

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

WEDNESDAY, 27 JULY 2005
9.48 A.M.
TRIAL

TRIAL CHAMBER I

Before the Judges:	Pierre Boutet, Presiding Bankole Thompson Benjamin Mutanga Itoe
For Chambers:	Ms Candice Welsch Mr Matteo Crippa
For the Registry:	Ms Maureen Edmonds
For the Prosecution:	Mr Peter Harrison Mr Christopher Santora Mr Mark Wallbridge(Case Manager)
For the Principal Defender:	No appearances
For the accused Issa Sesay:	Mr Wayne Jordash Ms Sareta Ashraph Ms Elizabeth Shackelford Ms Ellen Rogers
For the accused Morris Kallon:	Mr Shekou Touray Mr Melron Nicol-Wilson
For the accused Augustine Gbao:	Mr Andreas O'Shea Mr John Cammegh

1 [RUF27JUL05A - EKD]
2 Wednesday, 27 July 2005
3 [The accused Sesay and Kallon present]
4 [The accused Gbao not present]
09:32:28 5 [Open session]
6 [Upon commencing at 9.48 a.m.]
7 JUDGE THOMPSON: Will the experts adjust the technology so
8 that we return to open session if we are not already in open
9 session?
09:54:14 10 MS EDMONDS: We are in open session at the moment.
11 JUDGE THOMPSON: Thank you. Mr O'Shea, we are advised that
12 you have an application to make.
13 MR O'SHEA: Your Honour, thank you very much. Not so much
14 an application. In the jurisdiction that I come from, I am under
09:54:36 15 an ethical obligation to draw to the attention of the Court
16 authorities not only that are in my favour but also those which
17 are against me in relation to matters which are pending before
18 the Court. I have personal knowledge of a decision which
19 arguably is against me, which I say is distinguishable, which I
09:54:59 20 believe I should draw to Your Honours' attention. Your Honours
21 will be aware that there is a pending application before this
22 Court on the signing of witness statements.
23 PRESIDING JUDGE: We are aware. Are you talking of the
24 decision from Rwanda?
09:55:14 25 MR O'SHEA: Rwamakuba.
26 PRESIDING JUDGE: Yes.
27 MR O'SHEA: Yes.
28 PRESIDING JUDGE: End of last week?
29 MR O'SHEA: Yes.

1 PRESIDING JUDGE: We are familiar with it.

2 MR O'SHEA: I am very grateful, Your Honour.

3 PRESIDING JUDGE: And we know you were involved in that
4 case as well.

09:55:28 5 MR O'SHEA: Which places the special obligation on me, I
6 think. I would just like to say very briefly that on its face
7 this decision is against us. We do however say it is
8 distinguishable on the basis that the Court itself distinguishes
9 between the concept of a will-say statement and the concept of a
09:55:47 10 witness statement disclosed under Rule 66 and believes that there
11 is a different way of looking at those two documents. Thank you.

12 JUDGE THOMPSON: Thank you. Mr Jordash?

13 MR JORDASH: I don't take exactly the same position as
14 Mr O'Shea, because I don't submit that the authority is against
09:56:10 15 us at all. Because the motion which we seek to argue is one in
16 which we seek the -- a certain type of statement to be signed.
17 We haven't sought in that motion for the latter statement to be
18 signed; we have simply sought statements which are intended to be
19 possibly used as evidence. I would submit that that decision
09:56:42 20 does not necessarily go against us. I don't think I have been
21 terribly clear. But the distinction I would make --

22 PRESIDING JUDGE: I'm not sure you're even clearer this
23 morning, I must say. Your qualification of statements to be used
24 in evidence, I am not sure what you really mean by this at this
09:57:02 25 stage. Because you are trying to make a difference between
26 will-say and in your statements that may be used in evidence
27 presumably as inconsistent statements. Is this what you mean?

