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SCSL-04-14-T
(19245-19250)



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

Registrar: Mr. Lovemore G. Munlo, SC

Date: 20th of September 2006

PROSECUTOR **Against** **SAM HINGA NORMAN**
MOININA FOFANA
ALLIEU KONDEWA
(Case No.SCSL-04-14-T)

Public Document

DECISION ON KONDEWA APPLICATION FOR LEAVE TO CALL ADDITIONAL WITNESSES

Office of the Prosecutor:

Christopher Staker
James Johnson
Joseph Kamara

Court Appointed Counsel for Sam Hinga Norman:

Dr. Bu-Buakei Jabbi
John Wesley Hall, Jr.
Alusine Sani Sesay

Court Appointed Counsel for Moinina Fofana:

Victor Koppe
Arrow Bockarie
Michiel Pestman
Steven Powles

Court Appointed Counsel for Allieu Kondewa:

Charles Margai
Yada Williams
Ansu Lansana

Adura Nsiima K.
Heimaa
11:50

TRIAL CHAMBER I (“The 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 “Kondewa Application for Leave to Call Additional Witnesses”, filed by Court Appointed Counsel for the Third Accused (“Counsel for Kondewa”) on the 29th of August 2006 (“Motion”), seeking leave to add seven factual witnesses to their witness list;¹

NOTING the “Prosecution Response to Kondewa Application for Leave to Call Additional Witnesses”, filed by the Office of the Prosecutor (“Prosecution”) on the 1st of September 2006 (“Response”);²

NOTING the “Reply to Prosecution Response to Kondewa Application for Leave to Call Additional Witnesses”, filed by Counsel for Kondewa on the 7th of September 2006 (“Reply”);³

NOTING that since the Reply has been filed outside the time limits prescribed by Rule 7(C) of the Rules of Procedure and Evidence of the Special Court (“Rules”), which states that “[a]ny reply to the response shall be filed within five days”, The Chamber will not take into consideration the arguments advanced by Counsel for Kondewa in that Reply;

MINDFUL OF the “Order Concerning the Preparation and Presentation of the Defence Case”, delivered by The Chamber on the 21st of October 2005⁴ and the “Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case”, delivered by The Chamber on the 28th of November 2005 (“Order of the 28th of November 2005”);⁵

NOTING the “Materials Filed by Third Accused Allieu Kondewa Pursuant to Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of Defence Case”, by Counsel for Kondewa on the 5th of December 2005, which contained a list of 39 witnesses, including two experts, whom Counsel for Kondewa intended to call on behalf of the Third Accused (“Witness List of the 5th of December 2005”);⁶

NOTING the “Submissions by Counsel for Third Accused Allieu Kondewa Pursuant to the Consequential Order to the Status Conference of the 22nd Day of March 2006”, filed by Counsel for Kondewa on the 3rd of April 2006, wherein Counsel for Kondewa stated that they “shall [...] file, as soon as they receive a final witness list from the Norman Defence Team, a revised witness list with the names of those witnesses common to the Fofana witness list and the Norman witness list removed from their witness list”;⁷

NOTING the “Updated Witness List of the Third Accused Allieu Kondewa”, filed by Counsel for Kondewa on the 8th of May 2006, wherein they submitted an updated list of 28 witnesses (“Witness List of the 8th of May 2006”) and stated that “the Kondewa defence team investigators are still carrying out investigations and depending on the outcome of those investigations the Kondewa Defence team may

¹ SCSL-04-14-681.

² SCSL-04-14-684.

³ SCSL-04-14-685.

⁴ SCSL-04-14-474.

⁵ SCSL-04-14-489.

⁶ SCSL-04-14-498.

