

SCSL-2004-15-PT
(2034 - 2039)



SPECIAL COURT FOR SIERRA LEONE

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THE TRIAL CHAMBER

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

Registrar: Robin Vincent

Date: 21 April 2004

PROSECUTOR Against Issa Hassan Sesay
 Morris Kallon
 Augustine Gbao
 (Case No.SCSL-04-15-PT)

**KALLON - DECISION ON MOTION FOR QUASHING OF CONSOLIDATED
INDICTMENT**

Office of the Prosecutor:

Luc Côté
Robert Petit

Defence Counsel for Issa Hassan Sesay:

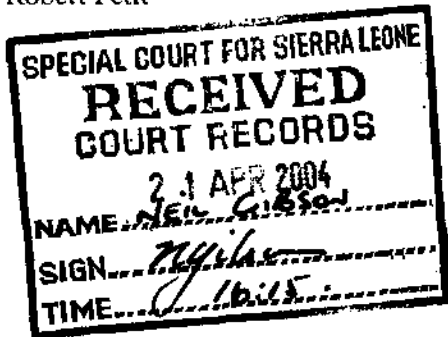
Timothy Clayson
Wayne Jordash

Defence Counsel for Morris Kallon:

Shekou Touray
Rupert Skilbeck, Duty Counsel

Defence Counsel for Augustine Gbao

Andreas O'Shea



THE TRIAL CHAMBER ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court");

SEIZED of the Motion for Quashing of Consolidated Indictment filed by Counsel for Morris Kallon ("Accused") on 10 February 2004 ("Motion") and the response thereto of the Office of the Prosecutor ("Prosecution") filed on 13 February 2004 ("Response");

NOTING the Decision of the Acting Principal Defender of 27 February 2004 ("Decision"), withdrawing the assignment of Mr. James Oury ("Assigned Counsel") for the Accused on the basis of conflict of interest;

NOTING the Decision on the Motion for Extension of Time to File Reply to "Prosecution Response to Defence Motion for Quashing Consolidated Indictment" of 19 March 2004, by which the Trial Chamber denied a request for extension of time to file a reply to the Prosecution Response following the withdrawal of the Assigned Counsel for the Accused and this until new Counsel was assigned;

NOTING the Decision of the Principal Defender of 17 March 2004, provisionally assigning Mr. Shekou Turay as new Counsel for the Accused;

NOTING the Indictment against the Accused, approved on 7 March 2003, the Indictment against Issa Hassan Sesay, approved on 11 March 2003, and the Indictment against Augustine Gbao, approved on 16 April 2003 ("Original Indictments");

NOTING the Decision and Order on the Prosecution Motion for Joinder of 27 January 2004 ("Joinder Decision");¹

NOTING the Indictment filed jointly by the Prosecution against the Accused and against Issa Hassan Sesay and Augustine Gbao on 5 February 2004 ("Consolidated Indictment")

CONSIDERING THE SUBMISSIONS AND ARGUMENTS OF THE PARTIES

I. THE SUBMISSIONS

A. *The Defence Motion*

1. In its Motion, the Defence seeks that the Consolidated Indictment be quashed and that a new consolidated indictment be consequently filed by the Prosecution within a 3 day period.
2. The Defence alleges that the Consolidated Indictment contains new allegations against all the three accused that were not contained in any of the three Original Indictments preferred by the Prosecution against each of them.²

¹ See *Prosecutor v. Issa Hassan Sesay*, SCSL-03-05-PT, *Prosecutor v. Alex Tamba Brima*, SCSL-03-06-PT, *Prosecutor v. Morris Kallon*, SCSL-03-07-PT, *Prosecutor v. Augustine Gbao*, SCSL-03-09PT, *Prosecutor v. Brima Bazzy Kamara*, SCSL-03-10-PT, *Prosecutor v. Santigie Borbor Kanu*, SCSL-03-13-PT, Decision on Prosecution Motions for Joinder, 27 January 2004.

² Motion, paras 10 and 11.

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3. The Defence also argues that pursuant to the Joinder Decision, the Order for consolidation of the three Original Indictments filed against each of the Accused should have resulted in no more than the preparation of a single indictment. As the three Original Indictments were almost identical, Defence concludes, it is clear that any consolidated indictment from these Indictments should have contained identical allegations.³
4. The Defence further asserts that by adding these additional new allegations, and contrary to the expressed provisions of the Joinder Decision, the Prosecution has not consolidated such three indictments, but has rather effectively amended them within the Consolidated Indictment and without seeking proper leave of the Trial Chamber pursuant to the relevant provisions of Rule 50 of the Rules of Procedure and Evidence ("Rules").⁴

