

THE SPECIAL COURT FOR SIERRA LEONE

**CASE NO. SCSL-2004-14-T
TRIAL CHAMBER I**

**THE PROSECUTOR
OF THE SPECIAL COURT
V.
SAM HINGA NORMAN
MOININA FOFANA
ALLIEU KONDEWA**

**MONDAY, 6 DECEMBER 2004
9.55 a.m
TRIAL**

Before the Judges:

**Benjamin Mutanga Itoe, Presiding
Bankole Thompson
Pierre Boutet**

For Chambers:

**Ms Sharelle Aitchison
Ms Roza Salibekova**

For the Registry:

Ms Maureen Edmonds

For the Prosecution:

**Mr Kevin Tavener
Ms Adwoa Wi afe
Mr Mohamed Stevens
Ms Marie-Helene Proulx
Ms Sharan Parmar**

For the Principal Defender:

Mr Kingsley Belle

For the Accused Sam Hinga Norman:

**Dr Bu-Buakei Jabbi
Ms Claire da Silva**

For the Accused Moinina Fofana:

**Mr Arrow Bockarie
Mr Victor Koppe
Mr Andrew Ianuzzi**

For the Accused Allieu Kondewa:

**Mr Charles Margai
Mr Yada Williams**

1 Monday, 6 December 2004
2 [The accused not present]
3 [Open session]
4 [The witness entered court]
5 [Upon reconvening at 9.55 a.m.]

09:25:59

6 **PRESIDING JUDGE:** Good morning, learned counsel, we are
7 resuming the session. I hope each and every one of us
8 found some time to rest before we wrap up the session,
9 which is ending tomorrow. Before we rose on Friday
10 **Mr Williams** for the third accused wanted to put a
11 question to this witness as to the identity of the
12 husband. The Chamber would like to know if, before
13 moving on to any other step, you still want to put this
14 question to this witness.

09:53:53

15 **MR WILLIAMS:** I do, My Lord.

09:54:28

16 **PRESIDING JUDGE:** You do?

17 **MR WILLIAMS:** Yes.

18 **PRESIDING JUDGE:** We would like to take arguments on why you
19 want the name of the husband, but we shall not do it in
20 her presence. The Chamber will have to excuse her. She
21 will leave and wait where they normally wait and we will
22 take arguments from you on why you think that the
23 revelation of the husband's name is strategically
24 important for the case of the Defence.

09:54:47

25 **MR WILLIAMS:** Yes, My Lord.

09:55:14

26 **PRESIDING JUDGE:** So, please, can you screen off and take her
27 to the waiting room, please. I think it is okay, there
28 is no problem. She can be taken out without any
29 problems. I think it is properly screened off. Madam

1 Witness, good morning.

2 THE WITNESS: Yes, good morning, sir.

3 PRESIDING JUDGE: How are you?

4 THE WITNESS: I'm fine.

09:56:48

5 PRESIDING JUDGE: Have a nice weekend?

6 THE WITNESS: Yes, thanks be to God.

7 PRESIDING JUDGE: You will be taken out; you'll wait for some
8 time. After that we shall call you in, okay?

9 THE WITNESS: Okay, sir.

09:58:38

10 [The witness withdrew]

11 PRESIDING JUDGE: The Chamber, before that question will be
12 put, would like to hear from the Defence as to how
13 material the revelation of the husband's name is to the
14 case for the Defence - it's only for the third accused,
15 please, because they raised the issue - and what
16 prejudice the Defence would suffer if the name was not
17 revealed. Those are the precise issues.

09:59:10

18 JUDGE THOMPSON: Perhaps one should slightly modify what the
19 learned Presiding Judge has said. Why is it so material
20 that we should have some revelation from the witness
21 stand, by her, of her husband's name, whether through a
22 confirmation process or not. Because I am assuming, and
23 I hope rightly, but you can correct me if I am wrong, the
24 Defence is already in possession of that name. I'm not
25 sure; I'm just assuming that. I'm just adding that bit.
26 That it's direct revelation from her or confirmation
27 otherwise.

09:59:45

10:00:19

28 MR WILLIAMS: We are privy to that information, but we want
29 the record to reflect that. It is in anticipation of our

1 defence that she has made a very serious allegation.

2 PRESIDING JUDGE: Are you on your arguments now or are you
3 replying to what Judge Thompson said?

4 MR WILLIAMS: I'm basically addressing --

10:00:57 5 JUDGE THOMPSON: The Court.

6 MR WILLIAMS: Yes.

7 JUDGE THOMPSON: That's okay, I'll just leave that.

8 PRESIDING JUDGE: You can finish with what he has put across
9 to you before you come to your main argument.

10:01:06 10 MR WILLIAMS: It's one and the same, My Lord.

11 JUDGE THOMPSON: All right then.

12 MR WILLIAMS: My Lords, the witness has made serious
13 allegations against the third accused -- well, they're
14 jointly tried -- against the accused persons. It is
15 absolutely necessary that the name of the husband of the
16 witness is reflected in the records. My Lord, just that
17 single incident or killing could be a decisive factor as
18 to the guilt or otherwise of the third accused. In
19 presenting our defence we intend to adduce evidence that
20 will counteract or contradict each and every one of the
21 allegations of fact made by the Prosecution. Our
22 investigations have already disclosed the name and
23 circumstances of the death of the husband of the witness.

24 PRESIDING JUDGE: Disclosed the name and the circumstances?

10:04:44 25 MR WILLIAMS: Of the death of the husband of the witness. If
26 the name of that victim is not at this stage made part of
27 the record, the evidence that the Prosecution would be
28 adducing would not make any sense to this Court. There
29 is no way the Bench could --

1 PRESIDING JUDGE: The evidence that the Prosecution will be --

2 MR WILLIAMS: The Defence.

3 PRESIDING JUDGE: The Defence would be adducing.

4 MR WILLIAMS: Would not make any sense to -- I'm sorry, the

10:05:58

5 evidence that the Prosecution will be adducing -- sorry,

6 the Defence will be adducing, My Lord; I'm sorry.

7 PRESIDING JUDGE: The Defence?

8 MR WILLIAMS: Yes, will be adducing will not make any sense to

9 this Court. It is only if the name of the victim is

10:06:29

10 known could the nexus between the evidence of this

11 witness and the evidence of the Defence be made.

12 My Lord, it is my submission that the question is a fair

13 question and it is in consonance with the protective

14 measures ordered by this Court. The identity of this

10:08:15

15 witness is known to the Defence, but shielded from the

16 public, and the disclosure of the name of the husband of

17 the witness to the Defence would not in any way affect or

18 disclose the identity of the witness.

19 I refer Your Lordships to a decision of this

10:09:43

20 honourable Court delivered by Justice Benjamin Mutanga

21 Itoe on the 10th of October 2003. It is a ruling on the

22 Prosecution motion for immediate protective measures for

23 witnesses and victims and for nondisclosure and urgent

24 request for the interim measures until appropriate

10:10:05

25 protective measures are in place. It is the case of the

26 Prosecutor v Allieu Kondewa, paragraphs 26 and 27 on

27 page 7.

28 PRESIDING JUDGE: What did Mr Justice Itoe have to say in that

29 case?

1 MR WILLIAMS: All that is favourable to my argument, My Lord.
2 It says, "This account for the consistent and constant
3 sympathy of these jurisdictions to impose nondisclosure
4 measures not indefinitely though, but on a temporary
10:11:17 5 basis in favour of the Prosecution at the pre-trial
6 stages of the proceedings. This said, it must be
7 emphasised, however, that the measures so ordained can
8 only be made on a temporary basis so as to avoid
9 violating the statutory right of the accused to a fair
10:11:33 10 trial."

11 In paragraph 27 Your Lordship quoted extensively the
12 decision of the Prosecutor v Blaskic, and I'll quote that
13 again with your leave, My Lord. "The philosophy which
14 imbues the Statute and the Rules of the Tribunal appears
10:11:56 15 clear. The victims and witnesses merit protection even
16 from the accused joint preliminary proceedings and until
17 a reasonable time before the start of the trial itself.
18 From that time, however, the right of the accused to an
19 equitable trial must take precedence and require that the
10:12:13 20 veil of anonymity be lifted in his favour even if the
21 veil must continue to obstruct the view of the public and
22 the media."

23 My Lord, what we're saying is that if the witness
24 were to disclose the name of her husband to this Court --

10:12:41 25 PRESIDING JUDGE: Just a minute. If --

26 MR WILLIAMS: If the witness were to disclose the name of her
27 husband to this Court, the veil of anonymity would still
28 remain intact because that information would not be
29 available to the public. My Lord, this is trial stage

1 and it is our submission that the right of the accused to
2 an equitable trial would be gravely affected if that
3 question is not answered.

4 PRESIDING JUDGE: The right of the accused to a fair trial.

10:14:19

5 MR WILLIAMS: The right of the accused to an equitable --

6 PRESIDING JUDGE: The Statute does not use equitable. The
7 Statute says the right to a fair trial.

8 MR WILLIAMS: But Your Lordship used that in your judgment.

10:14:38

9 PRESIDING JUDGE: Let's confine ourselves to the language of
10 the statute. You have made your point; it's okay.

11 MR WILLIAMS: As My Lord pleases. Sorry, My Lord?

12 PRESIDING JUDGE: The right of the accused to a fair trial.

10:15:02

13 MR WILLIAMS: Will be greatly affected if the question were
14 not answered. My Lord, the disclosure we're seeking is
15 not to be made to the public, but just to counsel present
16 here and the Court, which will be kept under seal.

17 PRESIDING JUDGE: Is that all?

10:15:56

18 MR WILLIAMS: My Lord, furthermore, I've not come across any
19 authority or any decision of any of the Tribunals where
20 those courts have refused to permit a witness to answer
21 questions. What they have done is to go into closed
22 session and have the questions answered. It will be an
23 open session, but what we are seeking to do is the device
24 we adopted would not have disclosed the information to
25 the public. That's all I intend to say at this stage,
26 My Lord.

10:16:27

27 PRESIDING JUDGE: Okay. Honourable Judge Boutet has a little
28 cold, so you should bear with his distorted voice. This
29 time it is his voice which is distorted; it's not that of

1 a witness.

2 JUDGE BOUTET: I will refrain from talking a lot today, as you
3 can see. There might not be cases on the very issue you
4 raise, but there is case law in other international
10:17:01 5 tribunals about the absolute anonymity of a witness --
6 absolute anonymity of a witness to the Defence or to an
7 accused. So there is case law on this. I'm not talking
8 here. We're talking here of really a certain measure of
9 protection that is far away from complete anonymity.

10:17:23 10 Yes, tribunals have adjusted to the given situation
11 trying to find the best possible means to dispense
12 justice in a fair manner. So yes, you may not have found
13 that specific issue, but I say to you there are cases
14 that go much further than that.

10:17:40 15 MR WILLIAMS: My Lord, there is only one case that I came
16 across which dealt with absolute anonymity, and even in
17 that instance the identity of the witness was made known
18 to the Court -- to the judges. It was shielded from the
19 Defence and the accused --

10:17:57 20 JUDGE BOUTET: To judges, I agree.

21 MR WILLIAMS: Yes, My Lord.

22 JUDGE BOUTET: But, if I may, if this is your objective -- I
23 would like to hear from the Prosecution, but why is it
24 not possible to have you and the Prosecution to agree
10:18:14 25 that this is the name of the husband and have that filed
26 with the Court record, rather than have the witness go
27 through that. I mean, if this is what you're trying to
28 achieve, I submit there might be other means of achieving
29 that than that particular approach.

1 MR WILLIAMS: I don't mind the means as long as --

2 PRESIDING JUDGE: The point is more fundamental than that. It
3 is whether in principle -- it is not just by agreement,
4 it is whether in principle the application you have made
10:18:44 5 can be granted having regard to the evidence of this
6 witness. I mean, it's the legality of your probing into
7 facts which may - which may - reveal her identity as a
8 protected witness.

9 MR WILLIAMS: My Lord, we already know her identity; that's
10:19:05 10 what I'm saying.

11 PRESIDING JUDGE: I mean the identity of the husband, because
12 revealing the name of the husband through her would
13 automatically somehow reveal -- but I think we would like
14 to hear from the Prosecution.

10:19:20 15 MR WILLIAMS: Yes, I don't know whether your Lordship would
16 want me to address the last concern.

17 JUDGE BOUTET: If I may, Mr Williams, just to pursue on what
18 Judge Itoe has just raised. If you were to ask that
19 question, you would ask that question for the witness to
10:19:34 20 answer in writing. In other words, you're not asking the
21 witness to state publicly the name of her husband.

22 MR WILLIAMS: Certainly, My Lord. That is why I said we can
23 go into closed session, but the device we adopted is
24 geared towards preventing the public from --

10:19:46 25 JUDGE BOUTET: Your application is only that the name be
26 disclosed by the witness to you by whichever means, but
27 not to the public?

28 MR WILLIAMS: Yes, My Lord, otherwise the purpose of the
29 measures would be defeated.

1 JUDGE BOUTET: It is only to make sure we do comprehend and
2 understand your application in this respect.

3 MR WILLIAMS: There are two situations here: Identity of a
4 witness, identity of a victim My Lord, the identity of
10:20:14 5 the witness is already known to us. We know every bit
6 about her - address, names, where she came from, et
7 cetera. What we are seeking to put in our case is the
8 identity of the husband, and that is not harmful in any
9 way because we already know who the witness is. It is
10:20:40 10 just for the benefit of the Court. We already know and I
11 believe the Prosecution also knows. It is just for the
12 benefit of the Court, when at the end of the day we will
13 come to adduce evidence to counteract or contradict that
14 bit of her evidence, to tie things up.

10:21:03 15 JUDGE THOMPSON: I want to ask one question, Mr Williams, and
16 ask you to enlighten me on this. What about the
17 subjective perception of the witness of grave
18 apprehension of danger to her own life if she discloses
19 his name? Is that a factor which, based on the
10:21:29 20 jurisprudence, this Court can consider in coming to a
21 final position, because that seems to me to be one
22 important dimension of it? The question of the veil of
23 anonymity is not a problem for me, because the veil of
24 anonymity shields her from the public and I imagine the
10:21:56 25 veil of anonymity would also shield the identity of the
26 alleged dead husband from -- the name of the husband from
27 the public. But there is in my own judgment some kind of
28 grave apprehension, whether well-founded or not, on her
29 part of danger to her life if she reveals the name.