⁷ SCSL-04-14-583, para. 4.

further reduce their witness list or may move the Chamber for leave to augment the said witness list";⁸

RECALLING the "Scheduling Order Concerning the Preparation and Presentation of the Defence Case for the Second and Third Accused", delivered by The Chamber on the 20th of July 2006 ("Order of the 20th of July 2006");⁹

RECALLING that in the Order of the 20th of July 2006 The Chamber noted that witnesses Momoh Bockarie Moiwa and Joe Kpana Lewis, listed as witnesses No. 22 and No. 23, respectively, on the Witness List of the 8th of May 2006, had not been previously listed as witnesses on the Witness List of the 5th of December 2005 and were added to the list without leave sought from The Chamber,¹⁰ and therefore, Counsel for Kondewa were ordered to remove these names from the Witness List of the 8th of May 2006, or, alternatively, to seek leave from The Chamber to add them to the list, should they still intend to call them on behalf of the Third Accused;¹¹

NOTING the "Materials Filed Pursuant to Scheduling Order of 20th July 2006", filed by Counsel for Kondewa on the 30th of August 2006, wherein they removed 15 witnesses from their Witness List of the 8th of May 2006, including witnesses Momoh Bockarie Moiwa and Joe Kpana Lewis, and filed an updated list of 13 witnesses ("Witness List of the 30th of August 2006");¹²

NOTING that by their Motion Counsel for Kondewa now seek leave to add to their Witness List of the 30th of August 2006 seven factual witnesses, including witnesses Joe Kpana Lewis and Momoh Bockarie Moiwa,¹³ and five other witnesses, namely, Karim Musa,¹⁴ Baimba Jobai, Steven Edmond Boima, Yeama Lewis and Sampha Carpenter;

NOTING that the Motion is filed pursuant to sub-Rule 73ter(E) of the Rules of Procedure and Evidence of the Special Court ("Rules"), which reads as follows:

After the commencement of the defence case, the defence may, if it considers it to be in the interests of justice, move the Trial Chamber for leave to reinstate the list of witnesses or to vary its decision as to which witnesses are to be called.

RECALLING The Chamber's Order of the 28th of November 2005, stating that "[s]hould the Defence seek to add any witnesses to this list after the 5th of December, 2005 it may be permitted to do so only upon good cause being shown";¹⁵

RECALLING The Chamber's previous ruling outlining the factors which should be taken into consideration when interpreting Rule 73ter(E) and the circumstances that could give rise to a showing of "good cause" and the "interests of justice", such as "the materiality of the testimony, the complexity of

⁸ SCSL-04-14-593, para. 7.

⁹ SCSL-04-14-673.

¹⁰ *Ibid.*, p. 5.

¹¹ *Ibid.*, p. 7, Disposition, Order No. 8.

¹² SCSL-04-14-683.

¹³ Cf. the spelling of witness's name in the Motion: Moiwai Bockarie Moiwa and in Annex C of the Witness List of the 30th of August 2006: Moinoh Bockarie Moiwai.

¹⁴ Cf. the spelling of witness's name in the Motion: Karim Musa and in Annex C of the Witness List of the 30th of August 2006: Karimu Musa.

¹⁵ See, *supra* note 5, p. 3.

the case, prejudice to the [other Party], including elements of surprise, on-going investigations, replacements and corroboration of evidence";¹⁶

NOTING that the Prosecution do not oppose the Motion with regard to the addition of five witnesses, namely, Karim Musa, Baimba Jobai, Steven Edmond Boima, Yeama Lewis and Sampha Carpenter, to the Witness List of the 30th of August 2006;¹⁷

CONSIDERING that the proposed evidence of witnesses Karim Musa, Baimba Jobai, Steven Edmond Boima, Yeama Lewis and Sampha Carpenter, as described in their witness summaries annexed as Appendix B to the Motion, appears to be relevant to the charges outlined in the Indictment against the Third Accused and could be material to his Defence case, and therefore, it would be in the interests of justice that their evidence be heard;

