

TRIAL CHAMBER II ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court"), composed of Justice Teresa Doherty, presiding, Justice Richard Lussick and Justice Julia Sebutinde; **SEISED** of the "Confidential Joint Defence Request to Inspect Locus in Quo Concerning the Evidence of Witness TF1-024" filed on 14 March 2005 on behalf of the Accused Brima, Kamara and Kanu ("Motion");

NOTING the Prosecution Answer to the Motion, filed on 4 April 2005 ("Prosecution Answer");

NOTING also the Joint Defence Reply to the Prosecution Answer to the Motion, filed on 8 April 2005 ("Defence Reply");

DECIDES AS FOLLOWS based solely on the written submissions of the parties pursuant to Rule 73(A) of the Rules of Procedure and Evidence of the Special Court ("Rules").

I. SUBMISSIONS OF THE PARTIES

Defence Motion

1. The Defence requests the Trial Chamber to inspect, in the presence of both Prosecution and Defence, the premises of the State House in Freetown to which Witness TF1-024 referred during his testimony on 7 and 8 March 2005. The Defence challenges the accuracy of the Witness's description of the site. It submits that the Trial Chamber has the power to conduct the requested investigation under Rule 54 of the Rules.

Prosecution Response

2. The Prosecution submits that the Motion is without merit. It argues that the Defence has had the opportunity during cross-examination to challenge the accuracy of the description given by Witness TF1-024 of the kitchen of the State House and the area outside the window. It submits that the proper channel for a further challenge of the testimony of this witness by the Defence should be through its own case. It argues that the Trial Chamber has already examined Witness TF1-024, and that in the light of Rule 85 and the international jurisprudence on this Rule no further examination of the witness should take place.

Defence Reply

3. The Defence argues that its request for an inspection of the said location cannot be denied on the basis of Rule 85 since it relies solely on Rule 54. It contends that the content of cross-examination as such is not an argument for denial of a request to inspect a *locus in quo* in the event that the particular *locus in quo* forms an essential part of the written witness statement on which the Prosecution relied during examination in chief of Witness TF1-024. It submits that the inspection would be essential for the ascertainment of the truth. The Defence emphasizes that it does not seek any further cross-examination of Witness TF1-024. It merely seeks an inspection of the *locus in quo* by the Trial Chamber in the presence of both Prosecution and Defence Counsel.

II. DELIBERATIONS

4. As a preliminary matter, we note once more that this motion was filed confidentially by the Defence. As stated in a previous decision, we urge and caution the Parties to file confidential documents only where cogent reasons are offered.¹ In the present case, no valid reasons for such confidentiality were provided and therefore this decision will be made public.

5. We note that the Defence has requested a site visit after hearing the evidence of the first prosecution witness. Although the Defence in cross-examination challenged some aspects of the witness's description of the kitchen of the State House and the area outside the kitchen, there is not - at least at present - any evidence which conflicts with the witness's testimony.

6. We agree with recent ICTR decisions that the need for a site visit has to be assessed in view of the particular circumstances of each trial.² The present trial is still at an early stage. It may well be that as more evidence is received the need for a site inspection will be made redundant.

7. As stated in the cited ICTR decisions:

["In view of the logistics and costs involved, a decision to carry out a site visit should preferably be made when the visit will be instrumental in the discovery of the truth and determination of the matter before the Chamber."]

8. We would not expect the logistics and costs of a site visit to be prohibitive in the present case. However, after considering the relevant circumstances in this case, we find that a site visit would not be instrumental in the discovering the truth or in determining the case, at least at this stage of the trial.

9. However, we do not exclude that a site visit may be feasible at a later stage. The Defence is at liberty to renew its request.

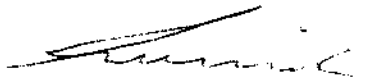
FOR THE ABOVE REASONS, THE TRIAL CHAMBER


DENIES the Motion.

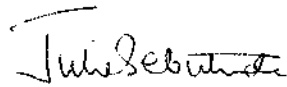
¹ *The Prosecutor v. Brima et al.*, Case No. SCSL-2004-16-T, Decision on the Confidential Joint Defence Application for Withdrawal by Counsel for Brima and Kamara and on the Request for Further Representation by Counsel for Kanu, 20 May 2005, para. 22.

² *The Prosecutor v. Simba*, Case No. ICTR-01-76-T, Decision on the Defence Request for Site Visits in Rwanda, 31 January 2005, para. 2; *The Prosecutor v. Bagosora et al.*, Case ICTR-98-41-T, Decision on Prosecutor's Motion for Site Visits in the Republic of Rwanda, para. 4.

Done at Freetown, Sierra Leone, this 16th day of June 2005


Justice Richard Lussick


Justice Teresa Doherty
Presiding Judge


Justice Julia Sebutinde

