



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

MONDAY, 18 SEPTEMBER 2006
9.47 A.M
TRIAL

TRIAL CHAMBER I

Before the Judges:

Bankole Thompson, Presiding
Pierre Boutet
Benjamin Mutanga Itoe

For Chambers:

Ms Roza Salibekova
Ms Anna Matas

For the Registry:

Mr Thomas George

For the Prosecution:

Mr Joseph Kamara
Ms Miatta Samba
Ms Lynn Hintz (Case manager)

For the accused Sam Hinga Norman:

Dr Bu-Buakei Jabbi
Mr Alusine Sesay
Mr Kingsley Belle (legal assistant)

For the accused Moinina Fofana:

Mr Arrow Bockarie
Mr Steven Powles
Mr Andrew Ianuzzi

For the accused Allieu Kondewa:

Mr Charles Margai
Mr Yada Williams
Mr Ansu Lansana

1 [CDF18SEP06A - CR]

2 Monday, 18 September 2006

3 [The accused Norman and Kondewa present]

4 [The accused Fofana not present]

5 [Open session]

6 [Upon commencing at 9.47 a.m.]

7 PRESIDING JUDGE: Good morning, counsel. Did you hear me?
8 I take it the representations remain the same? May we then
9 proceed with the trial?

09:46:35 10 Last time when we adjourned, we did so on the
11 representation of counsel for the second accused,
12 Mr Steven Powles, on the grounds of the continuing illness of
13 your client. Do you now have any submissions that you wish to
14 make to advance the course of justice, in terms of the
09:47:06 15 presentation of your client's case, at this point in time?

16 MR POWLES: Good morning, Your Honours. I had hoped to be
17 the bearer of good news this morning but, sadly --

18 JUDGE ITOE: We don't want Mr Powles to register himself as
19 the bearer of bad news.

09:47:29 20 MR POWLES: I'll do my best not to then. Your Honours, I
21 trust you've seen the letter from my learned colleague
22 Mr Andrew Ianuzzi --

23 PRESIDING JUDGE: Well, we would like to make the point,
24 rather than waste much time on that, we indicated to our legal
09:47:46 25 officer that that letter was not properly before us in the sense
26 that we were expecting a letter signed by you as the lead counsel
27 in this connection, and particularly consistent with the decision
28 which we took in respect of Mr Ianuzzi acting in a lead capacity.

29 MR POWLES: Your Honour, yes.

1 PRESIDING JUDGE: So we did say that letter was not
2 properly before us, and I'd like to advise, for the sake of legal
3 propriety and procedural consistency that you speak as counsel
4 leading the team at this point in time.

09:48:35 5 MR POWLES: Your Honour, certainly. May I just indicate
6 for the record the reason --

7 JUDGE ITOE: We would like to emphasise that when this
8 Chamber gives a decision, it must be respected, and there should
9 be no steps taken to sidetrack such a decision by whoever.

09:48:48 10 MR POWLES: Your Honour, yes. May I concur with that 100
11 per cent and say that the rationale behind Mr Ianuzzi drafting
12 this letter to Your Honours was in no way meant to indicate any
13 detraction from Your Honours' ruling. The sole reason that
14 Mr Ianuzzi drafted this letter, rather than anyone else on the
09:49:12 15 team for Mr Fofana, was because he was the one who spoke to both
16 Mr Fofana and the doctor concerned. And, accordingly, the
17 contents of the letter, from him, are first-hand. Whereas, were
18 they to come from anyone else in the team, it would be hearsay.

19 PRESIDING JUDGE: But you can adopt that. As a matter of
09:49:32 20 law, this is one area where form seems to be of the essence.

21 MR POWLES: Your Honour, yes.

22 PRESIDING JUDGE: Clearly, it goes to the root of the
23 proceedings. We're saying that someone who has signed the letter
24 does not have a locus before the Chamber, in terms of
09:49:51 25 representation; he is legal assistant. Therefore, it would seem
26 to me trite that we should in fact consider this matter as being
27 beyond any doubt. I do understand the question of hearsay and
28 all that, but it shouldn't be the case. After all, you can adopt
29 what somebody has said, and we take what you say from the Bar.

