

SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR

FREETOWN - SIERRA LEONE

Before: Judge Benjamin Itoe
Judge Bankole Thompson
Judge Boutet

Registrar: Mr. Robin Vincent

Date filed: 10 November 2004

THE PROSECUTOR

Against

SAM HINGA NORMAN

MOININA FOFANA

ALLIEU KONDEWA

CASE NO. SCSL - 2004 - 14 - T

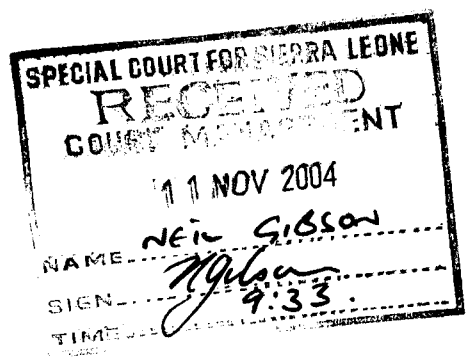
**PROSECUTION RESPONSE TO KONDEWA MOTION FOR SERVICE OF
CONSOLIDATED INDICTMENT AND FURTHER APPEARANCE**

Office of the Prosecutor:

Luc Côté
James C. Johnson
Adwoa Wiafe

Counsel for Fofana

Charles Margai



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I. INTRODUCTION

1. The Second and Third Accused, Fofana and Kondewa, were arraigned before the Special Court on 1 July 2003 on identical indictments charging them with eight (8) counts of crimes against humanity and war crimes. They both pleaded not guilty to all the counts. The First Accused, Norman, was also arraigned on an eight (8) count indictment dated 7 March 2003. The Fofana and Kondewa indictments contained additional particulars not contained in the Norman indictment.
2. On 7 November 2003, the Third Accused, Kondewa, filed a motion alleging defects in the form of the indictment.¹ By a decision rendered on 27 November 2003,² the Trial Chamber ordered the Prosecution either to delete in every count and wherever they appeared, the phrase “including but not limited to” or to provide in a Bill of Particulars the specific additional events alleged against the accused in each count. In pursuance of this order, the Prosecution filed a Bill of Particulars on 5 December 2003.

¹ See, Preliminary Motion Based on Defects in the Form of the Indictment against Allieu Kondewa, 7 November 2003.

² See, *Prosecutor v. Kondewa*, Annexure to Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment”, SCSL-2003-12-PT, 27 November 2003.

3. On 9 October 2003, the Prosecution filed a motion requesting the joinder of the trials of the 3 accused: Norman, Fofana and Kondewa. The Prosecutor further requested that the indictments against the three accused be consolidated into a single indictment. On 27 January 2004, the Trial Chamber granted the Prosecution request for joinder (“the Joinder Decision”) and consequentially ordered that a single consolidated indictment (“the Consolidated Indictment”) be prepared as the Indictment on which the joint trial shall proceed. The Chamber further ordered that the Consolidated Indictment be served on each Accused in accordance with Rule 52 of the SCSL Rules. The Consolidated Indictment was filed by the Prosecution on 4 February 2004 and served by Court Management on Counsel for Kondewa on 5 February 2004.³

II. SUBMISSIONS OF THIRD ACCUSED

4. The Third Accused files this motion seeking, first, service of the Consolidated Indictment pursuant to Rules 50(A) and 52, and, secondly, a further appearance on this indictment pursuant to Rule 50(B)(i). This request is based on alleged differences between the original and Consolidated Indictments.
5. The Third Accused further seeks a quashing of the original indictment.
6. The Prosecution submits that the motion should be dismissed in its entirety.

III. ARGUMENTS

7. The Accused submits that he has not been personally served with the Consolidated Indictment contrary to the order given by the Trial Chamber in the Joinder Decision. It will be noted that the records of the Court obtained from Court Management (attached hereto) indicate that the Consolidated Indictment was served on Defence Counsel on 5 February 2005. Although there is no indication that service of the Consolidated Indictment was effected personally on the Accused, this failure on the part of the Registry was an administrative error which, based on the overall circumstances of this case, has caused no identifiable harm to him given that the Consolidated Indictment was served on the Kondewa Defence team shortly after it was filed by the Prosecution. Further, the Defence has demonstrated knowledge of the charges contained in the Consolidated

³ See, email from Court Management attached.

Indictment, and has thus far defended him against the charges contained therein in the first and second trial sessions.

