



Case No. SCSL-2003-02-I
THE PROSECUTOR OF
THE SPECIAL COURT
V.
FODAY SAYBANA SANKOH

FRIDAY, 21 MARCH 2003
12.00 NOON
CONTINUED INITIAL APPEARANCE

Before the Judge:

Benjamin Mutanga Itoe

For the Prosecution:

Ms Brenda Hollis
Mr Nicholas Browne-Marke

For the Defence:

Ms Claire Carlton-Hanciles
Ms Haddijatou Kah-Jallow
Mr Ibrahim Sorie Yillah

OPEN SESSION

1 [RUF21MAR03 - SM]

2 Friday, 21 March, 2003

3 [The accused present]

4 [Open session]

5 [Upon commencing at 12.00 p.m.]

6 JUDGE ITOE: Please be seated. Please call the next case.

7 COURT CLERK: Case No. SCSL 2003-02-I.

8 JUDGE ITOE: That's the fourth case?

9 COURT CLERK: Yes, My Lord. The Prosecutor against Foday
10 Saybana Sankoh.

11 JUDGE ITOE: Can I have the number, please. Let me have
12 the number of the case. Bring it, bring it, please. Give it to
13 me.

14 Ask him to look at me this way. Mr Sankoh, can you -- can
15 you, Mr Foday Sankoh, can you look at me, please.

16 Yes. You are Mr Foday Saybana Sankoh? Are you Mr Foday
17 Saybana Sankoh? Is that your name?

18 Ask him, is he hearing me at all? Take the microphone, you
19 know, near his mouth, please. Take the microphone near his
20 mouth. Let him just give me a simple reply. No. Take it,
21 remove it, depart it. Yes. Take it near his mouth.

22 Are you Mr Foday Saybana Sankoh? Are you hearing me at
23 all? Move the microphone back, please.

24 The Court notes that the accused person has refused to
25 identify himself for any further continuation of the pre-trial
26 proceedings at this stage. Tell him No. At this stage.

27 I will continue to ask him questions -- to continue to ask
28 him questions, because he is not providing replies.

29 We hope that some day he will afford replies to these

1 questions that are being put to him

2 Now, when we last arose, we heard a similar scenario. This
3 is a consistent behavior, that is a consistent pattern of
4 behavior, that has been manifested by the accused person, and I
5 do remember that there was an application from the Defence for a
6 full psychiatric and physiological examination to be conducted on
7 the accused in order to determine whether he's fit to plead; am I
8 right? That was the application that was made by the Defence?

9 MS KAH-JALLOW: Yes, My Lord.

10 JUDGE ITOE: And the Court did order, did make an order,
11 that the medical examination be conducted by an expert on the
12 psychiatric and physiological situation of the accused person.
13 And it did direct the Registrar of this Court to take the
14 necessary measures for this examination to be conducted.

15 The Registry is here represented, can I have any comment
16 from the Registry on this order that was made by the Court?

17 THE REGISTRAR: Following the --

18 JUDGE ITOE: Can you please --

19 THE REGISTRAR: Following the order, a consultant
20 psychiatrist from the Netherlands was engaged --

21 JUDGE ITOE: What is his name? May we have his name,
22 please.

23 THE REGISTRAR: Yes, Dr Peter Verkaik.

24 JUDGE ITOE: Yes, go ahead.

25 THE REGISTRAR: He was engaged to examine Mr Sankoh and did
26 so on the 19 of March. I have here a report from the doctor in
27 which he gives notice of the examination that took place of
28 Mr Sankoh, and I will hand Your Honour a copy of that report.