1 That's all I need to ask.

2 MR WILLIAMS: My Lord, before we took a break on Friday

3 Your Lordship did order that the witness be counselled.

4 JUDGE THOMPSON: Yes.

10:22:47

5 MR WILLIAMS: My Lord, that should have been the function of
6 the Witness and Victims Unit.

7 JUDGE THOMPSON: Yes.

8 MR WILLIAMS: To tell the witness that this will not be
9 disclosed to the public, the lawyer who is asking you
10 these questions already knows every bit about yourself.
11 So, I mean, knowing something about your husband does not
12 affect your security.

10:23:01

13 JUDGE THOMPSON: Good point. Well, I take the point from a
14 purely practical point of view. What I was asking was
15 whether, according to the jurisprudence, this is a factor
16 that should come into the final equation whether such an
17 application should be granted or not, and, if it is,
18 whether it is a factor that we should accord any great
19 weight to or less weight to. That's all I wanted to
20 know. On the practical level I understand what you're
21 saying. Hopefully - although we are not in a perfect
22 world - the counselling will play its role, but I'm just
23 asking whether we judges can, in the process, factor this
24 issue of subjective perception of a witness.

10:23:16

10:23:35

25 MR WILLIAMS: My Lord, I believe once a witness has subjected
26 himself or herself to the Court, he or she should answer
27 legitimate questions put to her. The only thing the
28 witness should be assured of is that what you're saying
29 would not be made public and would not affect your

10:23:55

1 security or safety. My Lord, apart from the witness, the
2 accused persons are also entitled to rights.

3 JUDGE THOMPSON: I perfectly concede that. It is just that I
4 wanted to know whether there is any case law that has
10:24:40 5 highlighted this particular aspect.

6 MR WILLIAMS: I'm not aware of any, My Lord.

7 JUDGE THOMPSON: Thank you, anyway.

8 PRESIDING JUDGE: We'd like to take arguments from the
9 Prosecution on this issue, please.

10:24:56 10 MS WIAFE: Your Honours, the Prosecution does not object to
11 the application made by the Defence given the purpose for
12 which the Defence seeks the name. The Prosecution would
13 like to say that since the witness has testified that she
14 has fears for her security, then perhaps we could adopt a
10:25:14 15 procedure that doesn't involve the witness herself. The
16 Prosecution does not mind conferring with the Defence and
17 agreeing on the name of the witness's husband if that is
18 possible. But in principle we have no objection to the
19 disclosure of the witness's name. We believe this is the
10:25:50 20 procedure that would avoid causing distress to the
21 witness in this case.

22 PRESIDING JUDGE: Mr Williams, I suppose you don't have a
23 reply to this?

24 MR WILLIAMS: Just to submit, My Lord, that the method
10:26:30 25 suggested by my learned friend is perfectly fine by me.
26 I mean, as long as the name goes in, we don't mind the
27 means.

28 MR MARGAI: My Lords, I wonder if I could, with your leave,
29 just seek clarification.

1 PRESIDING JUDGE: On what, Mr Margai?

2 MR MARGAI: On the measure suggested by the Prosecution. I
3 mean, for the guidance of all of us, whether an agreement
4 as to the name by the Prosecution and the Defence will
10:27:10 5 constitute evidence. That's all I wish to know. That is
6 a very important factor. I mean, they're not testifying,
7 and I think I owe, if I do share a relationship with the
8 Bench, to ensure that we all build up the jurisprudence
9 in a meaningful way.

10:27:31 10 PRESIDING JUDGE: That is a concern of the Court. We have to
11 build up a jurisprudence, rather than basing --

12 MR MARGAI: I agree.

13 PRESIDING JUDGE: -- our decision on a consensus by the
14 Prosecution and the Defence, because it could well be a
10:27:43 15 measure of convenience that would induce us to the wrong
16 jurisprudence and the wrong decision in this matter.

17 MR MARGAI: And circumvent the procedure that should otherwise
18 be adopted.

19 JUDGE THOMPSON: I couldn't agree with you more. All that is
10:27:57 20 expedient is not lawful.

21 MR MARGAI: Precisely. Thank you, My Lords.

22 PRESIDING JUDGE: We shall confer on this matter for a few
23 minutes and we shall be back in a couple of minutes. The
24 Court will rise, please.

10:28:31 25 [Break taken at 10.32 a.m.]

26 [Upon resuming at 11.04 a.m.]

27 PRESIDING JUDGE: We are resuming the session. We have an
28 oral ruling which will be perfected by a written decision
29 on this issue in due course. Judge Boutet, present our

1 decision, please.

2 JUDGE BOUTET: This is the decision of the Chamber. The Trial
3 Chamber being highly concerned about the protection of
4 this witness, who has clearly expressed fear about
11:01:12 5 providing an answer to this question put to her by
6 counsel for the third accused, when she is asked by the
7 Defence to produce the name of her husband, and being
8 acutely aware that witnesses may be re-traumatised by
9 giving evidence in a Trial Chamber --

11:01:42 10 MR JABBI: My Lord, I am sorry to interrupt the ruling, but is
11 the witness supposed to be here?

12 JUDGE BOUTET: Yes.

13 PRESIDING JUDGE: Yes, yes, yes.

14 JUDGE BOUTET: Yes, we knew she was there.

11:01:55 15 PRESIDING JUDGE: We asked that she be there.

16 JUDGE BOUTET: -- the Chamber will not allow this question to
17 be put to this witness in the form initially proposed.
18 The Trial Chamber is not prepared, therefore, to order
19 this witness to answer this question, but is, however,
11:02:17 20 prepared to accept, pursuant to Rule 89C, the alternative
21 method proposed of having this information form part of
22 the record as an agreed statement of fact reduced in
23 writing and filed as an exhibit in Court and to form part
24 of the record.

11:02:40 25 So that concludes this application at this time. Do
26 you have other questions of this witness?

27 MR WILLIAMS: None, My Lord.

28 JUDGE BOUTET: So obviously the Prosecution, having made a
29 statement that they would agree to do what has been

1 proposed, that should solve the issue. After the next
2 recess you may move to produce that document as an
3 exhibit.

4 Madam Prosecutor, do you have any questions in
5 re-examination?

6 MS WIAFE: No, Your Honour.

7 JUDGE BOUTET: Thank you.

8 MR WILLIAMS: Did I hear Your Lordship say after next recess?

9 JUDGE BOUTET: You can do it now if you have it reduced in
10 writing. You can do it at any time. You need not to
11 introduce that through the witness.

12 MR WILLIAMS: I understand, My Lord. We can do it at any
13 time.

14 JUDGE BOUTET: Yes, absolutely.

15 MR WILLIAMS: I'm grateful.

16 MS WIAFE: Your Honour, we just wanted to seek some
17 clarification as to the procedure. The Prosecution is
18 wondering whether the witness should not be shown the
19 name right now to confirm

20 PRESIDING JUDGE: No, please.

21 JUDGE BOUTET: No, we have agreed to that and both sides
22 agreed. It is an agreed statement of fact that will be
23 introduced as part of the record. We don't want the
24 witness to be involved in this at all.

25 PRESIDING JUDGE: As we said, there will be a written decision
26 on this issue to put matters straight on record as to the
27 motivation behind the decision of the Chamber. If we
28 came with an oral decision, it was to at least see if
29 Mr Williams was going to proceed with one or two

1 questions - now he says no - and, of course, thereafter
2 for us to have the witness released for the time being.

3 MS WIAFE: Your Honour, the Prosecution seeks further
4 clarification. The Defence has given us the full name of
11:05:07 5 the witness's husband, but the Prosecution doesn't have
6 everything that the Defence has supplied as --

7 PRESIDING JUDGE: Those things will be sorted out later. We
8 have agreed, we have ruled, and they will be sorted out
9 in a regular manner later on. Madam Witness.

11:05:29 10 THE WITNESS: Yes, sir.

11 PRESIDING JUDGE: We have finished with you. We thank you for
12 coming --

13 THE WITNESS: Okay.

14 PRESIDING JUDGE: -- to give evidence in this matter.

11:05:44 15 Although we have finished with you, we may need you back
16 here again, and when the time comes -- we are not saying
17 you must come back here, no. We say we may need you back
18 here. If that happens you will be contacted. Thank you
19 very much and have a safe journey to your place of abode.

11:06:34 20 JUDGE BOUTET: After this witness is excused we will revert
21 back to the previous witness, which is the child witness,
22 and we'll get to closed session for you, Mr Koppe, to
23 proceed with your cross-examination. To allow that to
24 happen we are going to be rising for a few minutes and
11:06:55 25 when it is ready we are coming back to that.

26 PRESIDING JUDGE: The Court will rise, please.

27 [Break taken at 11.10 a.m.]

28 [The witness withdrew]

29 [HN061204B]

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[Upon resuming at 11.43 a.m]
[At this point in the proceedings a portion of the
transcript, pages 17 to 61, was extracted and sealed
under separate cover, as the session was heard in camera]

1 [Closed session]

2 JUDGE BOUTET: Mr Koppe, are you proceeding? Is it you or
3 Mr Bockarie? Please do so. So this is the
4 cross-examination by the second accused of Witness
11:45:30 5 TF2-067. So do we have the witness?

6 Yes. You may proceed.

7 WITNESS: TF2-067 [Resumed]

8 [Witness answered through interpretation]

9 CROSS-EXAMINED BY MR KOPPE:

11:45:59 10 Q. Good morning, Mr Witness.

11 A. Good morning, sir.

12 Q. Could you tell this Court what your name is.

13 A. You want to expose my name.

14 JUDGE BOUTET: Mr Witness, we are now in a closed session.

11:46:23 15 There is nobody in the public, and the fact that you may
16 answer that question will not disclose your identity. I
17 know you are concerned about that. But you are
18 protected. And the mere fact that you may answer and
19 give your name will not be publicly known.

11:46:48 20 THE WITNESS: Well, it's for a problem in the future, a
21 possible problem in the future.

22 PRESIDING JUDGE: What are you saying, Mr Witness?

23 THE WITNESS: I'm afraid of a possible problem in the future.

11:47:13 24 PRESIDING JUDGE: We are telling you that -- it's true, you
25 are not seeing the courtroom. There is nobody in this
26 court. It's only the -- the audience is gone; the public
27 is gone. We are in a closed session. So in a closed
28 session, you are supposed to answer all questions which
29 are put to you, including giving your name. And it does

1 not go outside. It remains here. So can you answer that
2 please, question.

3 JUDGE BOUTET: And Witness, the Court's record about that will
4 not -- is not available publicly. So it's only for the
11:47:54 5 Court to have access to that information, and it will not
6 be and it is not accessible by members of the public,
7 whoever they may be. So in the future, the fact that you
8 have given your name will not be known because you have
9 given your name in this Court. Do you understand that?

11:48:15 10 THE WITNESS: Yes.

11 PRESIDING JUDGE: Okay. What's your name, then, young man?

12 THE WITNESS: Ishmael Kargbo. Ishmael Kargbo.

13 JUDGE BOUTET: Thank you, Mr Witness.

14 THE WITNESS: Yes, sir.

11:49:12 15 JUDGE BOUTET: Yes, Mr Counsel, please proceed.

16 MR KOPPE:

17 Q. Mr Witness, could you please tell this Court where you
18 are residing? What is your place of residence?

19 A. Where I abide presently?

11:49:34 20 Q. Yes.

21 A. How do you want to show there for reasons of -- for
22 security purposes.

23 MR KOPPE: I could circumvent all this by asking him the
24 address I know. Maybe that's more expedient.

11:49:52 25 Q. Are you, Mr Witness, presently residing at 4 -- number 4,
26 Mokuwa Street in Bo Town?

27 A. Yes, sir.

28 Q. Without this --

29 PRESIDING JUDGE: Please, Mr Koppe, what's the address?

1 MR KOPPE: Mokuwa, M-O-K-U-A.

2 PRESIDING JUDGE: Yes. Number what?

3 MR KOPPE: Number 4.

4 THE WITNESS: M-O-K-U-W-A.

11:50:36

5 PRESIDING JUDGE: Mr Witness, you said M-O-K-U?

6 THE WITNESS: M-O-K-U-W-A. K-U, as in us.

7 PRESIDING JUDGE: Mokuwa Street?

8 THE WITNESS: Yes.

9 MR KOPPE:

11:51:00

10 Q. In Bo Town, isn't it, Witness?

11 A. Yes.

12 Q. Would you tell this Court the name of your mother,
13 Witness.

14 A. No, I'll not tell you my mother's name.

11:51:27

15 Q. Witness, is your mother's name Zainaib --

16 PRESIDING JUDGE: When he says no, what does the Prosecution
17 have to say about that? The witness will not talk about
18 the mother's name. Mr Koppe's asking the question
19 otherwise. The name can go.

11:51:57

20 MS PARMAR: Certainly, Your Honour. Just to explain the
21 witness's demeanour, given his vulnerability, he was
22 seriously counselled during proofing sessions to not
23 reveal his identity during testimony. And perhaps he is
24 just being mindful of that, just to keep that in mind.

11:52:19

25 JUDGE BOUTET: So again, Mr Witness, we want to re-emphasise
26 for you that contrary to the last week when you were
27 giving evidence, we are now in what we call a closed
28 session. Last week, when you first testified, we were
29 not in a closed session, and part of your answers could

1 be heard by the public. Now, nothing of what you say is
2 heard by the public; it's only by the Court. So if it's
3 your name, the name of your father, or whatever
4 information you're giving us now is protected and will
5 not be disclosed publicly. Do you understand that?

11:52:52

6 THE WITNESS: Yes.

7 JUDGE BOUTET: Thank you, Mr Witness.

8 MR KOPPE:

9 Q. Mr Witness, is your mother's name Zainaib Kargbo?

11:53:14

10 A. Yes.

11 JUDGE BOUTET: Can you spell it out for us, please.

12 MR KOPPE: That's Z-A-N-A-I-B. No, I'm sorry. It's
13 Z-A-I-N-A-I-B, I'm sorry.

14 Q. Witness, is your mother also known as "Baby"?

11:53:51

15 A. Well, I only know the Zainaib name.

16 Q. Do other people call your mother sometimes Baby?

17 A. I've not heard that. I only tell you what I know.

18 Q. Witness, is your father's name Albert? Albert Kargbo?

19 A. Why are you asking me all of these questions?

11:54:54

20 PRESIDING JUDGE: Mr Witness, young man, it's not for
21 anything. It's just a simple question, because we want
22 to know. In a closed session, this is very, very -- it's
23 a closed session. The public is not here. You have been
24 told this by myself, my colleague --

11:55:23

25 THE WITNESS: But you want to know everything about me.

26 PRESIDING JUDGE: Yes. It is good, you know -- it's not bad
27 for you, you know, if we know everything about you. Not
28 everything anyway, but those things which we want to
29 know. So there is no --

1 THE WITNESS: For what reason?

2 PRESIDING JUDGE: That is what justice is. That is part of
3 the truth that we swear, you know, to speak when we take
4 the Koran. You know, you took the Koran, and you swore
11:56:05 5 to it. And you made us understand that you really know
6 what it is or what the consequences are if you told a
7 lie. And we are not saying that that is it, but it is a
8 question of just knowing certain facts. And the public
9 is not here, young man. Ishmael, Ishmael?

