

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

MONDAY, 4 JULY 2005
10.00 A.M.
STATUS CONFERENCE

TRIAL CHAMBER I

Before the Judges:	Bankole Thompson, Presiding
For Chambers:	Ms Candice Welch Mr Matteo Crippa
For the Registry:	Mr Geoff Walker
For the Prosecution:	Mr Peter Harrison Mr Alain Werner Ms Suzanne Mattler (intern) Mr Mark Walbridge (Case Manager)
For the Principal Defender:	Ms Haddijatou Kah-Jallow
For the accused Issa Sesay:	Mr Wayne Jordash Ms Ellen Rogers Ms Elizabeth Shackelford
For the accused Morris Kallon:	Mr Melron Nicol-Wilson Mr Charles Taku
For the accused Augustine Gbao:	Mr John Cammegh Mr Ben Holden

1 [HS040705A-SGH]
2 Monday, 4 July 2005
3 [Status Conference]
4 [Open Session]
5 [The accused Sesay and Kallon present]
6 [The accused Gbao not present]
7 [Upon commencing at 10.00 a.m.]

8 MR WALKER: This is Case no. SCSL-04-15-T. Prosecutor v
9 Issa Hassan Sesay, Morris Kallon and Augustine Gbao, which is
10:03:25 10 listed for a status conference.

11 PRESIDING JUDGE: Good morning, counsel. This proceeding
12 is the status conference preceding the fifth trial session of the
13 RUF case. It is being held in pursuance of Rule 65 bis of the
14 Rules of Procedure and Evidence of this Court. According to 65
10:03:59 15 bis, and I quote, "A status conference may be convened by the
16 designated judge or by the Trial Chamber. The status conference
17 shall: (i) organise exchanges between the parties so as to
18 ensure expeditious trial proceedings; (ii) review the status of
19 his case and allow the accused the opportunity to raise issues in
10:04:24 20 relation thereto."

21 Guided by these objections of a status conference, I now
22 proceed with representation. Who appears for the Prosecution?

23 MR HARRISON: My name is Harrison. H-A-R-R-I-S-O-N,
24 initials P H and appearing with me is Mr Werner. First name
10:04:47 25 Alain. And also appearing with the Prosecution is Ms Suzanne
26 Mattler, an intern in the Prosecution's office.

27 PRESIDING JUDGE: Thank you. For the first accused.

28 MR JORDASH: For the first accused myself, Wayne Jordash,
29 Elizabeth Shackelford and Ellen Rogers.

1 PRESIDING JUDGE: Thank you. For the second accused.
2 MR NICOL-WILSON: For the second accused Charles Taku and
3 Melron Nicol-Wilson.
4 PRESIDING JUDGE: And the for the third Accused.
10:05:13 5 MR CAMMEGH: John Cammegh and Ben Holden.
6 PRESIDING JUDGE: Thank you. Any other appearances?
7 Right, let me now indicate the agenda items for this morning's
8 session. The substantive agenda items for today's status
9 conference as follows: One, matters or issues relating to the
10:05:40 10 health of the accused or their detention. Two, trial logistics.
11 (A) trial schedule; (B) case presentation. Three, witness
12 issues. (A) additional witnesses; (B) witnesses for the fifth
13 trial session; (C) other witness issues; (D) expert witnesses.
14 The fourth item is outstanding motions pending in the Trial
10:06:18 15 Chamber and the Appeals Chamber. And then we will round up the
16 day by looking at any other matters.
17 Let us proceed with the first on my list; matters or issues
18 relating to health of the accused persons or their detention. Do
19 counsel for the Defence have any issues relating to the health of
10:06:40 20 the accused persons or their detention? First health.
21 MR JORDASH: For Mr Sesay, no, thank you.
22 PRESIDING JUDGE: Learned counsel for the second accused.
23 MR TAKU: For Morris Kallon, nothing that I know of.
24 PRESIDING JUDGE: And learned counsel for the third
10:06:55 25 accused.
26 MR CAMMEGH: So far as we are aware, nothing in relation to
27 Augustine Gbao.
28 PRESIDING JUDGE: Thank you. Does the head of the
29 detention facility, Mr Barry Wallace, have any matters in

1 relation to the health of the accused persons or their detention
2 to bring to the attention of the Court?

3 MR WALLACE: Nothing, Your Honour.

4 PRESIDING JUDGE: Thank you. Let us proceed with trial
10:07:25 5 logistics. (A) trial schedule. It should be noted that the
6 fifth trial session of this case will commence tomorrow,
7 5th July 2005, pursuant to the Trial Chamber's order of 20th May
8 2004 detailing amendment to judicial calendar and scheduling
9 order for status conference. The aforesaid fifth trial session
10:07:58 10 will end on 5th August 2005.

