

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL-2004-15-T
TRIAL CHAMBER I

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

FRIDAY, 15 OCTOBER 2004
9.48A.M.
TRIAL

Before the Judges:

Benjamin Mutanga Itoe, Presiding
Bankole Thompson
Pierre Boutet

For Chambers:

Ms Candice Welsch
Mr Matteo Crippa

For the Registry:

Mr Geoff Walker

For the Prosecution:

Mr Peter Harrison
Ms Boi-Tia Stevens
Ms Melissa Pack
Mr Christopher Santora
Mr Christopher Dunn (intern)
Mr Bobby Gboyor (Case Manager)

For the Principal Defender:

Ms Haddijatou Kah-Jallow

For the accused Issa Sesay:

Mr Wayne Jordash
Ms Sareta Ashraph

For the accused Morris Kallon:

Mr Shekou Touray
Mr Melron Nicol-Wilson

For the accused Augustine Gbao:

Mr John Cammegh

1 Friday, 15 October 2004

2 [The accused Sesay and Kallon entered court]

3 [The accused Gbao not present]

4 [Upon commencing at 9.48 a.m.]

09:39:03 5 [Open session]

6 PRESIDING JUDGE: Good morning, learned counsel. Are we --

7 yes, Mr Harrison, do you have --

8 MR HARRISON: The Prosecution wishes to inform the Court that

9 the current witness TF1-167 is not present in court and

09:44:18 10 is not going to be present today. The circumstances of

11 his non-attendance are not known with any clarity by the

12 Prosecution. There has been no communication by anyone

13 in the Prosecution office with the witness. However, the

14 representative from witness management is here, and

09:44:40 15 should the Court wish to hear from him, he may able to

16 advise the Court as to those circumstances.

17 What the Prosecution can inform the Court of this

18 morning is that two other witnesses are available to

19 testify today. Those two witnesses are TF1-197 and

09:45:05 20 TF1-355. The first of those witnesses, TF1-197, is

21 present, the Prosecution is able to tender that witness

22 and wishes to do so today to give their evidence.

23 The other request that is being made by the

24 Prosecution is that the Prosecution be allowed until

09:45:30 25 Monday to provide to the Court the continuing testimony

26 of TF1-167, the current witness.

27 PRESIDING JUDGE: All right. Thank you, Mr Harrison. On the

28 application I -- learned counsel for the Prosecution, as

29 to shelving the evidence for now, you know, of TF1-167 to

1 Monday. What would be your observations on this, learned
2 counsel?

3 MR JORDASH: Your Honour, I feel slightly handicapped by not
4 knowing what might have happened to this witness. And
09:46:25 5 with Your Honour's leave, I would like to reserve my
6 comments until I've heard from Mr Vahidy about what has
7 happened or might have happened to this witness. Until
8 we know why he hasn't arrived at court, it is difficult
9 to know whether to support the Prosecution or not in what
09:46:48 10 they're asking the Court to do.

11 PRESIDING JUDGE: Yes, Mr Touray.

12 MR TOURAY: Your Honour, I associate myself with the views
13 expressed by learned counsel for the first accused.

14 PRESIDING JUDGE: All right, thank you. Mr Cammegh.

09:47:11 15 MR CAMMEGH: Your Honour, I agree. With respect, I think it
16 is incumbent upon the Prosecution to give us some
17 explanation, or if not the Prosecution, then anyone
18 within the Court service to give us some explanation as
19 to the witness's non-attendance, which Mr Jordash said,
09:47:27 20 in order for us to formulate some sort of view as to how
21 we, on the Defence, should proceed from here vis-a-vis
22 that witness. We really have to know what sort of
23 demeanour he is likely to be in, or the demeanour he was
24 in whenever this decision by him was made.

09:47:49 25 On the other issue of proceeding with further
26 evidence today, I have to say, with great regret, that
27 much as in the interest of expedience --

28 PRESIDING JUDGE: We will visit that issue with the two arms.

29 We'll visit that issue, you know, later. Let's sort this

1 out, first please.

2 MR CAMMEGH: Very well.

3 PRESIDING JUDGE: Yes. I think since the Prosecution has

4 indicated the presence of the Head of the Witness

09:48:31 5 Protection Unit, Mr Vahidy, in court, I think we are

6 inclined to the submission by the Defence -- by the

7 Defence counsel that we hear from Mr Vahidy as to the

8 circumstances surrounding the non-attendance today, you

9 know, of that witness.