11:56:37 10 THE WITNESS: Yes, sir.

11 PRESIDING JUDGE: The public is not here. You understand?

12 THE WITNESS: Yes.

13 PRESIDING JUDGE: So you don't need to --

14 THE WITNESS: But I will suggest that it stops there.

11:56:53 15 PRESIDING JUDGE: It will --

16 THE WITNESS: You should not know everything about me.

17 PRESIDING JUDGE: There are certain things we need to know.

18 You understand? We need to know some of these things so
19 that we can be able to come by proper decision in this
11:57:21 20 matter. You don't need to have any fears. Do you
21 understand? Do you understand?

22 THE WITNESS: Yes. But I don't want anyone to go and look at
23 me at my house. There are some people, I don't know
24 which one may be amongst you who may be bad or good. I
11:57:48 25 don't know.

26 PRESIDING JUDGE: You say what?

27 THE WITNESS: I don't want anyone to go and visit me or search
28 for me at my house because there could be bad or good
29 people amongst you, and I can't determine now who is good

1 or who is bad.

2 PRESIDING JUDGE: Well, for now, you should presume that
3 everybody here is a good person, unless we find a reason
4 to say that somebody is a bad person. Everybody here is
11:58:25 5 known and is presumed to be a good person. So don't you
6 worry. You are saying that amongst us, there may be some
7 bad people and there may be some good people. Don't you
8 worry about that. Ishmael, Ishmael?

9 THE WITNESS: Yes.

11:58:46 10 PRESIDING JUDGE: Don't you worry about that, okay? Just --

11 THE WITNESS: I want to give an example.

12 PRESIDING JUDGE: Yes.

13 THE WITNESS: Example: Like when Jesus was with his
14 disciples, they also said they would never betray him
11:59:14 15 And when the time came, one of them sold him, and all of
16 them disappeared. And he alone suffered.

17 PRESIDING JUDGE: Yes, we know that story very well. You are
18 right. You are right. That story is true, my dear.
19 It's very true. But we'll make sure that nobody betrays
11:59:41 20 you or comes to search for you. You are under the
21 protection of this Court. Do you understand me? You are
22 under the protection of this Court. And if you leave
23 here and anybody comes to harass you or to do anything
24 bad to you, you should report back to this Court, to the
12:00:01 25 officials of this Court, and the matter will be taken
26 care of.

27 Please, I want that to be translated to him
28 properly. Because it is then that we will know who the
29 bad man you're referring to is and we'll take the steps,

1 necessary steps, to ensure that we know what to do about
2 the bad man who you may be thinking of. But for now, we
3 have no bad man here.

12:00:37 4 JUDGE BOUTET: And that protection goes to you and your
5 family. It's not only for you, but it is you and your
6 family.

7 PRESIDING JUDGE: And this protection goes to you, not only to
8 you, but to your family as well. That's to your mother,
9 Zainaib Kargbo, and your father whose name we are waiting
10 to get from you.

11 THE WITNESS: What name do you have? What name do you have
12 out there?

13 PRESIDING JUDGE: The name I have -- we have here is your own,
14 Ishmael Kargbo.

12:01:20 15 THE WITNESS: The name you are about to call, the father's
16 name you are about to call.

17 MR KOPPE:

18 Q. Witness, that was Albert. Albert Kargbo.

19 A. Well, with regards to my address, I could be at Mokuwa
12:01:50 20 Street. I could be to my aunt's place. I stay at three
21 different places.

22 PRESIDING JUDGE: No, it is not your address. You have given
23 your address. You say you are at number 4 --

12:02:07 24 THE WITNESS: No, to say that if someone wants to search me or
25 to visit me, you would not easily get me. If you want to
26 search or visit me, you would not easily find me. I
27 could be at three different places. That's why I'm
28 saying this.

29 PRESIDING JUDGE: Nobody will come to search you for anything.

1 I've told you that you are under the protection of this
2 Court. And if you see any bad man, you know, who is
3 coming to look for you, it is -- you should not hesitate.
4 You should not stop to report him. You should report,
5 you know, the person, and then the Court which is
6 protecting you, your mother, your father, and your
7 family, we'll take steps to make sure that something is
8 done.

12:02:38

9 So I think we have to proceed now, Ishmael.

12:02:53

10 THE WITNESS: Yes, sir.

11 PRESIDING JUDGE: We have to proceed now. You have the
12 assurance of this Court. I'm speaking on behalf of this
13 Court. And it is this Court that controls these
14 proceedings. You have our protection. Your father has
15 our protection. Your mother and your family has our
16 protection. So you don't have to be afraid of anything.

12:03:07

17 Can you give us your father's name, please.

18 JUDGE BOUTET: The question that was asked -- could you repeat
19 your question, Mr Koppe.

12:03:32

20 MR KOPPE:

21 Q. Your father's name, Witness, is that Albert Kargbo?

22 A. Yes.

23 Q. Witness, do your father and mother live in the same
24 house?

12:04:02

25 PRESIDING JUDGE: How relevant is that, please? We should not
26 push him too much. How relevant is that?

27 MR KOPPE: I will rephrase the question --

28 THE WITNESS: Are you talking --

29 PRESIDING JUDGE: Don't answer that question. He's coming on

1 with another question.

2 MR KOPPE:

3 Q. Do your father and mother live with you on number 4
4 Mokuwa Street?

12:04:36

5 A. You mean my father and my father? Are you not referring
6 to the same person?

7 Q. Yes, your father and mother, are they living with you on
8 number 4 Mokuwa Street?

9 A. Yes, sir.

12:04:52

10 Q. Witness, do you remember saying last week to the Court
11 that the last time that you saw your father was about
12 four weeks ago?

13 A. I did not mention a week. I mentioned the date that I
14 came.

12:05:54

15 Q. Could you repeat that for the Court, the date you
16 came -- what date you saw your father for the last time.

17 A. Go over that again.

18 Q. You said you mentioned the date which you saw your father
19 the last time. Can you tell again to this Court what
20 date it was that you saw your father for the last time.

12:06:31

21 A. I -- what do you mean, when I was about coming to town
22 here or what? Let the question be precise and clear.

23 Q. Thank you, Witness. I remember I was here last week here
24 in court, and I remember you telling the Court that the
25 last time you saw your father was four weeks before in
26 Bo. Do you remember that?

12:07:18

27 A. Four weeks before I came here?

28 Q. That's right.

29 A. No, no, no, no. I did not say so. I accept now that you

1 are saying so. I did not say that.

2 Q. Can you tell this Court, when was the last time that you
3 saw your father?

4 A. When I last saw my father in Bo or here? What do you
5 mean?

12:08:04

6 Q. When was the last time that you saw your father?

7 A. Well, when I was in Bo before I came, I saw my father on
8 Thursday. I left Bo on Thursday, and I saw my father in
9 the morning Thursday. I went to school at 12.00. During
10 lunch, I came back home. In the afternoon, we had to
11 come.

12:08:39

12 PRESIDING JUDGE: He said he left -- he saw his father on
13 Thursday, and left when?

14 MR KOPPE: I think he said in the afternoon.

12:08:55

15 THE WITNESS: I said I saw my father on the morning, on
16 Thursday. I went to school that same day. Came
17 back -- I came back at 12.00. We spent some time until
18 the afternoon. I can't remember the exact time now, but
19 we left on the same Thursday to Freetown.

12:09:17

20 MR KOPPE:

21 Q. And this was four weeks ago, or when was this?

22 A. Before the Ramadan, before pray day. Because pray day
23 was on Sunday. I came the Thursday preceding pray day.
24 I reached here the night of Thursday.

12:10:11

25 Q. Yes, but Witness, can you tell the Court how long ago
26 that was?

27 A. No, I can't tell.

28 Q. When you last saw your father, did he know you were going
29 to testify in this Court?

1 A. Well, before I could ever speak to anyone, they first
2 spoke to my father because they couldn't have just taken
3 me to this place without consulting my father.

4 I don't understand this question. Let me say yes.
5 My father knows.

12:11:16

6 Q. Thank you.

7 A. How do you ask such a question?

8 Q. I'm almost done, Witness, so we're almost finished.

9 Could you tell this Court if you have seen your
10 father in Freetown since you came to Freetown?

12:11:39

11 A. My father?

12 Q. Yes.

13 A. Yes, I've seen my father.

14 Q. You have seen him in Freetown --

12:12:08

15 PRESIDING JUDGE: Well, that's the answer he has given.

16 MR KOPPE: I wasn't finished with my question.

17 Q. You have seen him in Freetown recently? When was the
18 last time you saw him?

19 A. Where?

12:12:22

20 Q. In Freetown. You saw him last week or this weekend?

21 A. Ah. Well, I spoke during last week. The day I was
22 supposed to complete my testimony was last week, but I
23 was not allowed to complete. This week, today's Monday.

24 Q. So you don't know exactly when you saw him for the last
25 time?

12:13:17

26 A. I can't tell.

27 Q. Was it a few days ago or one week ago?

28 A. A few days. A few days.

29 Q. Did you stay in the same house with your father when you

1 were in Freetown or when you are in Freetown now?

2 A. No.

3 Q. My last question to you, Mr Witness: Do you know that
4 your father, like yourself, also gave evidence as a
5 witness to this Court last week?

12:14:36

6 PRESIDING JUDGE: How relevant is that to him? Or to the
7 issues?

8 MR KOPPE: I think it's very relevant, Your Honour. I think
9 it's very relevant.

12:14:53

10 PRESIDING JUDGE: Is it not on record? I mean, did he answer
11 the question before you say the father gave evidence?
12 You may proceed.

13 MR KOPPE: I will repeat the question.

14 JUDGE BOUTET: Thank you.

12:15:14

15 MR KOPPE:

16 Q. Witness, do you know whether your father gave also
17 evidence in this Court as a witness, like you last week?

18 A. That's my question, but I can't answer.

19 Q. You cannot answer, Witness, or you don't want to answer?

12:16:03

20 A. Both.

21 JUDGE BOUTET: But, Witness, the question is do you know or
22 not? If you don't know, you can say you don't know. If
23 you know, well, all you have to say is "I know."

24 THE WITNESS: Let's forget about that and go elsewhere.

12:17:01

25 JUDGE BOUTET: Witness, you must answer the question.

26 THE WITNESS: For what reason?

27 PRESIDING JUDGE: For the same reasons that I have been
28 talking to you all along, for the same reasons that I'm
29 talking to you all along. Hmm? Ishmael.

1 THE WITNESS: Yes, sir.

2 PRESIDING JUDGE: For the same reasons which I have been using
3 to convince you to answer these questions. They will do
4 you no harm. Do you know or you do not know?

12:18:20 5 THE WITNESS: This question, it looks like -- it looks like I
6 should know what's happening to my father.

7 JUDGE BOUTET: We want to know from you what you know. These
8 questions are asked of you. You have accepted to give
9 evidence. You have been sworn on the Koran. And we want
10 to know from you what's your answer to that question.

12:18:59 11 THE WITNESS: Well, I was sworn to the Koran, but I did not
12 swear for this question. I swore for what they did to me
13 during this war, not for this question that I swore. I
14 came to explain what they did to me. I did not come -- I
15 did not come to answer that question. I did not swear
12:19:28 16 for that question. We should close that chapter. That
17 particular question should not be asked of me. Let's go
18 directly to what I came for.

19 JUDGE BOUTET: Mr Witness, we decide what you answer or you
12:19:43 20 don't answer. You don't decide that. What we're asking
21 you is that you answer as truthfully as possible. Now
22 what you have been telling us is that what you have been
23 saying to this Court is true only with respect to what
24 has happened to you. Everything else is not true.

12:20:06 25 That's what you're saying.

26 THE WITNESS: I swore for what happened to me. What happened
27 to me and my family, that is what I swore for. Then I
28 explained.

29 PRESIDING JUDGE: Mr Koppe, put the question to him again

1 please.

2 Mr Witness, please try and answer this question and
3 let us leave this place. I have given you all the
4 assurances that you're under the protection of this
5 Court. We don't need to stay here for too long.

12:20:56

6 MR TAVENER: It may be, Your Honour, that if a small break can
7 be allowed, the witness can be spoken to by Witness
8 Services. It may assist him to understand that he is
9 protected, it is correct for him to answer the questions.

12:21:16

10 PRESIDING JUDGE: He knows. He has gotten the message. He
11 knows.

12 MR MARGAI: My Lord, with respect, we take exception to that.

13 THE WITNESS: Yeah, you should do that.

14 PRESIDING JUDGE: We will not do that, my dear Ishmael.

12:21:37

15 Ishmael.

16 THE WITNESS: Yes, sir.

17 PRESIDING JUDGE: You are under the protection of this Court.
18 Please answer the question. It is a direct question. If
19 you know, you say you know. If you do not know, you say
20 you do not know. So that is it.

12:21:46

21 Mr Koppe, can you put the question to him again,
22 please.

23 MR KOPPE:

24 Q. Witness, do you know whether your father, just like
25 yourself, testified in this Court --

12:22:04

26 A. Well, you have been giving me two names.

27 PRESIDING JUDGE: Concentrate on the father, please. Remove
28 "just as yourself." Ask him whether he knows of the
29 father. That's all. These are matters you deduced from

1 the evidence. You don't need to suggest --

2 JUDGE THOMPSON: He's on record as testifying.

3 MR KOPPE: I just wanted to make it easier.

4 PRESIDING JUDGE: No, no, no, it's not easier. You're
5 complicating it.

12:22:39

6 MR KOPPE:

7 Q. Witness, do you know whether your father testified in
8 this Court last week?

9 PRESIDING JUDGE: Simple question.

12:22:50

10 THE WITNESS: Yes.

11 MR KOPPE: Thank you, Witness.

12 JUDGE BOUTET: Cross-examination by the third accused. And is
13 your cross-examination in closed session as well? We are
14 in closed session.

12:23:30

15 MR MARGAI: Yes. Yes, I shall continue in closed session.

16 JUDGE BOUTET: Good.

17 CROSS-EXAMINED BY MR MARGAI:

18 Q. Witness, are you in a position to identify your father
19 before this Court?

12:24:34

20 A. I can't.

21 Q. Witness, if your father stands before this Court, could
22 you tell this Court that "this is my father"?

23 A. I can't tell.

24 Q. Witness, may I ask why can't you tell?

12:26:29

25 A. I just can't.

26 Q. Witness, am I to understand you to be saying that you
27 would not want to identify your father as distinct from
28 saying that you could not identify him?

