

SCSL - 2004 - 15 - PT
(323 - 333)
SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR
FREETOWN - SIERRA LEONE

Before: Judge Bankole Thompson, Presiding Judge
Judge Itoe
Judge Boutet

Registrar: Mr. Robin Vincent

Date filed: 13 February 2004

THE PROSECUTOR

Against

MORRIS KALLON also known as BILAI KARIM ET AL

CASE NO. SCSL-2004-15-PT

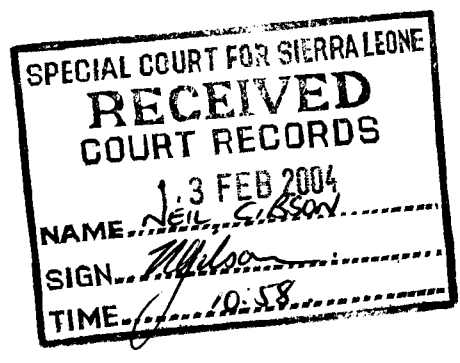
**PROSECUTION RESPONSE TO DEFENCE "MOTION FOR QUASHING OF
CONSOLIDATED INDICTMENT"**

Office of the Prosecutor:

Luc Côté, Chief of Prosecutions
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Defence Counsel:

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James Oury
Steven Powles
Melron Nicol-Wilson



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I. INTRODUCTION

1. The Prosecution files this response to the Defence Motion entitled “Motion for Quashing of Consolidated Indictment” (the “**Defence Motion**”) filed on behalf of Morris Kallon (the “**Accused**”) on 10 February 2004.

II. PROCEDURAL MATTER

2. As to the allegation made by the Defence at paragraph 7 of the Defence Motion, the Prosecution refers the Chamber to the Court Management Memorandum, “Motion for Quashing of Consolidated Indictment”, dated 12 February 2004 (attached as Annex 1).

III. BACKGROUND

3. On 7 March 2003, Judge Bankole Thompson approved the Indictments against Accused Sesay, Kallon, and Brima. On 16 April 2003, Judge Bankole Thompson approved the Indictment against Accused Gbao. On 28 May 2003, Judge Pierre Boutet approved the Indictment against the Accused Kamara. On 16 September 2003, Judge Pierre Boutet approved the Indictment against the Accused Kanu.

4. On 15 and 21 March 2003, Accused Sesay and Kallon each made an initial appearance before Judge Benjamin M. Itoe. On 25 April 2003, Accused Gbao made an initial appearance before Judge Bankole Thompson. On 4 June 2003, Accused Kamara made an initial appearance before Judge Pierre Boutet. On 23 September 2003, Accused Kanu made an initial appearance before Judge Pierre Boutet.
5. On 23 June 2003, the Accused Sesay filed a motion entitled “Preliminary Motion For Defects in the Form of the Indictment (Rule 72 (B)ii of the Rule of Procedure and Evidence (sic)),” to which the Prosecution filed its Response dated 1 July 2003 and the Accused Sesay filed his Reply dated 28 July 2003. On 13 October 2003, the Trial Chamber issued “Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment” (the “**Sesay Decision**”). Pursuant to the Sesay Decision, on 3 November 2003, the Prosecution filed a “Bill of Particulars”, which provided further particularity to the Counts contained in the Indictment against the Accused Sesay.
6. On 17 October 2003, the Accused Kanu filed a motion entitled “Motion on Defects in the Form of the Indictment and for Particularization of the Indictment,” to which the Prosecution filed its Response dated 24 October 2003 and the Accused Kanu filed his Reply dated 30 October 2003. On 19 November 2003, the Trial Chamber issued “Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment” (the “**Kanu Decision**”). Pursuant to the Kanu Decision, on 25 November 2003, the Prosecution filed a “Bill of Particulars”, which provided further particularity to the Counts contained in the Indictment against the Accused Kanu.
7. The Accused Kallon did not file a preliminary challenge to the form of the Indictment.
8. In the “Decision and Order on Prosecution’s Motion for Joinder,” (the “**Joinder Decision and Order**”) dated 27 January 2004, the Trial Chamber ordered that the individual accused who are alleged to be members of the RUF be joined in one trial, the individual accused who are alleged to be members of the AFRC be joined in another trial and ordered the Prosecution to prepare and serve consolidated Indictments on each of the accused. Pursuant to the Joinder Decision and Order, the Prosecution filed a consolidated Indictment in the instant case on 4 February 2004 (the “**Consolidated Indictment**”).

