

SCSL-04-14-T
(18965-18971)

18965

**SPECIAL COURT FOR SIERRA LEONE
Trial Chamber 1**

Before: Justice Bankole Thompson, Presiding
Justice Pierre Boutet,
Justice Benjamin Mutanga Itoe

Registrar: Mr. Lovemore G. Munlo, SC

Date: 18th July 2006

PROSECUTOR

Against

**Samuel Hinga Norman
Moinina Fofana
Allieu Kondewa**

Case No. SCSL-04-14-T

Public

**FIRST ACCUSED'S URGENT MOTION FOR LEAVE TO FILE ADDITIONAL
EXHIBITS**

Office of the Prosecutor:

Mr Christopher Staker
James Johnson
Joseph Kamara

For Samuel Hinga Norman

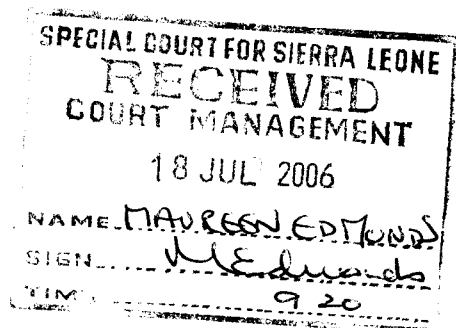
Dr. Bu-Buakei Jabbi
John Wesley Hall, Jr.
Alusine Sani Sesay

For Moinina Fofana:

Michiel Pestman
Arrow J. Bockarie
Victor Koppe

For Allieu Kondewa:

Charles Margai
Yada Williams
Ansu Lansana
Susan Wright.



INTRODUCTION

1. Counsel for the First Accused hereby files this application for leave to file additional exhibits on behalf of the First Accused pursuant to Rule 89(C), Sub Rule 73ter(E) of the Rules of Procedure and Evidence and the Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case¹ paragraph C where the Court further Orders that each Defence Teams file “a list of exhibits the Defence intends to offer in its case, containing a brief description of their respective nature and contents, and stating where possible whether or not the Prosecution has any objection as to their authenticity. *Should the Defence seek to add any exhibit to this list after the 5th of December, 2005 it may be permitted to do so only upon good cause being shown.*”
2. The Defence of the First Accused finds itself obligated, however in the interests of justice to seek leave to file additional exhibits so as to put up an effective defence.
3. On the 21st of October, The Trial Chamber issued an “Order Concerning the Preparation and Presentation of the Defence Case”² where it Ordered the Defence Teams to file a list of witnesses that each Defence Team intends to call no later than 17th of November, 2005
4. The Order was subsequently followed with “Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case”³ whereby the Trial Chamber further ordered the Defence Teams for Norman, Fofana and Kondewa to individually file materials not later than the 5th of December, 2005, at 4.00pm. In paragraph C of the said Decision, the Trial

¹ SCSL-04-14-T-489: Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case, page 3, para C, italics added

² SCSL-04-14-T-474: Order Concerning the Preparation and Presentation of the Defence Case, 21st October, 2005

³ SCSL-04-14-T-489: Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case, 28th November, 2005

Chamber ordered the Defence to file “a list of Exhibits the Defence intends to offer in its case, containing a brief description of their respective nature and content, and stating where possible whether or not the Prosecution has any objection as to their authenticity. Should the Defence seek to add any exhibit to this list after the 5th of December, 2005 it may be permitted to do so only upon good cause being shown”⁴

5. Counsel for the First Accused hereby seeks leave of the Trial Chamber to file additional exhibits which are very material to the case and which were not available to the Defence Team as of 5th of December, 2005 and also when Counsel filed its Motion for Leave to file Additional Witness and Exhibit Lists on the 3rd April, 2006.⁵

SUBMISSIONS

Defence Showing of Good Cause

6. Counsel for First Accused states that it encountered a lot of difficulties during its investigative and witness tracing exercises which hindered its ability to unearth some important documents which are very material for the defence of the First Accused and the entire trial. Counsel had indicated in its Motion, Defence Witness and Exhibit Lists⁶, that the witness and exhibit tracing exercise will thus continue in the mean time with the possibility that exhibits may be unearthed.
7. Counsel had indicated that investigation was ongoing,⁷ and following the Norman Defence Team investigative trip to Nigeria, certain documents were unearthed

⁴ Ibid, para D

⁵ SCSL-04-14-T-581: First Accused’s Urgent Motion for Leave to File Additional Witness and Exhibits Lists

⁶ SCSL-04-14-T-499: Defence Witness and Exhibit Lists for the First Accused as per the Consequential Order for Compliance of 28th November 2005 Concerning the Preparation and Presentation of the Defence Case, para 9

⁷ SCSL-04-14-T-581: First Accused’s Urgent Motion for Leave to File Additional Witness and Exhibits Lists, para 11

which are very material to the Defence of the First Accused, the Prosecution's theory of command responsibility and the entire trial. These documents were only made available to the Norman Defence Team during the second investigative trip to Nigeria from the 25th of May to 3rd June 2006 by its Legal Assistant.⁸ Counsel further states that it is because of the poor health condition of the prospective Defence Witness⁹ that Counsel had not got the documents on the earlier visit in March 2006. One of the main values or principles in international criminal adjudication is the truth, and in the words of Justice Thompson "in this quest for the truth, I am guided by the principle that it is of paramount importance for the Chamber to continue to be flexible in the process of receptivity of evidence, as it had been in the case for the prosecution, so as to ensure that no relevant evidence vital to the discovery of the truth is foreclosed by reason of legal technicalities, novel artificial judicial conceptual distinctions, or outmoded juridical doctrines not contemplated by the plain and ordinary meaning of the applicable statutory provisions and rules."¹⁰

