



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

FRIDAY, 22 SEPTEMBER 2006
10.07 A.M
STATUS CONFERENCE

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
Mr Mohamed Bangura
Ms Miatta Samba
Mr Kevin Tavener

For the accused Sam Hinga Norman:

Mr Aluseine Sesay
Mr Kingsley Belle (legal assistant)

For the accused Moinina Fofana:

Mr Andrew Ianuzzi
Mr Steven Powles

For the accused Allieu Kondewa:

Mr Yada Williams

1 [CDF22SEP06A - CR]

2 Friday, 22 September 2006

3 [The accused Norman and Kondewa present]

4 [The accused Fofana not present]

09:57:38 5 [Open session]

6 [Upon commencing at 10.06 a.m.]

7 PRESIDING JUDGE: Good morning, counsel. From the
8 perspective of the Bench, I reckon we're here this morning to
9 work out some implementing modalities for advancing the interests
10 of justice at this stage of the trial. Namely, the fair and
11 expeditious presentation of the case for the second accused and
12 third accused.

13 The proceeding, of course, is in the nature of a status
14 conference, and it's being held pursuant to Rule 65 *bis* of the
10:04:17 15 Rules of procedure and evidence of the Special Court, which
16 provides as follows, and I quote: "A status conference may be
17 convened by the designated Judge or by the Trial Chamber. The
18 status conference shall; 1. Organise exchanges between the
19 parties so as to ensure expeditious trial proceedings; 2. Review
10:04:21 20 the status of his case and to allow the accused the opportunity
21 to raise issues in relation thereto." End quote.

22 Gentlemen and counsel, we specifically, and more precisely,
23 this conference was convened for the purpose of determining how
24 effectively we can proceed with the hearing of the case of the
10:06:33 25 second accused, in the light of the developments occasioned by
26 the delay of his recovery of his present illness.

27 In the event we cannot proceed with the presentation of the
28 case by the second accused, to consider the option of the
29 advisability of having this Defence team for the third accused

1 proceed with the presentation of their client's defence.

2 So, I hope I have set the purpose in precise and concise
3 compass. And before calling for specific proposals and
4 submissions from the parties, let me, as concisely as I can,
10:09:56 5 provide for the record the detailed procedural background to this
6 important phase of the trial insofar as it relates to the second
7 accused.

8 It may be recalled that on 12th September 2006 the Chamber
9 held a status conference prior to the beginning of the eighth
10:09:56 10 trial session, then scheduled to start on 13 September 2006, with
11 a closing of the Defence case for the first accused and the start
12 of the presentation of the Defence case for the second accused.

13 However, prior to that, on 11th September 2006, the Chamber
14 received a communication from Dr Harding of the detention unit
10:10:01 15 informing the Court that the second accused, Moinina Fofana, had
16 chicken pox and would be unable to attend Court.

17 The Chamber received a waiver by the second accused of his
18 right to be present in Court during the status conference, which
19 was communicated to the Chamber by his Court-appointed counsel.

10:10:01 20 The Chamber was also informed that it was expected that the
21 second accused would recover by Monday, 18th September 2006.
22 Counsel for Fofana brought an application before the Chamber,
23 requesting postponement of the trial until the improvement of the
24 health of his client.

10:13:33 25 On 15th September 2006, the trial proceedings were resumed
26 in order to proceed with a formal closing of the Defence case of
27 the first accused. Counsel for Fofana then reported that his
28 client was still ill and unable to attend Court and that he
29 consented not to be present, that is, he waived his right to be

1 present in Court. Counsel, however, renewed his application not
2 to proceed with the hearing of the Defence case in the absence of
3 the second accused. The application was predicated upon
4 counsel's inability, as he indicated, to contact their client due
10:13:34 5 to his high fever and the contagious nature of his illness. The
6 Chamber granted the adjournment until Monday, 18 September 2006.

7 On 18 September 2006, when the trial resumed, counsel for
8 Fofana reported to the Bench that the second accused was still
9 unwell, and that the latest medical report from the stand-by
10:15:03 10 physician, Dr Fadlu-Deen, was that the accused would be unable to
11 attend Court for at least another week. A waiver was given by
12 the second accused for his absence from Court on that day. A
13 letter signed by counsel for Fofana to that effect was admitted
14 in evidence as Exhibit 160.

