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SCSL-04-14-T  
(19328-19336)

19328

**SPECIAL COURT FOR SIERRA LEONE**

**In Trial Chamber I**

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

Registrar: Mr. Lovemore Munlo, SC

Date: 2<sup>nd</sup> October 2006

**THE PROSECUTOR**

**-against-**

**SAMUEL HINGA NORMAN, MOININA FOFANA, and ALLIEU KONDEWA**

Case No. SCSL-04-14-T

**PUBLIC**

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**KONDEWA APPLICATION FOR LEAVE**

**TO CALL ONE ADDITIONAL WITNESS**

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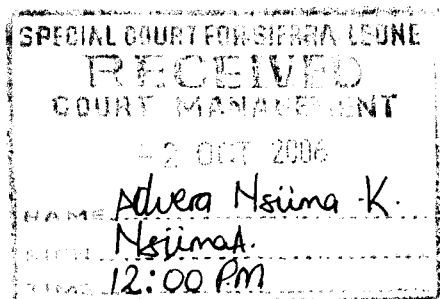
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## I. INTRODUCTION

1. Counsel for the Third Accused, Mr. Allieu Kondewa (the “Defence”), hereby submit their ‘Application for Leave to Call One Additional Witness’ (the “Application”). For the reasons outlined below, the Defence seek leave of Trial Chamber I (the “Chamber”) to call one additional factual witnesses. The Defence submit that there is good cause to grant the Application and that the addition of the proposed witness will serve the interests of justice.

## II. BACKGROUND

2. On 28 November 2005, the Trial Chamber issued a “Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case” ( the “Order”)<sup>1</sup> which stipulated that the Defence would only be permitted to add witnesses or exhibits to their list upon a showing of good cause.
3. On 3<sup>RD</sup> April 2006, the Defence submitted the “Submission by Counsel for Third Accused Allieu Kondewa Pursuant to the Consequential Order to the Status Conference”<sup>2</sup> which stipulated that the Kondewa Defence would file a reduced witness list upon receiving a final witness list from the Norman Defence Team.
4. On 8 May 2006, the Defence submitted the “Updated Witness List of the Third Accused Allieu Kondewa”<sup>3</sup> which provided a tentative updated and reduced witness list contingent on receiving a finalized core witness list from both the Norman and Fofana Defence teams. The submitted list included twenty-eight core witnesses. The following names were removed from the witness list: Hassan Décor Sallu, Brima Moriba, Karmoh Lahai Bangura, Karmoh Mohamed Mansaray, Mohamed Daiman Faloun, Dixon Saidu Kosia, Brima John Keni Sei, M. T. Collier, Raymond D. Murphy, and Dr. Joe A.D. Alie.
5. On the 20<sup>th</sup> July 2006 the Trial Chamber 1 ordered the Kondewa Defence team, inter alia, to remove Momoh Bockarie Moiwa and Joe Kpana Lewis from their witness list as they had

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<sup>1</sup> SCSL-2004-14-T-489, 28 November 2005.

<sup>2</sup> SCSL-2004-14-T-583, 3 April 2006.

<sup>3</sup> SCSL-2004-14-T-593, 8 May 2006.

been included without leave of the Trial Chamber or, alternatively, to seek leave of the Trial Chamber to add them to their witness list<sup>4</sup>

6. The Defence filed an application for leave to call seven additional witnesses on the 29<sup>th</sup> August 2006<sup>5</sup> and on the 20<sup>th</sup> September 2006 the Trial Chamber 1 granted Defence leave.<sup>6</sup>
7. On the 25<sup>th</sup> September 2006 the Defence filed ‘Materials Filed Pursuant To Trial Chamber Order Of 20<sup>th</sup> September 2006’<sup>7</sup>
8. On the 26<sup>th</sup> September 2006 the Defence discovered that a witness, MORIE JUSU KAMARA, for whom they had been searching since 7<sup>th</sup> January 2006 was now available to testify on behalf of the Defence for Kondewa. The reasons for his apparent disappearance will be explained in other paragraphs of this application.
9. It is against this background that this application is made.