29 A. Yes.

1 Q. What is yes? You would not want to identify him as your
2 father in court?

3 A. Yes.

4 Q. Why?

12:27:37 5 A. I have nothing to say.

6 Q. Why wouldn't you want to identify him in this Court?

7 A. I have no reason to identify him

8 Q. But would you identify him if the Court were to ask that
9 you do so?

12:28:28 10 A. What do you mean by that? What do you mean by that word
11 "identify"?

12 Q. That is to say, this man standing here is my father --

13 MR TAVENER: I object to these questions. I object to these
14 questions. They're quite difficult conceptual questions
15 being put to a witness, and the nature of the question
16 doesn't appear to show any obvious relevance except to
17 somehow harass the witness. They simply lead nowhere.

18 Would he do something? Would he identify if his father's
19 in Court? It's not going to happen. It's purely

12:29:07 20 hypothetical. I oppose the questions on the basis of,
21 firstly, relevance; and secondly, conceptual questions
22 being asked of a juvenile.

23 JUDGE BOUTET: Mr Margai, your reply.

24 MR MARGAI: My Lords, if only my learned friend could recall

12:29:22 25 the application that was made by my learned friend

26 Mr Koppe for the second accused for us to move into

27 closed sessions, and also recall that I did not only

28 associate with such an application, but I also applied to

29 this Court to recall PW34, and advanced reasons for so

1 asking, which Your Lordships asked me to reduce into
2 writing which I have done. So to say that it is
3 irrelevant, I think --

4 JUDGE BOUTET: I don't have a copy of your motion with me, but
12:30:06 5 my reading of your motion on Friday did not lead me to
6 conclude that you are calling the Court to order that
7 this other witness be called back. Furthermore, your
8 associate, Mr Williams, told us on Friday that you were
9 rethinking that particular motion and aspect of your
10 motion because it was not clear whether the law was
11 supporting you in this respect.

12 So as a minimum, let me put it to you, Mr Margai,
13 there is confusion as to where you stand on this and what
14 is your motion, if any, in this respect.

12:30:38 15 MR MARGAI: My Lord, I'm very clear in my mind where I stand,
16 and I wish to assure this Court that the motion was filed
17 as ordered on Friday.

18 JUDGE BOUTET: I have seen the motion filed, indeed.

19 MR MARGAI: Sorry.

12:30:52 20 JUDGE BOUTET: I have seen a motion filed.

21 MR MARGAI: And Mr Williams was quite right in saying that we
22 were rethinking, rethinking on the path of remodifying
23 the motion which we have done this morning with the
24 concurrence of Mr James Johnson.

12:31:15 25 PRESIDING JUDGE: You mean you concur and you decide on what
26 to do?

27 MR MARGAI: No, not that we decided --

28 PRESIDING JUDGE: The motion was supposed to have been filed.
29 It was filed. So what is this discussion between -- and

1 the Prosecution was supposed to file their reply.

2 MR TAVENER: Excuse me, I want the witness to take his
3 headphones off. That's all I'm trying to say.

4 PRESIDING JUDGE: Okay.

12:31:54

5 MR MARGAI: Yes, My Lord. All I'm saying is we filed the
6 motion and it has been served.

7 PRESIDING JUDGE: Has the Prosecution replied?

8 MR MARGAI: They have not replied. And according to your
9 order, they are supposed to reply today.

12:32:08

10 PRESIDING JUDGE: Today.

11 MR MARGAI: I take it up until 4.00 p.m. They have up to 4.00
12 p.m.

13 PRESIDING JUDGE: Unless they have an extension of time.

14 MR MARGAI: Unless they have -- but I believe they will
15 comply, My Lords.

12:32:19

16 PRESIDING JUDGE: Right.

17 MR MARGAI: But quite frankly, the question is very relevant,
18 and the relevance will be seen in the context of the
19 application that will be in line with the motion,

12:32:37

20 My Lords. I mean, I'm sure Your Lordships will recall
21 that I did say that when PW34 testified, Mr Yillah, who
22 cross-examined on behalf of the first accused, wrote a
23 name on a piece of paper and showed him and asked him
24 whether he could identify that name or associate that
25 name with an individual carrying that name. And his
26 answer was in the negative.

12:33:05

27 JUDGE BOUTET: I thought -- and I follow you up to now. I
28 have no problem with that.

29 MR MARGAI: And in the light of the answers given to questions

1 put by my learned friend Mr Koppe, it is now clear beyond
2 all reasonable doubt that, in fact, there was every
3 reason for me making that application to recall PW34.
4 And the information given to the Court by Mr Williams was
12:33:48 5 quite factual and in line with the questions that have
6 now been answered emanating from Mr Koppe. And it is
7 quite obvious that before that application could have
8 been properly made, we needed to address what has now
9 been addressed by Mr Koppe. That was why Mr Williams
12:34:16 10 said we were rethinking.

11 JUDGE BOUTET: And again, bear with me on this, because I
12 don't have your motion with me, and I know I have looked
13 at it on Friday. My recollection of the essence of your
14 motion, the one that you had filed on Friday was
12:34:30 15 essentially asking the Court to allow you not to you
16 recall the witness, but to allow you to file that piece
17 of paper that had a name written on it as an exhibit.
18 But as I say --

19 MR MARGAI: With the greatest respect, My Lord, it was
12:34:47 20 Mr Koppe. I applied for this witness to be recalled.
21 And in fact, there was some question from the Bench to
22 the Prosecution as to whether the Bench had the power to
23 recall or to order a recall. And I think my learned
24 friend did say that he doubted very much whether the
12:35:11 25 Bench had such a power.

26 PRESIDING JUDGE: Then we ordered that the matter should be
27 reduced into writing.

28 MR MARGAI: Reduced into writing. That I have done, My Lords.

29 PRESIDING JUDGE: Yes. I haven't seen the motion as yet.

1 Maybe it's because the other party's reply is not yet in.

2 MR MARGAI: Your brother on the left has seen it, I believe.

3 PRESIDING JUDGE: It doesn't appear he has seen the right one.

4 JUDGE BOUTET: That's right. I was going to tell you that
5 maybe I was mistaken.

12:35:42

6 PRESIDING JUDGE: Because I know your motion was an
7 application to recall the witness. I would be surprised
8 if you would sidetrack the main issue.

9 MR MARGAI: No, no, no, no. We are still on track, My Lord.

12:35:53

10 We are still on track.

11 PRESIDING JUDGE: Yes, good. I'm sure, you know -- anyway.

12 MR MARGAI: In fact, the only modification was to include an
13 authority which I saw over the weekend.

14 JUDGE THOMPSON: That was my recollection, that you had not in
15 any way backtracked from your original position --

12:36:05

16 MR MARGAI: No, My Lords.

17 JUDGE THOMPSON: -- and that you clearly wanted this witness
18 recalled. And I think the Prosecution had indicated that
19 in response to my own inquiry whether this Court had the
20 undoubted authority to order recall of a witness, I think
21 they modified their position because I remember

12:36:22

22 Mr Tavener beginning by saying that the Court did not,
23 but later on conceded perhaps that the Court may well
24 have the jurisdiction but not to interrupt or
25 interpose --

12:36:44

26 MR MARGAI: To interfere with the conduct of the Prosecution's
27 case.

28 PRESIDING JUDGE: Yes, guaranteed prosecutorial autonomy in
29 the presentation of their case. That's my own

1 recollection.

2 MR MARGAI: That is quite so, My Lord.

3 PRESIDING JUDGE: And you say Mr Tavener had it, even if the
4 witness had to be recalled, it should be recalled not in
12:37:06 5 the course of the conduct of the case for the Prosecution
6 but during the conducting of the case for the Defence.

7 MR MARGAI: And then I retorted by saying that we could not
8 have one witness testifying for both the Prosecution and
9 the Defence, and that he could be called as a witness of
12:37:25 10 the Court in pursuit of the truth.

11 PRESIDING JUDGE: And where are you anyway? Where are you
12 placing -- at what stage do you think -- is the Court
13 limited to calling a witness at a particular stage?

14 MR MARGAI: No, no, no, that's not what I'm saying, My Lord.
12:37:42 15 The Court can recall a witness as and when the Court
16 deems it necessary in the interests of justice.

17 JUDGE BOUTET: I have a copy of the document you filed on 3
18 December and 6 December in front of me now.

19 MR MARGAI: That's correct, My Lord.

12:38:09 20 JUDGE BOUTET: It's called "Motion for recall of Witness
21 TF2-067" --

22 MR MARGAI: That is, correct, My Lord.

23 JUDGE BOUTET: I will look at it and bear with that, and we
24 will advise accordingly. We will not give a decision on
12:38:25 25 that. But the questions that are being asked at this
26 particular moment.

27 MR MARGAI: No, it was because -- I mean, the issue came up
28 when my learned friend Mr Tavener said that the questions
29 were not relevant, and I was trying to convince the Court

1 of its relevance.

12:38:51 2 JUDGE THOMPSON: I seem to take the view that the questions
3 may well have been phrased in too conceptual a manner,
4 and probably that might have been one of the reasons why
5 we're in a state of impasse. But I do not know how the
6 translator deals linguistically with "identify." I think
7 learned counsel for the Prosecution was, in fact,
8 expressing a position which I myself was thinking about,
9 whether we may not be in an area of conceptualisation
10 here. That's all.

12:39:18 11 MR MARGAI: I think you're right, My Lord. Because I heard
12 the witness ask, What do you mean by identify or
13 identification? I really did not listen to the
14 translation on the English channel. So maybe that
15 was --

12:39:40 16 JUDGE THOMPSON: It's probably a question whether if this
17 witness speaks Krio, is it? And he speaks also Mende.

18 MR MARGAI: No, he doesn't.

12:39:56 19 JUDGE THOMPSON: No, it's just Krio. Whether the translators
20 could find some appropriate concept in Krio which would
21 reflect "identify," I don't know.

22 MR MARGAI: That might help.

12:40:20 23 JUDGE THOMPSON: I think the danger usually arises when we
24 engage in what is called transliteration, trying to
25 translate word for word instead of trying to get the idea
26 across.

27 MR MARGAI: Perhaps I could rephrase my question by asking him
28 whether he would recognise his father standing before
29 this Court. Maybe that is a simpler way of --

1 MR TAVENER: My objection still remains. I don't understand
2 why my friend needs to put the collocation in court.
3 "Can he recognise his father," that would be enough. By
4 adding the extra layer causes the confusion and upsets
12:41:05 5 the witness. Therefore, if the question is "can he
6 identify his father," I don't know whether that is
7 particularly relevant, but I have no objection to that
8 question. Can he identify his father? I don't know why
9 you need to put "in Court" because this witness will
12:41:21 10 never be called upon to do that.

11 JUDGE BOUTET: And in looking at your submission, Mr Margai,
12 your submission, and I'm looking at the conclusion of
13 your submission, the counsel requests that the Trial
14 Chamber recall Witness TF-057 for further examination of
12:41:40 15 057. So it's not to confront Witness X with Witness B.
16 It's to further -- for further examination of
17 Witness TF2-057.

18 MR MARGAI: The reason for that is Your Lordships did say on
19 the last adjourned date that that document was not before
12:42:06 20 you. And since that document is not before you, it
21 really does not form part and parcel of the proceedings.

22 JUDGE BOUTET: But the objection is sustained in part on the
23 question being put to the witness at this particular
24 juncture. If you give the witness a more precise
12:42:35 25 question, leaving outside "Court."

26 MR MARGAI: Well, I shall move on, if it pleases
27 Your Lordships.

28 Sorry, his headphone is not on.

29 Q. Mr Witness, you were in your house when you saw the

1 Kamajors enter Bo from CKC end, were you not?

2 A. Well, I said the Kamajors -- the Kamajors were coming
3 more from the CKC end, the villages around CKC end. That
4 is what I know about. Because we were going in that
5 area. We were going to those villages, walking for our
6 teachers when I was in the primary school. That's how I
7 knew about those villages. There are many from that end,
8 and they were coming from that end to Bo. I didn't know
9 where they were coming from

12:43:43

10 Q. Thank you, Mr Witness. Now, at this time you saw the
11 Kamajors entering Bo, would you agree that you were
12 between the age -- ages of 10 and 11 years?

12:44:07

13 A. I can't tell now. I'm not able to know.

14 Q. Thank you.

12:44:47

15 A. Go over the question. Go over the question again once
16 more.

17 Q. Now, when you saw the Kamajors entering Bo, this was
18 about seven years ago. Is that correct?

19 A. No, I'm not able to know.

12:45:07

20 PRESIDING JUDGE: [Microphone not activated]

21 MR MARGAI: It's the same question.

22 PRESIDING JUDGE: For a witness like this, it's good to remain
23 within the same context, Mr Margai. He was --

24 MR MARGAI: I said he was between the ages of 10 and 11. He
25 said he would not know. So I have asked the same
26 question in another way by saying --

12:45:21

27 PRESIDING JUDGE: He said, "ask me the question again."

28 That's what he said.

29 MR MARGAI: As My Lord pleases.

1 PRESIDING JUDGE: That's what he said.

2 MR MARGAI:

3 Q. Would you agree that when you saw the Kamajors entering
4 Bo from CKC end, you were about 10 or 11 years old?

12:45:46 5 A. I don't know. I don't know.

6 JUDGE THOMPSON: [Previous translation continues] answer before
7 he said ask me the question again. You have it now
8 confirmed twice that he doesn't know what age he was.

9 MR MARGAI: Yes, My Lords.

12:46:02 10 Q. Now, would you agree with me that it was about seven
11 years ago when you saw these Kamajor entering Bo?

12 A. Well, I don't know that question. I don't know the
13 answer. It was during the war period. I was a small
14 child. I couldn't have -- I couldn't have known.

12:46:43 15 Q. Now, did you see the way they were dressed?

16 A. Yes, I will tell you.

17 Q. Would you say they looked fearful, the way they dressed?

18 A. Yes, sir, fearful.

19 Q. And as a small boy, were you afraid of them?

12:47:31 20 A. Yes, sir. Because some of them that I used to
21 see -- okay.

22 Q. And you'd agree with me that you did not want them to
23 come close to you when you saw them coming in that
24 fearful dress?

12:48:00 25 A. No, I told you, because even myself would not stand close
26 to them.

