

SCSL-2004-16-T
(8766-8776)

276

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

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

Registrar: Mr. Robin Vincent

Date filed: 18 May 2005

THE PROSECUTOR

Against

**Alex Tamba Brima
Brima Bazzy Kamara
Santigie Borbor Kanu**

Case No. SCSL-04-16-T

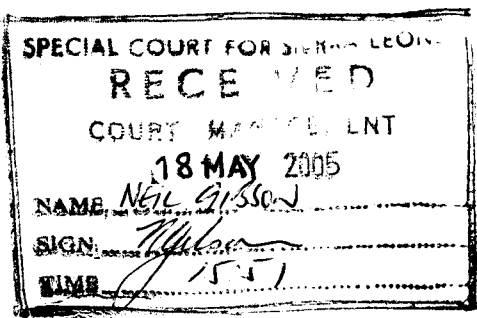
PROSECUTION COMBINED REPLY TO “JOINT DEFENCE RESPONSE TO PROSECUTION REQUEST FOR LEAVE TO CALL AN ADDITIONAL WITNESS PURSUANT TO RULE 73bis(E)” AND “JOINT DEFENCE NOTICE TO INFORM THE TRIAL CHAMBER OF ITS POSITION VIS-À-VIS THE PROPOSED EXPERT WITNESS MRS. BANGURA PURSUANT TO RULE 94bis”

Office of the Prosecutor:
Luc Côté
Lesley Taylor
Shyamala Alagendra
Lorenzo Pugliatti

Defence Counsel for Alex Tamba Brima
Glenna Thompson
Kojo Graham

Defence Counsel for Brima Bazzy Kamara
Mohamed Pa-Momo Fofanah

Defence Counsel for Santigie Borbor Kanu
Geert-Jan Alexander Knoop
Carry Knoop
Abibola E. Manley-Spaine



SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

THE PROSECUTOR

Against

Alex Tamba Brima
Brima Bazzy Kamara
Santigie Borbor Kanu

Case No. SCSL-04-16-T

PROSECUTION COMBINED REPLY TO “JOINT DEFENCE RESPONSE TO PROSECUTION REQUEST FOR LEAVE TO CALL AN ADDITIONAL WITNESS PURSUANT TO RULE 73bis(E)” AND “JOINT DEFENCE NOTICE TO INFORM THE TRIAL CHAMBER OF ITS POSITION VIS-À-VIS THE PROPOSED EXPERT WITNESS MRS. BANGURA PURSUANT TO RULE 94bis”

I. PROCEDURAL BACKGROUND

1. On 1 April 2004, Trial Chamber I issued the “Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of Trial” (the “Original Order”).¹
2. On 26 April 2004, pursuant to the Original Order, the Prosecution filed a “Witness List”, which included a summary of the expected testimony of each witness.
3. On 9 February 2005, Trial Chamber II issued the “Order to Prosecution to Provide Order of Witnesses and Witness Statements” (the “9 February 2005 Order”).
4. Pursuant to the 9 February 2005 Order, on 21 February 2005 the Prosecution filed a “Revised Witness List”.
5. Subsequently, on 28 April 2005, the Prosecution filed an “Updated Witness List”.
6. On 4 May 2005, the Prosecution filed its “Prosecution Request for Leave to Call an Additional Witness Pursuant to Rule 73bis(E)” (the “Request”).

¹ *Prosecutor Against Brima, Kamara and Kanu*, Case No.SCSL-04-16-T, “Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of Trial”, 1 April 2004.

7. On 13 May 2005, the Defence filed its “Joint Defence Response to Prosecution Request for Leave to Call an Additional Witness Pursuant to Rule 73bis(E)” (the “Joint Defence Response”).
8. On the same day the Defence also filed its “Joint Defence Notice to Inform the Trial Chamber of its Position vis-à-vis the Proposed Expert Witness Mrs. Bangura Pursuant to Rule 94bis” (the “Joint Defence Notice”).
9. The Prosecution hereby files its Combined Reply to the two Defence filings of 13 May 2005.

