

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO.: SCSL-04-15-T
TRIAL CHAMBER I

THE PROSECUTOR
OF THE SPECIAL COURT
v.
ISSA HASSAN SESAY
MORRIS KALLON
AUGUSTINE GBAO

THURSDAY, 29 JULY 2003
9.43 A.M.
CONTINUED TRIAL

Before the Judges:

Benjamin Mutanga Itoe, Presiding
Bankole Thompson
Pierre Boutet

For Chambers:

Mr. Matteo Crippa
Ms. Candince Welsch

For the Registry:

Mr. Geoff Walker

For the Prosecution:

Ms. Lesley Taylor
Ms. Boi-Tia Stevens
Mr. Alieu Iscandari
Mr. Bobby Gboyor (Case Manager)

For the Principal Defender:

Ms. Haddijatou Kah-Jallow

For the Accused Issa Hassan Sesay :

Mr. Wayne Jordash
Ms. Sareta Ashraph
Mr. Azeem Suterwalla (Intern)

For the Accused Morris Kallon :

Mr. Raymond Brown
Mr. Melron Nicol-Wilson
Lauren Anselowitz (Intern)

For the Accused Augustine Gbao:

Mr. Andreas O'Shea

Court Reporters:

Ms. Roni Kerekes.
Ms. Susan G. Humphries
Mr. Momodou Jallow

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WITNESS/ES

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WITNESS FRANCIS PAUL WRIGHT

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1 Thursday, 29 July 2004
2 [The Accused Sesay and Kallon entered court]
3 [The Accused Gbao not present]
4 [The witness entered court]
5 [Open session]
6 [Upon commencing at 9.43. a.m.]
7 MR. PRESIDENT:
8 The session is open. Mr. Jordash, you may proceed with the cross-examination of this witness.
9 MR. JORDASH:
10 Your Honour, thank you.
11 [WITNESS TF1-253 CONTINUES]
12 [The witness answered through interpretation]
13 CROSS-EXAMINED BY MR. JORDASH:
14 MR. JORDASH:
15 Q. I've just got a few questions for you, Mr. Witness. Hopefully it won't take long. You were captured by
16 rebels in Makambisa; is that correct?
17 MR. PRESIDENT:
18 Please ask the question, again, please.
19 MR. JORDASH:
20 Q. You were captured by rebels in Makambisa; is that correct?
21 A. [No response]
22 Q. Can you hear me, Mr. Witness?
23 THE INTERPRETER:
24 My Lord, I think there is a problem with the microphone. I think there is a problem with the
25 microphone of the witness.
26 JUDGE BOUTET:
27 Can you check?
28 MR. PRESIDENT:
29 Can the technicians check the microphone of the witness, please?
30 JUDGE BOUTET:
31 It may not be the microphone, it may be his earphones. He may not have the right ones. Check to make
32 sure that it is the right one.
33 MR. PRESIDENT:
34 Is that all right now?
35 THE INTERPRETER:
36 Yes, it is, My Lord.
37

1 MR. PRESIDENT:

2 Yes, Mr. Jordash.

3 MR. JORDASH:

4 Thank you.

5 Q. Mr. Witness, I've got a few questions for you and hopefully it won't take long.

6 MR. PRESIDENT:

7 Hope they remain few, Mr. Jordash.

8 MR. JORDASH:

9 I think they will.

10 MR. PRESIDENT:

11 Okay, go ahead.

12 MR. ISCANDARI:

13 Your Honours, before we continue, I just observed someone peeping through the curtains up there,
14 and that gives a direct view of the witness. Would the Court be able to check on that?

15 JUDGE BOUTET:

16 This is our chambers.

17 MR. PRESIDENT:

18 Yeah, there must be some cleaners, you know, who may be peeping inside here. It is not right for
19 them to peep inside here.

20

21 Mr. Iscandari, thank you for the vigilance, because the witnesses are supposed to be protected, you
22 know, from all persons.