1 MR POWLES: Your Honour, yes. May I say, the letter to
2 Your Honours was not meant as a representation on behalf of the
3 team from Mr Fofana. It was meant as the best evidence that we
4 could put before Your Honours.

09:50:30 5 JUDGE ITOE: We do respect, Mr Powles, it was evidence of
6 representation. It's not the best evidence here. When a lawyer,
7 when somebody representing a party purports to address a letter
8 to the Chamber, he must have the locus of representing the party,
9 with due respect. It's not a question of the best evidence, you
09:50:49 10 know.

11 PRESIDING JUDGE: I think, counsel, this is a matter we
12 don't need to argue further over. We take a very firm procedural
13 position, consistent with the decision of this Court, and we have
14 no intention of yielding one inch away from that.

09:51:05 15 MR POWLES: Nor would I urge Your Honours. All I simply
16 seek to do is reassure Your Honours that the motivation behind
17 the letter was meant in no way to detract from the orders that
18 Your Honours have made --

19 PRESIDING JUDGE: We are so reassured, and we accept it
09:51:24 20 bona fides.

21 MR POWLES: I'm reassured to hear that.

22 JUDGE BOUTET: I would like to add, when Mr Ianuzzi, if he
23 did speak to Mr Fofana, he did that on your own instruction.
24 He's not the counsel on record. Obviously you, or somebody with
09:51:37 25 authority to do so, directed him or asked him to do that.

26 Therefore, it was only proper for you to report back, not him.
27 But, that matter being settled now, let's move ahead.

28 PRESIDING JUDGE: With that preliminary issue being
29 resolved, let's now move to any submissions or proposals you may

1 have to advance the course of justice in the context of this
2 tribunal.

3 MR POWLES: Your Honour, yes. May I, therefore, on the
4 behalf of the team for Mr Fofana formally present the contents of
09:52:06 5 the note prepared by Mr Ianuzzi to the Trial Chamber and adopt
6 them, and say this is, as I understand it, the current position
7 in relation to Mr Fofana's health. Your Honours will see from
8 the note that Mr Ianuzzi spoke to Dr Fadlu-Deen yesterday
9 morning, and Dr Fadlu-Deen reported that Mr Fofana is still
09:52:30 10 suffering from chicken pox. His condition is improving, however,
11 he remains in quarantine and will be unable to attend hearings
12 for at least one further week.

13 PRESIDING JUDGE: I will take the position here now if that
14 letter is meant to be the legal basis for some subsequent
09:52:52 15 application on your part, before this Bench will consider the
16 merit of any such subsequent application, we'd like the matter
17 regularised, because it's of the utmost importance that whatever
18 is the outcome of your application should be predicated upon
19 procedural regularity, as we have been insisting.

09:53:18 20 MR POWLES: Your Honour, in that regard, I wonder whether
21 this might help: That we get a formal note from one of the
22 doctors who has been treating Mr Fofana and present that to the
23 Trial Chamber to present the fullest picture possible to the
24 Trial Chamber, rather than second-hand information from one
09:53:40 25 person having spoken to the doctor. It seems to me that the most
26 appropriate way to proceed would be to present direct evidence
27 from the doctor to the Trial Chamber for the Trial Chamber to
28 have before it.

29 PRESIDING JUDGE: What about the option that you in fact

1 adopt and sign or authenticate this information?

2 MR POWLES: I'm more than happy to do that.

3 PRESIDING JUDGE: Isn't that a better option? Because if
4 we are to accept the idea of an option of a medical doctor, we
09:54:11 5 might have to begin to stagger the possibility of an adjournment,
6 go and come back. We need to conserve as much time as we can.

7 MR POWLES: I agree, Your Honour.

8 PRESIDING JUDGE: That's the way we have been leading you,
9 that if you adopt what is in that letter as your own and then
09:54:25 10 present the letter under your signature, or with some
11 authentication, it might properly form the basis for an
12 application that you may want to make this morning. If you want
13 a short stand down, we can give you a short stand down and come
14 back, but things are to be done with utmost scrupulousness
09:54:51 15 because of the condition in which we are; we are in the Defence
16 phase.

17 MR POWLES: Your Honours --

18 JUDGE BOUTET: Mr Powles, before you move ahead, your
19 proposal to have a much fuller medical report, assessment, would
09:55:35 20 be, I suggest, welcome as well.