10:15:03 15 In that letter, there was also an indication that the
16 second accused should have discussion with counsel for appearing
17 again in Court. Counsel for Fofana requested another adjournment
18 until Monday, 25th September 2006, giving the undertaking that
19 should the second accused recover before that date, they would be
10:15:55 20 ready to proceed with their case. The Bench accordingly granted
21 the adjournment to Tuesday, 26th September 2006 and directed
22 counsel for Fofana to submit a detailed medical report on the
23 state of the health of his client for the further assessment of
24 the Chamber.

10:15:55 25 On 20th September 2006, counsel for Fofana filed a document
26 entitled "Confidential Medical Report of Dr Deen regarding
27 Moinina Fofana." That document, I reckon, is before the Court
28 and I do not know at this stage whether counsel wants the
29 document to be read in open Court or there is, perhaps, a

1 preference for a brief closed session to consider hearing on the
2 subject to look at the report, or whether counsel can advise the
3 Court as to whether certain parts of that report could be
4 disclosed in public without prejudice to the right of privacy,
10:15:56 5 which usually attaches to documentation of that nature. I invite
6 your short intervention at this point.

7 MR POWLES: I'm very grateful for that, Your Honour.
8 Your Honour, the report has been submitted to the Trial Chamber
9 on a confidential basis. I understand it is on the public record
10:15:57 10 that Mr Fofana has chicken pox and, as a result of that,
11 currently in quarantine. That essentially is the thrust of the
12 report from Dr Fadlu-Deen.

13 PRESIDING JUDGE: But what may not be on the public record
14 is probably details --

10:15:57 15 MR POWLES: Your Honour, I would submit that the details --
16 and reading it now, it's clear that some of the details contained
17 within it, I would submit, are not necessary for public concern.
18 The main point of the report is that Mr Fofana is suffering from
19 chicken pox and, as a result of that, is in quarantine. The
10:16:03 20 exact details how that is manifesting itself is not, I submit,
21 not something that --

22 PRESIDING JUDGE: Well, based on that, we'll receive the
23 report in evidence and mark it and dispose of any possibility of
24 a closed-session hearing. My learned brother might want to
10:16:03 25 intervene.

26 JUDGE BOUTET: I really don't know why you are not
27 accepting that the whole of it be public. As you say, it is well
28 known that the accused is suffering from chicken pox and chicken
29 pox does produce some consequences, some physical reactions, so

1 that is all the report is talking about. The thing is, we have
2 the doctor here. We'll have some discussion on this matter with
3 the doctor. I would much prefer we hear this and do this in a
4 public session rather than a closed session. That's why, if
10:16:04 5 you're saying that you prefer that part of it still be kept
6 confidential, it may mean that the whole of this session should
7 be in a closed session, which I don't think would be appropriate.
8 I would like to hear your views on this.

9 MR POWLES: Certainly, Your Honour. Obviously the
10:19:02 10 principle of open justice is fundamental and most important. And
11 that is something, certainly on behalf of the team for Mr Fofana,
12 we would adhere to and support. However, there are some matters
13 which are private and, in my submission, should remain so. It
14 doesn't seem to me that it is necessary for it to be on the
10:19:02 15 public record, the exact details of the current situation of
16 Mr Fofana. I can understand that the public would perhaps need
17 to know why these proceedings have been adjourned. That is on
18 the record, that Mr Fofana is suffering from chicken pox. The
19 report is slightly more detailed than that, and I would submit
10:19:05 20 that that is something which is a matter of privacy for the
21 defendant in this case. I can certainly cite the case of
22 Mr Milosevic, where the actual details of the illnesses that he
23 was suffering were not placed on the public record. Perhaps the
24 general description of the ailments that he was suffering were
10:19:05 25 placed on the Court record but the actual report, as far as I
26 recall, were not disclosed, and the exact details of the
27 examination that he sustained were not made public. I would
28 submit that is certainly in the spirit of open justice but, at
29 the same time, ensuring that the privacy of the accused is

1 respected. There is certainly no need for the whole of this
2 session to be in private.