23

24 Mr. Jordash, I think things are in order now. You may proceed, please.

25 MR. JORDASH:

26 Thank you.

27 Q. You were first captured by rebels in Makambisa; is that correct?

28 A. Yes, it is true.

29 Q. And the rebels who caught you were wearing some civilian clothes, some combat shirts; is that
30 correct?

31 A. Yes, it is true.

32 Q. Some had some type of clothe wrapped around their heads?

33 A. Yes, it is true.

34 Q. After being captured in Makambisa the next place you were taken to is Manarma -- was Manarma; is
35 that correct?

36 A. Yes, it is true.

37 Q. Before you were taken to Manarma, one of the rebels told you or said that they were the men of

- 1 Superman; is that correct?
- 2 A. Yes, that was what they told me.
- 3 Q. Now, you didn't know of Superman until that time; is that correct?
- 4 A. Yes, that's correct.
- 5 Q. And was it at this stage that the rebels also said that they were the men of Superman, and that they
- 6 came from Lunsar?
- 7 A. Yes.
- 8 Q. At any stage in Makambisa or Manarma, did you learn anything else about where the men of
- 9 Superman were operating?
- 10 A. No, I did not know. It was during that very day that they captured me that they told me that they were
- 11 the men of Superman.
- 12 Q. Did you hear anything during your time with the rebels about the men of Superman being also in the
- 13 area of Makeni?
- 14 A. That is before I was captured.
- 15 Q. What did you hear before you were captured about Makeni?
- 16 A. Those that are fleeing from Makeni and Lunsar who came to me -- who came to us told us about
- 17 Superman's men.
- 18 Q. And about Superman's men operating around the Makeni area; is that correct?
- 19 A. Those that fled from Makeni, they told us that some of Superman's men were in Makeni and that he
- 20 was stationed in Lunsar.
- 21 Q. Thank you. And did you hear anything about Superman's men being in the Kambia District during
- 22 that time?
- 23 A. Well, when people were fleeing from different parts and coming to us, those who came from Kambia,
- 24 the part of Kambia, did not come to us any more.
- 25 Q. What about parts -- people from parts of Koinadugu, did you hear anything about them running from
- 26 Superman's men?
- 27 A. Well, I cannot tell, because it is a little bit far because those from Makeni and those from Lunsar were
- 28 the ones that informed us about Superman and his gang.
- 29 Q. Thank you. Now, the commanders under Superman were Colonel Sesay and Colonel Johnson; is
- 30 that correct?
- 31 A. I would not know. I would not know because I don't know whether Colonel Sesay was a subordinate
- 32 of Issa -- I mean Superman.
- 33 Q. But certainly Colonel Sesay and Colonel Johnson were playing commanding roles in the rebel group
- 34 that captured you?
- 35 JUDGE BOUTET:
- 36 Mr. Jordash, I may be wrong in this, but it is not my recollection that in the evidence yesterday we
- 37 heard that Johnson was a colonel, as such. Yes, Sesay, that was clear, but I have no recollection that

1 Johnson had been given that rank. You may have that in your notes, but this is not my recollection.
2 But, as I say, I have not checked the record, I'm just going by my own recollection this morning on
3 this.

4 MR. JORDASH:

5 I think Your Honour is absolutely right, and I apologise for that.

6 Q. Just dealing with Colonel Sesay for the moment. Colonel Sesay was playing a commanding role in
7 the rebel group that captured you; is that correct?

8 A. Yes, it is true. Yes, he told me that he was Colonel Sesay.

9 Q. And Johnson, who we heard about yesterday, he was playing a commanding role too; is that correct?

10 A. Yes, they told me that he was one of the bosses.

11 Q. Did you hear that Johnson's first name or part of his name was Junior, Junior Johnson? Did you ever
12 hear that?

13 A. Well, the name that they showed me was the one that I knew.

14 Q. Okay, thank you. Did you hear about a man called Gibril Massaquoi working with Superman in the
15 Lunsar area during your time with the rebels?

16 MR. PRESIDENT:

17 Mr. Jordash, the name of a man called?

18 MR. JORDASH:

19 Gibril Massaquoi.

20 MR. PRESIDENT:

21 Gibril Massaquoi.

22 A. During that time I did not hear about this name. The names that I knew about were those that I gave
23 you.

24 MR. JORDASH:

25 Q. Okay. Thank you. From what you heard about the rebels in the villages around Manarma, were they
26 under the control of Superman?

27 A. I did not see Superman there and all they told me was they came from him. Those that were there
28 were Colonel Sesay and --

29 Q. Whilst you were with the rebels in Makambisa and Manarma, there were other villages in the
30 surrounding areas that were being attacked by rebels, is that correct, from what you heard?

31 A. Yes, it is true.

32 Q. For example, Masemoi.

33 A. That was what I told you. I told you that all the surrounding villages were attacked by the rebels.

34 Q. From what you heard, these were rebels from the same group; is that correct?

35 A. Say it again.

36 Q. From what you heard about the rebels attacking the surrounding villages, were they from the same
37 group as the rebels who captured you?

1 A. Well, those that captured me they told me that they were the rebels, so it is a little bit difficult for me to
2 know the difference.

3 MR. JORDASH:

4 Thank you very much. I've nothing further.

5 MR. PRESIDENT:

6 Thank you, Mr. Jordash.

7

8 Mr. Brown.

9 MR. BROWN:

10 Thank you, Your Honour.

11 CROSS-EXAMINED BY MR. BROWN:

12 MR. BROWN:

13 Q. Mr. Witness, I have just a couple of questions about Makambisa.

14 A. Okay. Ask me the questions.

15 Q. You described to the Court yesterday that you were near the outskirts of Makambisa when you saw
16 men with guns; is that correct?

17 A. Say it again.

18 Q. You were at the outskirts of Makambisa with your brothers when you saw men with guns; is that
19 correct?

20 A. It is not after the town. It is when we were coming towards the town. That was the area where I was
21 captured.

22 MR. PRESIDENT:

23 Mr. Brown, change the word "outskirts".

24 MR. BROWN:

25 This may be an interpretation question because I did write that word down yesterday.

26 MR. PRESIDENT:

27 Yes, just rephrase it.

28 JUDGE BOUTET:

29 Yes. I remember that word was used yesterday, at least I heard from translation yesterday that the
30 witness would have said "outskirts" at some give town, whether it was this town or not.

31 MR. BROWN:

32 But going back the other way it my not be translated the same way.

33 JUDGE BOUTET:

34 True.

35 MR. BROWN:

36 Q. What word would you use to describe the place where you saw the men with guns?

37 A. When we were coming towards the town?

1 Q. Yes.

2 A. When you say, "on the outskirts of the town," maybe the town would be around where that table is. If
3 the bush is where I am sitting here, that is what is referred to as the outskirts of the town.

