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SPECIAL COURT FOR SIERRA LEONE

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TRIAL CHAMBER I

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

Registrar: Mr. Lovemore G. Munlo SC

Date: 25th of July 2006

PROSECUTOR Against ISSA HASSAN SESAY
 MORRIS KALLON
 AUGUSTINE GBAO
 (Case No. SCSL-04-15-T)

Public Document

DECISION ON SESAY DEFENCE MOTION TO DIRECT THE PROSECUTOR TO INVESTIGATE THE MATTER OF FALSE TESTIMONY BY WITNESS TF1-366

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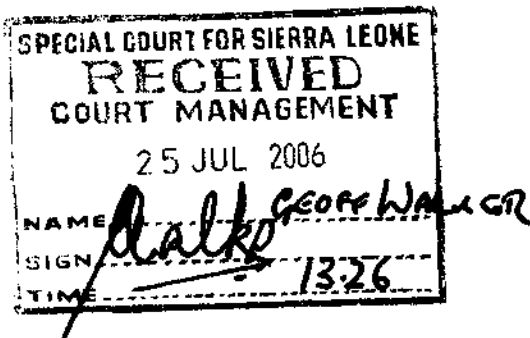
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TRIAL CHAMBER I (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”) composed of Hon. Justice Bankole Thompson, Presiding Judge, Hon. Justice Pierre Boutet, and Hon. Justice Benjamin Mutanga Itoe;

SEIZED of the *Defence Motion to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness TF1-366*¹ filed by Counsel for the Accused Issa Hassan Sesay (“Defence”) on the 12th of January 2006 (“Motion”) in which the Defence assert that strong grounds exist for believing that Prosecution Witness TF1-366 knowingly and wilfully gave false evidence and seek that the Trial Chamber order the Prosecutor to investigate the testimony of Prosecution Witness TF1-366;

NOTING the *Prosecution Response to the Sesay Motion to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness TF1-366*² filed by the Office of the Prosecutor (“Prosecution”) on the 23rd of January 2006 (“Response”);

NOTING ALSO the *Reply to the Prosecution Response to the Sesay Motion to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness TF1-366*³ filed by Defence on the 26th of January 2006 and the *Corrigendum* thereto filed on the same day (“Reply”);

MINDFUL of the provisions of Rules 91 and 77 of the Rules of Procedure and Evidence of the Special Court (“Rules”);

THE TRIAL CHAMBER ISSUES THE FOLLOWING DECISION:

I. INTRODUCTION

1. The Prosecution called Witness TF1-366 to testify at the trial proceedings in the case of *Prosecutor v. Sesay, Kallon and Gbao* on the 7th of November 2005. The Trial Chamber granted the Prosecution’s application to have TF1-366 testify entirely in closed session, after a finding that if the whole

¹ *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Defence Motion to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness TF1-366, 12 January 2006.

² *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Prosecution Response to the Sesay Motion to Direct the Prosecutor to Investigate the matter of False Testimony by Witness TF1-366, 23 January 2006.

³ *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Reply to Prosecution Response to the Sesay Motion to Direct the Prosecutor to Investigate the matter of False Testimony by Witness TF1-366, 26 January 2006

of the Witness' testimony were given in public, his identity would be disclosed with the possibility of his personal security and that of his family being jeopardised.⁴

2. Witness TF1-366 testified for 10 days, from the 7th to the 18th of November 2005, inclusive, during which he was examined-in-chief by the Prosecution and cross-examined by Defence Counsel for the Accused Sesay, Kallon and Gbao.

3. In accordance with our *Order to Prosecution to Produce Witness List and Witness Summaries* dated the 7th of July 2004,⁵ the Prosecution filed the following witness statements of Witness TF1-366 that had previously been disclosed to the Defence:

- Statement of the 5th of February 2004 (handwritten and typed versions);
- Statement of the 30th of August 2004;
- Mission Interview of the 17th and 18th of February 2005;
- Additional Information from Proofing on the 8th, 9th, 11th, 12, 15th and 16th of August 2005;
- Additional Information from Proofing on the 19th, 20th and 21st of October 2005; and
- Additional Information from Proofing on the 29th of October 2005.