3 JUDGE BOUTET: You mean in closed session?

4 MR POWLES: In closed session, Your Honour, yes.

10:19:18 5 JUDGE BOUTET: That's my concern. Some of the questions
6 that we'll need an answer to may have to deal with that
7 particular aspect. I'm trying to be, at the same time,
8 efficient, protecting the privacy of the accused, but, at the
9 same time, trying to maintain the public nature of these
10:19:23 10 proceedings. That's why I'm putting it to you. I'm not trying
11 to put you in a bind. I'm just seeking your views on this to see
12 what is your position.

13 MR POWLES: Perhaps we could go into closed session and I
14 could address the chamber slightly more openly.

10:19:23 15 [The Trial Chamber conferred]

16 PRESIDING JUDGE: Actually, the disposition of the Bench is
17 that we receive this document in evidence and give it an exhibit
18 number. Then, at some stage, the doctor may be able to discuss
19 or talk about this in a way, respecting the principles and rules
10:19:42 20 which guide doctors in matters of this nature and, at the same
21 time, not prejudicing the interests of the public. Of course, it
22 is now common knowledge that he suffers from chicken pox, and
23 also common knowledge about the incubation period and all that,
24 and he's slowly recovering. I think that's the way we'll
10:19:53 25 proceed.

26 MR POWLES: Your Honour, yes. Those precise pieces of
27 information are obviously not matters that we have concern about
28 being in the public domain, but I would submit that's as far,
29 really, it needs to go in terms of setting out and outlining the

1 exact issues that arise in this case. I certainly concur with
2 the Bench's view in terms of this being exhibited as a document,
3 but I would ask it be done on a confidential basis, as per the
4 filing.

10:19:53 5 PRESIDING JUDGE: What's the document? Is the document
6 here. Do we have a copy of the report? Counsel, when did you
7 file this? Yesterday?

8 MR POWLES: It was filed on 20th September, Your Honour.

9 PRESIDING JUDGE: I think we should track it down and then
10:19:58 10 give it an exhibit number. I take it, it will be 161.

11 [Exhibit No. 161 was admitted]

12 PRESIDING JUDGE: I don't think the Prosecution would want
13 to make any issue of this.

14 MR KAMARA: Not at all, My Lord.

10:19:58 15 PRESIDING JUDGE: So the position, really, counsel - sit
16 down - is, in the light of the filing of this document, the
17 Chamber definitely decided to convene this status conference
18 today to get the latest information on the status of the health
19 of the second accused, and assessment from Dr Harding on when and
10:21:00 20 where you, counsel for him, will be able to meet and discuss with
21 him his attendance in Court, and any other matters that
22 Dr Harding can assist the Court with. Is Dr Harding present?
23 Dr Harding, we're inviting you to --

24 MR POWLES: Your Honour, sorry to interrupt. May I rise at
10:21:00 25 this stage? If Dr Harding is to address the Court, in order for
26 him to be able to do so as openly as possible, may I ask that it
27 be done in closed session so that Dr Harding can, freely, state
28 for the Court's record whatever needs to be stated and, perhaps
29 thereafter, summarise for public consumption those parts of

1 Dr Harding's report that he's about to give for the public
2 record. My concern is that, during the course of any report,
3 there may be matters that emerge, such as are contained in the
4 report filed by the Defence, relating to the report tendered by
10:21:01 5 Dr Fadlu-Deen that, certainly, I would have concerns being before
6 the public.

7 JUDGE ITOE: Mr Powles, I think the report has been
8 admitted in evidence as Exhibit 161, and it is marked
9 confidentially. That is on your request, isn't it?

10:22:01 10 MR POWLES: Your Honour, yes.

11 JUDGE ITOE: As far as I'm concerned, I don't think I would
12 be expecting Dr Harding -- as far as I'm concerned, I don't think
13 I would be expecting him to go into details of what you don't
14 want to be on the public record for now. I mean, what our
10:22:01 15 interest really is, and what I would think our interests should
16 be now, is when will he be available for the trial? When could
17 he be available for the trial? I think the details of the
18 illness and whatever are the components of it, don't appear to
19 interest me, as a Chamber, as a judge. I'm interested in when he
10:22:01 20 can appear here for purposes of pursuing his defence. If he
21 cannot be present here, you know, within a reasonable time, then
22 we will go into examining, like the Presiding Judge did say, the
23 feasibility, possibility of inviting the third accused to proceed
24 with his defence. I don't think I'm interested in the details of
10:24:44 25 that report.

