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SCSL-04-15-T
(25425-25428)

25425

THE SPECIAL COURT FOR SIERRA LEONE

BEFORE:

Hon. Justice Bankole Thompson, Presiding
Hon. Justice Benjamin Itoe,
Hon. Justice Pierre Boutet

Registrar: Mr. Lovemore Green Munlo, SC

Date filed: 12th October 2006

The Prosecutor

-v-

Issa Hassan Sesay

Case No: SCSL – 04 – 15 – T

PUBLIC

**SKELETON REPLY TO THE PROSECUTION RESPONSE
(ORAL MOTION FOR JUDGMENT OF ACQUITTAL
PURSUANT TO RULE 98)**

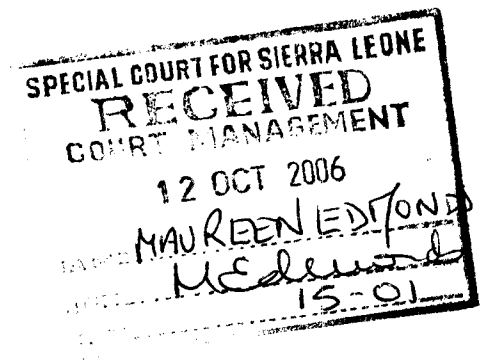
Office of the Prosecutor

Christopher Staker
Peter Harrison
Shyamala Alagendra

Defence

Wayne Jordash
Sareta Ashraph

Defence Counsel for Kallon; Shekou Touray and Charles Taku
Defence Counsel for Gbao; Andreas O'Shea and John Cammegh



Introduction

1. On the 25th September 2006, pursuant to Rule 98 and in compliance with the Trial Chamber's Order of the 2nd August 2006 ("Order"),¹ the Defence filed a skeleton argument in support of an oral Motion for Judgement of Acquittal.²
2. On the 25th September 2006 the Accused Gbao filed a skeleton argument in support of an oral Motion for Judgement for Acquittal.³ On the 27th September 2006 the Accused Kallon filed a revised Skeleton argument in support of an oral Motion for Judgement of Acquittal.⁴
3. On the 6th October 2006 the Prosecution filed a consolidated skeleton response ("The Response")⁵ to the Rule 98 Motions filed as aforementioned.
4. The following is a skeletal reply ("the Reply") to the Prosecution Response. It is conceded that the Order did not require a reply. However the reply is intended to expedite the oral procedure by narrowing the issues between the Prosecution and the Defence. It therefore serves the interests of judicial economy.

Reply

Prosecution Response – Para. 24

5. The Defence concede that Foindu may be an alternative spelling to Foendor or Foendu. It is conceded that the Prosecution have adduced sufficient evidence of killings at Foindu.

Prosecution Response – Para. 25

6. The Defence concede that Chendekom and Rochendekom may be alternative spellings of Tendakum. It is conceded that the Prosecution have adduced sufficient evidence of killings and enslavement at Tendakum.

Prosecution Response – Para. 26

7. The Defence concede that Tomendeh may be an alternative spelling to Tomandu. It is not conceded that the evidence given by TF1-016 is sufficient to sustain a conviction on Counts 6-9 in relation to Tomandu. It is conceded that the Prosecution have adduced sufficient evidence of enslavement at Tomandu.

¹ SCSL-04-15-T-621 (24880-24884).

² SCSL-04-15-T-645 (25202-25216).

³ SCSL-04-15-T-644 (25189-25201).

⁴ SCSL-04-15-T-648 (25380-25394).

⁵ SCSL-04-15-T-650 (25397-25424).

Joint Criminal Enterprise

8. The Defence for the first accused did not raise issues of law in relation to the alleged joint criminal enterprise(s). These issues were raised explicitly by Counsel for Kallon.⁶ The Prosecution purported to respond to the submissions in their Response.⁷ The Prosecution Response includes submissions which are potentially prejudicial to the case for the first accused. It is submitted that the Defence for the first accused ought be given an opportunity to Reply to the Prosecution Response.

Reply

9. The Defence submits the following:

Prosecution Para. 10

- (i) The Prosecution's Response that the "Indictment pleads all three categories of JCE"⁸ is incorrect and irrelevant to the submissions made by all three accused. The merits of all the accused's submissions can be assessed without reference to the merits of this Prosecution contention. It is inappropriate to argue this highly contentious assertion during the Rule 98 oral hearings.

Prosecution Para. 18

- (ii) The Prosecution's Response that (a) the JCE was "to take any actions necessary to gain political power and control over the territory of Sierra Leone" and included the use of forced labour, sexual violence, pillaging, the use of child soldiers and "other criminal acts in furtherance of the purpose of the JCE" and (b) "[F]orced mining and forced farming, forms of enslavement are examples of the second form of JCE" raises similar issues as those implicit in the Prosecution's Response in Paragraph 10 (see above). It is submitted that the Prosecution's assertions are wrong in law. The Prosecution's attempt to amend their pleading of the JCE through their Response to the Rule 98 submission is inappropriate and ought to be resisted.
- (iii) The Defence reiterates its view that it is highly undesirable for these issues to be canvassed in the Rule 98 hearings. The Prosecution have raised the subject, purportedly in response to one or more of the arguments advance by one of the Accused. The purported description of the Joint Criminal Enterprise(s) in the Response is incomplete and opaque and provides an insufficient basis for proper argument.

⁶ Kallon revised Skeleton, Paras. 11-18.

⁷ Response, Paras. 10-12 & 18-19.

⁸ Para. 10.


- (iv) Additionally, and for the same reasons, it is submitted that it is inappropriate at the Rule 98 hearing to consider the arguments advanced by Kallon concerning the pleading of the common purpose.⁹

Prosecution Response – Para. 19

- (v) The Kallon Motion raises issues concerning whether an Accused can only be held criminally responsible under the mode of liability of JCE if the Prosecution establishes beyond reasonable doubt that he had an understanding or entered into an agreement with relevant physical perpetrators to commit the particular crime.¹⁰ The Prosecution deal with this argument in Paragraph 19 of their Response, suggesting that it does “not matter that the accused is far removed from the scene of the crimes, nor does there need to be an agreement with the actual perpetrators.” The arguments advanced on both sides raise nuanced and complex issues of law, which ought not to be considered at the Rule 98 hearing.

Request

- 10. The Defence submit that the Rule 98 procedure should be concisely prescribed (as suggested herein) to allow the trial proceedings to advance expeditiously.



Wayne Jordash

Sareta Ashraph

⁹ Kallon revised Skeleton, Para. 17.
¹⁰ Kallon revised Skeleton, Para. 17.