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**SPECIAL COURT FOR SIERRA LEONE**

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**TRIAL CHAMBER I**

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

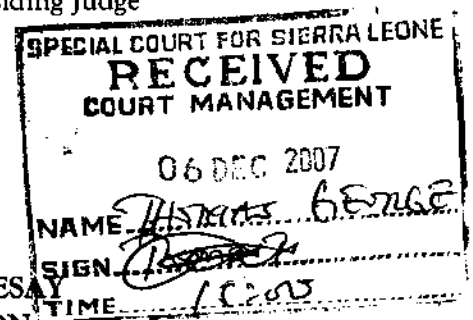
**Registrar:** Mr. Herman von Hebel

**Date:** 6<sup>th</sup> of December 2007

**PROSECUTOR**

**Against**

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



**Public Document**

**DECISION ON LEAVE TO APPEAL DECISION ON SESAY AND GBAO MOTION FOR VOLUNTARY WITHDRAWAL OR DISQUALIFICATION OF JUSTICE BANKOLE THOMPSON FROM THE RUF CASE**

**Office of the Prosecutor:**

Stephen Rapp  
Peter Harrison  
Anne Althaus

**Defence Counsel for Issa Hassan Sesay:**

Wayne Jordash  
Sareta Ashraph

**Defence Counsel for Morris Kallon:**

Shekou Touray  
Charles Taku  
Kennedy Ottego  
Lansana Dumbaya

**Court Appointed Counsel for Augustine Gbao:**

John Cammegh  
Prudence Acirokop

HON. JUSTICE BENJAMIN MUTANGA ITOE, PRESIDING JUDGE AND HON. JUSTICE PIERRE BOUTET of Trial Chamber I ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court");

SEIZED of the oral application, made jointly by the Prosecution and the Defence for Issa Hassan Sesay, Morris Kallon and Augustine Gbao on the 6<sup>th</sup> of December 2007, seeking leave to appeal the Decision on Sesay and Gbao Motion for Voluntary Withdrawal or Disqualification of Hon. Justice Bankole Thompson from the RUF Case rendered on the 6<sup>th</sup> of December 2007;

NOTING the submissions made in support of this application that were advanced by all Parties;

SATISFIED that it is in the interests of justice in these particular circumstances that the application for leave to appeal be made exceptionally by means of an oral application;

PURSUANT to Rules 7, 16, 73(A) and 73(B) of the Rules of Procedure and Evidence ("Rules");

HEREBY ISSUE THE FOLLOWING DECISION:

1. Rule 73(B) of the Rules establishes the standard which governs appeals on motions for interlocutory relief. According to Rule 73(B), the Trial Chamber may give leave to appeal in exceptional circumstances and to avoid irreparable prejudice to a party. The standard is conjunctive, as can be deduced from both the plain and literal interpretation of the Rule and this Chamber's settled jurisprudence on the subject.<sup>1</sup>

2. The Chamber has defined "exceptional circumstances" for the purposes of Rule 73(B) in these terms:

"Exceptional circumstances" may exist depending upon the particular facts and circumstances, where, for instance the question in relation to which leave to appeal is sought is one of general principle to be decided for the first time, or is a question of public international law importance upon

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<sup>1</sup> See, for instance, *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Application by the Second Accused for Leave for Interlocutory Appeal against the Majority Decision of the Trial Chamber of the 9<sup>th</sup> of December 2004 on Issue of Urgent Concern to the Accused Morris Kallon, 2 May 2005, para. 17 ("Kallon Application for Leave to Appeal"); *Ibid.*, Decision on Application for Leave to Appeal the Ruling (2 May 2005) on Sesay-Motion seeking Disclosure of the Relationship Between Governmental Agencies of the United States of America and the Office of the Prosecutor, 15 June 2005, para. 15.

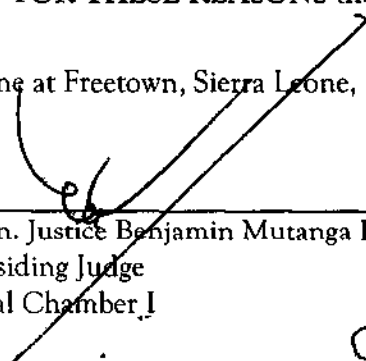
which further argument or decision at the appellate level would be conclusive to the interests of justice, or where the cause of justice might be interfered with, or is one that raises serious issues of fundamental legal importance to the Special Court for Sierra Leone in particular, or international criminal law, in general, or some novel and substantial aspect of international criminal law for which no guidance can be derived from national criminal law systems.<sup>2</sup>

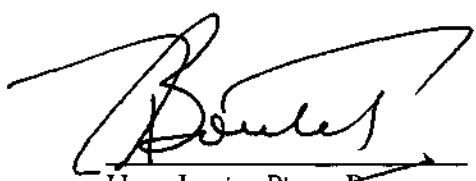
3. As regards the requirement of “irreparable prejudice”, this Chamber has previously held that the expression refers to prejudice that “may not be remediable by appropriate means within the final disposition of trial.”<sup>3</sup>

4. Given the joint oral submissions made by the parties on the seriousness, urgency, and exceptional nature of the issues raised in this application, the Chamber is satisfied that both prongs of the test have been satisfied. This matter clearly raises an issue of fundamental legal importance to the Special Court for Sierra Leone and for international criminal law generally, as it deals with the serious and fundamental issue of the standards to be applied in determining the disqualification of one of the Judges in the Chamber, a matter that has not previously been addressed by this Chamber. Furthermore, the Chamber is of the view that the parties would suffer irreparable prejudice if this issue was not dealt with at the appellate level as expeditiously as possible.

**FOR THESE REASONS** the Application for Leave to Appeal made by all of the parties is granted.

Done at Freetown, Sierra Leone, this 6<sup>th</sup> day of December 2007.

  
 Hon. Justice Benjamin Mutanga Itoe  
 Presiding Judge  
 Trial Chamber I

  
 Hon. Justice Pierre Boutet



<sup>2</sup> *Ibid.*, para. 26.

<sup>3</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decisions on Motion by the First and Second Accused for Leave to Appeal the Chamber's Decision on their Motions for the Issuance of a Subpoena to the President of the Republic of Sierra Leone, 28 June 2006, para. 13; See also *ibid.*, Decision on Joint Request for Leave to Appeal against Decision on Prosecution's Motion for Judicial Notice, 19 October 2004, para. 23.