II. INTRODUCTION

10. The Defence jointly object to the Prosecution Request on the following grounds :
 - a. that the Prosecution has failed to satisfy the requirement that the circumstances demonstrating good cause are “directly related and material to the fact in issue”;
 - b. that the Prosecution has failed to satisfy the requirement that the expert testimony sought to be admitted by the Prosecution is relevant and material;
 - c. that the Defence would be unfairly prejudiced by the calling of the expert witness at this stage of the proceedings; and
 - d. that the Prosecution has failed to satisfy the requirement that it has to show that the evidence sought to be admitted “could not have been discovered or made available at a point earlier in time notwithstanding the exercise of due diligence”.
11. In their Joint Defence Notice the Defence have challenged the expertise of the Prosecution’s proposed expert witness, Mrs. Zainab Bangura, and have notified the Trial Chamber of their wish to cross-examine Mrs Bangura, and further Ms. Christiana Solomon.

III. REPLY TO THE JOINT DEFENCE RESPONSE

Prosecution Reply to the First Objection

12. In paragraph 13 of its Request the Prosecution outlined the reason why Ms. Vann was removed from the witness list, namely that the substance of her evidence consisted of matters which could be addressed in the testimony of first hand witnesses. In removing Ms Vann from the list, the Prosecution has sought to limit its evidence to the best evidence available, being direct evidence which may be clearly understood without the assistance of expert opinion. Further, the Prosecution has sought to avoid unnecessarily cumulative evidence.
13. Rule 66(A)(ii) places a continuous obligation on the Prosecution to disclose to the Defence the statements of additional witnesses it intends to call to testify. In the event that such witnesses materialise after the commencement of the trial, the Prosecution may seek to disclose their statements upon showing good cause.
14. The issue of forced marriage in the context of the conflict in Sierra Leone warrants the calling of expert opinion. Forced marriage as an inhumane act under Article 2(i) of the Statute, is a novel legal charge. The complexity and sensitivity of the issue renders an expert opinion both material and relevant.
15. The Prosecution was able to make the assessment that a replacement expert witness was required on this issue only after it had the opportunity to review the report of Ms. Vann. That report did not include an analysis or opinion on the issue.
16. The Prosecution undertook all measures necessary and within its means to identify an expert and to obtain the said report. Given the circumstances as explained in paragraphs 16 to 21 of the Request, the Prosecution submits that it did so expeditiously.

Prosecution Reply to the Second Objection

17. The Prosecution submits that the curriculum vitae of Mrs. Bangura demonstrates that she can be qualified as an expert in the area of forced marriage in the cultural context of Sierra Leone. Any evidence which will assist the court in

understanding the context and consequences of forced marriages in the conflict in Sierra Leone is evidence that goes to the core of the allegations in the indictment in this regard. It is accordingly, material and relevant.

Reply of the Prosecution to the Third Objection

18. The Defence submit that calling of this additional witness at this stage of the proceedings causes unfair prejudice to the Defence.
19. An Accused person is prejudiced during a trial where there is an infringement of one or more of his rights guaranteed by law. The Prosecution submits that the adding of a witness to the witness list after the commencement of trial does not of itself infringe Articles 17(4)(a) and (b) of the Statute. Some specific prejudice must be identified by the Defence.
20. The Prosecution submits that no specific prejudice has been identified by the Defence. The Prosecution reiterates that it does not intend to call Mrs. Bangura until a later stage in the trial. Further, the Defence may attain its own expert evidence, and presumably may have already instructed its own expert or experts to address the various issues raised in the indictment requiring evidence of this nature.

Prosecution Reply to the Fourth Objection

21. The Defence submits that the Prosecution has failed to satisfy the fourth criteria set out in the 11 February 2005 Decision in *Prosecutor v Sesay*² because the Prosecution did not inform the Defence as early as 14 February 2005 of its intention to call Mrs. Bangura as a witness.³
22. As of 14 February 2005, the Prosecution had merely identified Mrs. Bangura as a suitable candidate and had instructed Mrs. Bangura to produce a written report for its consideration. The contention of the Defence amounts to a suggestion that the Prosecution ought to have informed them of the investigations it was conducting. The Prosecution submits that there was no such obligation.

² *Prosecutor v Sesay, Kallon and Gbao*, SCSL-2004-15-PT, “Decision on Prosecution Request for Leave to Call Additional Witnesses and Disclose Additional Witness Statements”, 11 February 2005, para 35.

³ Reference is made to paragraph 14 and 15 of the Joint Defence Response.

