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(25645 - 25648)

SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER I

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

Registrar: Mr. Herman Von Hebel

Date filed: 16th April 2008

THE PROSECUTOR

against

ISSA HASSAN SESAY
MORRIS KALLON
AUGUSTINE GBAO

Case No. SCSL -2004-15-T

PUBLIC

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

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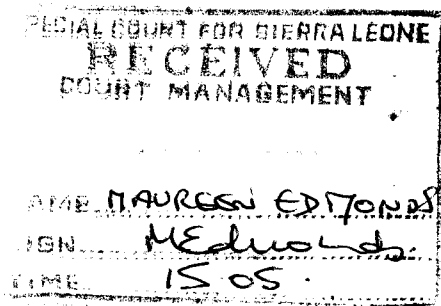
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Charles Taku
Kennedy Ogetto
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Court-Appointed Counsel for
Augustine Gbao:

John Cammegh
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INTRODUCTION:

1. On 4th April 2008, the Kallon Defence filed the “Kallon Notice of intention to rely on and adopt certain aspects of the Accused Issa Sesay’s testimony with confidential annexe” (herein called “the Kallon Notice”). The said Notice was filed as a follow-up to an earlier indication by the Kallon Defence to the Court in a Status Conference, in which the Prosecution was present, that the Kallon Defence would draw the Court’s attention to aspects of the Accused Issa Sesay’s evidence to the Court and that the Kallon Defence would seek to rely on it in defence of its case.¹ The Prosecution did not, at that material time, object to the said notification.

2. On 14th April 2008, the Prosecution filed their Response to the Kallon Notice, indicating therein that it was not their understanding that by the said Notice the Kallon Defence would seek to “adopt” the said aspects of the evidence of Issa Sesay. The Prosecution added that it was not their further understanding that Issa Sesay would thereby “become a common witness for himself and for Kallon” and that the adoption of Sesay’s evidence by Kallon would ensure “judicial economy and trial management”. They concluded that the Kallon Defence did not cite any Rule under which it is seeking to adopt the said evidence of Issa Sesay, making the Kallon Notice impermissible in the present case.²

ARGUMENT IN REPLY:

3. In reply to the foregoing arguments of the Prosecution, the Kallon Defence firstly submits that the Prosecution has deviated from the thrust and import of the Kallon Notice by trying to confuse and give different meanings to the words “rely on” and “adopt”. The Oxford Advanced Learner’s Dictionary defines the verb “to rely on/upon” *inter alia* as “to need or be dependent on somebody or something”.³ It also defines the verb “to adopt” *inter alia* as “to start to use a particular method or

¹ Status Conference Transcript, 10 January 2008, pp. 19-20.

² The Prosecution Response to Kallon’s Notice of intention to rely on and adopt certain aspects of the Accused Issa Sesay’s testimony with confidential annexe, 14 April 2008, p. 2 paras. 1-5 [SCSL-04-15-T-1080]. (Hereinafter called “Prosecution Response”).

³ 6th Edition, p. 990, edited by Sally Wehmeier.

to show a particular attitude towards somebody or something” or “formally accept a suggestion or policy by voting”.⁴ The Kallon Defence avers that the said verbs, as explained, are not mutually exclusive to give them the kinds of meaning that the Prosecution intends. What the Kallon Defence seeks to do with its Notice is to make sure that Kallon’s case in part rests upon or becomes dependent upon those relevant portions of Sesay’s evidence to the Court that are contained in the Kallon Notice. This way, the Kallon Defence ‘formally accepts’ the said evidence in order, as noted by the Court, to maintain judicial economy and ensure trial management, which is one of the primary objects of the Kallon Notice.

4. The Kallon Defence notes that the Prosecution itself admits that Sesay’s evidence is an “admissible evidence (...) on record”, and that once the said evidence is on record, “any party can in submissions seek to rely on it for corroboration or for some other purpose”.⁵ It is therefore untenable to simultaneously submit on the same averment that it is unnecessary to give notice to rely on such evidence. The relevant portions of the Sesay testimony relied upon to be adopted by the Kallon Defence are part of the Court’s record, which the Prosecution can rightly use, if they so choose, to cross-examine Kallon before he concludes his evidence in Court. The Prosecution is not therefore restrained from eliciting from Kallon the same or similar evidence they would have elicited from Sesay that by all indications touches and concerns Kallon. In particular, Issa Sesay need not be a “common witness” before an accused person can seek to rely on and adopt his tested testimony forming part of the record of the Court. Like every other witness, an accused can at any stage of the trial quote and rely on transcripts or Court records of both Prosecution and Defence witnesses to support, distinguish or disprove his case.
5. It is also the submission of the Kallon Defence that the contents of the Kallon Notice herein do not in any way prejudice or cause hardship to the case of the

⁴ Ibid, pp. 15-16.

⁵ Prosecution Response, p. 3, para. 9.

Prosecution, nor does the Prosecution allege so in their Response. The Kallon Notice simply seeks to ensure a speedy trial of the case against the Accused in order to comply with the legal requirements of the Statute of the Special Court on the Accused's right to fair, judicious and expeditious hearing.

6. Finally, it is the submission of the Kallon Defence that the relevant Rules governing the admission and use of evidence, including "written statements and transcripts", and "alternative proof of facts" were amply stated and dealt with at the Status Conference of 10th January 2008 herein mentioned.⁶ It is thus redundant to argue that the Kallon Defence's failure to recite the said Rules should affect the admission by the Court of the contents of the Kallon Notice, in view of the fact that the Prosecution, as said, were present when the said Rules were dealt with at the Status Conference.

CONCLUSION:

7. For the reasons above stated, the Kallon Defence respectfully solicits a wholesome dismissal of the Prosecution's Response to the Kallon Notice.

Filed this 16th day of April 2008 by:



.....
Charles Taku

Kennedy Ogetto

Tanoo Mylvaganam

(Counsel for Morris Kallon, 2nd Accused).

⁶ The Prosecution itself admits to this in para. 1 of its Response herein at page 2. See Rules 92*bis*, 92*ter* and 92*quater* of the Rules of Evidence and Procedure of the Special Court.