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SCSL-04-14-T  
(19343-19347)

19343



**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 Iroo

Registrar: Mr. Lovemore G. Munlo, SC

Date: 3<sup>rd</sup> of October 2006

SPECIAL COURT FOR SIERRA LEONE  
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- 3 OCT 2006

NAME THOMAS GEORGE

SIGN [Signature]

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 ONE ADDITIONAL WITNESS**

Office of the Prosecutor:

Christopher Staker  
James Johnson  
Joseph Kamara  
Kevin Tavener  
Mohammed A. Bangura

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

**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 One Additional Witness", filed by Court Appointed Counsel for the Third Accused ("Counsel for Kondewa") on the 2<sup>nd</sup> of October 2006 ("Motion"),<sup>1</sup> wherein Counsel for Kondewa seek leave of The Chamber to add witness Morie Jusu Kamara to the witness list of the Third Accused;

**NOTING** the "Order for Expedited Filing" delivered by The Chamber on the 2<sup>nd</sup> of October 2006,<sup>2</sup> wherein The Chamber ordered that "[a]ny Response to the Motion shall be filed no later than Wednesday, the 4<sup>th</sup> of October 2006, at 4:00 p.m." and that "[a]ny Reply to the said Response shall be filed no later than Friday, the 6<sup>th</sup> of October 2006, at 1:00 p.m.";

**NOTING** the "Fofana Response to Kondewa Application for Leave to Call One Additional Witness", filed by Court Appointed Counsel for the Second Accused ("Counsel for Fofana") on the 2<sup>nd</sup> of October 2006,<sup>3</sup> wherein Counsel for Fofana do not object to the Motion;<sup>4</sup>

**NOTING** the "Prosecution Response to Kondewa Application for Leave to Call One Additional Witness", filed by the Office of the Prosecutor ("Prosecution") on the 2<sup>nd</sup> of October 2006,<sup>5</sup> wherein the Prosecution do not object to the Motion;<sup>6</sup>

**NOTING** that the Defence case for the Third Accused is scheduled to start on the 5<sup>th</sup> of October 2006 at 9.30 a.m.<sup>7</sup> and will likely take less time than three to four weeks originally indicated;<sup>8</sup>

**CONSIDERING** that Article 17(4)(c) of the Statute of the Special Court provides that the Accused shall be "tried without undue delay";

**CONSIDERING**, therefore, that no prejudice will be caused to Court Appointed Counsel for the First Accused if The Chamber disposes of the Motion without considering their Response thereof, as it is in the interests of justice that the Motion be considered fairly and expeditiously;

**MINDFUL OF** the "Order Concerning the Preparation and Presentation of the Defence Case", delivered by The Chamber on the 21<sup>st</sup> of October 2005<sup>9</sup> and the "Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case", delivered by The Chamber on the 28<sup>th</sup> of November 2005 ("Order of the 28<sup>th</sup> of November 2005");<sup>10</sup>

**NOTING** the "Materials Filed by Third Accused Allieu Kondewa Pursuant to Consequential Order for

<sup>1</sup> SCSL04-14-T-705.

<sup>2</sup> SCSL04-14-T-706.

<sup>3</sup> SCSL04-14-T-707.

<sup>4</sup> *Ibid.*, para. 1.

<sup>5</sup> SCSL04-14-T-708.

<sup>6</sup> *Ibid.*, para. 2.

<sup>7</sup> Oral Ruling of The Chamber delivered during the court proceeding of the 28<sup>th</sup> of September 2006, Transcript, p. 6.

<sup>8</sup> Transcript of the 12<sup>th</sup> of September 2006, p. 20.

<sup>9</sup> SCSL04-14-T-474.

<sup>10</sup> SCSL04-14-T-489.

Compliance with the Order Concerning the Preparation and Presentation of Defence Case”, of the 5<sup>th</sup> 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;<sup>11</sup>

**NOTING** the “Updated Witness List of the Third Accused Allieu Kondewa”, filed by Counsel for Kondewa on the 8<sup>th</sup> of May 2006, wherein they submitted an updated list of 28 witnesses 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 further reduce their witness list or may move the Chamber for leave to augment the said witness list”;<sup>12</sup>

**MINDFUL OF** the “Scheduling Order Concerning the Preparation and Presentation of the Defence Case for the Second and Third Accused”, delivered by The Chamber on the 20<sup>th</sup> of July 2006 (“Order of the 20<sup>th</sup> of July 2006”);<sup>13</sup>

**NOTING** the “Materials Filed Pursuant to Scheduling Order of 20<sup>th</sup> July 2006”, filed by Counsel for Kondewa on the 30<sup>th</sup> of August 2006, wherein they removed 15 witnesses and filed an updated list of 13 witnesses (“Witness List of the 30<sup>th</sup> of August 2006”);<sup>14</sup>

**MINDFUL OF** the “Decision on Kondewa Application for Leave to Call Additional Witnesses” delivered by The Chamber on the 20<sup>th</sup> of September 2006,<sup>15</sup> wherein Counsel for Kondewa were granted leave to add seven more witnesses to the Witness List of the 30<sup>th</sup> of August 2006;