II. SUBMISSIONS OF THE PARTIES

A) *The Defence Motion*

4. The Defence submit that strong grounds exist for believing that Witness TF1-366 "knowingly and wilfully gave false testimony" on several different occasions during his testimony before the Trial Chamber which give rise to a *prima facie* case of perjury and contempt of the Special Court.⁶

5. After reviewing the jurisprudence of the International Criminal Tribunal for Rwanda ("ICTR") on false testimony, the Defence submit that Witness TF1-366 made false statements to the Court relating to three areas of his testimony:

⁴ The Chamber wishes to note that because of this closed session order, all of the filings in relation to this Motion should have been filed confidentially. This said, the Chamber is satisfied after a careful review of the materials and consultation with the appropriate authorities that the identity of Witness TF1-366 has not been compromised by the revelation of these portions of his closed session evidence. In light of this, this Decision has also been filed publicly. The Chamber urges all Parties to show more caution in the future.

⁵ *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Order to Prosecution to Produce Witness List and Witness Summaries, 7 July 2004.

⁶ Motion, para. 5.

TF1-366

B

1. The code name by which Issa Sesay was allegedly known for the purposes of radio communication;
2. The name of a man allegedly killed by Issa Sesay in Bumpo; and
3. The alleged second trip that TF1-366 took with Issa Sesay to Monrovia.⁷

6. Firstly, the Defence emphasise that Witness TF1-366 admitted to wilfully fabricating evidence regarding the code names of Issa Sesay when he testified that he had called out the names of "Advance" and "Retreat" in order to know whether the Defence Counsel "could remember the names" the Witness had given the day before.⁸ The Defence submit that this false testimony was material since it supported the Witness' assertion that he had reported alleged crimes committed by subordinates to Issa Sesay.⁹

7. Secondly, the Defence state that Witness TF1-366 proffered three different answers concerning the name of a man allegedly shot by Issa Sesay: that his name was Vandy, that his name was Akim and that he never knew the victim's name. The Defence submit that this evidence objectively establishes that the witness has given false testimony and shows a willingness to willingly fabricate evidence. The evidence is material, continue the Defence, because it alleges a direct killing by Issa Sesay and his role in leading an attack from Makeni to Kono.¹⁰

8. The last area of alleged false testimony referred to by the Defence relates to a very detailed account contained in a witness statement provided to the Prosecution of a trip to Monrovia that the Witness allegedly took with Issa Sesay. The Defence suggest that since the Witness testified that he had never given this information during the interview with the Prosecution, the statement must have been fabricated by the Witness. The Defence note that this statement was reviewed by the Witness on three occasions and thus could not have been either a fabrication or an error by the Prosecution investigator.¹¹

9. The Defence also submit that an objective analysis of the remainder of the Witness' statements give rise to strong grounds for believing that Witness TF1-366 knowingly and willingly gave false testimony. The Defence emphasise that his evidence was "replete with contradictions and

⁷ *Id.*, para. 15.

⁸ *Id.*, para. 16.

⁹ *Id.*, para. 17.

¹⁰ *Id.*, paras 19-20.

¹¹ *Id.*, paras 21-24.

inconsistencies" that are of such a nature and degree as to raise substantial doubts about the truth of his statements and remove any possibility of error, mistake or loss of memory.¹²

10. In conclusion, the Defence maintain that this motion is not concerned with the reliability or credibility of Witness TF1-366, but rather with the integrity of the trial proceedings. The Defence submit that Witness TF1-366 admitted to giving false testimony and that it is objectively clear that he did. The Defence conclude that the Trial Chamber should use the procedure set forth in Rule 91 of the Rules in order to safeguard the essence of these proceedings.¹³

B) The Prosecution Response

11. The Prosecution raises three preliminary objections to the Defence Motion. The Prosecution notes that Appendix A to the Motion was not filed and that the Motion, being 13 pages in length, exceeds the page limit for motions. Lastly, the Prosecution submits that Rule 91 of the Special Court Rules does not contain a provision granting the Trial Chamber jurisdiction to direct the Prosecution to investigate a matter of alleged false testimony.¹⁴

12. With regard to the specific instances of alleged false testimony contained in the Motion, the Prosecution addresses each area in turn.

