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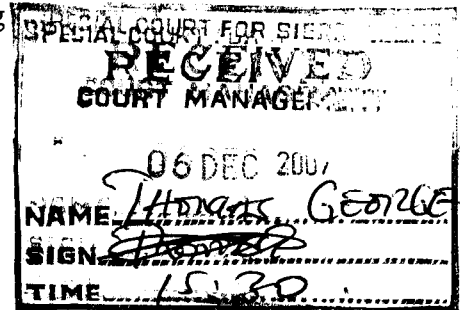
SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown - Sierra Leone

32207

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

Acting Registrar: Mr. Herman Von Hebel

Date filed: 6 December 2007



THE PROSECUTOR

Against

**Issa Hassan Sesay
Morris Kallon
Augustine Gbao**

Case No. SCSL-04-15-T

PUBLIC

PROSECUTION RESPONSE TO THE GBAO REQUEST FOR LEAVE TO CALL TWO ADDITIONAL WITNESSES AND FOR ORDER OF PROTECTIVE MEASURES

Office of the Prosecutor:

Mr. Peter Harrison
Mr. Charles Hardaway
Mr. Reginald Fynn

Defense Counsel for Issa Hassan Sesay

Mr. Wayne Jordash
Ms. Sareta Ashraph

Defense Counsel for Morris Kallon

Mr. Shekou Touray
Mr. Charles Taku
Mr. Kennedy Ogetto
Mr. Lansana Dumbuya

Defense Counsel for Augustine Gbao

Mr. John Cammegh
Ms. Prudence Acirokop

I. INTRODUCTION

1. The Prosecution files this Response to the Gbao Request for Leave to Call Two Additional Witnesses and for Order for Protective Measures (“Gbao Request”).¹

II. SUBMISSIONS

2. The rule applicable to the addition of witnesses to the witness list is Rule 73ter(E) of the Rules of Procedure and Evidence (RPE).² The rule states:

After the commencement of the defence case, the defence may, if it considers it to be in the interest of justice, move the Trial Chamber to reinstate the list of witnesses or to vary its decision as to which witnesses are to be called.
3. The case law states that two principles should be taken into account when deciding upon the admission of new witnesses. The first is that good cause has to be shown by the requesting party: credible justification for failing to disclose the new witnesses within the time frame has to be provided.³ The second is that it has to be shown that acceptance of the additional witness serves the interest of justice.⁴
4. The Prosecution has reviewed the Gbao Request and have found the following paragraphs to have met the requirements as set out in paragraph seven of the Gbao Request and paragraph three of the Prosecution Response: 12, 14, 15, 16, 17, 18, 20, 23, 24 and 26.
5. The Prosecution has reviewed the Gbao Request and have found the following paragraphs to have **not** met the requirements as set out in paragraph seven of the Gbao Request and paragraph three of the Prosecution Response: 13 and 19.

¹ *Prosecutor v. Sesay Kallon Gbao*, SCSL-04-15-T-902, “Gbao Request for Leave to Call to Call Two Additional Witnesses and for Order for Protective Measures, with Annex A and *Ex Parte* Annex B”, 3 December 2007.

² Rules of Procedure and Evidence of the Special Court for Sierra Leone as amended at the tenth Plenary on 19 November 2007, (RPE).

³ *Prosecutor v. Sesay Kallon Gbao*, SCSL-04-15-T-320, “Decision on Prosecution Request for Leave to Call Additional Witnesses and Disclose Additional Witness Statements”, 11 February 2005, para. 34.

⁴ Rule 73ter(E) RPE, See also *Prosecutor v Ferdinand Nahimana, Hassan Ngeze, Jean Bosco Barayagwiza*, ICTR-99-52-1, “Decision on the Prosecutor Oral Motion to Amend the List of Selected Witnesses”, 26 June 2001 paras. 17 and 19; *Prosecutor v Theoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze, Anatole Nsengiyumva*, ICTR-98-41-T, “Decision on Bagosora Motion to Present Additional Witnesses and to Vary its Witness List”, 17 November 2006, para. 2.

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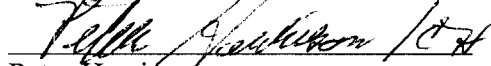
III. CONCLUSION

6. The Prosecution submits that based upon a review of the Gbao request that it has no objection to the addition of the witnesses sought or their being granted protective measures.

Filed in Freetown,

6 December 2007

For the Prosecution,



Peter Harrison

Senior Trial Attorney

INDEX OF AUTHORITIES

A. SPECIAL COURT FOR SIERRA LEONE

1. *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-902, “Gbao Request for Leave to Call to Call Two Additional Witnesses and for Order for Protective Measures, with Annex A and Ex Parte Annex B”, 3 December 2007.

2. *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-320, “Decision on Prosecution Request for Leave to Call Additional Witnesses and Disclose Additional Witness Statements”, 11 February 2005.

Rules and Regulations

1. Rule 73ter(E) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone as amended on 19 November 2007.

B. INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

1. *Prosecutor v Ferdinand Nahimana, Hassan Ngeze, Jean Bosco Barayagwiza*, ICTR-99-52-1, “Decision on the Prosecutor Oral Motion to Amend the List of Selected Witnesses”, 26 June 2001.

<http://69.94.11.53/default.htm>

2. *Prosecutor v Theoneste Bagosora, Gratién Kabiligi, Aloys Ntabakuze, Anatole Nsengiyumva*, ICTR-98-41-T, “Decision on Bagosora Motion to Present Additional Witnesses and to Vary its Witness List”, 17 November 2006.

<http://69.94.11.53/default.htm>