CONSIDERING that Counsel for Kondewa while conducting their on-going investigations only in August 2006 discovered and confirmed the attendance of these five witnesses,¹⁸ therefore, in these circumstances there is "good cause" to add them to the Witness List of the 30th of August 2006;¹⁹

NOTING that the Prosecution, however, do oppose the Motion with regard to witnesses Joe Kpana Lewis and Momoh Bockarie Moiwa, because, as they submit, it fails to meet the criteria of "good cause" for the addition of the latter two witnesses to the Witness List of the 30th of August 2006;²⁰

OBSERVING that a proper application should have been brought before The Chamber by Counsel for Kondewa for adding witnesses Joe Kpana Lewis and Momoh Bockarie Moiwa to the witness list at the time when their identities were first discovered, presumably March 2006, which Counsel for Kondewa clearly failed to do;

CONSIDERING, however, that the Prosecution were aware, as early as the 14th of March 2006, of the intention of Counsel for Kondewa to call these two witnesses, when their names appeared for the first time on the list of witnesses intended to be called on behalf of the Third Accused without leave of The Chamber, while replacing witnesses Haroun Quee and Mustapha Kamara, whose names were removed from that list;²¹

CONSIDERING that the Prosecution have had ample time to go through the witness list of the Third Accused as submitted on the 14th of March 2006, do their own investigations and should they wish to do so bring to the attention of The Chamber and the other Parties any irregularities in relation to this witness list;

¹⁶ SCSL-04-14-585, "Decision on the First Accused's Urgent Motion for Leave to File Additional Witness and Exhibit Lists", the 6th of April 2006, p. 4; SCSL-04-14-668, "Decision on Fofana Application for Leave to Call Additional Witnesses", the 17th of July 2006, p. 3; *See also*, SCSL-04-14-435, "Decision on Prosecution Request for Leave to Call Additional Witnesses and for Orders for Protective Measures", the 23rd of June 2005, p. 3.

¹⁷ Response, para. 3.

¹⁸ Motion, para. 13.

¹⁹ *See, inter alia*, SCSL-04-14-167, "Decision on Prosecution Request for Leave to Call Additional Witnesses", the 29th of July 2004, paras 17-18.

²⁰ Response, para. 3.

²¹ SCSL-04-14-571, "Materials Filed by Third Accused Allieu Kondewa Pursuant to the Scheduling Order of the 3rd Day of March 2006", the 14th of March 2006, Annex A, Nos 28, 30; *See also*, Order of the 20th of July 2006, p. 5.

CONSIDERING, however, that no objection was brought by any Party at that time nor at any other time, even after the matter was raised by The Chamber *proprio motu* in its Order of the 20th of July 2006;²²

CONSIDERING, therefore, that no prejudice will ensue to the Prosecution by allowing these two witnesses to be added to the Witness List of the 30th of August 2006 together with the five other witnesses;

CONSIDERING further that the proposed evidence of witnesses Joe Kpana Lewis and Momoh Bockarie Moiwa, as described in their witness summaries annexed as Appendix B to the Motion, appears to be relevant and material to the charges outlined in the Indictment against the Third Accused, as it is directed at specific and clearly identified portions of the Prosecution case and the alleged individual and command responsibility of the Third Accused, and it is not overly duplicative or repetitive of the evidence of the rest of the witnesses who are proposed to be called on behalf of the Third Accused;

CONSIDERING that Counsel for Kondewa have continuously made efforts to reduce the number of witnesses to be called on behalf of the Third Accused, which will contribute further to the expeditiousness of the trial;

FINDING, therefore, that in the particular circumstances of this case and in the exercise of our discretion, "good cause" requirement has been established and furthermore, it would be in the interests of justice that the evidence of witnesses Joe Kpana Lewis and Momoh Bockarie Moiwa be heard by The Chamber;