26 PRESIDING JUDGE: Yes. I would follow that by saying that
27 I've already indicated that Dr Harding is familiar with the
28 ethical guidelines and principles governing his profession in
29 this matter. I don't think he would divulge anything that he

1 thinks may well cross the line, so why not let the doctor have
2 the opportunity to make a short presentation, focusing on the
3 need for us to advance the interests of justice by a fair and
4 expeditious presentation of your client's defence? That is the
10:24:53 5 overarching position now, not the minutia of how the epidemiology
6 of chicken pox in this part of the world, or as it afflicts --
7 Dr Harding, are we on the same radar screen?

8 DR HARDING: Yes, My Lord.

9 PRESIDING JUDGE: Thanks. Are you reassured by that
10:24:53 10 interjection?

11 MR POWLES: Your Honour, I am

12 PRESIDING JUDGE: Right. Do sit down then.

13 DR HARDING: Yes, My Lord, Mr Fofana, as we all know, has
14 got chicken pox, but he's on the mend. I can safely say that
10:24:57 15 he's no longer infectious. He will be able to be in Court next
16 Wednesday, on 27th, and, even today, his attorney, his lawyers
17 can see him because he's no longer infectious. This, I can tell
18 you, is no longer producing any new symptoms.

19 PRESIDING JUDGE: Thank you very much. Thank you for that
10:24:57 20 conciseness in your presentation. Counsel, do you have anything
21 to say on that?

22 MR POWLES: Your Honour, I'm very grateful for [microphone
23 not activated].

24 JUDGE BOUTET: Open your microphone, please.

10:27:08 25 MR POWLES: Your Honour, no, and I'm grateful to Dr Harding
26 for the very helpful report.

27 PRESIDING JUDGE: Thanks.

28 JUDGE BOUTET: I would like to ask one more question from
29 Dr Harding. Dr Harding, you say he is no longer infectious and,

1 therefore, as of when can his lawyers meet with him and discuss
2 with him face to face, if I can put it this way?

3 DR HARDING: Let's say as from tomorrow. Even today they
4 could meet with him

10:27:08 5 JUDGE BOUTET: But tomorrow would be really safe?

6 DR HARDING: Safe.

7 JUDGE BOUTET: For everybody.

8 DR HARDING: Everybody, yes.

9 JUDGE ITOE: So safer.

10:27:08 10 DR HARDING: No, no, no. Everything is drying up. This is
11 okay. Tomorrow should be okay, Your Honour.

12 JUDGE BOUTET: And you say Wednesday. Why Wednesday and
13 not Tuesday if he's not --

14 DR HARDING: Mainly because of aesthetic -- you know, he's
10:27:17 15 got his drying things that are clearing up. You know, it's not
16 presentable for him to come. It's not that he is really sick.
17 Your Honour, I'm sorry, you know.

18 JUDGE BOUTET: I understand.

19 DR HARDING: You understand, yes. That's what I thought.

10:27:17 20 PRESIDING JUDGE: And there cannot be any [indiscernible]
21 at this point?

22 DR HARDING: No, no.

23 PRESIDING JUDGE: Okay. Does the Prosecution have any
24 input on this?

10:27:17 25 MR KAMARA: No, My Lord.

26 PRESIDING JUDGE: But you're relieved?

27 MR KAMARA: Yes, My Lord.

28 PRESIDING JUDGE: Given that assurance, then it puts an
29 entirely different complexion. We had, in fact, been working on

1 the possibility of several options in case we had a report of an
2 adverse nature necessitating the postponement further of the
3 presentation of the second accused's defence. Apparently, we
4 have an assurance and I would, in fact, come with a final
10:27:18 5 position after consultation with my brother judges.

