

699)

SCSL-04-15-T  
(25904-25911)

25904

**SPECIAL COURT FOR SIERRA LEONE**

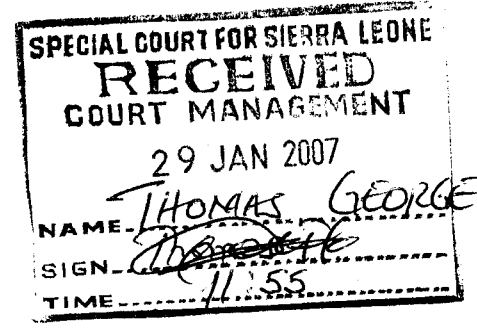
OFFICE OF THE PROSECUTOR

Freetown – Sierra Leone

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

Registrar: Mr. Lovemore G. Munlo SC

Date filed: 29 January 2007



**THE PROSECUTOR**

**Against**

**Issa Hassan Sesay**

**Morris Kallon**

**Augustine Gbao**

Case No. SCSL-04-15-T

**PUBLIC**

**PROSECUTOR'S RESPONSE TO DEFENCE APPLICATION FOR AN ADJOURNMENT OF THE 16<sup>TH</sup> FEBRUARY 2007 FILING**

Office of the Prosecutor:  
Mr Peter Harrison  
Mr Mohamed A. Bangura  
Ms Anne Althaus

Court Appointed Defence Counsel for Sesay  
Mr Wayne Jordash  
Ms Sareta Ashraph

Court Appointed Defence Counsel for Kallon  
Mr Shekou Touray  
Mr Charles Taku

Court Appointed Defence Counsel for Gbao  
Mr Andreas O'Shea  
Mr John Cammegh

## I. INTRODUCTION

1. The Prosecution files this Response to the “Defence Application for an Adjournment of the 16<sup>th</sup> February 2007 Filing” (“**The Motion**”).<sup>1</sup>
2. The “Scheduling Order Concerning the Preparation and the Commencement of the Defence Case” (“**the Scheduling Order**”)<sup>2</sup> ordered, in conformity with Rule 73 *ter* (B) of the Rules of Procedure and Evidence (“**The Rules**”), that the Defence teams for the three Accused in the RUF case file, no later than the 16 of February 2007, the following:
  - a) A “core” and “back-up”<sup>3</sup> witness list of all the witnesses that each Defence Team intends to call (including the usual data, summaries and indications that are provided with a witness list);<sup>4</sup>
  - b) An indication of whether the Accused will testify at trial pursuant to Rule 85(C);
  - c) A list of expert witnesses, whose names must appear on the list of witnesses referred to above, with a brief description of the nature of their evidence and an indication of when their reports will be ready and made available to all the parties and in accordance with Rule 94*bis* of the Rules;
  - d) An indication of common witnesses, if any, who will be called by Defence Teams;
  - e) A list of exhibits the Defence intends to offer in its case;
  - f) a chart indicating, for each paragraph in the current Indictment, the testimonial evidence and documentary evidence upon which the Defence will rely.
3. The Prosecution submits that the Motion should be dismissed. However, if the Trial Chamber takes the view that the Defence has raised relevant concerns then the

<sup>1</sup> *Prosecutor v Sesay*, SCSL-2004-15-T-697, “Defence Application for an Adjournment of the 16<sup>th</sup> February 2007 Filing”, 24 January 2007.

<sup>2</sup> *Prosecutor v Sesay, Kallon, Gbao*, SCSL-04-15-T-659, “Scheduling Order Concerning the Preparation and the Commencement of the Defence Case”, 30 October 2006.

<sup>3</sup> *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T-185, “Order to Prosecution to Produce Witness and Witness Summaries”, 7 July 2004. See, in particular, page 3, where it is stated that “back-up” witnesses “are meant to be used only as “back-up” witnesses if some of the “core” witnesses are not available to testify.” See also *id.*

*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T-339, “Decision Regarding the Prosecution’s Further Renewed Witness List”, 5 April 2005; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, “Decision on the First Accused’s Urgent Motion for Leave to File Additional Witnesses and Exhibit List”, 6 April 2006.