11 Due to a major outstanding issue left over from the last
12 trial session of the CDF case scheduled for a one day hearing out
13 of session on Wednesday, 6th July 2005, the RUF fifth trial
14 session will continue on Thursday, 7th July 2005 and not on
10:08:35 15 Wednesday, 6th July 2005.

16 It should also be noted that the hours of court sitting
17 remain unchanged: Monday, Tuesday, Thursday and Friday, we will
18 sit from 9.30 a.m. until 6.00 p.m. with a lunch break from
19 1.00 p.m. to 2.30 p.m. Wednesday sittings will be only from 9.30
10:09:04 20 to 1.00 o'clock as is now customary.

21 As regard case presentation, I need to reiterate that
22 despite noticeable improvement - and I say that with all feeling
23 of satisfaction - it is the Chamber's view that some aspects of
24 examinations-in-chief and cross-examinations continue to be
10:09:36 25 unduly lengthy, repetitious and sometimes oblique not too
26 relevant. Again all the Chamber can do is to appeal to counsel
27 on both sides to co-operate with the Bench in giving efficacy to
28 a joint commitment to ensure that all accused persons receive a
29 fair and expeditious trial.

1 Witness issues. Let us begin with (A) additional
2 witnesses. The records show that on 11th February 2005, the
3 Trial Chamber granted the Prosecution leave to add three
4 additional witnesses to its witness list. The witnesses on the
10: 10: 27 5 reference are TF1-366, TF1-367 and TF1-368. In its application
6 for leave, the Prosecution reserved the right to apply for the
7 said witnesses to be granted category C; that is insider
8 witnesses status and for them to be accorded the existing
9 protective measures. The Bench is advised that these witnesses
10: 11: 02 10 will not be testifying during the fifth trial session. Is this
11 correct? Will the Prosecution respond to the earlier comments
12 from the Bench and also the last question?

13 MR HARRISON: It is correct. They will not be testifying
14 in this session.

10: 11: 23 15 PRESIDING JUDGE: Thank you. Do counsel for the Defence
16 have any comments to make on this subject at this stage?

17 MR JORDASH: No, thank you.

18 PRESIDING JUDGE: Thanks. I also wish to mention that
19 pursuant to the Trial Chamber's consequential order to the
10: 11: 40 20 decision on further renewed witness list of 13th April 2005, the
21 Prosecution filed an up-dated core witness list on 5th May 2005
22 comprising 101 core witnesses. On 10th June 2005, the Trial
23 Chamber granted the Prosecution leave to add an additional
24 witness as an expert witness to that list, bringing the total up
10: 12: 16 25 to 102. Is the calculation correct that up to this point in time
26 33 out of 102 witnesses have testified? Is it also true that a
27 Prosecution investigator has been called to testify pursuant to a
28 request by the Defence? Will the Prosecution please respond to
29 these comments in question?

1 MR HARRISON: Yes, I think the numbers are accurate. If
2 the Prosecution investigator is added, then it is a total of 34
3 witnesses who have testified to date. The Prosecution takes no
4 position and has no concern whether that investigator is deemed
10:13:01 5 to be a Prosecution witness or a witness of the Court.

6 PRESIDING JUDGE: Right, thank you.

7 MR HARRISON: Or categorised from any other.

8 PRESIDING JUDGE: Are there any responses from the Defence
9 at this stage?

10:13:09 10 MR JORDASH: No, thank you.

11 PRESIDING JUDGE: Let us now address the issue of witnesses
12 for the fifth trial session. The Prosecution did file its
13 proposed order of appearance of witnesses on 20th June 2005.
14 According to that list, 17 Prosecution witnesses are scheduled to
10:13:34 15 testify during this trial session. According to the records, the
16 Prosecution indicated that the Defence was informed on
17 31st May 2005 of this order of appearance in compliance with the
18 42 day disclosure requirement. Will the Prosecution confirm
19 this?

10:13:59 20 MR HARRISON: Yes, we confirm that. Is it helpful to the
21 Court if I indicate now some changes.