29 JUDGE ITOE: Dr Peter Verkaik, is he in Court?

1 THE REGISTRAR: He is, Your Honour.

2 JUDGE ITOE: Has the Prosecution been served with this
3 report by Dr Verkaik?

4 MS HOLLIS: No, Your Honour, we have not.

5 JUDGE ITOE: Has the Defence been served with this report?

6 MS KAH-JALLOW: No, Your Honour, we have not yet been
7 served.

8 JUDGE ITOE: And how do you want the Court to proceed? Can
9 I have comments from the Prosecution on this, please.

10 MS HOLLIS: Yes, Your Honour. May it please the Court,
11 Your Honour, first and foremost the Prosecution would request
12 that the parties be provided with a copy of the report so that we
13 may assess the contents of the report and then arrive at a
14 position on the report. That would be the first thing we would
15 request. In addition to that, Your Honour, what we would
16 suggest that even if the accused, today, is unable to identify
17 himself that an identification was made at the time of arrest and
18 at the time of transfer to the Special Court. So we would
19 suggest that we do have a basis to believe that this is Foday
20 Saybana Sankoh. Consistent with that, Your Honour, we would ask
21 that pending a further proceeding on the issue of competence to
22 stand trial, that, Your Honour, would enter a plea of not guilty
23 on behalf of this accused, and we ask that for several reasons.

24 First of all, Your Honour, we believe that entering a plea
25 of not guilty on his behalf is consistent with the Rules
26 including the Rules for initial appearance.

27 Secondly, we believe that such a step by the Court would
28 most fully protect the rights of this accused. It would also
29 certainly not preclude any future actions or decisions by the

1 Defence, by the accused, or by this Court, but it would, in fact,
2 clarify matters.

3 So we would ask, Your Honour, that you provide an order
4 that a copy of that report be provided to the parties, set a
5 period of time during which the parties may review this report
6 and make further submissions, and pending all of that, that you
7 would enter a plea of not guilty on behalf of this accused.

8 Thank you, Your Honour.

9 JUDGE ITOE: Thank you. Yes, Mrs Jallow.

10 MS KAH-JALLOW: If it pleases Your Lordship, I do object to
11 the submission made by my learned senior that a plea of guilty
12 should be entered.

13 Please, pursuant to Section 61, it states quite clearly
14 that the accused should be read an indictment, and you should be
15 satisfied that he understands the charges in the indictment.
16 These are indeed serious charges. It is quite obvious to any lay
17 person that he obviously does not understand -- he would not
18 understand an indictment that is read to him. To enter a plea
19 would infer that he is indeed fit to stand trial at a latter
20 date, if it pleases, Your Honour.

21 JUDGE ITOE: Can I have Dr Verkaik, here please. I am not
22 taking you on oath. It's just a few questions by the Court.

23 Do you consider your report conclusive on the questions
24 that were asked by the Court? As far as the psychiatric and the
25 physiological situation of the accused is concerned, do you
26 consider this report conclusive?

27 DR VERKAIK: Yes, Your Honour, I would think so. But as I
28 mentioned in my report, as a recommendation, I suggested that
29 further investigation should be useful in order to find out

1 whether the situation will stay like this or eventually might
2 improve.

3 So for -- the psychiatrist for -- at the moment I examined
4 the patient --

5 JUDGE ITOE: I don't want you to go into any details.

6 DR VERKAIK: No. But the situation was for me clear that
7 --

8 JUDGE ITOE: Yes. I asked you a question, do you consider
9 your report and your investigation conclusive at this stage?

10 DR VERKAIK: At the stage in which I did my examination,
11 yes.

12 JUDGE ITOE: Then what do you make of "more extensive" --
13 in your report, the last page, "more extensive both psychiatric
14 and neurological is necessary to be able to draw specific
15 conclusions." What do you make of that sentence?

16 DR VERKAIK: Well, I cannot draw any conclusions about the
17 cause of the present, the state of the patient, when I examined
18 him. So, therefore, you need to do more extensive investigation.
19 And if I talk about neurological investigation, you have, for
20 instance, in my opinion, you should make a CT scan and
21 psychiatric evaluation after examination. Investigation should
22 mean more -- that you have to figure out more details about his
23 history, his medical history, of course, and the more extensive
24 psychiatric investigation should also contain a longer period of
25 observation.

26 JUDGE ITOE: Now, reading between the lines, I understand
27 you to really mean that this report is not conclusive as such.
28 And the questions asked by the Court -- the Court did direct that
29 this should be a psychiatric and a physiological examination,

1 medical examination, of the accused.

