

NOTING the oral response made by the Prosecution and the reply thereto by Defence;

MINDFUL of the provisions of Rule 89 of the Rules of Procedure and Evidence of the Court (“Rules”);

NOTING that the Chamber delivered an oral ruling on the 21st of July 2005 dismissing the objection raised by the Defence and indicating that a written reasoned ruling would be issued in due course;

THE TRIAL CHAMBER HEREBY ISSUES ITS REASONED WRITTEN RULING:

1. The Defence objected to the admission of evidence by Prosecution Witness TF1-360 identifying the signatures of Sam Bockarie and the Accused Issa Sesay on two documents called Salute Reports tendered by the Prosecution as Exhibits 35 and 36, respectively.^[1] Firstly, the Defence objected that they had not received adequate disclosure that the Prosecution intended to lead this evidence. Secondly, the Defence objected that evidence of the identification of signatures can only be admitted through an expert and that an insufficient foundation regarding the familiarity or nexus of the witness with the signature had been laid for its admission. Defence submitted that this procedure is highly unreliable and will place a huge onus upon the Defence to try to rebut the evidence.

2. The Chamber is satisfied that the Defence had adequate notice of the Prosecution’s intention to introduce the evidence of the identification of the signatures on the Salute Reports through Prosecution Witness TF1-360. According to the Defence, the Prosecution informed them several days before the 21st of July 2005 that they intended to ask Witness TF1-360 if he could identify the signatures in question. We note, moreover, that the Proofing Statement of the 10th and 13th to 16th of June 2005 that was disclosed to the Defence shortly thereafter clearly states that Witness TF1-360 recognized the signatures on the documents “as those of Sesay and Bockarie.”^[2]

3. The admission of evidence before the Special Court is governed by Rule 89 of the Rules which provides that:

Rule 89: General Provisions

(A) The rules of evidence set forth in this Section shall govern the proceedings before the Chambers. The Chambers shall not be bound by national rules of evidence.

(B) In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.

(C) A Chamber may admit any relevant evidence.

4. Therefore, as this Court has frequently noted, “the Rules favour a flexible approach to the issue of admissibility of evidence, leaving the issue of weight to be determined when assessing probative value of the totality of the evidence.”^[3]

5. This Chamber is also cognisant of its authority under Rule 95 to exclude evidence where its admission would bring the administration of justice into disrepute. Thus, the Chamber may exercise its discretion under this Rule and under its inherent jurisdiction to exclude evidence whose admission will impact adversely and unfairly on the integrity of the proceedings before the Court.^[4]

6. The Prosecution sought to introduce evidence that Witness TF1-360 recognized the signatures of Sam Bockarie and Issa Sesay on the Salute Reports based on his past familiarity with their signatures.

7. At common law, the opinion evidence of a lay person identifying handwriting has always been admissible in those cases “where the witness had seen the person write and those where the witness had acquired some previous familiarity with the person’s handwriting in another way.”^[5] Expert evidence is often used in order to conduct a comparison between a disputed writing and a writing considered to be genuine,^[6] but even here, courts have permitted lay persons or the trier of fact to compare disputed handwriting with admitted evidence and draw inferences thereon without the benefit of expert testimony.^[7]

8. The evidence of TF1-360 relating to the identification of the signatures of Sam Bockarie and Issa Sesay may be relevant and is therefore admissible in accordance with Rule 89(C) of the Rules. While the Defence have questioned the reliability of this evidence, the Chamber is satisfied that this determination will be made at a later stage and is not a relevant in terms of the assessment of the admissibility of the evidence. The Defence will have the opportunity to fully explore the foundation for the witness’ opinion that the signatures are those of Sam Bockarie and Issa Sesay.

9. The Chamber therefore finds that the application of the Defence lacks merit. The testimony relating to the identification of the signatures of Sam Bockarie and Issa Sesay in Exhibits 35 and 36 is admitted in evidence. The Chamber wishes to emphasise that a final determination of the relevance, reliability and probative value of this evidence will be made by the Trial Chamber at the appropriate time in light of all of the evidence adduced during the trial by the Prosecution and the Defence.

FOR ALL THE ABOVE REASONS, RULES that the Defence application is denied.

Done at Freetown, Sierra Leone, this 14th day of October 2005

Hon. Justice Benjamin Mutanga
Itoe

Hon. Justice Pierre Boutet

Hon. Justice Bankole
Thompson

Presiding Judge
Trial Chamber I

[Seal of the Special Court for Sierra Leone]

[1] Exhibit 35, Salute Report to the Leader of the Revolution RUF/SL from Major General Sam Bockarie, SCSL/ERL/35 and Exhibit 36, Salute Report to the Leader of the Revolution from Brigadier Issa H. Sesay, Battlefield Commander RUF/Sierra Leone, SCSL/ERL/36.

[2] Additional Information provided by witness TF1-360, Proofing on 10, 13-16 June 2005, para 22, Court Record p. 12161.

[3] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, “Ruling on Gbao Application to Exclude Evidence of Prosecution Witness Mr. Koker”, 23 May 2005, para 4. See also, *Prosecutor v. Norman, Kondewa and Fofana*, SCSL-04-14-AR65, “Fofana – Appeal Against Decision Refusing Bail”, 11 March 2005, paras 22-24.

[4] *Prosecutor v. Sesay, Kallon and Gbao, Id.*, paras 7-8.

[5] *Lockheed-Arabia v. Owen* [1993] QB 806 (Court of Appeal), para 7. See also, *Doe d. Mudd v. Suckermore* (1837) 4 Ad. & E. 703 and *R v. Wright* [1980] VR 593 (Supreme Court of Victoria).

[6] See, for example, *Prosecutor v. Stakic*, IT-97-24, Order Pursuant to Rule 98 to Appoint a Forensic Handwriting Examiner, 28 June 2002.

[7] See, for example, *R. v. Abdi*, (1997) 116 C.C.C. (3d) 384 (Ontario Court of Appeal), paras 16 and 21-22.