### III. SUBMISSIONS

#### The Applicable Law

10. The Rules of Procedure and Evidence (the “Rules”) provide: “After the commencement of the Defence case, if it considers it to be in the *interests of justice*, move the Trial Chamber for leave ... to vary its decision as to which witnesses are to be called”<sup>8</sup>. More specifically, with respect to the defence phase of the CDF proceedings, the Chamber has stated that “[s]hould the Defence seek to add any witnesses to [its] list after the 5<sup>th</sup> December 2005, it may be permitted to do so only upon *good cause* being shown”<sup>9</sup>

<sup>4</sup> SCSL-2004-14-T-673, 20 July 2006

<sup>5</sup> SCSL-2004-14-T-681, 29<sup>TH</sup> August 2006 –Kondewa Application for Leave to Call Additional Witnesses

<sup>6</sup> SCSL-2004-14-T-695, 20 September 2006 Decision on Kondewa Application for Leave to Call Additional Witnesses

<sup>7</sup> SCSL-2004-14-T-697 25 September 2006

<sup>8</sup> Rule 73ter(E).

<sup>9</sup> *Prosecutor v. Norman et al.*, SCSL-2004-14-T-585, Trial Chamber I, ‘Decision on the First Accused’s Urgent Motion for Leave to File Additional Witness and Exhibit Lists’, 6 April 2006 at 4, (*quoting Prosecutor v. Norman et al.*, SCSL-2004-14-T-435, Trial Chamber I, ‘Decision on Prosecution Request for Leave to Call Additional Witnesses and for Orders for Protective Measures’, 23 June 2005, at 3).

11. Factors that have been and may be taken into account by the Trial Chamber in determining whether “good cause” has been established include: the materiality of the evidence; the relevance of the evidence to determine the issues at stake; the contribution of the evidence to serving and fostering the overall interest of the law and justice; the absence of prejudice to the other party; the on-going investigations; and whether the new evidence could not have been discovered or made available at an earlier point in time notwithstanding the exercise of due diligence.
12. The Chamber however has placed particular and significant emphasis on the relevance of the proposed evidence as well as the danger of prejudice to the other parties.<sup>10</sup>

### **Proposed Additional Factual Witnesses**

13. The Defence propose to call one additional factual witnesses. A chart including his name, the nature of proposed testimony and the specific reason for him not having been listed previously is attached hereto as Appendix B.

### *Good Cause and Relevance*

14. Investigations carried out by the Defence on the 7<sup>TH</sup> January 2006 found Morie Jusus Kamara a witness of great importance and relevance to the Kondewa Defence whose testimony will answer direct allegations made by Prosecution witnesses against the Third Accused in respect of alleged incidents in Bonthe and Talia.
15. The additional witness to be called will answer specific and direct allegations made against the third Accused particularly by Prosecution Witness TF2-147<sup>11</sup>. This witness was also mentioned several times by Prosecution Witness TF2-147. The Defence submit that the

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<sup>10</sup> See, e.g., *Prosecutor v. Norman et al.*, SCSL-2004-14-T-213, Trial Chamber I, ‘Decision on Prosecution Request for Leave to Call Additional Expert Witness Dr. William Haglund’, October 2004, ¶17.

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<sup>11</sup> Testimony of the 10<sup>th</sup> November 2004-Third Trial Session

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evidence of this witness is relevant and crucial and request that leave be granted on that score.

16. Counsel for the 3<sup>rd</sup> Accused submit that they could not add this witness to their list before this application even though he had been discovered on the 7<sup>th</sup> January 2006 for the following reasons: After the discovery of this witness on the 7<sup>th</sup> January 2006 by investigators the witness was invited to Freetown for him to be further questioned but the witness failed to show up for the meeting at the appointed time and place. The investigators for the Defence carried out further investigations as to his whereabouts but could not come up with any information on that. The witness visited the Defence office on the 29<sup>th</sup> September 2006 and explained that the reason for his disappearance was that he had been remanded at the Pademba Road Prisons, Freetown on false allegations proffered against him by a prominent member of the Government of Sierra Leone. Counsel was not aware of his incarceration at the Pademba Road Prisons. The witness informs Counsel that the Sierra Leone Police carried out investigations on the allegations against him and no evidence of wrongdoing was found against him and he was only recently released without being charged. Counsel has only recently been able to interview him and he is willing to testify.

