

1216

SCSL-04-15-T
(129665-29671)
SPECIAL COURT FOR SIERRA LEONE
TRIAL CHAMBER I

29665

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

Registrar: Mr. Herman Von Hebel

Date filed: 1 August 2008

THE PROSECUTOR

against

**ISSA HASSAN SESAY
MORRIS KALLON
AUGUSTINE GBAO**

Case No. SCSL -2004-15-T

PUBLIC

**KALLON URGENT REQUEST FOR RELIEF TO EXTEND THE PERIOD FOR
FINAL ORAL SUBMISSIONS**

Office of the Prosecutor:

Peter Harrison
Reginald Fynn

Counsel for Issa Sesay:

Wayne Jordash
Sareta Ashraph

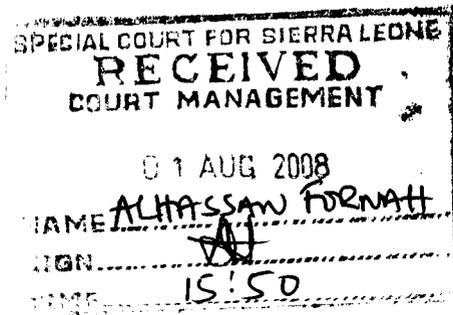
Counsel for Morris Kallon:

Charles Taku
Kennedy Ogetto

Court-Appointed Counsel for

Augustine Gbao:

John Cammegh
Scott Martin



INTRODUCTION

1. On 29 April 2008, the Chamber ordered, *inter alia*, that, in respect of oral submissions, that “[t]he parties shall inform the Chamber of the Anticipated length of their closing arguments which, thereafter, may be limited by the Chamber in the interests of justice”.¹
2. On 29 July 2008, the Second Accused, Morris Kallon filed his final trial brief.² On that day also, the Prosecution³ and the Third Accused⁴ filed their final trial briefs with 549 pages and 373 pages of substantive submissions, respectively. On 31 July 2008 the First Accused filed its final trial brief with 495 pages of substantive submissions.⁵
3. Closing arguments were scheduled for 4 and 5 August 2008, by the aforementioned order of the Chamber.⁶
4. On 31 July 2008, the Chamber invited the parties to submit “the anticipated length of [their] closing arguments”, wherein it was also stated: “[f]or your reference, you may wish to consider that the Parties in the CDF trial and the AFRC trial were given between two and three hours each”.⁷ For its part, the Kallon Defence requested a period of between 5 and 6 hours, noting in particular the length and complexity of the trial.
5. Today, on 1 August 2008, the Chamber ordered that, in order to present its closing oral submissions, and pursuant to its previous order of 29 April 2008,
 - a. that the Prosecutions be given two hours;
 - b. that the Sesay Defence be given two hours;
 - c. that the Kallon Defence be given an hour and a half; and
 - d. that the Gbao Defence be given an hour.⁸
6. The Kallon Defence hereby files a motion seeking urgent relief to extend the

¹ *D. v. Sesay et al.*, SCSL-04-15-T-1106, Order for the Filing of Final Trial Briefs and the Presentation of Closing Arguments, 29 April 2008, (“29 April Order”), Order 10.

² *D. v. Sesay et al.*, SCSL-04-15-T-1207, Morris Kallon Final Trial Brief, 29 July 2008, (“the Kallon Brief”).

³ *D. v. Sesay et al.*, SCSL-04-15-T-1206, Prosecution Final Trial Brief, 29 July 2008, (“the Prosecution Brief”).

⁴ *D. v. Sesay et al.*, SCSL-04-15-T-1208, Gbao- Final Trial Brief, 29 July 2008, (“the Gbao Brief”).

⁵ *D. v. Sesay et al.*, SCSL-04-15-T-1210, Filing of Sesay Defence Final Brief, 31 July 2008, (“the Seay Brief”).

⁶ 29 April Order, Order 7.

⁷ Email from Ms. Welsch to the Prosecution and the defence teams of the three accused.

⁸ *D. v. Sesay et al.*, SCSL-04-15-T-1214, Order Regarding the Presentation of Closing Arguments, 1 August 2008, (“1 August Order”).

period allotted to it by the Order and, therefore, reconsideration of the Order. It reasserts its request for a period between 5 and 6 hours.

SUBMISSIONS

7. The Defence notes that, by virtue of order 10 of the 29 April Order, the Chamber had reserved the ultimate determination of allotment of time until it had invited submissions from the parties and considered them. However, as a minimum it is submitted that the parties reasonably expected that two full days of submissions would be granted because in the 29 April Order, the Chamber put the parties on notice that oral submissions would be heard over two days. By reference to a normal court day, that equates to 12 hours of submissions.
8. In addition, by the same order, the Chamber ordered that final briefs be limited to 400 pages for each of the co-accused and 500 pages for the Prosecution. That order was subsequently revised in respect of the Prosecution, to 600 pages, and the Accused, Sesay, to 500 pages, and Kallon, to 450 pages.⁹ The Chamber extended the page limits “in the interests of justice”.¹⁰ Therefore, an additional 250 pages were permitted by the Chamber.¹¹ In the 1 August Order, the Chamber notes that the “...the purpose of the closing arguments is to enable the Parties to address issues raised in the final trial briefs...”. Therefore, the length of the briefs is material to the exercise of Chamber’s discretion as to the length of oral submissions.
9. Today’s order schedules oral submissions totalling of 6 hours and 30 minutes. In light of the foregoing, it is submitted that the parties were entitled to believe that: a period of 12 hours would be scheduled for oral submissions; that it would be extended to reflect the ultimate length of the final briefs that were filed, as compared to the length ordered initially; and that the parties would be granted an

⁹ *P v. Sesay et al.*, SCSL04-15-T-1202, Order in Relation to Sesay Defence and Prosecution Motions for Extensions to the Page Limits of Their Final Trial Briefs, 23 July 2008; and *P v. Sesay et al.*, SCSL-04-15-T-1204, Order in Relation to Kallon Defence Motion for Extension to the Page Limit of its Final Trial Brief, 25 July 2008.

