

624)

SCSL-04-15-T
(24946 - 24950)

24946



SPECIAL COURT FOR SIERRA LEONE

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995

FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

TRIAL CHAMBER I

Before: Hon. Justice Bankole Thompson, Presiding Judge
Hon. Justice Pierre Boutet
Hon. Justice Benjamin Mutanga Itoe

Registrar: Mr. Lovemore G. Munlo SC

Date: 3rd August 2006

PROSECUTOR Against ISSA HASSAN SESAY
 MORRIS KALLON
 AUGUSTINE GBAO
 (Case No. SCSL-04-15-T)

Public Document

**DECISION ON DEFENCE MOTION FOR CLARIFICATION AND FOR A RULING THAT
THE DEFENCE HAS BEEN DENIED CROSS-EXAMINATION OPPORTUNITIES**

Office of the Prosecutor:

James C. Johnson
Peter Harrison

Defence Counsel for Issa Hassan Sesay:

Wayne Jordash
Sareta Ashraph

SPECIAL COURT FOR SIERRA LEONE
RECEIVED
COURT MANAGEMENT

3 AUG 2006

NAME

SIGN

TIME

Bankole
SCOFF WALKER
12:40

Defence Counsel for Morris Kallon:

Shekou Touray
Charles Taku
Melron Nicol-Wilson

Court Appointed Counsel for Augustine Gbao:

Andreas O'Shea
John Cammegh

TRIAL CHAMBER 1 ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court") composed of Hon. Justice Bankole Thompson, Presiding Judge, Hon. Justice Pierre Boutet, and Hon. Justice Benjamin Mutanga Itoe;

SEIZED of the "Motion for a Ruling that the Defence Has Been Denied Cross-Examination Opportunities", filed by Defence Counsel for the First Accused, Issa Sesay ("Defence"), on the 29th of June, 2006 ("Motion");

CONSIDERING the Response to the Motion, filed by the Office of the Prosecutor ("Prosecution") on the 10th of July, 2006 ("Response") and the Defence Reply thereto, filed on the 17th of July, 2006 ("Reply");

CONSIDERING that the Defence seeks clarification from the Trial Chamber on whether, pursuant to this Chamber's previous Decisions concerning disclosure of supplemental witness statements, it will be entitled to recall all previous relevant witnesses who already testified at trial in order to cross-examine them on all supplemental factual allegations that arose from any subsequent witness pursuant to the rolling Prosecution disclosure of supplemental witness statements.¹

CONSIDERING that the Defence refers in particular to a previous Decision concerning certain Prosecution witnesses where this Chamber indicated, *inter alia*, that "for the purposes of further safeguarding the rights of the Accused as provided for in Article 17(4)(a) and 17(4)(b) of the Statute [the Trial Chamber] would be prepared to grant an adjournment so as to enable the Defence to examine the various options and strategies open to the Defence in relation to those supplemental statements."²

¹ Motion, paras. 3-4, 12, 20. The Defence specifically submits that it has been prejudiced in that it has not been able to effectively and comprehensively cross-examine certain earlier witnesses on allegations made by later witnesses. See *Id.*, paras 3, 10, 12. The Defence provides some examples at paras 14-16.

² See *Prosecutor v. Sesay et al.*, Case No. SCSL-04-15-T, Decision on the Defence Motion Requesting the Exclusion of Evidence Arising from the Supplemental Statements of Witnesses TF1-168, TF1-165 and TF1-041, 20 March 2006, para. 11. The Defence submits that Article 17 of the Statutes dictates that the reference to "various options and strategies" must include the opportunity for the Defence to recall all relevant witnesses and accordingly cross-examine them. See Motion, para. 11. In conclusion, the Defence anticipates that only if the relief sought is granted, for reasons of efficient management of resources, it could then prepare a schedule outlining the reasons for the recall of any specific witness. See paras 18, 20.

CONSIDERING that the Prosecution submits that the Motion should be dismissed in that the relief sought by the Defence is abstract and hypothetical and does not establish a proper legal basis.³

MINDFUL of this Chamber's previous Decisions concerning disclosure of supplemental witness statements and the requirement that it must be demonstrated that there has been a breach of Rule 66 of the Rules on the part of the Prosecution;⁴

MINDFUL that, one principle emerging from such Decisions is that as the primary charging instrument, the indictment itself, together with the Prosecution Pre-Trial Brief and Supplemental Pre-Trial Brief, has already served notice on the Accused as to the material facts alleged in the charges against him.⁵

MINDFUL that, it is also a statutory requirement that the Prosecution has an obligation to continuously disclose witness statements obtained from a witness prior to his testimony at trial in accordance with Rule 66 of the Rules,⁶ and that from the jurisprudence it is clear that the obligation of disclosure by the Prosecution of the evidence in its custody which it intends to introduce to establish material facts of the charges and the allegations contained in the indictment does differ from, and should not be confused with its obligation to state the material facts constituting the

³ Response, para. 3, 14. In particular, the Prosecution submits that whether a party intends to recall a witness it must establish good cause in relation to each individual witness and based on the specific circumstances and various factors pertaining to any such witness. *Id.*, paras 2, 5.