21 MR POWLES: Your Honour, yes.

22 JUDGE BOUTET: I would like to know, really, what is the
23 condition, because we were told last week, not necessarily by
24 you, but by your team, that it would be a week and now it's
09:55:48 25 another week. It's not that I don't accept your word for that,
26 but we are in a position to have -- to make a decision now as to
27 what it is or not, and we'd like to have the record fairly clear.
28 If it is contagious, I am in no position to argue with this. I
29 have to accept that.

1 MR POWLES: Your Honour, yes. I should say, up until now,
2 all we have been doing is really relaying to the Chamber the most
3 up-to-date information that we've had at that time, and the most
4 up-to-date information we have now is this. But it seems to me
09:56:21 5 Dr Fadlu-Deen was treating Mr Fofana while Dr Harding was away.
6 Dr Harding is now back in Freetown. He may be able to see
7 Mr Fofana and make another assessment, and that may be different
8 from Dr Fadlu-Deen's.

9 I should say on behalf of the team for Mr Fofana that we
09:56:37 10 are as anxious as Your Honours to take this process forward and
11 commence the case on behalf of Mr Fofana. It's something we want
12 to start and complete as soon as possible.

13 JUDGE ITOE: Mr Powles, let the Bench assure you we are not
14 taking on the Defence for what is happening. What is happening
09:56:53 15 is natural. It's the normal cause of events. I don't think that
16 the Bench is taking the Defence or holding the Defence
17 responsible for this - no, not at all. The situation is there,
18 and we have to live with it, if there is some medical backing to
19 what is happening, that's all.

09:57:17 20 MR POWLES: Your Honour, yes.

21 PRESIDING JUDGE: It is just if we decide to adjourn for
22 seven days, or 14 days, we would like to be on very firm and
23 strong legal grounds for doing that. We certainly are not in any
24 way reluctant to do that, but it would be necessary that we
09:57:40 25 satisfy ourselves, that we have a situation that warrants that.

26 MR POWLES: Of course.

27 PRESIDING JUDGE: It is all for the good of we are doing.
28 I can assure you that this Bench has always felt that it can do
29 what the law permits it to do without fear or favour.

1 MR POWLES: Your Honour, yes. For the purposes of today's
2 hearing, it seems to me there are two options. Either we can
3 stand down for a few moments and I can formally adopt and sign
4 this note from Mr Ianuzzi as my own, or we could perhaps do that
09:58:14 5 afterwards on the basis of Your Honours' understanding that's
6 what's going to happen.

7 PRESIDING JUDGE: Actually, the situation could be a
8 combination of scenarios. Stand down, come back, have you
9 authenticate or adopt the document, then present the document as
09:58:29 10 a basis for your application, whichever, also without foreclosing
11 the possibility of a fuller picture as to the condition of the
12 second accused from the doctors who have been treating him.

13 MR POWLES: Yes.

14 PRESIDING JUDGE: We will definitely take a short stand
09:58:48 15 down.

16 [Break taken at 10.01 a.m.]

17 [Upon resuming at 10.22 a.m.]

18 PRESIDING JUDGE: Yes, Mr Powles, what further assistance
19 can you give the Court?

10:19:55 20 MR POWLES: Your Honours, may I firstly thank the Court for
21 the very gracious adjournment to obtain a more precise address to
22 Your Honours in relation to the current position.

23 Your Honours, there is a short letter from myself to
24 Your Honours. Would Your Honours like me to read it out?

10:20:08 25 PRESIDING JUDGE: Please read.

26 MR POWLES: It is a letter dated 18th September 2006. It
27 commences, "Your Honours, the latest report from the clinic as at
28 Sunday, 17th September 2006 is that Mr Fofana is still suffering
29 from chicken pox. Although this condition is improving, the

1 stand-by physician, Dr Fadlu-Deen, reports that he remains in
2 quarantine and will not be able to attend the hearings for at
3 least one week.

4 Mr Andrew Ianuzzi, on behalf of your Defence team, spoke to
10:20:41 5 Mr Fofana on the telephone yesterday and was informed by
6 Mr Fofana that he wishes to be present at the presentation of his
7 evidence.

