

Case No. SCSL-2004-14-T
THE PROSECUTOR OF
THE SPECIAL COURT
V.
SAM HINGA NORMAN
MOINI NA FOFANA
ALLIEU KONDEWA

THURSDAY, 26 MAY 2005
4.24 P.M.
IN CHAMBERS

TRIAL CHAMBER I

Before the Judges:

For Chambers:

For the Registry:

Pierre Boutet, Presiding
Bankole Thompson
Benjamin Mutanga Itoe

Ms Sharelle Aitchison
Ms Roza Salibekova

Ms Maureen Edmonds

For the Prosecution:

No Appearances

For the Principal Defender: Mr Ibrahim Yillah

For the accused Sam Hinga Norman:

No Appearances

For the accused Moini na Fofana:

No Appearances

For the accused Allieu Kondewa:

Mr Yada Williams

1 Thursday, 27 May 2005

2 [In chambers meeting]

3 Present: Judge Boutet, Judge Itoe, Judge Thompson,
4 Maureen Edmonds, Mr Williams, Mr Yillah, Sharelle, Roza
04:24:18 5 and a security guard. Note: Because of the charged
6 atmosphere, speakers at times spoke too fast and were
7 unable to be recorded perfectly.

8 JUDGE BOUTET: We want to meet with you to discuss an issue
9 that we have been told happened in court. I would like
04:24:36 10 to know what it is. From what I hear you would have hit
11 one of the staff members in a court room in a public
12 forum. I am talking to you obviously, Mr Williams, and I
13 would like to know if that is the case. And I understand
14 you were there at least as a witness.

04:25:01 15 ~~MR YILLAH: I was there.~~

16 MR WILLIAMS: Basically what happened was when --

17 JUDGE ITOE: Excuse me. Sharelle, can you relate what
18 happened, please.

19 MS AITCHISON: Mr Williams came up to Roza and I. He said, "I
04:25:17 20 want to see you two now; get over here now." Roza and I
21 went over and stood by the Defence table and he started
22 doing this with his hands [indicating] and saying, "I
23 watched from your expressions in court and I can see from
24 your faces that you're biased." I said, "Can you please
04:25:33 25 move your hands away from me, don't threaten me." And
26 then you smacked on the face. There are probably other
27 things that were said. I said, "I always see people's
28 expression on people's faces and sometimes I see you
29 laugh but I don't make judgments." The last thing that

1 happened was you hit me on the left side of my jaw and I
2 said, "You just assaulted me," and I left the Court room.
3 Roza was there and witnessed it, the security guard
4 witnessed it, and I am sure Mr Yillah would also say that
5 I was hit on the left-hand side of my jaw after being
6 threatened by Mr Williams apparently about perceptions
7 from Roza and I where he thinks that our faces show bias
8 in the Court room.

04:26:06
9 MR WILLIAMS: Yes, My Lords, what happened during the recess
10 was I approached two of them that Mr Yillah and I were
11 going to have a word with them, you know, because we
12 didn't want to -- we wanted to [inaudible], but over the
13 last couple of days Mr Yillah and I have observed them
14 when counsel are making submissions - either Prosecution
15 of Defence. I mean, they take sides outrightly. I mean
16 not [inaudible] approval or disapproval.

17 The point of today was when Justice Bankole Thompson was
18 questioning Mr Bangura on the relevance of the document,
19 I mean quite clearly they were looking at a document,
20 nodding in disapproval of what the judge was saying. So
21 what we call them to, we call them to express our views
22 that this is quite -- I mean, we are not going to
23 [inaudible] you. I mean other people are seeing you. It
24 is not all the way -- and she told me - I don't know her
25 name but the lady who stood here - "I have seen you
26 laughing at witnesses; that is disgusting." Okay, that
27 is fine, but two wrongs do not make a right. If are
28 accusing me of doing something wrong, similarly I am
29 saying that what you have been doing is not right as

1 well.

2 But, I mean, I was sitting on one of the tables, all of a
3 sudden she became agitated, right, and started
4 [indicating]. And I stood up and because of my height I
5 was basically like leaning close to her, because I didn't
6 want to shout, and then - what did she say? [To Mr

7 Yillah] - "I think you're [inaudible]," and she pushed my
8 hand, because I was gesticulating, and I pushed her hand
9 as well.

10 That is all that transpired. She pushed me and I pushed
11 her right back. I didn't slap her, I didn't hit her, but
12 when she attacked -- I mean, when she used whatever force
13 on me, I used what I consider was proportionate.