13. With respect to the testimony of Witness TF1-366 regarding the code names of Issa Sesay, the Prosecution stresses that the Witness testified for 10 days about matters that happened over 10 years. Under cross-examination on the 9th day of testimony, the Witness provided two code names of Issa Sesay and then was unable to repeat them when asked to do so on the 10th day of testimony. The Prosecution states that it was after the third request to repeat the names that the Witness provided two different names and then responded that he had given the names to see if the lawyer recalled what he had said the day before. The Prosecution submits that everyone knew that the answers could be looked up in the transcript, that the Court could not have been misled and this could not constitute false testimony.¹⁵

14. With regard to the allegation of Issa Sesay shooting a person at Bumpe, the Prosecution submits that, contrary to the Defence assertion, Witness TF1-366 did not identify the person shot.

¹² *Id.*, para. 25.

¹³ *Id.*, paras 26-28.

¹⁴ Response, para. 2

¹⁵ *Id.*, para. 17.

Rather, while the Witness referred many times to a former SLA soldier named Akim Turay¹⁶ who was not shot, Witness TF1-366 was not asked and did not provide the name of the person allegedly shot and killed by Issa Sesay at Bumpe.¹⁷ The Prosecution points out that the statement that the person who was shot was named Vandy is contained in notes recorded during a proofing session that were recorded in English and not reviewed or read back to Witness TF1-366.¹⁸

15. The third area of the alleged false testimony relates to the second trip that Witness TF1-366 allegedly took to Monrovia with Issa Sesay. On this issue, the Prosecution states that the Witness testified that he went to Monrovia on one occasion with Issa Sesay to bring back arms and other items. Defence then put a portion of TF1-366's prior statement to the Witness in cross-examination which made reference to two trips and part of this statement was denied. The Prosecution states, but does not concede, that there may be evidence of a prior inconsistent statement, but maintains that this is not evidence of false testimony.¹⁹

16. After reviewing the law on false testimony, the Prosecution submits that the Defence has inappropriately asked the Trial Chamber to invoke a procedure because of one inconsistency relating to the code names of Issa Sesay which was introduced only in cross-examination and which is not material to the Prosecution's case. The Prosecution submits that two of the elements for false testimony, that the statement is contrary to the solemn declaration and that the witness must believe that the statement was false, have not been established.²⁰

17. The Prosecution also submits that the Motion is frivolous or an abuse of process, that the Court should consider a remedy under Rule 46(C) of the Rules and that the Defence misled Witness TF1-366 during cross-examination and has sought to mislead the Court.²¹

C) The Defence Reply

18. With regard to the preliminary objections of the Prosecution, the Defence accept that the transcripts that were meant to be filed as Appendix A were not filed and that the Motion was longer than the required length since it was drafted with too much space between the lines. While the

¹⁶ During the testimony of the 7th of November 2005, TF1-366 also referred to this person as Akim and Akim Toulay.

¹⁷ Response, paras 6-12.

¹⁸ *Id.*, para. 13.

¹⁹ *Id.*, paras 14-16.

²⁰ *Id.*, paras 19-20.

²¹ *Id.*, paras 18 and 21.

Defence maintain that the Chamber does have jurisdiction to direct the Prosecution to investigate the false testimony, the Defence respectfully invite the Chamber to invoke Rule 77 proceedings in whichever manner it considers appropriate.²²

19. The Defence emphasise that the Prosecution conceded that Witness TF1-366's evidence concerning the code names of Issa Sesay was not true. The Defence submit that the fact that the falsity of the testimony was easily discovered or later admitted does not remove the fact that the testimony was false. The Defence maintain that it is clear that the elements of false testimony have been satisfied and justify the invocation of Rule 91.²³

20. With regard to the name of the person allegedly killed by Issa Sesay in Bumpe, the Defence concede that Witness TF1-366 did not testify on the 7th of November 2005 that the man that Mr. Sesay killed was called Akim and that the Defence assertion was due to a misreading of the transcripts. The Defence maintain, however, that the fact that the Witness stated that the name of the victim was Vandy during a proofing session and then testified before the Court that he had never known the name is still irreconcilable.²⁴

21. The Defence assert that the Prosecution's stance regarding the alleged second trip of Witness TF1-366 to Monrovia with Issa Sesay is absurd since it refuses to even accept that there is evidence of a prior inconsistent statement and does not address the issue.²⁵

22. Lastly, the Defence take issue with the Prosecution's repeated position in its Response which states repeatedly that the Defence has sought to mislead the Court. The Defence emphasise that it had no intention to mislead the Court and that any misstatement of fact was inadvertent.²⁶

III. APPLICABLE LAW AND DELIBERATIONS

A) *The Relevant Provisions*

23. The law governing the offence of false testimony within the jurisdiction of the Special Court for Sierra Leone is embodied in two interrelated regimes of the Rules of Procedure and

²² Reply, paras 1-2.

