

445



SPECIAL COURT FOR SIERRA LEONE

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Court Management Support – Court Records

CS7 - NOTICE OF DEFICIENT FILING FORM

Date:	04/11/2005	Case No:SCSL-04-15-T	The Prosecutor – Sesay, Kallon and Gbao
To:	PROSECUTION: X DEFENCE: X CHAMBER: X OTHER:		
From:	Maureen Edmonds: Court Management		
CC:			
Subject	Pursuant to article 12 of the Directive to on Filing Documents before the Special Court, the following document(s) does not comply with the formal requirements laid down in Articles 3-11.		

Document(s): **Gbao, response to Notice to admit Transcripts in lieu of Testimony**

Dated: 03/11/2005

Reason:

- Article 5: Mis-delivered to the Court Management Section
- Article 7 : Format of Motions and other processes
- Article 8 : Lengths and sizes of briefs and others
- Article 10 : After-hours filing
- Other reasons: **Filed out of time.**
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Signed: *ME*

Dated: 4/11/05

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CMS7 FORM

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SCSL-04-15-T
(16972-16974)

16972

IN THE SPECIAL COURT FOR SIERRA LEONE

THE TRIAL CHAMBER

Before: The Trial Chamber
Justice Pierre Boutet. Presiding
Justice Benjamin Itoe,
Justice Bankole Thompson

Interim Registrar: Mr Lovemore Munlo

Date filed: 3rd November 2005

Case No. SCSL 2004 - 15 - T

In the matter of:

THE PROSECUTOR

Against

**ISSA SESAY
MORRIS KALLON
AUGUSTINE BAO**

**GBAO RESPONSE TO NOTICE TO ADMIT TRANSCRIPTS IN LIEU OF
TESTIMONY**

Office of the Prosecutor

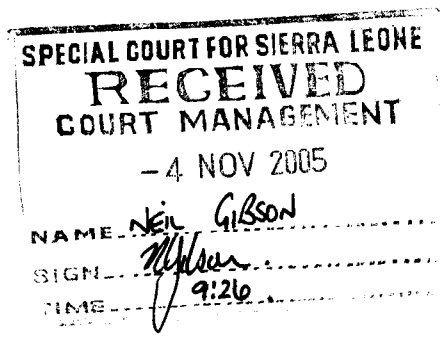
Luc Cote, Chief of Prosecutions
Lesley Taylor
Pete Harrison
Sharan Palmer

Counsel for Augustine Bao

Andreas O'Shea
John Cammegh

Counsel for co-accused

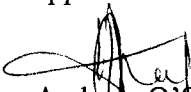
Wayne Jordash and Sareta Ashraph for Issa Sessay
Shekou Touray, Charles Taku and Melron Nicol-Wilson for Morris Kallon



1. On the 25th October 2005, the prosecution submitted a notice under Rule 92 bis of the Rules of Procedure and Evidence that it intended to offer written information in the form of transcripts of the testimony of prosecution witnesses TF1-023, TF1-104, and TF1-169 offered in the AFRC trial, in lieu of their oral examination in chief. The Defence hereby files its consent with reservations to the adoption of this procedure.
2. It is submitted that the application of Rule 92bis is a matter of judicial discretion to be exercised cautiously having regard to the rights of the accused and the fundamental interest in a fair trial. Even if the primary conditions of relevance and the ability to confirm reliability are satisfied, it is submitted that a request to forego part or whole of the oral testimony of a witness should not be granted unless in all the circumstances it is clearly in the interests of a fair trial to do so.
3. The starting point to any analysis of the application of this rule is the basic requirement of a fair trial that evidence should be in principle heard orally. This general principle of law derives from the general practice within state jurisdictions and international tribunals, as well as being implicit in Article 17(4)(e) of the Statute, and is reflected Rule 90 (A) of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda.
4. Further, with respect to transcripts from other trials it is important to keep in mind any potential prejudice which may be caused as a result of the conflict of interest between accused in different trials, a matter forming the basis of this Chamber's Decision on joinder.¹ The defence in one trial may permit matters in the examination in chief or cross-examination of a witness which the defence in another trial may legitimately object to in another trial.
5. However, in the particular circumstances of this application the defence for Gbao has decided not to oppose the prosecution request notwithstanding the above reservations. Such reservations are articulated to note for the record our discomfort in principle with the procedure being adopted by the prosecution to which we may react differently in other scenarios, and hopefully to assist the Chamber in outlining the

¹ Decision and Order on Prosecution Motions for Joinder of 27 January 2004. SCSL-2003-05-PT-096.

applicable principles in 92bis applications. It is submitted that the defence consent or non-consent should be a significant factor to be weighed in the balance in this type of application.


r Andreas O'Shea


pp John Cammegh

2 November 2005