14 JUDGE BOUTET: Proportionate?

15 MR WILLIAMS: Yes, I pushed her hand. I did what she said to
16 me.

17 JUDGE BOUTET: She said you slapped her in the face.

18 MR WILLIAMS: I did not. I have witnesses apart from Yillah;
19 other people that saw.

20 MS AITCHISON: We have a security officer here, Roza, and I am
21 sure Mr Yillah wouldn't lie before this panel that you
22 slapped me.

23 MR WILLIAMS: And you did not do anything to me?

24 MS AITCHISON: No, I said, "Don't threaten me."

25 MS SALIBEKOVA: She didn't say you are disgusting and, number
26 two, she said that we were discussing a document when a
27 document was shown to us. We are also receiving a copy
28 and we were discussing between us what to do and what
29 would be our understanding, but it doesn't -- I don't

1 think it is justified to read from what we are reacting
2 to read possible bias as you say, because --

3 MR WILLIAMS: You were nodding approval -- [Overlapping
4 speakers] -- on the Defence sides. I don't know about
5 the Prosecution.

04:29:51

6 MS SALIBEKOVA: In any event, I don't think this behavior is
7 justified and it was clearly a very aggressive tone by
8 which you were telling off, basically, Sharelle. And, as
9 you say, you are quite tall and you were standing like
10 that, but in fact you were doing this thing [indicating].
11 Because I was standing beside you and I was looking at
12 you and it was [indicating] this kind of thing. And then
13 Sharelle was going back and back and finally she said,
14 "Please take away your hand from me." She did like this
15 [indicating] and at this moment you hit her. It looked
16 like quite an intentional hit, I must say. It was not
17 just take away your hands.

04:30:08

04:30:27

18 MR YILLAH: May I explain? After Your Lordships was
19 [indicating] Mr Williams came from this direction to me,
20 because we were disgusted before, and then he went from
21 where I was standing. I could see he went to where
22 Sharelle was and said, "Mr Yillah and I would like to
23 have a word with you," and then they came to the edge of
24 the Defence table. I was there, I came to join Williams,
25 and Kingsley was there as well. And then Williams was
26 sitting on the edge of the table and talking to Sharelle
27 like this. "We have been observing" -- he was seated
28 there. "We have been observing that -- Mr Yillah and I,
29 other members of the Defence have been observing that

04:30:49

04:31:05

1 when counsel make submissions you make [inaudible] and
2 gestures in court that do not go down well with counsel,
3 and even sometimes when judges make submissions you make
4 -- and it shows outright bias if I get it clearly." But
04:31:36 5 Williams was talking to Sharelle like this and it was at
6 this point --

7 JUDGE BOUTET: With his finger.

8 MR YILLAH: Yes, seated like this. And it was at that point
9 that Sharelle said, "You disgust me when you laugh when
04:31:49 10 witnesses talk in court as well." But Williams' hand,
11 which is like this, and then Williams sent his hands
12 [indicating] and then she said, "You assaulted me," and
13 they left to come up. I mean, that was basically what
14 transpired in court today.

04:32:10 15 In addition to that, myself -- it was something that we
16 discussed as a Defence and was going to approach Sharelle
17 and the other lady before it turned out the way it did.
18 We were talking about it amongst ourselves as colleagues
19 here that we would not -- we do not approve of gestures
04:32:33 20 and gimmicks and whatnot in court when counsel are making
21 submissions and when judges or anybody is making a
22 submission. It sends a bad signal and sometimes it puts
23 counsel off guard if you are developing a particular
24 line. That was actually the intention and what I
04:32:53 25 explained is what transpired.

26 JUDGE BOUTET: All I can say is this is highly inappropriate
27 attitude and behaviour. If you had to discuss -- in
28 fact, if you have complaints about staff of the Chamber
29 you should come to us and complain about that if that is

1 the case. If it was something that you attempted to
2 solve in a friendly manner obviously it was not, from
3 what I can see, done in a friendly manner as such. It
4 appears to have been in a very aggressive manner.

