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SCSL-04-15-T
(25632-25636)

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SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

THE TRIAL CHAMBER I

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

Registrar: Herman Von Hebel

Date filed: 14 April 2008

SPECIAL COURT FOR SIERRA LEONE
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THE PROSECUTOR

Against

**Issa Hassan Sesay
Morris Kallon
Augustine Gbao**

Case No. SCSL-04-15-T

PUBLIC

**PROSECUTION RESPONSE TO KALLON NOTICE OF INTENTION TO RELY ON AND ADOPT
CERTAIN ASPECTS OF THE ACCUSED ISSA SESAY'S TESTIMONY WITH CONFIDENTIAL
ANNEXE**

Office of the Prosecutor:
Vincent Wagana
Amira Hudroge

Defence Counsel for Issa Hassan Sesay
Wayne Jordash
Sareta Ashraph

Defence Counsel for Morris Kallon
Charles Taku
Kennedy Ogeto
Lansana Dumbuya
Tanoo Mylvaganam

Court Appointed Counsel for Augustine Gbao
John Cammegh
Scott Martin

I. INTRODUCTION

1. During the Status Conference of 10th January 2008, there was a discussion where the Chamber urged the Defence Teams to make use of Rules 92*bis*, 92*ter* and 92*quater* of the Rules¹ and common witnesses, for reasons of judicial economy and trial management.² It was not the understanding of the Prosecution that *adoption* of evidence of one Accused by another Accused was one option of ensuring judicial economy and trial management.
2. At the said Status Conference, Mr. Taku stated to the effect that if Kallon was going to *rely* on any aspects of evidence lead by Sesay, they would inform the Court and draw its attention to specific aspects of the evidence of Sesay that Kallon would *rely* on.³ It was not the understanding of the Prosecution that at the same time Kallon would seek to *adopt* the said evidence and make it as if it were testimony given by Kallon. It was further not the understanding of the Prosecution that the First Accused would thereby become a common witness for himself and for Kallon.
3. On 4 April 2008, Kallon filed the “Kallon Notice of Intention to Rely on and Adopt Certain Aspects of the Accused Issa Sesay’s Testimony With Confidential Annexe”, (“the Notice”).⁴ The Annexe contains summaries of testimony and transcript references of aspects of the First Accused Issa Sesay’s testimony sought to be adopted by the Second Accused.
4. The Notice does not cite any Rule under which it is sought to *adopt* certain aspects of the First Accused Issa Sesay’s testimony.
5. The Prosecution says that *adoption* by the Second Accused, of evidence of the First Accused is not permissible in the present case.

II. ARGUMENT

6. The First Accused Issa Sesay was never made a common witness with Kallon, in

¹ Rules of Procedure and Evidence of the Special Court for Sierra Leone as amended 19 November 2007, (“the Rules”).

² Status Conference, Transcript, 10 January 2008, p.14-21.

³ Status Conference, Transcript, 10 January 2008, p.19-20.

⁴ *Prosecutor v Sesay et al*, SCSL-04-15-T-1070, “Kallon Notice of Intention to Rely on and Adopt Certain Aspects of the Accused Issa Sesay’s Testimony With Confidential Annexe”, 4 April 2008.

- spite of the Defence obligation to make clear the common witnesses it intended to call, pursuant to the Scheduling Order Concerning the Preparation and The Commencement of the Defence Case.⁵
7. When the First Accused Issa Sesay testified, he was exercising his rights under Rule 85 (C) of the Rules to appear as a witness in his own Defence and did not testify as a common witness for himself and for Kallon.
 8. The Prosecution's approach in its cross-examination of the First Accused Issa Sesay was based on the fact that he had testified in his own defence and not as a common witness for Kallon as well. As such, the Prosecution in cross-examining the First accused restrained itself from actively seeking to elicit from him Evidence involving the Second Accused.⁶
 9. Once admissible evidence is on record, any party can in submissions seek to rely on it for corroboration or for some other purpose, in which case, giving notice to rely on such evidence is unnecessary and the question of *adopting* does not arise.
 10. In these circumstances, the Prosecution strongly opposes the proposed *adoption* of evidence by the Second Accused from the First Accused.
 11. The Prosecution further opposes the tendering of the Annexe in lieu of oral testimony as it is neither a written statement nor a transcript and is not being brought under any relevant Rule of the Rules. Further, the tendering of the Annexe does not serve any useful purpose as all of the testimony of the First Accused is in evidence and can be referred to by any party at any stage of the proceedings.

III. CONCLUSION

12. The Second Accused is at liberty to exercise his full rights under Rule 85(C) of the Rules but cannot just *adopt* testimony from the First Accused who was not even a common witness.

⁵ *Prosecutor v Sesay et al*, SCSL-04-15-T-659, "Scheduling Order Concerning The Preparation and The Commencement of The Defence Case," 30 October 2006.

⁶ *Prosecutor v Norman et al*, SCSL-04-14-T-731, "Decision on the Impermissibility of Eliciting Evidence Involving The Second Accused Through Cross-Examination of Witness Called By the Third Accused," 10 November 2006; in a multi-defendant case, in the absence of notice, or in the absence of an opportunity to effectively cross examine, a party cannot elicit evidence from a Witness relating to the case of another Accused who did not call the Witness in question.

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13. The application by the Second Accused to *adopt* testimony from the First Accused and to tender Annexe should be dismissed.

Filed at Freetown, on 14 April 2008

For the Prosecution,



Vincent Wagana

Index of Authorities

A. Motions and Decisions

1. *Prosecutor v Sesay et al*, SCSL-04-15-T-1070, ‘Kallon Notice of Intention to Rely on and Adopt Certain Aspects of the Accused Issa Sesay’s Testimony With Confidential Annexe”, 4 April 2008.
2. *Prosecutor v Sesay et al*, SCSL-04-15-T-659, “Scheduling Order Concerning The Preparation and The Commencement of The Deference Case,” 30 October 2006.
3. *Prosecutor v Norman et al*, SCSL-04-14-T-731, “Decision on the Impermissibility of Eliciting Evidence Involving The Second Accused Through Cross-Examination of Witness Called By the Third Accused,” 10 November 2006.

B. Rules

1. Rules 85 (C), 92*bis*, 92*ter* and 92*quater* of the Rules of Procedure and Evidence of the Special Court for Sierra Leone as amended 19 November 2007.

C. Trial Transcripts

1. Status Conference, Transcript, 10 January 2008, pages 14-21.