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SCSL-04-15-T
(25804 - 25808)

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SPECIAL COURT FOR SIERRA LEONE

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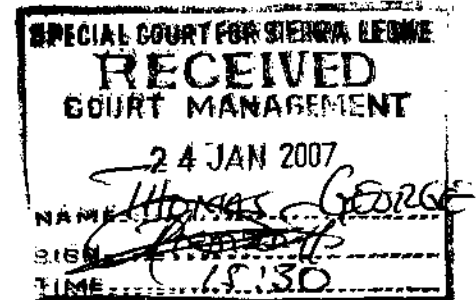
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TRIAL CHAMBER I

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

Registrar: Mr. Lovemore G. Munlo SC

Date: 24th of January 2007



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

Public Document

DECISION ON SESAY DEFENCE APPLICATION I - LOGISTICAL RESOURCES

Office of the Prosecutor:

James C. Johnson
Peter Harrison

Defence Counsel for Issa Hassan Sesay:

Wayne Jordash
Sareta Ashraph

Registrar:

Lovemore G. Munlo SC

Defence Counsel for Morris Kallon:

Shekou Touray
Charles Taku
Melron Nicol-Wilson

Defence Office:

Vincent O. Nmehielle

Court Appointed Counsel for Augustine Gbao

Andreas O'Shea
John Cammegh

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 Seeking Adequate Resources Pursuant to Rule 45 and/or Pursuant to the Registrar's Duty to Ensure Equality of Arms (Application I - Logistical Resources) filed publicly by Defence Counsel for the First Accused, Issa Hassan Sesay, ("Sesay Defence") on the 9th of January 2007 ("Application I")¹ seeking an Order from this Chamber to compel the Defence Office and/or the Registrar to provide the following resources to ensure an effective defence and a fair trial pursuant to Article 17 of the Statute of the Special Court ("Statute"):

- i. A second office, to be at a minimum the same size as that of the office now provided;
- ii. A second networked computer;
- iii. A vehicle for the sole use of the Sesay Defence Team throughout the remainder of the presentation of their case;
- iv. A witness management officer dedicated to finding and locating witnesses; and
- v. Funding for one investigator with international experience throughout the remainder of the Sesay Defence Case;²

NOTING the Response to Application I filed by the Office of the Prosecutor on the 12th of January 2007 and the Sesay Defence Reply thereto filed on the 16th of January 2007;

NOTING the initial Response to Application I filed by the Defence Office on the 12th of January, 2007;

MINDFUL of the Order on Defence Applications filed on the 17th of January 2007, ordering, *inter alia*, that the Sesay Defence re-file Application I to be served upon the Registrar, as the first respondent, and the Defence Office, as the second respondent;³

¹ On the same day, the Defence also filed a second Application, concerning the provision of resources for the employment of expert witnesses ("Application II"). Various documents subsequently filed in this matter contained joint submissions with respect to Application I and Application II. However, the present Decision will only take into consideration submissions made with respect to Application I. A Decision concerning Application II will be filed in due course.

² Application I, paras 2-3.

³ Application I was accordingly re-filed on the 17th of January 2007, with a corrigendum thereto filed on the same date.

NOTING the Response to Application I filed jointly by the Registrar and the Principal Defender on the 22nd of January 2007 (“Joint Response”) and the Sesay Defence Reply thereto filed on the 23rd of January 2007;

MINDFUL of this Chamber’s Scheduling Order Concerning the Preparation and Commencement of the Defence Case issued on the 30th of October 2006;

CONSIDERING that Article 17(4) of the Statute provides, *inter alia*, that the Accused shall be entitled:

- b. To have adequate time and facilities for the preparation of his or her defence [...];
- c. To be tried without undue delay;

CONSIDERING that Rule 45 of the Rules of Procedure and Evidence (“Rules”) directs the Registrar to “establish, maintain, and develop a Defence Office, for the purpose of ensuring the rights of the accused” and that among the functions of the Defence Office is the responsibility to provide “adequate facilities for counsel in the preparation of the defence”;⁴

MINDFUL that, as stated by this Chamber, the “institutional role of the Defence Office, once Defence Counsel have been assigned or appointed to an Accused person, is essentially to provide legal research as well as fiscal, logistical and related support services to Counsel assigned to defend the rights of suspects and of persons accused of crimes falling within the jurisdiction of the Court”;⁵

MINDFUL that the Appeals Chamber has held that, by creating the Defence Office, the Registrar “did not divest himself of his power and can therefore act concurrently with the Principal Defender”;⁶

MINDFUL that this Chamber has previously held that it has inherent jurisdiction to review the legality or reasonableness of administrative decisions which impact on the fundamental rights of the

⁴ In addition, the Appeals Chamber of the Special Court has held that “[a]s a creation of the Registrar, the Defence Office and at its head, the Principal Defender, remain under the administrative authority of the Registrar” and that “[a]lthough the Defence Office is given the main responsibility for ensuring the rights of the accused by accomplishing the functions mentioned [in para. 80], it is supposed to exercise its duty under the administrative authority of the Registrar. See *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-AR73, 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 (“Appeals Chamber Decision”), para. 83.

