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SCSL-2003-05-PT  
(1670-1674)  
SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR  
FREETOWN - SIERRA LEONE

Before: Judge Benjamin Itoe  
Judge Bankole Thompson  
Judge Pierre Boutet

Registrar: Robin Vincent

Date filed: 24 October 2003

**THE PROSECUTOR**

**Against**

**ISSA HASSAN SESAY**

CASE NO. SCSL - 2003 - 05 - PT

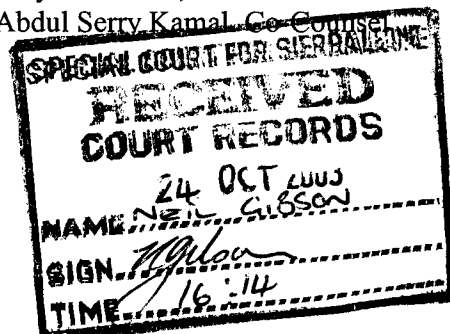
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**PROSECUTION RESPONSE TO DEFENCE "MOTION TO REQUEST  
THAT THE TIME PERIOD FOR RESPONSE TO THE PROSECUTION  
MOTION FOR JOINDER COMMENCE UPON THE RECEIPT OF THE  
MODIFIED OR PARTICULARIZED INDICTMENT(S) OR ON A DATE  
TO BE SET BY THE TRIAL CHAMBER"**

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**INTRODUCTION**

1. The Prosecution files this Response to the Defence “Motion to Request that the Time Period for Response to the Prosecution Motion for Joinder Commence Upon the Receipt of the Modified or Particularized Indictment(s) or on a Date to be Set by the Trial Chamber” (the “**Defence Motion**”) filed 20 October 2003 on behalf of Issa Hassan Sesay (the “**Accused**”), in relation to the Prosecution “Motion for Joinder” filed 9 October 2003 (the “**Prosecution Motion**”). In the Defence Motion, the Defence:
  - a) observes that a “Decision and Order on the Defence Motion on Form of the Indictment” (the “**Order**”) rendered by the Trial Chamber on 13 October 2003, ruled that the Prosecution must file either an amended Indictment or Bill of Particulars within 21 days of the Order in relation to usage of the phrase “but not limited to those events”, or simply delete the phrase from the Indictment;

b) argues that consequently, the Defence is not in a position to respond to the Prosecution Motion for Joinder until receipt of either an amended Indictment or Bill of Particulars (See paragraph 7 of the Defence Response).

c) further argues that the Defence is unable to verify whether in fact the indictments are identical as asserted by the Prosecution and therefore can not respond to the Prosecution Motion until any potential defence motion on form of the indictment is filed by any other accused sought to be joined, which may also result in an amended Indictment or Bill of Particulars (See paragraph 8 of the Defence Response); therefore

d) requests that the Trial Chamber suspend the time limits prescribed under Rule 7(C) respecting a response by the Defence to the Prosecution Motion until a particularized indictment is received; and

e) reserves the right to make further motions for delay in response to the Prosecution Motion following receipt of the said amendments or Bill of Particulars pursuant to the Order.

## **ARGUMENT**

### **I. Procedural Matters**

2. The Prosecution notes that the Defence Motion was filed 20 October 2003 in lieu of filing a Defence response to the Prosecution Motion, which was due 20 October 2003. The arguments raised by the Defence in the current Motion in fact flow from arguments raised in an earlier Defence Motion on Form of the Indictment, filed 23 June 2003, for which the Order was rendered 13 October 2003 - seven days prior to the filing of the current Defence Motion.
3. The Prosecution further notes that the Defence Motion is the fourth request for an extension of time thus far filed by Defence Counsel for the Accused.