B. The Prosecution Response

5. In its Response, the Prosecution submits that the Motion is erroneous and should be dismissed in that the Consolidated Indictment does not constitute an amendment of the Original Indictments, but rather contains a proper consolidation of all these indictments in conformity with the Joinder Decision and the respective Decisions on the preliminary motions on defects in the form of the indictment previously rendered in the cases of Issa Hassan Sesay⁵ and Santigie Borbor Kanu⁶.
6. The Prosecution also contends that by allowing the Prosecution to include additional events in the indictments, the Trial Chamber has taken the view that such inclusion does not constitute an amendment of an indictment, but rather provides more specificity as to the underlying facts. Indeed, the Prosecution submits that it would have been problematic to consolidate the Original Indictments in the fashion envisaged by the Defence in its Motion.⁷
7. Furthermore, according to the Prosecution, any additional particularization provided in the Consolidated Indictment in no way causes prejudice to the Accused but rather provides additional particularisation to several counts thereof and eliminates phrasing that was determined by the Trial Chamber to be potentially

³ *Id.*, para. 8.

⁴ *Id.*, paras 9 and 13. Rule 50(A) of the Rules on the amendment of an indictment, reads as follows:

- (A) The Prosecutor may amend an indictment, without prior leave, at any time before its approval, but thereafter, until the initial appearance of the accused pursuant to Rule 61, only with leave of the Designated Judge who reviewed it but, in exceptional circumstances, by leave of another Judge. At or after such initial appearance, an amendment of an indictment may only be made by leave granted by a Trial Chamber pursuant to Rule 73. If leave to amend is granted, Rule 47(G) and Rule 52 apply to the amended indictment.

⁵ *Prosecutor v. Issa Hassan Sesay*, SCSL-2003-05-PT, Decision and Order on Defence Motion for Defects in the Form of the Indictment, 13 October 2003 ("Decision and Order of 13 October 2003").

⁶ *Prosecutor v. Santigie Borbor Kanu*, SCSL-2003-13-PT, Decision and Order on the Defence Motion for Defects in the Form of the Indictment, 19 November 2003 ("Decision and Order of 19 November 2003").

⁷ Response, para. 13 and 14.

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ambiguous, putting the Accused precisely on notice of the events which underlie the counts with which he is being charged.⁸

AND HAVING DELIBERATED AS FOLLOWS:

II. THE MERITS OF THE MOTION

- 8. The issue raised in the Defence Motion herein turns on whether or not the Consolidated Indictment filed by the Prosecution pursuant to the Joinder Decision of the Trial Chamber in respect of the Accused, Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, alleged to belong to the Revolutionary United Front (RUF) armed faction, embodies allegations that were not contained in the three separate individual original indictments preferred against each of the Accused. In effect, in the Chamber's view, the issue to be addressed is simply whether the Consolidated Indictment filed by the Prosecution pursuant to the Joinder Decision in respect of Issa Hassan Sesay, Morris Kallon and Augustine Gbao contains new allegations. It is the opinion of the Chamber that though the issue is one of procedural technicality, it is not all problematical to warrant any complex and exhaustive legal analysis. On the contrary, a meticulous review of the procedural historical profile of the case so far will shed light on the issue whether there exist any sound legal grounds for quashing the indictment.
- 9. What, then, are the procedural historical features of the case so far? As to these features, the Chamber's findings are set out, in *extenso* in the succeeding paragraphs.
- 10. On 7 March 2003, Judge Bankole Thompson approved the Original Indictments against Accused Issa Hassan Sesay and Accused Morris Kallon. On 16 April 2003 the said Judge approved the Original Indictment against the Accused Augustine Gbao.
- 11. On 15 March 2003, Accused Issa Hassan Sesay and Morris Kallon made their initial appearances before Judge Benjamin Mutanga Itoe. On 25 April 2003, Accused Augustine Gbao made his initial appearance before Judge Bankole Thompson.
- 12. On 23 June 2003, Accused Issa Hassan Sesay filed a Motion entitled "Preliminary Motion for Defects in the Form of Indictment" pursuant to Rule 72 (B) (ii) of the Rules of Procedure and Evidence, to which the Prosecution filed a Response dated 1 July 2003, and the Accused a Reply dated 28 July 2003.
- 13. On 13 October 2003, this Trial Chamber issued a Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment.⁹ The Chamber, in that Decision, ordered, *inter alia*,:
 - "(i) That the Defence Preliminary Motion for Defects in the Form of the Indictment filed on the 24th day of June, 2003 on behalf of Issa Hassan

⁸ *Id.*, para. 10 and 16.
⁹ See *supra* note 5.