<sup>4</sup> *Prosecutor v Sesay, Kallon, Gbao*, SCSL-04-15-659, “Scheduling Order Concerning the Preparation and the Commencement of the Defence Case”, 30 October 2006, para. 1 a) i-v.

Prosecution suggests that the Defence be ordered to file the documents required by the Scheduling Order for those witnesses that have been assessed, with leave to file addendums to the required documents within two weeks. The Sesay Defence has on a number of occasions referred to hundreds of Defence witnesses and it must be the case that the Sesay Defence is able to comply with the Scheduling Order for the majority of those witnesses. Such an order would assist the Prosecution and ensure that the Accused are tried in an expeditious manner. Nor is there any reason to delay notifying the Prosecution whether the Accused will testify, the names of expert witnesses, listing common witnesses, and listing the Defence Exhibits.

## II. GENERAL SUBMISSIONS

### A. THE DEFENCE HAD SUFFICIENT TIME TO PREPARE ITS CASE

4. The Prosecution closed its case on the 2<sup>nd</sup> of August 2006. On that date, the Counsel for the First Accused had given assurances that he would be ready to start the Defence case in the month of January 2007 and, in fact, insisted that he wanted the Defence case to start at that time.<sup>5</sup> Counsel for the First Accused notably stated:

Obviously the Prosecution case, finishing now, even if the Defence case was to start in January, that's a long time for Mr Sesay and the other Accused to be sitting waiting for the commencement of the next stage. I certainly would want to file arguments, if there is any suggestion that we are not going to be starting early in the New Year.<sup>6</sup>

5. This Trial Chamber rendered its oral "Decision on the Defence Motion for Acquittal pursuant to Rule 98" on 25 October 2006.
6. During the 27 October 2006 Status Conference, contrary to what he had previously stated,<sup>7</sup> Counsel for the First Accused indicated that he would not be ready to start the Defence case until April 2007.<sup>8</sup>
7. The Defence for the First Accused, as well as the Defence Teams for the Second and Third Accused had 6 ½ months to prepare the filing of the above mentioned material, in

---

<sup>5</sup> *Prosecutor v Sesay, Kallon, Gbao*, Trial Transcript, 2 August 2006, closed session, p. 87, lines 9-14 and p. 90, lines 16-24; see also *Prosecutor v Sesay, Kallon, Gbao*, Status Conference, Transcript, 27 October 2006, p. 36, lines 2-23; 37 lines 28-29.

<sup>6</sup> *Prosecutor v Sesay, Kallon, Gbao*, Trial Transcript, 2 August 2006, closed session, p. 87, lines 9-14

<sup>7</sup> *Ibid.*

<sup>8</sup> *Prosecutor v Sesay, Kallon, Gbao*, Status Conference, Transcript, 27 October 2006, p. 35, lines 14-15.

particular their witness list. More importantly, the Defence will have had almost 4 months from the date of the Rule 98 Decision to prepare and finalize the said filing. This period of time is sufficient for the filing of the Defence material. It is certainly long enough for the Defence to indicate if the Accused will testify, and provide information regarding several other items listed in the Scheduling Order.

8. A comparison with the AFRC and CDF trials is helpful. In the AFRC case the Defence for the First Accused Brima had 6 months to file the witness list and other material from the date of the end of the Prosecution case.<sup>9</sup> From the date of the Rule 98 Decision, the Accused Brima had 1 ½ months to prepare and file the witness list and other requested documents.
9. In the CDF case the Defence for the First Accused Norman had 4 months and 3 weeks to file its list of witnesses and other material from the end of the Prosecution case.<sup>10</sup> The Defence team for Norman had 1 ½ month from the date of the Rule 98 Decision to prepare this filing.
10. In view of the above, it is submitted that the Sesay Defence has been granted sufficient time to prepare the filing of its witness list and other material in accordance with the Scheduling Order.

