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SCSL-04-15-T
(17191 - 17195)

17191

THE SPECIAL COURT FOR SIERRA LEONE

BEFORE:

Justice Pierre Boutet, Presiding
Justice Bankole Thompson
Justice Benjamin Itoe

Registrar: Mr. Lovemore Green Munlo

Date filed: 26th January 2006

The Prosecutor

-v-

Issa Hassan Sesay

Case No: SCSL – 2004 – 15 – T

**REPLY TO PROSECUTION RESPONSE TO THE SESAY MOTION TO
DIRECT THE PROSECUTOR TO INVESTIGATE THE MATTER OF FALSE
TESTIMONY BY WITNESS TF1-366**

Chief of Prosecution
Desmond de Silva, QC

Defence Team
Wayne Jordash
Sareta Ashraph
Chantal Refahi

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Reply

Prosecutions preliminary objections

1. The Defence accept the two administrative errors alleged by the Prosecution in paragraph 2 of their response. The Motion was drafted with too much spacing between the lines and Appendix A was not attached. Appendix A was intended to contain a copy of the transcript, which in any event is readily available and was clearly referenced in the body of the Motion. It is hoped that these errors, from which no prejudice arose, do not detract from the paucity of the Prosecution Response.
2. In the event that the Prosecution are correct concerning their third preliminary objection (lack of jurisdiction to direct the Prosecution to investigate a matter of alleged false testimony) the Defence respectfully invite the Chamber to invoke Rule 77 pursuant to Rule 91(B), in a manner, which it considers would best resolve the important interests at stake. In any event it is not conceded that the Chamber does not have jurisdiction to direct the Prosecution to investigate the matter of alleged false testimony.

Merits

Admission of false testimony

Code Names of Issa Sesay

3. The Defence notes that in paragraph 19 of the Response the Prosecution concession that witness TF1-366 gave evidence, concerning Mr Sesay's alleged code names on one occasion, and the evidence was not true. The fact that the witnesses lied on the 18th November 2005 and admitted this to be the case¹ would appear to give rise to a prima facie case of false testimony. The Prosecution's response that the, "answers could be looked up in the transcript, everyone knew that, and the court could not have been misled" is illogical. False testimony does not become true testimony because it is discovered by a cross-examining party or because it is obvious from the transcript or because it is later admitted by the witness. This discovery is the pre-condition for the invoking of the procedure pursuant to Rule 91 rather than the end of the

¹ See Transcript 18th November 2005 pp.25.

matter. It is crystal clear that (i) the witness made a solemn declaration (ii) the false statement made was contrary to the declaration (iii) the witness admitted he had known it to be false and (iv) he gave the fabricated code names to bolster his credibility on the issue of reporting which is an essential issue in the case against Mr Sesay. The fact that his lies were discovered and his poor excuse for them changes nothing. Nothing more is required to justify the invocation of Rule 91.

Number of trips to Monrovia

4. The Prosecution stance in paragraph 16 is absurd. On the one hand they disclose, pursuant to Rule 66, a witness statement, dated the 30th August 2004, in which is recorded detail upon detail concerning the witnesses purported second trip to Monrovia with the accused Mr Sesay² but when the witness denies making the statement or travelling to Monrovia a second time³ the Prosecution refuse even to accept that there is evidence of a prior inconsistent statement. It is a stance, which is both unhelpful and unrealistic. Moreover it fails to even begin to address or explain how TF1-366 could conceivably have been telling the truth. The Prosecution's contribution to the debate (aside from regurgitating what happened in court on the 15th November 2006⁴) appears to be limited to a mere denial of the Defence submissions, "(t)he allegation made against the witness is without merit."⁵ It may be thought that the Response is so limited that it indicates the Prosecution have failed in their duty to have proper regard to the points raised.

Sesay Shooting and Killing a Person at Bumpe

5. It is conceded that the witness did not state in court on the 7th November 2005 that the man Mr Sesay killed was called Akim.⁶ This error arose due to a misreading of the transcript. However this is not the end of the matter. Once

² See paragraph 19 of the Motion.

³ See Transcript 15th November 2005 pp.41 lines 13-16.

⁴ See Para. 15 of the Prosecution Response.

⁵ See para. 16 of the Prosecution Response.

⁶ See para. 10 of the Prosecution Response.

again the Prosecution fail to deal comprehensively with the Defence submissions. The fact that the witness appears not to have named the alleged victim in court does not detract from the fact that TF1-366 did purport to name the alleged victim during the so-called proofing sessions conducted in August 2005. The name he gave was "Vandy".⁷ The fact that the witness later denied ever knowing the name of the alleged victim⁸ and the irreconcilability of this assertion with that made earlier remains unexplained within the Prosecution Response.

Misleading the Court

6. The Chief of the Prosecution's Mr Desmond de Silva QC has seen fit to attach his signature to a document within which there are no less than three separate allegations that Counsel "sought to mislead the Trial Chamber"⁹ and/or did mislead the Chamber. If the Chief of the Prosecution believes that Counsel actively sought to mislead the Court then he is invited to invoke the disciplinary procedures pursuant to Article 8 of the Code of Professional Conduct for Counsel of the Special Court and/or invoke the United Kingdom's Bar Council procedures, which are equally stringent.
7. For the reasons given above it is not accepted that there was any intention to mislead. Any misstatement of fact was inadvertent. In those circumstances the Defence would respectfully request that the Chief of the Prosecution refrain from baseless allegations of professional misconduct and concentrate on addressing submissions.

Chantal Refahi

ff Wayne Jordash
ff Sareta Ashraph
Chantal Refahi

Dated this 26th of January 2006

⁷ See Additional Information provided by witness TF1-366 dated 8,9,10,11,12,15 & 16 August 2005 at pp. 5 paragraph 10 lines 12-14 and Defence Motion para. 18.

⁸ See Transcript 14th November 2005 pp.15 lines 5-10.

⁹ See para. 4, 13 and 21 of the Response.

Index of Authorities

Transcript

Transcript 14th November 2005 pp.15

Transcript 15th November 2005 pp.41

Transcript 18th November 2005 pp.25