27 Q. And as they approached your house, you moved away from
28 them?

29 A. When they were coming to our house?

1 Q. Yes. Yes.

2 A. I was at my house when they came. I was not with them.
3 I was not with them

12:48:46

4 Q. No, the question is: As they were -- when they were
5 coming to your house, you ran away so that you wouldn't
6 confront them?

7 A. That is not part of my statement. I can't answer that
8 question.

9 Q. I'm not suggesting that it is.

12:49:07

10 PRESIDING JUDGE: You should answer, even if it is in your
11 statement or not. Ishmael, let's finish quickly.

12 THE WITNESS: Yes, sir.

13 PRESIDING JUDGE: Do you know? You know you have to go back
14 to school. We have to send you back to school.

12:49:27

15 THE WITNESS: Yes.

16 PRESIDING JUDGE: So counsel is asking you -- put the question
17 again to him

18 MR MARGAI:

12:49:38

19 Q. Now, as these Kamajors approached your house, you ran
20 away from them not to come into contact with them?

21 A. When they were coming, when they were coming to our
22 house --

23 PRESIDING JUDGE: [Previous translation continues] When they
24 came to your house, were you afraid --

12:49:55

25 THE WITNESS: You mean the second time or the first time?

26 MR MARGAI:

27 Q. The first time.

28 A. Yes, sir. Yes, I was afraid.

29 Q. And you ran away because you were afraid naturally?

1 A. Well, when they first came to the house, when they
2 searched, I went into the parlour because I didn't want
3 to be with them

4 Q. My question is --

12:50:33

5 A. Because one, their smell.

6 PRESIDING JUDGE: Because what?

7 MR MARGAI: Their smell.

8 Q. So apart from their fearful appearance, you were also
9 trying to avoid their smell, not so?

12:51:00

10 A. Yes, one because of their smell, and I didn't want to be
11 with them again. I didn't want to be closer to them.

12 Q. So because of all of this, you ran and hid yourself?

13 A. No, I did not hide. I went to the parlour. When they
14 entered, they were searching. I did not run away. I
15 went to the parlour.

12:51:27

16 Q. Now, you said one big man went and called ECOMDG when the
17 first group of Kamajors went to the house. Can you
18 recall who this big man was?

19 A. The big man who came the time the Kamajors came to the
20 house?

12:52:20

21 Q. No, this big man who went to call ECOMDG when the first
22 batch of Kamajors went to the house.

23 A. No, I did not mention a big man there. It was on the
24 second incident that I mentioned a big man.

12:52:44

25 Q. I stand to be corrected, My Lords. According to your
26 testimony, you said when the first set of Kamajors came,
27 one big man in the house went and called ECOMDG.

28 A. No, let me clarify.

29 Q. Wait. And in your words, you said when the Kamajors saw

1 ECOMDG coming, they took to their heels, but they did not
2 go very far.

3 PRESIDING JUDGE: He's not denying that he gave this piece of
4 evidence, Mr Margai. It is a question of timing. Is it
5 the first or the second?

12:53:26

6 MR MARGAI: I'm saying that the first --

7 PRESIDING JUDGE: That is what the --

8 MR MARGAI: I stand to be corrected. It was the first.

9 JUDGE THOMPSON: He said the second.

12:53:36

10 MR MARGAI: Now he's saying he meant the second or he said the
11 second. I stand to be corrected.

12 PRESIDING JUDGE: You can pursue the cross-examination and
13 we'll go back to the records and clarify it. If you have
14 the first, then you can put it to him, and his reply will
15 be verified on the record.

12:53:58

16 MR MARGAI: As My Lord pleases.

17 PRESIDING JUDGE: Do you share my view?

18 MR MARGAI: I appreciate that but I don't want it to appear
19 that he's lying, you know. I mean, he may very well have
20 forgotten. Which it doesn't tantamount to deliberately
21 misleading this Court. And I don't want to create that
22 impression.

12:54:08

23 PRESIDING JUDGE: You may wish to put the question to him

24 MR MARGAI: As My Lord pleases.

12:54:16

25 PRESIDING JUDGE: Yes, please.

26 MR MARGAI:

27 Q. Now, Ishmael, I'm putting it to you that in your
28 testimony you told this Court that this big man went and
29 called ECOMDG when the first group of Kamajors entered

1 your house.

2 A. I did not say so. It was the second coming when the big
3 man informed the ECOMOG that the Kamajors were at the
4 house, that they were looting property, the second
5 incident, not the first one.

12:54:51

6 Q. Okay. Thank you. Thank you. Thank you.

7 Now, did you tell this Court that the first group of
8 Kamajors who went through that house claimed to be
9 searching for arms and ammunition? Or was it the second
10 you meant?

12:55:15

11 A. It was the first group, sir.

12 Q. The first group.

13 A. Yes, sir.

14 Q. Said they were searching for arms and ammunition.

12:55:32

15 A. Yes, sir.

16 Q. Thank you.

17 A. Arms, ammunitions, and they were also searching for Temne
18 people.

19 Q. For Temnes, yes. Thank you. Now, during their stay,
20 meaning the first group in your house, did ECOMOG come to
21 your house at any time during their stay, the first
22 group?

12:55:51

23 A. No, sir.

24 Q. Now, did the first group of Kamajors leave your house on
25 their own?

12:56:20

26 A. When they were searching, they saw nothing they went for.
27 They decided to go back.

28 Q. So they decided to go back. Thank you very much.

29 A. Yes, sir.

1 Q. And then a second group of Kamajors came?

2 A. Well, I said in my statement that I thought it was the
3 same group that came back because when they had searched
4 the first time, they had known already where the property
5 were.

12:57:15

6 Q. The reason why I am grouping them is for the Court to
7 know how many times Kamajors went to the house. They may
8 have been the same people. In other words, the Kamajors
9 went to your house twice. The first time and the second
10 time --

12:57:44

11 A. Yes, sir.

12 JUDGE THOMPSON: I think the emphasis here is on two
13 incidents, but that the operatives were the same.

14 MR MARGAI: Yes, yes.

12:57:54

15 JUDGE THOMPSON: Two incidents, two time frames, but the same
16 operatives of Kamajors?

17 MR MARGAI: Yes.

18 JUDGE THOMPSON: I think that's what I understand the evidence
19 to be now.

12:58:05

20 MR MARGAI: As My Lord pleases.

21 Q. Now, it was this second group of Kamajors who went into
22 your uncle's room and removed things. Not so?

23 A. Yes, sir.

24 Q. Did anybody go to call ECOMOG --

12:58:39

25 PRESIDING JUDGE: Mr Margai, please.

26 MR MARGAI: I'm sorry, I'm sorry. It was the second group of
27 Kamajors.

28 PRESIDING JUDGE: Who went into the --

29 MR MARGAI: Who went into his uncle's room and removed the

1 items he testified to.

2 JUDGE THOMPSON: I will put parenthetically in my notes
3 "same." I will do that parenthetically.

12:59:06

4 MR MARGAI: To be on the safe side, My Lord. He himself is
5 not sure.

6 JUDGE THOMPSON: Well, I mean, he seems to be correcting your
7 recollection of the evidence.

8 MR MARGAI: He said it may be the same people, just out of
9 abundance of caution.

12:59:16

10 JUDGE THOMPSON: All right, thank you.

11 PRESIDING JUDGE: No, he said -- I think your suggestion was
12 that it was the second group of Kamajors who went into my
13 uncle's room

14 MR MARGAI: Yes, My Lord.

12:59:32

15 PRESIDING JUDGE: The second group, not necessarily whether
16 they were the same people.

17 MR MARGAI: Exactly, My Lord.

18 PRESIDING JUDGE: Who went into my uncle's room

19 MR MARGAI: And removed the items.

12:59:45

20 JUDGE BOUTET: The witness added that he had said in his
21 statement and I quote, "I said in my statement that the
22 same group of Kamajors came back."

23 JUDGE THOMPSON: In other words, he interjected that and I'm
24 sure that that puts a different complexion from my own
25 perspective.

12:59:56

26 MR MARGAI: When we say the same group, we must be talking of
27 the same individuals, not the Kamajors in general.

28 JUDGE THOMPSON: Well, he's not talking about individuals with
29 the greatest of respect, Mr Margai. He's talking about

1 group. And he has decided to talk about group.

2 MR MARGAI: My Lord, what constitutes a group? It must be
3 people.

13:00:18

4 JUDGE THOMPSON: I'm sure, but the witness has not made the
5 distinction. He is talking about a group. He's not
6 talking about individual. He has been speaking in terms
7 of groups. And now, of course, the impression I had all
8 along was there were two distinct groups, but the witness
9 has modified his testimony and said that it may be the
10 same group that came the first time. So my point is that
11 we're talking about two distinct incidents, all right,
12 but, in fact, there's a possibility it may be that we're
13 not talking about two different groups. That's all I'm
14 saying.

13:00:35

15 MR MARGAI: Let me clarify that.

13:00:53

16 PRESIDING JUDGE: He doesn't have his phones on. That's fine.
17 He said the first group came searching for arms. They
18 looked round. And they went away. So when they were
19 coming, he imagines that they were the same people
20 because they must have seen, they must have seen what
21 property was available in the house. This is what is on
22 the record.

13:01:09

23 MR MARGAI: Let me clarify that, because his assumption for
24 this second coming is he believes that the reason was
25 they had seen these properties.

13:01:24

26 PRESIDING JUDGE: They had seen those things.

27 MR MARGAI: So let me clarify that.

28

29 JUDGE THOMPSON: Which logically follows that it must be the

1 same people in his mind, rightly or wrongly.

2 MR MARGAI: That's what I'm trying to clarify. Let me clarify
3 that.

13:01:44

4 Q. Now, could you put on your earphones, please. Now, this
5 first group of Kamajors who came, did you recognise their
6 faces? Did you recognise them?

13:02:21

7 A. No, sir. Because when the Kamajors had come first, they
8 searched for ammunitions. But I knew -- because when
9 they came, they did not search anywhere else. They went
10 to my uncle's room first. Right there, they started
11 looting. I couldn't say I remember them by their faces,
12 but they just went straight into my uncle's room.

13 Q. Now, the second Kamajors who came, did you recognise
14 them?

13:02:44

15 A. No, I couldn't mark their faces.

16 Q. So I take it back.

13:03:05

17 JUDGE BOUTET: I think there's some confusion here because the
18 witness is telling you that the first group that came,
19 they only searched for arms and ammunition. He did not
20 recognise their face. But when they came back, they went
21 directly to his uncle's room, which he concludes from
22 that they were the same.

13:03:23

23 MR MARGAI: That is the premise. That is the premise which
24 has now been discarded by him saying that -- by him
25 saying that he did not recognise their faces.

26 JUDGE BOUTET: That's true.

27 MR MARGAI: So we cannot say with any degree of certainty
28 whether the first -- sorry, the second were part of the
29 first or not.

1 JUDGE THOMPSON: But that does not in any way dilute the
2 evidence which is given. It doesn't dilute it.

3 MR MARGAI: No, no, no, no. I`m not suggesting that.

4 JUDGE THOMPSON: He virtually has given evidence here that in
13:03:49 5 his own mind at the particular time of the alleged
6 incident, what was operating that this can second
7 group -- so-called second group of Kamajors may well have
8 been the same group.

9 MR MARGAI: May well have been, but who are they?

13:04:07 10 JUDGE THOMPSON: That's point I'm making.

11 MR MARGAI: Precisely.

12 JUDGE THOMPSON: Whatever inference you want to draw cannot be
13 part of his evidence. I'm just trying to project myself
14 into the mind of this witness and to ascertain what
13:04:19 15 exactly he saw. And that's exactly what I am trying to
16 reflect.

17 MR MARGAI: To be honest with Your Lordship, I am not drawing
18 any inference at this particular time. I think it is too
19 premature. I just want to have the sequence so that we
13:04:38 20 can all be of the same mind. If you recall, I started by
21 asking him that ECOMDG coming to the house was when the
22 first group of Kamajors were in the house. He has now
23 denied that to say that it was not when the first group
24 was there. So the question of drawing inference we will
13:04:56 25 attempt to do that at the appropriate time.

26 JUDGE THOMPSON: I'm satisfied with your response. It's just
27 that I think as judges we've got to reflect the evidence.

28 MR MARGAI: I appreciate that.

29 JUDGE THOMPSON: [Microphone not activated]

1 MR MARGAI: It assists all of us in getting at the truth.

2 PRESIDING JUDGE: In any event, there's a common denominator.

3 And that is that --

4 MR MARGAI: Two groups went to the house.

13:05:24

5 PRESIDING JUDGE: That is not in dispute.

6 MR MARGAI: It is not in dispute.

7 PRESIDING JUDGE: Either the same twins or whatever, it is two
8 groups of Kamajors who came on two separate occasions.

9 MR MARGAI: I accept that, My Lords. May I continue.

13:05:37

10 PRESIDING JUDGE: Yes, yes, please, continue. Because we have
11 to wrap up your cross-examination before we go for lunch.

12 MR MARGAI: Okay, well fine. I'll try and finish in the next
13 15 to 20 minutes.

14 PRESIDING JUDGE: 15 to 20 minutes.

13:05:53

15 MR MARGAI: Yes, My Lords.

16 PRESIDING JUDGE: We are not prepared to wait here for 15 to
17 20 minutes.

18 MR MARGAI: My Lords, I really wanted us to complete this
19 witness so that when we come, we can decide on the modus.

13:06:06

20 PRESIDING JUDGE: The modus, yes. The modus is that we are
21 taking a new witness. Is the Prosecution ready with a
22 short new witness?

23 MR TAVENER: As always, Your Honour.

24 PRESIDING JUDGE: That's the modus.

13:06:19

25 MR MARGAI: It depends on who is leading. You see, because I
26 don't want us to start a witness since we are rising
27 tomorrow and we don't finish.

28 PRESIDING JUDGE: The other assurance I want to get from the
29 Prosecution is I hope that we can finish the

1 evidence-in-chief today.