**B. THE DEFENCE CAN BE PERMITTED TO ADD WITNESSES OR TO MODIFY ITS WITNESS LIST**

11. From the explanations provided by the Defence at paragraphs 14 and 15 of the Motion, the Defence anticipates that it will have in hand information for the majority of its 250 witnesses before 16 February 2007, and that the witnesses for whom it will not have

<sup>9</sup> The Prosecution closed its case on 21 November 2005. The Decision on the Defence Motion for Acquittal pursuant to Rule 98 was delivered on 31 March 2006. Trial Chamber II ordered the filing of the Defence material for the 10<sup>th</sup> of May 2006. The Defence case began on 5 June 2006. See *Prosecutor v Brima, Kamara, Kanu*, SCSL-04-16-T-469 “Decision on Defence Motions for Judgement of Acquittal Pursuant To Rule 98” 31 March 2006; *Prosecutor v Brima, Kamara, Kanu* “Order for Disclosure Pursuant To Rule 73ter and the Start of the Defence Case”, SCSL-04-16-T-478, 26 April 2006.

<sup>10</sup> The Prosecution case closed on 14 July 2005. The Decision on Motion for Acquittal pursuant to Rule 98 was delivered on 21 October 2005. The filing was ordered initially for 17 November 2005. This Trial Chamber ordered the filing of the Defence material for the 5<sup>th</sup> of December 2005. The Defence case commenced on 17 January 2006. *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-473, “Decision on Motions for Judgment of Acquittal Pursuant to Rule 98”, 21 October 2005; *Prosecutor v Norman, Fofana, Kondewa*, “Consequential Order For Compliance With the Order Concerning The Preparation and Presentation of the Defence Case”, SCSL-04-14-T-489, 28 November 2005; *Prosecutor v Norman, Fofana, Kondewa*, “Decision on Urgent Motion for Reconsideration of the Orders for Compliance with the Order concerning the preparation and Presentation of the Defence Case”, SCSL-04-14-T-507, 7 December 2005

complete information before that date are 22 witnesses in Kailahun and the witnesses the Defence wants to interview in Kenema.

12. The Prosecution submits that there is no logical reason why the deadline of 16 February 2007 should be postponed only for this proportionally small number of witnesses. The Prosecution says that there is no reason why the Defence cannot, by the 16 February 2007 deadline, file the material mentioned under paragraph 1 (b), (c), (d) and (e) of the Scheduling Order, and the majority of information required by paragraphs 1(a) and (f). According to the Scheduling Order, should the Defence seek to add witnesses or to modify its witness list after 16 February 2007, it may be permitted to do so upon showing good cause.

#### **C. THE PROSECUTION NEEDS SUFFICIENT TIME TO PREPARE**

13. The Prosecution is entitled to sufficient time to prepare for the Defence case. Given that the Trial Chamber is no longer hearing two trials simultaneously, the Prosecution will in practice be for Defence witnesses. The Scheduling Order allows for a 2 ½ months notice (i.e. between the filing of the Defence material on the 16 February 2006 and the start of the Defence case on 2 May 2007).<sup>11</sup> This is about 52 working days to prepare for 300 to 400 witnesses (based on Defence estimates of witnesses).
14. The Prosecution reiterates that the timing of the production of the witness list must be such that the Prosecution and the co-Accused have a sufficient amount of time to carry out preliminary investigations of the witnesses. Otherwise, the production of the witness list loses its purpose and utility.

#### **D. THE THREE ACCUSED ARE ENTITLED TO A FAIR AND EXPEDITIOUS TRIAL**

15. In its Scheduling Order, this Trial Chamber took into account the right of the Accused to a fair and expeditious trial. The Trial Chamber has offered latitude to the Defence in preparing their case by ordering the Defence case to commence on 2 May 2007, when the Defence had stated that it would be ready in April 2007.
16. An adjournment of the filing date now, in view of all the circumstances of the case and of the extensive period of time granted to the Defence to prepare its case, may be a factor in

---

<sup>11</sup> Scheduling Order, p. 2 para. 1 and p. 5 para. 5.

whether one or more of the Accused assert an undue delay in the trial. Counsel for the First Accused had himself argued along those lines at the end of the Prosecution case, on the 2<sup>nd</sup> of August 2006.<sup>12</sup>