²³ *Id.*, para. 3.

²⁴ *Id.*, para. 5.

²⁵ *Id.*, para. 4.

²⁶ *Id.*, paras 6-7.

Evidence of the Court. They are Rule 91(A), (B), (C) and (D) and Rule 77(C). Rule 91 provides as follows:

Rule 91: False Testimony under Solemn Declaration

(A) A Chamber, on its own initiative or at the request of a party, may warn a witness of the duty to tell the truth and the consequences that may result from a failure to do so.

(B) If a Chamber has strong grounds for believing that a witness may have knowingly and wilfully given false testimony, the Chamber may follow the procedure, as applicable, in Rule 77.

(C) The maximum penalty for false testimony under solemn declaration shall be a fine of 2 million Leones or a term of imprisonment of 2 years, or both. The payment of any fine imposed shall be made to the Registrar to be held in the separate account referred to in Rule 77(H).

(D) Sub-Rules (A) to (C) shall apply to a person who knowingly and wilfully makes a false statement in a written statement which the person knows, or has reason to know, may be used in evidence in proceedings before the Special Court.

24. According to Article 77(C):

Rule 77: Contempt of the Special Court

(C) When a Judge or Trial Chamber has reason to believe that a person may be in contempt of the Special Court, it may:

- (i) deal with the matter summarily itself;
- (ii) refer the matter to the appropriate authorities of Sierra Leone; or
- (iii) direct the Registrar to appoint an experienced independent counsel to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating contempt proceedings. If the Chamber considers that there are sufficient grounds to proceed against a person for contempt, the Chamber may issue an order in lieu of an indictment and direct the independent counsel to prosecute the matter.

B) *The Offence of False Testimony Defined*

25. In the Chamber's view, a person is guilty of the crime of false testimony under Rule 91 where he wilfully and knowingly testifies falsely after taking a solemn declaration to tell the truth. A person also commits the crime where "he knowingly and wilfully makes a false statement in a written statement which he knows or has reason to know, may be used in evidence in proceedings before the

Special Court.”²⁷ In essence, a person commits the crime of false testimony if he makes an untrue statement under oath or solemn declaration knowingly and wilfully with intent to mislead. Simply, false testimony is testimony that is untrue. Ordinarily, and as a concept, false testimony is broader than perjury, which has a state of mind element. Unless criminalized, false testimony does not *per se* amount to a crime.²⁸

26. Accordingly, in our considered view, the ingredients of false testimony are (i) making a false statement under oath or solemn declaration to tell the truth, (ii) knowing that the statement was false and (iii) wilfully making the statement with the intention to mislead the Court and cause harm. The first ingredient is the *actus reus* and the second and third ingredients constitute the *mens rea*.

C) The Requisite Standard of Proof Under Rule 91(B) and Rule 77(C)

27. As regards the crucial issue of the required standard of proof for the judicial inquiry prior to the initiation of proceedings under Rule 91(B) and Rule 77(C), the Chamber wishes to emphasise that Rule 91(B) clearly requires the Judge or the Trial Chamber to apply, in the preliminary judicial inquiry, this standard, namely “strong grounds for believing”.

28. The Chamber, in making a decision on this matter, would like to refer to the jurisprudence of the ICTR on the issue. In a decision in the case of the *Prosecutor v. Akayesu*, the Trial Chamber held that to prove the offence of false testimony, it is not sufficient to establish that a statement by the witness was false. It must also be shown that the false statement was a deliberate act, made wilfully and knowingly. The Chamber in that case, observed that “raising doubts about the reliability of statements made by a witness is not in itself sufficient to establish strong grounds for believing that” a “witness knowingly and wilfully gave false testimony.”²⁹ A further principle established in that case is that inaccuracies and contradictions are a natural occurrence in testimony before the Court and are insufficient to establish false testimony.³⁰ Equally important is the principle

²⁷ Rule 91(D).