8. The Third Accused requests an arraignment on the Consolidated Indictment by virtue of *differences* between the original and the Consolidated Indictment.⁴ However, no attempt is made to define what these differences are in respect of this particular Accused. The Prosecution submits that neither the content nor the times and locations contained in the Consolidated Indictment are new to this Accused. Counsel for the Accused misinterprets the Joinder Decision when he asserts that “the Trial Chamber stated that the new indictment differed in its contents with regards to the times and locations of the crimes allegedly committed by the Accused.” On the contrary, the Judges held that “the specific crimes charged in those several counts are exactly the same, *except for allegations in respect of additional time and locations as regards Accused Moinina Fofana and Allieu Kondewa.*”⁵ [emphasis added] Additionally, the additional locations contained in the Consolidated Indictment reflect the Bill of Particulars filed in the Kondewa case. In light of these facts, the Accused cannot now allege that the Consolidated Indictment is entirely new to him.
9. The Prosecution further submits that since the Consolidated Indictment contains no new charges no further arraignment is required under Rule 50(b)(i) of the Rules. Upon comparing the counts in all three Indictments, the majority in the Joinder Decision concluded that the specific crimes charged in those several counts are exactly the same. Accordingly, the majority in the Trial Chamber did not find it necessary then to order a further arraignment of the Third Accused. The Prosecution submits that there is equally no need to do so now. This is more so, as the Consolidated Indictment contains no new charges. Moreover, the Prosecution notes that the Third Accused did not appeal any aspect of the Joinder Decision.
10. The Third Accused finally seeks a quashing of the original indictment. The Prosecution respectfully submits that it is well understood from the order of the Trial Chamber in the Joinder Decision that the Consolidated Indictment supersedes the original indictment of the Accused.

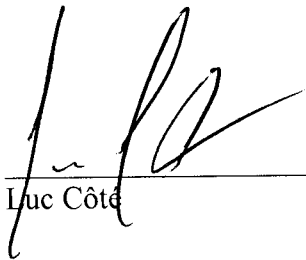
⁴ See para. 6 of the Defence Motion.

⁵ See Joinder Decision, para. 24. As opposed to the original Norman indictment, the original indictments for Fofana and Kondewa contain the same additional locations in respect of Bonthe and Moyamba.

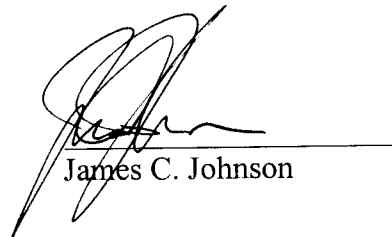
IV. CONCLUSION

11. Based on the foregoing, the Prosecution submits that the Kondewa Motion should be dismissed.

Freetown, 10 November 2004,



Luc Côté



James C. Johnson

Prosecutor v. Norman, Fofana, Kondewa, SCSL-2004-14-T

ANNEX

Email from Court Management to Counsel for Kondewa.



Geoff Walker

11/09/2004 09:15 AM

To: Neil Gibson/SCSL@SCSL, Jim Johnson/SCSL@SCSL
 CC:
 Subject: Fw: SCSL-04-14- PT -003 :Electronic Service CDF Cases

Attached are copies of the Electronic Service of the consolidated Indictment on Defence teams


Geoff Walker
 EXT 7234

----- Forwarded by Geoff Walker/SCSL on 09/11/2004 09:13 -----



Geoff Walker/SCSL

22/10/2004 09:34

To: SCSL-Records/SCSL
 cc
 Subject: Re: Fw: SCSL-04-14- PT -003 :Electronic Service CDF Cases 

Thanks very much Joseph.

Geoff Walker
 EXT 7234
 SCSL-Records/SCSL



SCSL-Records/SCSL

21/10/2004 17:10

To: Geoff Walker/SCSL@SCSL
 cc
 Subject: Fw: SCSL-04-14- PT -003 :Electronic Service CDF Cases

Geoff

Sorry to see your request late.

Court Records

Court Management

Registry

----- Forwarded by SCSL-Records/SCSL on 21/10/2004 17:09 -----



SCSL-Records

05/02/2004 14:24

To: mpestman@bfkw.nl, vkoppe@bfkw.nl, nollkaemper@jur.uva.nl, izegveld@bfkw.nl, ayotunde@sierratel.sl, stejansie@yahoo.com, gatejan@aol.com, cfmargai@yahoo.com, q.whitaker@doughtystreet.co.uk
 cc: Joseph Massaquoi/SCSL@SCSL, Hellen Nyabera/SCSL@SCSL, Henry Matthews/SCSL@SCSL, Neil Gibson/SCSL@SCSL, (bcc: SCSL-Records/SCSL)
 Subject: SCSL-04-14- PT -003 :Electronic Service CDF Cases

Please find attached the following documents filed 5 February 2004, in the CDF Cases, No. SCSL-04-14-PT:



SCSL-04-14-PT-003.pdf

Please acknowledge receipt by return mail.
 Joseph Massaquoi

Court Records
Court Management
Registry

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