09:48:58 10 Mr Vahidy, we would like you to give us an

11 explanation on oath, please. Can you swear in Mr Vahidy,

12 please, because the Defence may want to put some

13 questions to you, you never know.

14 MR JORDASH: For my part, I don't require Mr Vahidy to be

09:49:24 15 sworn.

16 PRESIDING JUDGE: Okay. Mr Touray, you don't require?

17 MR NICOL-WILSON: No, I don't.

18 PRESIDING JUDGE: Mr Cammegh?

19 MR CAMMEGH: No, Your Honour.

09:49:35 20 PRESIDING JUDGE: So by consent then and, of course, the

21 Prosecution you don't require it to be on oath.

22 MR HARRISON: Not at all.

23 PRESIDING JUDGE: Right. Mr Vahidy, we have we were trying to

24 satisfy the rights of the Defence who have waived their

09:49:47 25 right. You may proceed, you know, to letting us know

26 what the situation is.

27 MR VAHIDY: Thank you, Your Honour. This morning when the

28 party, as usual, went to collect the witness, he informed

29 us that he is not well enough to testify. On further

1 inquiry, I ascertained that apparently he had a sort of
2 very restless night and seemed to be quite agitated. As
3 a result, I sent nurse over right now who is probably
4 dealing with the issue now.

09:50:23 5 JUDGE THOMPSON: Slowly, Mr Vahidy, we're writing.

6 MR VAHIDY: I'm sorry. I have sent the nurse over who is
7 dealing with the issue now and would suggest a further
8 course of action for treatment. There is not much more I
9 can add at the moment, but -- except that, according to
09:50:38 10 him, he is not well enough to testify today and,
11 therefore, is not willing to come to the Court. Any
12 further report will be submitted after he has been
13 thoroughly examined by the doctors and, especially, if it
14 is necessary.

09:51:15 15 PRESIDING JUDGE: Yes, learned counsel, does -- I think the
16 Bench is satisfied with the explanation. I mean, we've
17 recorded that explanation. Unless you have something
18 else to add to that.

19 MR VAHIDY: No, sir, not for the moment.

09:51:31 20 PRESIDING JUDGE: All right. I think the ball is in the court
21 of the Defence, Mr Jordash.

22 MR JORDASH: If it is simply an issue of this witness being
23 ill, I would be happy to support my learned friend's
24 application for this witness to be moved until Monday. I
09:51:53 25 was initially troubled by the idea that it might be down
26 to the witness not being willing to come to court, and
27 I'm very keen that this witness continues to give his
28 evidence. But if it is simply an issue of the witness
29 being ill, then these things happen.

1 MR VAHIDY: Your Honours, I would like to make an addition to
2 this. I cannot definitively say, because at the moment
3 I'm relying on what the witness himself is saying. And
4 he is claiming that he is not well enough to testify. If
09:52:32 5 there is any other motivation, I am not really in a
6 position to answer as to that. But I can only finally
7 state what his condition is after he has been thoroughly
8 examined.

9 MR JORDASH: Could I just inquire of Mr Vahidy when he is
09:52:49 10 going to be examined and whether there is any indication
11 of what his symptoms are?

12 MR VAHIDY: Examined, he will be sometime during the course of
13 this morning. I don't have a complete detail of his
14 symptoms, but I could actually ascertain them, but
09:53:12 15 basically he was feeling sick and shivers and chill, and
16 that's what I gathered for this morning. He says he is
17 not well enough to testify, but any other symptom or
18 problem can only be ascertained after we do have a final
19 report from the doctor.

09:53:31 20 MR JORDASH: Thank you. Your Honours, my position, I think,
21 remains unchanged that if the witness is ill, the witness
22 is ill. Hopefully he won't be on Monday.

23 PRESIDING JUDGE: Thank you. Mr Touray.

24 MR NICOL-WILSON: Your Honour, we don't intend to resist the
09:54:04 25 application of the Prosecution as the for the reasons
26 explained.

27 PRESIDING JUDGE: Thank you. Mr Cammegh.

28 MR CAMMEGH: Nothing to add, Your Honour.

29 PRESIDING JUDGE: Thank you. Well, this matter stands

1 adjourned until Monday at 9.30 when we would -- it stands
2 adjourned until Monday at 9.30.