4 Q. And that is the place at which you first saw the men with the guns when you were with your brothers?

5 A. Yes. They came to right in front of me.

6 Q. And that is the place where they took your cigarettes, your diamonds, your other goods from you?

7 MR. ISCANDARI:

8 Objection. It misstates the testimony.

9 MR. BROWN:

10 Your Honour, I think this is fair cross-examination.

11 MR. ISCANDARI:

12 I don't recall this witness testifying to diamonds.

13 JUDGE BOUTET:

14 My recollection is the same. I have no recollection of diamonds.

15 MR. PRESIDENT:

16 No recollection of diamonds, Mr. Brown.

17 MR. BROWN:

18 May I ask the witness directly?

19 Q. Yesterday, did you not say that among the goods you had when you collected your things with your
20 brothers were cigarettes and diamonds?

21 JUDGE THOMPSON:

22 Diamints, D-I-A-M-I-N-T-S, not diamonds.

23 MR. BROWN:

24 I'm at a loss. What is a Diamint?

25 JUDGE THOMPSON:

26 Diamint is like -- go ahead. It is Diamint, D-I-A-M-I-N-T.

27 MR. PRESIDENT:

28 Let him answer Mr. Brown's question. Did he talk of diamonds?

29 A. Diamond is not one of the articles.

30 JUDGE THOMPSON:

31 I have Diamints.

32 A. If I had diamonds, I would have told you that I had diamonds, but I told you that I had Diamints,
33 cigarettes, and other things.

34 MR. BROWN:

35 It is my fault. It is a homonym in English, almost.

36 Q. This is the place where your goods were taken from you; yes?

37 A. Yes, that was the place where they took all my things that I talked about yesterday.

- 1 Q. And that was also the place where you were tied up and members of your family were killed?
- 2 A. The place where they were sitting was the very area where they tied me up and they killed members
3 of my family.
- 4 Q. You mentioned in your testimony that one man -- or that a man was smoking kthi and he put that kthi
5 cigarette out on your leg?
- 6 A. Yes, that's true. I have the scar.
- 7 Q. Kthi is a drug?
- 8 A. Yes. Yes, if you smoke -- when you smoke it, you become intoxicated.
- 9 Q. Was this man who put the kthi cigarette out on your thigh the only one in this group who was smoking
10 kthi?
- 11 A. There were so many, so I cannot tell. But he, who did the act to me, was the only one that I was able
12 to identify.
- 13 Q. So it is hard for to you say whether there were others or just this one smoking kthi?
- 14 A. Yes, that is true because I was not able to go wherever they said.
- 15 Q. Now, when these men approached you, did it appear that one man was in charge, one man was the
16 leader?
- 17 A. During that time when I was captured, nobody told me that this was the head.
- 18 Q. Was there one man who seemed to tell the others what to do?
- 19 A. Well, for me I did not hear -- well, nobody -- during the time when I was captured, nobody told me that
20 this was the head, but the only thing was if they brought somebody, they would just kill him or her.
- 21 Q. How long did this time last from when you first saw the men until you began to move towards
22 Manarma?
- 23 A. When I was tied, roughly it would be something like three hours.
- 24 Q. And to the best of your recollection, you can't tell whether there was one man who was the leader of
25 this group or whether they were just acting without a leader?
- 26 A. It was a little bit difficult to say that this was the head, because they would not give the command to
27 kill my two brothers, it was not the same individual who gave the command to kill my younger sister.
28 So when two or more people are talking, it is very difficult to identify or single out one individual as the
29 head.
- 30
- 31 When I reached at Manarma, that was the area where I knew there was one individual that was
32 identified as the head.
- 33 Q. And how could you tell that he was the head when you got to Manarma?
- 34 A. Well, when they wanted to kill me and he came and told them, "No, don't kill this man," and no sooner
35 he said it, then they stopped. He said, "Don't kill this one any more." And that was the time that I
36 knew that he was the head.
- 37 Q. When you were at Makambisa, did anyone ever tell any of the men not to kill your relatives?

1 A. No, no, no, no, that was the reason why in fact there was a lot of massacre.

2 Q. Did anyone tell the man who was smoking kthi not to burn you with the cigarette?

3 A. No, no, no, nobody. Nobody said so.

4 Q. Did anyone tell this man not to smoke kthi?

5 A. No, I did not say anybody said that.

6 Q. When this group arrived with you back at Manarma, did you see anyone smoking kthi there?

7 A. Well, I was not able to identify anybody who smoked kthi.

8 MR. BROWN:

9 Your Honour, I have no further questions.

10 MR. PRESIDENT:

11 Yes, Mr. Cammegh. Oh, I'm sorry, Mr. O'Shea. We missed you yesterday.

12 MR. O'SHEA:

13 Thank you, Your Honour, I'm flattered. I've heard a rumour from the public gallery that Mr. Cammegh
14 and I are twins so that might explain it.

15

16 I have no questions for this witness, Your Honour.

17 MR. PRESIDENT:

18 Right. Thank you. Any re-examination?

19 MR. ISCANDARI:

20 Your Honour, the Prosecution would not have any re-direct.

21 MR. PRESIDENT:

22 All right. I think we can release the witness.

23 JUDGE BOUTET:

24 I just want to thank the witness and tell him that it is finished. Mr. Witness, we thank you and your
25 evidence is finished.

