

REPUBLICA DEMOCRATICA DE TIMOR LESTE



DISTRICT COURT OF DILI

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Violetta
Mabakeri

Before the Special Panel for Serious Crimes

Case No 10 / 2003

THE DEPUTY GENERAL PROSECUTOR FOR SERIOUS CRIMES

v

MATEUS LAO aka ENA POTO

DEFENCE REPLY TO PROSECUTION RESPONSE DATED 20 OCTOBER
2004 TO DEFENCE MOTION TO EXCLUDE MINUTES OF DETENTION
REVIEW HEARING DATED 25 NOVEMBER 2002

For the Office of the Prosecutor :
Charles Nsabimana

For the Defence Lawyers Unit:
Sebastian Appenah

TO THE SPECIAL PANEL FOR SERIOUS CRIMES AND THE PROSECUTOR :

The defence replies as follows to the prosecution response dated 20 October 2004:

Re: paragraphs 4 to 8 of the Response

1. For the reasons set forth hereunder, the Minutes of the Detention Review Hearing in question do not fall to be classified and admitted as "qualifying material" for the purposes of section 24. 7 of the TRCP .
2. As submitted in our founding motion the UNTAET regulation 2003/30, as amended, imposes upon the prosecutor the following obligations :
 2. 1 the obligation to present to the court , together with the indictment , a list describing the evidence that supports the indictment ¹ ;
 2. 2 the obligation to provide the accused and his legal representative copies of all documentary evidence the prosecutor intends offering at trial ² .
3. It is clear from these provisions of the TRCP that these fundamental requirements must be met upon presentation of the indictment to the court.
4. The prosecutor concedes at paragraph 5 of his response that he " had knowledge of the existence " of the document in question . Why then , if he intended using it as evidence in support of the indictment or as documentary evidence that he intended offering at trial , did he not include it in his list of evidence submitted as an annexure to the indictment when the indictment was presented to the court ?

It must be emphasised that the prosecutor , at all times prior to the filing of the indictment was fully aware of the existence of this Detention Hearing record and cannot now claim the protection of Section 24. 7 of the TRCP.

5. He had every opportunity to list it when he filed his Transfer of Material on 25 February 2003 presenting the indictment to the court and listing various statements and reports as materials in support of the indictment. The only inference that the defence can draw from his failure to do so is that , since he was also the prosecutor at the Detention Hearing and thus had full knowledge of the proceedings, he did not consider the record of those proceedings as important to this case, and rightly so , since it did not relate to the current matter .
6. We submit that , for these reasons , the prosecutor made a conscious decision not to rely on the Minutes in question as supporting material . Having so decided, he now attempts to have these Minutes admitted on the pretext that the document was not available due to a situation beyond his control , yet provides no information as to what this situation may have been .

Such opportunism , sixteen months after presentation of the indictment, should not be condoned by the court. Strict compliance with the rules must be enforced by the court.

¹ Section 24. 2

² Section 24. 4(a)

Re: Paragraphs 9 to 14 of the Response

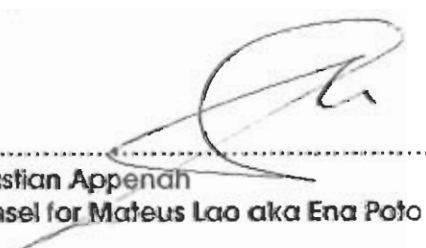
17. Furthermore, the prosecutor is seeking admission of the Minutes on purely speculative grounds - he is interpreting the reference made to an alleged killing by the accused of an unknown person as being to the killing of the victim referred to in the present indictment .
18. He is asking the court to admit these minutes as being relevant to the matter at hand , based entirely on speculation, and has provided no foundation for such a request.
19. To admit this document , which clearly refers to a different matter, as evidence, on the speculative reasoning of the prosecutor , and as supporting material to the indictment , would necessarily entail a finding by the court that the killing referred to is in fact the killing forming the subject matter of the indictment and would be " antithetical to , and ... seriously damage the nature of the proceedings ". This would severely prejudice the accused in that it would infringe upon his right to be presumed innocent and his right to a fair trial .

Conclusion

20. In the light of these submissions by way of a reply to the prosecution response , the right of the accused to be presumed innocent and to a fair trial takes precedence over any interest the prosecution may have in seeking the admission of these Minutes. The prosecution has , in any event , as is apparent from its concession that " it is undisputed that the Prosecutor had knowledge of the existence of that document " (paragraph 5 of its response) , failed to comply with the requirements of Sections 24. 2 and 24. 4(a) of the TRCP.

Wherefore, the defence prays that the prosecution request for admission of the Minutes into evidence be rejected .

DATED THIS 2ND DAY OF NOVEMBER 2004


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Sebastian Appenah
Counsel for Mateus Lao aka Ena Poto