22 PRESIDING JUDGE: Yes, that is fine. Yes. Expound if you
23 want to.

24 MR HARRISON: I have indicated this to counsel for the
10:14:13 25 first accused and the second accused already. Unfortunately
26 counsel for the third accused and I were not able to have a brief
27 conversation this morning. But what I wish to indicate at the
28 outset is that the existing list has, as the first witness,
29 TF1-306 and as the second witness TF1-122, the Prosecution wishes

1 to advise the Court and Defence counsel that the Prosecution is
2 not in a position at this moment to call either one of those
3 witnesses tomorrow. And we would wish to call as the first
4 witness tomorrow TF1-035, which is the third witness on the
10:14:57 5 current list. And the Prosecution would also like to inform the
6 Court and Defence counsel that on Thursday when we resume, the
7 Prosecution would like to call as its next witness TF1-272. This
8 is the witness that we in fact wished to call on the last
9 session, but because of certain timing inconveniences were not
10:15:25 10 able to do so. And this is a witness that comes to Sierra Leone
11 from another jurisdiction and we are asking the Court and Defence
12 counsel to indulge us by allowing the Prosecution to call TF1-272
13 as a second witness, hopefully early on Thursday, if not the very
14 beginning of Thursday.

10:15:45 15 PRESIDING JUDGE: Thank you. Learned counsel for the
16 Defence. Mr Jordash, your response.

17 MR JORDASH: Perfectly acceptable.

18 PRESIDING JUDGE: Good. Mr -- I do apologise.

19 MR TAKU: Mr Taku.

10:15:58 20 PRESIDING JUDGE: Your response.

21 MR TAKU: No objection, Your Honour.

22 PRESIDING JUDGE: And Mr Cammegh.

23 MR CAMMEGH: No, no response.

24 PRESIDING JUDGE: Thank you. And the Bench does not see
10:16:06 25 any difficulty with that.

26 So, on 28th June 2005, the Prosecution filed the transcript
27 of the testimony of Witness TF1-22 [sic] at the AFRC trial on
28 24th June 2005 as disclosure of additional information Pertaining
29 to this witness. Are there any comments on this? Do you want to

1 elaborate on this or just confirm?

2 MR HARRISON: I confirm it and the Prosecution sees that as
3 its obligation to disclose that as quickly as possible.

4 PRESIDING JUDGE: Thanks and any responses from the
10: 16: 56 5 Defence? Any problems?

6 MR JORDASH: No, thank you.

7 PRESIDING JUDGE: No. Counsel?

8 MR TAKU: No.

9 PRESIDING JUDGE: Thank you. Other witness issues. Let me
10: 17: 02 10 observe that the Prosecution has not yet indicated whether it
11 intends to apply for closed session hearing for part or the
12 entire testimony of any of the witnesses appearing during the
13 fifth trial session. May I have a response from the Prosecution?

14 MR HARRISON: Yes, the intention is to apply for closed
10: 17: 23 15 sessions. I can indicate now that the intention is to apply for
16 the entirety of the evidence of TF1-036 to be in closed session;
17 the entirety of the evidence of TF1-360. In addition, TF1-361 we
18 anticipate that the entirety of that will be in closed session,
19 but no decision has been made as to whether it is necessary for
10: 17: 54 20 the entirety of that evidence to be in closed session or simply a
21 portion of that.

22 And finally, the witness that I have already referred to,
23 the one that the Prosecution hopes to call on Thursday, TF1-272,
24 there is an existing order establishing witness protection
10: 18: 14 25 measures and also closed session measures for that witness and we
26 will be seeking to have that order applied in this Court.

27 PRESIDING JUDGE: Thank you. Any brief responses?
28 Mr Jordash.

29 MR JORDASH: No, thank you.

1 PRESIDING JUDGE: Learned counsel for the second accused.

2 MR TAKU: Just one minute, My Lord.

3 PRESIDING JUDGE: Yes.

4 MR TAKU: Nothing, My Lord.

5 PRESIDING JUDGE: No. Mr Cammegh?

6 MR CAMMEGH: Nothing from me.

7 PRESIDING JUDGE: It is also of interest to note that
8 pursuant to the order for compliance of Prosecution with Rule 94
9 bis, the Prosecution has disclosed the confidential expert
10:19:07 10 reports of witnesses TF1-296 and TF1-301. The records show that
11 all Defence counsel have indicated their intention to
12 cross-examine these witnesses on the basis of their reports. Are
13 there any comments on the parties?

14 MR HARRISON: There is nothing I can add to that.

10:19:33 15 PRESIDING JUDGE: Right. And learned counsel for the
16 accused persons. There is on record some indication that you
17 intend to cross-examine these witnesses on the basis of their
18 report.

19 MR JORDASH: Yes, every expert witness will be
10:19:45 20 cross-examined.

21 PRESIDING JUDGE: Right.

22 MR TAKU: We do have nothing to say, My Lord, but we want
23 just to know or have an idea when the Prosecutor intends to call
24 these expert witnesses so we can start preparing in time. If the
10:20:00 25 Prosecutor has made up his mind when.

