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SCSL-04-15-T
(25809 - 25816)

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THE SPECIAL COURT FOR SIERRA LEONE

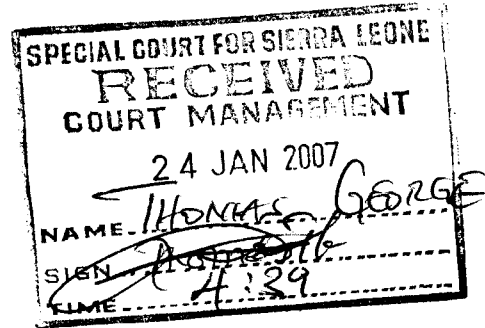
BEFORE:

Hon. Justice Bankole Thompson, Presiding
Hon. Justice Benjamin Itoe,
Hon. Justice Pierre Boutet

Registrar: Mr. Lovemore G. Munlo, SC

Date filed: 24th January 2007

The Prosecutor



-v-

Issa Hassan Sesay

Case No: SCSL - 04 - 15 - T

Defence Application for an Adjournment of the 16th February 2007 Filing

Office of the Prosecutor

Mr. Stephen Rapp
Dr. Christopher Staker
Mr. Peter Harrison
Mr. Mohammed A. Bangura

Defence Counsel for Issa Sesay

Wayne Jordash
Sareta Ashraph

Defence Counsel for Morris Kallon

Shekou Touray
Charles Taku
Melron Nichol-Wilson

Defence Counsel for Augustine Gbao

Andreas O'Shea
John Cammegh

INTRODUCTION

1. The Sesay Defence (“Defence”) acknowledges and is grateful for the Trial Chamber’s intervention in its 24th January 2007 Decision in which most of the additional logistical resources sought by the Defence were granted. These additional logistical resources will allow the Defence to work more effectively henceforth.
2. The following application concerns itself with the immediate consequences of the previous lack of resources.
3. On the 30th October 2006 Trial Chamber I issued a “Scheduling Order Concerning the Preparation and the Commencement of the Defence Case”.¹ The Defence was ordered to file, no later than Friday 16th February 2007, a number of items with the Court, including:
 - (a) a “core” and “back up” list of all the witnesses that each Defence team intends to call, including:
 - (i) a detailed summary of each witness’ testimony [which should] be sufficiently descriptive to allow the Prosecution and the Chamber to appreciate and understand the nature and content of the proposed testimony; and
 - (ii) the points of the Indictment to which each witness will testify, including the exact paragraph/s and the specific count/s; and
* * *
 - (e) a list of exhibits ... containing a brief description of their respective nature and contents.²
4. Additionally the Trial Chamber ordered that the defence case shall commence on Tuesday 2nd May 2007.
5. The Defence herewith files an application to adjourn the 16th February 2007 filing until the 5th March 2007.

¹ *Prosecutor v. Sesay et al.*, SCSL-04-15-659 (“Order”).

² *Id.*, at paragraph 1(a)(i)-(v).

APPLICATION

6. It is submitted that the Sesay defence case, consisting of a possible 250-plus witnesses, is one of the largest individual defence cases in modern International Tribunal history. The one notable exception to this might be the *Milosevic* trial at the ICTY which - due to its size and complexity - was beset with case management difficulties, delayed hearings, and ill health of the Accused. However, this trial was situated in the Hague, and witnesses were resident in the former Yugoslavia where the infrastructure (roads, telephone and written communication, medical care, housing, registration of addresses, access to vehicles) and the ability to keep track of witnesses is infinitely better than in Sierra Leone. It is respectfully submitted that the defence preparation in the Sesay case, bearing in mind these factors and the anticipated size and complexity of the defence case, is unique.

7. The sheer number of witnesses willing to give evidence on behalf of Mr. Sesay is unprecedented. The witnesses are located across the full length and breadth of Sierra Leone, in other parts of Africa, and in Asia. The locating and interviewing of these witnesses is but one aspect of the case preparation. There are a multitude of other ancillary tasks – all of which are being done by a team of 4-5 lawyers. This includes legal drafting and research, typing up and summarising prospective testimony, logging hundreds of exhibits, summarising and analysing the Prosecution case to assess the legal consequence of every piece of evidence, and taking instructions from the client regarding every piece of evidence. This is alongside other important work for defence case preparation.

8. A *single* Prosecution allegation might generate hours of defence work. A single allegation that Sesay had a farm in Giema where he forced civilians to work entails (i) summarising the allegation; (ii) analysing the allegation alongside the Prosecution and Defence cases thus far; (iii) taking instructions from the client; (iv) sending an investigation team to seek witnesses from Giema and nearby locations; (v) taking prospective testimony from prospective witnesses; (vi) summarising and analysing the prospective defence witness testimony; and finally (vii) taking further instructions

from the client on the prospective evidence and what other exculpatory evidence might exist. Mr. Sesay faces literally hundreds of allegations. The Defence intends to rebut every single one.