8 Additionally, Mr Fofana has several issues he would like to
9 discuss with his full legal team before appearing in Court.

10:20:53 10 Mr Ianuzzi did, however, receive Mr Fofana's waiver for today's
11 appearance. Mr Ianuzzi informed Mr Fofana that we will discuss
12 his medical condition, but that no witnesses will yet appear on
13 Mr Fofana's behalf. Subject to those conditions, Mr Fofana
14 waived his right to attend today's proceedings.

10:21:18 15 I should add, when speaking to Dr Fadlu-Deen and Mr Fofana,
16 Mr Ianuzzi was acting upon my instructions as a representative
17 for the Fofana Defence team " And it is signed, "Yours,
18 Steven Powles. "

19 Your Honour, would it be possible to place a copy of this
10:21:34 20 letter before the Court formally?

21 PRESIDING JUDGE: Yes, or do you wish to exhibit it?

22 MR POWLES: Not necessarily, no, Your Honour.

23 PRESIDING JUDGE: Well, it's an important document, from my
24 perspective, isn't it?

10:21:47 25 MR POWLES: Your Honour, yes.

26 PRESIDING JUDGE: Isn't it important from your perspective?

27 MR POWLES: It's of crucial importance.

28 PRESIDING JUDGE: Quite right.

29 MR POWLES: But Your Honour it doesn't form part of the

1 evidence before the Court in terms of evidence in the case.

2 THE PRESIDING JUDGE: No. We're on procedural issues. The
3 record will make this abundantly clear. This has nothing to do
4 with the substantive nature of the proceedings. There is no rule
10:22:09 5 of law, that I remember, banning exhibiting documents which may
6 necessarily not go to the substantive core issues of trial, but
7 to procedural issues.

8 MR POWLES: Your Honour, yes. It may be filing it formally
9 with the Registry as a submission may be the more appropriate way
10:22:28 10 to put it before the Court formally, rather than exhibiting it as
11 a Court document as part of the trial proceedings. I'm in
12 Your Honours' hands. I have no preference.

13 JUDGE BOUTET: We have consistently accepted these exhibits
14 in the Court in the past. Not to say on behalf of your client,
10:22:45 15 but for other accused persons. This is not a problem with us to
16 have that as an exhibit.

17 MR POWLES: Then I'm more than happy to exhibit it.

18 JUDGE ITOE: And it is a core issue. Don't underestimate
19 it. It concerns the appearance, you know, of an accused person
10:22:58 20 for his trial.

21 MR POWLES: In those circumstances, may I please exhibit
22 this document.

23 PRESIDING JUDGE: And core issue in the sense of procedural
24 due process, probably not in the sense of substantive due
10:23:09 25 process. I don't see any difficulty. Does learned counsel for
26 the first accused have any objection to the document being
27 exhibited for the limited purpose for which are in fact now
28 deliberating?

29 MR JABBI: No objection.

1 PRESIDING JUDGE: Thank you. Learned counsel for the third
2 accused?

3 MR MARGAI: No objection.

4 PRESIDING JUDGE: Prosecution?

10:23:36 5 MR KAMARA: Yes, My Lord, we are objecting.

6 PRESIDING JUDGE: Yes, let's hear your objection.

7 MR KAMARA: My Lord, we haven't seen the document.

8 JUDGE ITOE: But the document has been read.

9 PRESIDING JUDGE: [Indiscernible] to the traditions of our
10:23:43 10 profession dictate the kind of reciprocity that he's now --

11 MR KAMARA: No objection, My Lord [overlapping speakers].

12 MR POWLES: I, of course, am relieved to hear that because
13 I would hate to be subject to cross-examination.

14 PRESIDING JUDGE: The document will, in fact, be received
10:23:54 15 in evidence for its procedural importance and marked as
16 Exhibit 160.

17 [Exhibit No. 160 was admitted]

18 PRESIDING JUDGE: Having exhibited it, shall we hear then
19 any formal application that you wish to make?

10:24:11 20 MR POWLES: Your Honour, yes.

21 PRESIDING JUDGE: I did ask you right at the beginning
22 whether you had any submissions to advance the course of justice
23 this morning.

