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SCSL-04-15-T
(18268-18272)

18268

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

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

Interim Registrar: Mr. Lovemore G. Munlo, SC

Date filed: 7 March 2006

THE PROSECUTOR

Against

Issa Hassan Sesay
Morris Kallon
Augustine Gbao

Case No. SCSL-04-15-T

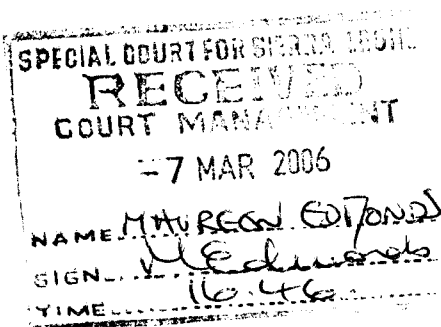
PUBLIC
PROSECUTION REPLY TO KALLON AND GBAO RESPONSES TO PROSECUTION
APPLICATION FOR LEAVE TO AMEND INDICTMENT

Office of the Prosecutor:
Christopher Staker
James C. Johnson
Peter Harrison

Defence Counsel for Issa Hassan Sesay
Wayne Jordash
Sareta Ashraph
Chantal Refahi

Defence Counsel for Morris Kallon
Shekou Touray
Charles Taku
Melron Nicol-Wilson

Defence Counsel for Augustine Gbao
Andreas O'Shea
John Cammegh



I. INTRODUCTION

1. The Prosecution files this consolidated reply to the Kallon and Gbao responses¹ to the “Prosecution Application for Leave to Amend the Indictment”, filed on 20 February 2006 (the “**Prosecution Application**”).²
2. The Prosecution arguments in support of its application are set out in the Prosecution Application. The present Reply responds to specific arguments in the Kallon and Gbao Responses.
3. The Prosecution notes that none of the Defence Responses object to the proposed amendment to paragraph 31 of the Indictment. The submissions below relate to the proposed amendment to paragraphs 48, 62 and 80 of the Indictment.
4. In addition to the specific arguments in reply set out below, the Prosecution also relies, in reply to the Kallon and Gbao Responses, on the arguments set out in the Prosecution Reply to the Sesay Response.

II. REPLY TO KALLON RESPONSE

5. Paragraphs 13-14 of the Kallon Response argue that there has been a delay in the bringing of this Prosecution Application, and that it was evident from witness statements disclosed to the Defence up to two years ago that some of the witnesses may give evidence of crimes falling outside the timeframe stated in the Indictment. The Prosecution refers to paragraph 15 of the Prosecution Reply to the Sesay Response. These paragraphs of the Kallon Response affirm that the Defence has been on notice for some time that some of the crimes alleged in paragraphs 48, 62 and 80 of the Indictment may have occurred outside the timeframe specified in those paragraphs.
6. Paragraphs 15-16 of the Kallon Response argues, without any detail, that there is a presumption against amendment of indictments “unless the circumstances of the case so dictate” and that the Indictment in this case has been amended already. However, nothing prevents an indictment being amended more than once, and the circumstances of the case dictating an amendment are dealt with above and in the Prosecution Application.

¹ *Prosecutor v Sesay, Kallon, Gbao*, SCSL-04-15-T-506, “Public Gbao Response to Prosecution Motion to Amend the Indictment”, 2 March 2006 (“**Gbao Response**”); SCSL-04-15-T-501, “Public Defence Response to Prosecution Application for Leave to Amend the Indictment on Behalf of the Second Accused, Morris Kallon”, 2 March 2006 (“**Kallon Response**”); referred to collectively as “**Defence Responses**”.

² *Prosecutor v Sesay, Kallon, Gbao*, SCSL-04-15-T-488, “Public Prosecution Application for Leave to Amend Indictment, 20 February 2006 (“**Prosecution Application**”).