6 [The Trial Chamber conferred]

7 MR KAMARA: My Lord, your mic is open, Justice Boutet.

8 [The Trial Chamber conferred]

9 JUDGE BOUTET: Mr Powles, given the prognosis or the
10:27:25 10 evolution of the health situation of your client, and given that
11 he's not contagious, at least even more or less contagious, if at
12 all, tomorrow, which means you will be able to meet with him and
13 discuss the further presentation and preparation of his case, as
14 of - from my understanding - Dr Harding's evidence, at this
10:27:52 15 stage, it is not a question of contagiousness, but more a
16 question of aesthetics, and his appearance, as such. There is
17 another alternative that might be used to protect his rights, his
18 presentation, as well, because we have a system in Court where he
19 could sit outside the well of the courtroom and watch the
10:28:15 20 proceedings, as such. We have done that with witnesses who do
21 testify from a back room. So he will be able to observe the
22 proceedings and give instructions and, at the same time, we'll be
23 able to proceed, so even sooner than Wednesday. I would like to
24 know from you if you have any comment on that.

10:28:32 25 MR POWLES: Your Honour, obviously the presentation of the
26 defence for Mr Fofana is an important part of the aspect of the
27 case, from his point of view, and I would submit that it would be
28 just short of imperative that he actually be in Court for that
29 very important part of the case, from his point of view, and if

1 the earliest that he can, it seems, be in Court is Wednesday, I
2 would ask for an adjournment of proceedings until that date, so,
3 at the commencement of his case, Mr Fofana can be in Court and
4 present for the duration of the presentation of his case. That,
10:29:18 5 Your Honour, I would say, is a very firm position that would be
6 adopted on behalf of Mr Fofana, given that it is, perhaps, a
7 portion of the case that is of fundamental importance to him

8 JUDGE ITOE: And I'm sure you would want to interact with
9 him directly, from his position where he's sitting.

10:29:36 10 MR POWLES: Your Honour, yes.

11 PRESIDING JUDGE: Thank you, counsel. We'll take a short
12 break and be back with our disposition.

13 [Break taken at 10.32 a.m.]

14 [Upon resuming at 10.42 a.m.]

10:39:10 15 PRESIDING JUDGE: Counsel, based on the brief deliberation,
16 which the Bench has had, our disposition is to adjourn this trial
17 to Wednesday, 27 September 2006. The matter, therefore, stands
18 adjourned to that date.

19 MR POWLES: Your Honour, may I raise one matter - I'm
10:39:29 20 sorry, I should have done so earlier - and that's for an
21 application for the response of Dr Harding, and the brief
22 discussion -- the response of Dr Harding to the learned brother
23 Justice Boutet's question as to whether Mr Fofana would be able
24 to appear in Court on Tuesday. The response that the learned
10:39:50 25 doctor gave was precisely the sort of thing that I would have
26 preferred, on behalf of Mr Fofana, not to be on the public
27 record. My application would be for that to be redacted, and any
28 press that are present today be instructed not to report that
29 particular part of this morning's session to the public. It

1 would seem to me that the precise details of Mr Fofana's ailment,
2 as they currently understand, are not something that are
3 necessary for public consumption, and given there has already
4 been some media attention to this specific aspect of the case, I
10:40:24 5 would ask that it be limited to the fact that Mr Fofana is
6 suffering from chicken pox and the trial is not able to commence
7 until Wednesday of next week.

8 JUDGE BOUTET: I disagree with that. I mean, chicken pox
9 does produce some physical result, as such. Everybody knows
10:40:40 10 that. It is of common knowledge, as such. Why would we -- and
11 all Dr Harding said is there are still some physical signs of
12 that, and it does produce an effect on the physical appearance.

13 I mean, this is well known. I'm not a doctor. I know this. So
14 what is so privy and what's the privacy of the accused so
10:41:06 15 concerned about when we know -- obviously I would agree with you,
16 if it was unknown of the disease he was suffering from, but once
17 you know that it is chicken pox, I mean --

18 MR POWLES: Your Honour, as I said --

19 PRESIDING JUDGE: Counsel --

10:41:20 20 JUDGE ITOE: Mr Powles, maybe this disease is not very
21 common in the part of the world you come from. Anybody hearing
22 about Fofana suffering from chicken pox in this country, has gone
23 through the exercise. I have. I have. So it wouldn't surprise
24 them to hear these details. There is nothing to hide, as a
10:41:42 25 matter of fact.

