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SCSL-2004-15-T
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SPECIAL COURT FOR SIERRA LEONE

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THE TRIAL CHAMBER

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

Registrar: Robin Vincent

Date: 6 July 2004

PROSECUTOR **Against** **Issa Hassan Sesay**
Morris Kallon
Augustine Gbao
(Case No.SCSL-04-15-T)

GBAO - DECISION ON APPLICATION TO WITHDRAW COUNSEL

Office of the Prosecutor:

Luc Côté
Lesley Taylor

Defence Counsel for Issa Hassan Sesay:

Timothy Clayson
Wayne Jordash

Defence Counsel for Morris Kallon:

Shekou Touray
Melron Nicol-Wilson

Defence Counsel for Augustine Gbao:

Girish Thanki
Andreas O'Shea



THE TRIAL CHAMBER ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court") composed of Judge Benjamin Mutanga Itoe, Presiding Judge, Judge Bankole Thompson, and Judge Pierre Boutet, both Judges of the Trial Chamber;

SEIZED OF the oral application made by Mr. Augustine Gbao in Court on 6 July 2004 to withdraw his counsel since he does not want anyone to represent him before the Court on the grounds that he does not recognize the legitimacy of the Special Court;

NOW RENDERS ITS DECISION ON THE ORAL APPLICATION:

I. BACKGROUND

1. During the first day of the trial on 5 July 2004, following the completion of the opening statement by the Prosecutor, Counsel for the Accused, Gbao, first expressed the intention of the Accused to make an opening statement to the Court but not pursuant to Rule 84 of the Rules.

2. When told by the Chamber that the right could only be exercised pursuant to Rule 84 which entails the Accused being put to his election namely, to make an opening statement after the Prosecution's opening statement and lose his right to do so at the beginning of the presentation of his evidence, Counsel indicated that the request to make an opening statement was being sought under Rule 54 of the Rules.

3. Rule 84 of the Rules of Procedure and Evidence provides as follows:

At the opening of his case, each party may make an opening statement confined to the evidence he intends to present in support of his case. The Trial Chamber may limit the length of those statements in the interests of justice.

4. The Chamber granted the application warning both Counsel and Accused to confine the statement to the provisions of Rule 84 and reiterated that each Accused would have to elect to make an opening statement either after the Prosecution's opening statement or at the opening of the Defence case. The Court further granted an adjournment until the following morning for the Accused to consult with his Counsel in order to ensure the Accused's desire to deliver an opening statement and that the contents thereof do comply with the provisions of Rule 84.

5. During the hearing held in this morning, the 6th of July 2004, Counsel for the Accused confirmed the Accused's intention to personally proceed with a brief opening statement. Once again,

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the Chamber warned the Accused to confine his statement within the plain scope and reading of Rule 84 and allowed the Accused to proceed with his opening statement.

6. Despite these warnings of the Court, the Accused in his statement, persistently asserted that he considered the Court to be of a political nature, thereby falling completely outside the scope of Rule 84 of the Rules. Once again, the Court warned the Accused to refrain from making statements with a political connotation. After several interventions and observing that the Accused resolutely persisted in making a political statement which is outside the scope of Rule 84, the Court decided to stop him from proceeding further.

7. Reacting to comments from the Accused, Counsel applied that the matter be stood down for five minutes to permit a discussion with his client. This was granted by the Court. Upon return, Counsel stated that he believed the Court should hear representations from the Accused. When he was provided with the opportunity to address the Court, the Accused stated that he decided not to recognize this Court any longer and wanted to withdraw his defence counsel who he did not want to represent him any longer.

II. DELIBERATION

8. Article 17(4)(d) of the Statute of the Special Court for Sierra Leone states that the accused has the right "to have legal assistance assigned to him or her, in any case where the interests of justice so require".

9. Rule 45(E) of the Rules of Procedure and Evidence states clearly that Counsel for the accused "will represent the accused and conduct the case to finality." Furthermore, this provision mandates that "Counsel shall only be permitted to withdraw from the case to which he has been assigned in the most exceptional circumstances."

10. As noted, Counsel for Mr. Gbao have represented him throughout the entirety of the proceedings before the Special Court and even during his initial appearances. Trial proceedings have now commenced and we are today on the second day of the trial.

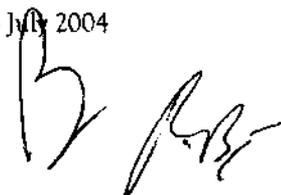
11. According to Rule 45(E) of the Rules, "most exceptional circumstances" would need to be established in order to allow Defence Counsel for Mr. Gbao to withdraw from the case at this stage of the process. No such exceptional circumstances have been advanced in this case. Instead, Mr. Gbao

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has stated only that he wants his counsel to withdraw since he does not recognize the legitimacy of the Special Court. We consider that this assertion is patently misconceived.

