



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

MONDAY, 12 MAY 2008  
9.42 A.M.  
TRIAL

TRIAL CHAMBER I

Presiding

Before the Judges:	Benjamin Mutanga Itoe,  Bankole Thompson Pierre Boutet
For Chambers:	Mr Felix Nkongho Ms Priyanka Chirimar
For the Registry:	Ms Advera Kamuzora
For the Prosecution:	Mr Peter Harrison Mr Joseph Kamara
For the accused Issa Sesay:	Mr Wayne Jordash Ms Sareta Ashraph
For the accused Morris Kallon:	Mr Charles Taku Mr Kennedy Ogeto Ms Lois Mbafor
For the accused Augustine Gbao:	Mr Scott Martin

1 [RUF12MAY08A-BP]

2 Monday, 12 May 2008

3 [Open session]

4 [The accused present]

09:34:04 5 [Upon commencing at 9.42 a.m.]

6 PRESIDING JUDGE: Learned counsel, good morning. We  
will

7 resume the proceedings. We are resuming the proceedings  
without

8 a witness?

9 MR OGETO: No, My Lords.

09:42:52 10 PRESIDING JUDGE: One is coming in. Oh, they brought in  
11 the wrong one.

12 MR OGETO: The wrong one.

13 PRESIDING JUDGE: Right. Okay. Anyway, this will be  
14 witness number?

09:43:14 15 MR OGETO: The sixteenth witness, My Lord.

16 PRESIDING JUDGE: The 16th, yes. It's witness number  
what?

17 MR OGETO: DMK-159.

18 PRESIDING JUDGE: DMK-159.

19 MR OGETO: Yes, My Lords.

09:43:54 20 [The witness entered Court]

21 WITNESS: DMK-159 [Sworn]

22 PRESIDING JUDGE: Yes, can you swear in the witness,

witness 23 please. And the witness is testifying -- Mr Ogeto, the  
24 is testifying in what language?  
09:44:55 25 MR OGETO: In English, My Lords.  
26 PRESIDING JUDGE: In English.  
27 MR OGETO: Yes.  
28 PRESIDING JUDGE: Yes, Mr Ogeto, you may proceed,  
please.  
29 MR OGETO: My Lords, this is one of the UNAMSIL  
witnesses,

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1 and I'm going to apply that his testimony be taken in closed  
2 session.

3 PRESIDING JUDGE: For the same reasons?

4 MR OGETO: Yes, for the same reasons advanced in respect  
of

09:46:18 5 145 and 146.

6 PRESIDING JUDGE: May we move into a closed session,  
7 please.

8 MS KAMUZORA: My Lords, we are set for closed session.

9 [At this point in the proceedings, a portion of the  
09:48:52 10 transcript, pages 4 to 124, was extracted and sealed under  
11 separate cover, as the proceeding was heard in a closed  
session]

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1 [Open session]

2 PRESIDING JUDGE: Thank you. We'll now resume the trial  
in  
3 a public session and this is a ruling of the Chamber in  
respect  
4 of the closed session application made by Mr Ogeto, learned  
16:32:56 5 counsel for the second accused, Morris Kallon.

6 Consistent with the general requirement that criminal  
7 proceedings are to be conducted in public, as provided for in  
8 Rule 78 of the Rules of Procedure and Evidence of this Court,  
but  
9 exceptionally as authorised by the provisions of Rule 79 of  
the

16:33:18 10 said Rules, this Chamber, on the application of Mr Ogeto,  
learned  
11 counsel for the second accused, Morris Kallon, for the  
testimony  
12 of DMK-159, to be heard in a closed session did, by way of an  
13 exceptional procedure, grant the said application under the  
14 rubric of protecting the interests of justice, as provided for  
in

16:33:49 15 Rule 79(A)(iii) of the Rules of Procedure and Evidence,  
coupled  
16 with and particularly in consideration of the necessity to  
have  
17 on the record the testimony of this witness called by the  
second  
18 accused Morris Kallon, for his Defence, and this, in  
accordance

19 with the provisions of Article 17(4)(e) of the Statute of the  
16:34:14 20 Court, we will now resume the proceedings in an open session  
and,  
21 in so doing, we would like to thank Mr Witness for coming  
before  
22 the Tribunal to testify before us and for giving us your  
23 understanding of what happened here, and what you witnessed  
24 during the conflict, which is supposed to enable us to arrive  
at  
16:34:52 25 a just determination of this case.