26 THE WITNESS:

27 Okay.

28 JUDGE BOUTET:

29 Just wait.

30 MR. PRESIDENT:

31 But in the course of the proceedings it might become necessary, it might, become necessary for you
32 to come back. We don't know yet, okay? It is finished now, but it might be necessary in due course
33 for you to come back here. We're not saying you will, but it may, you understand?

34 THE WITNESS:

35 Okay, no problem. Okay. I thank you very much the interpreter because you know how to interpret
36 well. So the fact that you interpreted for me up to this point, I say thanks to you. Okay. There is no
37 problem.

1 MR. PRESIDENT:

2 Thank you. Thank you for thanking the interpreter. Thank you.

3 [The witness withdrew]

4 MR. PRESIDENT:

5 Learned counsel for the Prosecution, may we have the next witness, please?

6 MS. TAYLOR:

7 Yes, Your Honour, the next witness is TF1-235. I have an application to make in respect.

8 MR. PRESIDENT:

9 TF1?

10 MS. TAYLOR:

11 235.

12 MR. PRESIDENT:

13 235. Yes, go on Ms. Taylor.

14 MS. TAYLOR:

15 Thank you, Your Honour. The witness we have just been told is almost at the court site and should be
16 here in the next five minutes. However, I have an application to make in respect of that witness and
17 that is that this witness be heard in closed session. And I also ask, pursuant to Rule 75(B)(ii) that
18 gives Your Honours the power to hold an in camera proceeding, to determine whether you will order a
19 closed proceeding pursuant to Rule 79. The reason being, that if I explain the reasons why the
20 Prosecution now asks that this witness be heard in closed session, it will defeat the point of having the
21 witness in closed session.

22 [Trial Chamber confer]

23 JUDGE THOMPSON:

24 Learned counsel for the Prosecution, which particular section or subsection are you relying on in Rule
25 79(B)?

26 MS. TAYLOR:

27 No, 75(B).

28 JUDGE THOMPSON:

29 75(B), which section?

30 MS. TAYLOR:

31 Subparagraph two says, "A Judge or Chamber may hold an in camera proceeding to determine
32 whether to order" closed sessions, in accordance with Rule 79.

33 JUDGE THOMPSON:

34 And your submission is that if you give us some outline of the reasons, you might, in fact, defeat the
35 purpose of the application?

36 MS. TAYLOR:

37 That is correct, yes.

1 MR. PRESIDENT:

2 Even if you did that peripherally.

3 MS. TAYLOR:

4 It is very difficult to do it peripherally, Your Honours, there is really quite some concern with this
5 witness, and it is almost impossible to explain the reasons why the Prosecution asks for this witness
6 to be heard in closed session in open session.

7 JUDGE THOMPSON:

8 In other words, this is information in your possession which you do not want the press to participate
9 in?

10 MS. TAYLOR:

11 The press or the public, because if I explain the basis of the application in public, it is believed that
12 that will lead to the identification of the witness.

13 JUDGE THOMPSON:

14 Speaking for myself, perhaps one solution would be that the judges and counsel on both sides go into
15 chambers and hear the reason, because it would be difficult for me -- I'm speaking for myself -- to
16 want to grant an application in respect of which I don't know the grounds and the reasons why we
17 need to consider whether we should grant it or not because I do know what my learned brothers think,
18 but I would definitely want to be privy to the grounds in support of the application before I make up my
19 mind.

20 MS. TAYLOR:

21 Is that the application to hear the application in camera or the application --

22 JUDGE THOMPSON:

23 Yes, that's the point I'm saying. I'm, in fact, saying that one viable option, from my perspective, would
24 be to have an in chamber conference with both sides just to hear whether we should, in fact, grant the
25 application to hold in camera or closed sessions.

26 MS. TAYLOR:

27 Your Honour, I don't know if I'm misunderstanding you. The Prosecution wishes to make an
28 application under Rule 79 to hear this witness in closed session, and pursuant to Rule 75(B)(ii), I'm
29 now applying for Your Honours to hear that application in camera so that the argument that this
30 Chamber may have in respect of whether to hold this witness in closed session, be heard in camera.

31 JUDGE THOMPSON:

32 In other words, there are the two levels here?

33 MS. TAYLOR:

34 That's correct.

35 MR. PRESIDENT:

36 One, the application to be heard in camera for the witness to give evidence in closed session?
37

1 MS. TAYLOR:

2 That is correct.

3 JUDGE THOMPSON:

4 So that is, in fact, what I'm saying. But you're suggesting to us that you cannot, at this stage, since
5 we're in public session, in fact, give us the reasons for that.

6 MS. TAYLOR:

7 That's correct.

8 JUDGE THOMPSON:

9 And it seems as if we're on the same wavelength. I would like to hear the reasons in camera.

10 MS. TAYLOR:

11 Yes, Your Honour.

12 JUDGE BOUTET:

13 This application, just for clear understanding, has to do with measures of protection for the witness?

14 MS. TAYLOR:

15 It has to do with reasons -- it has to do with the basis upon which the Prosecution make an application
16 to hear this witness in closed session, which has to do with the identification of the witness.