2 This order was made following an application by counsel for
3 the Defence. It was so ordered. Would you think that this
4 report is enough for the Court, you know, to act upon, for
5 purposes of proceeding with whatever procedures that it could go
6 into, as far as this case is concerned?

7 DR VERKAIK: I think it's hard to answer for me, because I
8 do not exactly know what ways there are for the Court to act,
9 so...

10 JUDGE ITOE: Well, we depend on you. We are not -- the
11 Court is not a doctor.

12 DR VERKAIK: Yes.

13 JUDGE ITOE: If the Court were able to, it would even go --

14 DR VERKAIK: Yes.

15 JUDGE ITOE: Yes. Because we, the Court, use experts. And
16 it is in domains where we know that we are not very versed that
17 we designate experts, and you're here in that capacity.

18 DR VERKAIK: So in my psychiatric point of view, the state
19 in which the patient is now, or was at the moment I examined him,
20 was very clear.

21 He was in the so-called catatonic stuporous state. And
22 that means that he is not talking, not reacting to his
23 environment, seemingly unaware of his environment, and in
24 combination with hardly moving. And that combination is called
25 catatonic stuporous state.

26 Therefore more possible causes and that's where I cannot
27 give conclusive -- I cannot make any conclusions about.

28 JUDGE ITOE: You cannot --

29 DR VERKAIK: The state -- the state is very clear.

1 JUDGE ITOE: Yes. You cannot make a conclusion as to the
2 analogy you've drawn as to the stuporous situation of the accused
3 or his psychiatric situation.

4 DR VERKAIK: Sorry, pardon?

5 JUDGE ITOE: I said, you cannot make any conclusions, like
6 you say, clearly, you know, about his psychiatric situation --

7 DR VERKAIK: No. No.

8 JUDGE ITOE: -- at this stage.

9 DR VERKAIK: The psychiatric situation is that he is in a
10 catatonic stuporous state.

11 JUDGE ITOE: Yes.

12 DR VERKAIK: That is my conclusion.

13 JUDGE ITOE: You have to say all this under oath, and at
14 that time, you will be exposed to cross-examination by counsel on
15 both sides. You have the luck, you know, that I am taking you on
16 just at this preliminary, you know, stage. So in any event, I
17 have taken note, you know, of what you've said, and I will draw
18 my conclusions.

19 The doctor -- you will not go please. The doctor has just
20 made certain statements. Has the Prosecution any comments to
21 make on what the doctor has said?

22 MS HOLLIS: Thank you, Your Honour, very briefly.

23 First, the Prosecution would understand from the doctor's
24 comments that further evaluation is needed [Inaudible].

25 Secondly, the Prosecution would understand that, perhaps
26 what the doctor was indicating, was that, as of this time, the
27 doctor can inform all of us [Inaudible] condition, and without
28 further evaluation could make no comments as to how long that
29 condition might last or whether he might improve or not improve.

1 That is what the Prosecution understood from what was said,
2 Your Honour.

3 JUDGE ITOE: So in the light of that -- in the light of
4 that, what is the stand of the Prosecution given this set of
5 facts?

6 MS HOLLIS: Your Honour, the Prosecution's position would
7 be that further evaluation should be conducted of this patient,
8 so that the Court would be fully informed before making a
9 decision as to [Inaudible]. It appears that there was a
10 preliminary investigation that can aid in giving information
11 necessary to assist Your Honour in your decision. Secondly, the
12 Prosecution remains of the view that it would not, in any way,
13 prejudice this accused. In fact, would clarify matters, if, Your
14 Honour, were to enter a plea of not guilty on his behalf.

15 And the Prosecution certainly respects the comments made of
16 the Defence. We do not believe it means that he is fit to stand
17 trial. What we do take it to mean is that the full scope of
18 rights will be afforded to this accused, and it would not
19 [Inaudible] anything [Inaudible] at the pre-trial as [Inaudible].

