

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

THURSDAY, 8 NOVEMBER 2007
10.02 A.M.
TRIAL

TRIAL CHAMBER I

Presiding

Before the Judges:

Benjamin Mutanga Itoe,
Bankole Thompson
Pierre Boutet

For Chambers:

Ms Erica Bussey
Mr Felix Nkongho

For the Registry:

Mr Thomas George

For the Prosecution:

Mr Peter Harrison

For the accused Issa Sesay:

Mr Wayne Jordash
Mr Kevin Hussey

For the accused Morris Kallon:

Mr Kennedy Ogeto
Mr Lansana Dumbuya

For the accused Augustine Gbao:

Mr John Cammegh

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OPEN SESSION

1 [RUF08NOV07A - JS]
2 Thursday, 8 November 2007
3 [The accused present]
4 [The witness entered court]
5 [Open session]
6 [Upon commencing at 10.02 a.m.]

7 PRESIDING JUDGE: Good morning, learned counsel.
8 Mr Witness, good morning.

9 THE WITNESS: Yes. Good morning, sir.

10 PRESIDING JUDGE: Yes, Mr Jordash?

11 MR JORDASH: I'd like to apply for an adjournment. I
12 received a phone call this morning from Mr Sesay indicating
that
13 he did not feel well enough to come to court, that the old
injury
14 which he was -- which he received treatment for at the
beginning
15 of this year, I think it was, was causing him undue pain, in
16 large part, to sitting in court for the last few weeks.

17 It's an application for an adjournment for one day.
There
18 was some confusion concerning -- or there was some subsequent
19 confusion concerning whether he'd waived his right to be
present.
20 He told me in categorical terms he wanted to be present during
21 the evidence of this witness. I came to court and received a
22 proforma signed -- sorry, not signed, but filled in at the
23 behest, it seems, of Mr Sesay and Dr Visser indicating that
24 Mr Sesay wasn't feeling well enough to come to court, but the
box

been
to
present
until

25 indicating that he'd waived his right to be present having
26 ticked. I subsequently checked with Mr Sesay and that appears
27 have been an error and he doesn't waive his right to be
28 and wishes to apply for an adjournment of the proceedings
29 tomorrow.

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two
any
well
to

1 I should indicate, and I asked Mr Sesay if this was
2 acceptable to him, but I should indicate that his sister died
3 days ago and, whilst he hasn't offered that as a reason for
4 adjournment, I would submit that that certainly, in my view,
5 having seen and spoken to him after the last two days, may
6 have something to do with his overall feeling of not wanting
7 come to court today. That's the application.

I'm

8 JUDGE THOMPSON: Well, that's -- in other words, your
9 application is predicated upon two grounds. The first the
10 medical condition, and the second the non-medical condition or
11 ground, sort of applying my own inquisitive judicial mind.

12 just wondering that if I were deliberating on whether to grant
13 this application, how would I be strictly guided by any kind
of
14 analysis as to the cogency or the merit of ground two, the one
of
15 the death of the sister?

16 In other words, what I'm saying is that don't we have
here
17 two grounds which seem to, in my own judicial experience, seem
to
18 be pulling apart from each other? I would think that ground
one
19 seems to be one which can be easily examined in terms as to
its
20 merit but, ground two, as I'm speaking again for myself, as I
21 said, based on my own inquisitive judicial mind -- I'm just at
a
22 loss. You might want to --

23 PRESIDING JUDGE: You may wish to -- I think the
Honourable
24 Justice Boutet has some comments, and then, you know, you can
--

25 JUDGE BOUTET: I would like to know what the doctor has
to
26 say about this, and what is the report and recommendation of
the
27 doctor; is he or is he not capable of attending? From a
medical
28 perspective; that's what I want to know.

29 MR JORDASH: Well, the note I've got is that, "I,

1 Dr Visser, hereby certify that the abovementioned detainee has
2 given the following reason for his absence: Not feeling
well,"
3 written next to the box.

4 JUDGE BOUTET: I know, Mr Jordash, you didn't write this
so
5 you are just reading from what you've been given, but I can
say
6 this -- that does not satisfy my requirement as to the --

7 PRESIDING JUDGE: Have you come to the end of the
reading?

8 MR JORDASH: Yes.

9 PRESIDING JUDGE: You have. It does not appear to
satisfy
10 my requirements at all. He is reporting -- it's a reported
11 speech -- he is reporting on what he has been told. There is
no
12 indication there, you would agree with us, that he, himself,
13 proceeded to a clinical examination of the complaint, you
know,
14 that Sesay wants to put across for him to certify that
15 clinically, indeed, he cannot attend for medical reasons.