17 JUDGE THOMPSON:

18 My own position is simply that I think the option would be to hear the reasons in camera.

19 MS. TAYLOR:

20 Yes, that's what I'm asking for.

21 JUDGE THOMPSON:

22 Or in chambers, otherwise I would not be able to make up my mind as to whether to grant the
23 application or not.

24 MS. TAYLOR:

25 That's correct. I'm asking whether it is done here in camera or done in your chambers in camera.

26 The effect is the same.

27 JUDGE THOMPSON:

28 I'm indifferent.

29 MR. PRESIDENT:

30 I can see Mr. O'Shea pushing Mr. Brown to the warfront. I hope you have given him enough
31 ammunition.

32 MR. BROWN:

33 I was thinking more of a flak jacket, Your Honour.

34 MR. PRESIDENT:

35 Right. Go ahead.

36 MR. BROWN:

37 Your Honour, I do not know the basis of -- the factual basis of my learned friend's application; I know

1 no more than the Court. I would, however, actually agree that a 75(B)(ii) hearing should be heard in
2 camera, but not in chambers because I think the accused have a right to be present at all insignificant
3 stages, and it is hard to know in advance what that would mean. I don't know exactly what the
4 arrangements would be in chambers, but I'm assuming that it would be difficult for all the accused and
5 requisite security to be there. So for that reason, I think that my learned friend's initial request that
6 this hearing -- the preliminary, the first stage, as Judge Bankole Thompson suggested, be heard in
7 camera but in the courtroom so that all --

8 JUDGE THOMPSON:

9 If the arguments are going to be exclusively legal, could not the Court, in its discretion, dispense with
10 the presence of the accused persons since they are ably, legally represented?

11 MR. BROWN:

12 I should like to agree with the latter part of your assertion, but I do not agree that the accused should
13 not be present. They have a right --

14 JUDGE THOMPSON:

15 But the Court has the discretion in matters which are exclusively legal, I mean, that we can say that as
16 long as the accused persons are represented and effectively represented, then, of course, their
17 presence can be dispensed with, and there would be no prejudice to the overall interests of justice.
18 Can the judges take that position?

19 MR. BROWN:

20 I fully understand now why Professor O`Shea urged me into the front lines, for I would not wish to
21 undertake a waiver of any kind or agree with the Court's assertion without significant research. My
22 position at this moment would be that the accused would, barring some extraordinary circumstance
23 that I can't foresee and haven't researched, should be present at every stage, and I think it is
24 important for a number of reasons having to do with the profound nature of these proceedings.

25 JUDGE THOMPSON:

26 But does the jurisprudence support that rigid position that you are taking? In other words, if it does,
27 then the jurisprudence would be saying every time in matters of such nature, the hands of the judges
28 are tied. I would have thought that discretion is given to us so that we can be able to inject some
29 flexibility, albeit judicially, in matters of this nature. But I would not press the point.

30 MR. BROWN:

31 I would certainly think that if my position is rigid now, it is because I've not had time to research. In
32 the absence of research, I would take the rigid position and also say that, certainly there should be
33 some preliminary showing before the Court would exercise --

34 MR. PRESIDENT:

35 I am taking the point *ex abundante cautela*.

36 JUDGE BOUTET:

37 Mr, Brown, do you see any difference between in camera or in chamber and in closed session? And

1 I'm just saying this because 75(B) details with an in camera proceeding to determine if we are to
2 proceed in closed session. Closed session, I don't dispute. If you sit in a closed session, obviously it
3 is a full session and the accused has the right to be present in chambers, and I'm just quoting from
4 the regulations. We're using different terms, obviously for different purposes.

5 MR. BROWN:

6 For this purpose, I would think that the terms are synonymous though they are obviously different and
7 could have different meanings. There certainly are circumstances where -- for example, I had a
8 notion at one point, and might in the future, make application for the Court to do an in camera review
9 of documents in order to determine or dispute that which would be something that would clearly be
10 distinguished from closed session. But for purposes of the current application, where it is for a
11 chance for our learned friend to make legal argument with some factual basis to convince the Court to
12 hold the witness's testimony in closed session, I would think that for that purpose, the two are on all
13 fours.

14 [Trial Chamber confer]

15 JUDGE THOMPSON:

16 Learned counsel on both sides, after brief deliberation, I think it is the opinion of the Bench, perhaps I
17 on this side in favour of flexibility, to hear the application here in closed session.

18 MR. PRESIDENT:

19 But we would like to say that we will retire in chambers for some sessions without the accused, you
20 know, being present. So we wouldn't want it to look like a rule, you know, that it is at all times that
21 accused persons have to be present when, indeed, it is considered that they are so well represented
22 by very competent and experienced counsel who better understand, you know, issues of law than the
23 accused persons, you know, do. To my mind, honestly, it would have made no difference -- I see
24 your point, Mr. Brown, but it would have made no difference whatsoever even if we retired without the
25 accused's presence to take this application in chambers, but this said -- like my learned friend -- my
26 learned colleague, you know, has mentioned, I will remain flexible, but it is not a rule that each time
27 we have to retire to chambers we must retire with the accused present.

28 JUDGE BOUTET:

29 [Overlapping microphones]

30 JUDGE THOMPSON:

31 -- to the times that we have had --

32 MR. BROWN:

33 Your Honour, your microphone is not on.

34 JUDGE THOMPSON:

35 Yes. The learned counsel for the first accused will testify to the fact that the times when we've had
36 such closed sessions or in camera sessions in the absence of the accused.