3 MR HARRISON: Would the Court wish to consider the suggestion
4 of the Prosecution --

09:55:13 5 PRESIDING JUDGE: That is the first arm of the application.
6 We're dealing, first of all, with your application to
7 adjourn. And that is the ruling, you know, on the
8 application to adjourn.

9 MR HARRISON: Thank you.

09:55:22 10 PRESIDING JUDGE: This matter is adjourned to Monday at 9.30.

11 Now, there is a second application that is made by
12 the Prosecution that they have witnesses standing by and
13 we -- they intend -- they're prepared to proceed with the
14 testimony of these witnesses. Does that -- what is the

09:55:49 15 reaction of the Defence? I know Mr Cammegh wanted to
16 submit on this, but, you know, I asked him to hold on,
17 but we may stand around, as usual.

18 Mr Jordash, what would be your reaction to this
19 application by the Prosecution?

09:56:04 20 MR JORDASH: I would oppose the application as vigorously as I
21 am able. I'd anticipated -- the Sesay team had
22 anticipated that this witness, who is ill, would be
23 giving evidence until perhaps next Wednesday. I
24 certainly had probably a day and a half of
09:56:24 25 cross-examination for this witness and I anticipated he
26 would be a good part of today in chief.

27 The witnesses that the Prosecution are seeking to
28 have called would, therefore, not have given evidence
29 probably until next Thursday, perhaps, at earliest. Your

1 Honours will appreciate that the Defence can only do so
2 much as we move along. We cannot be fully prepared for
3 every witness this session and we, obviously, gauge our
4 preparation according to when those witnesses will be
09:57:04 5 called, especially when there are -- when they are large
6 witnesses or witnesses who testified to a large part of
7 the indictment, like the last two witnesses. So all our
8 preparation has been very much focused on those two
9 witnesses.

09:57:22 10 So we would opposed the application simply because,
11 firstly, we certainly are not in a position to
12 cross-examine today, because I certainly have not sat
13 down to prepare with the rest of the team for
14 cross-examination of the next two witnesses. But in
09:57:37 15 relation to also simply taking detailed last-minute
16 instructions, a task which is essential for every
17 witness, notwithstanding the fact we have previously
18 prepared those witnesses, has not begun on those next few
19 witnesses.

09:57:55 20 At an absolute push, if this Court was minded to
21 continue, we could be ready for the next witness by this
22 afternoon, at an absolute push, but as I understand my
23 learned friend's application, it is an application not to
24 call the next witness, but the witness after that, so the
09:58:18 25 fourth witness in this session who deals with some
26 significant issues concerning the indictment. And we
27 could not, I would respectfully submit, be ready to
28 proceed with that witness today. So I do opposed it as
29 vigorously as I am able.

1 PRESIDING JUDGE: Yes, Mr Touray.

2 MR NICOL-WILSON: Your Honour, on behalf of the second, Morris
3 Kallon, we associate with the views of counsel for the
4 first accused.

09:58:50 5 PRESIDING JUDGE: Mr Cammegh?

6 MR CAMMEGH: Your Honour, hearing what Mr Jordash has just
7 said, whilst I know he is keen to act with the greatest
8 of expediency, the difficulty with calling a witness
9 simply in-chief today would be that proceedings that have
09:59:10 10 already been truncated, by virtue of the current witness
11 being adjourned until Monday, will be truncated even
12 further, because, of course, we will then face a
13 situation on Monday where we have got to accommodate the
14 rest of the current witness's evidence in-chief and
09:59:26 15 thereafter his cross-examination, and at some point we're
16 going to have to get around to the fresh witness's
17 cross-examination and things will become very truncated
18 indeed. So with the best will in the world, my
19 submission would be that, in all the circumstances, we
09:59:48 20 ought to adjourn in order that we can hopefully carry on
21 with the current witness on Monday and thereafter take
22 the following witnesses in their correct order.