RECALLING the "Consequential Order to the Status Conference of 18 January 2006", delivered by The Chamber on the 18th of January 2006, ordering, *inter alia*, Court Appointed Counsel for all three Accused "to disclose to the Prosecution and file with the Court any identifying information which is available for all the witnesses they are intending to call; This information shall include family name, first name and nicknames, date and place of birth (if known), names of parents, religion, occupation at the time relevant to the Indictment and current address, no later than Monday, the 23rd of January, 2006, 4 p.m.";²³

NOTING that Annex C of the Witness List of the 30th of August 2006 contains a list of witnesses in the proposed order of their appearance before The Chamber, including the names of seven additional witnesses for whom leave is being sought now, and therefore, there is no need to re-file this list unless changes are to be made to this proposed order;

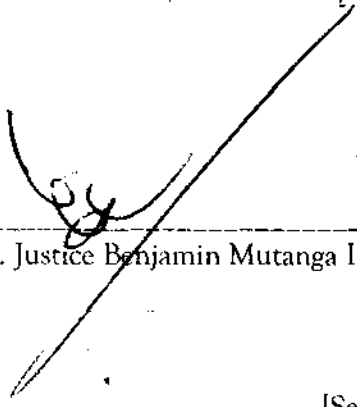
PURSUANT TO Rules 54 and 73^{ter}(E) of the Rules;

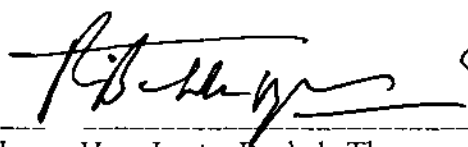
²² See, *supra* note 9.
²³ SCSL-04-14-534.

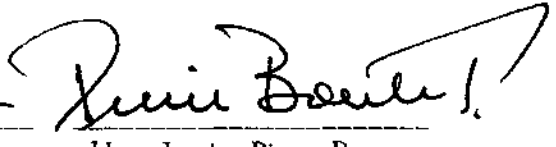
THE CHAMBER GRANTS the Motion and ORDERS as follows:

- 1) Counsel for Kondewa shall add witnesses Joe Kpana Lewis, Momoh Bockarie Moiwa, Karim Musa, Baimba Jobai, Steven Edmond Boima, Yeama Lewis and Sampha Carpenter to the Witness List of the 30th of August 2006;
- 2) Counsel for Kondewa shall re-file as soon as possible but no later than the 25th of September 2006, at 1.00 p.m., the Witness List of the 30th of August 2006, by including the names of these additional witnesses, the points of the Indictment to which they will testify, the estimated length of time for their testimony, the mode of their testimony, the language of their testimony and a summary of their proposed testimony, which shall contain detailed summaries of the incidents and/or events which a witness is called to testify upon, exact location and date (if available) of these alleged incidents and/or events, position and/or role of a witness in relation to the crimes charged in the Indictment and the nexus between the Accused and the proposed testimony of a witness;²⁴
- 3) Counsel for Kondewa shall file as soon as possible but no later than the 25th of September 2006, at 1.00 p.m., the identifying information for the additional seven witnesses, which shall include family name, first name and nicknames, date and place of birth (if known), names of parents, religion, occupation at the time relevant to the Indictment and current address;

Done in Freetown, Sierra Leone, this 20th day of September 2006.







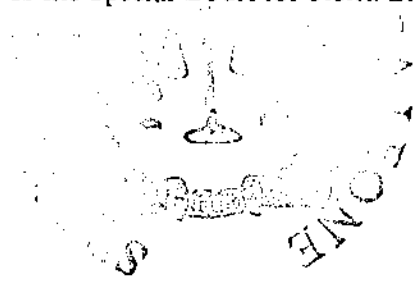
Hon. Justice Benjamin Mutanga Itoe

Hon. Justice Bankole Thompson

Hon. Justice Pierre Boutet

Presiding Judge
Trial Chamber I

[Seal of the Special Court for Sierra Leone]



²⁴ See, *supra* note 9, Order of the 20th of July 2006, p. 7, Disposition, Order No. 10.