26 So we thank you very much for coming and we wish you a  
safe  
27 journey back to Nigeria, and a happy pursuit of a very  
28 well-merited retirement after so many services, you know,  
29 rendered to the international community in respect of



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1 peacekeeping within the United Nations. We wish you all the

2 with your security enterprise and consultancy, and please have

3 safe journey back home. Thank you very much for coming.

4 THE WITNESS: My Lords, My Lordship, I want to thank you

5 most sincerely for giving me this opportunity. I will be

6 in my service of 30 years if I failed to come here and testify

7 because the course of justice has always been very dear to my

8 heart and the cause of service to humanity. I appreciate your

9 wisdom. I appreciate your listening and I appreciate the way

10 you've guided the whole proceedings. May the Almighty Lord

11 continue to guide you and be with each and every one you. I'm

12 always available in case I will be needed again. Thank you

13 much.

14 PRESIDING JUDGE: I hope we will not have cause to call

15 back again. Thank you very much for coming.

16 THE WITNESS: I would be willing to come back. Thank

17 very much, sir.

18 PRESIDING JUDGE: Right. The Chamber will recess for a

19 minutes and at that time you will have -- assist the witness

20 know out of Court. We will rise, please.

21 [The witness withdrew]

22 [Break taken at 4.38 p.m.]

23 [RUF12MAY08D-BP]

24 [Upon resuming at 5.10 p.m.]

17:09:04 25 PRESIDING JUDGE: Yes, I see Mr Harrison on his feet.

26 MR HARRISON: Yes, thank you for recognising me.

27 PRESIDING JUDGE: We have always recognised you.

28 MR HARRISON: The Prosecution --

29 PRESIDING JUDGE: You are a very recognised entity in

this

1 Court.

a  
raise  
that

2 MR HARRISON: The Prosecution thinks that there might be  
3 more efficient way of going about an issue that we want to  
4 and we think it's by raising it right now. The next witness

17:09:49 the  
5 the second accused wishes to call has a number DMK-082, and  
6 Prosecution says that we received an additional information on  
7 Thursday, so the date of it is 8 May 2008.

8 PRESIDING JUDGE: That's on DMK-082?

9 MR HARRISON: Correct. And we say that that additional  
17:10:21 10 information advances an alibi and that this is alibi evidence.  
11 Now, I've given copies of that additional information and  
copies  
12 of two filings to the learned chamber's officer and if they  
13 haven't been handed up to the Court I'm asking if they could  
be.

14 And the Prosecution is saying that this witness ought not to  
be  
17:10:55 15 permitted to give any alibi evidence and the reason why we say  
16 that is because this matter came before the Court by way of a  
17 motion.

18 PRESIDING JUDGE: There's a ruling on this.

19 MR HARRISON: Precisely.

17:11:05 20 PRESIDING JUDGE: This alibi thing.

the  
21 MR HARRISON: The ruling date is 1 May 2007. And what  
22 Trial Chamber did in the course of that ruling was it gave an  
23 order stating that the Kallon Defence, within 7 days of the  
24 service of the present decision, was to provide the  
Prosecution  
17:11:31 25 with a notice of alibi containing the following information,  
and  
26 then the Trial Chamber indicated that that information had to  
27 include the place or places at which the second accused claims  
to  
28 have been present, (b) was the pseudonyms of witnesses who the  
29 second accused intends to call in support of the alibi. And I

1 would just like to add in parenthesis that, we say, was  
violated. 2 It's that provision. And paragraph (c) of the disposition of  
3 that order states any other evidence upon which the second  
4 accused intends to rely to establish the alibi.

17:12:21 5 One of the other documents that ought to be before the  
6 Trial Chamber is the filing by the second accused stating the  
7 notification of alibi and those witnesses who would be giving  
8 evidence in support of the alibi, and that filing is dated 8  
May  
9 2000 -- sorry, 2007, and it's Court filing number 75. And on  
any  
17:12:47 10 review of this, you can take as long as you want in reviewing  
the  
11 document, but there's no mention whatsoever of 082 being an  
alibi  
12 witness.

