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SCSL-04-14-T
(19008-19013)

19008

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

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

Registrar: Mr. Lovemore G. Munlo, SC

Date: 24th July, 2006

PROSECUTOR

Against

**Samuel Hinga Norman
Moinina Fofana
Allieu Kondewa**

Case No. SCSL-04-14-T

Public

First Accused's Reply to the "Prosecution Response to First Accused's Urgent Motion for Leave to File Additional Exhibits Dated 18 July 2006"

Office of the Prosecutor:

Mr Christopher Staker
James Johnson
Joseph Kamara

For Samuel Hinga Norman

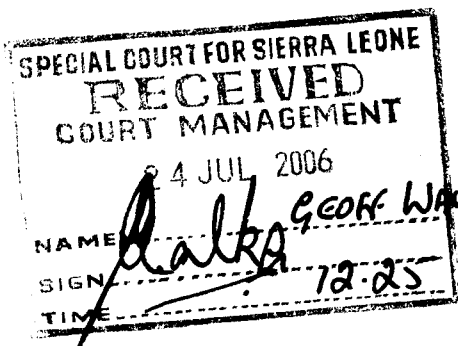
Dr. Bu-Buakei Jabbi
John Wesley Hall, Jr.
Alusine Sani Sesay

For Moinina Fofana:

Michiel Pestman
Arrow J. Bockarie
Victor Koppe

For Allieu Kondewa:

Charles Margai
Yada Williams
Ansu Lansana
Susan Wright.



INTRODUCTION

1. **Counsel for the First Accused hereby files its reply to the “Prosecution Response to First Accused Urgent Motion for Leave to File Additional Exhibits dated 18 July 2006.”**
2. **The Prosecution submits the Defence has failed to show whether good cause has been established and that the Motion should therefore be denied,¹ and that in the event that the Trial Chamber were minded to grant the Motion, the Prosecution seeks an Order that copies of the complete exhibits be provided to it, so as to enable the Prosecution to adequately conduct proper investigations and prepare for cross-examination, in order to avoid potential delays in the future,² and that the Prosecution also reserves its right to state its objection to authenticity of the proposed exhibits once they are disclosed.³**
3. **Counsel for the First Accused hereby request the Trial Chamber to discountenance the submissions of the Prosecution for the following reasons:**

SUBMISSIONS

4. **Counsel for the First Accused submits that the Prosecution’s concerns have already been addressed by the Court in its previous Decision when it ruled “that the Prosecution will have the opportunity to object to the authenticity , relevance and admission of an exhibit once it is disclosed and is in the process of being tendered through a particular witness.”⁴**

¹ SCSL-04-14-T-674: Prosecution Response to First Accused’s Urgent Motion for Leave to File Additional Exhibits, para 13

² Ibid, para 14

³ Ibid, para 15

⁴ SCSL-04-14-T-585: Decision on the First Accused’s Urgent Motion for Leave to File Additional Witness and Exhibits Lists, page 5

5. The Prosecution submits in paragraph 6 of its response that in accordance with the Order of the Trial Chamber of 28 November 2005, the burden is in this instance on the Defence to establish “good cause” for adding further exhibits to the Defence exhibits list. Counsel for the First Accused submit that the issue of “good cause” has been substantially dealt with in paragraph 6 and 7 of the First Accused’s Motion.⁵
6. Counsel for First Accused submits that the Defence Motion is for leave to file additional exhibits and not witnesses as opined by the Prosecution.⁶ Counsel submits that these exhibits are aimed at undermining the Prosecution’s theory of command responsibility and to assist the Trial Chamber in its quest for the truth. In the Canadian case of *Finta*, The Supreme Court had this to say: “the importance of putting all relevant and reliable evidence that is available before the trier of fact in order to provide the clearest possible picture of what happened at the time of the offences is indisputable. It would have been unfair to have deprived the respondent of the benefit of having all relevant, probative and reliable evidence before the jury. This is particularly true of evidence that could be considered helpful to his position.”⁷
7. The prosecution submits that the Motion fails to establish that proposed exhibits could not have been discovered or made available at a point earlier notwithstanding the exercise of due diligence⁸. Counsel submits that the circumstances leading to the unearthing of these exhibits have been explained in the Motion⁹ and further submits that the investigative problems of the Defence are more complex and difficult especially with the meagre resources.
8. Similarly, a Judge of the ICTY remarked that “the application of the principles has to take account of the peculiarities and difficulties of

⁵ SCSL-04-14-T-667: First Accused Urgent Motion for Leave to File Additional Exhibits

⁶ SCSL-04-14-T-674: Prosecution Response to First Accused’s Urgent Motion, para 10

⁷ May & Wierda, *International Criminal Evidence*, para 8.17,(2002)

⁸ SCSL-04-14-T-674, para 12

⁹ SCSL-04-14-T-667, para 6 & 7

unearthing and assembling material for war crimes prosecution conducted in relation to the territories of the former Yugoslavia. The resulting need for reasonable judicial flexibility is apparent.”¹⁰ This remark is equally applicable in the context of the Special Court. Counsel submits that the protection of the rights of the accused is an important feature of international criminal trials, proceeding at their expense may defeat the purposes of international justice. The resultant complexities were recognized by Lord Bingham C.J in the English case of *Sawoniuk*: Criminal charges cannot be fairly judged in a judicial vacuum. In order to make a rational assessment of evidence directly relating to a charge it may often be necessary for a judge to receive evidence describing, perhaps in some detail, the context and circumstances in which the offences are said to have been committed.¹¹ The net relevance must therefore be cast wider than in an ordinary criminal trial, in order to incorporate the background facts essential to a fair adjudication of the case.¹²

9. Contrary to the Prosecution’s submission that on the information given in the Motion, it is not evident how the proposed exhibits will assist in the determination of guilt or innocence of the First Accused¹³, Counsel submits that it is the duty of Counsel to put its case before the Trial Chamber with due diligence and the guilt or innocence of the Accused is the responsibility of the Trial Chamber. The additional exhibits are not cumulative as submitted by the Prosecution but are of significant relevance to the core issues in the case of the First Accused, disprove material issues and will go a long way to assist the Court in its quest for the truth.

¹⁰ May & Wierda, para 8.44

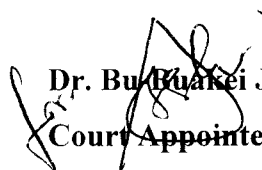
¹¹ Ibid, para 4.22

¹² Ibid

¹³ SCSL-04-14-T-674

CONCLUSION

10. From the foregoing analysis and submissions and for the reasons advanced and even more extensively and copiously in the Motion itself, Counsel request the Trial Chamber to discountenance the submissions of the Prosecution and grant the First Accused leave to file additional exhibits relevant to his defence.


Dr. Bu Buakei Jabbi
Court Appointed Counsel

INDEX OF DOCUMENTS

1. **SCSL-04-14-T-674: Prosecution Response to First Accused's Urgent Motion for Leave to File Additional Exhibits**
2. **SCSL-04-14-T-585: Decision on the First Accused's Urgent Motion for Leave to file Additional Witness and Exhibits Lists**
3. **SCSL-04-14-T-674: Prosecution Response to First Accused Urgent Motion**
4. **May & Wierda: International Criminal Evidence, 2002, Ed.**