2 MR TAVENER: The evidence-in-chief, yes.

3 PRESIDING JUDGE: Evidence-in-chief.

4 MR TAVENER: I'd expect so.

13:06:44

5 MR MARGAI: Let me go on and see what I can do.

6 PRESIDING JUDGE: Yes.

7 Mr Margai.

8 MR MARGAI:

9 Q. [Microphone not activated]

13:07:11

10 THE INTERPRETER: My Lords, the speaker's mic is not on.

11 MR MARGAI: Sorry.

12 Q. Did ECOMDG come to the house when the second group of
13 Kamajor was in the house?

13:07:41

14 A. The second group of Kamajors saw ECOMDG when they were
15 coming, and they ran away.

16 Q. And ECOMDG came to the house only once?

17 A. Yes, sir.

18 Q. Apart from these two groups of Kamajors who went to the
19 house, did any other group of Kamajor go to the house?

13:08:24

20 A. No, sir.

21 Q. Thank you. And you told this Court that --

22 PRESIDING JUDGE: Mr Margai, please.

23 MR MARGAI: Sorry.

13:09:01

24 Q. You told this Court that you and your father were taken
25 to the Kamajor base. Is that correct?

26 A. Yes. With my uncle, with whom I was going.

27 Q. I'm talking about from the house. You said you met your
28 uncle on the way.

29 A. Yes, sir.

1 Q. I'm talking from the house. Only you and your father
2 were taken from the house. Not so?

3 A. Yes, what I saw. And what I know.

4 Q. And it was on your way to the base that you saw your
5 uncle who was also forced to join your people?

13:09:40

6 A. Yes, sir.

7 Q. Thank you.

8 Were the Kamajors --

9 PRESIDING JUDGE: Mr Margai, please.

13:10:09

10 MR MARGAI: Sorry.

11 Q. Apart from the Kamajors who were taking you to the base,
12 yourself, your father, and your uncle were the only three
13 people who were taken at that particular point in time?

14 A. What I saw at that time is what I'm saying. It was only
15 us.

13:10:38

16 Q. The three of you?

17 A. Those are the only ones that I'm talking about.

18 Q. Yes, it's just for the records. You, your father, and
19 your uncle, apart from the Kamajors who took you to the
20 base. Not so?

13:10:58

21 A. Yes.

22 Q. And you did not spend up to a day at the base when you
23 and your father were released?

24 A. Yes.

13:11:30

25 Q. Thank you. Now, when you got to the base, could you tell
26 where your uncle and father were kept?

27 A. They kept them in separate places. They kept them in
28 separate places, different from us, the children. I

29 Q. What I want to know is, were they kept, meaning your

1 father and your uncle, were they kept in a room, in the
2 veranda, on the parlour, outside of the base?

3 A. Well, it was in a room, sir.

4 Q. A room

13:12:53

5 PRESIDING JUDGE: Who did they keep in the room? The father?

6 MR MARGAI: The father and uncle.

7 Q. And where were you kept? In a room?

8 A. Yes.

9 PRESIDING JUDGE: He was also kept in a room

13:13:34

10 MR JABBI: He was also kept in a room. A separate room, I
11 take it, from that in which his father and uncle were.

12 Q. Now, tell me, this Mende woman who came to your rescue
13 and took you to her village, from the point where you
14 started on to the village, how many checkpoints? Would
15 you agree with me that there were only --

13:13:55

16 PRESIDING JUDGE: Just ask him. Ask him Put the question to
17 him the way you put it.

18 MR MARGAI: Yes.

19 PRESIDING JUDGE: Ask him how many checkpoints.

13:14:05

20 MR MARGAI:

21 Q. How many checkpoints?

22 A. Only three checkpoints, sir.

23 Q. Three checkpoints, thank you.

24 Now, Mr Witness, I'm putting it to you that this man
25 whom you said was accused of being a soldier and killed
26 at one of the checkpoints, that that incident never
27 happened.

13:14:39

28 A. Well, for me, I know that I'm saying the truth, and it
29 happened. As long as I saw it with my eyes, it was not a

1 hearsay. I saw it. So it's not a question of talking a
2 lot. It's the truth that I've come to say. That is what
3 I saw.

13:15:47

4 MR MARGAI: My Lords, it only remains for me at this juncture
5 to apply to recall PW34 for him to be identified by this
6 witness before I wrap up.

13:16:22

7 JUDGE BOUTET: I just want to point out to you that this is
8 not your submission, so you're modifying your submission.
9 In your latest document filed, your submission is, and
10 I'll quote --

11 MR MARGAI: Sorry. Could he remove the earphones, please.

13:16:47

12 JUDGE BOUTET: Yes. Counsel requests - that's at paragraph 14
13 of your latest motion - that Trial Chamber recall
14 Witness TF2-057 for further examination after TF2-067
15 finishes giving his testimony. It's not while he's
16 giving or during his giving of evidence; it's after he
17 has finished.

13:17:04

18 MR MARGAI: No, no, no. This is a separate application. That
19 one we will argue after the Prosecution have responded.
20 That argument, if I recollect correctly, is to be
21 advanced tomorrow. I am now applying for this witness to
22 identify PW34, who is to be recalled, for identification
23 purposes only. And then after arguing that motion --

13:17:34

24 JUDGE BOUTET: I just want to make it clear: Should we agree
25 with your submission that Witness TF2-057 be recalled,
26 you're saying if we agree and that witness is indeed
27 recalled, then you want this young witness to also be
28 recalled by the Court to identify the other witness.

29 MR MARGAI: No, I've not finished with him yet. That's why

1 I'm saying that I shall conclude my cross-examination of
2 him after the identification of his father by him

3 JUDGE THOMPSON: So if I understand you rightly, it's a
4 two-stage process.

13:18:09 5 MR MARGAI: Two-stage, yes, two prong.

6 JUDGE THOMPSON: In other words, you want the PW34 to be
7 recalled for the purposes of identification.

8 MR MARGAI: Yes, My Lords.

9 JUDGE THOMPSON: And then once that is over, you go to the
10 second phase.

11 MR MARGAI: To the second phase. Maybe the second phase might
12 not be necessary, depending on what happens during the
13 first stage.

14 JUDGE THOMPSON: Okay.

13:18:34 15 JUDGE BOUTET: But the second phase being a confrontation
16 between the son and the father in court.

17 MR MARGAI: Not a confrontation, My Lord. Just for the
18 identification --

19 JUDGE BOUTET: I'll change my word. An identification between
13:18:53 20 the son and the father, the son saying "this is my
21 father."

22 MR MARGAI: Identifying the father, that's all. The son
23 saying, "This is my father." And then I finish with the
24 son.

13:19:07 25 JUDGE BOUTET: Yes, Mr Prosecutor.

26 MR TAVENER: Obviously the Prosecution opposes that
27 application. This witness has already stated his
28 father's name. He has agreed that he knew his father was
29 testifying. His father is now -- there's an application

1 for a particular witness to be brought back. I think
2 it's unfair to keep this witness any longer, and then for
3 the purposes of I don't know where the other witness is,
4 so I don't know whether he can be brought back. But at
13:19:34 5 this stage, I would ask that this witness be concluded,
6 and we see what happens upon the resolution of the motion
7 currently before the Court concerning the recall of the
8 other witness. But there's certainly sufficient
9 evidentiary basis from which to draw identification
13:19:54 10 assumptions. There's simply no reason to have this
11 procedure of putting one witness in the courtroom with
12 another. It's pointless.

13 JUDGE BOUTET: Mr Margai, you want to reply to this?

14 MR MARGAI: My Lord, I think it is crucial to our case
15 definitely. I mean, if it were all that simple, with the
13:20:25 16 assurance given by my learned friend from the Prosecution
17 that there is overwhelming evidence to establish a
18 relationship between PW34 and this witness, then of
19 course we would not be asking for more. But I think
13:20:47 20 there is more to it than meets the eye.

21 JUDGE THOMPSON: In other words, are you suggesting that the
22 state of the evidence does not provide the more that
23 you --

24 MR MARGAI: It doesn't.

13:21:00 25 JUDGE THOMPSON: -- you are envisaging.

26 MR MARGAI: It doesn't, My Lord.

27 JUDGE THOMPSON: Because I'm not sure whether it's fair to ask
28 you to do more than an outline of how this is so
29 materially crucial to your case without wanting you

1 to --

2 MR MARGAI: If Your Lordship insists, I could tell
3 Your Lordship. I'm sure Your Lordship knows why I am
4 pursuing that line of action. Now, assuming my
13:21:34 5 application is granted and this witness identifies PW34
6 as his father, then PW34 will be recalled and asked about
7 the piece of paper that was shown to him by Mr Yillah.
8 And I'm sure the rest is obvious to the naked eye.

9 JUDGE THOMPSON: Okay. Well -- thank you.

10 Counsel.

11 MR TAVENER: Thank you, Your Honour. Perhaps if we can deal
12 with the motions in order, and there is a motion before
13 the Court with respect to the recall of the other witness
14 which may solve the problem. Our concern is having this
13:22:09 15 witness who has been away from his home for some time not
16 being able to be released, particularly in light of the
17 stage we are at with this session. I simply do not know
18 whether what Mr Margai wants can be completed by
19 tomorrow. I think it would be best if this witness can
13:22:24 20 be released. We then consider the application before the
21 Court concerning the recall of the other witness, and
22 that may solve the problem.

23 JUDGE THOMPSON: I'm sure the Bench does not make light of
24 that concern. It's just that also the fairness concept
13:22:37 25 is also very much implicated here, and we're called upon
26 to maintain the appropriate balance.

27 MR TAVENER: I accept that, but the problem may well be solved
28 after the consideration of the application concerning the
29 other witness. That may solve the problem, and then we

1 can deal with whether we need to bring this witness back
2 in the next session. But for him to be released at this
3 stage.

13:23:07 4 MR MARGAI: Let my assure my colleague that if PW34 is
5 available, I have no doubt in my mind that we can argue
6 the motion tomorrow morning. I'm sure Your Lordships,
7 knowing the exigency of the situation, will endeavour to
8 pronounce a ruling. And assuming that the ruling goes in
9 our favour, we shall be finished with them before
10 lunchtime. I mean, there will be no need for this
11 witness to continue staying here after tomorrow, assuming
12 that PW34 could be got into town.

13 PRESIDING JUDGE: Well, we've heard the arguments on both
14 sides, and we will be giving a ruling on this probably
13:24:17 15 this afternoon. We'll consult on this and deliver a
16 ruling on it this afternoon.

17 MR MARGAI: [Microphone not activated] not interfere with
18 Your Lordship's lunch and appetite.

13:24:36 19 PRESIDING JUDGE: Since you so desire, I mean, who are we not
20 to be at the service of the expediency of the process,
21 particularly so because we are rising tomorrow, we are
22 under some pressure. So we are going to -- we shall
23 rise, and we shall resume sitting at 3.30. We shall
24 resume sitting at 3.30. This will allow us time to be
13:25:02 25 able to sort out a few issues. And I hope that if we
26 started at 3.30, we should be through at least with the
27 examination-in-chief by 5.00 or so.

28 Mr Tavener, is it your witness. I don't think so.

29 MR TAVENER: It's not my witness, but I hope, too, we could be

1 finished by 5.00, Your Honour. I understand it won't
2 take a long period of time.

3 PRESIDING JUDGE: Okay. Well, let's hope that we'll be able
4 to finish at least with the examination-in-chief by 5.00.

13:25:29

5 MR MARGAI: My Lords, we have done exceedingly well. I
6 believe that our counterparts have not taken up to about
7 10 witnesses. I mean the RUF. We have now taken 37. We
8 would not want to ride a willing horse to death.

13:25:50

9 PRESIDING JUDGE: That's true. You're very right, Mr Margai.
10 You're very right.

11 MR MARGAI: So I don't think we'll be missing much if we
12 should wrap up at this stage; that is, settling the
13 matter relating to this witness and PW34.

13:26:04

14 PRESIDING JUDGE: And we want to take another witness before
15 we rise.

16 MR MARGAI: As My Lord pleases.

17 PRESIDING JUDGE: Because we want to get to the case of the
18 Defence as fast as possible.

13:26:14

19 MR MARGAI: My Lord, I can assure you that at the rate we're
20 going, I mean the Prosecution have done exceedingly well.
21 If I should take them on their word, that they are likely
22 to reduce the number of witnesses. But even there, I
23 cannot see the Prosecution winding up before July.
24 Definitely.

13:26:30

25 PRESIDING JUDGE: I don't want to hear that anyway. I don't
26 want to hear that. I thought that by July, we should be
27 wrapping up with the Defence.

28 MR MARGAI: The Defence intends calling at least 56 witnesses,
29 including experts.

1 PRESIDING JUDGE: You mean your defence --

2 MR MARGAI: 56. At the very minimum 50, and maybe 10 experts.

3 So My Lord, let me be very practical. We would very much
4 want to finish this matter as early as possible. But as
13:27:04 5 you people have rightly stated, these are very, very
6 serious charges. And much as we want to expedite, we
7 have to do so with caution to ensure that we would have
8 done our best, even our incompetent best, in the defence
9 of our respective undertakings.

13:27:21

10 PRESIDING JUDGE: Right. Okay. Mr Margai, we shall rise and
11 resume the session at 3.30. The Court will rise, please.
12 Thank you.

13 [Luncheon recess taken at 1.27 p.m.]

14 [On resuming at 3.55 p.m.]

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1 [HN061204C]

2 [Open session]

3 PRESIDING JUDGE: Good afternoon, learned counsel, we are
4 resuming the proceedings. The Chamber would like to
15:52:23 5 inform counsel that the ruling on all the issues raised
6 by Mr Margai, learned counsel for the third accused,
7 would be further the subject matter of a deliberation by
8 the Chamber after we have heard the arguments on the
9 written motion tomorrow, because they are so linked that
10 we thought that for judicial purity we should do things
15:52:57 11 at the right time instead of splitting issues and taking
12 them diversely. So we would be visiting that issue
13 tomorrow after hearing the oral argument. And I wouldn't
14 want forget, we shall start our session tomorrow at 9.15
15:53:31 15 because of the special events of tomorrow. We hope that
16 the arguments on the motion would be through by 10.00,
17 10.15 at the latest, so please endeavour to come much
18 earlier than you're used to so that we can start exactly
19 at 9.15, please. This said, we would be calling on the
15:54:02 20 Prosecution to present their next witness.

21 MR SAUTER: Your Honours, the Prosecution calls TF2-056, 5-6.

22 PRESIDING JUDGE: TF2-0 --

23 MR SAUTER: 5-6.

24 PRESIDING JUDGE: This would be your 38th witness?

15:54:29 25 MR SAUTER: To my knowledge, yes.

26 PRESIDING JUDGE: Your 38th?

27 MR SAUTER: Yes. Your Honours, before I start to interview
28 the witness I would like to raise briefly one issue. In
29 order to avoid a closed session, the Defence and the

1 Prosecution has agreed on one fact. It is written in
2 this document and signed by all the Defence -- by one
3 Defence counsel for all teams and by the Prosecution, and
4 I would like to tender this document as an exhibit.

15:55:17

5 PRESIDING JUDGE: At the appropriate time. You will tender it
6 at the appropriate time, or you thought that you should
7 tender it before you start your examination-in-chief. I
8 think it should come at the appropriate time when you've
9 come to that stage of your examination-in-chief.

