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SCSL-04-15-T
(25504-25509)

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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: 15th of November 2006

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

Public Document

DECISION ON DEFENCE APPLICATION FOR REVIEW OF THE REGISTRAR'S DECISION ON THE SESAY DEFENCE "EXCEPTIONAL CIRCUMSTANCES" MOTION

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Charles Taku
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Court Appointed Counsel for Augustine Gbao:
Andreas O'Shea
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SPECIAL COURT FOR SIERRA LEONE
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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 “Application for Review of the Registrar’s Decision (10th March 2006) on the Sesay Defence ‘Exceptional Circumstances’ Request (25th November 2005)” filed by Defence Counsel for the First Accused, Issa Hassan Sesay, (“Defence”) on the 5th of April 2006 (“Application”);

NOTING the Response filed by the Registrar on the 28th of April 2006 (“Response”) and the Reply thereto filed by the Defence on the 3rd of May 2006 (“Reply”);

NOTING the Directive on the Assignment of Counsel issued by the Registrar in consultation with the President of the Special Court on the 3rd of October 2003;

NOTING also the Legal Services Contract between the Principal Defender of the Defence Office of the Special Court (“Principal Defender”) and Defence Counsel for the First Accused dated the 1st of October and the Addendum thereto;

PURSUANT to Article 17 of the Statute and Rules 26bis and 54 of the Rules of Procedure and Evidence (“Rules”);

THE TRIAL CHAMBER ISSUES THE FOLLOWING DECISION:

I. BACKGROUND

1. On the 25th of November 2005, Leading Counsel for the Defence Team of the First Accused requested additional funds for his Team under the “Special Consideration” clause of the Judicial Services Contract, which provides for additional funds to a Defence Team in consideration of the provisions of services of exceptional nature. On the 10th of March, 2006 the Registrar issued a Decision rejecting the said request (“Refusal Decision”).

2. Thereupon, Counsel filed, confidentially and *ex-parte*,¹ the instant Application on the 5th of April 2006. The Registrar filed a Response to the said Application on the 28th of April 2006, after the Easter Judicial Recess. A Reply was subsequently filed by the Defence on the 3rd of May 2006.

¹ See Reply, para. 1. Based on the principle that criminal trials be conducted in public and consistent with the established jurisprudence of the Special Court, the Chamber deems it necessary for this Decision to be filed publicly, omitting, if

II. SUBMISSIONS OF THE PARTIES

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A. The Application

3. By the aforesaid Application, the Defence seeks a review by the Trial Chamber of the aforesaid Refusal Decision and an Order quashing the same on the grounds that the said Decision is substantively and procedurally unfair and unreasonable and, if allowed to stand, will result in a breach of the substantive interests of the Accused contained in Article 17 of the Statute, and in particular the right to a fair and expeditious trial.²

4. In support of the Application, the Defence submits that, taking into consideration the temporal and geographical breadth of the alleged crimes, the number and nature of the crimes, the various modes of criminal liability and the number of Prosecution and Defence witnesses, the case against Accused Sesay is approximately 50% larger and significantly more complex than any other Accused before the Special Court and that this constitutes "exceptional circumstances" for the granting of additional funds to the Defence Team.³

5. Counsel for the First Accused strenuously contends that the Refusal Decision is based on conclusions which no sensible or reasonable Decision Maker could have reached, and that the Registrar has failed to act with procedural fairness towards the Accused by concluding, *inter alia*, that the case against Accused Sesay is not more complex than the case against the other Accused. In addition, the Counsel further contends that the Refusal Decision also failed to take into consideration that the imminent approach of the Defence case will increase the workload of the Sesay Defence Team.⁴

6. The Defence finally submits that the Trial Chamber has an inherent jurisdiction to dispose of the Application and, in particular, to review the Refusal Decision on the grounds that it involves the fundamental rights of the First Accused under Article 17 of the Statute.⁵

necessary and as required, any information of a confidential nature. See, for instance, *Prosecutor v. Sesay, Kallon and Gbao*, SCSL04-15-T, Written Reasons for the Decision on Prosecution Request for Leave to Call Additional Witness TF1-371 and for Order for Protective Measures, 15 June 2006, paras 12-15; *id.*, SCSL04-15-PT, Decision on the Motion by Morris Kallon for Bail, 23 February 2004, paras 19-21. See also *Prosecution v. Brima, Kamara and Kanu*, SCSL04-16-T, Decision on Confidential Motion to Call Evidence in Rebuttal, 14 November 2006, para. 11.

² Application, paras 2 and 31.

³ *Id.*, paras 8, 12 and 14.

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B. The Response

7. In Response, the Registrar submits that the Trial Chamber should refuse consideration of the Application on the grounds that a Chamber's inherent power to intervene in an administrative matter is limited to the lack of other applicable regulatory means. On the specific issue of request for funds, the Registrar submits that the Legal Services Contract expressly provides for recourse to Article 22 of the Directive on the Assignment of Counsel for the settlement of any dispute arising from such Contract and that the Defence did not abide by this procedure.⁶

C. The Reply

8. In its Reply, the Defence reiterates the main submissions in support of its Application, and submits that the Registrar's Response fails to address any of the substantive arguments raised by the Defence.⁷

9. The Defence further submits that Article 22 of the Directive on the Assignment of Counsel covers disputes arising between a Defence Team and the Defence Office and that the current dispute involves the Defence Counsel and the Registrar. The Defence states that the Principal Defender declined to deal with the merits of the request and the Registrar has then made a decision. In conclusion, the Defence argues that the lack of and the essential need for a mechanism of review of administrative decisions which might affect the rights of an Accused suggest that the Trial Chamber must have an inherent jurisdiction to decide on the merits of the Refusal Decision.⁸

III. APPLICABLE LAW

10. On the subject of the applicable law, the Chamber wishes to observe at the outset that, from the nature of the dispute which is the subject matter of the present Application as gathered from the Application and the respective contentions and submissions of the parties embodied in the Response and Reply and as set out in the foregoing paragraphs herein, the inference is irresistible that the issue is one that falls within the administrative purview of the Registrar of the Special Court, and ordinarily, at this point in time, not one amenable to judicial review by the Trial Chamber. The Chamber so finds.