26 PRESIDING JUDGE: Are you in a position to say that yet?

27 MR HARRISON: I am sorry, I can't give you any clear
28 guidance on that. But we will try to give you that information
29 prior to the end of this session.

1 PRESIDING JUDGE: All right. Okay. Learned counsel for
2 the third, Mr Cammegh?

3 MR CAMMEGH: I am quite certain we will wish to
4 cross-examine every expert witness.

10:20:20 5 PRESIDING JUDGE: Good, yes.

6 MR CAMMEGH: Without exception.

7 PRESIDING JUDGE: Right. Thanks. Okay. Also of some
8 relevance is that on 10th June 2004, the Chamber granted leave to
9 the Prosecution to add an additional expert witness to its list
10:20:43 10 by the name of Zainab Bangura, an expert on forced marriage. Let
11 me make just a few brief comments on this thing. The first is
12 that no application has come from the Prosecution about
13 protective measures for this witness. And second, that the
14 curriculum vitae and her expert report were filed on 10th June
10:21:10 15 this year. The third is that counsel for all the accused persons
16 have indicated their intention to cross-examine her on her
17 report. Any further light to be shed on this matter,
18 Mr Harrison?

19 MR HARRISON: I can't shed any right now. I will
10:21:33 20 investigate this matter and try to report back to Defence
21 counsel, if not tomorrow or Thursday.

22 PRESIDING JUDGE: Very well. Learned counsel, are you
23 satisfied with that undertaking.

24 MR JORDASH: Yes.

10:21:39 25 MR TAKU: Yes, My Lord.

26 PRESIDING JUDGE: Right. Outstanding motions before the
27 Chambers.

28 MR HARRISON: I am sorry to interrupt.

29 PRESIDING JUDGE: That is okay. Fine.

1 MR HARRISON: Under the heading of witnesses, I thought
2 there might be one further piece of information which the
3 Prosecution ought to convey. That information is this; the
4 Prosecution wishes to advise Defence counsel and the Court that
10: 22: 08 5 the Prosecution does not expect to call in this session TF1-356
6 or TF1-143. Neither of those witnesses will be called in this
7 session.

8 PRESIDING JUDGE: Thank you. Learned counsel will please
9 make note of that.

10: 22: 41 10 Pending before this Chamber are the following motions:
11 Accused Gbao and Sesay, joint defence application for the
12 exclusion of testimony of witness TF1-141. The motion was filed
13 jointly on 17th May this year. A response was received from the
14 Prosecution on 27th May 2005, and a rely was filed on
10: 23: 12 15 1st June 2005. I am advised that the motion is under
16 deliberation.

17 The second motion pending before this Chamber, it is a
18 joint defence motion requesting conformity of procedural practice
19 for taking witness statements. The motion was filed jointly by
10: 23: 38 20 the Defence for the first and third accused on 21st June 2005.
21 And a response by the Prosecution was filed on 1st July 2005. A
22 reply by the Defence, if any, is pending.

23 In addition, on 29th June and 1st July, the Defence for the
24 first accused filed defence submissions of statements of
10: 24: 06 25 Prosecution witnesses called in July 2004 with inconsistent
26 statements marked. Can we shed some light on that?

27 MR JORDASH: Well, it is correct.

28 PRESIDING JUDGE: It is correct.

29 MR JORDASH: It is pursuant to Your Honours' order on the

1 CDF trial exhibits.

2 PRESIDING JUDGE: Right. Thanks. So there is no
3 complication about that?

4 MR JORDASH: I don't think so.

10:24:35 5 PRESIDING JUDGE: At this stage.

6 MR JORDASH: Not yet.

7 MR CAMMEGH: Your Honour, can I raise a logistical matter
8 in relation to that that strikes me as quite sensible?

9 PRESIDING JUDGE: Trial logistics or any other matter?

10:24:45 10 MR CAMMEGH: It --

11 PRESIDING JUDGE: It fits into the scheme of trial
12 logistics?

13 MR CAMMEGH: Well, it does, yes.

14 PRESIDING JUDGE: Okay.

10:24:54 15 MR CAMMEGH: But it has direct bearing on Mr Jordash's
16 submission of the inconsistencies. I know that the case manager
17 for the Prosecution, Mr Wallbridge, has already been extremely
18 helpful to us by serving a disk on which all the exhibits in this
19 case have been placed. In relation to complying with the CDF's
10:25:22 20 trial's order that we should file inconsistencies, it would be
21 very, very helpful - I don't know if it will be possible - but it
22 would be very helpful if it were that the Prosecution could
23 similarly serve a disk containing the statements of witnesses
24 called thus far. The logistics of that being self-explanatory.
10:25:42 25 It is very difficult and expensive to take witness bundles back
26 and forth from London to here.