37

1 MR. BROWN:

2 There is an ancient maxim that I learned early in my career, which is: He who stands well, stands
3 silent.

4 MR. PRESIDENT:

5 All right.

6 JUDGE BOUTET:

7 Mr. O'Shea, before you proceed, maybe we can ask that the curtains be opened anyhow even though
8 we are on a closed session. There are no witnesses being called. They may not hear what we're
9 saying, unless, Madam Prosecutor, you have any objection to that?

10 MS. TAYLOR:

11 None, whatsoever, Your Honour.

12 JUDGE BOUTET:

13 Thank you.

14

15 Mr. O'Shea I was not doing that to preclude you from talking.

16 MR. O'SHEA:

17 I understand that, Your Honour. I don't want to be accused of being a coward later by Mr. Brown, so
18 allow me to just put my little input in. I'm perfectly happy to -- and I think Your Honours are quite right
19 in the course that you're taking. I'm perfectly happy to trust the Prosecution's word at this stage, as to
20 the necessity of the course that they want to take. I would only ask that the Court reserves its position
21 to some extent in that if going through the argument, it appears that it was not really necessary, that
22 the Prosecution repeat the application in open session.

23 MR. PRESIDENT:

24 Repeating the application in open session?

25 MR. O'SHEA:

26 Only in circumstances where -- because, Your Honours, of course, don't know what is going to be
27 said. Only in circumstances where it appears hearing the application, that it wasn't actually necessary
28 that it had to be taken in closed session. I'm sure that is not the case. I have a great deal of trust in
29 my learned friend. I'm just reserving my position, as it were.

30 MR. PRESIDENT:

31 Well, let's wait and see. There is no reason for us to have any mistrust for Ms. Taylor in making this
32 application at all.

33 JUDGE THOMPSON:

34 Learned counsel for the Prosecution, are we sure we are in closed session in terms of the
35 technology?

36 MS. TAYLOR:

37 That was going to be my first question, Your honour. I'm not sure whether we are or not.

1 JUDGE THOMPSON:

2 Yes. We better make sure that the experts guarantee us foolproof closed session arrangements. Are
3 the technicians around?

4 JUDGE BOUTET:

5 Again, Madam Prosecutor, you have, certainly, no objection that we leave the curtains open, because
6 the sound is closed for the public gallery during your arguments or these arguments.

7 MS. TAYLOR:

8 That's fine. I have no difficulty with us being a spectacle. It is only being audible.

9 JUDGE BOUTET:

10 Okay. Thank you.

11
12 Do we know now if it is functioning or not? The speakers have been closed for the public gallery?

13 Thank you.

14 [At this point in the proceedings, a portion of the transcript, pages 15 to 34, was extracted and sealed
15 under a separate cover, as the session was heard in camera]

16 [Pages 1 to 15 by Roni Kerekes]

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1 [On resuming at 11.48 a.m.]

2 [Open session]

3 MR. PRESIDENT:

4 The session will resume and we are resuming in open session. So, let the technicians, please, take
5 the necessary measures for us to be in open session.

6 JUDGE BOUTET:

7 Is the sound established in the public gallery, do we know? It is, Mr. Presiding judge.

8 MR. PRESIDENT:

9 The ruling of the Court will be read by our colleague, Honourable Justice Bankole Thompson.

10 JUDGE THOMPSON:

11 Learned counsel for the Prosecution, learned counsel for the Defence, this is our ruling: The
12 application of the Prosecution is granted. A reasoned written decision will be published in due course.
13 The proceedings will continue in closed session.

14 MR. PRESIDENT:

15 And for the closed session, I -- since we are running slightly out of time between now and 1.00 when
16 we are suppose to start, we would take this witness in closed session at 2.00. So, the session will
17 rise, the Court will rise and we will resume at 2.00 but in closed session, in closed session. So let the
18 gallery be informed that the Court has ordered that the proceedings will have to be conducted in
19 closed session. Thank you. The Court will rise please.

20 [Luncheon recess taken at 11.52 a.m.]

21 [At this point in the proceedings, a portion of the transcript, pages 36 to 37 was extracted and sealed
22 under separate cover, as the session was heard in camera]

23 [Pages 20 to 35 by Susan G. Humphries]

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1 [Open session]

2 MR. PRESIDENT:

3 Are you hearing now? Is it okay? Right, are we switched on to the open session?

4 MR. WALKER:

5 Yes.

6 MR. PRESIDENT:

7 Yes -- well, Mr. Jordash, I think -- Mr. Jordash, can you please at this open session go through what
8 you told us in the closed session, please, preliminarily on the absence of Mr. Sesay?

9 MR. JORDASH:

10 Certainly. As Your Honours have seen, Mr. Sesay is not in court. I spoke to him over the luncheon
11 adjournment on the telephone when he indicated that at that stage he wasn't intending to come to
12 court. I haven't been able to see him over the luncheon adjournment, but from what he has said to
13 me over the phone, he was unhappy about this morning's proceedings and has taken the view that he
14 will absent himself this afternoon. I haven't been able to obtain any further details or even -- any real
15 details as to the source of his unhappiness. The only thing I would add to that is that in no way is he
16 seeking to challenge the legitimacy of the Court. He just accepts that this Court is to try him and
17 accepts that unreservedly, but at this stage I'm not able to clarify in any more detail what is the
18 problem, due to not having had the opportunity to see him. But in no way, as far as he communicated
19 to me, in any way his intended absence means to be any disrespect to the Court. Those are my
20 submissions.