²⁸ *Black’s Law Dictionary*, 7th ed., Bryan A. Garner (ed.), (West Group: St Paul, Minnesota, 1999), p. 1486.

²⁹ *Prosecutor v. Akayesu*, ICTR-96-4-T, Decision on the Defence Motion to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness “R”, 9 March 1998; p. 3. See also *Prosecutor v. Rutaganda*, ICTR-96-3-T, Decision on the Defence Motion to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness “CC”, 10 March 1998, p. 3.

³⁰ *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgement, 2 September 1998, paras 139-140. There, the Chamber observed: “To deduce from any resultant contradictions and inaccuracies that there was false testimony, would be akin to criminalising frailties in human perceptions.” See also *Prosecutor v. Bagilishema*, ICTR-95-14-T, Decision on the Request of the Defence for the Chamber to Direct the Prosecutor to Investigate a Matter with a View to the Preparation and Submission of an Indictment for False Testimony, 11 July 2000, paras 6-7.

enunciated by the Appeals Chamber of the ICTR in *Rutaganda*, clearly making a distinction between issues of credibility and the issue of whether a witness' statement is false. The Chamber stated that:

A credibility determination may be based, but does not necessarily depend, on a judicial finding that a witness has given false testimony. The testimony of a witness may lack credibility even if it does not amount to false testimony within the meaning of Rule 91. Thus an investigation for false testimony is ancillary to the proceedings and does not impact on the accused's right to a fair trial.³¹

29. This Trial Chamber endorses the proposition that the demonstration of inconsistencies, inaccuracies or contradictions in the evidence of a witness that raise doubts as to his or her credibility is not enough to establish that he or she has made a false statement. We opine that such factors are issues to be considered by the Court in its assessment of the credibility and the reliability of the witness' evidence, but something further is required to establish the required *mens rea* of the offence of false testimony.

30. It is the Defence submission that strong grounds under Rule 91(B) exist "if an objective assessment of the nature and quality of the statements within the totality of the witness' evidence, left a fair-minded observer with reasonable doubts about the veracity of the statement(s)."³² The Defence seek to distinguish veracity from credibility or reliability. Consistent with the ICTR jurisprudence, this Chamber takes the view that the test under Rule 91(B) is not satisfied by doubts as to the credibility or reliability of the statements.³³ Reasonable doubts as to veracity, however, merely go to establish the *actus reus* of the offence, namely, that the statement is in fact false. They would not establish that the false statement was made knowingly or wilfully.

31. Thus, the Trial Chamber finds that the party seeking a remedy under Rule 91(B) must also establish strong grounds for believing that a witness may have knowingly and wilfully given a false statement. There may be occasions in which there is direct evidence to establish the *mens rea* of the offence. Where there is not, however, strong grounds may be established by inference. In this regard, the Trial Chamber agrees with the Defence submission that an objective assessment of the witness' evidence and all of the relevant circumstances may lead the Chamber to form strong grounds for believing that the witness may have knowingly and willingly provided false testimony.

³¹ *Prosecutor v. Rutaganda*, ICTR-96-3-A, Decision on Appeals Against the Decisions by Trial Chamber I Rejecting the Defence Motions to Direct the Prosecutor to Investigate the Matter of False Testimony by Witnesses "E" and "CC", 8 June 1998, para. 28.

³² Motion, paras 13-14.

³³ *Id.*

IV. MERITS OF THE MOTION

32. Based on the foregoing exposition of the law governing the issues raised by the Motion, the Chamber now proceeds to consider the merits of the Defence Motion. But before doing so, we deem it necessary to dispose of three Preliminary Objections raised by the Prosecution to the Motion.

A) The Prosecution's Preliminary Objections

33. Taking the first and second together, the Chamber recalls that the Prosecution complained that Appendix A was not attached to Motion Paper and that the length of the Motion, due to improper spacing, exceeded the limit prescribed by the Rules. The Chamber agrees with the Prosecution but finds that no prejudice is caused to the Prosecution by these procedural irregularities.