23 PRESIDING JUDGE: I just have one question to put to learned
24 counsel. We have just been told that TF1-167 is ill; he
10:00:10 25 says he is ill. He is being examined, you know, today.
26 We do not know to what extent he might be in shape, you
27 know, to be in court on Monday. We cannot -- I don't
28 want us to presume that he would necessarily be in court
29 on Monday. If he isn't in court on Monday, certainly the

1 Tribunal, you know, would like to continue its work.

2 MR CAMMEGH: Indeed.

3 PRESIDING JUDGE: I know, I very much understand, you know,

4 the stand of the Defence, because if you're focused on a
10:00:48 5 witness, you're not necessarily focused on all the
6 witnesses, particularly a trial as complicated as this.

7 That I'm prepared to concede. But if this witness is not
8 there, you know, on Monday, I think we should be able --
9 he might be here. If he's there on Monday, that's fine.

10:01:09 10 There's no problem. But if he isn't, we have to move and
11 I think that is where I would be asking the Defence, you
12 know, to understand and maybe be prepared to take some
13 standby or alternative witness in the course of our
14 proceedings on Monday and that will depend, of course, on
10:01:30 15 your agreement with the Prosecution.

16 MR CAMMEGH: I don't think anybody on this side of the room --

17 and I'm sure my learned friend for the Prosecution would
18 be only eager to set this particular suggestion in
19 motion. Over the weekend we will all have time to

10:01:51 20 prepare for either one of those two fresh witnesses. If
21 my learned friend for the Prosecution would care to

22 indicate which one he would prefer to call first, that
23 would give us a clearly substantial benefit. If we can

24 leave it in this way: That we adjourn today in the hope
10:02:13 25 that 167 comes back promptly on Monday, but failing that,

26 if my learned friend would care to indicate which witness
27 he would want to call in lieu on Monday, then we've got
28 the weekend to prepare for him. And nobody on this side
29 of the room, I'm sure, is going to suggest that we don't

1 crack on with a fresh witness if the need arises.

2 PRESIDING JUDGE: Okay, thank you.

3 JUDGE BOUTET: I would like to hear as to why it would not be

4 feasible or possible to start the examination-in-chief of

10:02:48 5 a witness. I've heard your comments that it may confuse

6 you, but you are an experienced counsel and I know you

7 are not to be confused that easily. I'm sure you've done

8 that in past. We're talking examination-in-chief of one

9 of those two witnesses. I have not got a clue as to the

10:02:57 10 length of examination-in-chief, but I doubt -- based on

11 past experience in these trials up to now, it has never

12 been of less than half a day. And I'm saying this

13 with -- I'm talking this afternoon, not this morning,

14 because to lose a full day of trial is quite a lot, given

10:03:18 15 that we have limited time frame and especially, we were

16 dividing that on a monthly basis. So that is my concern

17 at this time. I'm just asking you the question. I'm not

18 trying to put undo pressure on you. I know this slight

19 opening was made by Mr Jordash, so I would want to know

10:03:37 20 from you.

21 MR CAMMEGH: Given my personal circumstances in this case, and

22 if it was just down to me, I would probably be content to

23 hear the witness in chief. I think Mr Jordash probably

24 has a slightly more problematical situation than I do

10:03:54 25 and, no doubt, Mr Touray also. My objection to hearing a

26 witness in-chief today is simply this: That it is going

27 to -- I use the word "truncate". It is going to create a

28 certain hiatus at some point. We're going to have to

29 delay the completion of one witness in order to

1 accommodate the other one at some point down the line; it
2 is simply that. Your Honour, I hope, is right, I don't
3 think it would unduly confuse me, but it simply to try
4 and keep things some semblance of order so we don't have
10:04:29 5 to keep jumping backwards and forwards to complete
6 various witnesses. I think Mr Jordash's position is
7 probably a little bit more substantial on this point than
8 mine.

9 JUDGE BOUTET: Thank you. Mr Touray.

10:04:43 10 MR NICOL-WILSON: Your Honour, in line with your continuous
11 directions, we are always prepared to deal with a standby
12 witness. And this case we're prepared to deal with
13 TF1-355, who is supposed to be the third witness in this
14 trial session, but this is not even the witness the
10:04:59 15 Prosecution intends to call. The Prosecution intends to
16 call the fourth witness and another witness and we do not
17 even have the statements of this witness in court. So
18 we're opposed to the examination-in-chief this morning,
19 but we will be inclined to allow the examination-in-chief
10:05:15 20 to go this afternoon.

21 JUDGE BOUTET: I want to make sure I hear you. You're saying
22 if it were 355, you might be inclined to hear -- you
23 would have no objection in principle to that.

