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THE SPECIAL COURT FOR SIERRA LEONE
FREETOWN – SIERRA LEONE

IN THE TRIAL CHAMBER

Before: Judge Bankole Thompson, Presiding judge
Judge Benjamin Mutanga Itoe
Judge Pierre Boutet

Date filed: April 2004

THE PROSECUTOR

Against
SAMUEL HINGA NORMAN
MOININA FOFANAH
ALLIEU KONDEWA
CASE NO. SCSL-2004-14-PT

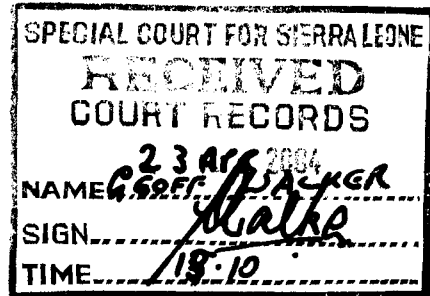
DEFENCE MOTION REQUESTING AN EXTENSION OF TIME WITHIN
WHICH TO RESPOND TO PROSECUTION'S
MOTION FOR JUDICIAL NOTICE AND ADMISSION OF EVIDENCE

Office of the Prosecutor:

Mr. Luc Cote
Mr. James C. Johnston
Mr. Charles Caruso

Applicant's Counsel:

Mr. Charles Margai
Mr. Yada Williams
Mr. Thomas G. Briody
Mr. Ansu Lansana



INTRODUCTION

1. On the 5th of April 2004, the Prosecutor filed a Motion for Judicial Notice and Admission of Evidence which was served on Counsel for the 3rd Accused, Allieu Kondewa on the 7th April 2004. Citing judicial economy and the limited temporal mandate of this court, the Prosecution seeks to have the court apply the doctrine of judicial notice to some 25 “facts” set forth in an annex “A” to the motion. The prosecutor also seeks admission into evidence of 69 documents found in Annex “B”. The documents include UN Humanitarian Situation Reports, UN resolutions, Reports of the UN Secretary General, Maps, treaties, NGO reports and speeches of Sierra Leone’s President.

2. That by Motion entitled “*REQUEST FOR LEAVE TO AMEND THE INDICTMENT AGAINST SAMUEL HINGA NORMAN, MOININA FOFANA & ALLIEU KONDEWA*” dated and filed on the 9th February 2004 the Prosecutor seeks to amend the indictment against the Accused persons by adding four new counts to the original indictment against the 3rd Accused which was approved by Judge Bankole Thompson on the 7th March 2003. The indictment of the three accused persons were joined by an order of the Trial Chamber dated the 27th January 2004 and a Consolidated Indictment filed on the 5th February 2004. The Proposed Amended Indictment seeks to introduce new locations and time frames into the Consolidated Indictment. In a Response to the Prosecution’s motion, Counsel for the 3rd Accused opposed the application for an amendment to the Indictment on various grounds. It was argued *inter alia* that the proposed amendment if granted will among other things affect the fairness of the trial and will prejudice the rights of the accused to a fair trial. The 3rd Accused awaits a ruling on the matter.

ARGUMENT

3. On March 2, 2004, the Prosecutor filed a Pre-Trial Brief in accordance with the orders of this Court and Rules 54 and 73bis. The Prosecutor's brief is 40 pages in length. The brief recites the history of the civil war in Sierra Leone and provides extensive citations of international humanitarian law and the developing case law from the international tribunals for the former Yugoslavia and Rwanda. Yet in 40 pages of text, and despite more than a year of preparation, the Prosecutor's brief failed to identify a single witness against the 3rd Accused in the consolidated indictment. Nor does the Prosecutor identify a single document or exhibit which it believes might tend to incriminate the 3rd Accused.

4. The 3rd Accused, Allieu Kondewa has yet to learn the names of any witness expected to testify against him. Indeed, the prosecutor has relied on "protective" measures for witnesses to such an extent that it has redacted virtually every statement provided to the 3rd Accused in this case. While protection of prosecution witnesses is an accepted and understandable practice of international courts as well as many national courts, the prosecution has actually redacted names of witnesses from statements that appear to exculpate Mr. Kondewa.

5. That as a result of the aforesaid, the 3rd Accused's right to a fair trial and to know the nature and extent of the case against him is serious violated.

6. That the Prosecution was ordered by the Trial Chamber on the 1st of April 2004 to file a more comprehensive Pre-Trial Brief which will *inter alia*

“a. Include references, both testimonial and documentary, upon which the Prosecution will rely to establish the factual allegations set out in the indictment and the Prosecution Pre-Trial Brief of the 2nd March 2004; and

b. Elaborate on the specific case against each individual accused, with particular attention given to the alleged nexus between each accused and the alleged crimes.”