⁵ *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Written Reasons for the Decision on Application by Counsel for the Third Accused to Withdraw from the Case, 19 June 2006 (“Written Reasons”), para. 41. Emphasis added.

⁶ See Appeals Chamber Decision, *supra* note 4, para. 86. Emphasis added.

Accused⁷ and, in particular, in its Decision in the case of *Prosecutor v. Brima*, this Chamber explicitly stated that:

[...] the Special Court for Sierra Leone, as an independent judicial entity, in addition to its statutory jurisdiction as provided for in the Founding Instruments of the Court, is endowed with an inherent jurisdiction to enable it to act effectively in pursuance of its mandate.⁸

NOTING that in this Decision the Chamber ultimately declared that it possesses an inherent jurisdiction to entertain and to adjudicate on certain issues involving the rights of the Accused and to review an administrative decision rendered by the Registrar;⁹

SATISFIED that, in the present circumstances, the exercise of such inherent power by this Chamber to intervene in the matter would ensure that those fundamental rights of the Accused Sesay prescribed in Article 17 of the Statute are protected by promptly providing his Defence Team with adequate facilities for the preparation and commencement of its Defence case;

PURSUANT to Article 17 of the Statute, Rule 26bis, 45, 54 and 73 of the Rules and Article 26 of the Directive on the Assignment of Counsel;

PARTIALLY GRANTS Application I and, consequently

HEREBY ORDERS the Defence Office and, concurrently, the Registrar to provide as soon as possible but no later than Thursday, the 1st of February 2007, the following additional resources to the Sesay Defence:

- i. A second office, at a minimum of the same size of the same office provided, with desk and other appropriate furniture;
- ii. A second networked computer, to be located in the said second office;
- iii. A vehicle, to be used for the sole purpose of witness-related trips and limitedly for the remainder of the presentation of Sesay Defence case; and, finally

⁷ See, for instance, Written Reasons, supra note 5, paras 19-21 and 25. See also similar jurisprudence from Trial Chamber II: *Prosecutor v. Taylor*, SCSL03-01-PT, Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for the Preparation of the Mr. Taylor's Defence, 23 January 2007.

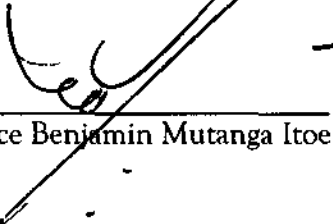
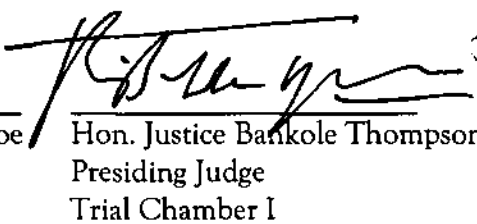
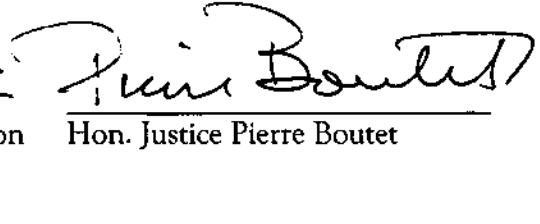
⁸ *Prosecutor v. Brima*, SCSL04-16-PT, Decision on Applicant's Motion Against Denial by the Acting Principal Defender to Enter a Legal Service Contract for the Assignment of Counsel, 6 May 2004, para. 62.

⁹ *Ibid*, paras 64-65.

iv. A witness management officer dedicated to finding and locating witnesses. The witness management officer shall cooperate with the Witness and Victims Section of the Special Court as necessary.

DENIES Application I, at this stage, with regards to the provision of additional funding for one investigator with international experience.¹⁰

Done at Freetown, Sierra Leone, this 24th day of January, 2007

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



¹⁰ The Chamber in particular notes the recent undertaking by the Principal Defender that he is engaging for additional resources to meet the investigative needs of the Defence Teams. See Joint Response, Annex H.