21 MR. PRESIDENT:

22 Thank you.

23
24 Yes, the Prosecution please. Do you have any observations on this, please, the absence of the first
25 Accused?

26 MS. TAYLOR:

27 No, the Prosecution does not wish to be heard on this matter.

28 MR. PRESIDENT:

29 But we would like to have the attitude of the Prosecution to the absence of the first Accused because
30 it impacts on the continuation of the trial.

31 MS. TAYLOR:

32 Well, the position of the Prosecution should be the trial should continue. The first Accused has
33 voluntarily absented himself from the proceedings. He's had the opportunity to come, he is
34 represented by able counsel, and therefore, his interests are protected.

35 MR. PRESIDENT:

36 Yes, Ms. Taylor, we are listening to you. You are through?

37

1 MS. TAYLOR:

2 Yes, Your Honour.

3 MR. PRESIDENT:

4 Okay, thank you.

5

6 We are taken aback by this and as we've always indicated, we intend that these trials should proceed
7 expeditiously and, indeed, it is. One of the rights of the accused person, you know, to ensure that,
8 you know, to make sure that -- or it is our right or rather our statutory duty to make sure that the trial
9 against the accused proceeds expeditiously. And, in his absence, since you are not very sure of what
10 may have happened to him in between the time during the lunch break, the Chamber would like to
11 summon the detention facility to let us know what must have happened to Mr. Sesay. We, of course,
12 do not doubt what you have said, Mr. Jordash, but we would like the detention facility, representative
13 of that facility to appear before us and to explain to us what has really happened, and in this regard,
14 we shall be rising for -- we shall stand down this matter for 15 minutes and shall resume thereafter, as
15 soon as we are sure that somebody from the detention facility is around to explain what has
16 happened. So the Court will rise please.

17 [Break taken at 2.20 p.m.]

18 [On resuming at 2.50 p.m.]

19 MR. PRESIDENT:

20 We are resuming the session and as I said we would like to hear from somebody from the detention
21 facility in order to be sure of what has really happened to the first Accused. I don't know if there is
22 anybody from the detention facility here. Mr. Walker, do you have --

23 MR. WALKER:

24 Yes, Mr. Wright.

25 MR. PRESIDENT:

26 Mr. Wright. All right, can he sit there please.

27 [Witness entered court]

28 [WITNESS: FRANCIS PAUL WRIGHT sworn]

29 MR. PRESIDENT:

30 You can -- Mr. Wright, you can sit down.

31 QUESTIONED BY THE COURT:

32 JUDGE THOMPSON:

33 Please, state your full names for the Court.

34 THE INTERPRETER:

35 My Honours, can the speaker please open his mic. My Honours, can the speaker please open his
36 mic.

37

1 THE WITNESS:

2 Francis Paul Wright.

3 JUDGE THOMPSON:

4 Where do you live?

5 A. At Freetown.

6 Q. What is your occupation?

7 A. I'm a detention centre supervisor.

8 Q. In that capacity, what are your responsibilities?

9 A. I supervise the national staff on the day-to-day running of the detention facility.

10 Q. Do you do anything else?

11 A. Yes, I also manage the day-to-day running of the facility.

12 Q. Do you as -- in that capacity which you have [inaudible] have custody of persons detained in the
13 detention facility of the Special Court?

14 A. I'm sorry --

15 Q. Do you have custody of persons who are detained in the detention of the Special Court?

16 A. Yes, Your Honour.

17 Q. Among those detainees, do you have one Issa Hassan Sesay who is the first Accused in this trial?

18 A. Yes, Your Honour.

19 Q. Do you see him here in court?

20 A. No, Your Honour.

21 Q. Do you know where he is now?

22 A. I do, Your Honour.

23 Q. Please, tell the Court where he is?

24 A. He is currently in the detention facility.

25 Q. Did you warn him to come to court this afternoon?

26 A. I did, Your Honour.

27 Q. What was his response?

28 A. His response was quite simply, "I do not want to go to court this afternoon."

29 Q. From an abundance of caution, did he give you any other reason?

30 A. No, Your Honour.

31 Q. How did he appear to you physically and mentally? Just your opinion.

32 A. Yes. In my opinion, physically he was fine and mentally he was fine; he was very calm and very
33 collected.

34 JUDGE THOMPSON:

35 Thank you.

36 MR. PRESIDENT:

37 Did you, Mr. Wright, make any report on this situation?

1 A. I did, Your Honour, yes.

2 Q. Was it in writing?

3 A. It was, Your Honour. Yes.

4 Q. Can we have it? Is it possible for us to look at it?

5 A. It is, Your Honour, yes.

6 MR. PRESIDENT:

7 Have counsel -- Mr. Jordash, have you seen this.

8 MR. JORDASH:

9 Yes, I have. Thank you very much.

10 MR. PRESIDENT:

11 We would like to receive this in evidence.

12 MR. JORDASH:

13 Certainly.

14 MR. PRESIDENT:

15 This report is admitted in evidence and marked as Exhibit 5. Am I right?

16 MR. WALKER:

17 Correct, Your Honour.

18 [Exhibit No. 5 was admitted]

19 MR. PRESIDENT:

20 Mr. Wright, could you read Exhibit 5 please to the hearing of the Court?

21 MR. WRIGHT:

22 "I, Paul Wright, do hereby certify that Issa Sesay was personally asked by me to state if it was his
23 intention to attend court today, on the 29th day of July 2004. His response was that he would not
24 attend. The comments that are written on the report is when asked to go to court, Mr. Sesay simply
25 said that he did not want to go to court this afternoon."

