

(1045)

SCSL-04-15-T  
(24767 - 24771)

24767

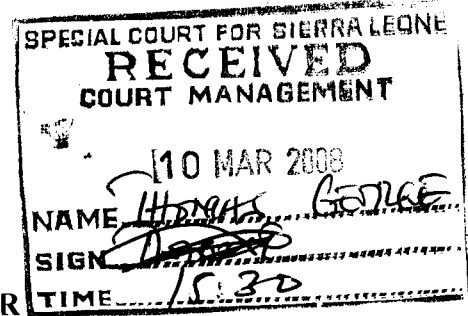
**SPECIAL COURT FOR SIERRA LEONE**  
FREETOWN - SIERRA LEONE

**TRIAL CHAMBER I**

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

Registrar: Mr. Herman von Hebel

Date filed: 10<sup>th</sup> March 2008



**THE PROSECUTOR**

v.

**Issa Hassan Sesay  
Morris Kallon  
Augustine Gbao**

Case No. SCSL-04-15-T

---

**PUBLIC**

**SESAY DEFENCE REPLY TO PROSECUTION RESPONSE TO SESAY  
DEFENCE APPLICATION FOR ADMISSION OF  
WITNESS STATEMENT OF DIS-129 UNDER RULE 92BIS  
OR, IN THE ALTERNATIVE UNDER RULE 92TER**

---

Office of the Prosecutor  
Mr. Peter Harrison  
Mr. Reginald Fynn  
Mr. Charles Hardaway  
Mr. Vincent Wagona

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

Defence Counsel for Morris Kallon  
Mr. Charles Taku  
Mr. Kennedy Ogetto  
Mr. Lansana Dumbuya  
Ms. Tanoo Mylvaganam

Defence Counsel for Augustine Gbao  
Mr. John Cammegh  
Mr. Scott Martin

1. On 10<sup>th</sup> March 2008, the Prosecution filed its Response<sup>1</sup> to the Sesay Defence's Application for the Admission of the statement of DIS-129 under Rule 92*bis* or alternatively under Rule 92*ter*.<sup>2</sup>

### **Rule 92*ter***

2. The Prosecution does not consent to the statement being admitted under Rule 92*ter* but provides no reasons for its objection.
3. While the Defence agrees that Rule 92*ter* states that admission of evidence should be "with the agreement of the parties", we submit that, as a principle, reasons should be provided as a means of ensuring that any lack of consent accords with the parties' commitment to the interests of justice.

### **Rule 92*bis***

#### *Objection in relation to time limits*

4. The Application, filed on 6<sup>th</sup> March 2008, is 3 days' short of the notice requirement under Rule 92*bis*. This was a result of DIS-129 being involved in a vehicular accident between Kailahun and Kenema and having to return to Kailahun for several days to receive medical treatment before coming to Freetown. The Trial Chamber will note that the statement was finalised on the day the Application was filed.
5. The Defence submit that there is no prejudice to the Prosecution caused by a 3 day shortfall in the notice period, particularly in light of the fact that the statement is in their possession and the witness is available for cross-examination.

#### *Objection in relation to need for cross-examination*

6. The witness is available for cross-examination by the parties and no objection is taken

---

<sup>1</sup> *Prosecutor v. Sesay et al.*, Prosecution Response to Sesay Defence Application for the Admission of the Witness Statement of DIS-129 under Rule 92*bis* or, in the alternative, under Rule 92*ter*, 10<sup>th</sup> March 2008, SCSL-04-15-T-1041 (the 'Response').

<sup>2</sup> *Prosecutor v. Sesay et al.*, Sesay Defence Application for the Admission of the Witness Statement of DIS-129 under Rule 92*bis* or, in the alternative, under Rule 92*ter*, 6<sup>th</sup> March 2008, SCSL-04-15-T-1036 (the 'Application').

by the Sesay Defence to such cross-examination taking place. Consequently, we submit the Prosecution's submissions in paragraphs 7-10 are moot.

