

**SPECIAL COURT FOR SIERRA LEONE
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE**
**PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995
FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996**

TRIAL CHAMBER I

Before: Hon. Justice Benjamin Mutanga Itoe, Presiding Judge
Hon. Justice Bankole Thompson
Hon. Justice Pierre Boute
Registrar: Robin Vincent
Date: 5th of April 2005
PROSECUTOR **Against** **ISSA HASSAN SESAY**
MORRIS KALLON
AUGUSTINE GBAO
(Case No. SCSL-04-15-T)

**RULING ON THE REQUEST TO RE-OPEN THE
CROSS-EXAMINATION OF WITNESS TF1-012**

Office of the Prosecutor:

Luc Côté
Lesley Taylor
Peter Harrison

Defence Counsel for Issa Hassan Sesay:

Wayne Jordash
Sareta Ashraph

Defence Counsel for Morris Kallon:

Shekou Touray
Melron Nicol-Wilson

Defence Counsel for Augustine Gbao:

Andreas O'Shea

John Cammegh

TRIAL CHAMBER I (“Trial Chamber I”) of the Special Court for Sierra Leone (“Special Court”) composed of Hon. Justice Benjamin Mutanga Itoe, Presiding Judge, Hon. Justice Bankole Thompson, and Hon. Justice Pierre Boutet;

SEIZED of the Oral Application by Counsel for the Accused Issa Hassan Sesay made on the 4th of February 2005 to re-open his cross-examination of Witness TF1-012 (“Application”);

CONSIDERING that this Application was supported by Counsel for the Accused Augustine Gbao while Counsel for the Accused Morris Kallon did not take any position;

CONSIDERING that the Prosecution opposed the Application;

CONSIDERING that on the 4th of February 2005, the Trial Chamber delivered an oral Ruling denying the Application;

NOTING that the Trial Chamber indicated at that time that a reasoned written Ruling on this matter would be delivered in due course;

NOTING Rule 89(B) of the Rules of Procedure and Evidence of the Special Court (“Rules”);

THE TRIAL CHAMBER HEREBY ISSUES ITS RULING:

1. This is the written Ruling of the Trial Chamber in support of its decision to deny the Application of the Counsel for the Accused Issa Hassan Sesay and supported by Counsel for the Accused Augustine Gbao on the 4th of February 2005 to re-open his cross-examination of Witness TF1-012.

2. During the trial of this case on the 4th of February 2005 after the conclusion of his own cross-examination of Witness TF1-012 and that of Counsel for the other Accused and before the re-examination by the Prosecution, Counsel for the First Accused applied to re-open his cross-examination in order to adduce two further pieces of evidence: the names of those persons the Witness lived with in captivity in Tombodu and the names of those people that he knew were forced to mine in 2000. Upon further questioning by the Chamber, Counsel indicated that he had asked the Witness about the names of the people in the house with him in Tombodu during his cross-examination and the Witness had stated that he could not remember them. Counsel for the Third Accused Gbao indicated that during his cross-examination of the Witness, it became apparent that the Witness did remember the names but did not want to reveal them due to security concerns. With regard to the second list of names, Mr. Jordash admitted that he had failed to ask this question during his cross-examination due to an oversight on his part. He, however, submitted that this Court has discretion to allow him to re-open his cross-examination pursuant to its power under Rule 89(B) of the Rules to “apply rules of evidence which best favour a fair determination of the matter before it”.

3. The Prosecution opposed the Application on the grounds that some finality was required in trial proceedings. Counsel noted that based on the cooperation that existed between Defence Counsel, Counsel for Accused Gbao had been invited to go into a closed session in order to obtain the names of those persons who lived with the Witness in Tombodu but had declined to do so.

4. The Chamber notes that Rule 85 of the Rules sets out clearly the general procedure to be followed for the presentation of evidence at trial:

Rule 85: Presentation of Evidence

(A) Each party is entitled to call witnesses and present evidence. Unless otherwise directed by the Trial Chamber in the interests of justice, evidence at the trial shall be presented in the following sequence:

- (i) Evidence for the prosecution;
- (ii) Evidence for the defence;
- (iii) Prosecution evidence in rebuttal, with leave of the Trial Chamber;
- (iv) Evidence ordered by the Trial Chamber.