⁴ For the relevant jurisprudence of the Special Court on this subject, see for example: *Prosecutor v. Sesay et al.*, Case No. SCSL-04-15-T, Decision on Defence Motion to Request the Trial Chamber to Rule that the Prosecution Moulding of Evidence is Impermissible, 1 August 2006; *Id.*, Decision on Defence Motion for an Order Directing the Prosecution to Effect Reasonably Consistent Disclosure, 18 May 2006; *id.*, Ruling on Application for the Exclusion of Certain Supplemental Statements of Witness TF1-361 and Witness TF1-122, 1 June 2005; *Id.*, Ruling on Oral Application for the Exclusion of Statements of Witness TF1-141 Dated Respectively 9th of October, 2004, 19th and 20th of October, 2004, and 10th of January, 2005, 3 February 2005 ("Ruling on Witness TF1-141"); *Id.*, Ruling on Oral Application for the Exclusion of "Additional" Statement for Witness TF1-060, 23 July 2004; *Id.*, Ruling on the Oral Application of the Exclusion of Part of the Testimony of Witness TF1-199, 26 July 2004; *Id.*, Ruling on Disclosure Regarding Witness TF1-015, 28 January 2005; and *Id.*, Ruling on Disclosure Regarding Witness TF1-195, 4 February 2005. See also *Prosecutor v. Norman et al.*, Case No SCSL-04-14-T, Decision on Disclosure of Witness Statements and Cross-Examination, 16 July 2004 ("Norman Disclosure Decision"); *Prosecutor v. Sesay et al.*, Case No. SCSL-04-15-T, Sesay - Decision on Defence Motion for Disclosure Pursuant to Rules 66 and 68 of the Rules, 9 July 2004;

⁵ *Prosecutor v. Sesay et al.*, Case No. SCSL-04-15-T, Decision on the Defence Motion Requesting the Exclusion of Evidence Arising from the Supplemental Statements of Witnesses TF1-168, TF1-165 and TF1-041, 20 March 2006, ("Decision on Witnesses TF1-168, TF1-165 and TF1-041"), para. 10; see also *id.*, Decision On The Defence Motion For The Exclusion of Certain Portions of Supplemental Statements of Witnesses TF1-117, 27 February 2006, paras 10-11 and 13; *Id.*, Decision On The Defence Motion For the Exclusion of Evidence Arising From the Supplemental Statements of Witnesses TF1-113, TF1-108, TF1-330, TF1-288, 27 February 2006, paras 9, 11 and 13.

⁶ *Norman Disclosure Decision*, supra note 4, paras 22-23. See also, for instance, *Prosecutor v. Sesay et al.*, Case No. SCSL-04-15-T, Decision on the Gbao and Sesay Joint Application for the Exclusion of the Testimony of Witness TF1-141, 26 October 2005, para. 19; *id.*, Ruling on Witness TF1-141, supra note 4, para. 17.

charges against the accused persons in the indictment and as to the form and contents of the indictment.⁷

NOTING that, even though the Rules of Procedure and Evidence ("Rules") do not specifically provide for motions for clarification of a Chamber Decision,⁸ this Chamber has, in exceptional circumstances, previously provided clarification of one of its Decision;⁹

FINDING however that the instant Motion does not directly specify any issue or relief concerning possible prejudice suffered by the Defence in relation to any particular factual allegation or any particular witness who testified before this court and does not cite any relevant authority in support;

BEING SATISFIED that, in the circumstances, this Chamber's relevant jurisprudence on the issue of supplemental witness statements disclosed by the Prosecution is clear and unambiguous and does not need to be further clarified by this Chamber¹⁰

OBSERVING that the recall of a witness for cross-examination remains a discretionary matter for the Court;

PURSUANT TO Article 17 of the Statute of the Special Court for Sierra Leone ("Statute") and Rules 54, 66, 73 and 89 of the Rules;

⁷ Decision on Witnesses TF1-168, TF1-165 and TF1-041, *supra* note 5, para. 11; See also *id.*, Decision on Defence Motion for an Order Directing the Prosecution to Effect Reasonably Consistent Disclosure, 18 May 2006. For a general guidance on the form and contents of an indictment, see *Prosecutor v. Norman et al.*, Case No. SCSL-04-14-AR73, Decision on Amendment of the Consolidated Indictment, 16 May 2005.

⁸ Similarly, also the relevant Statute, Rules or Regulations of the International Criminal Court do not provide a procedure for clarification. See *Situation in Uganda*, Case No. ICC-02/04-01/05, Decision on the Prosecutor's Position on the Decision of Pre-Trial Chamber II to Redact Factual Descriptions of Crimes from the Warrants of Arrest, Motion for Reconsideration, and Motion for Clarification, 28 October 2005, paras 25-27.

⁹ *Prosecutor v. Norman et al.*, Case No. SCSL-04-14-T, Decision on Joint Motion of the First and Second Accused to Clarify the Decision on Motions for Judgment of Acquittal pursuant to Rule 98, 3 February 2006. According to the relevant jurisprudence of the ICTR, motions for clarification can be granted only in exceptional circumstances. See *Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-A, Decision on Ngeze's Motion for Clarification of the Schedule and Scheduling Order, 2 March 2004.


¹⁰ For additional reference from the International Criminal Court on the issue of motions for clarification, see *Situation in Uganda*, Case No. ICC-02/04-01/05, Decision on the Prosecutor's Motion for Clarification and Urgent Request for Variation of the Time-Limit Enshrined in Rule 155, 18 July 2005.

FOR THESE REASONS,

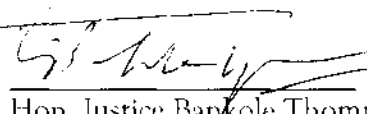
THE CHAMBER HEREBY

DISMISSES the Motion in its entirety as lacking merit.

Done at Freetown, Sierra Leone, this 3rd day of August, 2006



Hon. Justice Benjamin Muranga Itoe



Hon. Justice Bankole Thompson
Presiding Judge
Trial Chamber I



Hon. Justice Pierre Bouter

[Seal of the Special Court for Sierra Leone]