7. As to paragraphs 17-18 of the Kallon Response, see paragraphs 4, 10 and 14 of the Prosecution Reply to the Sesay Response, and the Conclusion thereto.
8. Paragraph 19 of the Kallon Response argues that if the proposed amendment is allowed, the timeframe stated in paragraphs 48, 62 and 80 of the Indictment would be unacceptably broad. However, this Trial Chamber has already held that in cases before international criminal courts, “The sheer scale of the alleged crimes makes it ‘impracticable’ to require a high degree of specificity in such matters as the identity of the victims and the time and place of the events”,³ and that a timeframe could acceptably be formulated, for instance, as “At all times relevant to this Indictment”.⁴
9. As to paragraphs 20-22 of the Kallon Response, see paragraphs 4, 10 and 14 of the Prosecution Reply to the Sesay Response, and the Conclusion thereto. The argument in these paragraphs appears to be premised on the assumption that the proposed amendments amount to “new charges”, which, for the reasons given elsewhere in the Prosecution Reply to the Sesay Response, the Prosecution submits that they do not.
10. Paragraph 23 of the Kallon Response argues that the proposed amendments will alter the case of command responsibility against Kallon, by extending the period of alleged command responsibility by a year and a half. That is not the case, since Kallon is already charged with command responsibility in respect of crimes committed in the Kono District up until at least January 2000.⁵
11. As to paragraph 26 of the Kallon Response, see paragraph 10 of the Prosecution Reply to the Sesay Response and the Conclusion thereto.
12. Paragraph 27 of the Kallon Response adds nothing by way of argument.
13. As to paragraphs 24-25 and 28-32 of the Kallon Response, see paragraph 15 of the Prosecution Reply to the Sesay Response. These paragraphs are premised on the view that the proposed amendments contain “new charges”, which, for the reasons given elsewhere in the Prosecution Reply to the Sesay Response, the Prosecution submits that they do not.

III. REPLY TO GBAO RESPONSE

14. Paragraph 2 of the Gbao Response argues that the Prosecution confuses the issue of the *Dossi* principle with issues concerning amendments to indictments. That is not so—the quote from

³ *Prosecutor v Sesay*, SCSL-2003-05-PT-080, “Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment”, Trial Chamber, 13 October 2003, para. 21.

⁴ *Ibid.*, para. 21.

⁵ Indictment, para. 71.

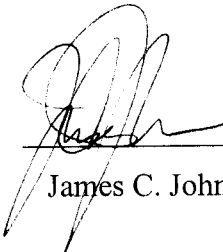
Archbold in the Prosecution Application⁶ clearly refers to the desirability of amending an indictment during trial once it appears that dates stated in an indictment may not be correct.

15. As to paragraphs 3-6 of the Gbao Response, see paragraphs 4, 10 and 14 of the Prosecution Reply to the Sesay Response, and the Conclusion thereto.
16. As to paragraphs 7-8 of the Gbao Response, see paragraph 15 of the Prosecution Reply to the Sesay Response.
17. As to paragraphs 9-11 of the Gbao Response, see paragraphs 5, 7 and 12 of the Prosecution Reply to the Sesay Response.

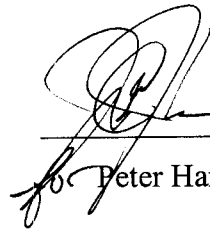
Filed in Freetown,

7 March 2006

For the Prosecution,



James C. Johnson



Peter Harrison

⁶ Prosecution Application, para. 6.

List of Authorities

1. *Prosecutor v Sesay, Kallon, Gbao*, SCSL-04-15-T-502, “Public Defence Response to Prosecution Application for Leave to Amend the Indictment”, 2 March 2006.
2. *Prosecutor v Sesay, Kallon, Gbao* SCSL-04-15-T-506, “Public Gbao Response to Prosecution Motion to Amend the Indictment”, 2 March 2006.
3. *Prosecutor v Sesay, Kallon, Gbao*, SCSL-04-15-T-501, “Public Defence Response to Prosecution Application for Leave to Amend the Indictment on Behalf of the Second Accused, Morris Kallon”, 2 March 2006.
4. *Prosecutor v Sesay, Kallon, Gbao*, SCSL-04-15-T-488, “Public Prosecution Application for Leave to Amend Indictment, 20 February 2006.
5. *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-AR73-397, “Decision on Amendment of the Consolidated Indictment”, Appeals Chamber, 16 May 2005.
6. *Prosecutor v Sesay*, SCSL-2003-05-PT-080, “Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment”, Trial Chamber, 13 October 2003.
7. *Prosecutor v Akayesu*, ICTR-96-1-A, “Judgement”, Appeals Chamber, 1 June 2001, (<http://65.18.216.88/ENGLISH/cases/Akayesu/judgement/Arret/index.htm>)
8. *Prosecutor v Rutaganda*, ICTR-96-3-A, “Judgement”, Appeals Chamber, 26 May 2003, (<http://65.18.216.88/ENGLISH/cases/Rutaganda/decisions/030526%20Index.htm>)
9. *R v Dossi*, 13 CR.App.R. 158 (CCA)