20 JUDGE ITOE: Thank you. Mrs. Jallow.

21 MS KAH-JALLOW: The accused, I understand, was indicted.
22 My Lord, the key word there is that the accused understands the
23 indictment. [Inaudible] Your Honour, has demonstrated.

24 Obviously, in the report he has said that he was in a
25 chronic stupor. Obviously, he doesn't understand.

26 JUDGE ITOE: Speak up please.

27 MS KAH-JALLOW: He would not -- it does not appear that he
28 would understand the grave charges that are placed [Inaudible]
29 against him. I therefore urge the honourable Court that further

1 evaluation [Inaudible] physiological and psychiatric evaluation
2 should be taken and until the determination, we should not
3 enter -- we should not be in a hurry to enter a plea at this
4 stage.

5 JUDGE ITOE: The Prosecution feels that entering a plea of
6 guilty at this stage does not prejudice the rights of the
7 Defence. Do you hold that view?

8 MS KAH-JALLOW: With the utmost of respect to my learned
9 senior, we beg to differ. Competence, as we know, would
10 determine whether or not this accused person would or would not
11 stand trial as, Your Lordship, pleases.

12 JUDGE ITOE: Well, doctor you can take your place.

13 This matter will be stood down for a couple of minutes for
14 the Court to return with the ruling on the issues that have been
15 placed before it. The Court will rise.

16 [Break taken]

17 JUDGE ITOE: The Court has listened very attentively to the
18 submissions and the applications made by the Prosecution and the
19 reply that has been made by the Defence. And in these
20 circumstances, the Court considers that, at this stage, the
21 establishment of the psychiatric and physiological state and
22 condition of the accused is an imperative hurdle to overcome
23 before any further proceedings in this matter.

24 This is so because counsel for the Defence, in applying for
25 these examinations, was raising at the same time the important
26 legal issue of the inability of her client to stand trial or to
27 plead.

28 The medical report, as it is indeed rightfully considered
29 by Madam Hollis, leading counsel for the Defence. For the

1 Prosecution, I'm sorry. It is inconclusive and the Court noted
2 learned counsel for the Prosecution to have said that further
3 examinations are necessary.

4 In these circumstances, it would, the Court considers, be
5 premature to invite the accused, whose psychiatric and
6 physiological condition is still in doubt, to enter a plea nor
7 could one, in these circumstances, be entered for him at this
8 stage.

9 It is consistent with the overall interests of the law and
10 of justice that the application by the Prosecution, at this
11 stage, be considered as premature and to be rejected.

12 In the light of the foregoing, the Court orders as follows:

13 (1) that the medical report on the accused dated the 20 of March,
14 2003, be served by the Registrar on the Prosecution and on
15 counsel for the Defence; (2) that the accused be subjected to a
16 further and detailed expert psychiatric and physiological
17 examination as ordered earlier by the Court, and that this
18 examination be conclusive and of a nature to enable the Court to
19 determine whether the accused can take a plea or not, or whether
20 he even understands the nature of the plea, or is indeed fit to
21 stand trial.

22 The Registrar of this Court is directed to see to the
23 execution of these orders and thereafter fix a date when this
24 matter will come up either before a judge of this Court or this
25 Chamber designated under on Rule 28 or before the Trial Chamber
26 for a final determination of all the issues that have been
27 appraised so far in these proceedings.

28 The Court also orders that the reports emanating from this
29 order, the medical reports emanating from this order, and which

1 are not -- which are the subject to nondisclosure should be
2 served and made available to counsel for the Prosecution and also
3 to counsel for the Defence. This matter is accordingly adjourned
4 to a date to be fixed by the Registrar at a consultation with all
5 the parties involved.

6 The Court will rise and resume in -- which matter is this?
7 Is it ready? Is that matter ready? I don't have any
8 confirmation that this was ready. I thought we were to take it
9 later on in the day. Yes. Well, call on this one then. Call
10 the next case, though. He can be taken away, yes.

11 But he is able to look at -- he is looking at everybody
12 except the judge.

13 [Hearing adjourned]

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