04:33:29

5 Mr Williams, that is totally unacceptable in any court,
6 whether it is this Court or a court downtown

7 Sierra Leone. Counsel are not to behave in any way that
8 would be perceived to be aggressive, as you appear to
9 have been behaving vis-a-vis. If that the case you can

04:33:52

10 complain to us -- [Overlapping speakers]

11 MR WILLIAMS: I always gesticulate when I am talking.

12 JUDGE BOUTET: Then you should be utterly carefully.

13 MR WILLIAMS: Yes, but it was in a very friendly manner.

14 MS SALIBEKOVA: Please.

04:34:07

15 ~~MR WILLIAMS: And she just burst out that "Your conduct when~~
16 you laugh at witnesses is absolutely disgusting." I
17 mean, she raised her voice basically -- [Overlapping
18 speakers]

04:34:20

19 MR YILLAH: To be quite honest, My Lord, when Williams was
20 talking to Sharelle, "When you make -- when counsel are
21 making submissions, when judges are talking, you make
22 gestures," I couldn't get the words exactly. And then at
23 that point Sharelle burst out and said, "It disgusts me
24 when you laugh when witnesses talk". And it was at that
25 point that --

04:34:36

26 MS SALIBEKOVA: I don't think she used this term.

27 SECURITY OFFICER: Excuse me, sir.

28 JUDGE BOUTET: [Overlapping speakers].

29 MR YILLAH: And then Williams --

1 JUDGE BOUTET: The issue is she claims you slapped her in the
2 face.

3 MS AITCHISON: We have a witness, a security officer, here;
4 you can speak to someone independent.

04:34:55

5 MR WILLIAMS: You have spoken to him.

6 JUDGE BOUTET: Please.

7 MR WILLIAMS: [Overlapping speakers] she pushed my hands and I
8 pushed her hands back. I mean, I reacted to the way -- I
9 mean, she --

04:35:07

10 JUDGE BOUTET: She does not talk about her hands being pushed
11 back. She said she was slapped in the face.

12 MR WILLIAMS: Is she going to concede that she pushed my
13 hands.

04:35:21

14 MS AITCHISON: Let's ask the security whether my face was
15 slapped.

16 SECURITY OFFICER: Should I explain myself? Yeah, I was in
17 the Court with accused Fofana when eventually I saw
18 Mr Williams pushing this lady with his hand like this,
19 but I didn't see him. Then I saw him slapping her.

04:35:44

20 JUDGE BOUTET: But at the beginning he pushed her?

21 SECURITY OFFICER: Yes, sir. I was monitoring Moinina Fofana,
22 accused, when I saw Mr Williams pushing this lady.

04:36:05

23 JUDGE THOMPSON: I don't think I can make any contribution to
24 this because my name has been mentioned here. I don't
25 want to be -- I feel that since my name has been
26 mentioned it would not be fair for me to make any
27 statement. Counsel has said that -- I find it difficult,
28 but, as I say, we need to have some protocol in the Court
29 room. Really it is so difficult to understand if in a

1 court room we members of the Bench do anything that
2 creates an impression to both sides, either the
3 Prosecution or the Defence, that indicate we have already
4 made up our minds.

04:36:56

5 And so it would seem to me that even if we agree, and
6 which we must, that counsel both for the Defence and

7 Prosecution should do nothing in a way to affront the
8 dignity of members who work for our chamber -- of course,

04:37:23

9 the facts are not clear now. I mean, we are not sure
10 whether there was really what has been alleged. But I
11 think that we ourselves, as members of our own chamber,
12 ought to be able to set ground rules for our legal
13 officers who work for us in that they do not do anything
14 that will reflect adversely upon the judges.

04:37:48

15 I don't want to go beyond that. Of course, I work in the
16 chambers, I know exactly how I feel sometimes about the
17 atmosphere in the Chamber and my two brothers will here
18 testify the fact that I have sometimes described certain
19 actions in the Chamber has hostile. And I don't want to

04:38:10

20 go beyond this because it would mean that I may be
21 bringing my own perceptions into a situation which
22 clearly detracts from the dignity of the Court. Whether
23 we are in session or whether we were observing a
24 judgment, this should not have happened. I can't condone

04:38:31

25 it, what happened. If you really assaulted the lady I
26 think it is clearly wrong and you should not have done
27 it.

28 But, of course, if really our own legal officers, who are
29 trained lawyers themselves, feel that they must at times

1 be making faces and grimaces when lawyers and judges are
2 speaking, if that is true, then it shows that they need
3 to be made to understand that that is not how the system
4 should work.

04:39:08

5 That is all I think I need to say at this stage.

6 JUDGE BOUTET: Judge Itoe?

04:39:46

7 PRESIDING JUDGE: Well, I deplore any conduct that compromises
8 the decorum in the Court from wherever it comes. I don't
9 know, but I think there is a basic code of conduct for
10 respect for every court official including court counsel.
11 The relationship should be one of cordiality between
12 counsel on both sides and our court officials, and, of
13 course, a greater manifestation of respect for the Bench,
14 because I think that the judges were not just picked from
15 the roadsides. They were picked from somewhere, certain
16 legal systems, and I think the trail behind them, some
17 experience which they have.