23. The Prosecution's obligation is to disclose evidence it has in its possession. Mrs. Bangura's report came into the Prosecution's possession in its final form on 4 May 2005. The Prosecution immediately filed its request to call Mrs Bangura as an expert, and in the circumstances, it is submitted that the Prosecution has proceeded more than expeditiously and with due diligence in this regard.

Further Submissions in Reply to the Joint Defence Motion

24. The Prosecution refers to a decision of a Trial Chamber of the ICTY in *Prosecutor v Zejnil Delalic et al*⁴, wherein it was held as follows:

“The Trial Chamber is enjoined to utilise all its powers to facilitate the truth finding process in the impartial adjudication of the matter between the parties. It is thus important to adopt a flexible approach when considering the management of witnesses. Where the testimony of a witness is important to the Prosecution or the Defence, the Trial Chamber will ensure that such witness is heard, subject, naturally, to the limits prescribed in the Statute of the International Tribunal ("the Statute") and Rules. In the present case, these two particular witnesses, 6 and 7, are deemed material to the Prosecution and it would be contrary to the interests of justice to exclude their testimony. The rights of the Accused enunciated in Article 21 of the Statute are in no sense affected by the adoption of such a flexible approach. The terms of Sub-rule 66(A) have been satisfied by the Prosecution's disclosure of the witness statements as soon as it was possible and practicable. Full consideration will, naturally, be given to arguments put forward by Counsel for all four Accused persons in future in support of any application for measures required to safeguard fairness to the accused.”

25. The Prosecution respectfully submits that following this decision and the criteria laid down by the Special Court in previous Decisions in this regard, it would best serve the interests of justice that the Request be granted.

IV. PROSECUTION REPLY TO JOINT DEFENCE NOTICE

⁴ *Prosecutor v Zejnil Delalic Zdravko Mucic Also Known As "Pavo" Hazim Delic Esad Landzo Also Known As "Zenga"*, Decision On Confidential Motion To Seek Leave To Call Additional Witnesses, 4 September 1997.

Witness is not an Expert on Forced Marriages

26. The Prosecution submits that for the Defence to assert that Mrs. Bangura is precluded from being an expert on forced marriage because she once practiced in the insurance industry is neither a reasonable nor a fair assessment of her CV and her activities over the past decade.
27. This determination pays no attention or regard to the work that Mrs. Bangura has been exclusively undertaking since the mid-1990s with both civil society, national NGOs, as well as international organisations / institutions such as the World Bank, UN Development Programme (UNDP) and the UN High Commission for Refugees (UNHCR).
28. Mrs. Bangura has not worked in the insurance industry for several years, during which time she has worked *extensively* within many aspects of Sierra Leonean civil society, including, as was recognised in paragraph 8 of the Joint Defence Notice, accountability, anti-corruption, women's development and democracy. What the Defence have failed to acknowledge is that Mrs. Bangura's civil society and international consulting activities have also encompassed the issue of sexual violence perpetrated against women and forced marriages.
29. The Prosecution submits that Mrs Bangura's experience and exposure to the issues surrounding forced marriage and sexual violence generally is clearly evident upon any reading of her CV and in the professional biography contained in Section 1 (entitled "Qualifications") of her expert report.
30. By way of illustration, as Executive Director of the Campaign for Good Governance, Mrs. Bangura has worked *specifically* on the promotion and protection of women's rights, including providing free medical and legal services for women victims of sexual violence during the conflict. Following the Freetown invasion of 6 January 1999, Mrs. Bangura worked to provide these medical and legal services solely for victims of forced marriage ("bush wives").
31. Further, Mrs. Bangura has consulted specifically within a gender context to the World Bank, UNDP, UNHCR, the Global Fund for Women, the Mano River Union and the Global Fund for Human Rights. During these consultancies, Mrs.

Bangura's exposure to, and interaction with, victims of sexual violence and to those of forced marriage was extensive.

32. The Prosecution refers to a recent ICTR Trial Chamber Decision in the Case of *Bizimungu et al*⁵ where it was held:

“The role of an expert is to assist the Chamber in understanding the context in which the events took place. The expert must possess a relevant specialised knowledge acquired through education, experience, or training in his proposed field of expertise.”