26 MR POWLES: There is --

27 JUDGE ITOE: I think that you are going into certain
28 details and asking for -- making certain applications which, in
29 the circumstances, really, are not necessary. There is nothing

1 that you can hide from this population as far as the chicken pox
2 is concerned.

3 MR POWLES: I --

4 PRESIDING JUDGE: Just a brief response, quick. The
10:42:08 5 application was, in fact, for redaction, but just a short
6 response before I give you the position of the Bench.

7 MR POWLES: Of course, chicken pox is not an ailment that
8 is limited to this part of the world and I was unfortunate enough
9 to suffer from it myself. However --

10:42:21 10 JUDGE ITOE: I didn't say it doesn't exist there, but the
11 phenomenon is much more predominant here than it is over there.

12 MR POWLES: However, I wouldn't necessarily, I remember -- I
13 am not the most attractive person at the best of times, but
14 certainly when I had chicken pox, I was in a slightly worse
10:42:39 15 position, and I certainly wouldn't necessarily want that
16 discussed in the press and in public. The fact that he has
17 chicken pox, I would submit, is about as far as it should go, and
18 my application would be for what was stated on the public record
19 to be redacted.

10:42:54 20 PRESIDING JUDGE: Actually, you're viewing this thing from
21 the perspective of the Anglo-Saxon kind of social-cultural
22 milieu. This is a different socio-cultural milieu. And really,
23 we have considered the application, and our position is that it
24 is meretricious and, therefore, we reject it. We adjourn.

10:43:21 25 MR WILLIAMS: Your Honour --

26 PRESIDING JUDGE: Why?

27 MR WILLIAMS: My Lord, we would like to have an indication
28 as to when we will be expected to start our case.

29 JUDGE ITOE: Mr Williams, ask Mr Powles. Ask Mr Powles,

1 don't ask us.

2 MR WILLIAMS: We could be guided by the Bench--

3 JUDGE ITOE: No, no --

4 PRESIDING JUDGE: Not at this stage.

10:43:45 5 JUDGE ITOE: The Bench can't guide you. Mr Powles will
6 guide us.

7 MR WILLIAMS: If I may be heard, My Lord.

8 PRESIDING JUDGE: We will allow to be brief. A brief
9 interjection.

10:43:55 10 MR WILLIAMS: My Lord, the second accused had indicated
11 that their case, it would take them about a week to present their
12 case.

13 PRESIDING JUDGE: Yes.

14 MR WILLIAMS: There might be a gap between taking their
10:44:03 15 factual witnesses and their expert, My Lord, so we are expected
16 to have a couple of days in between. What happens between --
17 those are two periods, My Lord, from my side, would the Bench
18 expect us to start, or do we have to start after their expert,
19 has testified, My Lord?

10:44:21 20 PRESIDING JUDGE: Well, be on guard, counsel. This is a
21 status conference, and I think it's appropriate that we discuss
22 it, but the position really is that, from the perspective of the
23 Bench, we had come here with a real focus on, to use a kind of
24 colloquial metaphor, jump-starting the defence case for the
10:44:51 25 second accused, and if it was not possible to have that done on
26 the 26th, then, of course, call upon you to consider the
27 advisability of doing that.

28 At this point in time, I'm not sure whether we want to go
29 into the nitty-gritty of when you will come on board, because the

1 danger of this kind of exercise, is, as we've just learned from
2 experience, when we begin to make projections and focus, we are
3 never able to factor in some problem like a contagious illness
4 that may afflict somebody, may afflict even counsel or even may
10:45:31 5 afflict the Bench. So, if you are asking for precise
6 approximations, it would be very difficult. We can ask Mr Powles
7 to respond.

8 Mr Powles, are you in a position to give your colleagues
9 some kind of projection as to how your case will evolve and when
10:46:14 10 you might, in fact, bring the presentation of the defence case to
11 a conclusion?