7. That the Trial Chamber on the 2nd April 2004 acting under Rule 73 bis ordered “that a Pre-Trial Conference shall be held on the 28 April 2004”.

8. That the Prosecutor’s Motions for Judicial Notice and Presumption of Facts/Admission of Evidence in the cases of THE PROSECUTOR Vs. LAURENT SEMANZA ICTR-97-20-T and THE PROSECUTOR Vs. PAULINE NYIRAMASUHUKU & ARSENE SHALOM NTAHOBALI (ICTR-97-21-T), THE PROSECUTOR Vs. SYLVAIN NSABIMANA & ALPHONSE NTEZIRYAYO (ICTR-97-29a and B-T) THE PROSECUTOR Vs JOSEPH KANYABASHI (ICTR-96-15-T), THE PROSECUTOR Vs. ELIE NDAYAMBAJE (ICTR-96-88-T) were filed after fully loaded Pre-Trial Briefs had been filed, Pre-Trial Conferences held, full disclosures made of the case against the Accused persons by the Prosecutor and the indictment on which the Accused persons will be tried finalised.

9. That the court in THE PROSECUTOR Vs. LAURENT SEMANZA ICTR-97-20-T at para. 45 had this to say:

“The Chamber finds that the proper time for taking judicial notice of the matters contained in Appendices A and B is at this stage of the proceedings. In the interest of aiding the parties in preparing their respective trial presentations the Chambers is constrained to take judicial notice of some of the facts contained in Appendix A, as modified, and of the documents in Appendix B at this time. The Decision shall become part of the trial record of this case”.

10. That the Prosecutor’s Motion is therefore pre-mature and ill-conceived at this stage of the proceedings having regard to the aforesaid.

11. That the above argument discloses sufficient good cause and exceptional circumstances¹ as required to warrant the granting of the application herein.

ORDERS SOUGHT:

In the light of the foregoing reasons Counsel for the 3rd Accused requests the Trial Chamber to issue the following Orders:

1. That the 3rd Accused be granted an extension of time within which to file a response to the Prosecution's Motion for Judicial Notice and Admission of Evidence dated the 1st April 2004.
2. That in the event the first Order is granted that this Court do grant the Accused a period of fourteen days after the Prosecutor would have served un-redacted witness statements and/or witness summaries on the defence and made a full disclosure of the case against the 3rd Accused.

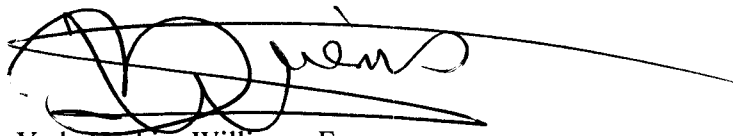
DATED THIS 23rd DAY OF APRIL 2004.

RESPECTFULLY SUBMITTED,



CHARLES F. MARGAI

LEAD COUNSEL



Yada Hashim Williams, Esq.

CO-COUNSEL FOR ALLIEU KONDEWA.

¹ The Prosecutor Vs. Alex Tamba Brima (SCSL-2003-06-PT) Decision on the application for extension of time for leave to be granted to file defence motion to appeal against the decision refusing an application for the issue of the writ of habeas corpus, 15th October 2003 paras. 16 and 17; The Prosecutor Vs. Morris Kallon SCSL2003-07-PT Decision on the Defence motion for an extension of time to file preliminary motions, 14th June 2003 paras. 9, 10 11.

LIST OF AUTHORITIES

1. The Prosecutor Vs. Laurent Semanza (ICTR-97-20-T), Decision on the Prosecutor's Motion for Judicial Notice & Presumption of Facts - 3rd November 2000.
2. The Prosecutor Vs. Pauline Nyiramasuhuku & Arsene Shalom Ntahobali (ICTR-97-21-T), The Prosecutor Vs. Sylvain Nsabimana & Alphonse Nteziryayo (ICTR-97-29A and B-T), The Prosecutor Vs. Joseph Kanyabashi (ICTR-96-15-T), The Prosecutor Vs. Elie Ndayambaje (ICTR-96-88-T) N0. 98-42-T, Decision on the Prosecutor's Motion for Judicial Notice and Admission of Evidence – 15th May 2002.
3. The Prosecutor Vs. Alex Tamba Brima (SCSL-2003-06-PT) Decision on the application for extension of time for leave to be granted to file defence motion to appeal against the decision refusing an application for the issue of the writ of habeas corpus - 15th October 2003.
4. The Prosecutor Vs. Morris Kallon SCSL2003-07-PT Decision on the Defence motion for an extension of time to file preliminary motions - 14th June 2003.