*Objection relating to evidence going to proof of the 'acts and conduct of the accused'*

7. Throughout the Prosecution's own Applications for the admission of evidence under Rule 92bis, the Prosecution has defined evidence going to proof of the 'acts and conduct as
 

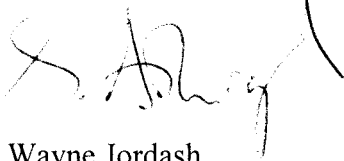
the evidence the Prosecution seeks to admit pursuant to Rule 92bis is evidence of the matters alleged in the Indictment as opposed to the evidence directly implicating any of the Accused persons in the perpetration of a crimes. Therefore, the evidence does not go to prove the acts of conduct of the Accused. Examples of such 'background evidence' include evidence demonstrating the occurrence of crimes in a certain location, or in a widespread or systematic manner.<sup>3</sup>
8. The witness statement filed in the Application is a description of life under the RUF in Kailahun district based on what the witness saw or heard. It does not concern the acts and conduct of the accused, as defined by international jurisprudence or by the Prosecution in the applications made during its case.
9. To widen the definition of 'acts and conduct of the Accused' to including evidence relating to joint criminal enterprise and command responsibility for subordinates, immediate or otherwise, render the efficacy of Rule 92bis illusory. Mr. Sesay is said to be a joint criminal enterprise with all members of the AFRC and RUF and to have effective command and control of all members of the RUF. Should Rule 92bis be widened to include evidence of joint criminal enterprise and command responsibility, the effect would be that no relevant evidence could be admitted under this Rule.
10. The Defence submits that the entirety of the statement of DIS-129 is relevant and admissible under Rule 89(C).

---

<sup>3</sup> *Prosecutor v. Sesay et al*, Prosecution Notice to Admit the Transcripts of Testimony of TF1-023, TF1-104 and TF1-269, para 17, 25<sup>th</sup> October 2005, SCSL-04-15-T-433; *Prosecutor v. Sesay et al.*, Prosecution Notice to Admit the Transcripts of Testimony of TF1-156 and TF1-179, para 12, 23<sup>rd</sup> March 2006, SCSL-04-15-T-521; *Prosecutor v. Sesay et al.*, Prosecution Notice to Admit the Transcripts of Testimony of TF1-256, para 16, 3<sup>rd</sup> May 2006, SCSL-04-15-T-543; *Prosecutor v. Sesay et al.*, Prosecution Notice to Admit the Transcripts of Testimony of TF1-256, para 17, 3<sup>rd</sup> May 2006, SCSL-04-15-T-544.

11. The Defence submits that, in the interests of judicial economy and given the lack of prejudice to the Prosecution, who hold the statement of DIS-129 and are able to cross-examine the witness, the statement ought to be admitted under Rule 92*bis* in its entirety with an order that the witness be made available for cross-examination.
  
12. The Defence we would be grateful for an indication at the earliest opportunity so we can make the appropriate arrangements.

Dated 10<sup>th</sup> March 2008



Wayne Jordash  
Sareta Ashraph

**BOOK OF AUTHORITIES**

*Prosecutor v. Sesay et al.*, Prosecution Response to Sesay Defence Application for the Admission of the Witness Statement of DIS-129 under Rule 92*bis* or, in the alternative, under Rule 92*ter*, 6<sup>th</sup> March 2008, SCSL-04-15-T-1041.

*Prosecutor v. Sesay et al.*, Sesay Defence Application for the Admission of the Witness Statement of DIS-129 under Rule 92*bis* or, in the alternative, under Rule 92*ter*, 6<sup>th</sup> March 2008, SCSL-04-15-T-1036.

*Prosecutor v. Sesay et al.*, Prosecution Notice to Admit the Transcripts of Testimony of TF1-023, TF1-104 and TF1-269, 25<sup>th</sup> October 2005, SCSL-04-15-T-433.

*Prosecutor v. Sesay et al.*, Prosecution Notice to Admit the Transcripts of Testimony of TF1-156 and TF1-179, 23<sup>rd</sup> March 2006, SCSL-04-15-T-521.

*Prosecutor v. Sesay et al.*, Prosecution Notice to Admit the Transcripts of Testimony of TF1-256, 3<sup>rd</sup> May 2006, SCSL-04-15-T-543.

*Prosecutor v. Sesay et al.*, Prosecution Notice to Admit the Transcripts of Testimony of TF1-256, 3<sup>rd</sup> May 2006, SCSL-04-15-T-544.