34. The third objection of the Prosecution relates to the that fact Rule 91(B) of the Special Court Rules adopts the procedure under Rule 77 instead of providing that the Chamber may "direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony" as do its counterparts in the ICTY and ICTR Rules.³⁴ Rule 77(C) offers the Trial Chamber three options for proceeding: that the Trial Chamber may deal with the matter summarily itself, that it may refer the matter to the appropriate authorities of Sierra Leone or that it may "direct the Registrar to appoint an experienced independent counsel to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating contempt proceedings."

35. The Chamber disagrees with the Prosecution that the Defence Motion should be dismissed for lack of jurisdiction. While the Defence originally sought the remedy of having the Trial Chamber direct the Prosecution to investigate the matter, in its Reply the Defence invites the Chamber to invoke Rule 77 in the manner that would "best resolve the important interests at stake."

36. After a careful reading of the Rules, the Trial Chamber is satisfied that the appropriate remedy, should the test under Rule 91(B) for false testimony be satisfied, is one of the options set forth in Rule 77(C). In cases where the offence of false testimony has been clearly established before

³⁴ Rule 91(B)(i) of the Rules of Procedure and Evidence of the ICTY and the Rules of Procedure and Evidence of the ICTR.

the Trial Chamber, the Chamber may then choose to proceed summarily.³⁵ The Chamber, believes, however, that in most cases, the most appropriate remedy would be to order the Registrar to appoint an independent counsel to conduct the investigation and report back to the Chamber as to whether there are sufficient grounds for initiating false testimony proceedings.

37. We will now, therefore, proceed to examine the merits of the Application to determine if the burden under Rule 91(B) is satisfied and, which of the procedures, if it is, under Rule 77(C) should be adopted.

B) Substantive Merit of Motion

38. Guided by the law as expounded in the foregoing paragraphs, the question for the Chamber's determination is whether the Defence has shown that there exist strong grounds or there is reason to believe that witness TF1-366 knowingly and wilfully gave false testimony in the present trial proceedings contrary to Rule 91. In effect, the issue for the Chamber's determination is whether the Defence has presented evidence from which the Trial Chamber can conclude that there are strong grounds to believe that Witness TF1-366 has committed the offence of false testimony to warrant application of the procedure by Rule 77(C).

39. What then, is the evidence in support of the Defence Motion? According to the Defence, there are three areas of false testimony given by Witness TF1-366. They are: (1) the radio code names of Issa Sesay, (2) the name of the man allegedly killed by Issa Sesay in Bumpe, and (3) the alleged second trip with Issa Sesay to Monrovia.

(1) The Radio Code Names of Issa Sesay

40. The Chamber recalls that under cross-examination by Counsel for the Second Accused, Witness TF1-366 was asked for the radio code name of Issa Sesay. At first his response was that he did not know the name since they changed code names all the time. When asked to name those code names of Issa Sesay that he could remember, he stated "Fire Power" and "Highway". The following day, Witness TF1-366 was cross-examined by Counsel for the Third Accused Augustine Gbao. He was asked if he remembered the code names for Issa Sesay that he had provided the day before. The

³⁵ *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-AR77, Decision on Defence Appeal Motion Pursuant to Rule 77(j) on Both the Imposition of Interim Measures and on Order Pursuant to Rule 77(C)(iii), 23 June 2005, para. 18.

first two times he was asked, Witness TF1-366 asked Counsel to tell him the names which he would then be able to confirm. The third time he was asked, Witness TF1-366 provided two different names, "Advance" and "Retreat". When Counsel suggested that this was proof that the Witness was lying, the Witness denied this, stating: "No. You know yesterday what I told you. I just called those names for me to know whether you could remember the names I called yesterday. We have several code-names."

41. The Defence submits that this is a clear admission by Witness TF1-366 that he was knowingly and wilfully giving false evidence which was material to the case against First Accused since it goes to his knowledge of crimes in the Kono District. The Prosecution, on the other hand, argues that since everyone knew that the answers were in the transcripts, the Court could not have been misled. Further, the Prosecution contends that a Witness responding incorrectly and then making it clear that he was aware the response was incorrect does not testify falsely. In its Reply, the Defence emphasises that it is clear that this evidence satisfies all of the elements required for the offence of false testimony.