28 MR JORDASH: The will-say statement, which as I understand
29 the decision, and I have only looked at it briefly, the decision

1 appears to say that will-say statements do not have to be signed.
2 What I would respectfully submit is that what is analogous to the
3 will-say statements in this case is the proofing notes which the
4 Prosecution produce in relation to each witness. What the
09:57:39 5 Defence is seeking is in fact the statements which a witness
6 understands might be used in evidence to be signed. That is the
7 distinction I would draw. I hope that is a bit clearer.

8 PRESIDING JUDGE: Yes, it is.

9 MR JORDASH: Thank you.

09:57:57 10 MR O'SHEA: Your Honours, I can confirm that in terms of
11 the way the argument proceeded in the Rwanda tribunal, I think it
12 is correct that the analogy would be with the proofing notes.

13 JUDGE THOMPSON: We will proceed with the
14 examination-in-chief of the witness.

09:58:27 15 MR HARRISON: If I could just indicate this will be the
16 41st witness called in this trial. The witness will be
17 testifying in Krio and the number of the witness is TF1-036.
18 This will be a matter where the Prosecution is making an
19 application for closed session. Just prior to doing that, if I
09:58:55 20 could just remind the Court that from yesterday there was
21 somewhat of a concern about the legibility of the final exhibit.
22 I think it is to Mr Touray's satisfaction, the copy that was
23 kindly distributed by Court Management and has been entered as an
24 exhibit. But I will let Mr Touray confirm that he is satisfied
09:59:16 25 with the quality.

26 MR NICOL-WILSON: Yes, Your Honour, we are satisfied with
27 the copy.

28 JUDGE THOMPSON: So what we have in evidence is the legible
29 copy?

1 MR NICOL-WILSON: Yes.

2 MR HARRISON: And one final matter from yesterday. If I
3 could just remind the Court that during the questioning by
4 Mr Touray in the morning he made a request of the Prosecution to
09:59:41 5 review certain documents. We indicated in court that the
6 Prosecution was stipulating to the assertion sought and at the
7 same time, or shortly after Mr Touray's application or request of
8 the Prosecution, Mr Cammegh made one as well. The Prosecution
9 indicated to Mr Cammegh we would also make the stipulation. I
10:00:01 10 don't think it is necessary for me to state the particular name
11 of this witness; it may not be of the best interests of the
12 Defence for me to state the name. But the stipulation sought by
13 Mr Cammegh that the name does not exist in either Exhibit 35 or
14 Exhibit 36 is accepted by the Prosecution.

10:00:27 15 JUDGE THOMPSON: The record will reflect that. There are
16 no brief responses on that? No.

17 MR HARRISON: It is at this time the Prosecution would ask
18 that the Court enter into a closed session so the application
19 could be made for the entirety of this witness's testimony to be
10:00:48 20 heard in closed session.

21 JUDGE THOMPSON: So that we are able to advise members of
22 the public, could we have a rough estimate as to how long they
23 would need to be kept out of this proceeding?

24 MR HARRISON: The Prosecution hopes to conclude the
10:01:04 25 examination-in-chief by noon tomorrow. My best estimate right
26 now is that it would be unwise for the public to come back before
27 2.30 on Friday, if they come back on Friday at all.

28 PRESIDING JUDGE: I would say it is a very optimistic view,
29 but I think a fair view would be on Monday rather than Friday.

1 JUDGE THOMPSON: Yes. Members of the public have already
2 left.

3 MR HARRISON: If it is of any assistance, the next
4 witness -- even if we have to juggle the order, the next witness
10:01:45 5 will not be in closed session.

6 JUDGE THOMPSON: Right. That's TF1-133, thanks. Can we
7 now have the technology adjusted so that we go into closed
8 session to hear the application on behalf of the Prosecution.

9 [At this point in the proceedings, a portion of the
10 transcript, pages 7 to 58, was extracted and sealed under
11 separate cover, as the session was heard in camera.]

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WITNESSES FOR THE PROSECUTION:

WITNESS: TF1-036 20

EXAMINED BY MR HARRISON 20