Specific Difficulties

9. The difficulties which pertain to this application (above and beyond the sheer size of the Prosecution and Defence cases) concern the lack of availability of transport to allow important investigation trips to take place. The Sesay legal assistants all returned to Sierra Leone by the 8th January 2007. It was the hope and expectation that two investigation trips would be able to set off on the 10th January 2007 - one to Kono and one to Kailahun. Immediately after these trips it was envisaged that a third investigation trip to Kenema would take place. Counsel and the legal assistants had agreed that in order to be ready for the 16th February filing and the 2nd May 2007 trial date, continuous investigation trips would be necessary through January to May 2007.

10. The Defence team visited Kailahun and Kono in November/December 2006 doing team Outreach/sensitisation. There were a large number of prospective new witnesses (approximately 22 known new witnesses in Kailahun alone) ranging from G5's, MP's, intelligence officers, medical officers, miners, nurses, teachers, pastors, imams, and witnesses who have knowledge of what occurred on the training bases. These are all potentially hugely significant witnesses. All consented to be interviewed. It was arranged that investigation teams would return in early January 2007 to both Kailahun and Kono to conduct preliminary interviews and thereafter assess the witnesses' prospective testimony. Prospective witnesses in Kenema were also informed of an investigation team's anticipated arrival in January 2007.

11. The investigation trip to Kono was launched on 13th January 2007. The investigation trips to Kailahun and Kenema have yet to leave Freetown. Court Transport is doing its best to accommodate the team requirements but is hampered by (i) a lack of vehicles for the use of the Defence; and (ii) a Registry policy which dictates that the

defence teams, in totality, are permitted only to conduct two trips at any given time. At this moment the Kallon team has one trip. The Sesay team has another.

12. As a consequence of this delay the Sesay investigation teams are approximately two weeks behind their envisaged investigation plan and case preparation.
13. Court Transport has indicated that it might be able to provide a vehicle to the Defence for investigation purposes by Monday 29th January 2007. At this stage, the Sesay investigation trip to Kono will have returned (26th January 2007). It is anticipated that the Kallon trip will return on the 28th January 2007. Vehicles require a 48 hour turn-around before they are able to travel up-country again.
14. It is anticipated that there will be sufficient time to analyse the prospective evidence of the new witnesses in Kono District found during the investigation trip to be able to ensure that the details of the evidence are properly summarised and compiled into the 16th February filing.
15. However, it is anticipated that the Sesay investigation trip to Kailahun, leaving on Monday 29th January (if a vehicle is available), will return two weeks later leaving insufficient time to properly analyse, summarise, and compile the prospective evidence found during that investigation trip before the 16th February filing. It is still unclear to the Defence when the planned investigation trip to Kenema will be able to launch.
16. The Defence is working day and night to accomplish the various tasks to be ready to commence its case on the 2nd May. The Defence does not believe that the interests of justice are served by any adjournment to the trial date.
17. Nevertheless the Defence will not be ready to comply with the filing deadline of the 16th February. The 22 witnesses in Kailahun alone may well all prove to be significant but we will not be in a position to include them in our filings. We will

have insufficient time to interview them, summarise their prospective testimony, and then work out within the Defence strategy who shall be called to testify, who will be placed onto the back up list, and whose testimony will not be pursued. We do not want to be forced to apply to add additional witnesses nor do we want to guess at their anticipated testimony in order to include them in the filing. The same applies to witnesses in Kenema.

18. It is anticipated that the Defence, could be ready to file by the 5th March 2007. It is respectfully submitted that this would not prejudice the Prosecution who would still have adequate (and accurate) notice of the Defence case a full two months before it commenced. Moreover, the Defence has cross-examined extensively and, it is submitted, has revealed its case substantially throughout the course of the last two years. There will be few, if any, surprises in the evidence that is led on behalf of Mr. Sesay.

19. It is acknowledged that Article 17 of the Statute of the Special Court provides Mr. Sesay with a number of rights including the right to a fair and expeditious trial, and the right to adequate time and facilities in the preparation of his defence. An adjournment to the 5th March 2007 would provide the Defence with adequate time in the preparation and presentation of this aspect of the defence case³ without endangering Mr. Sesay's right to an expeditious trial which would still commence on 2nd May 2007.


³ *Prosecutor v. Tadic*, IT-94-1-A, "Judgement", Appeals Chamber, 15 July 1999, paragraph 47.

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REQUEST

20. The Defence respectfully (and regretfully) seeks an adjournment of the 16th February 2007 filing date until the 5th March 2007.

Dated 24th January 2007



Wayne Jordash
Sareta Ashraph

Counsel, Sesay Defence Team

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BOOK OF AUTHORITIES

Prosecutor v. Sesay et al., SCSL-04-15-659, “Scheduling Order Concerning the Preparation and the Commencement of the Defence Case”, 30 October 2006.

Prosecutor v. Tadic, IT-94-1-A, “Judgement”, Appeals Chamber, 15 July 1999.