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SCSL - 04 - 15 - T
(27781 - 27784)

THE SPECIAL COURT FOR SIERRA LEONE

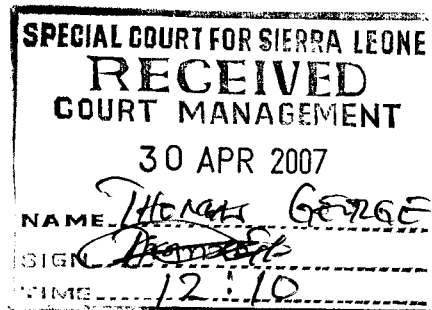
27781

BEFORE:

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

Acting
Registrar: Mr. Herman von Hebel

Date filed: 30th April 2007



The Prosecutor

-v-

**Issa Hassan Sesay
Morris Kallon
Augustine Gbao**

Case No: SCSL - 04 - 15 - T

PUBLIC

Defence Reply to the Prosecution 24th April 2007 Leave to Respond Application

Office of the Prosecutor
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Introduction

1. The Defence replies, pursuant to the 25th April 2007 Court Order,¹ to the Prosecution's "Leave to Respond Application".² The Application states that "errors of fact [are] contained in paras. 4 and 8 to 11" of the "Defence Reply to Prosecution Response to 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".³
2. The Application states that the Prosecution did disclose the statements of DIS-258 pursuant to Rule 68. The Defence has checked its records and has confirmed that this is correct.
3. The statements of DIS-258 were not discovered by the Defence because the statements were disclosed under the TF1 number TF1-319; the statements were heavily redacted (pursuant to the pre-existing Special Measures Orders); the inspection procedure pursuant to Rule 66(A)(iii) only permits a limited opportunity to compare and contrast with previous disclosures; and moreover the Prosecution curiously failed to indicate that the statements were disclosed notwithstanding the Defence requested disclosure of the statements on four separate occasions.
4. It is unfortunate that the Prosecution considered that the interests of justice did not require them to mention this disclosure to the Defence at any stage during the various communications from the 1st March 2007⁴ until the 24th April 2007.
5. The Defence has to rely upon the good will and common sense cooperation of a Prosecuting body when considering issues of disclosure, especially when the issues are complicated by substantial editing of the disclosed statements and limited possibilities to compare the earlier disclosure with the documents being inspected due

¹ *Prosecutor v. Sesay et al.*, SCSL-04-15-766, "Order on Prosecution Application for Leave to Respond to the Sesay Defence Reply Regarding Defence Motion for Disclosure Pursuant to Rule 66(A)(iii) and/or Disclosure Pursuant to Rule 68", 25 April 2007.

² *Prosecutor v. Sesay et al.*, SCSL-04-15-763, "Prosecution Application for Leave to Respond to the Sesay Defence Reply to Prosecution Response to 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", 24 April 2007 (the "Application").

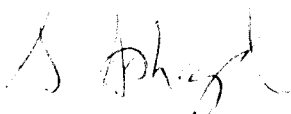
³ *Prosecutor v. Sesay et al.*, SCSL-04-15-761, "Defence Reply to Prosecution Response to Defence Motion to Request the Trial Chamber to Permit Inspection of Witness Statements (Rule 66(A)(iii)) and/or Order Disclosure Pursuant to Rule 68", 23 April 2007.

⁴ The first Defence request for disclosure of any statements.

to the limitations of the Rule 66(A)(iii) inspection procedure. If the Prosecuting body refuses instead to assist with correcting errors or with ensuring the process works to enhance the process, disclosure does not work or is liable to lead to injustice. In these circumstances the damage caused to the interests of justice and the integrity of the truth-finding process is inestimable.

6. In this respect, the Defence is at a loss to understand why the Prosecution did not mention that they had disclosed the statements when (i) the Defence requested confirmation on the 1st March 2007; (ii) when the request was renewed on the 23rd March 2007; (iii) when the request was renewed for the second time on the 29th March 2007; (iv) when clarity was sought on the 30th March 2007; and (v) when the Prosecution filed their Response to the request for *inter alia* Rule 68 disclosure wherein the Prosecution advanced the argument that the request was moot because “the Prosecution has already made available to the First Accused an opportunity to **inspect** the documents” (emphasis added). The Prosecution’s approach is baffling at best and misleading at worst.
7. The Defence regrets its error and offers sincere apologies to the Prosecution, notwithstanding the Prosecution’s demonstrable failure to fulfil the *spirit* of its disclosure obligations.

Dated 30th April 2007



Wayne Jordash
Sareta Ashraph

Book of Authorities

Prosecutor v. Sesay et al., SCSL-04-15-766, “Order on Prosecution Application for Leave to Respond to the Sesay Defence Reply Regarding Defence Motion for Disclosure Pursuant to Rule 66(A)(iii) and/or Disclosure Pursuant to Rule 68”, 25 April 2007.

Prosecutor v. Sesay et al., SCSL-04-15-763, “Prosecution Application for Leave to Respond to the Sesay Defence Reply to Prosecution Response to 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”, 24 April 2007.

Prosecutor v. Sesay et al., SCSL-04-15-761, “Defence Reply to Prosecution Response to 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”, 23 April 2007.