SCSL-04-15-T
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SPECIAL COURT FOR SIERRA LEONE

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995

FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

TRIAL CHAMBER I

Before:	Hon. Justice Benjamin Mutanga Itoe, Presiding Judge Hon. Justice Bankole Thompson Hon. Justice Pierre Boutet
Registrar:	Herman von Hebel
Date:	25th of January 2008

SPECIAL COURT FOR SIERRA LEONE
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25 JAN 2008
NAME Adera Nsiima-K.
SIGN. Nsiima
TIME 11:30

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

Public Document

DECISION ON THE ISSUE OF RECALLING WITNESS TF1-371 AS DIRECTED BY THE APPEALS CHAMBER

Office of the Prosecutor:
Peter Harrison
Vincent Wagona
Reginald Fynn

Defence Counsel for Issa Hassan Sesay:
Wayne Jordash
Sareta Ashraph

Defence Counsel for Morris Kallon:
Charles Taku
Kennedy Ogeto

Court Appointed Counsel for Augustine Gbao:
John Cammegh
Scott Martin

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;

MINDFUL of the Chamber Majority Decision on Oral Objection Taken by Counsel for the Third Accused, Augustine Gbao relating to the Admissibility of Portions of the Evidence of Witness TF1-371 rendered by Hon. Justice Thompson and Hon. Justice Itoe on the 2nd of August 2006 ("Majority Decision");[1]

MINDFUL of the fact that the Chamber Decision upheld an objection made by Court Appointed Counsel for Augustine Gbao to exclude Portions of the testimony of Witness TF1-371 given on the 21st and the 24th of July 2006;[2]

MINDFUL of the Chamber Decision dated 15th of October 2007 to grant leave to the Prosecution to Appeal against the Chamber Decision to exclude the said Portions of Evidence of TF1-371;

CONSIDERING the Appeals Chamber's Decision dated 13th of December 2007 allowing the Prosecution's Appeal against the Chamber Majority Decision and directing the Trial Chamber to provide adequate time for the cross-examination of Witness TF1-371;

MINDFUL of the Submissions of the Parties before the Chamber during the Status Conference on the 10th of January 2008 and during the proceedings on the 17th of January 2008;

ISSUES THE FOLLOWING DECISION;

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[1] *See also* Separate and Concurring Written Reasons of Hon. Justice Bankole Thompson on Majority Decision on Oral Objection Taken by counsel for the Third Accused, Augustine Gbao, to the Admissibility of Portions of the Evidence of Witness TF1-371, 2 August 2006; Dissenting Written Reasons of Hon. Justice Pierre Boutet on Majority Decision on Oral Decision on Objection Taken by Counsel for the Third Accused, Augustine Gbao, to the Admissibility of Portions of the Evidence of Witness TF1-371, 2 August 2006.

[2] *See* Majority Decision, for instance, paras 15, 22-23 and 16.

I. SUMMARY OF THE FACTS

1. Witness TF1-371 testified at trial on the 20th, 21st, 24th, 28th, and 31st of July 2006 and on the 1st and 2nd of August 2006.[3] The Defence, on the 21st and 24th of July 2006, objected to the testimony of Witness TF1-371, the last Prosecution Witness, on the grounds that it implicated the Third Accused, Augustine Gbao, for the first time, in incidents concerning the killings in Kono District.[4]

2. This Chamber delivered two oral rulings on the 24th of July 2006 in which the majority of the Chamber, comprising of Hon. Justice Bankole Thompson, then Presiding Judge and Hon. Justice Benjamin Mutanga Itoe, granted the Defence objection and declared that the evidence in question was inadmissible and ordered that it be expunged and excluded from the records.[5]

3. In a Motion filed on the 21st of August, 2006, the Prosecution applied for leave to appeal against the Chamber Majority Decision. On the 15th of October 2007, the Chamber unanimously granted the Prosecution's application. On the 22nd of October 2007, the Prosecution filed an interlocutory appeal, seeking a reversal of the Chamber's Majority Decision.[6]

4. On the 13th of December 2007, the Appeals Chamber issued its Decision on the Prosecution Appeal regarding the exclusion by the Trial Chamber, of those Portions of Evidence given by Witness TF1-371. In that Decision, the Appeals Chamber quashed the Impugned Trial

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[3] *See* Transcript of 20 July 2006; Transcript of 21 July 2006; Transcript of 24 July 2006; Transcript of 28 July 2006; Transcript of 31 July 2006; Transcript of 1 August 2006; and Transcript of 2 August 2006.