13 And, with respect to the alibi information, on the  
fourth  
14 page of that filing, all that we have stated as the alibi is  
that  
17:13:18 15 Morris Kallon was not present at the scene of the alleged  
16 incident involving UNAMSIL peacekeepers at Makoth village  
between  
17 Lunsar and Makeni on 3 May 2000 as alleged and was at Makeni  
Town  
18 the material time of the alleged act. And we say that the  
alibi

wholly 19 evidence which is offered in the additional statement is  
17:13:48 20 different from even that. So there's two points.  
witness 21 The first one is 082 is not referred to as an alibi  
22 and, secondly, the nature of the alibi being offered by 082 is  
information 23 different from stated in the notice. The additional  
it's 24 again filed on 8 May, which is the first notice we have, and  
17:14:14 25 Court Management number 25843, it refers at paragraph 6 that  
the 26 witness will testify that on 1 May 2000, the witness saw the  
27 accused arrive in Masingbi.  
and 28 Now, the alibi information is only talking about 3 May  
29 it's talking about the second accused being in Makeni Town.

2000  
there's  
1 Paragraph 8 says that the witness will state that on 2 May  
2 he and Morris Kallon were together the whole day. Again,  
3 no notice about 2 May; it's confined to the 3rd.

17:15:11 4 In paragraph 9 states that on 3 May 2000 the witness was  
5 with Morris Kallon drinking palm wine when the witness's radio  
6 operator came and said that Komba Gbundema had gone to the  
7 highway along Lunsar/Makeni Road to intercept an UNAMSIL  
8 reinforcement. This was between 10 a.m. and 11 a.m. So the  
9 Prosecution acknowledges that there is a reference to 3 May in  
10 the alibi notice but, again, not by this witness.

17:15:35 11 And secondly, it appears that all of this alibi is  
placing  
12 the second accused in Masingbi, whereas the information given  
in  
13 the alibi notice is that he is in Makeni Town. So we say that  
14 the alibi notice is wholly inconsistent with the proposed  
17:16:00 15 evidence that's contained in the additional statement, and we  
say  
16 it's the alibi evidence alone that is inadmissible.

17 We accept that any other evidence the witness may have  
to  
18 give is of course admissible, but it's the alibi, we allege to  
be  
19 alibi evidence that is not. On that basis we say that it's  
17:16:21 20 simply before this Court to make a ruling that such evidence

view  
on  
of  
17:16:42  
you

21 cannot be heard. If you disagree with me, and you take the  
22 that it's still permissible to tender that evidence, and do so  
23 the understanding that --  
24 PRESIDING JUDGE: Well, we will only look at it in terms  
25 credibility in due course because we have an earlier ruling,  
26 know.  
27 MR HARRISON: If you take that --  
28 PRESIDING JUDGE: Yes.  
29 MR HARRISON: -- then what the Prosecution says ought to



1 happen is that the statements of this witness ought to be  
2 disclosed now, so that we would be able to review them in  
advance  
3 of the testimony, and we would prefer to make the application  
now  
4 so that they could be disclosed tonight so there would be no  
17:17:07 5 delay tomorrow.

6 The Trial Chamber has had these sorts of applications  
7 before you in the past, and you have in previous decisions  
relied  
8 upon the Appeals Chamber decision in Tadic and that states  
what  
9 the law is and the law simply is that -- and again this is  
from  
17:17:30 10 paragraph 324 of the Tadic case:

11 "As stated above once the Defence has called a witness  
to  
12 testify, it is for a Trial Chamber to ascertain his or  
her  
13 credibility. If there is a witness statement, in the  
sense  
14 referred to above, it would be subject to disclosure  
only  
17:17:55 15 if so requested by the Prosecution, and if the Trial  
16 Chamber considers it right in the circumstances to order  
17 disclosure."

18 That's the test. It's a broad one. Does the Trial  
Chamber

the 19 consider it right in the circumstances to order disclosure of  
17:18:13 20 statement. Prosecution says it is right in the circumstances  
21 because here we have a last-minute alibi being tendered. We  
22 ought to be permitted to look at the early on statements which  
23 make no reference to the alibi and the later statements which  
24 apparently do, so that we can cross-examine the witness fully  
on  
17:18:33 25 this newly developed theory of the Defence, with respect to  
this  
26 witness. That's the application before you.  
27 JUDGE THOMPSON: So you mentioned that -- so you're  
giving  
28 us in a nutshell you are giving us one option, a proposed  
option  
29 by way of an efficient way of proceeding. That's what you are

1 doing. Because you are saying that in case we do not agree  
with  
2 you that the evidence is inadmissible, then you are leaving us  
3 with a proposed option of the most efficient way of  
proceeding,  
4 and that is to -- to order disclosure.

