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SCSL - 04 - 15 - T
(27774 - 27778)

THE SPECIAL COURT FOR SIERRA LEONE

BEFORE:

27774

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

SPECIAL COURT FOR SIERRA LEONE	
RECEIVED	
COURT MANAGEMENT	
30 APR 2007	
NAME	Thomas GEORGE
SIGN	<i>[Signature]</i>
TIME	11:55

-v-

Issa Hassan Sesay
Morris Kallon
Augustine Gbao

Case No: SCSL - 04 - 15 - T

PUBLIC

**Motion Requesting Reasons for Prosecution Objection
to Authenticity of the Exhibits Filed by Issa Sesay**

Office of the Prosecutor

Peter Harrison
Charles Hardaway
Penelope-Ann Mamattah
Vincent Wagona

Defence

Wayne Jordash
Sareta Ashraph

Defence Counsel for Kallon

Shekou Touray
Charles Taku
Melron Nicol-Wilson

**Court Appointed Counsel
for Augustine Gbao**

Andreas O'Shea
John Cammegh

Introduction

1. On 30th October 2006 the Trial Chamber issued its Scheduling Order Concerning the Preparation and the Commencement of the Defence Case.¹ Paragraph 2c) of the Order states that, where possible, the Prosecution should advise whether there is any objection to the authenticity of the exhibits filed by an Accused.
2. In compliance with the Order, the Defence on 5th March 2007 inter alia filed an Exhibit Chart listing 395 exhibits (DIS/EXH/1 to DIS/EXH/395).² The exhibits are voluminous, detailed, and complex and in many cases several pages long.
3. On three separate occasions in March/April 2007 for approximately 7 hours the Prosecution purported to inspect the 395 exhibits for authenticity.
4. On 18th April 2007 the Prosecution in purported *bona fides* compliance with the Order filed a notification of objection to the authenticity to every single exhibit, except (i) those which had been seized and disclosed by the Prosecution (DIS/EXH/21, DIS/EXH/33, DIS/EXH/65, DIS/EXH/67, DIS/EXH/71, DIS/EXH/78, DIS/EXH/90, DIS/EXH/113, DIS/EXH/121, DIS/EXH/150, DIS/EXH/190, DIS/EXH/364, DIS/EXH/375, DIS/EXH/395) and (ii) a 2004 Encyclopaedia CD from the Sierra Leone Information System produced with the support of UNDP (DIS/EXH/78).³
5. The Defence seeks a reasoned explanation from the Prosecution concerning their purported objection to the authenticity of each of the “disputed” 380 exhibits.

¹ Prosecutor v Sesay et al, SCSL-04-15-T-659, “Scheduling Order Concerning the Preparation and the Commencement of the Defence Case”, 30th October 2006, (the “Order”),

² Prosecutor v. Sesay et al, SCSL-04-15-T-726, “Sesay – Filing of Documents in Compliance with the Scheduling Order Concerning the Preparation and the Commencement of the Defence Case dated 30th October 2006”, 5th March 2007 at Annex B.

³ Prosecutor v. Sesay et al, SCSL-04-15-T-758, “Prosecution Notification of Objection to Authenticity of the Exhibits filed by Issa Hassan Sesay”, 18th April 2007.

Reasons

6. The Prosecution's objection to the authenticity of the 380 exhibits may be perfectly proper. Notwithstanding it leaves the Defence with no information concerning the nature of the objections or how to meet them.

7. An examination of the various "disputed" exhibits provides no obvious answers concerning the precise objections raised by the Prosecution. Conversely the blanket nature of the objections raises further unanswered questions. For example the Prosecution have inter alia raised objections to the following exhibits:
 - (a) Photographs of Hanga Road, Kenema (examples: DIS/17, DIS/19, DIS/20, DIS/32);
 - (b) Photographs of Issa Sesay (example: DIS/56)
 - (c) Photographs of Cyborg Pit (example: DIS/70)
 - (d) UNAMSIL Press Briefings (example :DIS/61)
 - (e) Press Reports (examples: DIS/50, DIS/57)
 - (f) Excerpts from the Sierra Leonean TRC report (DIS/79)
 - (g) United Nations Humanitarian Reports (Example: DIS/80, DIS/82)
 - (h) UNAMSIL Cease Fire Documentation (Example: DIS/104)
 - (i) Government of Sierra Leone NCDDR documentation (Example: DIS/134)
 - (j) ECOWAS reports concerning peace negotiations (Example: DIS/151)
and,
 - (k) Security Council Reports (Example: DIS/310).

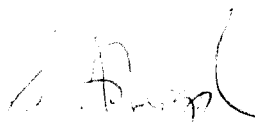
8. The Defence submits that the interests of justice demand that a party which purports to object to the authenticity of exhibits or a party's evidence owes a duty to the Court and the opposing party to describe the precise nature of the objections and provide proper explanation of the same. This allows the producing party to meet the objections or make sensible and proportionate decisions concerning which documents (or evidence) need to be proved, verified or corroborated through court testimony. This process would appear to lie at the heart of adversarial proceedings.

9. In the alternative, in the absence of this information or explanation, the Defence will be compelled to seek to prove the authenticity of each and every exhibit through oral or documentary testimony. It will take an inordinate amount of time to prove 380 exhibits, in terms of locating the various photographers, writers of official reports, compilers of Joint Security Reports, issuers of G5 passes, drafters of combat medic reports and RUF educational reports, the authors of the TRC report, journalists, UN representatives, Sierra Leone Government Representatives – the list is endless. Moreover, once obtained, the presentation of this proof will inevitably take many weeks of valuable court time.
10. The Defence does not regard the aforementioned as a useful or sensible exercise unless the objections are *bona fides* and reasonable. This assessment can not be made until the Prosecution explains the precise basis for its objections. This would enable the Defence to make reasonable decisions concerning the need to adduce proof or additional evidence in support of authenticity.

Request

11. The Defence requests an order from the Trial Chamber that the Prosecution provide a detailed explanation of the basis for its objections to each of the 380 defence exhibits. The Defence seek an expedited order to ensure that it can commence forthwith any investigations which prove to be necessary.

Dated 30th April 2007



Wayne Jordash
Sareta Ashraph

Book of Authorities

Prosecutor v Sesay et al, SCSL – 04 – 15 – T – 659, “Scheduling Order Concerning the Preparation and the Commencement of the Defence Case”, 30th October 2006.

Prosecutor v. Sesay et al, SCSL-04-15-T-726, “Sesay – Filing of Documents in Compliance with the Scheduling Order Concerning the Preparation and the Commencement of the Defence Case dated 30th October 2006”, 5th March 2007

Prosecutor v. Sesay et al, SCSL-04-15-T-758, “Prosecution Notification of Objection to Authenticity of the Exhibits filed by Issa Hassan Sesay”, 18th April 2007.