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SCSL-04-14-T
(14987-14989)

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**THE SPECIAL COURT FOR SIERRA LEONE
FREETOWN - SIERRA LEONE**

TRIAL CHAMBER 1

Before: Hon. Justice Pierre Boutet, Presiding Judge
Hon. Justice Bankole Thompson
Hon. Justice Benjamin Mutanga Itoe

Interim Registrar: Mr. Lovemore Munlo SC

Date : 24TH FEBRUARY 2006

PUBLIC

THE PROSECUTION

Against

SAMEUL HINGA NORMAN, MOININA FOFANA, and ALLIEU KONDEWA

CASE NO. SCSL-2004-14-T

**THIRD ACCUSED'S REQUEST FOR LEAVE TO BE AT LIBERTY TO RAISE
EVIDENTIARY OBJECTIONS DURING PROSECUTION'S CROSS EXAMINATION
OF WITNESSES NOT CALLED BY HIM**

Office of the Prosecutor:

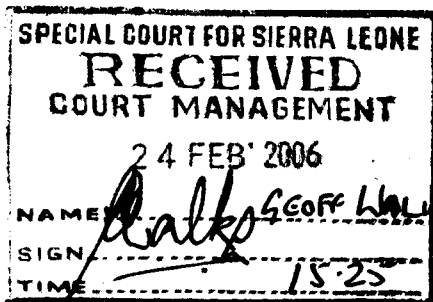
Mr. Luc Cote
Mr. James C. Johnston
Kevin Tavener

Court Appointed Counsel for Sam Hinga Norman

Dr. Bu-Buakei Jabbi
John Wesley Hall, Jnr
Alusine Sesay
Clare da Silva (Legal Assistant)

Court Appointed Counsel for Moinina Fofanah

Victor Koppe
Arrow Bockarie
Michiel Pestman
Andrew Ianuzzi (Legal Assistant)



Court Appointed Counsel for Allieu Kondewa

Mr. Charles F. Margai
Mr. Yada H. Williams
Ms. Susan L. Wright
Mr. Ansu B. Lansana
Martin E. Michael (Legal Assistant)

INTRODUCTION

1. An issue has arisen as a consequence of the Third Accused's ("the Accused") position relative to non-common witnesses being called by the First Accused and cross-examined by the Prosecution. The Accused seeks leave to be at liberty to object to questions raised during the Prosecution's cross-examination of such witnesses.

THE APPLICABLE LAW

2. The Rules of Procedure and Evidence, which for our purposes mirror the rules which govern both the *ad hoc* tribunals, provide for the handling of evidentiary matters.
3. It is within the sole purview of the Trial Chamber to determine whether a question can be posed to a witness. Rule 90 provides that:
"The Trial Chamber shall exercise control over the mode and order of interrogating witnesses and presenting evidence so as to:
 - i. Make the interrogation and presentation effective for the ascertainment of the truth; and
 - ii. Avoid the wasting of time.¹"
4. There is no provision made or limitation given relative to who can raise these issues in the form of an evidentiary objection. Nor can such be implied.
5. Given the interest shared by all parties for a fair trial within a reasonable time, the opposite inference can and should be drawn. Where any party can identify and articulate how certain evidence is not "effective for the ascertainment of the truth" or would result in "the wasting of time", it is respectfully submitted that the Trial Chamber should apply the plain meaning of Rule 90 and allow that party to make such objections.

¹ Rule 90(F), Rules of Procedure and Evidence.

6. Rule 89 provides that “[a] Chamber may admit any relevant evidence.”² The opposite shall likewise be understood and a Chamber may be asked to refuse to admit any irrelevant evidence.

7. As the Chamber makes its decision, it can be guided by Rule 89 which provides that:

*In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.*³

SUBMISSION

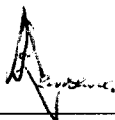
8. Hearing evidentiary objections from all parties contributes to the perception that the Chamber is ensuring a fair determination of the matter before it. The spirit of the Statute and the general principles of law are consonant with that aim. In order to be done, justice must be seen to be done.

9. The Accused finds himself in the position of wanting to be at liberty to object to questions raised during the Prosecution’s cross-examination of a witness not his own because he is part of a joint trial. There is no question that he could raise such objections if the witness were his own. Thus to be barred from raising these questions runs afoul of the provision that “[i]n joint trials, each accused shall be accorded the same rights as if he were being tried separately.”⁴

10. The Accused therefore moves this Honourable Chamber for leave to be at liberty raise evidentiary objections during the Prosecution’s cross-examination of witnesses not called by him.

Done in Freetown this 24th day of February 2006.

COUNSEL FOR ALLIEU KONDEWA



² Rule 89 ©Rules of Procedure and Evidence.

³ Rule 89(B), Rules of Procedure and Evidence.

⁴ Rule 82(A), Rules of Procedure and Evidence.