*Interests of Justice*

17. As outlined in APPENDIX B the proposed additional factual witness is in possession of material information relevant to the charges against the Third Accused contained in the Prosecution's Indictment. The proposed evidence is not overly duplicative or repetitious of that of the existing witnesses and is directed at specific and clearly identified portions of the Prosecution's case and will answer direct and specific allegations made by witnesses against the Third Accused individually.
18. For the reasons stated above, neither the Prosecution nor the other Accused will suffer any prejudice. Given the timing of the trial, there is no element of surprise resulting in detriment to the Prosecution.

**CONCLUSION**

19. The Defence submit that it will in the next few days file a reduced witness list consisting of a maximum of 15 witnesses and possible reducing it to 11 witnesses and the addition of this

single witness will therefore not cause undue delay or unnecessarily lengthen the Defence for Kondewa or in any way prejudice the Prosecution.

20. For the foregoing reasons, the Defence respectfully request the Chamber to grant the Application in the interest of justice.

COUNSEL FOR ALLIEU KONDEWA



YADA WILLIAMS,

LIST OF AUTHORITIES

1. RULES OF PROCEDURE AND EVIDENCE: RULE 73ter(E)

2. *Prosecutor v. Norman et al.*, SCSL-2004-14-T-585, Trial Chamber I, 'Decision on the First Accused's Urgent Motion for Leave to File Additional Witness and Exhibit Lists', 6 April 2006

3. *Prosecutor v. Norman et al.*, SCSL-2004-14-T-534, Trial Chamber I, 'Consequential order to the Status Conference of the 18<sup>th</sup> January 2006', 18<sup>th</sup> January 2006'

4. *Prosecutor v. Norman et al.*, SCSL-2004-14-T-489, Trial Chamber I, 'Consequential order for Compliance with the order Concerning the Preparation and Presentation of the Defence Case', 28<sup>th</sup> November 2005'

5. *Prosecutor v. Norman et al.*, SCSL-2004-14-T-435, Trial Chamber I, 'Decision on the Prosecution Request for Leave to Call Additional Witnesses and for the Orders for Protective Measures', 23 June 2005

6. *Prosecutor v. Norman et al.*, SCSL-2004-14-T-213, Trial Chamber I, 'Decision on Prosecution Request for Leave to Call Additional Expert Witness Dr. William Haglund', October 2004

**APPENDIX B**

NAME OF WITNESS	SUMMARY/NATURE OF PROPOSED TESTIMONY	REASON FOR DELAY
<p>MORIE JUSU KAMARA</p> <p>D.O.B 1957 AGE 49</p> <p>SEX – MALE</p> <p>NATIONALITY-SIERRA LEONEAN</p> <p>ADDRESS- BOHAI</p> <p>NGIYAIYA, BONTHE DISTRICT</p> <p>OCCUPATION-FISHING MENDE</p>	<p>SPECIFIC EVIDENCE: Witness will debunk the evidence of PW 25 (TF2 – 147) in respect of Allieu Kondewa and incidents in Bonthe.</p> <p>Will testify that he was the one that invited Allieu Kondewa to Bonthe and that they never received or took any command from Kondewa.</p> <p>GENERAL EVIDENCE: Initiated in to Kamajor society in 1995 by Allieu Kondewa. Upon initiation returned to his Paramount Chief and he was seconded to the Sierra Leone Navy at Bonthe Island</p> <p>Will testify to killings by SLA at BOHAI NGIYAIYA in 1997</p> <p>Relationship was initially good but later deteriorated.</p> <p>Naval Commander of the CDF will testify generally on incidents in Bonthe and the surrounding villages. Knew Father Garrick very well and will rebut some of the issues raised by Fr.Garrick. Witness will testify that contrary to the evidence of Father Garrick and TF2-071, the 3<sup>rd</sup> Accused did not demand nor was he paid the sum of Le. 600,000.00 for removing Lahai Koroma to safety. Witness</p>	<p>Witness was incarcerated at Pademba Road Prisons and was only recently released</p>



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NAME OF WITNESS	SUMMARY/NATURE OF PROPOSED TESTIMONY	REASON FOR DELAY
	will testify that contrary to the evidence of Father Garrick and TF2-071 Kamajors in Bonthe were at no time relevant to the indictment under the control of the 3 <sup>rd</sup> Accused.	

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