

**SPECIAL COURT FOR SIERRA LEONE
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE**

TRIAL CHAMBER I

Before: Hon. Justice Benjamin Mutanga Itoe, Presiding Judge
Hon. Justice Bankole Thompson
Hon. Justice Pierre Boute
Registrar: Mr. Herman von Hebel
Date: 1st of November 2007
PROSECUTOR **Against** **ISSA HASSAN SESAY**
MORRIS KALLON
AUGUSTINE GBAO
(SCSL-04-15-T)

Public Document

INTERIM ORDER CONCERNING APPLICATION FOR JUDICIAL REVIEW

Office of the Prosecutor:

Peter Harrison Reginald Fynn

Registrar

Herman von Hebel

Office of the Principal Defender

Vincent Nmehielle

Defence Counsel for Issa Hassan Sesay:

Wayne Jordash
Sareta Ashraph

Defence Counsel for Morris Kallon:
Shekou Touray
Charles Taku
Kennedy Ogetto

**Court Appointed Counsel for Augustine
Gbao:**
John Cammegh

TRIAL CHAMBER I (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”) composed of Hon. Justice Benjamin Mutanga Itoe, Presiding Judge, Hon. Justice Bankole Thompson and Hon. Justice Pierre Boutet;

SEIZED of the Application for Judicial Review of Registry's Refusal to Provide Additional Funds for an Additional Counsel as Part of the Implementation of the Arbitration Decision of the 26th of April 2007 filed publicly, with public and *ex parte* confidential annexes, by Defence Counsel for the First Accused, Issa Hassan Sesay, ("Sesay Defence") on the 5th of September 2007 ("Application");

NOTING the Response to the Application filed by the Registrar on the 17th of September 2007 ("Response") and the Reply thereto filed by the Sesay Defence on the 24th of September 2007 ("Reply");

NOTING that the Office of the Prosecutor ("Prosecution") has filed no response to the Application;

MINDFUL of the Decision of the Arbitrator in the Matter of an Arbitration Pursuant to Article 9 of the Legal Services Contract and Article 22 of the Directive on the Assignment of Counsel and in the Matter of an Arbitration between Wayne Jordash, Assigned and Lead Counsel for Issa Sesay (Claimant) and the Principal Defender of the Special Court for Sierra Leone (1st Respondent) and the Registrar of the Special Court of the Special Court for Sierra Leone (2nd Respondent) rendered on the 26th of April 2007 ("Arbitration Decision");

CONSIDERING that negotiations between the parties took place on the 20th and 21st of July 2007 on the implementation of the Arbitration Decision ("Negotiations") and that it was agreed between the parties in the Negotiations (i) that an enhancement of 40% would be made to the Sesay Defence's pre-Arbitration monthly budgetary limit of \$25,000, thereby raising the monthly budgetary limit to \$35,000;[1] (ii) that this enhancement would be backdated to cover the period from November 2003 to November 2006;[2] and (iii) that funds would be released for the hiring of an international investigator for a period of four months.[3]

CONSIDERING the Sesay Defence's submission that it was further agreed that a lump sum payment of \$30,000 would be made to the Defence for the purposes of hiring additional co-counsel until the end of the Defence case (estimated at a period of three months at the time of the Negotiations);[4]

CONSIDERING the Registrar's contention that there was no such agreement between the parties,[5] but that, in an effort to accommodate the Sesay Defence, the release of an additional \$10,000 per month for the projected three months of the Defence case was proposed with the proviso that, at the conclusion of this period, the monthly disbursement would revert from the enhanced \$35,000 to the original \$25,000;[6]

CONSIDERING the Sesay Defence's submission that the payment of additional funds for the recruitment of additional Defence counsel is necessary to implement the Arbitration Decision and that the Registrar's refusal to make such funds available above and beyond the agreed funding enhancement is irrational given (i) the size and complexity of the Defence case, the increased workload of the Defence case and the fact that the original budget of \$25,000 was inadequate; (ii) the resources that have been made available to the *Taylor* Defence Team and (iii) the resources provided to the Prosecution;[7]

CONSIDERING that the lack of specificity in the Arbitration Decision precludes the Chamber from making a proper and adequate assessment of the apparent divergence of the parties as to whether the provision of additional funds for the hiring of additional Defence counsel was envisioned by the Arbitrator as essential to the implementation of his Decision;

CONSIDERING that, in these circumstances, the making of any determination would be premature;

PURSUANT to Article 17 of the Statute of the Special Court (“Statute”) and Rules 26bis, 33(B) and 54 of the Rules of Procedure and Evidence (“Rules”);

THE TRIAL CHAMBER ORDERS AS FOLLOWS

1. That the Registrar, the Principal Defender and the *Sesay* Defence, respectively, provide the Chamber, by Monday, the 5th of November 2007 at 4:00 p.m., with:
 - o (i) The terms of the Legal Services Contract made between the Office of the Principal Defender and the Defence Teams for the First, Second and Third Accused and, in particular, the rates paid at the start of the case to those Defence Teams for out-of-Court preparation and for days in Court;
 - o (ii) Any information concerning amendment of the said rates since the start of the case and, where such amendments have taken place, the rate actually paid;
2. That the Registrar, the Principal Defender and the *Sesay* Defence, respectively, provide the Chamber with the following information by Monday, the 5th of November 2007 at 4:00 p.m.:
 - o (i) What, in addition to the Arbitration Decision, formed the basis of the discussions during the Negotiations between the parties with regard to the enhancement of the Defence’s pre-Arbitration monthly budgetary limit, eventually leading an agreed enhancement in the order of 40%;
 - o (ii) Whether the same considerations affected the agreement concerning the enhancement of the *Sesay* Defence’s monthly budgetary limit backdated to the period from November 2003 to November 2006, and, in particular, whether such enhancement was intended to settle claims for back pay only or was also intended to cover other costs or expenditure incurred during that period;
 - o (iii) Any other relevant or pertinent information that may assist the Chamber.

Done at Freetown, Sierra Leone, this 1st day of November 2007

Hon. Justice Bankole
Thompson

Hon. Justice Benjamin Mutanga
Itoe
Presiding Judge
Trial Chamber I

Hon. Justice Pierre Boutet

[Seal of the Special Court for Sierra Leone]