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SCSL-2004-15T  
(10576 - 10578)

10576

**IN THE SPECIAL COURT FOR SIERRA LEONE**

**THE TRIAL CHAMBER**

**Before:** The Trial Chamber  
Judge Benjamin Itoe, presiding  
Judge Bankole Thompson  
Judge Pierre Boutet

**Registrar:** Mr Robin Vincent

**Date filed:** 21st February 2005

**Case No. SCSL 2004 - 15 - T**

**In the matter of:**

**THE PROSECUTOR**

**Against**

**ISSA SESAY  
MORRIS KALLON  
AUGUSTINE BAO**

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**BAO RESPONSE TO PROSECUTION FURTHER RENEWED WITNESS LIST  
PURSUANT TO ORDER TO THE PROSECUTION CONCERNING RENEWED  
WITNESS LIST**

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**Office of the Prosecutor**

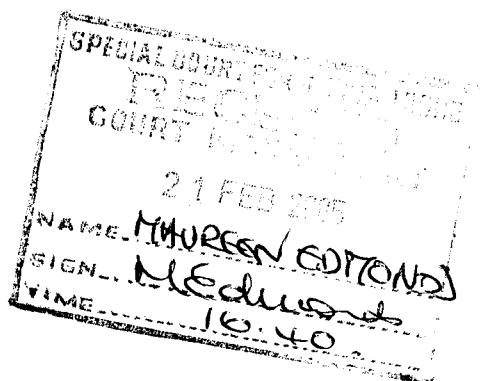
Luc Cote, Chief of Prosecutions  
Lesley Taylor  
Pete Harrison  
Sharan Palmer

**Counsel for Augustine Bao**

Girish Thanki,  
Andreas O'Shea  
John Cammegh  
Kenneth Carr

**Counsel for co-accused**

Wayne Jordash, Sery Kamal, and Sareta Ashraph for Issa Sessay  
Shekou Touray and Melron Nicol-Wilson for Morris Kallon



1. On the 10 February 2005 the prosecution filed a further renewed witness list.<sup>1</sup> In its motion giving effect to this act the prosecution submit that it is not required to seek leave before moving witnesses from its 'back up' to its 'core' list.
2. It is respectfully submitted that the above submission is contrary to the letter, spirit and purpose of the Rules. In particular, Rule 73(E) of the Rules of Procedure and Evidence requires the prosecution to seek leave if it wishes to vary its 'decision as to which witnesses *are* to be called'.
3. The prosecution has sold its witness list to the Chamber and the parties by placing emphasis on the notion of 'core' witnesses, which are witnesses that the prosecution *is* to call, as opposed to 'back up' witnesses, which the prosecution may call only in the event that 'core witnesses' are not available. (See e.g. reference to the status conference of 23 June 2004 in the Trial Chamber's Decision of 7 July 2004<sup>2</sup>).
4. It is submitted that this creates a clear legitimate expectation that the Defence should focus its resources on the 'core' witness list as being the principal case against the accused and the witnesses for which the prosecution has made an actual decision to call for trial.
5. As the Chamber noted in its Decision of 1 April 2004,<sup>3</sup> the function of the prosecution obligations with respect to the witness list is to protect the right of the accused to a fair trial and the rights as contained in Article 17 of the Statute. The procedure of requesting leave, it is submitted, is a safeguard and monitoring procedure against the inadvertent or deliberate violation of any of the basic rights of the accused including not being taken by surprise or finding itself in a position of inadequate time and facilities for the preparation of its defence. While the 'back up' witness list assists in protecting these rights to

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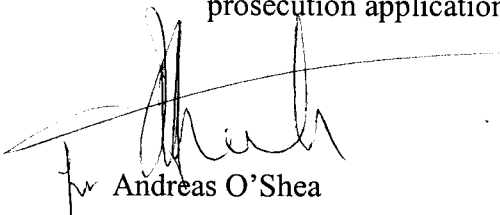
<sup>1</sup> Further Renewed Witness List Pursuant to Order to the Prosecution Concerning Renewed Witness List of 10 February 2005

<sup>2</sup> Order to Prosecution to Produce Witness List and Witness Summaries of 7 July 2004

<sup>3</sup> Order to Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of Trial of 1 April 2004

the extent that it enables the defence to have a window into the consequences of future unforeseen events with respect to actual prosecution witnesses, it is submitted that it should not serve as a tool advantageous to the prosecution enabling the possibility of wrong-footing the defence through arbitrary movements between 'lists'. Otherwise it would serve the interests of the defence better if no distinction were to be made between 'core' and 'back up' witnesses. Then the trial would be viewed from the perspective of the total number of witnesses identified by the prosecution and the defence would remain equally prepared on all witnesses and argue vigorously against a list containing an apparently unrealistic number of witnesses.

6. It is therefore submitted that on an ordinary reading of Rule 73(E) and in the light of its purpose, the prosecution is required to seek leave to vary its decision on the witnesses which are to be called including the removal of a witness from a reserve list to an active list. It is submitted that this requires the prosecution to justify their position in relation to each witness and to provide the reasons for the non-testimony of the witnesses envisaged to be replaced, as well as the extent to which the act amounts to a genuine replacement of witnesses covering similar ground as opposed to a reshuffle to maintain the allocated number.
7. Since the prosecution has not provided any reasonable explanation for its actions in relation to these particular witnesses it is therefore requested that the prosecution application be dismissed.



for Andreas O'Shea

Counsel for Augustine Bao