17:19:19 5 MR HARRISON: Correct. That's the alternative argument  
6 being advanced.

7 PRESIDING JUDGE: In fact, what you are saying is that  
the  
8 summary provided is not detailed enough. Is that what you are  
9 saying? The summary provided in the notification of alibi, in  
10 which you have a series of witnesses who are supposed to  
17:19:42 11 on this issue of the alibi, is not exhaustive enough to enable  
testify 12 you to get into the thrust of where his arguments or, rather,  
13 where his statement on the alibi, you know, stands.

14 MR HARRISON: The summary does not refer to the alibi  
17:20:09 15 evidence at all. It's only the additional information filed  
on 16 the 8th that mentions it.

17 JUDGE THOMPSON: And you complain also about  
inconsistency.

18 MR HARRISON: Yes, of course. We're saying there is no  
19 alibi up to Thursday.

17:20:22 20 JUDGE THOMPSON: Yes. Because, as I've said earlier,  
you

most  
in.  
--  
17:20:45  
notification  
that

21 had indicated that you were coming with a proposal as to the  
22 efficient way of proceeding and that's the one I'm interested  
23 JUDGE BOUTET: Mr Harrison, I have a copy of the Defence  
24 the alibi notification of 8 May 2007 but was that amended  
25 subsequently to today, to indicate the change in the  
26 of alibi at any time between that time and today?  
27 MR HARRISON: No.  
28 JUDGE BOUTET: So the first notification is essentially,  
29 from what you are saying, is because now you have indication

1 this witness is to come to testify on that issue.

2 MR HARRISON: Yes.

3 JUDGE BOUTET: And it should be not on 3 May but on  
4 different dates as well.

17:21:08 5 MR HARRISON: Correct.

6 JUDGE BOUTET: Thank you.

7 PRESIDING JUDGE: Yes, Mr Ogeto.

8 MR OGETO: My Lords, we, first of all, we must  
acknowledge

9 and admit the fact that the alibi that was filed on 8 May 2007

17:21:41 10 does not specifically mention the presence of the accused in  
11 Masingbi. I have discussed with the accused person about this  
12 omission, and he says he did provide that information to his  
13 Defence team. As to why it was not filed I do not know, My  
14 Lords. But my understanding of the jurisprudence on this

issue,

17:22:17 15 and also of the Rules of this Court, is that the remedy is not  
to

16 exclude the testimony of the witness because no notice has  
been

17 provided; the jurisprudence is to the effect that the Chamber

18 will look at the testimony of the witness at the end of the  
case

19 and assess --

17:22:38 20 PRESIDING JUDGE: The credibility.

21 MR OGETO: -- the credibility. That is the first point.

colleague, 22 The second point relating to the proposal made by my  
willing 23 we do have the statement of the witness here and we are  
advancing 24 to disclose it to the Prosecution if that will help in  
17:23:02 25 the proceedings. That's all I would say for now, My Lords.

disclose 26 PRESIDING JUDGE: And you would accept that we can  
clock. 27 it to him now. Of course I'm looking with my eyes on the

28 MR OGETO: Yes, we can immediately.

29 PRESIDING JUDGE: Yes, you can. We cannot go on with it

1 now. We have to give him time to go through the document.

2 Mr Harrison, on disclosure, what is your application, please?

3 MR HARRISON: We say that the statement ought to be  
4 provided to the Defence.

17:24:02 5 PRESIDING JUDGE: What statement?

6 MR HARRISON: The statements of 082; all statements.

7 PRESIDING JUDGE: All statements of 082?

8 MR HARRISON: The logic being is that there was a  
9 summary -- well, there must have been something done because  
the

17:24:15 10 witness is listed in the summary that's filed back in March of  
11 2007, so there must be at least one from them. And there's no  
12 reference whatsoever to alibi in that early summary. Now,  
there  
13 may be something in the statement.

14 JUDGE BOUTET: I'm sorry, Mr Harrison, are you saying  
that

17:24:32 15 this particular witness was listed way back in '07 with a  
summary  
16 at the time?

