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SCSL-04-14-T
(10053-10059)

10053

SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR

FREETOWN – SIERRA LEONE

Before: Judge Benjamin Itoe
Judge Bankole Thompson
Judge Boutet

Registrar: Mr. Robin Vincent

Date filed: 28 October 2004

THE PROSECUTOR

Against

SAM HINGA NORMAN

MOININA FOFANA

ALLIEU KONDEWA

CASE NO. SCSL – 2004 – 14 - T

**PROSECUTION RESPONSE TO FOFANA MOTION FOR SERVICE AND
ARRAIGNMENT ON CONSOLIDATED INDICTMENT AND A SECOND
APPEARANCE**

Office of the Prosecutor:

Luc Côté

James C. Johnson

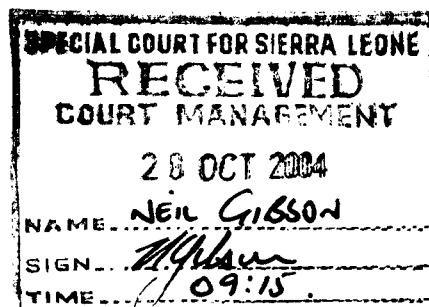
Adwoa Wiafe

Counsel for Fofana

Michiel Pestman

Arrow J. Bockarie

Victor Koppe



SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR

FREETOWN-SIERRA LEONE

THE PROSECUTOR**Against****SAM HINGA NORMAN****MOININA FOFANA****ALLIEU KONDEWA****CASE NO. SCSL – 2004 – 14 – T**

**PROSECUTION RESPONSE TO FOFANA MOTION FOR SERVICE OF
CONSOLIDATED INDICTMENT AND A FURTHER APPEARANCE**

I. INTRODUCTION

1. The Second Accused, Fofana, was arraigned before the Special Court on 1 July 2003. He pleaded not guilty to eight (8) counts of crimes against humanity and war crimes. The Third Accused, Kondewa, was arraigned before the Court charged with the same (8) counts. The First Accused, Norman, was also arraigned on an eight (8) count indictment dated 7 March 2003. The Fofana and Kondewa indictments contained additional particulars not contained in the Norman indictment.
2. On 7 November 2003, the Third Accused, Kondewa, filed a motion alleging defects in the form of the indictment.¹ By a decision rendered on 27 November 2003,² the Trial Chamber ordered the Prosecution either to delete in every count and wherever they appeared, the phrase “including but not limited to” or to provide in a Bill of Particulars the specific additional events alleged against the

¹ See, Preliminary Motion Based on Defects in the Form of the Indictment against Allieu Kondewa, 7 November 2003.

² See, *Prosecutor v. Kondewa*, Annexure to Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment”, SCSL-2003-12-PT, 27 November 2003.

accused in each count. In pursuance of this order, the Prosecution filed a Bill of Particulars on 5 December 2003.

3. On 9 October 2003, the Prosecution filed a motion requesting the joinder of the trials of the 3 accused; Norman, Fofana and Kondewa. The Prosecutor further requested that the indictments against the three accused be consolidated into a single indictment. On 27 January 2004, the Trial Chamber granted the Prosecution request for joinder (“the Joinder Decision”) and consequentially ordered that a single consolidated indictment (“the Consolidated Indictment”) be prepared as the Indictment on which the joint trial shall proceed. The Chamber further ordered that the Consolidated Indictment be served on each Accused in accordance with Rule 52 of the SCSL Rules. The Consolidated Indictment was filed by the Prosecution on 4 February 2004 and served by Court Management on Counsel for Fofana by an email dated 5 February 2004.³

II. SUBMISSIONS OF SECOND ACCUSED

4. The Accused files this motion seeking, first, service of the Consolidated Indictment and, secondly, a further appearance on the grounds that the indictment contains new charges in respect of the Second Accused.
5. The Prosecution submits that the motion should be dismissed in its entirety.

III. ARGUMENTS

6. The Accused submits that he has not been personally served with the Consolidated Indictment contrary to the order given by the Trial Chamber in the Joinder Decision. It will be noted that the records of the Court obtained from Court Management (attached hereto) indicate that the Consolidated Indictment was served on Defence Counsel by an email dated 5 February 2004. Although there is no indication as to whether service of the Consolidated Indictment was effected personally on the Accused, this failure on the part of the Registry was an administrative error which, based on the overall circumstances of this case, has caused no identifiable harm to him. First of all, the Consolidated Indictment was

³ See, email from Court Management attached.

served on the Fofana Defence team shortly after it was filed by the Prosecution. Secondly, the Defence demonstrated knowledge of the charges contained in the Consolidated Indictment, and has thus far defended him against the charges contained therein in the first and second trial sessions.

7. The Accused further argues that he must be arraigned on the Consolidated Indictment by virtue of new allegations contained therein. The Prosecution submits that the Consolidated Indictment contains no new charges and, thus, no further arraignment is required. The Defence cites the separate opinion of Judge Itoe in the Joinder Decision in support of its position.⁴ However, upon comparing the counts in all three Indictments, the majority in the Joinder Decision concluded that “*the specific crimes charged in those several counts are exactly the same,*⁵ except for the allegations in respect of additional time and locations as regards Accused Moinina Fofana and Allieu Kondewa, which is an issue of no materiality for the instant purpose.”⁶ Accordingly, the majority in the Trial Chamber did not find it necessary then to order a further arraignment of the First Accused. The Prosecution submits that there is equally no need to do so now. In addition, reliance by the Defence on the separate opinion of Judge Itoe is of no relevance to the present analysis since the Court is guided by the majority opinion, and more so as the Defence did not appeal any aspect of the Joinder decision.

