. Okay, Mr Kallon, thank you very much. That's all I

19 Thank you, Your Honours.

17:28:33 20
minutes

PRESIDING JUDGE: Mr Wagona, yes, we just have ten

21 to 5.30.

22 MR WAGONA: Yes, My Lords.

23 PRESIDING JUDGE: And we would normally rise. It is the
24 Chamber's stand, you know, that you may start your
17:28:54 25 cross-examination tomorrow morning.

26 MR WAGONA: Much obliged.

27 PRESIDING JUDGE: Yes. It's been a very hard day of
28 submissions and arguments, so I think all the parties and the
29 teams are entitled to some ten minutes of rest after a rather

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1 active and very, very controversial session today. So.

2 MR TAKU: May it please Your Honours, I just wanted to
find
3 out from the learned Prosecutor if I should bring another
witness
4 tomorrow -- sometime tomorrow or on Monday.

17:30:04 5 PRESIDING JUDGE: Yes, sir. It's a fair question.

6 MR WAGONA: My Lord, it's possible that I'll finish in
the
7 afternoon, but maybe by the break.

8 PRESIDING JUDGE: I see.

9 MR WAGONA: Yeah.

17:30:21 10 PRESIDING JUDGE: I think you better bring a witness,
you
11 know. You never know. He might abridge his -- you never
know,
12 he might abridge his cross-examination. So what we will say
is
13 you bring your witness in the afternoon.

14 MR TAKU: Thank you, Your Honour.

17:30:37 15 PRESIDING JUDGE: I think so. So that he stands by.
And
16 Mr Taku who is the first witness -- or the second witness
you're
17 calling? Yes, Mr Ogeto.

18 MR OGETO: Yes, My Lords, that's the next issue we were
19 going to address.

17:31:19 20 PRESIDING JUDGE: Yes, that's right.

21 MR OGETO: Yes, My Lords. The next witness was supposed
to

22 have been DMK-159.

23 PRESIDING JUDGE: Yes.

24 MR WAGONA: But we have a slight problem. We were
recently

17:31:32 25 informed through the Registry that we would normally require

26 waiver of immunity for UNAMSIL witnesses from the UN. Now, we

27 have written to the United Nations office -- legal office in

28 New York for waiver of immunity for this witness. We haven't

29 received any communication from that office. We have also
sought

1 the assistance of the Registrar to facilitate a quicker
response.
2 We haven't gotten that response. Accordingly, we wish to
request
3 that we bring witness DMK-160 in place of 159. I've already
4 mentioned this to the Prosecution. I haven't received a
response
17:32:28 5 from them. But that is the position. We are unable to bring
6 DMK-159 because of this issue of waiver of immunity.

7 JUDGE BOUTET: I seem to recall that on your list of
8 proposed witnesses there is more than one former UN member,
and
9 the same would apply to all of them. So I don't know if your
10 application has been made only with reference to 159, but I
17:32:52 11 would
12 imagine the waiver is sort of a standard procedure for all
former
13 UN members.

14 MR WAGONA: Yes. The application is for all of them,
15 My Lords, yes.

16 PRESIDING JUDGE: So what you are saying is that DMK-160
17 is
18 not involved in the waiver application?

19 MR WAGONA: No, he is not. He is a local witness, has
20 nothing to do --

21 PRESIDING JUDGE: What we would then advise is to ensure
17:33:23 22 that, you know, you consult with the Prosecution and other

21 parties, of course, and other Defence teams, you know, to call
22 witnesses, you know, who are not involved in this waiver,
because
23 you do not know when you'll receive a response.

24 MR WAGONA: Yes, My Lords.

17:33:43 25 PRESIDING JUDGE: So you could rearrange and reorganise
26 your list of witnesses, you know, which you already must have
27 filed and the order, you know, in which you are supposed to
have
28 called them. I see there are 16 witnesses here. Sixteen, and
--

29 MR WAGONA: Yes, that is the first batch, My Lord.

1 PRESIDING JUDGE: It's the first batch, yes.

2 MR WAGONA: Yes.

3 PRESIDING JUDGE: First batch of 16. So if we go with
160,

4 I don't know with who we shall go next. 161. But the
important

17:34:20 5 thing is for you to communicate the order whilst we're waiting
6 for the response from the United Nations.