26 MR. PRESIDENT:

27 All right. Thank you. Mr. Jordash, would you have any questions to put to Mr. Wright?

28 MR. JORDASH:

29 No. Thank you very much.

30 MR. PRESIDENT:

31 Well, I know that he is [inaudible] your client, but out of abundance of caution I don't know if
32 any -- if any of your colleagues, you know, would have any questions, you know, to put to Mr. Wright
33 at this stage.

34 MR. BROWN:

35 I have no questions for Mr. Wright, sir.

36 MR. PRESIDENT:

37 Right.

1 MR. O'SHEA:

2 No, Your Honour, no questions.

3 MR. PRESIDENT:

4 Thank you. Of course, I would imagine that Ms. Taylor wouldn't have any questions. Do you have
5 any questions to put to Mr. Wright?

6 MS. TAYLOR:

7 No, I don't, Your Honour.

8 MR. PRESIDENT:

9 No questions.

10

11 Yes, we would be calling on our learned colleague, Justice Bankole Thompson to give a very short
12 ruling on this -- on this situation, please.

13 [Ruling]

14 JUDGE THOMPSON:

15 This is the ruling of the Court on the issue of the non-attendance of the first Accused at this session:

16

17 Based on the testimony given by Mr. Paul Wright and Exhibit 5, the Bench is of the opinion that there
18 is sufficient evidentiary foundation for invoking the Court's authority under Rule 60 of the Rules of
19 Procedure and Evidence. In our recent ruling on the subject of trial in absentia, entitled: "Ruling on
20 the issue of the absence of Augustine Gbao in Court," we stated the general principles governing the
21 issue of trial in absentia in these terms, at paragraphs 6 of the said ruling, and I quote: "Restating the
22 general principle embodied in Article 17(4)(d), Rule 60 of the Rules of Procedure and Evidence of the
23 Court provides thus: 'An accused may not be tried in his absence unless: (i) the accused has made
24 his initial appearance; has been afforded the right to appear at his own trial, but refuses so to do; or
25 (ii) the accused, having made his initial appearance, is at large and refuses to appear in court. (B) In
26 either case, the Accused may be represented by counsel of his choice, or as directed by a Judge or
27 the Trial Chamber. The matter may be permitted to proceed if the judge or Trial Chamber is satisfied
28 that the accused has expressly or impliedly waived his right to be present."

29

30 We also stated at paragraph 7 and I quote: "In the Chamber's opinion, Rule 60 provides that as a
31 matter of law, the right of an accused person to be tried in his or her presence can be derogated from
32 in two clearly defined circumstances, to wit (i) where he has made his initial appearance and has been
33 afforded the right to appear at his trial but refuses to do so; or (ii) where having made his initial
34 appearance he is at large and refuses to appear in court."

35

36 Guided by these principles, the Bench is satisfied that: (i) The first accused made his initial
37 appearance on the indictment upon which he is charged before this Court, pursuant to Rule 61, on the

1 15th of March 2003; (ii) the first accused did appear on the 5th of July 2004 and subsequent
2 adjournments except on the 26th of July 2004 due to illness; (iii) the first Accused was present in court
3 during the morning session of the 29th of July 2004 when this matter was adjourned to the present
4 afternoon session; (iv) that the first accused was duly notified by Mr. Wright to come to court this
5 afternoon for the purpose of his trial but refused, and did appear to Mr. Wright, to be in good health;
6 and (v) the first accused has waived his right to be present at his trial, and this Court has no option but
7 to permit the joint trial of all the Accused persons to proceed in the absence of the second accused,
8 pursuant to Rule 60(A)(i) of the Rules -- of the first accused, pursuant to Rule 60(A)(i) of the Rules,
9 and it is so ordered.

10 MR. PRESIDENT:

11 Mr. Wright, thank you very much. We're sorry to have taken your time. I think you may now leave
12 and go after your normal business. Thanks for coming.

13
14 Right. Can the Prosecution call the witness please and we will resume the session in -- we will
15 resume in a closed session. We are not rising, so let the technician --

16 [At this point in the proceedings, a portion of the transcript, pages 44 to 83, was extracted and sealed
17 under separate cover, as the session was heard in camera]

18 [Pages 38 to 43 by Momodou Jallow]
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CERTIFICATE

We, Roni Kerekes, Susan G. Humphries and Momodou Jallow, Official Court Reporters for the Special Court for Sierra Leone, do hereby certify that the foregoing proceedings in the above-entitled cause were taken at the time and place as stated; that it was taken in shorthand (*machine writer*) and thereafter transcribed by computer; that the foregoing pages contain a true and correct transcription of said proceedings to the best of our ability and understanding.

We further certify that we are not of counsel nor related to any of the parties to this cause and that we are in nowise interested in the result of said cause.

Roni Kerekes

Susan G. Humphries

Momodou Jallow