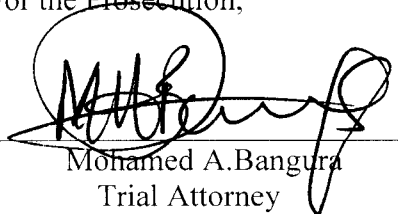
### III. CONCLUSION

17. In order for the Prosecution to have adequate time to prepare for the Defence case, and to preserve the right of each Accused to a fair and expeditious trial, the Prosecution submits that no adjournment of the filing of the witness list and other Defence material should be granted. In the event the Trial Chamber takes the view that some relief should be given, the Prosecution says that the following terms should be complied with according to the existing Scheduling Order: whether the Accused will testify; information regarding expert witnesses; list of common witnesses; and list of Defence Exhibits. The Defence should comply with the remaining two provisions of the Scheduling Order, the witness list and chart relating the evidence to the paragraphs of the Indictment, for at least 80% of the witnesses. An addendum for the remaining witnesses and chart information could be filed within two weeks of 16 February 2007. This compromise would assist the Prosecution, and probably the co-Accused, without putting undue pressure on the First Accused who would already have this information at hand.

Filed in Freetown,

29 January 2006

For the Prosecution,



Mohamed A. Bangura  
Trial Attorney

---

<sup>12</sup> *Prosecutor v Sesay, Kallon, Gbao*, Trial Transcript, 2 August 2006, closed session, p. 87, lines 9-14 and p. 90, lines 16-24.

**Index of Authorities**

**ORDERS, DECISIONS AND MOTIONS**

1. *Prosecutor v Sesay*, SCSL-2004-15-T-697, “Defence Application for an Adjournment of the 16th February 2007 Filing”, 24 January 2007.
2. *Prosecutor v Sesay, Kallon, Gbao*, SCSL-04-15-T-659, “Scheduling Order Concerning the Preparation and the Commencement of the Defence Case”, 30 October 2006.
3. *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T-185, “Order to Prosecution to Produce Witness and Witness Summaries”, 7 July 2004.
4. *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T-339, “Decision Regarding the Prosecution’s Further Renewed Witness List”, 5 April 2005.
5. *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T-585, “Decision on the First Accused’s Urgent Motion for Leave to File Additional Witnesses and Exhibit List”, 6 April 2006.
6. *Prosecutor v Sesay, Kallon, Gbao*, SCSL-04-15-659, “Scheduling Order Concerning the Preparation and the Commencement of the Defence Case”, 30 October 2006.
7. *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-473, “Decision on Motions for Judgment of Acquittal Pursuant to Rule 98”, 21 October 2005.
8. *Prosecutor v Sesay, Kallon, Gbao*, SCSL-04-15-T-659, “Scheduling Order Concerning the Preparation and the Commencement of the Defence Case”, 30 October 2006.
9. *Prosecutor v Brima, Kamara, Kanu*, SCSL-04-16-T-469, “Decision on Defence Motions for Judgement of Acquittal Pursuant To Rule 98”.
10. *Prosecutor v Brima, Kamara, Kanu*, SCSL-04-16-T-478, “Order for Disclosure Pursuant To Rule 73ter and the Start of the Defence Case”, 26 April 2006.
11. *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-489, “Consequential Order For Compliance With the Order Concerning The Preparation and Presentation of the Defence Case”, 28 November 2005.
12. *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-507, “Decision on Urgent Motion for Reconsideration of the Orders for Compliance with the Order concerning the preparation and Presentation of the Defence Case”, 7 December 2005.
13. *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-473, “Decision on Motions for Judgment Acquittal Pursuant to Rule 98”, 21 October 2005.

25911

14. *Prosecutor v Brima, Kamara, Kanu*, SCSL-04-16-T- 469, “Decision on the Defence Motions for Judgment of Acquittal Pursuant to Rule 98”, 31 March 2006.

#### **TRANSCRIPTS**

1. *Prosecutor v Sesay, Kallon, Gbao* , Trial Transcript, 2 August 2006.
2. *Prosecutor v Sesay, Kallon, Gbao*, Status Conference, Transcript, 27 October 2006