12 JUDGE BOUTET: Mr Presiding Judge, if I may say to
13 Mr Powles, before he answers your question. You remember at the
14 status conference, Mr Powles, we had some discussions about your
10:46:28 15 calling Dr Hoffman on, I think it was 9, 10 October, if I'm not
16 mistaken, and you had suggested that your case, leaving aside
17 Dr Hoffman, might be finished before and, therefore, we would
18 have to move to the third accused at that particular time. But
19 now that things have changed as to the starting date of your
10:46:48 20 case, is it likely that when you finish with your witnesses,
21 Dr Hoffman will be at the tail end of that, and there will not be
22 a break in between, type of thing? I will not hold you to half a
23 day. I'm trying to assist the Court and the third accused,
24 obviously.

10:47:08 25 MR POWLES: Your Honour, the position with Dr Hoffman is
26 that he will be here on 9th October, and in a position to testify
27 around that time. Certainly the remaining of the defence
28 witnesses for Mr Fofana will be completed by that time. How much
29 in advance of that date is difficult to assess. I would estimate

1 it would take approximately five working days to present the
2 case, other than Dr Hoffman to the Court. It may be that, with a
3 number of lawyers in the room, that could increase slightly. But
4 I would estimate about five working days.

10:47:48 5 PRESIDING JUDGE: That's examination-in-chief?

6 MR POWLES: Well, to the extent that I can estimate how
7 long the cross-examinations will be, I would say that it should
8 still be completed within five working days. However, I can only
9 speak for my part and cannot encroach on how long others may want
10 to cross-examine the defence witnesses for.

10:48:06

11 JUDGE BOUTET: But the five days, in your estimate, does
12 include an assessment of possible time for the cross-examination.

13 MR POWLES: Your Honour, yes.

14 JUDGE BOUTET: It is not only the examination-in-chief, it
15 does include cross-examination.

10:48:20

16 MR POWLES: Your Honour, yes. But, of course, it may go
17 longer.

18 JUDGE BOUTET: We're talking estimates here.

19 MR POWLES: My best estimate is five working days.

10:48:31

20 JUDGE ITOE: It is only an estimate, as you cannot estimate
21 with precision what your own witnesses are coming to say here.
22 They may well deviate and take a much longer time.

23 PRESIDING JUDGE: I join my brother in that, having regard
24 to the principle of orality, where witnesses take the liberty to
25 expand on what they've told their lawyers.

10:48:51

26 MR POWLES: Your Honour, yes.

27 PRESIDING JUDGE: That's why I say that this is merely a
28 difficult exercise, and you can only be just approximating. Does
29 that satisfy you, Mr Williams? Is it helpful at all?

1 MR WILLIAMS: It is very helpful, My Lord.

2 PRESIDING JUDGE: It is a very difficult kind of exercise,
3 really.

4 MR WILLIAMS: My Lord, the problem is compounded further by
10:49:17 5 the fact that, by all indication, the month of Ramadan should
6 start on Monday, and a good number of our witnesses are Muslims
7 and they have expressed, you know, reluctance to travel from
8 their homes during the month of Ramadan. And keeping them away
9 for an extended period is even, you know, more uncomfortable.

10:49:39 10 PRESIDING JUDGE: When does Ramadan start, you say?

11 MR WILLIAMS: By all indications, on Monday, My Lord.

12 PRESIDING JUDGE: Monday, and it lasts for 31 days or
13 30 days?

14 MR WILLIAMS: Twenty-nine or 30, My Lord.

10:49:52 15 PRESIDING JUDGE: Twenty-nine or 30 days, and this is bound
16 to affect --

17 MR WILLIAMS: Yes, it is My Lord. If we have -- I mean,
18 for example, if we know for certainty, My Lord, that we would be
19 expected to start after Dr Hoffman, then we can get the
10:50:10 20 non-Muslims first, My Lord, and that might take us close to the
21 end of the month.

22 [The Trial Chamber conferred]

23 PRESIDING JUDGE: We have been trying to see how far we can
24 come in with some kind of projection here. In other words, to
10:53:37 25 accommodate counsel for the third accused in terms of some
26 precise date. We can say, subject to, of course, the vagaries
27 that we cannot control that October 5 would be a good time to
28 start the defence for the third accused.