24 MR POWLES: Your Honour, yes. I wanted to be in a position
10:24:22 25 to put some document before Your Honours. Your Honours, on the
26 basis of the document that you now have before you, my
27 application would be for an adjournment of these proceedings
28 until Monday, 25th September, for Mr Fofana to be present in
29 Court. It may be, however, that he's still not well.

1 PRESIDING JUDGE: Well, let us just deal with the situation
2 as it is now, and then avoid any speculative dimensions of it,
3 since we want to just confine ourselves to what is happening as
4 of now.

10:25:00 5 JUDGE ITOE: What's the date of Monday again?

6 MR POWLES: 25th September.

7 PRESIDING JUDGE: Just narrow it down, otherwise if you
8 enter into speculation, that might complicate things and this
9 Court tries to simplify things when it can.

10:25:19 10 MR POWLES: Your Honour, in those circumstances, my
11 application is for an adjournment until Monday, 25th September.
12 Being anxious as everyone to keep matters moving, if we receive
13 information that indicates that Mr Fofana is better and is able
14 to be present in Court prior to that date, we would, of course,
10:25:36 15 inform all the parties and take our leave from the parties, and
16 if everyone is available and willing to come back to Court at a
17 date prior to Monday the 25th, of course, everyone will endeavour
18 to do so. At this stage, it seems, based on the information that
19 we have received from Dr Fadlu-Deen, that we have no option but
10:25:56 20 to seek an adjournment until Monday, 25th September.

21 PRESIDING JUDGE: Counsel for the first accused, any
22 objection?

23 MR JABBI: My Lord, my only comment is to plead with
24 counsel for the second accused. In view of the possibility that
10:26:36 25 Monday might well not yield the result anticipated, whether they
26 adjourn it until Tuesday, the 26th, to be on the safe side,
27 because Saturday, Sunday, we will not be able to be informed and
28 Monday will be a safe time for sending information all around.
29 So if we can choose Tuesday instead, otherwise no objection, My

1 Lord.

2 PRESIDING JUDGE: In parliamentary language, that would
3 sound like a friendly amendment.

4 MR POWLES: Your Honour, I'm in your hands.

10:27:16 5 PRESIDING JUDGE: It's entirely up to you.

6 MR POWLES: Based on the information I have, my application
7 is for Monday, but if it suits everyone else for it to be
8 Tuesday, I'm happy for it to be Tuesday.

9 PRESIDING JUDGE: I think what he's asking you to do, if I
10:27:28 10 understand him, is to revise your application on that basis.

11 MR POWLES: My application is for Monday. If my learned
12 friend wants to make an application for it to be Tuesday, I'm
13 happy to fall behind him.

14 PRESIDING JUDGE: We thought you could harmonise your
10:27:46 15 positions.

16 MR POWLES: I'm happy to go along with what everyone else
17 wants, but based on the information I have --

18 PRESIDING JUDGE: We'll rule on that if you cannot
19 harmonise. Counsel for the third accused?

10:27:58 20 MR MARGAI: My Lord, we have no objection. But, I think,
21 in my honest opinion, it seems to me that the friendly advice
22 given by Dr Jabbi seems to be countermining the speculative
23 caution that was administered just a short while ago.

24 PRESIDING JUDGE: Yes, I see. You don't object?

10:28:20 25 MR MARGAI: I have no objection to Monday.

26 PRESIDING JUDGE: Learned counsel for the Prosecution?

27 MR KAMARA: No objection, My Lord, except as to a simple
28 fact we want to draw to the attention of the Bench. Upon reading
29 the tendered exhibit, My Lord --

1 PRESIDING JUDGE: What's the number of that exhibit again?

2 MR KAMARA: 160.

3 PRESIDING JUDGE: Thanks. Yes. What is your concern,
4 counsel?

10:28:45 5 MR KAMARA: That Dr Fadlu-Deen reports -- My Lord, I
6 understand there is an undertaking now by the Defence to present
7 that report. My Lord, it is equally important for this Court to
8 look into that report. Is it as a result of a re-examination of
9 the accused person, or was it a general advisory remark that was
10:29:04 10 made?

11 PRESIDING JUDGE: We don't want to get into that kind of
12 complicated aspect of it.

13 MR KAMARA: It is not, My Lord. Because, come Monday, was
14 it an examination that was done -- last week when we were here
10:29:20 15 for the status conference, we were informed that he would be
16 examined today.