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Sesay is denied in so far as it relates to all challenges except that found to be meritorious and upheld in paragraphs 31-33 of the Decision;

- (ii) That consistent with the qualifications to (i) above, the Prosecution elect either to delete in every count and wherever it appears in the Indictment the phrase "but not limited to those events" or provide in a Bill of Particulars specific additional events alleged against the Accused in each count."¹⁰
14. Pursuant to the aforesaid Decision, the Prosecution did file a Bill of Particulars on 3 November 2003, providing additional specificity to the original Indictment preferred against Issa Hassan Sesay by including additional events in every count where the phrase "but not limited to these events" appeared.¹¹
15. The Bill of Particulars provided the specificity which Accused Issa Hassan Sesay, had sought in his Motion filed on 23 June 2003, and was not challenged in any subsequent motion.
16. On 17 October 2003, Accused Santigie Borbor Kanu filed a Motion entitled "Motion on Defects in the Form of the Indictment and for Particularization of the Indictment" to which the Prosecution filed a Response dated 24 October 2003 and the Accused a Reply dated 30 October 2003.
17. On 19 November 2003, the Trial Chamber issued a Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment.¹² The Chamber in that Decision, ordered, *inter alia*:
- (i) That the Defence Preliminary Motion for Defects in the Form of the Indictment filed on 17 October 2003 on behalf of Santigie Borbor Kanu is denied in so far as it relates to all challenges except that found to be meritorious and upheld in paragraph 17 of the Decision.
- (ii) That consistent with the qualification (i) above the Prosecution elect either to delete in every count and wherever they appear in the Indictment the phrases "but not limited to those eventss", "including but not limited to" and "included but were not limited" or provide in Bill of Particulars specific additional events alleged against the Accused in each count."
18. Pursuant to the aforesaid Decision, the Prosecution did file a Bill of Particulars on 25 November 2003 providing additional specificity to the original Indictment by including additional events in every count where the aforementioned phrases in paragraph 17 (ii) appeared.¹³
19. The Bill of Particulars provided the specificity which Accused, Santigie Borbor Kanu, had sought in his Motion filed on 17 October, 2003, and was not challenged in any subsequent motion.

¹⁰ Annexure to the Decision And Order On Defence Preliminary Motions For Defects in the Form of the Indictment, page 2.

¹¹ *Prosecutor v. Issa Hassan Sesay*, SCSL-2003-05-PT, Bill of Particulars, 3 November 2003.

¹² See *supra* note. 6.

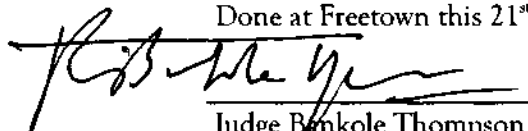
¹³ *Prosecutor v. Santigie Borbor Kanu*, SCSL-2003-13-PT, Bill of Particulars, 25 November 2003.

20. The Accused Morris Kallon, it has to be noted, did not file any preliminary motion in respect of defects in the form of the Original Indictment against him.¹⁴
21. Based on the foregoing findings as to the procedural history of this case, the Chamber concludes that the Bill of Particulars filed in the case involving Issa Hassan Sesay pursuant to the Chamber's Decision and Order of 13 October 2003, and that filed in the case involving Santigie Borbor Kanu also pursuant to the Chamber's Decision and Order of 19 November 2003, respectively are integrally part and parcel of the Original Indictments. They are not separate and distinct accusatory instruments from the Original Indictments approved pursuant to Rule 47 of the Rules. It is our view, therefore, that technically, the two Bills of Particulars cannot in law, be characterised as new and separate accusatory instruments against the Accused embodying new charges. We also wish to emphasise that the fact that the Accused, Morris Kallon, never filed a motion challenging the formal validity of his Original Indictment does not provide a legal basis for quashing the Consolidated Indictment. He is not at all prejudiced by the additional specificity provided by the Prosecution in the Bills of Particulars in respect of the other Accused persons since he legally stands to benefit from the nature and extent of the degree of particularity provided by the Prosecution in respect of the allegations ruled by the Chamber to have been impermissibly vague, imprecise and uncertain. The Chamber, accordingly, holds that the additional allegations particularised in the Bills of Particulars do put all three Accused on notice as to additional incidents or events in respect of which the Prosecution may be adducing evidence at the trial, so that none of them will be taken *ex improviso* as to the alleged matters.

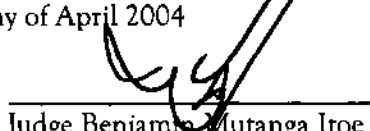
FOR THE ABOVE-STATED REASONS

The Chamber holds that there do not exist any sustainable or sound legal grounds upon which to quash the Consolidated Indictment, and accordingly dismisses this Motion.

Done at Freetown this 21st day of April 2004



Judge Bankole Thompson
Presiding Judge,
Trial Chamber



Judge Benjamin Mutanga Itoe



Judge Pierre Boutet



¹⁴ The Accused filed two preliminary motions pursuant to Rule 72(B)(i) of the Rules based on lack of jurisdiction of the Special Court to try him. See *Prosecutor v. Morris Kallon*, SCSL-2003-07-PT, Preliminary Motion Based on Lack of Jurisdiction: Establishment of Special Court Violates Constitution of Sierra Leone, 16 June 2003; *id.*, Preliminary Motion Based on Lack of Jurisdiction/Abuse of Process: Amnesty Provided by Lomé Accord, 16 June 2003.