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SCSL - 2003 - 05 - PT - 020

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SPECIAL COURT FOR SIERRA LEONE

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Before: Judge Bankole Thompson

Registrar: Mr. Robin Vincent

Decision of: 17th of April, 2003

THE PROSECUTOR

Against

ISSA HASSAN SESAY also known as ISSA SESAY

CASE NO. SCSL - 2003 - 05 - PT

**DECISION ON THE PROSECUTION MOTION TO ALLOW DISCLOSURE TO
THE REGISTRY AND TO KEEP DISCLOSED MATERIALS UNDER SEAL
UNTIL APPROPRIATE PROTECTIVE MEASURES ARE IN PLACE**

The Office of the Prosecutor:
Mr. Luc Cote'
Mr. Jim Johnson
Mr. Nicholas Browne-Marke

The Defence Office:
Mr. John R.W.D. Jones
Mrs. Claire Carlton-Hanciles
Mr. Ibrahim Yillah
Mrs. Haddijatu Kah-Jallow

SPECIAL COURT FOR SIERRA LEONE
COURT RECORDS
RECEIVED
NAME: *Estace Thompson*
SIGNATURE: *[Signature]*
DATE: *17-4-03* TIME: *3:32 PM*

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THE SPECIAL COURT FOR SIERRA LEONE (the Court),

SITTING AS Judge Bankole Thompson, designated by the President of the Special Court according to Rule 28 of the Rules of Procedure and Evidence (“the Rules”);

BEING SEIZED of the Extremely Urgent Prosecution Motion to Allow Disclosure to the Registry and to Keep Disclosed Material Under Seal Until Appropriate Protective Measures are in Place of the 7th of April 2003 and filed by the Registry on the 9th of April, 2003 (“the Prosecution Motion for Disclosure”) and the supporting materials attached thereto;

CONSIDERING the Response of the Defence Office to the Prosecution Motion for Disclosure of the 14th of April, 2003 (“the Defence Response”);

CONSIDERING that the Prosecution is satisfied with the Defence Response and does not intend to reply thereto;

CONSIDERING the Registrar’s Practice Direction on Disclosure by the Prosecutor;

CONSIDERING the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure of the 7th of April, 2003, filed on the 9th of April, 2003, seeking an order for the implementation of several protective measures for witnesses and victims and for the protection of the confidentiality of all non-public materials disclosed to the Defence;

WHEREAS the Court decided to deliberate on the Prosecution Motion for Disclosure solely on the basis of the parties’ briefs;

CONSIDERING the Statute of the Special Court, and in particular Articles 16 and 17 thereof, and Rules 7, 53, 54, 66, 68, 69, 73 and 75 of the Rules;

SUBMISSIONS OF THE PARTIES

The Prosecution

1. From an abundance of caution, the Prosecution submitted that the first day of the initial appearance of the Accused, the 15th of March, 2003, was the beginning date of the disclosures obligations pursuant to Rule 66 (A)(i) of the Rules. Consequently, the Prosecution identifies the 14th of April, 2003 as the expiration date of the disclosure obligations pursuant to Rule 66 (A)(i).
2. Pending deliberation and appropriate ruling on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, the Prosecution requests:
 - (a) an Order allowing the Prosecution to make the disclosure pursuant to Rule 66 (A)(i) to the Registry;
 - (b) an Order to the Registry to keep the disclosed material under seal until orders for appropriate measures for witnesses, victims and non-public materials have been issued;

The Defence

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3. In its response the Defence agrees with the terms of the requests made by the Prosecution, reserving the right to file a Response to the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure within the time limits set forth in the Rules.

4. Furthermore, the Defence seeks clarification from the Court on the time limits for the filing of preliminary motions pursuant to Rule 72 (A).

