

(12498 - 12501)

SPECIAL COURT FOR SIERRA LEONE**The Trial Chamber**

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

Registrar: Robin Vincent

Date: 18 March 2005

The Prosecutor Against Sam Hinga Norman
Moinina Fofana
Allieu Kondewa
Case No. SCSL-04-14-T

DEFENCE REPLY
To Prosecution Response to Defence Request for
"STAYED" WITNESS INDEXING

Office of the Prosecutor

Luc Cote
 James C. Johnson
 Kevin Tavener

Court Appointed Counsel for Sam

Hinga Norman
 Dr. Bu-Buakei Jabbi
 John Wesley Hall Jr.

Court Appointed counsel for Moinina

Fofana
 Michiel Pestman
 Arrow J. Bockarie
 Victor Koppe

Court Appointed Counsel for Allieu

Kondewa
 Charles Margai
 Yada Williams
 Ansu Lansana

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INTRODUCTION

1. In its Response¹ to the subject Defence Request², the Prosecution argues that there is no basis for requesting an order to the Prosecution to provide “stayed” witness indexing as per the Defence Request because the Prosecution is already required by orders of the Trial Chamber not only to disclose prosecution witness statements to the Defence far in advance of their being called to give evidence but also to file witness orders at least 14 days prior to calling the witness; and that in any case the First Accused has been on notice in respect of the “stayed” portions of the consolidated indictment since the inclusion of the relevant particulars in the said indictment (see paras. 4-6 of the Prosecution Response). The Prosecution also submits that no legal basis or reason is advanced by the Defence for the said Request (paras. 3 and 7 of the said Response). That, accordingly, the Defence does not require the requested index-linked list of witnesses whose testimonies relate to the “stayed” portions.

¹ *Prosecution v. Norman, Fofana and Kondewa*, Case No. SCSL-04-14-T: “Prosecution Response to Defence Request for “Stayed” Witness Indexing”, 15 March 2005, #374. RP. 12483 - 12487

² *Ibid*: “Defence Request for ‘Stayed’ Witness Indexing”, 7 March 2005, #366, RP. 12418 – 12426

REPLY

2. The Defence replies that, in view of the “staying” Decision³ and the special dispensation of the Moyamba Crime Base Decision⁴, the requested “stayed” witness indexing is, in all the circumstances, a natural and necessary extension of the Prosecution’s disclosure obligations and of the Trial Chamber’s order for providing witness orders in advance of testimonies or evidence. It is noted that the Moyamba Crime Base Decision is specifically concerned with a particular geographic area and it is not necessarily of general application to other geographic and non-geographic bases of “stayed” portions. It is likely that similar Decisions will be sought in respect of other geographic and non-geographic bases of “stayed portions”. The requested indexing would be apt to enhance and facilitate not only defence preparations in the interest of justice but also the Prosecution’s own prospects and chances of winning Defence cooperation in the former’s quest to upstage “stayed” portion testimonies even possibly before final decisions in respect of relevant appeals at present pending before the Appeals Chamber. Furthermore, paragraphs 11 to 13 inclusive of the aforesaid Defence Request convincingly set out sufficient reasons and the ideal structured scope for the requested “stayed” witness indexing.

CONCLUSION

3. It is submitted that the wider interests of justice and overall fair play would be immensely enhanced and facilitated served by the requested “stayed” witness

³ Ibid: “Decision on First Accused’s Motion for Service and Arraignment on the Consolidated Indictment”, 29 November 2004, #282, RP. 10888-10894. SEE ALSO

Ibid: Separate Concluding Opinion of Judge Bankole Thompson on Decision on First Accused’s Motion for Service and Arraignment on the Consolidated Indictment”, 29 November 2004, #285, RP. 10899-10909.

Ibid: “Dissenting Opinion of Hon. Judge Benjamin Mutanga Itoe, Presiding Judge, on the Chamber Majority Decision on the Motion for Service and Arraignment”, 29 November 2004, #293, RP. 10971-11011.

⁴ Ibid: “Decision on Presentation of witness Testimony on Moyamba Crime Base”, 1 March 2005 #354, RP. 12238 - 12242

indexing; and their learned and honourable Lordships of the Trial chamber are urged to grant the Defence Request as prayed.

Done in Freetown 18th March 2005-03-17

DR. BU-BUAKEI JABBI



COURT APPOINTED COUNSEL

SAM HINGA NORMAN



FIRST ACCUSED