¹⁰ *Id.*

¹¹ The defence submits that the fact that the full page entitlements were not used up is immaterial because when the Chamber stated, by its order of 29 April 2008, that it would hear oral submissions over two days, it did not, at that point, know whether the parties would use their full entitlements.

equitable proportion of that total amount of time to present its oral submissions.

10. In addition, it is submitted that the Chamber be guided by the discretionary exercise of Trial Chamber II, adjudicating on corresponding issues in the other cases to have reached this stage before the Special Court together with the principle of proportionality. In *Brima et al.* the parties were granted 9 hours of oral submissions (. That case lasted 176 trial days and the prosecution called 59 witnesses in support of a 14 count indictment.¹² In this case, however, 84 Prosecution witnesses were heard in support of an 18 count indictment, yet the parties have only been granted 6 and 30 minutes for oral submissions. This also illustrates the larger scope of the response which the parties must make at oral submissions. The comparatively larger scope of this case as compared to *Brima* and *Fofana* is reflected in the size of the final briefs filed before the respective Trial Chambers. In *Brima et al.* 726 pages of written submissions were filed from all the 4 parties in total filed.¹³ The parties in this case have filed 1967 pages of final submissions.
11. The Chamber notes that “the [p]arties have filed very comprehensive final trial briefs”. The Kallon Defence notes and emphasises the importance of the oral submissions as the only element of the closing arguments which are responsive to the Prosecution Brief, given the simultaneous filing of the prosecution and defence final briefs. Under the particular circumstances of this case, elements of the case against the Accused have only come to light through the Prosecution Brief. The right against self-incrimination and the presumption of innocence ensure the significance of the forthcoming oral submissions to the fair trial rights of the accused, under Article 17(4) of the Statute.
12. The Order cites that the “purpose of closing arguments is to enable the Parties to address issues raised in the final trial briefs of the other Parties not already addressed in their own final trial brief”. It is submitted that counsel for Kallon

¹² *P v. Brima et al.*, SCSL-04-16-T-613, Judgment, 20 June 2007, at para 9 and 10.

¹³ The Prosecution filed 485 pages, the Accused Brima filed 142, the Accused Kanu filed 152 pages and the Accused Kamara filed 147 pages.

cannot adequately address the issues raised in the Prosecution Brief, as well as the Sesay Brief and the Gbao Brief, which require response, notwithstanding the arguments in the Kallon Brief. Briefs filed by the other parties total 1417 pages of substantive submissions, excluding annexes and authorities. The Kallon Defence has already compiled material for submissions which would take longer than one and a half hours to properly present. Given that the all briefs of the parties were filed within the last three days, material issues which must be dealt with in oral submissions continue to come to light. It is submitted that, in the interests of justice the Accused be granted sufficient time to make response to the charges levelled against him, in a manner that is commensurate and adequate to the scope of the Prosecution case.

RELIEF SOUGHT

13. In light of the foregoing, it is respectfully requested :
 - a. that the Trial Chamber extend the length of oral submissions available to the Kallon Defence to a period between 5 and 6 hours; and
 - b. that in light of the timing of the relevant order of the Trial Chamber, this motion and the forthcoming oral submissions, that an oral hearing be scheduled for Monday 4 August 2008, prior to the hearing of oral submissions, in order that the Chamber hear the submissions of the party and dispose of the matter expeditiously;
14. In the alternative,
 - a. that the Kallon Defence be permitted to file a written response to the Prosecution Brief, as well as the other defence briefs, in order to properly present its defence to the issues raised therein.

DONE in Freetown on this...^{19th} day of...^{August}....., 2008.

For Defendant **KALLON**,



Chief Charles A. Taku



Kennedy Ogetto

AUTHORITIES

P v. Sesay et al., SCSL-04-15-T-1106, Order for the Filing of Final Trial Briefs and the Presentation of Closing Arguments, 29 April 2008, (“29 April Order”), Order 10.

P v. Sesay et al., SCSL-04-15-T-1207, Morris Kallon Final Trial Brief, 29 July 2008, (“the Kallon Brief”).

P v. Sesay et al., SCSL-04-15-T-1206, Prosecution Final Trial Brief, 29 July 2008, (“the Prosecution Brief”).

P v. Sesay et al., SCSL-04-15-T-1208, Gbao- Final Trial Brief, 29 July 2008, (“the Gbao Brief”).

P v. Sesay et al., SCSL-04-15-T-1210, Filing of Sesay Defence Final Brief, 31 July 2008, (“the Seay Brief”).

Email from Ms. Welsch to the Prosecution and the defence teams of the three accused.

P v. Sesay et al., SCSL-04-15-T-1214, Order Regarding the Presentation of Closing Arguments, 1 August 2008, (“1 August Order”).

P v. Sesay et al., SCSL04-15-T-1202, Order in Relation to Sesay Defence and Prosecution Motions for Extensions to the Page Limits of Their Final Trial Briefs, 23 July 2008; and *P v. Sesay et al.*, SCSL-04-15-T-1204, Order in Relation to Kallon Defence Motion for Extension to the Page Limit of its Final Trial Brief, 25 July 2008.

P v. Brima et al., SCSL-04-16-T-613, Judgment, 20 June 2007, at para 9 and 10.