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SCSL-04-15-T
(25455-25459)

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
FREETOWN – SIERRA LEONE

TRIAL CHAMBER I

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

Registrar: Mr. Lovemore G. Munlo SC

Date filed: 20 October 2006

THE PROSECUTOR

Against

Issa Hassan Sesay
Morris Kallon
Augustine Gbao

Case No. SCSL-04-15-T

**RESPONSE TO THE SESAY REQUEST FOR CONSIDERATION OF ADDITIONAL LOCATIONS
RELEVANT TO THE RULE 98 MOTION AND REGARDING ANOTHER ALLEGATION FILED ON A
CONFIDENTIAL BASIS**

Office of the Prosecutor:
Mr. James Johnson
Mr. Mohamed A. Bangura
Ms. Shyamala Alagendra

Defense Counsel for Issa Hassan Sesay
Mr. Wayne Jordash
Ms. Sareta Ashraph

Defense Counsel for Morris Kallon
Mr. Shekou Touray
Mr. Charles Taku
Mr. Melron Nicol-Wilson

Defense Counsel for Augustine Gbao
Mr. Andreas O'Shea
Mr. John Cammegh

SPECIAL COURT FOR SIERRA LEONE
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COURT MANAGEMENT
20 OCT 2006
NAME Advera Nsiima K.
SIGN Nsiima
TIME 15-04

I. PRELIMINARY OBJECTION

1. The additional request filed by Sesay, “Sesay Defence Team Request For Consideration Of Additional Locations When Considering The Sesay Rule 98 Motion” (“Sesay Request”) was filed 4 weeks after the time limit for filing the Defence skeletal motions for Rule 98.¹ The Sesay Request is out of time and should be dismissed, although to assist the Trial Chamber in reviewing the evidence the Prosecution concedes that there is no evidence with respect to Kabala and Kurubonla, both in Koinadugu District, for Counts 3 to 5.

II. EVIDENCE RELATING TO LOCATIONS IN ISSUE

2. The Prosecution relies upon the following evidence in support of the following locations raised in the Sesay Request:
 - Counts 3 to 5 – at Sembehun, Bo District, para. 46 of Indictment; TF1-008, T. 8.12.05, pp. 36-38.²
 - Counts 3 to 5 – at Mortema, Kono District, para. 48 of Indictment; TF1-071, T. 19.1.05, pp. 30-33.³
 - Counts 3 to 5 – at Kabala, Koinadugu District, para 50 of Indictment; the Prosecution concedes there is no evidence.
 - Counts 3 to 5 – at Kurubonla, Koinadugu District, para. 50 of Indictment; the Prosecution concedes there is no evidence.
 - Counts 3 to 5 – Koinadugu, Koinadugu District, para. 50; TF1-184, T. 5.12.05, pp. 23-24; TF1-212, T. 8.7.05, pp. 110-112.
 - Counts 3 to 5 – Nonkoba, Port Loko District, para. 53 of Indictment; TF1-345, T. 19.7.06, pp. 25-39.
 - Counts 6 to 9 – Kabala, Koinadugu District, para. 56 of Indictment; the Prosecution advised in its filing of 17 October 2006, that there is no evidence.⁴

¹ *Prosecutor v. Sesay et al*, SCSL-04-15-T-621, “Scheduling Order Concerning Oral Motion For Judgement Of Acquittal Pursuant To Rule 98”, 2 August, 2006, p. 4.

² See in particular, TF1-008, T. 8.12.05, p. 37, lines 5-7, where in referring to the shooting of Tommy Bockarie, the witness said “... at that time that they killed that fellow, I was afraid and I went into the bush to look for my people.”

³ *Prosecutor v. Sesay et al*, SCSL-04-15-T-653, “Prosecution Answers To Questions From The Trial Chamber Regarding Evidence Relevant To Specific Locations Named In The Indictment,” 17 October 2006, para. 2.

⁴ *Supra*, para. 3.