24 MR NICOL-WILSON: No objection whatsoever, Your Honour, if it
10:05:30 25 is with regards to 355.

26 JUDGE BOUTET: Thank you. Mr Jordash, was it 355 as well that
27 you said you might -- I didn't hear you to say you would
28 be, but you might be?

29 MR JORDASH: It was the next witness, 355, yes.

1 JUDGE BOUTET: So the Prosecution had suggested to start with
2 197 and then 355. You're saying if were 355 -- 197 you
3 have strong objection, because you're absolutely not
4 ready.

10:05:59 5 MR JORDASH: Yes. 355 I don't have too much problem with.

6 MR HARRISON: TF1-355 can be made available to the Court at a
7 time deemed appropriate. If the Defence feel that it is
8 of assistance to them to adjourn until either 1.00 or
9 2.00 before resuming a session, if they need that time to
10:06:24 10 prepare, there would be no opposition to that. But 355
11 is available. The time estimate for the direct
12 examination is two to three hours.

13 [Trial Chamber confer]

14 PRESIDING JUDGE: Learned counsel, we -- the Bench is very,
10:09:11 15 very conscious of the procedural complexities and the
16 involvement, you know -- the procedural involvement in
17 these cases and we think that, you know, that nobody is
18 entitled -- you know, nobody should be taken by surprise.
19 We're trying to avoid anything by ambush in this
10:09:34 20 Tribunal. We think that the events of this morning are
21 not attributable to anybody's, you know, faults. It just
22 came from nowhere and we are all faced with a certain
23 reality; the absence of a major witness who we were
24 supposed to hear today. We presume, we assume that he
10:09:54 25 might be available on Monday. We're optimistic, but we
26 feel, you know, that there is some element of reluctance
27 on the side of the Defence to even go with 355 -- or 335,
28 because they have to be given time to prepare for the
29 Defence of their clients. And we think that, you know,

1 it is more in conformity, you know, with judicial
2 practice and judicial fairness that we adjourn the
3 proceedings, you know, to Monday. The Prosecution and
4 the Defence will agree on the standby witnesses who will
10:10:38 5 have to testify on Monday in the event of 167, you know,
6 not being present for the proceedings. I think the
7 principles of fairness, you know, require that we allow
8 the Defence to be fully prepared over the weekend for
9 whatever eventuality they have to face on Monday. We
10:11:04 10 expect that there will be the usual discussions, you
11 know, with the Prosecution on how we are going to
12 proceed, which witnesses we're going to take, because
13 I hear from the third accused -- or rather, the second
14 accused Defence team, you know, that they don't --
10:11:18 15 they've not even been served with some statements of some
16 witnesses I think.

17 MR NICOL-WILSON: No, Your Honour. We have been served, but
18 we do not have the statements of such witnesses in Court
19 at the moment.

10:11:30 20 PRESIDING JUDGE: Oh, you don't have them in court at the
21 moment. In any event, that also underlies the assumption
22 of non-preparedness, you know, to move with these trials.
23 So on the principle of fairness to all the partes, we
24 will adjourn the proceedings. It is nobody's fault.
10:11:49 25 We'll adjourn the proceedings today in order to allow the
26 Defence to properly -- Defence counsel to properly
27 prepare the Defence of their clients. We will adjourn
28 until Monday at 9.30 and continue with the proceedings.
29 But, please, the Prosecution and the Defence should

1 arrange themselves, you know, properly so that we know
2 that the witnesses -- we'll have one witness here and a
3 standby. The Defence should be as prepared to go on with
4 the witness as it should be prepared to go on with the
10:12:23 5 standby witness. That is the directive, you know, that
6 we're giving here. Yes, Mr Jordash.

7 MR JORDASH: Just to say thank you very much for the Court's
8 understanding. We do appreciate it.

9 PRESIDING JUDGE: Thank you. This said learned counsel, we
10:12:49 10 are adjourning the proceedings to Monday. We wish all of
11 you a very happy weekend. Thank you.

12 [Whereupon the hearing adjourned at 10.15 a.m., to be
13 reconvened on Monday, the 18th day of October 2004, at
14 9.30 a.m.]

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C E R T I F I C A T E

I, Roni Kerekes, Official Court Reporter 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 my ability and understanding.

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

Roni Kerekes