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SCSL-04-14-T
(19157-19160)

19157

SPECIAL COURT FOR SIERRA LEONE

In Trial Chamber I

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

Registrar: Mr. Lovemore Munlo, SC

Date: 7th September 2006

THE PROSECUTOR

-against-

SAMUEL HINGA NORMAN, MOININA FOFANA, and ALLIEU KONDEWA

Case No. SCSL-04-14-T

PUBLIC

**REPLY TO PROSECUTION RESPONSE TO KONDEWA APPLICATION FOR LEAVE
TO CALL ADDITIONAL WITNESSES**

Office of the Prosecutor

Mr. Christopher Staker
Mr. James C. Johnson
Mr. Joseph Kamara

Court Appointed Defence Counsel for Norman

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

Court Appointed Defence Counsel for Fofana

Mr. Victor Koppe
Mr. Arrow J. Bockarie
Mr. Michiel Pestman
Mr. Andrew Ianuzzi - Legal Assistant

Court Appointed Defence Counsel for Kondewa

Mr. Charles Margai
Mr. Yada Williams
Mr. Ansu Lansana
Mr. Martin Michael- Legal Assistant

SPECIAL COURT FOR SIERRA LEONE
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- 7 SEP 2006
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I. INTRODUCTION

1. Counsel for the Third Accused, Mr. Allieu Kondewa (“the Defence”), hereby submit their reply to the ‘Prosecution Response to the Kondewa Application for Leave to Call Additional Witnesses’¹(the “Response”).
2. This reply relates only to submissions of the Office of the Prosecutor in respect of Momoh Bockarie Moiwa and Joe Kpana Lewis, since the Prosecution has not opposed the application in respect of the other five witnesses for which leave is sought. The Defence appreciate the candour shown by the Prosecution in this respect.
3. The Defence submit that contrary to the submissions of the Prosecution² the Defence have shown good cause sufficient enough to convince the Chamber to grant the Application and that the addition of the proposed witnesses will serve the interests of justice.

II. SUBMISSIONS

4. The Prosecution argues that the Defence have not shown good cause in respect of Momoh Bockarie Moiwa and Joe Kpana Lewis and they state in paragraph 5 of their response that “ The Defence now seeks to reinstate witnesses Joe Kpana Lewis and Momoh Bockarie Moiwa without any reason that amounts to a showing of good cause, other than the fact that the names were inadvertently added to a previous list of the 8 May 2006.”³
5. With respect to the Prosecution they have clearly misunderstood the crux of the application herein and by their submissions and use of the word “reinstate” they have clearly misrepresented the true state of affairs. Nowhere in the application do the Defence seek leave of the Trial Chamber to *reinstate* Joe Kpana Lewis and Momoh Bockarie Moiwa. The application is for leave to call these witnesses as additional witnesses of fact and not for reinstatement. Reinstatement of a witness would arise where a witness was properly put on a witness list and then subsequently removed from the said list by the Defence who then seek to have him put

¹ SCSL-04 -145-T 684

² SCSL-04 -14 -T 684 P.19155 Para. 5

³ SCSL-04 -14 -T 684 P.19155 Para. 5

back on that list. This is clearly not the position with this application. That was why the Chamber in its infinite wisdom in ordering their removal from the witness list of the third Accused or alternatively ordered the Defence, if they intended to call the said witnesses to inter alia “..... seek leave from the Chamber to add (emphasis ours) these witnesses...”⁴ to their witness list. The Trial Chamber did not use the word “reinstate”. The Prosecution’s response is therefore of no moment in the light of the Trial Chamber’s order.

6. Notwithstanding the above the Defence submits that with respect to the Prosecution, they have shown good why leave should be granted to call Joe Kpana Lewis and Momoh Bockarie Moiwa.⁵
7. The Prosecution by their submissions have restricted good cause to reasons why a witness was not put on the list of witnesses originally. Good cause is not restricted to this alone. The Defence have submitted that the additional witnesses to be called will answer specific and direct allegations made against the third Accused. The Defence further submitted that the evidence of the seven witnesses are relevant and request that leave be granted on those scores.
8. The Defence submit that the evidence of Joe Kpana Lewis and Momoh Bockarie Moiwa are material, relevant to the determination of the case against the Third Accused, and will serve and foster the overall interest of the law and justice. These clearly amount to good cause and this is what the Defence rely on for the granting of the Application.
9. Furthermore it is in the interest of justice that the Third Accused not lose the right to call two very crucial and important witnesses who will give direct and relevant testimony in respect of specific allegations made against him, through no fault of his.
10. The Defence submit that they showed good cause in paragraph 16 when they stated that each of the seven proposed additional factual witnesses is in possession of material information relevant to the charges against the Third Accused contained in the Prosecution’s Indictment. The proposed evidence is not overly duplicative or repetitious of that of the existing witnesses, is directed at specific and clearly identified portions of the Prosecution’s case and will answer

⁴ SCSL-04-14-673 - Scheduling Order Concerning The Preparation And Presentation Of The Defence Case For The Second And Third Accused. P.18999 Para 8.

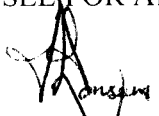
⁵ SCSL-04-14-681 P.681 Paras.14 and 16.

direct and specific allegations made by witnesses against the Third Accused individually. This is clearly good cause which the Prosecution claim was not shown.

CONCLUSION

11. For the foregoing reasons, the Defence respectfully request the Chamber to grant the Application in the interest of justice.

COUNSEL FOR ALLIEU KONDEWA



CHARLES FRANCIS MARGAI