- Counts 6 to 9 – Mandaha, Bombali District, para. 57; TF1-031, T. 17.3.06, pp. 87-89. The witness testified in 2006 and said she was 60 years old, and she said the events in issue happened during the rainy season when she was 52.⁵ Therefore, the events would have happened during the rainy season of 1998. The surrounding events referred to by the witness were referred to by other witnesses, and took place in 1998.⁶ Although the Sesay Request says that the witness referred to her daughter being “deflowered”, in fact the witness said “...the rebels raped her and deflowered her, but I wouldn’t know which particular person did that to her.”⁷
- Counts 10 to 11 – Wonedu, Kono District, para. 62 of Indictment; TF1-015, T. 31.1.05, pp. 3-9, where the witness describes the event and the first accused’s cross-examination at pp. 24-25, from which it is apparent the event happened at Wundidu, similarly the cross-examination by the second accused at T. 31.1.05, p.81; and T. 28.1.05, p. 2-3 and 7-20 where the location is spelled Wundidu, and the transcript of 27.1.05, pp. 148-149, where the location is spelled Wenedu. The Prosecution says that Wundidu and Wenedu are different spellings of Wonedu.
- Count 10 to 11 – Kabala, Koinadugu District, para. 64 of Indictment, TF1-272, T. 5.7.05, pp. 56-58; and TF1-117, 29.6.06, pp. 111-114.⁸

III. ASSERTION OF INSUFFICIENT EVIDENCE THAT SESAY RAPED JPK’S WIFE

3. The Sesay Request also seeks a distinct form of relief. It seeks a ruling that there is insufficient evidence to sustain a conviction that Sesay raped JPK’s wife. The Trial Chamber advised that it would acquit on counts, where there is no evidence to support the count, as required by Rule 98, and rule on whether there was no evidence with respect to a particular location stated in the Indictment. The authorities relied upon in the “Consolidated Prosecution Skeleton Response To The Rule 98 By The Three Accused,”⁹

⁵ Transcript, 17.3.06, pp. 78-79.

⁶ For example see TF1-167, T. 14.10.04, pp. 82-91; TF1-334, Ex. 119 (AFRC Transcript, 23.5.05, pp. 77-79).

⁷ Transcript, 17.3.06, p. 89.

⁸ TF1-117 states that the group he was with settled on the outskirts of Kabala and the transcript records the location as “One Mile” which is the “first place you will get to before you enter Kabala Town.” (p. 111). TF1-117 gives evidence of hands being cutting off, the cutting of breasts, and dropping burning plastic onto the backs of victims.

⁹ *Prosecutor v. Sesay et al*, SCSL-04-15-T-650, “Consolidated Prosecution Skeleton Response To The Rule 98 Motions By The Three Accused”, 6 October 2006, paras. 3-5.

make clear that a Rule 98 motion should not undertake a review of all allegations contained in an Indictment. It is limited to determining whether there is no evidence to support a count of the Indictment, and if not, to acquit on the count.

- 4. The relief sought falls outside both categories referred to by the Trial Chamber, and the Prosecution emphasizes that the matter was not raised in either the skeleton motion or in the oral hearing, and raising it at this late date is simply unfair and contrary to procedure set out in the Trial Chamber’s Order of 2 August 2006.¹⁰
- 5. There is ample evidence to support a conviction for Counts 6 to 9, and this is no time to raise such a matter or attempt to change the law so that individual allegations, which are not specific to particular locations stated in the Indictment, should form part of the arguments and deliberations of a Rule 98 motion.

Filed in Freetown,
20 October 2006.

For the Prosecution,

per P. H. Harrison
James C. Johnson

P. H. Harrison
Pete Harrison

¹⁰ *Prosecutor v. Sesay et al*, SCSL-04-15-T-621, “Scheduling Order Concerning Oral Motions For Judgement Of Acquittal Pursuant To Rule 98,” 2 August 2006.

List of Authorities**A. Orders**

Prosecutor v. Sesay et al, SCSL-04-15-T-621, “Scheduling Order Concerning Oral Motions For Judgement Of Acquittal Pursuant To Rule 98,” 2 August 2006.

B. Filings

Prosecutor v. Sesay et al, SCSL-04-15-T-650, “Consolidated Prosecution Skeleton Response To The Rule 98 Motions By The Three Accused”, 6 October 2006

Prosecutor v. Sesay et al, SCSL-04-15-T-653, “Prosecution Answers To Questions From The Trial Chamber Regarding Evidence Relevant To Specific Locations Named In The Indictment,” 17 October 2006