AFTER HAVING DELIBERATED

On the scheduling of the disclosure obligations

5. In its Scheduling Order of the 10th of April, 2003, the Court deemed the initial appearance of the Accused as concluded on the 21st of April, 2003. In the same order, the Court also deemed this date as the beginning date of the Prosecution's disclosure obligations pursuant to Rule 66 (A)(i) and Rule 68 (B) of the Rules and consequently, pursuant to Rule 7 of the Rules, identified the 23rd of April, 2003 as the expiration date of the Prosecution's disclosure obligations pursuant to Rule 66 (A)(i) and Rule 68 (B);

6. The Court therefore finds and confirms the 23rd of April, 2003 as the expiration date for the Prosecution's disclosure obligations pursuant to Rule 66 (A)(i) and Rule 68 (B);

On the request to make the disclosure to the Registry

7. The Court takes cognizance of the Parties agreement on the terms of the orders sought by the Prosecution in its Prosecution Motion for Disclosure.

8. Furthermore, the Court notes that in his Practice Direction for Disclosure by the Prosecutor, the Registrar directs that disclosure pursuant to Rule 66 (A)(i) shall be made to Counsel for the accused, identified either as Counsel engaged by the accused pursuant to Rule 44 of the Rules or Counsel assigned to the accused pursuant to Rule 45 of the Rules and that Court staff serving in the Defence Office shall no be in a position to receive the disclosure. Lastly, pending assignment of Counsel in accordance with Rule 45, the Registry shall certify the Prosecution fulfillment of the obligations to disclose and the sealing and dating of the disclosed materials until assignment of Counsel is accomplished.

9. The Court endorses these provisions set forth by the Registrar in his Practice Direction for Disclosure by the Prosecutor. Nevertheless, the Court deems it necessary that disclosures pursuant to Rule 66 (A)(i) and Rule 68 (B) shall be made with a view to ensure appropriate protection of witnesses and victims as well as for the confidentiality of all non-public materials subject to such disclosure;

10. Pending a ruling on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, it is therefore necessary to guarantee that the fulfillment of the Prosecution's obligations to disclose shall encompass appropriate interim measures for the protection of witnesses and victims as well as for the confidentiality of all non-public materials subject to disclosure by the Prosecution;

11. Therefore, the Court is of the opinion that the Prosecution should be allowed to comply with its obligations to disclose pursuant to Rule 66 (A)(i) and Rule 68 (B) by making such

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disclosures to the Registry;

On the time limits for filing the preliminary motions:

12. Rule 72 (A) of the Rules mandates that preliminary motions by either party shall be brought within 21 days following disclosure by the Prosecutor to the Defence of all the material envisaged by Rule 66 (A)(i).

13. In his Practice Direction for Disclosure by the Prosecutor, the Registrar directs that disclosure will not be deemed to take effect until the disclosed materials are unsealed by relevant Counsel.

14. In consideration of the intermediary role played by the Registry in the disclosure process as envisaged in the present decision, the Court deems necessary to request the Registrar to further clarify this direction in order to encompass the relevant procedure for the transmission of the disclosed materials to the Defence and the moment when the transmission comes into effect.

FOR THESE REASONS, THE COURT:

CONFIRMS the Scheduling Order of the 10th of April, 2003,

GRANTS the Prosecution Motion for Disclosure, and in particular:

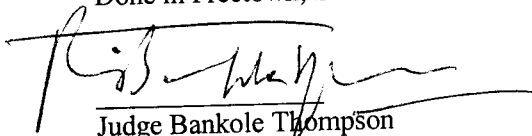
GRANTS the request of the Prosecution for an Order allowing the Prosecution to make the disclosure pursuant to Rule 66 (A)(i) to the Registry,

GRANTS the request of the Prosecution for an Order to the Registry to keep the disclosed material under seal until orders for appropriate measures for witnesses, victims and non-public materials have been issued,

INSTRUCTS the Registry to certify the disclosure by the Prosecution. The Registry shall seal and date the disclosed materials and liaise with the Prosecution in organizing the custody of such materials.

After appropriate ruling on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure has been rendered and ordered measures will have been put in place, the Registry shall make available the disclosed materials to the relevant Counsel. The Registry shall consult with the Prosecution and the Defence Office for this purpose.

Done in Freetown, Sierra Leone this 17th day of April, 2003


Judge Bankole Thompson
Designated Judge

Seal of the Special Court for Sierra Leone

