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SCSL-04-15-T
C 27009-27017

27009

THE SPECIAL COURT FOR SIERRA LEONE

BEFORE:

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

Registrar: Mr. Herman von Hebel

Date filed: 30th March 2007

SPECIAL COURT FOR SIERRA LEONE	
RECEIVED	
COURT MANAGEMENT	
30 MAR 2007	
NAME	Adura Nsiima K.
SIGN	Nsiima
TIME	13:53

The Prosecutor

-v-

Issa Hassan Sesay

Case No: SCSL - 04 - 15 - T

**DEFENCE MOTION TO REQUEST THE TRIAL CHAMBER TO PERMIT
INSPECTION OF WITNESS STATEMENTS (RULE 66(A)(iii))
AND/OR ORDER DISCLOSURE PURSUANT TO RULE 68**

Office of the Prosecutor
Stephen Rapp
Peter Harrison

Defence Counsel for Issa Sesay
Wayne Jordash
Sareta Ashraph

Defence Counsel for Morris Kallon
Shekou Touray
Charles Taku
Melron Nicol - Wilson

Court Appointed Counsel for Augustine Gbao
Andreas O'Shea
John Cammegh

INTRODUCTION

1. The Defence have established that the Prosecution has interviewed and taken statements from a certain number of defence witness.¹ The precise circumstances in which this occurred are not known. The Prosecution is refusing to take steps to disclose these statements. It is submitted that the Defence ought to be permitted to inspect the documents pursuant to Rule 66(A)(iii) and/or they ought to be disclosed pursuant to Rule 68 of the Rules of Procedure and Evidence of the Special Court.

APPLICATION

2. On the 1st March 2007 the Defence wrote informally to the Prosecution requesting mutual disclosure of statements relating to witness (DIS-258). The Prosecution declined the request asserting protective measures and refusing to disclose any statements or permit inspection of the same.
3. On the 23rd March 2007 the Defence wrote informing the Prosecution officially of our intention to call witness DIS-258 and witness DIS-126 and identifying them pursuant to the 42 day rule.² Included in the notification was a request to the Prosecution to allow inspection of any statements in their possession relating to the two witnesses. The Prosecution, via letter dated 30th March 2007, indicated only that it is aware of its obligations and will comply with those obligations.
4. The Defence submits that the Prosecution is obliged (i) pursuant to Rule 66(A)(iii) to take steps to seek variation of any protective measures in place and thereafter allow the Defence an opportunity to inspect any statements relating to the named witnesses, or any future named defence witnesses and/or (ii) pursuant to Rule 68 to disclose them as containing exculpatory material.

¹ See Confidential Annex A which contains the names of the two witnesses known to the Prosecution.

² See Confidential Annex B.

THE LAW**Rule 66(A)(iii)**

5. Trial Chamber I outlined the relevant law³:
- (i) “[P]ursuant to sub-Rule 66(A)(iii) the Defence may be permitted to inspect documents in custody or control of the Prosecution, which may consist of witness statements and/or interview notes given by witnesses for the Defence”.⁴
 - (ii) The Trial Chamber will consider a Defence Request for permission to inspect the documents only if the initial request to the Prosecution was unsuccessful.⁵
 - (iii) The Defence may be granted the permission to inspect books, documents, photographs and tangible objects in the custody or control of the Prosecution upon a showing by the Defence of categories of such items, or specific items, which the Defence consider to be material to the preparation of a defence; or which are intended for use by the Prosecution as evidence at trial.⁶

Merits

6. The named witnesses have confirmed that they have provided witness statements to the Prosecution. The Prosecution has not denied that they are in possession of statements from these witnesses. The Defence has requested to be permitted to inspect the statements but the Prosecution has declined the request.
7. The statements sought are material to the Defence preparation. As Trial Chamber I has previously held, “witness statements and/or interview notes, for which permission to inspect is sought ... reportedly taken by the Prosecution from witnesses whom the ... Accused intends to call in his defence ... are material for the preparation of his defence case”.⁷

³ *Prosecutor v. Norman et al.*, SCSL-04-14-618, “Decision on Application by the Second Accused Pursuant to Sub-Rule 66(A)(iii),” 14th June 2006.