⁴ *Id.*, para. 18. See also paras 7, 10-30 for the full amplitude of the Defence contentions and submissions.

⁵ *Id.*, para. 4.

⁶ Response, paras 10-16, 17.

⁷ Reply, paras 4, 11-19.

⁸ *Id.*, paras 5-10.

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11. Premised on the foregoing finding, we hold that, at this point in time, the resolution of the dispute is exclusively governed by Article 22 of the Directive on the Assignment of Counsel ("Directive"), issued by the Registrar in consultation with the President of the Special Court.

12. Article 22 of the Directive provides that:

Any dispute between the Principal Defender and Assigned Counsel or Contracting Counsel, arising out of the interpretation or application of the Provisional Assignment Agreement or Legal Service Contract, which is not settled by negotiation shall be submitted to arbitration by a single arbitrator agreed to by both parties. Should the parties be unable to agree on a single arbitrator within thirty days of the request for arbitration, then each party shall proceed to appoint one arbitrator and the two arbitrators thus appointed shall agree on a third. Failing such agreement, either party may request the appointment of the third arbitrator by the President of the Special Court. The decision rendered in the arbitration, including payment for the costs of the arbitration, shall constitute final adjudication of the dispute.

13. The Chamber also finds that the following passage of the Addendum to the Legal Services Contract demonstrates that a decision of the Registrar may be settled by arbitration in accordance with Article 22 of the Directive:

As to the arbitration process, the Registrar and the Principal Defender recommend that the arbitrators should determine amongst themselves which rules of arbitration should apply for this process.⁹

IV. DELIBERATION

14. Guided by the aforementioned Article 22, the Chamber opines that, as this stage, it possesses no jurisdiction to review the Refusal Decision. We so hold for the reason that the present dispute is still in its arbitral stage.

15. The Chamber further opines that the submission of Counsel for the First Accused that the dispute is not arbitrable because it is not a dispute between the Defence Counsel for the First Accused and the Registrar but between the former and the Principal Defender is legally untenable. Such a contention flies in the face of the law as expounded by the Appeals Chamber in the case of *Prosecutor v. Brima at al.*,¹⁰ and by this Trial Chamber in the case of *Prosecutor v. Sesay et al.*,¹¹ that the

⁹ The Legal Services Contract No. 2005-03 concluded between the Principal Defender and Defence and the Addendum thereto were filed as Appendix A to the Defence Motion.

¹⁰ *Prosecutor v. Brima, Kamara and Kanu*, SCSL04-16-T, Decision on Brima-Kamara Defence Appeal Motion against Trial Chamber II Majority Decision on Extremely Urgent Confidential Joint Motion for the Re-Appointment of Kevin Metzger and Wilbert Harris as Lead Counsel for Alex Tamba Brima and Brima Bazzy Kamara, 8 December 2005, para. 79-86.

¹¹ *Prosecutor v. Sesay, Kallon and Gbao*, SCSL04-15-T, Written Reasons for the Decision on Application by Counsel for the Third Accused to Withdraw from the Case, 19 June 2006, paras 33-45. *Id.*, Written Reasons on Decision on the Principal

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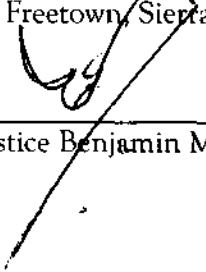
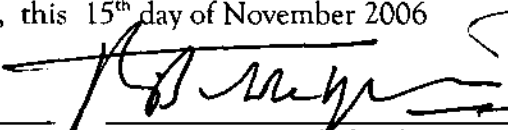
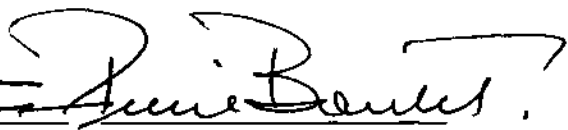
Principal Defender is, for the purposes of the institutional and administrative hierarchy of the Special Court, subject to the supervisory and oversight authority of the Registrar. Hence, it is now settled law that the Principal Defender does not enjoy institutional autonomy within the organizational framework of the Special Court.

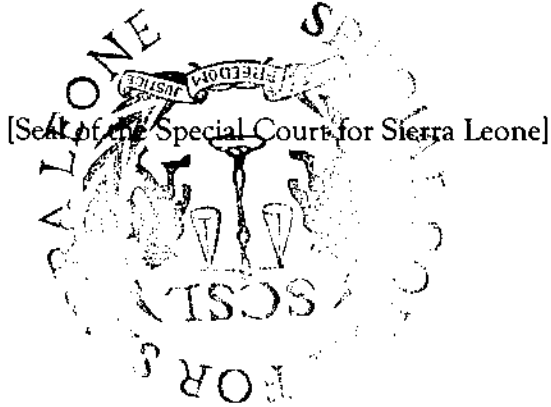
16. Predicated upon the foregoing considerations, the Chamber rules that the filing of the present Application is premature and that it cannot entertain the said application until the statutory remedy of arbitration has been exhausted.

V. DISPOSITION

15. The Application is accordingly DISMISSED in its entirety.

Done at Freetown, Sierra Leone, this 15th day of November 2006

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



Defender's Motion for a Review of the Registrar's Decision to Install Surveillance Cameras in the Detention Facility, 22 June 2006, paras 11-14.

B.