**NOTING** the “Kondewa Materials Filed Pursuant to Trial Chamber Order of 20<sup>th</sup> September 2006”, of the 25<sup>th</sup> of September 2006, which contained a list of 20 witnesses (“Witness List of the 25<sup>th</sup> of September 2006”);<sup>16</sup>

**NOTING** that by their Motion Counsel for Kondewa now seek leave to add witness Morie Jusu Kamara to their Witness List of the 25<sup>th</sup> of September 2006;

**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 28<sup>th</sup> of November 2005, stating that “[s]hould the Defence seek to add any witnesses to this list after the 5<sup>th</sup> of December, 2005 it may be permitted to do so only upon good cause being shown”;<sup>17</sup>

**RECALLING** The Chamber’s previous ruling outlining the factors which should be taken into

<sup>11</sup> SCSL-04-14-T-498.

<sup>12</sup> SCSL-04-14-T-593, para. 7.

<sup>13</sup> SCSL-04-14-T-673.

<sup>14</sup> SCSL-04-14-T-683.

<sup>15</sup> SCSL-04-14-T-695.

<sup>16</sup> SCSL-04-14-T-697.

<sup>17</sup> See, *supra* note 10, p. 3.

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 the case, prejudice to the [other Party], including elements of surprise, on-going investigations, replacements and corroboration of evidence";<sup>18</sup>

**CONSIDERING** that the proposed evidence of witness Morie Jusu Kamara appears to be relevant and material to the charges outlined in the Indictment against the Third Accused, as it is directed at specific allegations made by the Prosecution witnesses TF2-147 and TF2-071 against the Third Accused and his alleged individual and command responsibility, 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;<sup>19</sup>

**CONSIDERING** that in support of the existence of "good cause" for granting the Motion Counsel for Kondewa submit that, although their investigations discovered Morie Jusu Kamara to be a witness of great importance and relevance to the Defence case for the Third Accused as early as the 7<sup>th</sup> of January 2006, Counsel for Kondewa could not have added this witness to their list as the latter failed to appear at the scheduled meeting with them and only reappeared on the 29<sup>th</sup> of September 2006, after having been released from the Pademba Road Prisons in Freetown, where he had been detained until recently on false allegations proffered against him;<sup>20</sup>

**CONSIDERING** that Counsel for Kondewa have continuously made efforts to reduce the number of witnesses to be called on behalf of the Third Accused and now submit that they "will in the next few days file a reduced witness list consisting of a maximum of 15 witnesses and possible reducing it to 11 witnesses",<sup>21</sup> which will contribute further to the expeditiousness of the trial;

**NOTING** that neither the Prosecution nor Counsel for Fofana oppose the Motion;

**FINDING** that "good cause" requirement has been established and it would be in the interests of justice that the evidence of witness Morie Jusu Kamara be heard by The Chamber;

**PURSUANT TO** Rules 54 and 73ter(E) of the Rules;

<sup>18</sup> SCSL-04-14-T-585, "Decision on the First Accused's Urgent Motion for Leave to File Additional Witness and Exhibit Lists", the 6<sup>th</sup> of April 2006, p. 4; SCSL-04-14-T-668, "Decision on Fofana Application for Leave to Call Additional Witnesses", the 17<sup>th</sup> of July 2006, p. 3; See also, SCSL-04-14-T-435, "Decision on Prosecution Request for Leave to Call Additional Witnesses and for Orders for Protective Measures", the 23<sup>rd</sup> of June 2005, p. 3 and *supra* note 15, pp. 3-4.

<sup>19</sup> Motion, Appendix B; See also, paras 14, 15 and 17.

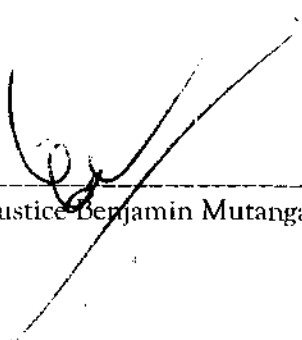
<sup>20</sup> *Ibid.*, paras 14 and 16.

<sup>21</sup> *Ibid.*, para. 19.

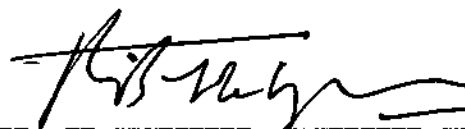
THE CHAMBER GRANTS the Motion and ORDERS as follows:

- 1) Counsel for Kondewa shall add witness Morie Jusu Kamara to the Witness List of the 25<sup>th</sup> of September 2006 and re-file as soon as possible but no later than the 5<sup>th</sup> of October 2006, at 9.00 a.m. the reduced witness list of the Third Accused;
- 2) Counsel for Kondewa shall re-file as soon as possible but no later than the 5<sup>th</sup> of October 2006, at 9.00 a.m., a list containing the order of their witnesses' appearance, which shall include witness Morie Jusu Kamara;

Done in Freetown, Sierra Leone, this 3<sup>rd</sup> day of October 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]

