

SCSL-04-16-T  
 (7051-7056)  
 SPECIAL COURT FOR SIERRA LEONE  
 OFFICE OF THE PROSECUTOR  
 FREETOWN - SIERRA LEONE

Before: Judge Teresa Doherty, Presiding  
 Judge Richard Lussick  
 Judge Julia Sebutinde

Registrar: Mr. Robin Vincent

Date filed: 4 April 2005

**THE PROSECUTOR**

Against

**ALEX TAMBA BRIMA  
 BRIMA BAZZY KAMARA  
 SANTIGIE BORBOR KANU**

CASE NO. SCSL - 2004 - 16 - T

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**PROSECUTION RESPONSE TO JOINT DEFENCE MOTION TO DECLARE NULL AND  
 VOID TESTIMONY-IN-CHIEF OF WITNESS TF1-023**

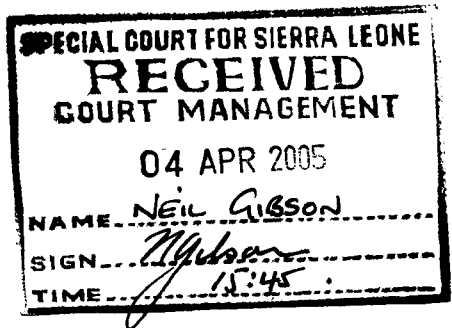
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Office of the Prosecutor:  
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 Kevin Metzger  
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**I. BACKGROUND**

1. On 9 March 2005, witness TF1-023 commenced to give evidence in chief. On the morning of 10 March 2005, the witness stated that she wished to say something before answering the question asked.<sup>1</sup> The witness then described how she had been threatened the previous day as she was leaving the court premises. After the witness was escorted from the Court and the Trial Chamber received two written reports concerning security incidents relating to Witness TF1-023, the Chamber went into closed session.<sup>2</sup>
2. Subsequently, the Chamber ordered that the witness continue to give her testimony in closed session in order to safeguard her protection.<sup>3</sup> Counsel for the First Accused asked that this fact be reflected in the record of the Court, but did not raise any objection to the order based on Rule 79(B), Rule 75, or at all.<sup>4</sup>

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<sup>1</sup> Transcript 10 March 2005, p. 3 (lines 2-3).

<sup>2</sup> Transcript 10 March 2005, p. 5 (line 25) to p. 6 (line 6).

<sup>3</sup> Transcript 10 March 2005, p. 24 (lines 3-4).

<sup>4</sup> Transcript 10 March 2005, p. 23 (line 26) to p. 24 (line 2).

3. On 14 March 2005 the Defence filed a joint motion seeking “to declare null and void” the evidence of Witness TF1-023 given in closed session on 10 March 2005 (“the joint Defence motion”). The joint Defence Motion seeks this remedy on two bases:
  - a. A breach of Rule 79(B), insofar as the Trial Chamber did not make public its reasons for ordering the closed session; and
  - b. A breach of Rule 75, particularly Rules 75(F)(i) and 75(G), insofar as any order to vary the protective measures previously granted to witness TF1-023 should have been made by Trial Chamber I and not by Trial Chamber II.
4. The Prosecution submits that the joint Defence motion is without merit and, in any event, seeks a remedy entirely disproportionate to the alleged mischief.

## II. ARGUMENT

### A. The Chamber acted within its proper authority

5. The direction of the Trial Chamber that the evidence of witness TF1-023 continue in closed session was made in light of the statement of the witness that she had been threatened and her name had been used.<sup>5</sup> Notwithstanding this, the witness had expressed to the Witnesses and Victims Section a desire to continue giving evidence.<sup>6</sup> This was an extraordinary situation and required Trial Chamber II to safeguard the protection of the witness.
6. Witness TF1-023 is a Category I A witness to whom extensive protective measures had been granted. In ordering these measures, Trial Chamber I said that the risk of re-traumatisation and rejection by their families and communities demonstrated convincingly that there was danger and a risk to the security of victims of sexual violence should their

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<sup>5</sup> Transcript 10 March 2005, p. 23 (lines 23-25).

<sup>6</sup> Transcript 10 March 2005, p. 6 (lines 13-20).

identities be disclosed.<sup>7</sup> In the circumstances, the existing protective measures had been undermined.

7. The Prosecution submits that in such extraordinary situations, the Court may rely upon its inherent jurisdiction rather than refer the matter to the Trial Chamber which had previously granted protective measures to the witness. The inherent jurisdiction of a court has been defined as “the reserve or fund of powers, a residual source of power, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression.”<sup>8</sup> The juridical basis of a court’s inherent jurisdiction is the “very authority of the Judiciary to uphold, to protect and to fulfil the judicial function of administering justice according to law in a regular, orderly and effective manner.”<sup>9</sup>
8. In the instant case, it was in the interests of justice to act immediately to protect the witness who had expressed both a security concern and a desire to continue with her evidence. Such immediate action was also necessary to preserve the integrity of the judicial process. This extends to not making public the reasons for a closed session if so doing would undermine the efficacy of the closed session.

### **B. The remedy sought by the Defence is unwarranted**

9. The joint Defence motion notes two technical breaches of the Rules and seeks a remedy of the exclusion of evidence. The relief sought is wholly disproportionate to the mischief alleged. The joint Defence motion is silent as to any prejudice suffered by the Defence as a result of the alleged breaches. The Prosecution submits that there is none. The order for a closed session was, in all the circumstances, consistent with Article 17. All three Accused were represented in Court by Counsel, all of whom chose not to cross examine the witness

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<sup>7</sup> *Prosecutor v Sesay, Kallon and Gbao*, Case No. SCSL-04015-T, *Decision on Prosecution Motion for Modification of Protective Measures for Witnesses*, 5 July 2004, paragraph 33.

<sup>8</sup> *Prosecutor v. Brima et al.*, SCSL-04-16-PT, *Decision on Applicant’s Motion Against Denial by the Acting Principal Defender to Enter a Legal Service Contract for the Assignment of Counsel*, 6 May 2004, para. 55, quoting from *The Editors of Halsbury’s Laws of England*.

<sup>9</sup> *Id.* at para. 57.

but indicated that they may make an application to recall the witness.<sup>10</sup> Accordingly, there is no basis for the exclusion of the impugned evidence.

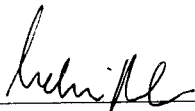
### III. CONCLUSION

10. For the foregoing reasons, the Prosecution submits that the Defence motion seeking to exclude the portion of the testimony of witness TF1-023 given in closed session should be dismissed in its entirety.

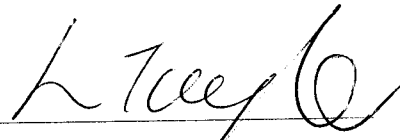
Dated this 4<sup>th</sup> day of April 2005.

In Freetown,  
Sierra Leone.

For the Prosecution,



Luc Côté  
Chief of Prosecutions



Lesley Taylor  
Senior Trial Counsel

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<sup>10</sup> Transcript 10 March 2005, p. 42 (lines 20-29) and p. 43 (lines 19-22).

## **PROSECUTION INDEX OF AUTHORITIES**

*Prosecutor v Sesay, Kallon and Gbao, Case No. SCSL-04-015-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 5 July 2004*

*Prosecutor v. Brima, Kamara and Kanu., SCSL-04-16-PT, Decision on Applicant's Motion Against Denial by the Acting Principal Defender to Enter a Legal Service Contract for the Assignment of Counsel, 6 May 2004*