8. In the case of *Nahimana*, the ICTR Chamber cited with approval the case of *Jelusic*, where the ICTY Trial Chamber held that "it is to be in the interests of justice that any evidence necessary to ascertain the truth be presented to it and be subjected to examination by the parties"¹¹. Counsel is submitting that it will be in the overall interests of justice to grant the First Accused leave to file the additional documents. In assessing the "interests of justice" and "good cause" Chambers have taken into consideration such matters as the materiality of the testimony, the complexity of the case, prejudice to the Defence, including elements of surprise, ongoing investigations, replacements and corroboration of

⁸ SCSL-04-14-T-612: Report about prospective Defence Witness Major General Abdul One Mohammed of Nigeria, para 3

⁹ Ibid

¹⁰ SCSL-04-14-T-617: Dissenting Opinion of Hon. Justice Bankole Thompson on Decision on Motions by Moinina Fofana and Sam Hinga Norman for the Issuance of Subpoena ad Testificandum to H.E Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone, para. 2

¹¹ *The Prosecutor v. Nahiman et al* (Case No. ICTR-99-52-1), Decision on the Prosecutor's Oral Motion for Leave to amend the List of Selected Witnesses, dated 26 June 2001.

the evidence.¹² Counsel takes into consideration the Trial Chamber's Decision on the First Accused's Urgent Motion for Leave to file Additional Witness and Exhibits Lists¹³ where the Court said, the prosecution will have the opportunity to object to the authenticity, relevance and admission of an exhibit once it is disclosed and in the process of being tendered through a particular witness.

9. Counsel further submits that the right to a fair trial and to put up an effective defence as provided for in Article 17(4) of the Statute of the Special Court, is a fundamental human right, recognized in all civilised jurisdictions and legal systems and Counsel for the First Accused is of the view that this right is going to be violated if Counsel is not granted leave to file additional exhibits. Counsel submits that to prevent a manifest injustice to the Accused, The Chamber should grant the necessary leave to file the said documents herein listed in *Annex A*.

Conclusion

10. Counsel for the First Accused hereby request the Trial Chamber to use its powers under Rule 89(C), Rule 73ter(E) of the Rules and the relevant paragraph C of the Consequential Order for Compliance of 28th November 2005, and in the interest of justice, to the grant Counsel leave to file an additional exhibits list for a fair determination of the case against the First Accused.

Dr. Bu Buakei Jabbi

Counsel for the First Accused

¹² Ibid, para 20

¹³ SCSL-04-14-T-585: Decision on the First Accused's Urgent Motion for Leave to File Additional Witness and Exhibit Lists

INDEX OF DOCUMENTS

1. SCSL-04-14-T-474: Order Concerning the Preparation and Presentation of the Defence Case, 21st October, 2005
2. SCSL-04-14-T-489: Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case, 28th November, 2005
3. SCSL-04-14-T-581: First Accused's Urgent Motion for Leave to File Additional Witness and Exhibits Lists
4. SCSL-04-14-T-499: Defence Witness and Exhibit Lists for the First Accused as per the Consequential Order for Compliance of 28th November 2005 Concerning the Preparation and Presentation of the Defence Case, para 9
5. SCSL-04-14-T-581: First Accused's Urgent Motion for Leave to File Additional Witness and Exhibits Lists, para 11
6. SCSL-04-14-T-612: Report about prospective Defence Witness Major General Abdul One Mohammed of Nigeria, para 3
7. SCSL-04-14-T-617: Dissenting Opinion of Hon. Justice Bankole Thompson on Decision on Motions by Moinina Fofana and Sam Hinga Norman for the Issuance of Subpoena ad Testificandum to H.E Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone, para. 2
8. The Prosecutor v. Nahimana (Case No. ICTR-99-52-I) Decision on Prosecutor's for Leave to Amend the List of Selected witnesses, dated 26 June, 2001
9. SCSL-04-14-T-585: Decision on the First Accused's Urgent Motion for Leave to File Additional Witness and Exhibits Lists.

ANNEX A

No.	Title of Document	Nature and Contents of document	Any objection?
1.	Periodic Report Civil Defence Force "Kamajors" dated 7 August 1997	This exhibit is a periodic report in respect of military operations, administrative and logistic requirements of the CDF as reported by their field commanders and signed by Brigadier General A. O Mohammed.	Not sure
2.	Letter from President Ahmed Tejan Kabbah to CSO Mustapha with an Action Plan captioned Operation Athens dated 13th August 1997	This exhibit is a letter by President Kabbah to the CSO Mustapha of Nigeria whereby President Kabbah is referring to a discussion he had with President Abacha, stressing the need to upgrade the Kamajors and increasing their numbers. There is a Plan attached whereby President Kabbah is requesting Ecomog commander to study it carefully to ensure some coordinated action between Ecomog and the CDF.	Not sure