III. ARGUMENT

9. The Defence Motion argues that the Consolidated Indictment filed by the Prosecution adds new allegations that were not included in the original Indictments. In so doing, the Defence contends that these new allegations are tantamount to an amendment. As such, the Defence argues that the Prosecution was required to seek leave of the Court to amend the Indictments and having failed to do so, the Defence seeks that the Consolidated Indictment be quashed. Additionally, the Defence seeks an order requiring the Prosecution to file a new consolidated Indictment within three days.
10. The Prosecution submits that the Defence Motion is erroneous and should be dismissed in its entirety. The Consolidated Indictment filed by the Prosecution does not constitute an amendment to the original Indictment, but rather contains a proper consolidation of all three Indictments in conformity with the Trial Chamber's Joinder Decision and Order and the Sesay and Kanu Decisions on the form of Indictment. Additionally, the further particularization provided by the Prosecution in the Consolidated Indictment in no way causes prejudice to the Accused, but rather provides additional particularization to several counts in the Indictment and eliminates phrasing that was determined by the Trial Chamber to be potentially ambiguous, notably "but not limited to".

A. Prosecution in compliance with both the Joinder Decision and the Sesay and Kanu Decisions

11. The Indictments against Kallon, Sesay and Gbao, which were ordered to be consolidated by the Trial Chamber, were identical concerning the charges but for the additions made by the Bill of Particulars. The Defence's contention omits that the Sesay Decision ordered the Prosecution to either "delete in every count and wherever it appears in the Indictment the phrase '*but not limited to these events*' or provide in a Bill of Particulars specific additional events alleged against the Accused in each count."¹ Pursuant to the Sesay Decision, the Prosecution filed a "Bill of Particulars", which provided additional specificity to the original indictment by including additional events to the respective counts.² Consequently, these additional events form part of the Indictment against the

¹ See *Prosecutor Against Issa Hassan Sesay*, SCSL-2003-05-PT, "Decision and Order on the Defence Motion for Defects in the Form of the Indictment", 13 October 2003.

² See *Prosecutor Against Issa Hassan Sesay*, SCSL-2003-05-PT, "Bill of Particulars," 3 November 2003.

Accused Sesay. Neither the Bill of Particulars nor the Indictment was subsequently challenged by the Accused Sesay. The events that are challenged in paragraph 10 of the Defence's Motion are the same events that were added by the "Bill of Particulars" pursuant to the Sesay Decision.

12. The Prosecution also notes that following Kanu's challenge to the form of the Indictment, the Trial Chamber similarly ordered the Prosecution to "elect to delete in every count and wherever it appears in the Indictment the phrases '*but not limited to those events*', '*including but not limited to*', and '*included, but were not limited to*' or to provide in a Bill of Particulars specific additional events alleged against the Accused in each count."³ Pursuant to this order, the Prosecution provided the Accused Kanu with a Bill of Particulars, which provided additional events underlying certain counts in the original indictment.⁴ These additional events thereafter formed part of the Indictment against Kanu. Neither the Bill of Particulars nor the Indictment was subsequently challenged by Accused Kanu. In complying with the Order to consolidate the Indictments against both the RUF and the AFRC, the Consolidated Indictments reflect the additional events that are now part of the Sesay and Kanu Indictments.
13. Indeed, it would have been problematic had the Prosecution consolidated the original Indictments in the fashion requested by the Defence Motion. The Defence Motion, in effect, requests the Trial Chamber to reverse its earlier decision in *Sesay* and file a consolidated Indictment that is less particularized and which repeatedly contains a phrase that the Trial Chamber has already held to be potentially ambiguous.
14. Clearly, by allowing the Prosecution to include additional events in the Indictments, the Trial Chamber has considered that this does not constitute an amendment but rather a particularization permitted by the original wording of the Indictments. Furthermore, the Prosecution's Bill of Particulars (filed pursuant to the Sesay and Kanu Decisions) formed part of the record upon which the Joinder Decision and Order were decided and was specifically referred to during oral submissions by the Prosecution during the hearing thereof.

³ See *Prosecutor Against Santigie Borbor Kanu*, SCSL-2003-13-PT, "Annexure to the Decision and Order on the Defence Motion for Defects in the Form of the Indictment", 19 November 2003.

⁴ See *Prosecutor Against Santigie Borbor Kanu*, SCSL-2003-13-PT, "Bill of Particulars," 25 November 2003.

B. Scrutiny of the Indictment

15. Contrary to paragraph 18 of the Defence Motion, the Consolidated Indictment will not “deprive the Trial Chamber of an opportunity to scrutinise and oversee the Prosecution’s amendment of the Indictment.” In the two aforementioned challenges to the form of the Indictment the Trial Chamber did in fact “scrutinize” the Indictments. In both instances, the Trial Chamber ordered further particularization, which in turn permitted the Prosecution to include additional events that underlie the Counts. The Prosecution notes that these portions are identical to that contained within the Accused’ original indictment.

