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SCSL-2004-15-PT  
(6355 - 6358)

6355



**SPECIAL COURT FOR SIERRA LEONE**

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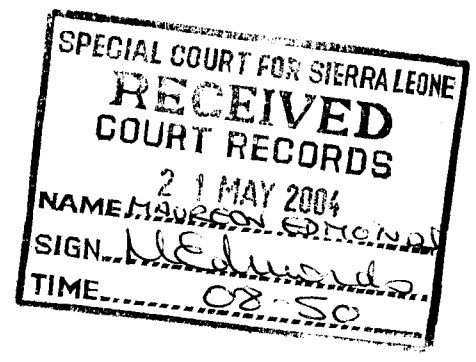
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**CS7 - NOTICE OF DEFICIENT FILING FORM**

Date:	21 <sup>st</sup> May 2004	Case Name:	The Prosecutor v. Sesay
		Case No:	SCSL-2004-15-PT
To:	<b>PROSECUTION: X</b>  <b>DEFENSE: Defence Office</b>  <b>CHAMBER: Trial Chamber</b>  <b>OTHER:</b>		
From:	Maureen Edmonds: Court Management		
CC:			
Subject	Pursuant to article 12 of the Directive to on Filing Documents before the Special Court, the following document(s) does not comply with the formal requirements laid down in Articles 3-11.		

Document(s): Defense Response to the Prosecution application for Leave to file interlocutory appeal against the decision on the Prosecution's Motion for concurrent hearing of evidence common to case SCSL-2004-15-PT and SCSL-2004-16-PT  
Dated: 20<sup>th</sup> May 2004



Reason:

- Article 5: Mis-delivered to the Court Management Section
- Article 7 : Format of Motions and other processes
- Article 8 : Lengths and sizes of briefs and others
- Article 10 : After-hours filing
- Other reasons: *Filed out of time*
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Signed: *M Edmonds*

Dated: *21<sup>st</sup> May 2004*

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**CMS7 FORM**

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6356

**THE SPECIAL COURT FOR SIERRA LEONE**

**BEFORE:**

**Judge Benjamin Itoe  
Judge Bankole Thompson  
Judge Pierre Boutet**

**Registrar: Mr. Robin Vincent**

**Date filed: 20<sup>th</sup> May 2004**

**The Prosecutor**

**-v-**

**Issa Hassan Sesay**

**Case No: SCSL – 2004 – 15 – PT**

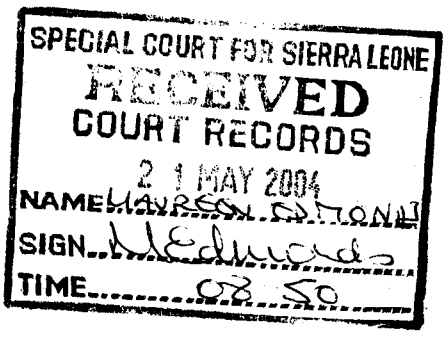
**Defence Response to the Prosecution application for  
Leave to file an interlocutory appeal against the  
decision on the Prosecution’s Motion for concurrent  
hearing of evidence common to cases SCSL -2004-15-  
PT and SCSL – 2004 – 16 - PT**

**Office of the Prosecutor**

Luc Cote  
Robert Petit

**Defence Counsel**

Tim Clayson  
Wayne Jordash  
Serry Kamal  
Sareta Ashraph



1. The Prosecution application simply reiterates its (previous and unsuccessful) arguments in support of joinder and concurrent hearings. It criticises the Honourable Trial Chambers decision on the basis that it failed to (i) properly assess the stated “detriment” to the accused<sup>1</sup> (ii) give sufficient consideration to the principles of judicial economy, consistency in jurisprudence and credibility of the judicial process<sup>2</sup> (iii) properly consider the hardship and risks to the witnesses in giving evidence twice<sup>3</sup>. In the first place the defence submit that these are unwarranted criticisms which arise due to a selective reading of the judgement. In the second place any lack of detail in the judgement is as a consequence of the Prosecutions own failure in refusing to particularise with any (or sufficient detail) the evidence (which was to be the subject of their application) the specific witnesses therein and the reasons why in *their* cases the interests of justice dictated that concurrent hearings were appropriate.
2. It ill behoves the Prosecution to complain when the various issues are adjudicated upon with a level of detail consistent with the general information given (by themselves) to the Trial Chamber; simply put if the Prosecution want to have the issues addressed by either the defence or the Trial Chamber with particularity then it should provide the necessary evidentiary detail to proceed accordingly.
3. The Prosecution fail to demonstrate either “exceptional circumstances” or “irreparable prejudice”. Their assertions that (i) *over* one hundred and fifty witnesses” will have to testify twice<sup>4</sup> (ii) “*to a large extent*” (they are) still subject to fear and trauma<sup>5</sup> and (iii) there “is a *high probability*, that as a result of the hardships and risks involved, *some* witnesses will not appear for the second trial”<sup>6</sup> simply illustrate (again) the unwillingness of the Prosecution to “nail their colours to the mast” and provide the type of detail which might allow these issues to be adjudicated upon above and beyond generalities and basic principles.
4. Moreover the generalities relied upon in support of their applications do not provide any further detail or argument than that provided in the Prosecutions previous (unsuccessful) arguments (as contained in identical form in both their joinder and concurrent hearing applications.

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<sup>1</sup> See para 4 of the Motion

<sup>2</sup> See para 6 of the Motion

<sup>3</sup> See para 8 of the Motion

<sup>4</sup> See para 12 of the Motion

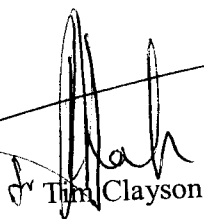
<sup>5</sup> See para. 13 of the Motion

<sup>6</sup> See para 16 of the Motion

**CONCLUSION**

5. The defence hereby respectfully prays that the Trial Chamber rejects the Prosecutions request for leave to file an interlocutory appeal against its decision on the matter of the concurrent hearing of common witnesses.

Dated the 20th day of May 2004



Tim Clayson

Wayne Jordash

Serry Kamal

Sareta Ashraph