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SCSL-04-16-T
(15116 - 15118)

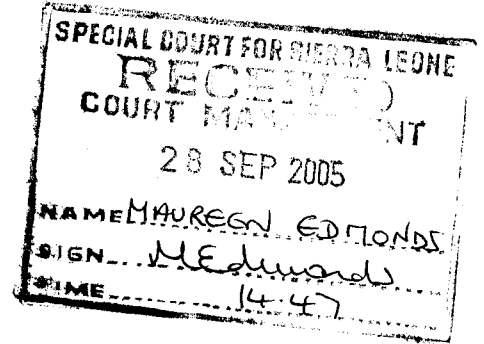
**SPECIAL COURT FOR
SIERRA LEONE**

Case No. SCSL-2004-16-T

Before: Judge Teresa Doherty, Presiding
Judge Julia Sebutinde
Judge Richard Lussick

Registrar: Lovemore Munlo

Date filed: 28th September 2005



THE PROSECUTOR

against

ALEX TAMBA BRIMA

BRIMA BAZZY KAMARA

and

SANTIGIE BORBOR KANU

JOINT DEFENCE MOTION FOR LEAVE TO RECALL WITNESS TF1-023

Office of the Prosecutor:

Luc Cote
Lesley Taylor

Defence Counsel for Brima

Kojo Graham
Glenna Thompson

Defence Counsel for Kanu:

Geert-Jan Alexander Knoops
Carry J. Knnops
A.E. Manly-Spain

Defence Counsel for Kamara:

Andrew Daniels
Mohamed P. Fofanah

BACKGROUND

1. On the 9th and 10th March 2005, the witness TF1-023 gave evidence for the Prosecution in the case against Brima, Kamara and Kanu. On the 10th March the witness made a complaint to the Trial Chamber about threats by some members of the Accused family.¹ It appeared that the Prosecution had been informed of this earlier and had made some investigations which alleged that Brima Samura, the then investigator to the Brima defence team had passed on information about the identity of this particular witness to these family members. The Trial Chamber then put in motion steps which ultimately led to Brima Samura and the four ladies concerned to be tried for Contempt of Court.
2. At the end of the Prosecution Case Counsel of Brima, then Mr Kevin Metzger, informed the Court that the we as Defence were not in a position to cross examine this witness because inter alia there was a necessity to validate the information that we had been given by the Investigator under suspicion. The Defence was not at that time in a position to check the sources or the information given to us by that Investigator as the team was then without a new investigator.² The position of the other teams was put to the Chamber by Mr Knoops for the Defence for Kanu. In summary it was that as the teams were running a joint defence that if one team cannot proceed because of “a paralysation of his investigator, that also affects the ability of the other teams to effectively cross-examine the witness.”³ Consequent upon that, the witness was not cross examined by any of the Defence teams.
3. The Defence for all three Defence Teams therefore seeks leave for the recall of TF1-023 in order that this witness can be cross examined by the Defence teams.

JUSTIFICATION

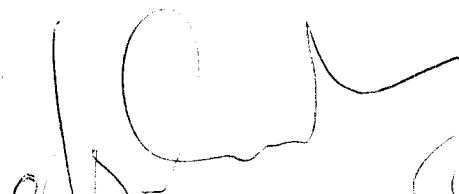
4. The Defence makes this application pursuant to Rule 54 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone.
5. The Contempt proceedings arose out of the witness' complaint. Consequent upon that the Investigator Brima Samura was suspended from working with us pending the outcome of the Contempt proceedings. This meant that any information which had been obtained by this investigator had to be cross checked particularly if it pertained to the evidence that had been given by witness TF1-023. The allegations the investigator faced were serious enough to raise doubts in the minds of the defence as to the quality and indeed the veracity of the information thus far obtained. In essence we could not rely on the information that had been supplied to us and shared with the other teams in order to cross examine the witness.

¹ See Transcript of the 10th March 2005.


² See page 48 lines 4 to 17 of Transcript of 10th March.

³ See page 49 lines 13 to 28 of Transcript of 10th March.


6. It was at the time thought that the issue would be cleared up pretty quickly and then any application would have followed shortly. Furthermore, it did take a while for a suitable investigator to be found and approved and who would be able to not only continue where the previous investigator left off, but also to go over information obtained by that previous investigator.
7. The Defence are aware that the Prosecution is coming to the end of its case and does not in any way wish to prolong the prosecution's time table unnecessarily. However, this witness gave evidence which included identification evidence by the use of names which the Prosecution say are names by which the Defendants Tamba Brima and Santigie Kanu are known.⁴ It is therefore imperative that that Defence are allowed to cross examine this witness on all or part of her evidence.
8. Furthermore the behaviour of those concerned in the Contempt proceedings was not one of the making or condoned by any of the Defence team or their clients. The Defence case should therefore not be prejudiced by the behaviour of others. Indeed any failure of omission to cross examine this witness will be not only a failure of the Defence Counsel's duty but also impair the fairness of the trial of the Accused persons.
9. The Defendants are entitled to a fair trial and the cross examination of all witnesses particularly those whose evidence touches and concerns particular accused persons.
10. The Defence are now in position to do so and respectfully seek leave for the Prosecution to recall this witness in order hat she be cross examined by the Defence.



Glenna Thompson



G. Alexander Knoops



Andrew Daniels

⁴ See page 30 lines 22 to 29 of the Transcript of 10th March.