04:40:16

18 It is a very embarrassing situation. It would be very
19 [inaudible] if I have to learn that when a judge is
20 talking there is some signal of disapproval for what he
21 is saying or is it a mockery or is it what? I don't
22 know. There appears to be much in this matter that we
23 are hearing.

04:40:44

24 There was an incident in court, certainly there was an
25 incident. The way I look at it, it started from a
26 cordial discussion and then it degenerated into
27 something, well, that was a bit unpleasant. It is
28 difficult for me to say who did what, but certainly you
29 know both parties who are involved in this have some

04:41:08

1 share of blame in each, you know somehow. I don't know.
2 It is very, very difficult to take a judgment on this. I
3 regret this incident and the only position I take is that
4 I hope it does not repeat itself and that we would all
04:41:53 5 observe the decorum of the Court room and the ethics of
6 what duties we're called upon to exercise inside the
7 Court room. This is all I have to say.

8 It is difficult -- we are moving from a slap -- the guard
9 says it was a slap on the chest, he says it was a touch
04:42:16 10 on the hand. It is all these things. It is difficult
11 for me to really know, but there was an unpleasant
12 incident, certainly, which occurred, and I think there
13 was an altercation between learned counsel Williams and
14 Sharelle. There is no doubt about that.

04:42:33 15 ~~All we can say is that~~ I mean, all I can say is that I
16 would let the matter rest there with a caution. All the
17 parties will observe the decorum of the Court because we
18 have worked together for the past one year and it would
19 be -- I think we need to continue working this way and to
04:43:03 20 ensure that incidents like this do not occur.

21 I think this is what I have to say, Mr Presiding Judge,
22 on this.

23 JUDGE BOUTET: We will be discussing this in chambers with our
24 staff as well, but any gesture by any counsel that is
04:43:20 25 pushing, hurting, whatever is unacceptable regardless of
26 the circumstances. Regardless. If you know yourself,
27 Mr Williams, you have long arms, long hands and so on,
28 and you [inaudible] people, you should be careful of
29 that. Whether this is a conduct that is unacceptable and

1 if it is by accident, it is by accident, but still it is
2 a conduct -- from what I can understand it is an incident
3 that I find highly regrettable and we don't need this
4 kind of conduct in our court room. Absolutely not.

04:43:58 5 And, as I say, if you have problems and there are
6 concerns, well, if it is of that seriousness - and it is
7 - then bring it to our concern and we will look into it.

8 But not in a manner that appears to have been solved. In
9 that respect I don't think this is a conduct that is
10 acceptable.

04:44:18 11 JUDGE THOMPSON: I would suggest one thing if I may. I am
12 sure that on reflection counsel might think that he could
13 have restrained himself. And knowing both of you as
14 gentleman, I don't see what would be wrong in counsel
15 apologising for actually starting the train or losing

04:44:43 16 your restraint. Because we all have this restraint, we
17 all have powers of restraint even when we think we have
18 legitimate grievances. Perhaps in a court room -- I
19 mean, I am not -- as I say, it is so difficult to judge

04:45:04 20 the pros and cons because the facts are disputed. But
21 given the level of the standards of our profession, that
22 we sometimes avoid getting into situations which can
23 result in undermining the decorum of the Court. And I

04:45:29 24 would see no difficulty if -- I mean, it is entirely up
25 to you but also entirely up to the Presiding Judge, that
26 if you think you could have restrained yourself, even
27 though the situation was one which you felt strongly
28 about, and registered a protest to us in chambers, you
29 could have sent a message to the Court Management and

1 said look, we would like to see the judges in chambers
2 after this particular session. But in a way you let your
3 restraint -- I mean, you did not apply the restraint
4 which normally one would expect counsel would apply in
5 such situations.

6 I am just appealing to your sense of what you know are
7 the values of the profession and how a lawyer and judges
8 also should be restrained in their manners in public,
9 particularly when they are performing their official
10 duties, so as not to bring the administration of justice
11 into disrepute in that kind of sense. But that is the
12 way I look at it. Not the merits, but the degree of
13 restraint which we all need to show from time to time in
14 trying situations. I think that might just be perhaps
15 the way that one can begin to resolve a problem and see
16 later on what we can do about it at our level, if we feel
17 necessary that certain things have to be done to smoothen
18 the relationship between the lawyers and the legal staff
19 that work for us in our chambers.