C. Prejudice to the Accused

16. Contrary to the Defence’s assertion in paragraph 19 of the Defence Motion, the Consolidated Indictment does not cause “prejudice” to the Accused. On the contrary, the additional events provided in the Consolidated Indictment puts the Accused precisely on notice of the events which underlie the counts with which he is being charged. By electing both to remove the impugned phrasing, which the Accused Kallon had not challenged, and by listing in the Indictment additional events for which evidence will be led at trial in accordance with the Sesay decision, and to which the Accused Kallon will have to answer, the Prosecution has discharged its duty to provide adequate notice to the Defence.

D. The Scope of the Change from the Original Indictment

17. The Prosecution also notes that the circumstances in *Kajelijeli*, the decision by the Trial Chamber for the International Tribunal for Rwanda (“ICTR”) cited in the Defence Motion, differ from those in the instant motion. In *Kajelijeli*, the Trial Chamber for the ICTR found that the discrepancies between the original Indictment and the “corrected Indictment” are “in fact adding new charges.”⁵ The Trial Chamber for the ICTR noted that the Prosecution was including new allegations regarding the defendant’s authority over newly identified subordinates, in addition to new allegations concerning the individual conduct of the defendant as to his individual criminal responsibility in relation

⁵ See *The Prosecutor v. Juvenal Kajelijeli*, ICTR-98-44A-T, “Decision on Prosecutor’s Motion to Correct the Indictment Dated 22 December 2000 and Motion for Leave to File An Amended Indictment,” 25 January 2001, at para. 16.

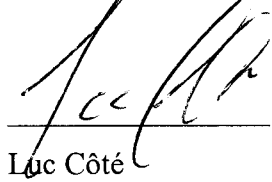
to his participation in the distribution of weapons – both of which were not included in the original Indictment.⁶ In the case against the Accused, the Prosecution submits that the Consolidated Indictment does not differ from the original Indictment as in *Kajelijeli*. The criminal responsibility portion, including the identification of subordinates and the conduct of the Accused, remains unchanged.

IV. CONCLUSION

18. Based on the arguments above, the Prosecution submits that the Defence's Motion should be dismissed in its entirety.

Freetown, 13 February 2004.

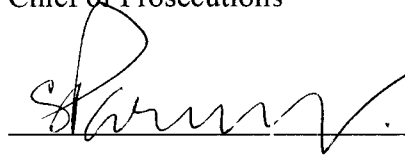
For the Prosecution,



Luc Côté
Chief of Prosecutions



Chris Santora
Trial Attorney



Sharan Parmar
Trial Attorney

⁶ *Ibid*, at para. 16.

PROSECUTION INDEX OF ATTACHMENTS

Court Management Memorandum, "Motion for Quashing of Consolidated Indictment", dated 12 February 2004.

PROSECUTION INDEX OF AUTHORITIES

ANNEX 1

Court Management Memorandum, "Motion for Quashing of Consolidated Indictment", dated 12 February 2004.



SPECIAL COURT FOR SIERRA LEONE
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COURT MANAGEMENT MEMORANDUM

Date:	12 th February 2004	Ref:	NG/CMS/LO/16/04
To:	Trial Chamber Judges Robir Vincent Courtney Griffiths QC James Oury Steven Powles Melrcn Nichol-Wilson Sylvain Roy Luc Coté	Through:	
		From:	Neil Gibson
Cc:	Caitlin Reiger Kacru Okuizumi Wendy Hart Alan Werner Sylvia Pyne-Caulker		
Cases:	SCSL-2004-15-PT Sesay, Kallon & Gbao		
Subject:	Motion for Quashing of Consolidated Indictment		

Dear All,

I have been requested to research the case file of Mr. Morris Kallon in reference to Paragraph 7 of the Defence Counsel Motion for Quashing of Consolidated Indictment filed on the 10th February 2004. Paragraph 7 states:

“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 names 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 leave of the Court.”

I have reviewed the Court files and can confirm that the original indictments, in the case of both Kallon and Sesay, both signed by the Registrar on the 7th March 2003 at 17:00 hours, are correct in content. As the indictment served on Mr. Kallon, approved by the Trial Chamber, was photocopied from the original it is a reasonable assumption that it was correct.

There is no evidence on the court record that Mr. Kallon's indictment was amended in any way and the original on file is correct. It is impossible, because of changes in personnel and



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procedures, to be certain but as the only copy which is incorrect is that which is posted on the bulletin board, we must accept that an administrative error has occurred during the process of scanning and posting the same, which has resulted in the front and back pages of Mr Kallon's indictment being mixed with pages from Mr Sesay's indictment.

This occurrence is greatly regretted however, systems introduced since that time should ensure that the mistake is not repeated.

I hope this is of some assistance.

Kind Regards

A handwritten signature in black ink, appearing to read 'Neil Gibson', with a small 'T' above the first letter.

Mr. Neil Gibson

Deputy Chief, Court Management

Ext 7251. Email: gibsonn@un.org