### **II. Amended Indictment or Bill of Particulars not necessary to the determination of Prosecution Motion for Joinder**

4. As held by the Trial Chamber, a party seeking an extension of time must demonstrate “exceptional circumstances or good cause”.<sup>1</sup> The Prosecution submits

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<sup>1</sup> See *The Prosecutor v. Kallon*, SCSL-2003-07-PT, “Order on the Defence Application for Extension of Time

that receipt by the Defence of the amended Indictment or Bill of Particulars, pertaining to either the Sesay Indictment or potentially any other indictment, is not necessary to respond to the Prosecution Motion for Joinder and therefore does not constitute good cause to warrant delay in the deliberation of the Prosecution Motion.

5. In the Defence Motion, the Defence relies upon the definition of a “same transaction” to require their consideration of all events in a Bill of Particulars or amended indictment in order to answer the Prosecution Motion (see paragraphs 6 and 7 of the Defence Motion). As noted in paragraph 24 of the Prosecution Motion for Joinder, the indictments are essentially identical against each accused, in particular the charges laid. The Prosecution submits that the Order does not affect the bulk of the facts alleged to be the basis for the common transaction and that any elaboration thereof does not affect consideration of the Prosecution Motion.
6. Furthermore, paragraphs 23 – 29 of the Prosecution Motion highlight practical considerations as to how a joint trial serves the interest of justice given that the case brought against each accused is based upon the same body of evidence - considerations which are independent of any finding by the Trial Chamber as to whether such charges and crimes may be found in need of elaboration by the Prosecution.

### **III. Hypothetical Motions on Form of the Indictment Not Relevant to Response to Prosecution Motion for Joinder**

7. The Prosecution further submits that the Defence argument that the Prosecution Motion be delayed pending the potential motions by other accused challenging the form of their respective indictments is in fact premature and not warranted.
8. This request by the Defence is based upon hypothetical motions brought by the other accused sought to be joined (See paragraph 8 of the Defence Motion). The Prosecution notes that the “Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment”, dated 13 October 2003, of the Trial Chamber upholding the Indictment for Issa Sesay, held *inter alia* that the indictment as it

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to file Reply to Prosecution Response to Preliminary Motions”, 24 June 2003; *The Prosecutor v. 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 a Writ of *Habeas Corpus*”, 15 October 2003.

currently stands, provides sufficient notice to the accused as to the crimes alleged therein (but for the need for elaboration where it is alleged “*but not limited to those events*”). Should this precedent be followed and applied to future potential defence motions on the form of the indictment, the Prosecution submits that the decision would have no impact upon the basis and validity of the Prosecution Motion for Joinder.

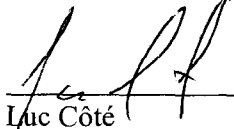
9. Finally, irrespective of the Order to delete or furnish details as to “but not limited to those events”, the Prosecution maintains that as currently framed, the Sesay Indictment sufficiently establishes the requirement of the existence of “the same or different crimes committed in the course of the same transaction” (See Rule 48(B) of the Rules of Procedure and Evidence). As the charges are identical within each case of each accused sought to be joined, the Prosecution maintains that the joinder of cases as currently requested sufficiently outlines the criminal acts to which the accused are alleged to be connected, including general and specific geographic locations and specified time periods, and therefore the Defence argument that it is not possible to consider the basis of the joinder motion given the Sesay indictment as it now stands simply cannot be sustained (see paragraph 9 of the Defence Motion).
10. For these reasons, the Prosecution submits that the basis for the Defence Motion for an Extension of time and any subsequent extensions be dismissed as not constituting good cause.

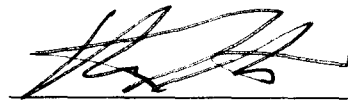
## CONCLUSION

The Prosecution submits that the arguments raised by the Defence are not relevant to the considerations to be made by the Trial Chamber with regards to the Prosecution Joinder and therefore do not constitute good cause. In particular, the Defence does not bring any valid reason justifying a delay in the deliberation of this matter.

Freetown, 24 October 2003.

For the Prosecutor,

  
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Luc Côté  
Chief of Prosecutions

  
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Robert Petit  
Senior Trial Counsel