20 MR WILLIAMS: As I mentioned earlier on, we have been
21 observing them for a long, long time. The attitude this
22 afternoon was particularly disturbing when Your Lordship
23 was talking.

24 JUDGE THOMPSON: Yes.

25 MR WILLIAMS: I don't know if Your Lordship observed when I
26 went from my seat to draw attention to their conduct;
27 that is what I did. Because I think they were even
28 talking almost to our hearing.

29 JUDGE THOMPSON: As I say, there is no point, I can take care

1 of that. I told my brother here that I find that in
2 chambers sometimes the environment is hostile, but I
3 don't -- I will say it in their presence; what they think
4 about it I don't even care. But the issue now is we're
04:48:07 5 in public, we're administering justice in public. Each
6 of us need to exercise that kind of restraint so that
7 conduct that is likely to reflect adversely on us does
8 not happen, and that is all I am saying. That in that
9 case it is your action that started the reaction that
04:48:27 10 resulted in whatever and I don't see any difficulty in
11 you apologising and saying perhaps I should have
12 exercised some restraint as a moral position. I mean,
13 there are times when we do certain things we also feel
14 sometimes perhaps we should have shown a little more
04:48:44 15 restraint notwithstanding the nature of the
16 circumstances.

17 MR WILLIAMS: I take the cue, My Lord, and I will say that --
18 sorry about the way the incident -- how it turned out to
19 be, My Lord, and I am really sorry about it and I want to
04:49:05 20 give an assurance to the Bench that in the future I would
21 handle similar situations in a better way.

22 JUDGE THOMPSON: In a different way.

23 MR WILLIAMS: Exactly, My Lords.

24 MR YILLAH: I am speaking for myself as well, My Lord. The
04:49:21 25 incident is highly regrettable and I want to join my
26 friend Williams in apologising to the Chamber for this
27 incident. But, of course, with the assurance that it
28 will not happen again, certainly I knew Your Lordships
29 will [inaudible] take the necessary measures to prevent

1 the occurrence of such an event. I must say this: I
2 share Williams' concern so far as my observation of that
3 table -- of the legal officer's table is concerned. I
4 mean, it happened that the incident turned out to be with
5 Sharelle. I have a lot of respect for her and she knows
6 that but most times such gimmicks and gestures --

04:49:59

7 [Overlapping speakers].

8 JUDGE THOMPSON: The fact that lends to the dignity of the
9 Court.

04:50:14

10 MR YILLAH: Not Sharelle, the other lady there, she provokes.
11 Certainly even this morning. She may not know but when
12 we sit there we observe. Even when I learned judge was
13 giving statement or when lawyers make submissions,
14 sometimes lawyers may say things that don't favour you
15 but it's for the Bench

04:50:32

16 JUDGE THOMPSON: [Overlapping speakers]

17 MR YILLAH: But sometimes these gimmicks and gestures, they
18 can send one off balance whilst your developing your
19 argument.

04:50:43

20 JUDGE THOMPSON: And sometimes it sends a bad message to the
21 public too.

22 MR YILLAH: I apologise to the public and I am sorry -- I have
23 the greatest respect for Sharelle but most of these
24 gimmicks from my observation are triggered by the other
25 lady. I am speaking the honest truth.

04:50:59

26 JUDGE THOMPSON: I would say sometimes it gives the
27 [inaudible] again where you have your legal officers
28 nodding when one judge speaks or one judge speaking,
29 nodding approval, and then the other. This is not known

1 in the Common Law system. If it is true that is
2 unfortunate.

3 MR YILLAH: I do apologise to the Chamber.

4 MS SALIBEKOVA: It's very easy to prove, Mr Yillah.

5 [Judge Thompson left the room]

6 MS SALIBEKOVA: I think it is very easy to prove. Go back to
7 the tapes and look at them. I don't think this is
8 justified, you justifying the behaviour of Mr Williams by

04:51:42

9
10 JUDGE BOUTET: Let's leave it there now, please. We will see
11 what we will do but for the time being I hope that we
12 will not see any repetition of that. As I have clearly
13 stated, if you do have problems we expect you to raise
14 that with us. Certainly there are ways to resolve

04:52:03

15 difficulties other than arriving at a problem like we
16 have now. I hope we will not see that again.

17 MR YILLAH: Profoundest apologies.

18 MR WILLIAMS: Grateful.

19 JUDGE BOUTET: Thank you. Meeting over.

20 [Meeting concluded]

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