[4] Transcript of 21 July 2006, John Cammegh, pp. 7-11 (CS); Transcript of 24 July 2006, John Cammegh, pp. 8, 19-23 (CS).

[5] Transcript of 24 July 2006, Hon. Justice Bankole Thompson, p. 2, Lines 17-26 (CS) and p. 34, Lines 8-12 (CS).

[6] *See* Prosecution Application for Leave to Appeal Majority Decision on Oral Objection Taken by Counsel for the Third Accused to the Admissibility of Portions of the Evidence of Witness TF1-371, 21 August 2006; *See also* Prosecution Notice of Appeal and Submissions Regarding the Objection to the Admissibility of Portions of the Evidence of Witness TF1-371, 22 October 2007.

Chamber Majority Decision and ordered the Chamber to admit the evidence of Witness TF1-371 which had been declared inadmissible.[7]

5. The Appeals Chamber further directed the Trial Chamber to allow the Accused sufficient time to cross-examine Witness TF1-371, if he chooses to do so."[8]

6. At the Status Conference held on the 10th of January 2008, the Chamber inquired on the availability of the Witness TF1-371 as well as the length of any expected cross-examination.[9] The Prosecution submitted that Witness TF1-371 could, if the Chamber so directed, be made available during the first week of February, 2008.[10]

7. The Chamber accorded to Counsel for Gbao a time limit of seven days within which to present to the Chamber his position on the implementation of the directives of the Appeals Chamber with respect to the cross-examination of this witness.[11]

8. At the hearing on the 17th of January 2008, Learned Counsel Mr. Cammegh, orally informed the Chamber that it is not in the interests of the Accused, Augustine Gbao, for Witness TF1-371 to be recalled for further cross-examination and that it is not seeking to recall Witness TF1-371 for that purpose.[12]

9. The Defence further submitted that the issue of whether this Witness should be recalled or not is exclusively the prerogative of the Defence and not that of the Prosecution.[13] The Prosecution on its part agreed with the submissions of the Defence and submitted that, since the

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[7] Decision on Prosecution Motion Regarding the Objection to the Admissibility of Portions of Evidence of Witness TF1-371, 13 December 2007, p. 11.
[8] Ibid. para. 27.
[9] Transcript of the Status Conference on 10 January 2008, Hon. Justice Benjamin Mutanga Itoe, p. 36, Lines 25-29.
[10] Ibid, Reginald Fynn, p. 37, Lines 7-10.
[11] Ibid, Hon. Justice Benjamin Mutanga Itoe, p. 44, Lines 14-18.
[12] Draft Transcript of 18 January 2008, John Cammegh, p. 3, lines 4-19.
[13] Ibid, p. 2, Lines 24-29.

Defence have opted not to conduct a further cross-examination of Witness TF1-371, as directed by the Appeals Chamber; it is not seeking to recall the said Witness.[14]

10. In the light of the foregoing, the Chamber accepts the submissions of Mr. Cammegh, Learned Lead Counsel for the Gbao Defence and the position taken by the Prosecution and holds, in the circumstances, that notwithstanding the directives of the Appeals Chamber for a recall of Witness TF1-371 for cross-examination by the Defence, it is not necessary to order the Prosecution to produce him before this Chamber for that purpose given the decision by the Defence not to exercise its right to have TF1-371 recalled for further cross-examination as directed by the Appeals Chamber.

11. In the Light of the Foregoing Considerations, **THE CHAMBER HOLDS AND DIRECTS**:

1) That Witness TF1-371 shall not be recalled for cross examination;

2) That the evidence in its entirety, given by Witness TF1-371 before this Chamber is admitted and constitutes an integral part of the evidence in the record of proceedings in this trial.

Done at Freetown, Sierra Leone, this 25th day of January 2008

Hon. Justice Pierre Boutet

Hon. Justice Benjamin Mutanga Itoe
Presiding Judge
Trial Chamber I

Hon. Justice Bankole Thompson

[Seal of the Special Court for Sierra Leone]

[14] Transcript of 18 January 2008, Vincent Wagona, p. 4, lines 7-11.