42. Did Witness TF1-366 give false testimony on this aspect of the case? On a close examination of the evidence as disclosed by the transcript, the Chamber finds that there are indeed inaccuracies and seeming contradictions in respect of this aspect of the Witness' testimony but that the evidence falls short of false testimony. Such inconsistencies and contradictions will be considered during the Trial Chamber's final determination of the credibility, reliability and probative value of Witness TF1-366's evidence at the appropriate time in light of all of the evidence adduced during the trial by the Prosecution and the Defence.

(2) The Name of the Man Allegedly Killed by Issa Sesay in Bumpe.

43. The Defence concedes that its original assertion that Witness TF1-366 testified that the man allegedly shot by Issa Sesay was named Akim was based on an erroneous reading of the trial transcripts. However, the Defence maintains that there is still a contradiction between the Witness pre-trial statement to the Prosecution that he saw Issa Sesay "shoot and kill one of our fighters named Vandy" in Bumpe and his testimony both in examination-in-chief and cross-examination that he did not know the soldier who was allegedly killed by Issa Sesay and had never known his name. The Prosecution contends that the witness' statement was recorded in English and never read back to the Witness. The Defence submits that the evidence is material since it relates to allegations that Mr. Sesay killed a man and had a role in leading an attack during which crimes were committed.

44. The Chamber finds on a close examination of the evidence on this issue, that there appears to be an inconsistency or contradiction in the witness' testimony on this point but that this does not amount to giving false testimony.

(C) The Alleged Second Trip with Issa Sesay to Monrovia

45. The Chamber notes that in a 19-page typed statement taken during an interview with a Prosecution investigator on the 30th of August 2004, Witness TF1-366 recounted going on two trips to Monrovia with Issa Sesay in order to collect arms, ammunition and other supplies from Charles Taylor. The witness statement contains an 8-paragraph account of the first trip to Monrovia and a 3-paragraph account of the second trip, both containing such alleged details as who went, where they went in Monrovia and which supplies were obtained.

46. The records reveal that during examination-in-chief, Witness TF1-366 testified that he has only gone to Monrovia once and provided details regarding the alleged first trip to Monrovia with Issa Sesay. Under cross-examination by Defence, the Witness confirmed that he has only gone to Monrovia once with Issa Sesay, allegedly in 2002. When Defence read out portions of the statement regarding the first trip to him, the Witness confirmed having provided some details and denied others. Since the Witness entirely denied ever having told the investigator about a second trip to Monrovia, the details of this trip in the statement were not put to the Witness.

47. The Defence submits that the details recorded in the written statement and the subsequent denial necessarily mean that Witness TF1-366 must have willingly fabricated the evidence. The Prosecution, on the other hand, submits that this may be evidence of, at most, a prior inconsistent statement (which it does not concede), but that such evidence does not amount to false testimony.

48. On this issue, the Trial Chamber finds that the evidence does reveal an inconsistency between the Witness' written statements and his oral testimony, but that such inconsistency, contrary to what the Defence contends, does not demonstrate or constitute false testimony. The Trial Chamber reiterates that all of the inconsistencies and contradictions will be considered during the Trial Chamber's final determination of the credibility, reliability and probative value of Witness TF1-366's evidence and all of the other Prosecution and Defence evidence adduced during the trial, but cannot be treated, at this stage, as probative of the offence of false testimony.

49. The Chamber also does not accept the Defence submission that the remainder of the Witness' testimony is "replete with contradictions and inconsistencies" amounting to false testimony.

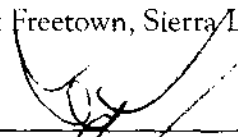
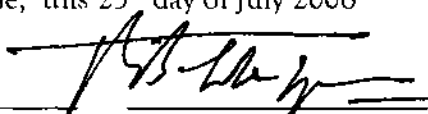
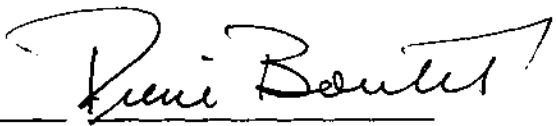
V. DISPOSITION

FOR ALL THE ABOVE REASONS,

50. The Chamber rules that there is no legal basis upon which to find that there are strong grounds for believing that Witness TF1-366 may have knowingly and wilfully given false testimony.

THE MOTION IS ACCORDINGLY DENIED AND DISMISSED.

Done at Freetown, Sierra Leone, this 25th day of July 2006

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