7 MR WAGONA: Yes, My Lords. The only one affected is
that

8 one, DMK-159 for the time being.

9 PRESIDING JUDGE: I see.

17:34:31 10 MR WAGONA: So the rest of the call order remains
intact.

11 PRESIDING JUDGE: Okay.

12 MR WAGONA: And if there are any difficulties, we will
13 advise the parties.

14 PRESIDING JUDGE: It is the call order that is dated 15
17:34:42 15 April 2008.

16 MR WAGONA: Exactly, My Lords.

17 PRESIDING JUDGE: Right. So what you are saying is from
18 160 we shall move to 161, and so on and so forth, in that
order.

19 MR WAGONA: That is the position. That is the current
17:34:56 20 position, My Lord, yes.

21 PRESIDING JUDGE: So I think DMK-160 can be brought in

22 tomorrow in the afternoon.

23 MR WAGONA: Yes, My Lord. We will comply with that.

24 PRESIDING JUDGE: That's right.

17:35:08 25 MR WAGONA: Yes, My Lords.

26 MR JORDASH: Your Honours, may I raise a very short
issue,

27 which is the issue of the closing brief? It would really
assist

28 the Defence for the first accused --

29 PRESIDING JUDGE: For the consequential order.

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numbers

1 MR JORDASH: -- if Your Honours could indicate page
2 and timing, and then we will be able to gauge the work rate
3 the next few weeks.

over

4 PRESIDING JUDGE: Okay. We shall address that.

17:35:38

5 MR JORDASH: Thank you.

reminding

6 PRESIDING JUDGE: We'll address that. Thanks for

7 us.

time,

8 MR CAMMEGH: Your Honour, can I - I'm sorry to take

but

9 but in relation to timing, I don't want to sound to mercenary

17:35:50
any

10 those of us involved in this trial cannot earn any money here

have

11 more after the final brief goes in. So I, out of necessity,

12 taken a professional engagement.

13 PRESIDING JUDGE: Why? Why should they do that?

out

14 MR CAMMEGH: Well, Your Honour, it is what it is. But

17:36:05
professional

15 of necessity and of survival, I have had to take a

16 engagement in London throughout the month of October. I would

17 hope that Your Honours would not insist on announcing the

afford

18 verdicts while I can't be here, but, Your Honour, I can't

19 not to try and earn a living after this ends, and I'm sure
this
17:36:32 20 might be a situation that applies to various of my colleagues,
21 but I just would ask the Chamber to bear that in mind. I know
22 it's personal convenience, but it's also extremely important
to
23 me. We've all made a big commitment to this Trial Chamber,
but
24 there are some commitments which perhaps have to come below
17:36:53 25 others in terms of priorities, and I simply ask that any
verdicts
26 are not announced before 1 November, if that is at all
possible.
27 PRESIDING JUDGE: Well, we'll look at that.
28 MR CAMMEGH: Maybe that's an optimistic time frame
anyway,
29 but --

1 PRESIDING JUDGE: Very, very optimistic indeed.

2 MR CAMMEGH: I thought I ought to make the point.

3 PRESIDING JUDGE: 1 November is very optimistic. It's
4 possible, but very optimistic.

17:37:19 5 MR CAMMEGH: Thank you, Your Honour.

6 PRESIDING JUDGE: On that, counsel, we'll rise and
presume
7 our proceedings at 9.30 tomorrow. The Chamber will rise,
please.

8 [Whereupon the hearing adjourned at 5.28
p.m.

9 to be reconvened on Friday, the 18th day of
17:38:51 10 April 2008 at 9.30 a.m.]

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WITNESSES FOR THE DEFENCE :

WITNESS: ACCUSED MORRIS KALLON

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CROSS-EXAMINED BY MR CAMMEGH

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