27 PRESIDING JUDGE: Yes.

28 MR CAMMEGH: If we had it on disks - and I am only asking
29 of course for witnesses who have been called in the trial not the

1 whole bundle by any means - but if we had a disk, it would make
2 matters much more efficient or enable things to be much more
3 efficiently handled - I wonder if that is something the OTP could
4 put their minds to. I think it would be of great assistance to
10:26:08 5 everybody.

6 PRESIDING JUDGE: Right. Thanks.

7 MR CAMMEGH: It is not urgent, but it is something I would
8 ask them to consider.

9 PRESIDING JUDGE: Yes, it is something to ponder upon.

10:26:13 10 MR CAMMEGH: Yes.

11 PRESIDING JUDGE: Mr Harrison, your response?

12 MR HARRISON: Yes, we will look into that.

13 PRESIDING JUDGE: Your tentative response.

14 MR HARRISON: We will look into that and try to determine
10:26:23 15 and give some advice to Defence counsel as soon as we can.

16 PRESIDING JUDGE: Right. Thanks. I am also advised that
17 there are no matters in respect of this trial, no motions pending
18 before the Appeals Chamber. The last item is any other matters.
19 Does the Prosecution have anything to say --

10:26:47 20 MR HARRISON: No, thank you.

21 PRESIDING JUDGE: -- for the purpose of this status
22 conference? Anything further? Thanks. Learned counsel for the
23 Defence, Mr Jordash?

24 MR JORDASH: No, thank you.

10:26:56 25 PRESIDING JUDGE: Learned counsel, Mr Taku?

26 MR TAKU: Yes, My Lord. We just wanted to find out if at
27 this point in time the Prosecutor has made up its mind to drop
28 any of the 103 witnesses? If he has made up his mind he can
29 inform us.

1 PRESIDING JUDGE: Yes. Well, counsel, at some point in
2 time you will communicate your response?

3 MR HARRISON: Yes, we will.

4 PRESIDING JUDGE: I don't want to put you under any
10:27:23 5 pressure here on this point.

6 MR HARRISON: We will try to convey some information to you
7 as soon as we can and it may be possible to convey that
8 information prior to the end of this session. But as of this
9 moment I am not able to tell you.

10:27:37 10 PRESIDING JUDGE: Right. Okay.

11 MR CAMMEGH: Just one thing from me, Your Honour. It is a
12 little far off, but forward planning is always sensible. We
13 would be very grateful if the Court could indicate as early as
14 they can whether or not the RUF trial is likely to be sitting in
10:27:55 15 January of next year. I understand that the CDF case may well be
16 approaching completion. I am not quite sure what the position
17 is. But certainly, as far as one's professional diary is
18 concerned, the earlier we know whether we have to be here in
19 January of next year the better it will be.

10:28:13 20 PRESIDING JUDGE: The Chamber is very sensitive to that and
21 I understand that discussions are on-going to make sure that we
22 come out with some indication as soon as possible.

23 MR CAMMEGH: We are most grateful for that.

24 PRESIDING JUDGE: Right. Yes, Counsel.

10:28:29 25 MR TAKU: Yes, Your Honour. We very respectfully suggest
26 that in making a determination, Your Honours also take into
27 consideration we will be here up to December, sometime in
28 December.

29 PRESIDING JUDGE: Yes. Well, as I say, we will factor all

1 the possible parameters into this complicated exercise and
2 certainly come out with the most agreeable and fair solution.
3 Yes, quite.

4 MR JORDASH: On the same subject, may I be so bold as to
10:29:00 5 ask Your Honours to consider consulting with counsel who come
6 from overseas? If there are two choices I would certainly
7 appreciate being able to put my views across as to which I would
8 prefer.

9 PRESIDING JUDGE: You are not being presumptuous. We think
10:29:20 10 it is absolutely necessary. I mean, we do not have any kind of
11 rigid, ritualistic response to that. I mean, it is for the
12 interest of all the parties, including ourselves, as the ones who
13 virtually facilitate the judicial process. So we certainly
14 will -- you can communicate to our Chamber legal advisors your
10:29:51 15 own input and we certainly are very flexible on this.

16 MR JORDASH: Thank you.

17 PRESIDING JUDGE: Right. Anything else? Well, if there is
18 nothing else, I am minded now to bring this status conference to
19 a close and to say have a restful, if you can, rest of the day.

10:30:07 20 [Whereupon the Status Conference adjourned at
21 10.27 a.m.]

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