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SCSL-04-14-T

18562

(18562 - 18566)

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

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

Registrar: Mr. Lovemore Munlo, SC

Date filed: 19 June 2006

THE PROSECUTOR

Against

Samuel Hinga Norman
Moinina Fofana
Allieu Kondewa

Case No. SCSL-04-14-T

PUBLIC

**PROSECUTION RESPONSE TO FIRST ACCUSED URGENT MOTION FOR EXTENSION
OF TIME DATED 15 JUNE 2006**

Office of the Prosecutor:

Mr. Christopher Staker
Mr. James C. Johnson
Mr. Joseph F. Kamara
Mr. Nina Jørgensen

Court Appointed Counsel for Norman

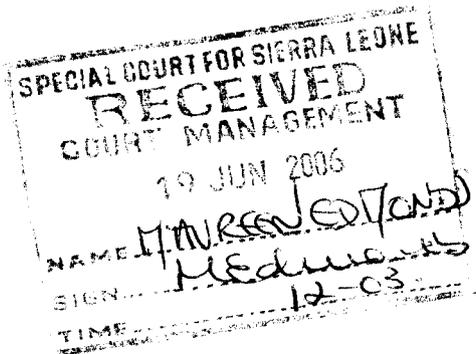
Dr. Bu-Buakei Jabbi
Mr. John Wesley Hall, Jr.
Ms. Clare DaSilva (*Legal Assistant*)

Court Appointed Counsel for Fofana

Mr. Victor Koppe
Mr. Arrow J. Bockarie
Mr. Michiel Pestman
Mr. Andrew Ianuzzi (*Legal Assistant*)

Court Appointed Counsel for Kondewa

Mr. Charles Margai
Mr. Yada Williams
Mr. Ansu Lansana
Mr. Martin Michael (*Legal Assistant*)



I. INTRODUCTION

1. The Prosecution files this Response to the “First Accused Urgent Motion for Extension of Time to Comply with Order Contained in ‘Decision on Norman Motion to Defer Further Evidence and Closing of His Case to September – December Trial Session’¹ (“**Motion for Extension**”) filed by Court Appointed Counsel for the First Accused on 15 June 2006, noting the Trial Chamber’s “Order for Expedited Filing”² (“**Order**”) of 16 June 2006.
2. Counsel for the First Accused filed the “Norman Motion to Defer Further Evidence and Closing of His Case to September – December Trial Session”³ (“**Original Motion**”) on 6 June 2006, requesting in part leave to delay filing 92bis evidence until no “later than 21 days after his cross-examination . . . of all witnesses to be called on behalf of the other co-accused persons herein”.⁴
3. The Trial Chamber issued on 14 June 2006 the “Decision on Norman Motion to Defer Further Evidence and Closing of His Case to September – December Trial Session” (“**Decision**”).⁵ The Decision ordered Defence to submit documents pursuant to Rule 92bis of the Rules of Procedure and Evidence of the Special Court (“Rules”) no later than 4:00pm on 16 June 2006.⁶
4. In its Motion for Extension, Counsel for the First Accused requests an extension⁷ of the deadline ordered above until 14 July 2006.⁸

II. BACKGROUND

5. On the 6th of April 2006 The Chamber granted leave to the Counsel for Norman to add witness J.A Carpenter to their list⁹ whose evidence is now apparently being sought to be admitted through Rule 92bis of the Rules. On 25th May 2006 The Chamber asked Counsel for the First Accused to indicate his intent to submit any documents pursuant to Rule

¹ *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-2004-14-T-622.

² *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-2004-14-T-623.

³ *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-2004-14-T-608.

⁴ *Ibid.* para. 1 (c).

⁵ *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-2004-14-T-619.

⁶ Decision, para. 17 (c).

⁷ Motion for Extension, para. 4.

⁸ *Ibid.*, para. 7.

⁹ *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-585 “Decision on the First Accused’s Urgent Motion for Leave to File Additional Witness and Exhibit Lists”, the 6th of April 2006.

