SCSL - 2004 - 15 - PT
(1573 - 1577)

SPECIAL COURT FOR SIERRA LEONE

IN THE APPEALS CHAMBER **Case Number: SCSL – 04 – 15 – PT**

BEFORE: Unknown

Date: 19th April 2004

Prosecutor

-v-

Issa Hassan Sesay

APPLICATION TO SHOW GOOD CAUSE TO ALLOW AN APPEAL OF THE DECISION ON APPLICATION OF ISSA SESAY FOR PROVISIONAL RELEASE

Office of the Prosecutor
Luc Cote
Robert Petit

Defence Counsel for Issa Sesay
Tim Clayson
Wayne Jordash
Serry Kamal
Sareta Ashraph

INTRODUCTION

1. On the 31st March 2004 Judge Boutet, having been seized of the application for provisional release filed on the 4th February 2004 (Motion) on behalf of Issa Sesay (Accused) pursuant to Rule 65 of the Rules of Procedure and Evidence of the Special Court, dismissed the motion (the Order) and denied the application for bail.

2. The defence hereby seek to appeal pursuant to Rule 65(E) by seeking leave to appeal. The defence by this motion seek to show good cause.

SUBMISSIONS

PARAGRAPH 48

3. In paragraph 48 of the Order Judge Boutet inter alia states that he is not satisfied that prior to Mr Sesay'arrest he was informed and aware of the extreme seriousness of the crimes falling within the jusrisdiction of the Special Court. It is submitted that the Learned Judge ought properly to have decided this issue in favour of the accused. In particular the accused was able to rely upon persuasive character evidence – see for example the statement of General Opande – several of whom make clear that Mr Sesay was aware of the seriousness of the crimes falling within the jurisdiction of the court. The fact that the matter had been discussed with such eminent and knowledgeable persons such as General Opande ought to have persuaded the judge that Mr Sesay was sufficiently appraised of the jurisdiction of the court to allow an inference that he did not flee despite that knowledge.

4. In addition the defence submit that the Learned Judge failed to provide adequate reasons for his determination in this regard. In particular the Prosecution provided no evidence to contradict the evidence provided by the defence on this issue. In the absence of evidence to contradict the submissions of the defence it is submitted that the issue ought not to have been determined against him.

5. In any event it should not have been decided against him without the provision of cogent reasons to explain why the issue was resolved in favour of the Prosecution's submissions.

6. Moreover the Learned Judge appears in paragraph 48 to have required the impossible. The indictment against Mr Sesay was confidential. He could not have been aware of it nor should he be expected to demonstrate that if he had he would have surrendered.

7. It is therefore submitted that the Learned Judge misapplied himself to the factual issues aforementioned. The accused was able to demonstrate that he knew (i) that there would be a Special Court set up under the auspices of the United Nation (ii) that the Court would be interested in him and (iii) despite knowing of the extraordinary nature of the Court (and the inferences which could reasonably be drawn concerning the likely seriousness of the charges) he did not flee. The defence should not (nor could it) be required to demonstrate more than this. The evidence provided by the defence was persuasive and unchallenged and ought to have left the court in no doubt that the accused (i) had the opportunity to flee and (ii) did not avail him self of that opportunity notwithstanding sufficient notice of the Special Court.

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8. It is submitted that the Learned Judge's interpretation of the evidence (that the Accused participated in the peace process following the end of the hostilities) and the conclusion therein (that the evidence only (maybe) relates to the issue of mitigation) is wrong in two respects:

(i) the evidence adduced does not suggest that the Accused participated in the peace process following the end of the hostilities. The evidence shows that he was instrumental in bringing the RUF to the peace table and thereby helping to bring about the end of the hostilities. Thereafter he participated in the peace process;

(ii) The evidence showed that the accused worked hard to play a part in bringing the conflict to an end. It shows that the accused (as outlined during the oral hearing) was concerned from the year 2000 to ensure that the rule of law was returned to Sierra Leone. The Learned Judge's assessment that this could not relate to the issue of whether the accused would appear for trial ignores the fact that he placed himself under the authority of the United Nations to bring the war to an end. At the very least it shows that accused was able to abide by the authority of the United Nations (at considerable risk to himself) and as such relates to the issue of whether he can be trusted now to abide by the requirements of the rule of law (as expressed through the authority of the Special Court). This evidence should not simply be downgraded to mitigation since it relates specifically to Mr Sesay's conduct which ought to weigh heavily in his favour on a wide variety of issues including good character; honesty; intent and bail.

(iii) Moreover if the evidence relied upon by the defence is to be regarded in such a way the Learned Judge ought to give detailed reasons to justify that position. In particular the defence placed a great deal of weight on this evidence. It is respectfully submitted that a single sentence, expressing the view that the evidence does not relate to the issue of bail, fails to provide sufficient explanation to the defence as to why it is so regarded.

REQUEST

The defence hereby submit that the Learned Judge erred in law and fact in his assessment of the aforementioned issues and the defence hereby have satisfied the requirement of showing good cause. The defence therefore apply for leave to appeal the Order as wrong in law and fact.

Tim Clayson
Wayne Jordash
Serry Kamal
Sareta Ashraph

19th April 2004