16 MR JORDASH: Well, I suppose the --

17 PRESIDING JUDGE: Yes. Yes, you may go on.

18 JUDGE THOMPSON: Before he goes on, I would like to say
I
19 join my colleagues in expressing that judicial reservation to
the
20 first ground, based on what you have read.

21 MR JORDASH: Well, to a large degree, of course, the
doctor
22 in these matters must take what the patient says to him and
act
23 on that. And if the patient says, "I'm feeling pain. I don't
24 feel as though I can go to court," to a large extent the
doctor
25 has to take that at face value, and that's what I'm urging
upon
26 the Court.

27 JUDGE THOMPSON: But my experience sometimes is that if
28 it's -- there may be a verifiable situation; doctors may go on
29 to -- and that is of course if the condition is verifiable as
to

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1 providing some corroborative evidence as to what the patient
2 says, because I do agree with you that's a very difficult
area.

3 A patient might go and say, "I'm having headache," and the
doctor
4 at that point in time may not be able to verify it. But there
5 are some verifiable situations in terms of one's medical
6 condition. But I just put that. I do take your point.

7 MR JORDASH: I suppose in the end I'm asking the Court
to

Sesay 8 take it on trust, and I would respectfully submit that Mr
9 has never once done anything in terms of feigning illness to
10 avoid coming to court. And in the last three years I think
the 11 Court has not sat for one day because of Mr Sesay's illness
12 and --

saying 13 PRESIDING JUDGE: Mr Jordash, you know, we are not
14 that he is feigning this, no. I don't think that's what we
are 15 saying. All we are saying is we are a court of record, and if
we 16 have to grant an adjournment for reasons that have been
advanced, 17 these reasons have to have some legal, you know, some legal
18 justification, and since we are in the medical field, all we
are 19 saying is that a medical certification would at least back
this 20 application, you know, for the Court to be able to arrive at
21 granting the application.

you 22 It is not your fault. You did say that he only phoned
23 this morning. It would have been difficult for you to arrange
24 for certain things you've done and you've just been presented
may 25 with that form where he says he is not well, and the doctor
the 26 be consulted rather precipitatedly, and he has said: Well,
27 accused has told me this, and so on and so forth and he
himself 28 did not bother to conduct a clinical verification of what must
29 have hampered Mr Sesay from attending the session this
morning.

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time.

us,

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1 So this is it, and it is not your fault, and we are not saying
2 that we don't trust what you are saying either. But it's just
3 you have the judicial basis, the legal basis for granting this
4 adjournment. It is important for us, and for a court of
5 that we are, you know, to justify that, rather than granting
6 adjournment on the grounds that, well, the accused has said
7 and that. I think that falls short of the expectations, you
8 know, of this Court in terms of medical certifications that we
9 require from time to time to orientate our proceedings here.
10 This is what we are saying.

11 So I don't know if we could stand down this matter and
12 in the doctor. We think that we would get to -- we will be
13 to get to somewhere. I don't think it takes us a very long
14 The Court Management can call in the doctor for him to tell
15 you know, what his position is in this matter and whether he -

fails

16 maybe he may have -- he may well have examined Mr Sesay but

going

17 to put it on record, thinking that maybe the Court was not

the

18 to insist to go through the whole hog of an inquiry into the

19 reasons that Mr Sesay is advancing for absenting himself from

20 Court.

minutes,

21 So I think we would stand the matter down for 15

22 15, 20 minutes, to enable the doctor to come here. The Court

he

23 Management should please take note and ask the doctor; we hope

portion?

24 is there. I mean, Mr Jordash, what doctor signed that

25 MR JORDASH: Dr Visser, V-I-S-S-E-R.

If

26 PRESIDING JUDGE: Dr Visser. Well, I hope he is there.

27 he is there, he should be contacted. If not, the doctor in

If

28 charge of the unit, I think it's still Dr Harding, isn't it?