15:55:36

10 MR SAUTER: It is relevant just at the beginning of the
11 interview, therefore, I think this is the appropriate
12 time after the --

13 PRESIDING JUDGE: Well, the introductory details about the
14 witness first, please, before we get into tendering the
15 document.

15:55:50

16 MR SAUTER: Yes.

17 WITNESS: TF2-056 [sworn]

18 [The witness answered through interpretation]

15:56:32

19 PRESIDING JUDGE: Mr Sauter, you may proceed, please. You
20 want to have details about his name -- you will ask his
21 name first -- or rather, his birth, marital status and
22 what have you, and then we can introduce the document
23 after these details.

24 MR SAUTER: Yes.

15:56:52

25 EXAMINED BY MR SAUTER:

26 Q. Good afternoon, Mr Witness.

27 A. Good afternoon.

28 Q. I would like to start your interview with some --

29 PRESIDING JUDGE: The witness is testifying in what language?

1 MR SAUTER: In Limba.

2 THE WITNESS: Yes, I speak Limba.

3 MR SAUTER:

15:57:19 4 Q. I would like to start with some questions to your
5 personal data. How old are you, Mr Witness?

6 A. It is okay.

7 Q. Mr witness, my question was how old are you?

8 A. 52.

9 Q. And where were you born?

15:57:48 10 A. I was born at Bombali.

11 Q. It is in the Bombali District?

12 A. There I was born.

13 Q. And where are you residing right now?

14 A. I'm living at Bo Town.

15:58:20 15 Q. Are you married, Mr Witness?

16 A. I am married.

17 Q. To how many wives?

18 A. I have four wives.

19 Q. And do you have children?

15:58:37 20 A. Yes.

21 Q. How many children do you have, Mr Witness?

22 A. I was 13 children.

23 JUDGE BOUTET: Is it 13?

24 MR SAUTER: 13, 1-3.

15:59:01 25 THE WITNESS: 13, 1-3.

26 Q. Did you ever attend school, Mr Witness?

27 A. I didn't go to school.

28 Q. And what is your profession?

29 A. I am a farmer.

1 Q. Thank you, Mr Witness. That is all as far as your
2 personal data is concerned.

3 A. Okay. All right.

15:59:40

4 MR SAUTER: May I now, Your Honours, tender this document as
5 an exhibit. Mr Walker, please. Would you show it to the
6 Defence.

7 JUDGE BOUTET: Can you explain about, without stating the
8 content, what is the purpose of it?

16:00:04

9 JUDGE THOMPSON: I share the same position. There should be
10 some nexus, even in very general and vague terms, but
11 there needs to be some nexus, otherwise the link is not
12 there.

13 MR SAUTER: It is hard for me to explain without discovering
14 anything. It concerns his position within the society.

16:00:24

15 JUDGE THOMPSON: That's fine. That is a general statement.

16 JUDGE BOUTET: At this moment or at the time?

17 MR SAUTER: At the present time and at the time in question.

18 JUDGE THOMPSON: That is fine for me as long as there is a
19 nexus.

16:02:03

20 JUDGE BOUTET: So this document describing information about
21 the witness that could reveal his identity is marked as
22 Exhibit 47.

23 [Exhibit No. 47 was admitted]

24 MR SAUTER: May I proceed?

16:03:41

25 PRESIDING JUDGE: The document is already marked as Exhibit
26 47.

27 MR SAUTER: Yes.

28 Q. Mr Witness, when did you move to Bo? You said you're
29 presently residing in Bo. When did you move to Bo from

1 your place of birth?

2 A. I moved to Bo in 1961.

3 Q. Did you stay all the time from 1961 until today in Bo?

4 A. Yes.

16:04:26

5 Q. Mr Witness, are you familiar with the term "Kamajors"?

6 A. Yes.

7 Q. Could you explain what you mean when you say "Kamajors"?

8 A. Yes.

9 Q. Please tell the Court.

16:04:54

10 A. They wear ronkos and they have amulets.

11 Q. So you are describing their attire. What is a ronko?

12 A. It is clothes, but it is a country clothes. It is not

13 like the one I am wearing.

14 PRESIDING JUDGE: He said the ronko is a country clothes, not

16:05:36

15 like the one he is wearing.

16 MR SAUTER: Yes.

17 Q. What were the Kamajors doing, to your knowledge?

18 A. Well, in the year 1998.

19 Q. What happened in the year 1998?

16:06:07

20 A. When we came to Bo.

21 Q. Go ahead, please.

22 A. It came from the police barracks area.

23 Q. Mr Witness, you said "When we came to Bo", who do you

24 mean by "we"?

16:06:53

25 A. [No translation]

26 Q. I did not get the translation.

27 A. When they came, they came from the police barracks end.

28 Q. Mr Witness, when who came?

29 A. The Kamajors.

1 Q. Let' go back to the year -- no, let's go back a little
2 bit. When did the Kamajors first come to Bo?

3 A. The first one?

4 Q. When the Kamajors came for the first time to Bo?

16:08:04 5 A. They came in the year 1996.

6 Q. And what did they do in Bo when they came in 1996?

7 A. At that time they never did anything wrong. They were
8 working together with the soldiers.

9 Q. Did this stay to be the same in the following years?

16:09:06 10 A. The end?

11 Q. No, my question was whether they continued to work
12 together with the soldiers in the following years after
13 1996?

14 A. They started working together in 1996 and in 1997, that
15 was the beginning of 1997. They worked together.

16:09:40

16 Q. Mr Witness, what happened in the year 1997?

17 A. At the end of 1997 when it was about to finish --

18 Q. Continue, please.

19 A. The people who were called the RUF came to Bo.

16:10:49

20 Q. What did the Kamajors do when the RUF came to Bo?

21 A. All run and went into the bush.

22 Q. So you say they left Bo when the RUF came; that's right?

23 A. Yes, that was what happened. They left the town and went
24 into the bushes.

16:11:35

25 Q. And did they ever return to Bo?

26 A. They only returned in Bo in the year 1998.

27 Q. Could you give us a month when they returned in 1998?

28 A. In March month.

29 Q. And could you give the Court a day within March?

1 A. I cannot tell you the date. I only know the month.

2 Q. You said earlier the soldiers were in Bo before. Were
3 they still in Bo when the Kamajors entered in 1998?

4 A. They were not there again.

16:13:26 5 Q. Do you know when the soldiers left Bo?

6 A. It was on Monday.

7 Q. Could you tell the Court how many days or weeks or months
8 it was that the soldiers left Bo before the Kamajors were
9 entering? Did you understand my question?

16:14:00 10 A. Four days.

11 Q. Has there been any other military force at the time that
12 the Kamajors were entering Bo?

13 A. There was no other fighting group. It was only the
14 Kamajors that were there.

16:15:13 15 Q. So what happened when the Kamajors entered Bo in 1998?

16 A. They came -- they came by the new police barracks.

17 Q. Did they do anything within the police barracks?

18 A. They killed eight policemen.

19 Q. Did you personally see them killing policemen?

16:16:12 20 A. I was not present, but I saw the corpses.

21 Q. How did you learn of the killing of eight policemen by
22 Kamajors?

23 A. Those parents whose policemen were killed told me about
24 it.

16:17:11 25 Q. You said --

26 PRESIDING JUDGE: Told him about it what?

27 MR SAUTER:

28 Q. Mr Witness --

29 A. Those who were killed. I asked some of them, they told

1 me this was my father, this is my relatives. That is how
2 I know that they were killed by Kamajors.

3 Q. Did these people also tell you that their relatives were
4 killed by Kamajors?

16:17:52

5 A. They are.

6 Q. When did you go to the police barracks? Was it on the
7 day the killings occurred?

8 A. In the morning hours.

16:18:47

9 Q. Mr Witness, in the morning hours of what day, the day
10 that the policemen were killed, or any other day?

11 A. They came at about 10.00 a.m. in the morning. When it
12 was 10.00, that is the time they started the attack.

13 Q. When you say "they came", who do you mean, the Kamajors?

14 A. The Kamajors, when they came from the bush.

16:19:47

15 Q. And did you go to the police barracks the very day the
16 Kamajors came to Bo?

17 A. We went there early in the morning. We were many.

18 Q. Mr Witness, the question was whether or not you went to
19 the police barracks the same day the Kamajors came or at
20 any other day?

16:20:18

21 A. I went there on the very morning they came to the police
22 barracks. That was the time I went there myself.

23 Q. But I understood the time you came to the police
24 barracks, the killings had already occurred, and you saw
25 the bodies of eight killed policemen; is that right?

16:21:03

26 A. Yes, that was how it happened.

27 Q. Did the Kamajors do anything else within the police
28 barracks, apart from killing?

29 A. They destroyed four houses.

1 Q. Did you see them destroying four houses?

2 A. I was not there, but when I came, I saw four burnt houses
3 and the eight corpses I talked about.

4 Q. And how did you learn that these four houses were
5 destroyed by Kamajors?

16:22:25

6 A. All those leaving the barracks told me about it, even the
7 men in the barracks they said "These houses were burnt by
8 Kamajors. "

9 Q. Mr Witness, did you personally at this time have any
10 encounter with the Kamajors?

16:23:02

11 A. Yes.

12 Q. Please tell the Court about it.

13 A. At one time they hacked a Limba man in my presence. I
14 was standing there; I saw it happen.

16:23:47

15 PRESIDING JUDGE: Please, wait, wait, wait, just wait.

16 MR SAUTER:

17 Q. What did you see happen?

18 A. When they came, they asked the man what was his tribe.

19 Q. Mr Witness, the question was whether you personally had
20 any encounter with the Kamajors? Did the Kamajors do
21 anything do you personally.

16:24:26

22 A. Well, what happened to me?

23 Q. Yes.

24 A. What happened to me, that was the time when the ECOMOGs
25 had already arrived.

16:24:54

26 JUDGE BOUTET: Mr Prosecutor, are you leaving aside the
27 incident that the witness was describing about the
28 hacking -- the witness was giving evidence about
29 something that he observed in his presence, are you

1 leaving that aside now?

2 MR SAUTER: No, no, no, I'm coming to this point later.

3 JUDGE BOUTET: Okay.

4 MR SAUTER:

16:25:29

5 Q. Mr Witness, you just said anything happened to you after
6 ECOMDG had arrived at Bo. How many days after the
7 Kamajors, ECOMDG came to Bo, approximately?

16:26:10

8 A. These are the -- these are the three things that happened
9 in my presence before the coming of ECOMDG. One, was the
10 killing of the policemen, the next one was the burning of
11 the four houses, and the third one was the hacking of
12 that Limba man.

16:26:32

13 Q. Okay, Mr Witness, let's come to this incident first,
14 which you describe as the hacking of a Limba man. What
15 happened to this Limba man?

16 A. When he came -- when they came, they asked him his tribe.

17 Q. What was his answer?

18 A. He said "I am a Limba."

19 Q. What happened to him after stating that he's a Limba?

16:27:08

20 A. They said he was a junta.

21 Q. Did anything happen to his man?

22 A. They had one language and that is they said, "Allahu
23 Akbar".

24 Q. And after this was said, what happened?

16:27:58

25 A. They hacked him until he died. He finally died.

26 Q. Did you observe this with your own eyes?

27 A. I was there clearly.

28 Q. How far away from the scene you have been, approximately?

29 A. There was just a line across us.

1 Q. Did the Kamajors do anything else to this person after
2 they killed the man?

3 A. They mutilated him.

4 Q. What do you mean when you say "they mutilated him"?

16:29:40

5 A. He was mutilated as if you were mutilating a deer and
6 they placed all the flesh together.

7 Q. Did you know the person who was killed?

8 A. I know him

16:30:28

9 Q. So, Mr Witness, you described three incidents which
10 occurred before ECOMDG came. Let's go now to the arrival
11 of the ECOMDG. How many days or weeks after the arrival
12 of the Kamajors ECOMDG came to Bo?

13 A. It could be -- it could be about five days. They were
14 the only people there within that five days.

16:31:05

15 Q. When you say "They were the only people there", who do
16 you mean?

17 A. The Kamajors, it was only the Kamajors. There was no
18 other fighting group.

19 Q. For about five days; is that right?

16:31:26

20 A. Yes.

21 Q. So I was asking you before whether you personally had any
22 encounter with the Kamajors?

23 A. Yes, they did something bad to me.

24 Q. Please tell the Court what they did to you?

16:32:09

25 A. This was done when the ECOMDG had already arrived.

26 Q. Please tell the Court what was done to you.

27 A. They entered my house.

28 Q. What did they do after having entered your house?

29 A. They took my television.

1 Q. Did they take anything else or only the television?

2 A. They also took my freezer.

3 Q. Anything else?

4 A. They also took my filter.

16:33:43 5 Q. What do you mean when you say "filter"?

6 A. That is what I used to filter the water before I try it
7 in popular things.

8 Q. Was this all, the television, the freezer, the filter?

9 A. And so many other articles. I cannot even remember now
16:34:30 10 because I was frightened.

11 Q. Did they give you any reasons why they took those things
12 from you?

13 A. They asked me and I showed them the receipt for all the
14 articles they have taken from me.

16:35:10 15 Q. The question was, Mr Witness, whether they gave you any
16 reasons for taking those things away.

17 A. They said that I'm a junta and that these property
18 belongs to a junta.

19 Q. How did you identify the people coming to your house and
16:35:53 20 taking your property, or some of your property away as
21 being Kamajors?

22 A. Because -- because they had the ronkos and the amulets
23 and also they had some looking glasses.

24 Q. Do you know who was commander of the Kamajors at this
16:36:41 25 time in Bo?

26 A. Yes.

27 Q. Who was it?

28 A. He was called Kosseh Hindowa.

29 MR SAUTER: The writing is K-O-S-S-E-H. Last name,

1 H-I-N-D-O-W-A-H.

2 Q. Did you know Kosseh Hindowa?

3 A. I know him well.

16:38:04

4 Q. Did you meet Kosseh Hindowa during this time, I mean,
5 when the Kamajors came back to Bo?

6 A. It was the only time I saw him was when the Limba man was
7 arrested and he was taken to Kosseh Hindowa.

8 Q. Did you know the Limba man who was arrested?

9 A. [No translation]

16:38:55

10 MR SAUTER: I did not get the answer, but I assume the answer
11 was yes.

12 JUDGE BOUTET: We shall have the answer from the translator.

13 MR SAUTER:

16:39:11

14 Q. Once again the question was did you know the Limba man
15 who was arrested by the Kamajors?

16 A. Yes, I know him.

17 Q. Did you know for what reasons he was arrested?

18 A. Yes, I know.

16:39:53

19 Q. Could you please tell the Court what the reasons were, to
20 your knowledge?

21 A. He was arrested, because daughter was a --

22 Q. His daughter was what?

23 JUDGE BOUTET: Mr Interpreter, can you repeat that, please.

24 You were cut off when you were giving the answer.

16:40:21

25 THE INTERPRETER: He was arrested because his daughter was a
26 young girl.

27 MR SAUTER:

28 Q. I did not get the answer clearly. He was arrested
29 because his daughter was a young girl. Mr Interpreter,

1 is this what the witness said?