12. The issue of the legitimacy of the Special Court has already been litigated before the Appeals Chamber of this Court where it held in the cases of Kallon, Norman and Kamara in its *Decision on Constitutionality* dated the 13th of March, 2004, and its *Decision on Preliminary Motion on Lack of Jurisdiction: Establishment of Special Court Violates Constitution of Sierra Leone* which was issued on the 25th of May, 2004, that the Special Court for Sierra Leone was competent to determine its own legality. It held that the relevant constitutional requirements had been fulfilled for the domestic incorporation of the Special Court Agreement and that the Court acts only in an international sphere and does not form part of the national judiciary. This finding was referred to and applied in the Gbao case, *Decision on Preliminary Motion on the Invalidity of the Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court*, dated 25 May 2004. These findings are binding on this Trial Chamber and thus the legitimacy of the Special Court can now be considered to be *res judicata*.

13. It is, therefore, our considered opinion that the ground that Mr. Gbao has advanced, that is, the non-recognition of the legitimacy of the Special Court, cannot constitute "exceptional circumstances" under Rule 45(E) that are required for allowing Counsel to withdraw. Counsel has the obligation to conduct this case to its finality and must continue to do so. We therefore do so hold and direct.

14. In making this finding, the Trial Chamber would like to refer to the decision of the International Criminal Tribunal for Rwanda ("ICTR") in the case of the *Prosecutor v. Barayagwiza* of the 2nd November 2000.¹ In that decision, the Court found that Mr. Barayagwiza's assertion that he did not want to be represented since he did not believe that the ICTR was an independent and impartial tribunal, could not constitute "exceptional circumstances" warranting the withdrawal of defence Counsel.

15. It is clear from examining all of the circumstances of this case that the interests of justice would not be served by allowing Mr. Gbao to be unrepresented before this Court. The Trial Chamber accordingly takes the position that it must safeguard the rights of the accused and the integrity of the proceedings before the Court by insisting that Mr. Gbao should continue to be represented by the

Counsel that have represented him throughout these proceedings. We hold in this regard that an accused person cannot waive his right to a fair and expeditious trial whatever the circumstances.

16. In the *Barayagwiza* decision, the ICTR remarked:

In the present case, Mr Barayagwiza is actually boycotting the United Nations Tribunal. He has chosen both to be absent in the trial and to give no instructions as to how his legal representation should proceed in the trial or as to the specifics of his strategy. In such a situation, his lawyers cannot simply abide with his "instruction" not to defend him. Such instructions, in the opinion of the Chamber, should rather be seen as an attempt to obstruct judicial proceedings. In such a situation, it cannot reasonably be argued that Counsel is under an obligation to follow them, and that not do[ing] so would constitute grounds for withdrawal.

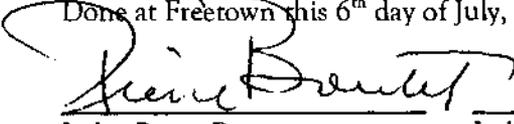
17. We also note that all counsel before the Special Court has an obligation to act as an officer to the Court, in addition to acting in the interests of the Accused person.

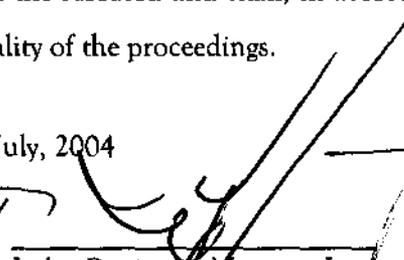
III. DISPOSITION

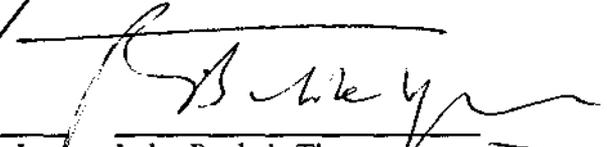
HEREBY FINDS that:

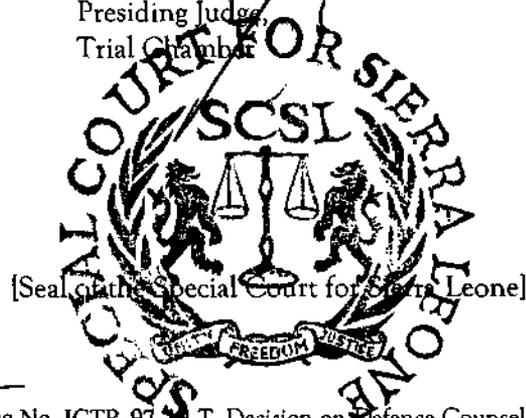
The Accused Gbao has not established exceptional circumstances as required by Rule 45(E) in order to withdraw his Counsel, and accordingly **ORDERS THAT** Counsel currently on Gbao's Defence Team must continue to represent the Accused and shall, in accordance with the provisions of Rule 45(E), conduct the case to the finality of the proceedings.

Done at Freetown this 6th day of July, 2004


 Judge Pierre Boutet


 Judge Benjamin Mutanga Itoe
 Presiding Judge,
 Trial Chamber


 Judge Bankole Thompson



¹ *Prosecutor v. Barayagwiza*, Case No. ICTR-97-19-T, Decision on Defence Counsel Motion to Withdraw, 2 November 2000.