29 Dr Harding is there we could proceed.

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Mr

1 JUDGE BOUTET: Maybe that's why it's Visser, because

2 Harding is not there. But whatever. And in addition to that,

mean,
we
like

3 Jordash, I would like to be informed as to the future. I
4 you say that your client is likely to be okay tomorrow and
5 attend. But is it something that is recurrent and next week
6 are going to face -- this is the kind of information I would
7 to know for the future. So is it something that is to be
8 expected or it is just a one-off and he will be okay.

happen
expect
doctor

9 I know your client had surgery. We know what happened
10 before the surgery. So, is it something that is likely to
11 again? So, if only to be properly informed as to what to
12 is one question that we would like to ask the doctor and hope
13 this doctor is in a position. I'm saying this because he's
14 not -- I'm not sure if it's a he or she but, whatever the
15 is, that this particular doctor is in a position to properly
16 advise the Court. It's not of your making, I know.

20

17 PRESIDING JUDGE: The Chamber will rise for about 15 to
18 minutes and we will resume thereafter with the doctor on the
19 stand.

20 [Break taken at 10.20 a.m.]

21 [RUF08NOV07B - JS]

22 [Upon resuming at 11.00 a.m.]

Yes,

23 PRESIDING JUDGE: Yes, we are resuming the session.
24 Mr Jordash.

his

25 MR JORDASH: I think I inadvertently misled the Court.
26 Dr Visser is in fact DR Visser, DR are the first initials of

27 first two names.

28 PRESIDING JUDGE: I see.

29 MR JORDASH: So DR Visser is in fact the detention

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1 supervisor at the moment. The real doctor is here now.

2 PRESIDING JUDGE: Well, you see, it's as if we knew what
3 the error was on the paper, we were insisting on some medical
4 expertise on this and, lo and behold, I think events have

proved

5 us right and the security adviser who was trying to speak like
6 a doctor is very far from being one.

7 MR JORDASH: It seems that way.

Management,

8 PRESIDING JUDGE: Yes. Well, I think, Mr Court
9 please let the Court move from the closed to the open session.

10 MR GEORGE: Yes, sir. We are in open session now.

illness,

11 PRESIDING JUDGE: Thank you. For the records, I think
12 everything that was -- that we heard and said this morning,
13 concerning an adjournment that is related to Mr Sesay's
14 should be transferred to the open records, you know, of the

the

15 Court. It was taken in closed session, but it should move to
16 open records of the Court because these are matters of public
17 interest which should be -- to which everyone should have
18 unless, of course, we deem it otherwise.

access

is

19 So we are now in an open session and before we left, or
20 before we rose, there was some uncertainty as to why Mr Sesay
21 not in court this morning, and particularly so because he has

not

says,

22 waived his right to be present in court and, from what he
23 and what I noted from Mr Jordash's application, he is not

waiving

24 it particularly for this witness. I suppose it is within that
25 context that he refused to waive his right to be present in
26 court.

is

27 But we are told, Mr Harding -- Dr Harding, I'm sorry --
28 that Mr Sesay, who you take care of amongst other detainees,
29 not -- is indisposed and cannot be in Court today and, from

the

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Court

1 application we have before us, it is that he cannot be in

2 for medical reasons and for only one day.

3 Because we want to complete our records, and to have the
4 clinical backing for this application, we decided that we
should
5 have you in here so as to hear from you and to know what
6 precisely is at the root of this application and to enable us
7 know whether to grant it or not.

8 So, Dr Harding, I think you may enlighten the Court on
9 Mr Sesay's state of health at this point in time and, maybe
after
10 your enlightenment, the Judges may want to put certain
questions
11 or seek some clarifications from you on this issue, not only
for
12 today, but for subsequent hearings. So you may please advise
the
13 Court, Dr Harding.

14 DR HARDING: Good morning, My Lords. Last evening Mr
Sesay
15 complained of pain in his right hip joint. He was given
16 appropriate medication and I must say that he says he feels
much
17 better this morning. However, he is afraid that he wouldn't
last
18 the day because of the pain, and I want to support that and I
19 have duly given him the day off so that he will recuperate
20 properly and he has promised, and I want to promise you that
he
21 will be in Court tomorrow.

22 PRESIDING JUDGE: Thank you. I understand what you have
23 said. I don't know if my colleagues have some questions to
put
24 to you, Dr Harding?

as
25 JUDGE BOUTET: Dr Harding, can we have some indication
26 to the recurrence of this problem or this is something that is
27 still to be expected off and on, or it's one-off or what is
the
28 prognosis, if you know it?
29 DR HARDING: Yes, I do. As most of us are aware, Mr
Sesay

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of
1 has got bad right hip joints. To be precise, osteoarthritis
2 his right hip joint as a result of the bullet that shattered
3 hip, and the bullet that was removed in Senegal some months
ago.
4 So it's possible that he will be having pain on and off, you
5 know.
6 We, he is -- I wouldn't say constantly but he is on
7 painkillers for that and we can just hope that it won't occur
8 very often.
9 JUDGE BOUTET: But because of evolution of his
osteoporosis
10 as such, I'm not saying it can be cured but it can be
controlled,
11 to an extent, the pain, by painkillers?