17 MR HARRISON: Yes.

18 JUDGE BOUTET: Same witness in 082 and no reference then  
19 about this alibi in the --

17:24:42 20 MR HARRISON: Yes.

21 JUDGE BOUTET: -- by the same witness?

22 MR HARRISON: Yes.

23 JUDGE BOUTET: It's only in the additional information  
so

24 all of that is coming up now that he is to testify about that.

17:24:50 25 MR HARRISON: Yes.

26 JUDGE BOUTET: Okay. I had not understood that from  
you.

27 JUDGE THOMPSON: I thought that was the gravamen of your

28 initial complaint.

29 MR HARRISON: Yes, that's why we're saying this is a  
case



1 where first argument is simply inadmissibility.

2 JUDGE THOMPSON: Yes, quite. I thought so.

3 MR HARRISON: They've waited until now, this witness was  
4 supposed to have testified Friday, they have waited until one

day

17:25:12 5 before he was to testify before providing the information  
about

6 the alibi evidence.

7 JUDGE THOMPSON: To be designated as an alibi witness.

8 MR HARRISON: Yes, which he was not done by the filing -

-

9 JUDGE THOMPSON: Done right from the beginning.

17:25:27 10 PRESIDING JUDGE: And still not done.

11 MR HARRISON: Yes; exactly. That's what I'm saying. So  
12 that's why we're saying that if there is to be disclosure it  
13 ought to be of all statements because there must have been  
14 something from 2007, because he is listed on the original list

of

17:25:43 15 summaries, and presumably there's at least one subsequent one,  
16 somewhere around 8 May, where the alibi is disclosed. But we

say

17 we're entitled to any intervening statement because they would  
18 show whether or not the alibi is ever raised at an earlier

date.

19 And all of that, we say, is fairly before, or ought to be

fully

17:26:08 20 before the Court to understand and assess the credibility of  
the

21 witness in bringing this alibi forward at such a late date.

22 PRESIDING JUDGE: Yes, did you have something else,

23 Mr Ogeto?

24 MR OGETO: No, nothing else, My Lord.

17:28:24 25 PRESIDING JUDGE: Okay, no. The Chamber orders that the  
--

26 that all the statements of witness number DMK-082 be disclosed  
to

27 the -- to the Prosecution immediately we come to the end of  
these

28 proceedings today, so that we can at least think of taking the

29 witness on tomorrow. Would that be all right by you,

1 Mr Harrison?

2 MR HARRISON: I think that will be fine.

3 PRESIDING JUDGE: That will be fine. And then -- well,  
it

4 means that we are going to take the witness on tomorrow; that  
17:29:13 5 we're taking the witness tomorrow, DMK-082.

6 MR OGETO: That's fine with us, My Lord.

7 PRESIDING JUDGE: And who will be the next if DMK-082 --

8 MR OGETO: DMK-444.

9 PRESIDING JUDGE: DMK-444.

10 MR OGETO: Yes.  
17:29:31

11 THE INTERPRETER: Your Honours, in what language will  
the

12 witness be testifying in tomorrow?

13 PRESIDING JUDGE: Mr Ogeto, have you heard the question  
14 from the cabin? In what language will the witness be  
testifying?

15 MR OGETO: Krio, My Lords.  
17:31:10

16 PRESIDING JUDGE: Krio.

17 MR OGETO: Yes.

18 PRESIDING JUDGE: Have you gotten the response? I'm  
19 talking to the cabin; have you got the response?

20 THE INTERPRETER: Yes, Your Honour.  
17:31:19

21 PRESIDING JUDGE: Right. Okay. Well, learned counsel,  
the

at 22 Chamber will rise, please, and we will resume sitting tomorrow  
23 9.30. We will rise, please.  
24 [Whereupon the hearing adjourned at 5.33  
p.m.,  
17:32:18 25 to be reconvened on Tuesday, the 13th day of  
26 May 2008 at 9.30 a.m.]  
27  
28  
29

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EXHIBITS:

20 Exhibit No. 370

62 Exhibit No. 371

WITNESSES FOR THE DEFENCE:

WITNESS: DMK-159 2

EXAMINED BY MR OGETO 4

62 CROSS-EXAMINED BY MR JORDASH

83 CROSS-EXAMINED BY MR FYNN