29 MR WILLIAMS: Most grateful, Your Honour.

1 PRESIDING JUDGE: Right. Any other matter that is --

2 JUDGE ITOE: When Dr Hoffman comes, we'll take him on the
3 9th, for the second accused.

4 PRESIDING JUDGE: Yes. Any other matter that we need to
5 address? Mr Kamara?

10:54:19

6 MR KAMARA: Yes, My Lord. Thank you, My Lord. Except that
7 we intend to start on Wednesday, and we do hold the defence of
8 the second accused to their listing last filed, hoping that we're
9 going according to what we have. And, if that is the case, we
10 start with Ibrahim Tucker and we continue along those lines.

10:54:40

11 PRESIDING JUDGE: Do we have a commitment there is no
12 variation, or there is no anticipated variation of the order in
13 which the witnesses will be called?

14 MR POWLES: I'll choose my words carefully. There
15 certainly won't be any change to the order in which the witnesses
16 are called. I'm yet to have a consultation with Mr Fofana. Once
17 I have that consultation, then maybe the number of witnesses will
18 be affected, but certainly the order won't.

10:54:55

19 PRESIDING JUDGE: Yes, that's what you want some assurance
20 about?

10:55:14

21 MR KAMARA: Yes, My Lord, because as we anticipate speed,
22 we have to know exactly who is next so we can prepare for
23 cross-examination and matters along those lines. As my learned
24 friend indicated to the Court, he's intending to do five days, I
25 see we still have 14 witnesses and, realistically, it doesn't
26 seem --

10:55:29

27 PRESIDING JUDGE: That's the point. I don't want to get
28 into argumentative exchanges here, because we're seeking to
29 exercise some kind of judgment of predictability, which we cannot

1 do with any degree of exactitude. These are matters which
2 sometimes are influenced by the unforeseen circumstances, the
3 unpredictables, like the one we've just had to deal with. All we
4 can have are just working figures, and that's all he's given you.

10:56:03 5 MR KAMARA: Yes, My Lord.

6 PRESIDING JUDGE: Of course, I was a little intrigued when
7 he said that his five days would include cross-examination,
8 because I don't know what computation and what statistical kind
9 of methodology he used in that --

10:56:18 10 MR KAMARA: I was thinking that maybe the list would be
11 reduced, probably.

12 PRESIDING JUDGE: Let's hope he's taking the hint.

13 MR KAMARA: As My Lord pleases.

14 PRESIDING JUDGE: Is there anything else we need to
10:56:31 15 address?

16 MR POWLES: No. Thank you very much, Your Honours.

17 PRESIDING JUDGE: Are we sure?

18 JUDGE ITOE: I think this is also a good opportunity,
19 Mr Williams, for you to address the same issue, because you might
10:56:39 20 be coming on board on the 5th.

21 MR WILLIAMS: Yes, My Lord.

22 JUDGE ITOE: You might be coming on board on the 5th, so I
23 think you better put yourself in a good posturing to address the
24 concerns of the Prosecution, so far as the order of calling your
10:56:54 25 witnesses is also concerned.

26 MR WILLIAMS: We'll do that, My Lord.

27 JUDGE ITOE: It's important that you do that, so we don't
28 come into this same debate when the time comes for us to kick off
29 with defence of the third accused.

1 MR WILLIAMS: Grateful, Your Honour.

2 JUDGE ITOE: Thank you.

3 PRESIDING JUDGE: Any other matter?

4 MR KAMARA: Except to reintroduce Kevin Tavener, who has
10:57:14 5 again, Your Honour.

6 PRESIDING JUDGE: He is most welcome. We observed him. We
7 didn't have occasion to invite him for any input, since he's ably
8 supported by you and your other colleagues.

9 MR KAMARA: Thank you, Your Honour.

10:57:26 10 JUDGE ITOE: Unfortunately, we can't receive him with some
11 coffee. It would be nice receiving him warmly with cups of
12 coffee.

13 PRESIDING JUDGE: Having concluded the business of the day,
14 we again state the trial is adjourned to Wednesday, 27 September
10:57:48 15 2006.

16 [Whereupon the hearing adjourned at 11.00 a.m.,
17 to be reconvened on Wednesday, the 27th day of
18 September 2006, at 9.30 a.m.]

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EXHIBITS:

Exhibit No. 161

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