33. The Prosecution submits that the *experience* of this proposed witness is the material factor in determining whether Mrs. Bangura is in fact an expert. Furthermore, by use of the word “or” the Trial Chamber clearly envisages a disjunctive assessment of education, experience or training – meaning that expertise need not be derived from all of these sources. Thus, it is the Prosecution's submission that although Mrs. Bangura's educational background is in the field of insurance, her extensive experience is sufficient to qualify her as an expert with relevant specialised knowledge.

34. Taking all of the above into consideration (as well as all the additional information contained within Mrs. Bangura's CV and professional biography), the Prosecution reiterates its submission that Mrs. Bangura is an expert qualified to comment and inform the Court on issues concerning the practice of forced marriage during the Sierra Leonean conflict.

Report Is Inadequate as an Expert Report

35. In response to the Defence assertions made in paragraphs 9-21 in Section 3.2 of the Joint Defence Notice, the Prosecution submits that the detailed concerns that the Defence entertains concerning the content and methodology of Mrs. Bangura's report are concerns which would be most appropriately addressed by the Defence in their cross-examination of Mrs. Bangura.

36. The Prosecution avers that the purpose of the written filings required by Rule 94bis, is *solely* to ascertain whether the Defence accepts an expert statement filed

⁵ *Prosecutor v. Bizimungu et al*, Case No. ICTR-99-50-T, “Oral Decision on Qualification of Prosecution Expert Sebahire Deo Mbonyekebe”, 2 May 2005 (emphasis added).

pursuant to the Rule or not, and whether the Defence intends to cross-examine the expert witness. It is not appropriate at this stage in the proceedings for the Defence to challenge any of the content or the methodology of Mrs. Bangura's expert report.

Request for Cross-Examination of Ms. Christina Solomon

37. The Prosecution objects to the Defence request to cross-examine Ms. Solomon. The Defence wrongly state that Ms. Solomon is a "co-author" of Mrs. Bangura's report.⁶ At page 6 of the said report, it is clearly stated that Ms. Solomon merely provided support in the compilation of the report and nothing more.
38. The said report in its entirety represents the expert opinion of Mrs. Bangura only. At page 21, Mrs. Bangura has signed as the maker of the report and has affirmed the truth of the contents thereof.
39. Rule 94bis makes provision whereby the Defence may indicate that it wishes to cross-examine the expert. It does not extend to the cross-examination of any other person.

V. CONCLUSION

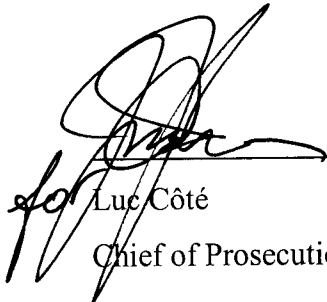
40. The Prosecution respectfully submits that it there is good cause and it would be in the interests of justice that the expert witness, Mrs. Bangura, be added to the Witness List.
41. The Prosecution further requests that the Honourable Court does not require Ms. Christiana Solomon to attend court to be cross-examined, whether under Rule 94bis, or at all.

⁶ Reference is made to paragraph 23 of the Joint Defence Notice

Filed this 18th day of May 2005,

In Freetown

For the Prosecution,


for Luc Côté
Chief of Prosecutions


Lesley Taylor
Senior Trial Attorney

INDEX OF AUTHORITIES

Prosecutor v. Biximungu et al, Case No. ICTR-99-50-T, “Oral Decision on Qualification of Prosecution Expert Sebahire Deo Mbonyikebe”, 2 May 2005
<http://www.ictr.org/default.htm>

Prosecutor v Sesay, Kallon and Gbao, SCSL-2004-15-PT, “Decision on Prosecution Request for Leave to Call Additional Witnesses and Disclose Additional Witness Statements”, 11 February 2005

Prosecutor Against Brima, Kamara and Kanu, Case No.SCSL-04-16-T, “Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of Trial”, 1 April 2004

Prosecutor v Zejnil Delalic Zdravko Mucic Also Known As "Pavo" Hazim Delic Esad Landzo Also Known As "Zenga", Decision On Confidential Motion To Seek Leave To Call Additional Witnesses, 4 September 1997
<http://www.un.org/icty/celebici/trialc2/decision-e/70904WG2.htm>