17 JUDGE ITOE: If he was just examined, on what basis would
18 counsel be reporting from the Bar that this was the situation?

19 MR KAMARA: My Lord, this is a report that counsel is
10:29:35 20 giving to the Court.

21 JUDGE ITOE: We had earlier on said that we want, in due
22 course, a medical report filed on this issue.

23 MR KAMARA: As My Lord pleases. If that is the case, then
24 we go by that standard that a medical report will be submitted to
10:29:51 25 substantiate that point.

26 JUDGE BOUTET: This is what Mr Powles has agreed to, to
27 provide a full medical report by Dr Harding. He was the treating
28 physician at the time. Now he's back, he should do the
29 assessment and provide the Court with that information. That's

1 what Mr Powles has agreed to do.

2 PRESIDING JUDGE: For all we know, Dr Harding might adopt
3 what Dr Fadlu-Deen says, or he might not. This is normal in the
4 medical profession.

10:30:14 5 MR KAMARA: Yes, My Lord, as long as we have that for the
6 records of the Court, we are satisfied. Also, as regards the
7 waiver, My Lord -- I'm sorry if I'm a bit technical --

8 PRESIDING JUDGE: Oh, no, counsel, please, go ahead.

9 MR KAMARA: We have adopted a process before in this Court
10:30:31 10 wherein we more or less have a waiver template, for the accused
11 to sign that waiver. I do remember some time ago I made my
12 position in this Court, and it is the position of the
13 Prosecution, that the waiver does not belong to the lawyer, the
14 Defence counsel, it belongs to the accused persons.

10:30:49 15 PRESIDING JUDGE: That is elementary law.

16 MR KAMARA: Yes. Therefore, My Lord, I do request, and it
17 was so done in another case before this court, wherein we more or
18 less have a waiver template. The accused signs that waiver and
19 it forms part of the records of the Court, rather than having a
10:31:03 20 statement, generally reflecting "I do now waive my position." My
21 Lord, this is the second time we are having that. If we can have
22 that waiver template in consistence with what we have done
23 before, it is much appreciated.

24 JUDGE ITOE: To me, at this stage, it isn't necessary,
10:31:19 25 because no evidence has even been recorded for the accused for us
26 to insist on whether he should be present or not. We are still
27 on the very peripheral stage in this matter. There is no process
28 going on in the absence of the accused person for him to really
29 sign the waiver, because there is nothing fundamental going on.

1 We are still in the process of -- the rules are there, yes, but
2 they should not be dragged to an end that might finally, you
3 know, defeat the purpose for which such rules are set. If
4 evidence were being called in the absence of Mr Fofana, then
10:32:00 5 maybe this Bench would say it would insist on him signing the
6 waiver, but nothing is happening. Nothing. Nothing is
7 happening. Everything that is happening is happening in his
8 favour.

9 MR KAMARA: My Lord, if you take it along those lines, I
10:32:15 10 see it as if something is happening, happening in the sense that
11 a list has been given of witnesses and decisions have been taken
12 as a result of that list and, also, these are matters that do
13 affect the Defence of the second accused.

14 At that point, even though evidence has not been led, as
10:32:33 15 yet, still, this is in the trial. We are already in the trial
16 proper, and properly [indiscernible], and if it is convenient for
17 the Court to have that waiver from the accused persons, it is the
18 position of the Prosecution that we so do have that.

19 PRESIDING JUDGE: Waiver as to what?

10:32:49 20 MR KAMARA: As to his presence in Court, like we did in the
21 case of the first accused some time ago.

22 JUDGE BOUTET: But in the case for the first accused --

23 JUDGE ITOE: [Microphone not activated].

24 MR KAMARA: Sorry, My Lord?

10:33:01 25 JUDGE BOUTET: In the case of the first accused, one of the
26 reasons why we asked that it be done in writing was that there
27 was no clear indication at the time when we did not appear in
28 Court that he had waived his right to be present. For greater
29 certainty for past actions, we asked that it be done so the

1 record would clearly reflect that the accused was indeed
2 consenting for not being present in Court, for a period X.
3 Whatever it was, I don't recall. But, since then, either in this
4 trial or other trials, we have accepted counsel as well, that the
10:33:35 5 accused is not present and has waived his right to be present.
6 This was done prior to any other evidence or any other action to
7 be taking place in this Court. Your insistence that it be so
8 formal has not been followed by this Court at all, except, I
9 agree with you, in the case of the first accused, for the reason
10:33:52 10 I'm just explaining, it was because to make sure there would be
11 no uncertainty as to why the accused was or was not in Court.

