

SCSL-2004-15-PT
(288 - 292)

SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER

Before: Judge Thompson, Presiding Judge
Judge Itoe
Judge Boutet

Registrar: Robin Vincent

Date: 10 February 2004

The Prosecutor Against: Issa Sesay

Morris Kallon

Augustine Gbao

(Case No. SCSL-2004-15-PT)

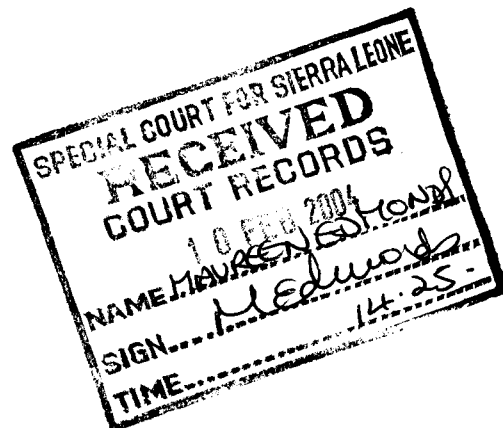
MOTION FOR QUASHING OF CONSOLIDATED INDICTMENT

Office of the Prosecutor:

David Crane
Desmond de Silva QC
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Boi-Tia Stevens

Defence Counsel:

Courtney Griffiths QC
James Oury
Steven Powles
Melron Nicol-Wilson



1. On 9 October 2003 the Prosecution filed six motions for joinder of the accused: Sesay, Brima, Kallon, Gbao, Kamara, and Kanu. On 27 January 2004 the Trial Chamber issued its '*Decision and Order on Prosecution Motions for Joinder*'.
2. In short, the Trial Chamber ordered the joint trial of (i) the accused: Sesay, Kallon, and Gbao; and (ii) the accused: Brima, Kamara, and Kanu. The Prosecution have sought leave to appeal the Trial Chamber's Decision.
3. The Trial Chamber ordered, *inter alia*, that "two *consolidated* indictments be prepared as the Indictments on which the separate joint trials shall proceed and that the Registry assign new case numbers to the consolidated indictments".
4. Thus, in relation to Mr Kallon, the Prosecution were ordered to prepare and serve a consolidated indictment of the three pre-existing indictments of Sesay (SCSL-2003-05-PT), Kallon (SCSL-2003-07-PT), and Gbao (SCSL-2003-09-PT).
5. On 5 February 2004, the Prosecution filed an indictment against the three accused: Sesay, Kallon and Gbao (SCSL-2004-15-PT).
6. An examination of the three separate indictments of the three accused reveals that, save for the description of the individual accused's alleged background and position, the said indictments were identical in terms of the specific allegations made.
7. Indeed it is noted that the original indictment against Mr Kallon (filed 7 March 2003) had simply been cut and pasted from the indictment of Sesay. It appears that the exercise was not accurately carried out in that Counts 3 to 13 in the indictment named Sesay and not Mr Kallon as the accused. It is understood that the indictment was subsequently amended by the Prosecution to correct this mistake without the leave of the Court.

8. As the original indictments against the three accused were identical it is submitted that the consolidation of the three indictments as ordered by the Trial Chamber should have resulted in just that, a single, consolidated indictment. The new indictment should only have been a consolidation of that which was contained in the three previous indictments and no more. As the three original indictments were identical, it is clear that any consolidated indictment from them should have contained identical allegations.
9. Instead of simply “consolidating” the three indictments as ordered by the Trial Chamber, the Prosecution have filed an indictment that goes way beyond consolidation in that it substantially adds to the allegations against the three accused. New allegations are made against the three accused that were not contained in the original three indictments. Thus, the Prosecution have failed to follow, and have effectively ignored, the Trial Chamber’s order to simply consolidate the three indictments.
10. The new indictment filed by the Prosecution adds a whole plethora of new allegations not contained in any of the three indictments. The new allegations are contained at paragraphs: 49, 50, 51 (bar Karina), 52 (bar Freetown – moreover, period of allegation extended from 31 January 1999 to 28 February 1999), 53, 56, 57 (bar Mandaha), 59 (bar Freetown – moreover, period of allegation extended from 31 January 1999 to 28 February 1999), 60, 63, 64, 65, 67, 72, 73 (period of allegation extended from 31 July 1998 to 31 November 1998), 75 (bar Freetown – moreover, period of allegation extended from 31 January 1999 to 28 February 1999), 76, 79, 81 (bar Karina – moreover, period of allegation extended from 30 June 1998 to 31 November 1998), 82 (bar Freetown, Kissy, Fourah Bay, Uppun, State House and Pendemba Road – moreover, period of allegation extended from 31 January 1999 to 28 February 1999).
11. None of the new allegations set out above were contained in any of the three original indictments.

12. By adding these additional allegations to the indictment the Prosecution have not “consolidated” the indictment as ordered by the Trial Chamber but have effectively *amended* it.
13. Such an amendment to an indictment may not be carried out unilaterally by the Prosecution once the accused has made his initial appearance. Such amendment may only be carried out with leave of the Trial Chamber.
14. The relevant part of Rule 50(A) of the Rules of Procedure and Evidence of the Special Court, provides:

“At or after ... initial appearance, an amendment of an indictment may only be made by leave granted by a Trial Chamber pursuant to Rule 73.”
15. It is submitted that the purpose of this Rule is to ensure that any amendment to an indictment will not result in injustice by prejudicing the accused and will not cause unwarranted delay to the trial. The requirements of Rule 50 are not merely procedural, but absolutely essential to ensure the fairness of proceedings.
16. In *Kajelijeli* (ICTR) ‘Decision on Prosecutor’s Motion to Correct the Indictment ...’ 25 January 2001, it was held that an indictment may only be amended after confirmation with prior judicial approval (at para. 18). In *Kovacevic* (ICTY) ‘Decision on Motion to Amend Indictment’, 5 March 1998, the Trial Chamber held that amendment may only be made to an indictment if it will cause no prejudice the right of the accused to a fair and expeditious trial. In *Krnojelac* (ICTY) ‘Decision on Prosecutor’s Response to Decision of February 24, 1999’, 20 May 1999, the Trial Chamber warned that once leave to amend an indictment is given, the amendment may not go beyond what was permitted or directed by the Trial Chamber.
17. Save for service of the amended indictment, the Prosecution gave no notice that it was their intention to amend the Indictment to the extent that the have

or at all. Furthermore, the Prosecution have not sought the requisite leave of the Trial Chamber.

- 18. Further, the Prosecution have not explained the reasons for this tardy attempt to amend the indictment and are attempting to deprive the Trial Chamber of an opportunity to scrutinise and oversee the Prosecution's amendment of the indictment so as to ensure a fair and expeditious trial.
- 19. Moreover, the Defence have been deprived of the opportunity to explain how the amendment of the indictment at this late stage in the proceedings will cause prejudice and may substantially delay the commencement of the trial.
- 20. In short, the Prosecution may simply not amend an indictment without giving the defence an opportunity to comment on the amendments sought and, more importantly, without the leave of the Trial Chamber. In this case no such leave was sought.

Relief Sought

- (i) That the Indictment (SCSL-2004-15-PT) filed by the Prosecution on 5 February 2004 be quashed.
- (ii) That a consolidated indictment be filled by the Prosecution within 3 days of the Trial Chamber's Decision to Quash the Indictment.

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