⁴ *Ibid* Para. 15.

⁵ *Ibid* Para. 17.

⁶ *Ibid* Para. 18.

⁷ *Ibid* Para. 18.

8. It is the Defence contention that the Prosecution is intending to use the statements for cross-examination of the Defence witnesses. Reasonable inferences arise – and ought to be drawn – if the Prosecution fails to deny this assertion.
9. It is submitted that the Trial Chamber should order the Prosecution to permit Counsel for the First Accused to inspect the witness statements and/or interview notes, of those witnesses, whom the First Accused intends to call on his behalf in his defence case. This ought to be done promptly and in reasonable time to prevent the Defence and the Witness and Victim's Unit, from wasting its resources in calling to Freetown witnesses who may have given contradictory statements and who may subsequently be abandoned. The Prosecution ought not to be permitted to ambush the Defence.

Rule 68


10. Additionally it may be the intention of the Prosecution to rely upon these named witnesses in the forthcoming Taylor proceedings. The Defence statements relating to these named witnesses suggest that Mr. Taylor had little to do with Mr. Sesay. This evidence, inter alia will affect the credibility of the prosecution evidence given by witness such as Tarnue, Bility and TF1-366. It is submitted that the Prosecution witness statements are likely to corroborate this central contention and the Prosecution is under a duty to disclose this exculpatory material forthwith.
11. In the event that the statements in the possession of the Prosecution contradict this central contention, the Defence is in possession of material which significantly affects the credibility of proposed witnesses against Mr. Taylor. The Defence would wish to consider the interests of justice and its consequential legal obligation in relation to this material, namely whether the Defence is under a duty to disclose this material to Mr. Taylor's legal representatives.

REQUEST

12. In light of the settled jurisprudence of the Special Court and in light of the need to resolve the complex issues arising from the potential possession of material that may exculpate one or more of the Accused within the jurisdiction of the Special Court the Defence requests (i) an order that the Prosecution permit Counsel for the

Defence to inspect forthwith and henceforth promptly any witness statements and/or interview notes in the Prosecution's custody or control of those witnesses whom the First Accused intends to call on his behalf in his defence case and/or (ii) an order that the Prosecution disclose the statements pursuant to Rule 68, namely as tending to affect the credibility of the prosecution evidence concerning Mr. Sesay's alleged links with Mr. Taylor.

Dated 30th March 2007



Wayne Jordash
Sareta Ashraph

Book of Authorities

2704

Decisions

Prosecutor v. Norman et al., SCSL-04-14-618, “Decision on Application by the Second Accused Pursuant to Sub-Rule 66(A)(iii),” 14th June 2006.



SPECIAL COURT FOR SIERRA LEONE
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE
PHONE: +39 0831 257000 or +232 22 297000 or +39 083125 (+Ext)
UN Intermission 178 7000 or 178 (+Ext)
FAX: +232 22 297001 or UN Intermission: 178 7001

Court Management Section – Court Records

CONFIDENTIAL DOCUMENT CERTIFICATE

This certificate replaces the following confidential document which has been filed in the *Confidential* Case File.

Case Name: The Prosecutor – v- Sesay, Kallon & Gbao
Case Number: SCSL-2004-15-T
Document Index Number: 748
Document Date 30 March 2007
Filing Date: 30 March 2007
Number of Pages: 9 Page Numbers: 27015-27017
Document Type: - **Confidential Annexes**

- Affidavit
- Indictment
- Correspondence
- Order
- Motion**

Document Title: **Defence Motion to Request the Trial Chamber to Permit Inspection of Witness Statements (Rule 66(A) (iii)) and or Order Disclosure Pursuant to Rule 68**

Name of Officer:

Advera Nsiima K.

Signed *Nsiima A.*