92bis by 30 May 2006.¹⁰ On the 29th of May 2006, Counsel for the First Accused informed the Court that they were to tender documents in lieu of oral testimony and were, therefore, considering of not calling witness J.A. Carpenter.¹¹ Counsel for Norman further assured the Chamber they would get a positive answer in relation to the availability of these documents within two days, i.e. 31st May 2006, and they failed to provide such an answer.¹²

6. On the 14th of June 2006, The Chamber found that Counsel for Norman have not provided any reasonable explanation as to why they failed to obtain either the timely attendance of J.A. Carpenter as a witness in this trial or the documents to be tendered through him or under Rule 92bis of the Rules.¹³

III. ARGUMENT

7. The Counsel for the First Accused relies on the language of Rule 92bis to indicate that there is no timeframe for the submission of documents under that Rule.¹⁴
8. The Defence also submitted that the Prosecution would suffer no prejudice if the Rule 92bis documents were to be submitted at a latter stage.
9. The Prosecution submits that notwithstanding the Rules being silent as to the timing of an application made under Rule 92bis, the Chamber is empowered under Rules 54 to issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation, preparation or conduct of the trial. Also under Rule 89 the Chamber is to apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the Statute and general principles of law.
10. The Prosecution submits on the general use of Rule 92bis by the Norman Defence, that it had ample time to properly conduct their investigations, collect evidence, prepare witnesses and obtain their attendance in a timely manner to avoid unnecessary delays and adjournments. The Chamber rendered its decision on Motions for Judgment of Acquittal Pursuant to Rule 98 on the 21st of October 2005. Eight months later, the Norman Defence

¹⁰ Transcript 25 May 2006, pp. 60-61.

¹¹ Transcript of the 29 May 2006, pp.16-17.

¹² *ibid.*, p. 16, lines 25-27.

¹³ *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-2004-14-T-619, “Decision on Norman Motion to Defer Further Evidence and Closing of His Case to September – December Trial Session”, 14 June 2006.

¹⁴ Motion for Extension, para. 6.

has still not been able to prepare and file any Rule 92bis application, despite the Trial Chamber reminders in this respect.

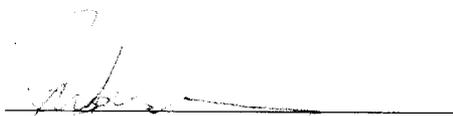
11. On the particular issue of the use of Rule 92bis in relation to the evidence of J.A. Carpenter by the Defence of the First Accused, this issue has been before the Chamber since 25th of May 2006. On the 2nd of June 2006, 7th of June 2006, and on the 14 of June 2006, the Chamber was forced to adjourn to accommodate the Defence of the First Accused to make the necessary filings or alternatively call the witness to give his oral testimony. Counsel for Norman have not provided any reasonable explanation as to why they failed to obtain either the timely attendance of J.A. Carpenter as a witness in this trial, or the documents to be tendered through him under Rule 92bis of the Rules.¹⁵
12. The Prosecution further submits that the Defence Motion has failed to show any reasonable basis for the Chamber to vary its own Order of the 15th of June 2006 other than to unreasonably delay the trial process despite the concessions already gained.

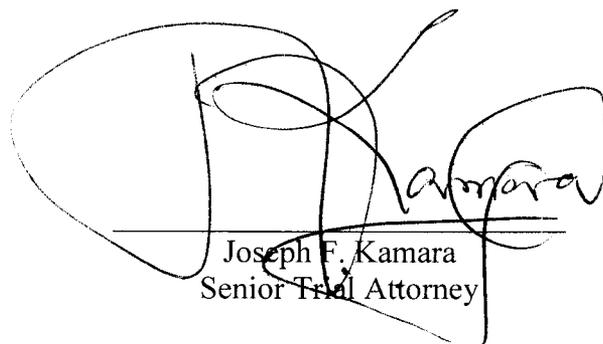
IV. CONCLUSION

13. For these reasons the Prosecution submits that the Defence request should be rejected.

Filed in Freetown,
19 June 2006

For the Prosecution,


James C. Johnson
Chief of Prosecutions


Joseph F. Kamara
Senior Trial Attorney

¹⁵ *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-2004-14-T-619, “Decision on Norman Motion to Defer Further Evidence and Closing of His Case to September – December Trial Session”, 14 June 2006 (“Decision”).

INDEX OF AUTHORITIES

1. *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-2004-14-T-622, “First Accused Urgent Motion for Extension of Time to Comply with Order Contained in ‘Decision on Norman Motion to Defer Further Evidence and Closing of His Case to September – December Trial Session’”, 15 June 2006.
2. *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-2004-14-T-623, “Order for Expedited Filing”, 16 June 2006.
3. *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-2004-14-T-608, “Norman Motion to Defer Further Evidence and Closing of His Case to September – December Trial Session”, 6 June 2006.
4. *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-2004-14-T-619, “Decision on Norman Motion to Defer Further Evidence and Closing of His Case to September – December Trial Session”, 14 June 2006.
5. *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-585 “Decision on the First Accused’s Urgent Motion for Leave to File Additional Witness and Exhibit Lists”, the 6th of April 2006.