2 A. The man was arrested because the daughter was a young
3 girl.

16:41:20

4 Q. What happened to this man who was arrested for his
5 daughter being a young girl?

6 A. Because they said the daughter was in love with a junta.

7 Q. So what happened to this man?

8 A. That was why he was arrested and taken to the office at
9 88 Mahei Boima Road.

16:42:12

10 Q. What was at Mahei Boima road? Mahei Boima I've learned
11 from Mr Bockarie the writing is M-A-I-H --

12 MR BOCKARIE: M-A-H-E-I.

13 MR SAUTER: Thank you. Boima, B-O-I-M-A.

14 JUDGE BOUTET: Thank you.

16:42:32

15 Q. So, Mr Witness, my question was: What was at Mahei Boima
16 Road?

17 THE INTERPRETER: My Lord, will the counsel please repeat his
18 question.

19 MR SAUTER:

16:42:46

20 Q. The question was: What was at Mahei Boima Road where the
21 Limba man was brought to?

22 A. That was their head office.

23 Q. Mr Witness, when you say "their head office", whose head
24 office?

16:43:37

25 A. The Kamajors.

26 Q. The Kamajor head office. And you said in connection with
27 this arrest you met Mr Hindowa. Why did you meet
28 Mr Hindowa?

29 A. When the Limba man was arrested, we when went there.

1 Q. Mr Witness, "we went there", who went there? Only you or
2 others?

3 A. I had some other people who came -- who went with me.

16:44:42

4 Q. And for what purpose you went to Mr Hindowa, you and your
5 colleagues?

6 A. We went there to tell Mr Hindowa that all the allegations
7 they made against him was untrue.

8 Q. And what was the reaction of Mr Hindowa?

16:45:30

9 A. When I went there now, I find them beating the man in
10 front of Mr Hindowa.

11 Q. Did Mr Hindowa say anything to you and your -- and the
12 other men having been with you on your allegation that
13 this man was not a junta?

14 A. Yes.

16:46:17

15 Q. What did he say, please?

16 PRESIDING JUDGE: What was the question again? It was long.

17 MR SAUTER:

18 Q. Whether or not Mr Hindowa said anything to him on his
19 allegation that the arrested man was not a junta?

16:46:35

20 A. Yes.

21 Q. Please tell the Court what Mr Hindowa was saying.

22 A. He said I was to pay 100,000.

23 Q. What for you should pay 100,000?

24 A. So that he will release him

16:47:41

25 Q. And did you pay 100,000?

26 A. Yes, I paid it.

27 [HN061204D 4.50 p.m.]

28 Q. Did they release, after that, this man?

29 A. Yes, he was released to me.

1 Q. Do you know for what time this man was in captivity?

2 A. He slept there for three days.

3 Q. And you said you saw him being beaten when you came to
4 Hindowa. In which condition was he when he was released
16:48:42 5 to you?

6 A. He had pains all over his body where they were beating
7 him.

8 MR BOCKARIE: Objection, Your Honour. He isn't in a position
9 to determine whether he had pains all over his body.

16:49:07 10 That's purely subjective, Your Honour.

11 PRESIDING JUDGE: What if he complained to him?

12 MR BOCKARIE: There is no evidence to this Court that he made
13 a complaint to him, Your Honour.

14 PRESIDING JUDGE: The objection is overruled. Mr Sauter, you
16:49:32 15 may continue, please.

16 MR SAUTER: Thank you.

17 Q. So what happened to this man to your observations?

18 A. He had welts all over his body and when he was released,
19 he didn't take one month and he died.

16:49:56 20 Q. Did you pay for ransom money or money for release for
21 anyone else?

22 A. Yes.

23 Q. Please tell the Court.

24 A. Two Limba men were also tied.

16:50:48 25 Q. Go ahead, please.

26 A. They had a rope they called FM

27 Q. What do you call a FM rope?

28 A. They know the type of rope.

29 Q. Certainly they know, but would you please describe to the

1 Court what you call FM rope?

2 JUDGE THOMPSON: He didn't call it. He said they called it FM
3 rope. They called it. It's not his own
4 characterisation. What does he understand by it anyway,
5 that's different.

16:51:40

6 MR SAUTER: I understood they tied them with FM rope.

7 JUDGE THOMPSON: Which they called FM rope, not he. He didn't
8 call it FM rope. He's not familiar with the terminology
9 according to him.

16:51:59

10 MR SAUTER:

11 Q. So can you describe what you saw when they were tied up?

12 A. They removed their apparels, the two of them

13 Q. And?

14 A. They wanted to put pepper in their private parts.

16:52:49

15 Q. Did you know the two persons that were arrested and tied
16 up?

17 A. Yes, we are staying almost in the same place.

18 Q. Did you do anything when you saw them being arrested and
19 tied?

16:53:11

20 A. Yes.

21 Q. Please describe what you did?

22 A. I removed 110,000 leones.

23 Q. Removed from where?

24 A. It was my own money.

16:54:01

25 Q. Did anybody ask you for money in this context?

26 A. Yes, the commander, the head, asked me for that money.

27 Q. Did you know the commander?

28 A. I know him because we are nearer each other.

29 Q. What was his name?

1 A. He was called Moses Sandy.

2 Q. To my knowledge the writing is M-O-S-E-S, Sandy
3 S-A-N-D-Y. Did you pay the money that was asked from
4 you?

16:55:15 5 A. Yes, yes, I paid 110,000 leones.

6 Q. For what time were these two persons in custody?

7 PRESIDING JUDGE: To who did he pay the money?

8 MR SAUTER: Excuse me, yes.

9 Q. To who did you give this money?

16:55:41 10 A. I gave this money to Moses Sandy.

11 Q. Did you give him anything else or just this money?

12 A. Yes.

13 Q. What, please?

14 A. I gave them 10 bushels of rice.

16:56:24 15 Q. Was he asking for rice for the release of these two
16 persons?

17 A. In fact, they said I was to pay 15 bushels. I begged
18 them to accept 10 bushels.

16:57:10 19 Q. The other question was for what time these two persons
20 have been in captivity?

21 A. They were there for two days. On the third day they was.

22 Q. Mr Witness, did you pay for anyone else?

23 PRESIDING JUDGE: On the third day what happened?

24 MR SAUTER: On the third day was released.

16:57:51 25 PRESIDING JUDGE: They were released.

26

27 MR SAUTER:

28 Q. Mr Witness, did you pay for the release of anyone else?

29 A. Yes.

1 Q. Who was it?

2 A. One other man. He was also a Limba man.

3 Q. What happened to him?

4 A. He was also staying near my house.

16:58:48 5 Q. Did anything happen to him?

6 A. He was also arrested, saying he was a junta.

7 Q. Who arrested him?

8 A. The Kamajors.

9 Q. What did they do to him after they had arrested him?

16:59:21 10 A. They undressed him and left him naked.

11 Q. Did they do anything else to him?

12 A. They were about to beat him

13 Q. Did they in fact beat him?

14 A. They beat him.

17:00:02 15 Q. In which way did they do so?

16 A. He was put down on the floor.

17 Q. Go on, please.

18 A. He was to lie on the floor and begin to roll for a
19 distance.

17:00:54 20 Q. For what distance about?

21 A. I did not measure it, but it was a considerable distance.

22 Q. Could you give an estimate in any way how big the
23 distance was?

24 A. It is more than the distance between me and the judges.

17:01:42 25 Q. Is it much more than the distance between you and the
26 judges?

27 PRESIDING JUDGE: He said the distance was a considerable
28 distance. Is it material for you to establish the real
29 distance, Mr Sauter?

1 MR SAUTER: He has given a distance before in his previous
2 statement and I think it is material whether it is just
3 20 metres or much more.

4 PRESIDING JUDGE: Go ahead. You are talking of metres. He
5 may only know feet.

17:02:18

6 MR SAUTER: It's even a big distance, whether it's from here
7 to there or --

8 PRESIDING JUDGE: He says it's more, beyond.

9 MR SAUTER:

17:02:31

10 Q. We were speaking about him being beaten. You said he was
11 forced to roll on the ground. Was he beaten while
12 rolling on the ground?

13 PRESIDING JUDGE: What happened to him as he was rolling on
14 the ground?

17:03:00

15 MR SAUTER:

16 Q. Mr Witness, what happened to him as he was rolling on the
17 ground?

18 A. As he was rolling, he rolled and get to the one who was
19 standing the far distance, and as soon as he gets near
20 him, he hits him with the gun.

17:03:24

21 Q. What did you do when seeing this?

22 A. We ran and called ECOMDG.

23 Q. What did ECOMDG do -- or did ECOMDG do anything?

24 A. The ECOMDG came and arrested them.

17:04:15

25 Q. Who was arrested by ECOMDG?

26 A. So the man who was beaten up was taken by the ECOMDG and
27 they took him to their office.

28 Q. The question, Mr Witness, was who was arrested by ECOMDG?
29 You said ECOMDG came and arrested them

1 A. No, when the ECOMDG came, they removed the victim from
2 the Kamajors.

3 Q. You said earlier you paid for the release also of this
4 man, but did you pay anything or did you not?

17:05:33

5 A. Which people?

6 Q. You were describing that Kamajors were arresting a man --
7 a Limba man, made him lay on the ground and roll over a
8 certain distance, and then after you have informed
9 ECOMDG, ECOMDG came and freed this person. Did you pay
10 for the release of this person?

17:06:09

11 A. I paid money so that he'll be released, and they also
12 seized his house. I also paid money for that house.

13 Q. Who seized the house of this man?

14 A. That was their leader, the leader of the Kamajors.

17:07:02

15 Q. Do you know a name?

16 A. I know him

17 Q. What was his name?

18 A. He was called Abu Tawa.

19 Q. A-B-U, last name T-A-W-A. Did Abu Tawa ask a certain sum
20 of money from you?

17:07:47

21 A. Yes.

22 Q. What was he asking for?

23 A. He said before they could release this fellow to me, they
24 could release the fellow and the house to me, I should
25 pay 400,000 leones.

17:08:16

26 Q. Did you pay 400,000?

27 A. I begged them and finally I paid 300,000.

28 Q. To who did you pay 300,000 leones?

29 A. I paid to Abu Tawa.

1 PRESIDING JUDGE: Mr Sauter, you still have some time to go?

2 MR SAUTER: Approximately half an hour.

3 PRESIDING JUDGE: Half an hour. Since you're likely to go

4 beyond 5.30, I'm afraid, Mr Sauter, we will continue

17:09:48

5 tomorrow morning. We'll take the arguments on the motion

6 first.

7 MR SAUTER: Would you please allow me to make a remark?

8 PRESIDING JUDGE: Yes, what remark, Mr Sauter?

9 MR SAUTER: As you know the President of Germany is here.

17:10:11

10 PRESIDING JUDGE: So what?

11 MR SAUTER: And he, for whatever reason, wants to see me

12 tomorrow.

13 PRESIDING JUDGE: Tomorrow?

14 MR SAUTER: Yes, at 10.50.

17:10:24

15 PRESIDING JUDGE: But you can inform the German President that

16 you're involved in a prosecution. I think at about that

17 time we should also be busy with the German President --

18 about that time.

19 MR SAUTER: I know.

17:10:42

20 PRESIDING JUDGE: I am sure. So after that we will have to

21 resume our normal business.

22 MR SAUTER: Thank you.

23 JUDGE THOMPSON: And permit me to say I am sure that the

24 German President believes in the rule of law.

17:10:57

25 MR SAUTER: He is a jurist himself.

26 PRESIDING JUDGE: As I said, we're going to start at 9.15, we

27 will take the arguments on the motion, and at about 10.30

28 we shall rise for just a few minutes, but, please, you

29 will remain in Court. We will give indications tomorrow

1 so that you will know how things will evolve in the
2 course of the day. So we are starting at 9.15. Yes,
3 Mr Margai?

4 MR MARGAI: Yes, My Lords, there are two motions.

17:11:45 5 PRESIDING JUDGE: Which ones?

6 MR MARGAI: The one to recall PW 34 and an earlier one dealing
7 with the question of non-exclusion of investigators from
8 closed sessions.

9 PRESIDING JUDGE: We will let you know what the position is
10 tomorrow.

11 MR MARGAI: Very well.

12 PRESIDING JUDGE: Yes, we will let you know what the position
13 is tomorrow.

14 JUDGE BOUTET: On this second motion about investigators, we
15 were not intending to hear. I thought you were just
16 underlining this problem, rather than being a motion, but
17 we'll look into it; that's not a problem. But we had not
18 intended to ask the Prosecution to argue or to make any
19 presentation on that. Do you wish to pursue further that
20 matter?

17:12:35 21 MR MARGAI: Yes, My Lords. In fact, when I mentioned by way
22 of application the question of non-exclusion of
23 investigators, Your Lordships requested that the motion
24 be in writing, which I have done and served the
25 Prosecution.

17:12:53 26 JUDGE BOUTET: On that issue?

27 MR MARGAI: Yes.

28 PRESIDING JUDGE: We will put it on advisement and we'll come
29 back on this issue tomorrow, please. Is that all right,

1 Mr Margai ?

2 MR MARGAI: As My Lords please. I didn't want the --

3 PRESIDING JUDGE: We'll put it on advisement and --

4 MR MARGAI: What the view of the Prosecution is on the first
5 motion maybe --

17:13:20

6 PRESIDING JUDGE: We shall look into all that tomorrow when we
7 start at 9.15.

8 MR MARGAI: Very well.

9 PRESIDING JUDGE: We shall rise and resume tomorrow at 9.15.

17:13:43

10 The Court will rise, please.

11 [Whereupon the hearing adjourned at 5.17 p.m., to be
12 reconvened on Tuesday, the 7th day of December 2004, at
13 9.15 a.m.]

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EXHIBITS:

Exhibit No. 47 65

WITNESSES FOR THE PROSECUTION:

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C E R T I F I C A T E

We Ella K Drury, Joanne Mankow and Roni Kerekes, 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.

_____ Ella K Drury

_____ Joanne Mankow

_____ Roni Kerekes