(B) Examination-in-chief, cross-examination and re-examination shall be allowed in each case. It shall be for the party calling a witness to examine him in chief, but a Judge may at any stage put any question to the witness.

5. In *Kupreskic*, the Trial Chamber of the International Criminal Tribunal for the Former Yugoslavia (“ICTY”) remarked that:

[I]t is incumbent upon the Tribunal to ensure a fair and expeditious trial and to conduct orderly proceedings, and that these interests are best served by the aforementioned order of presentation of evidence.[\[1\]](#)

6. Adopting this observation, the Chamber is of the view that it possesses discretion to vary the order of the presentation of evidence in order to ensure the fairness of the trial proceedings. However, it should be emphasised that in our opinion such a discretionary power should only be exercised in exceptional circumstances to meet the justice of the case, for example, when new material is introduced warranting rebuttal by the opposing party as was held by the ICTY in the *Delalic* decision. There, the Tribunal noted that:

[W]here during re-examination new material is introduced, the opposing party is entitled to further cross-examine the witness on such new material. Similarly, where questions put to a witness by the Trial Chamber after cross-examination raise entirely new matters, the opponent is entitled to further cross-examine the witness on such new matters. The rationale is clear in the sense that further cross-examination is to re-examination what cross-examination is to examination-in-chief. Hence to deny further cross-examination when new material is raised in re-examination is tantamount to a denial of the right to cross-examination on such new material.[\[2\]](#)

7. In this case, Mr. Jordash, Counsel for the Accused Sesay, requested that he be allowed to re-open his cross-examination after the cross-examination of Counsel for the Second and Third Accused and before the Prosecution began its re-examination.

8. The Chamber wishes to emphasise that the questions that Counsel was seeking to ask did not arise from any new information elicited through either re-examination by the

Prosecution^[3] or examination-in-chief by the Court. Regarding the list of persons who had lived with the Witness in Tombodu, the Witness had stated during cross-examination by Counsel for the Accused Sesay that he could not remember who they were. During cross-examination by Counsel for the Accused Gbao, the Witness stated that he could remember their names, but did not want to specifically name them for security reasons. At that point, the Court invited Counsel to go into closed session but Counsel refused, noting that he did not intend to adduce any such names.^[4] As already noted, Counsel for the Accused Sesay admitted that he had not thought of asking for the names of the miners in 2000 during his cross-examination due to an oversight.

9. Of much significance in the opinion of this Chamber is the fact that Counsel for all three Accused were provided with the ample and unlimited opportunity to cross-examine Witness TF1-012, despite its standing injunction against lengthy and repetitious cross-examination. While recognising that it has the discretion to allow counsel to re-open cross-examination where the interests of justice and the fairness of trial proceedings so require, the Chamber finds that Counsel has failed to show any exceptional circumstances justifying the exercise of its discretion in the present situation.

FOR ALL THE ABOVE-STATED REASONS,

DENIES the request of Counsel for the Accused Sesay to re-open his cross-examination of Witness TF1-012.

Done in Freetown, Sierra Leone, this 5th day of April, 2005

Hon. Justice Pierre Boutet Hon. Justice Benjamin Mutanga Hon. Justice Bankole Thompson
Itoe
Presiding Judge
Trial Chamber I

[Seal of the Special Court]

[1] *Prosecutor v. Kupreskic et al.*, Case No. IT-95-16, Decision on Order of Presentation of Evidence, 21 January 1999.

[2] *Prosecutor v. Delalic et al.*, Case No. IT-96-21-T, Decision on the Motion on Presentation of Evidence by the Accused, Esad Landzo, 1 May 1997 at para. 30.

[3] In fact, because Defence objections to the questions asked by the Prosecution during re-examination were sustained, no evidence was elicited during re-examination.

[4] Transcripts of Trial Proceedings, 4 February 2005 at pp. 42-43.