12 DR HARDING: Yes, it can be controlled.

13 JUDGE BOUTET: But can he be administered painkillers
and

14 still attend Court in a normal fashion?

15 DR HARDING: Yes, he can. He can, My Lord.

16 JUDGE BOUTET: But it was your advice, on medical
grounds,

17 that today it would be better for him to recuperate for one
more

18 day.

19 DR HARDING: Yes, My Lord.

20 JUDGE BOUTET: Okay. Thank you very much. We
appreciate

21 it.

22 JUDGE THOMPSON: Dr Harding, in a situation like this,
you

23 know the history very well of this litany. Is it possible at
24 this stage to predict that there may well be a progressive
25 deterioration of the osteoporosis, or you don't want to,
because

26 it's a condition which, once it sets in, and particularly
after

27 surgery, and that kind of thing, it becomes residual, then
28 there's a possibility. But I leave you to enlighten us on
that.

29 DR HARDING: Yes. It is very possible that it will

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of 1 progress, but that there will be a progressive deterioration
2 his condition; that's a possibility.

3 JUDGE THOMPSON: Thank you. That's all I want to know.

4 PRESIDING JUDGE: Yes, Mr Jordash?

assist 5 MR JORDASH: May I ask a question? I think it might
6 the Court.

7 PRESIDING JUDGE: Yes, you may. Why not.

you 8 MR JORDASH: Before the Honourable Judges came back in,
9 suggested to me something that he might be able to do in Court
to 10 assist him; could you explain that, please?

11 DR HARDING: Yes, My Lords. I just want to ask your
12 indulgence to allow Mr Sesay to stand up after a long Court
13 session so that he could stretch his leg and maybe that would
14 ease the pain, because he is complaining of the -- that the
long 15 sitting that, you know, it is a bit painful, not to move about
16 but just to stand up and then he sits again.

stood 17 PRESIDING JUDGE: Well, I don't think this Court has
When 18 in the way of Mr Sesay's movements, if and when he wishes.
to 19 he wants to go to the restroom he is always granted the leave
know, 20 do that. If he wants to stretch or flex his muscles, you
we 21 for some time, now that you've certified that, I don't think

contribute

22 would see any harm in that. I mean, if only it would

23 to ameliorating the situation of his health.

24 DR HARDING: Thank you My Lord. Thank you.

reasons

25 PRESIDING JUDGE: Yes. Well, I think upon hearing
26 Dr Harding and his explanation on the medical situation of
27 Mr Sesay, the Tribunal is satisfied that there are good

present

28 for him to be absent from Court today, and that there are good
29 reasons also for him to refuse to waive his right to be

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1 in Court.

tomorrow

2 And on these remarks, the Court accordingly decides to
3 grant Mr Jordash's application for an adjournment until

tomorrow

4 and the Chamber will accordingly adjourn its session to

5 at 9.30 when we hope, as Dr Harding has assured us, Mr Sesay
6 would be fit to come, to make an appearance in Court, for the
7 pursuit of the proceedings in the Chamber.

8 Yes, Mr Jordash?

something

9 MR JORDASH: I was wondering if I might complete

of 10 which I omitted two or three days ago during the examination

11 TF1-188? I tendered two --

12 JUDGE BOUTET: DIS, you mean?

two 13 MR JORDASH: DIS, yes, thank you. DIS-188. I tendered

find 14 potential exhibits, and I indicated at the time that I would

good 15 out when they'd been disclosed so that they could then, if

16 cause was shown, be then tendered. It was exhibit, Defence

17 Exhibit --

tomorrow. 18 PRESIDING JUDGE: Well, I think you can do this

because 19 You can do this first thing tomorrow before we continue,

20 I think we had already closed our records for today after

21 granting the adjournment, and we resume and take the

application 22 on this issue of the exhibits when we resume sitting tomorrow,

23 Mr Jordash.

at 24 We adjourn this session and we resume sitting tomorrow

25 9.30. The Chamber rises, please.

26 [Whereupon the hearing was adjourned at

27 11.20 a.m., to be reconvened on Friday, the

9th 28 day of November 2007 at 9.30 a.m.]

29