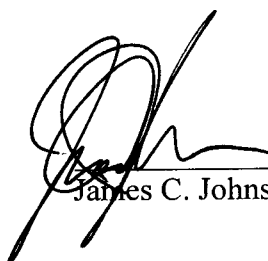
IV. CONCLUSION

8. Based on the foregoing, the Prosecution submits that the Fofana Motion should be dismissed.

Freetown, 28 October 2004,



Luc Côté



James C. Johnson


⁴ See, Defence Motion, para. 6.

⁵ Emphasis in the original.

⁶ See, Joinder Decision, para. 24.

Annex

1. Email from Court Management to Counsel for Fofana, 5 February 2004.

 Geoff Walker
10/22/2004 09:33 AM

To: James C Johnson/SCSL@SCSL
cc: Len Dolphin/SCSL@SCSL, Neil Gibson/SCSL@SCSL, Maureen Edmonds/SCSL@SCSL
Subject: Fw: SCSL-04-14- PT -003 :Electronic Service CDF Cases

Hi Jim.

I attach a copy of the e-mail which was sent to M. Pestman, Counsel for Fofana on 5th February at 14:24.

Geoff Walker
EXT 7234

----- Forwarded by Geoff Walker/SCSL on 22/10/2004 09:29 -----



SCSL-Records/SCSL
21/10/2004 17:10

To: Geoff Walker/SCSL@SCSL
cc:
Subject: Fw: SCSL-04-14- PT -003 :Electronic Service CDF Cases

Geoff

Sorry to see your request late.

Court Records

Court Management

Registry

----- Forwarded by SCSL-Records/SCSL on 21/10/2004 17:09 -----



SCSL-Records
05/02/2004 14:24

To: mpestman@bfkw.nl, vkoppe@bfkw.nl, nollkaemper@jur.uva.nl, lzegveld@bfkw.nl, ayotunde@sierratel.sl, stejansie@yahoo.com, gatejan@aol.com, cfmargai@yahoo.com, q.whitaker@doughtystreet.co.uk
cc: Joseph Massaquoi/SCSL@SCSL, Hellen Nyabera/SCSL@SCSL, Henry Matthews/SCSL@SCSL, Neil Gibson/SCSL@SCSL, (bcc: SCSL-Records/SCSL)
Subject: SCSL-04-14- PT -003 :Electronic Service CDF Cases

Please find attached the following documents filed 5 February 2004, in the CDF Cases, No. SCSL-04-14-PT:



SCSL-04-14-PT-003.pdf

Please acknowledge receipt by return mail.

Joseph Massaquoi
Court Records
Court Management
Registry

This Special Court for Sierra Leone document has been scanned using Symantec Antivirus

Geoff Walker
10/22/2004 09:38 AM

To: James C Johnson/SCSL@SCSL
cc: Len Dolphin/SCSL@SCSL, Neil Gibson/SCSL@SCSL, Maureen Edmonds/SCSL@SCSL
Subject: Fw: SCSL-04-14-PT- 003 :Electronic Service CDF (Trial Chamber) Case

Jim.

This copy was sent to the Defence Teams on the same day, but three minutes earlier.

Geoff Walker
EXT 7234

----- Forwarded by Geoff Walker/SCSL on 22/10/2004 09:35 -----



SCSL-Records/SCSL

To Geoff Walker/SCSL@SCSL

cc

Subject Fw: SCSL-04-14-PT- 003 :Electronic Service CDF (Trial Chamber) Case

Court Records
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----- Forwarded by SCSL-Records/SCSL on 21/10/2004 17:11 -----



SCSL-Records
05/02/2004 14:21

To: Luc Cote/SCSL@SCSL, SCSL-Defence/SCSL@SCSL, Bankole Thompson/SCSL@SCSL, Pierre Boutet/SCSL@SCSL, Benjamin Itoe/SCSL@SCSL, Robin Vincent/SCSL@SCSL, Robert Kirkwood/SCSL@SCSL, Beatrice Ureche/SCSL@SCSL, Wendy Hart/SCSL@SCSL, SCSL-PressOffice/SCSL@SCSL, Saleem Vahidy/SCSL@SCSL, Musu D Kamara/SCSL@SCSL, Sylvain Roy/SCSL@SCSL, Gerald Stevens/SCSL@SCSL, Maureen Edmonds/SCSL@SCSL, Lotta Teale/SCSL@SCSL, Sylvia Pyne-Caulker/SCSL@SCSL, Kaoru Okuizumi/SCSL@SCSL, Caitlin Reiger/SCSL@SCSL, Neil Gibson/SCSL@SCSL, Nina Jorgensen/SCSL@SCSL, Allison Cooper/SCSL@SCSL, Matteo Crippa/SCSL@SCSL, Desmond de Silva/SCSL@SCSL, David M Crane/SCSL@SCSL, Eric Witte/SCSL@SCSL, Alain Werner/SCSL@SCSL, Katherine Gallagher/SCSL@SCSL, SCSL Defence-Norman/SCSL@SCSL, SCSL Defence-Kondewa/SCSL@SCSL, SCSL Defence-Fofana/SCSL@SCSL
cc: Joseph Massaquoi/SCSL@SCSL, Henry Matthews/SCSL@SCSL, Hellen Nyabera/SCSL@SCSL, (bcc: SCSL-Records/SCSL)
Subject: SCSL-04-14-PT- 003 :Electronic Service CDF (Trial Chamber) Case

Please find attached the following documents filed 5 February 2004, in the CDF Case, No. SCSL-04-14-PT:

☐ SCSL-04-14-PT-003 - NORMAN,FOFANA,KONDEWA - INDICTMENT - 5 FEBRUARY 2004

Court Records
Court Management
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