12 MR KAMARA: I take the cue, My Lord. If that is the
13 position of the Bench, we do so accept and we've made our
14 position from the Prosecution's angle. My Lord, we are trying to
10:34:09 15 be on the safe side as well.

16 PRESIDING JUDGE: That would be my own understanding, too.
17 Once counsel indicates for the record that the accused person has
18 waived his right to be present at, say, today's proceedings, and,
19 of course, prefaced by some reasons, we've always accepted that.
10:34:36 20 As you say, you want it very strictly formalised. I would have
21 thought that, if I recall, one of the maxims of the common law,
22 the forms of action are dead and they must never, never rule us
23 again from the grave.

24 MR KAMARA: I agree, My Lord.

10:34:57 25 JUDGE ITOE: My Lordship reminds of me of Maitland.

26 PRESIDING JUDGE: His Lordship is right. So the position
27 is that there is no objection.

28 MR POWLES: I'm relieved to hear that. Of course, I should
29 say for the record, consideration was given to obtaining a

1 signature from Mr Fofana. Mr Ianuzzi was put forward as a
2 potential to go and obtain that signature, but I thought it would
3 be rather invidious of me to force him to breach the quarantine.

4 JUDGE ITOE: Don't expose him to that. I don't think we
10:35:35 5 want a second person --

6 PRESIDING JUDGE: Quite right. I hope you do not
7 inadvertently reveal some sinister kind of thing. In any
8 event --

9 MR POWLES: Your Honours, in relation to my learned
10:35:48 10 friend's point about whether Mr Fadlu-Deen actually saw
11 Mr Fofana, I can report that he saw him on both Friday and
12 Saturday. This estimate is based on those determinations that
13 were carried out on those dates.

14 Finally, as the Court has rightly stated, different doctors
10:36:05 15 may arrive at different conclusions and of course the situation
16 may change. The only thing I'm anxious about is if Dr Harding
17 comes back and indicates that it is possible we could reconvene
18 back in Court at a date in advance of Monday, that we are in a
19 position to do so, so as not to lose any more invaluable time.

10:36:28 20 If that is the case, of course we would inform the Court and all
21 the parties as soon as we hear anything that that indicates that
22 is the position.

23 At the moment, the best information we have indicates that
24 Mr Fofana won't be able to attend in advance of Monday, 25th
10:36:41 25 September and, therefore, I stand by my application for an
26 adjournment to that date. Of course, we will endeavour to inform
27 all the parties in advance of that date if it is likely there is
28 going to be a further adjournment, or an application for a
29 further adjournment. I hope, to that extent, I can reassure my

1 learned friend, Dr Jabbi, that Monday will not be an ineffective
2 hearing for no unnecessary purpose.

3 PRESIDING JUDGE: Thank you.

4 MR POWLES: Unless I can assist the Court further, those
10:37:12 5 would be my submissions.

6 PRESIDING JUDGE: Thank you. The Bench grants the
7 application for adjournment on the basis of Exhibit 160 and also
8 the oral submissions of counsel on behalf of the second accused.

9 The Bench orders that counsel for the second accused file a
10:39:12 10 complete and comprehensive medical report on the second accused's
11 condition. This is by way of notification from the Bench that we
12 wish to advise that if it's not feasible to begin the case for
13 the second accused by the next adjourned date, counsel for the
14 third accused should begin to consider the advisability of
10:39:48 15 presenting their case for their client within that period.

16 The proceeding, therefore, is accordingly adjourned to
17 Tuesday, 26th September 2006.

18 [Whereupon the hearing was adjourned at 10.43 a.m.,
19 to be reconvened on Tuesday, the 26th day of
10:40:54 20 September 2006, at 9.30 a.m.]

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EXHIBITS:

Exhibit No. 160

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