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SCSL-04-15-T
(32567 - 32590)

SPECIAL COURT FOR SIERRA LEONE
APPEAL CHAMBER

32567

Before: Hon. Justice George Gelaga King, Presiding
Hon. Justice Emmanuel Ayoola
Hon. Justice Renate Winter
Hon. Justice Raja Fernando
Hon. Justice Jon Kamanda

Registrar: Mr. Herman Von Hebel

Date filed: 17th December 2007

SPECIAL COURT FOR SIERRA LEONE	
RECEIVED	
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17 DEC 2007	
NAME	ISSA HASSAN SESAY
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TIME	15:50

THE PROSECUTOR

v.

Issa Hassan Sesay
Morris Kallon
Augustine Gbao

Case No. SCSL-04-15-T

PUBLIC

SESAY REPLY TO PROECUTION CONSOLIDATED RESPONSE TO APPEAL
AGAINST THE DECISION ON SESAY AND GBAO MOTION FOR VOLUNTARY
RECUSAL OR DISQUALIFICATION OF JUDGE BANKOLE THOMPSON FROM
THE RUF CASE

Office of the Prosecutor:
Mr. Peter Harrison
Mr. Reginald Fynn

Defense Counsel for Issa Hassan Sesay
Mr. Wayne Jordash
Ms. Sareta Ashraph

Defense Counsel for Morris Kallon
Mr. Shekou Touray
Mr. Charles Taku
Mr. Ogetto Kennedy

Court-Appointed Counsel for Augustine Gbao
Mr. John Cammegh
Ms. Prudence Acirokop

INTRODUCTION

1. The Defence for Sesay files this Reply to the Prosecution's Consolidated Response to the Notices of Appeal of Sesay, Kallon and Gbao ("The Response").¹

REPLY

2. The Response fails to deal with the most salient errors of law and fact. In the main, the arguments advanced by the Prosecution do not address whether, in light of the Separate Opinion,² the Accused have a legitimate reason to fear that the Judge lacks impartiality and whether this fear can be objectively justified nor whether there were errors made which led to the Decision.³
3. The salient issues are not reducible to whether (i) a judge is disqualified from hearing two or more criminal trials;⁴ (ii) whether actual bias has been established;⁵ (iii) whether "Justice Thompson is entitled to invoke any principal of law which he feels is applicable to the case before him;"⁶ (iv) whether Hon. Justice Thompson found a joint criminal enterprise between the AFRC and the RUF;⁷ or even (v) whether Mr. Justice Thompson's Dissenting Opinion mentioned the Accused or assigned them any culpability "for any crimes committed that were detailed in the CDF trial".⁸
4. In light of the findings (and the reasonable inferences) arising from the Separate Opinion, namely that the CDF were justified in committing crimes against innocent civilians because these were necessary to prevent the "tyranny", "anarchy" "continuing breakdown of law and order", and "widespread violence" as perpetrated by the RUF, it matters not whether the evidence in the CDF trial was different,⁹ or that one of the Accused (Sesay) accepts that some members of the RUF committed crimes,¹⁰ or that the Accused were not mentioned in

¹ *Prosecutor v. Sesay et al*, SCSL-04-15-T-929, "Prosecution Consolidated Response to Sesay, Kallon and Gbao Appeal of the Decision on the Defence Motion for Voluntary Withdrawal Joint Motion for Voluntary Withdrawal or Disqualification of Justice Bankole Thompson from the RUF Case", 14 December 2007.

² *Prosecutor v. Moinina Fofana and Allieu Kondewa*, SCSL-04-14-T-785, "The Separate Concurring and Partially Dissenting Opinion of Hon. Justice Bankole Thompson".

³ *Prosecutor v. Sesay et al*, SCSL-04-15-T-909, "Decision on Sesay and Gbao Joint Motion for Voluntary Withdrawal or Disqualification of Justice Bankole Thompson from the RUF Case", 6 December 2007 (the "Decision").

⁴ The Response, para. 18.

⁵ The Response, paras. 24 and 25.

⁶ The Response, para. 33.

⁷ The Response, para. 27.

⁸ The Response, para. 31.

⁹ The Response, para. 38.

¹⁰ The Response, para. 30.

the Separate Opinion,¹¹ or that Judges are required to be “persons of high moral character, impartiality and integrity”,¹² or that the “Judges of the Trial Chamber sit as a panel of the three judges”.¹³ These issues do not, except only tangentially, touch upon or militate against this overwhelming degree of prejudgment. This prejudgement gives rise to a fear that Hon. Justice Thompson lacks impartiality and this fear can be objectively justified by an examination of the unqualified degree of attribution of virtue to the CDF, the explicit and unqualified denial of worth to the RUF, and the issues which must be decided in the RUF trial.

REQUEST

5. For these reasons the Defence submits that the Trial Chamber erred when concluding that the Defence had failed to firmly establish a reasonable appearance of bias on the part of Justice Thompson.
6. The Defence respectfully requests that the Appeal Chamber, pursuant to Rule 15(B), disqualify Hon. Justice Thompson from the RUF proceedings.
7. In light of the finding that there is some evidence indicating the appearance of bias, the Defence respectfully requests that the Learned Judge be excused from the proceedings until the Appeal Chamber has deliberated. Mr. Sesay consents to continue with only two judges.

Dated 17th December 2007



Wayne Jordash
Sareta Ashraph

¹¹ The Response, para. 31.

¹² The Decision, para. 27.

¹³ The Decision, para. 90.

LIST OF AUTHORITIES

Judgements and Decisions

Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-T-785, “The Separate Concurring and Partially Dissenting Opinion of Hon. Justice Bankole Thompson”.

Prosecutor v. Sesay et al, SCSL-04-15-T-909, “Decision on Sesay and Gbao Joint Motion for Voluntary Withdrawal or Disqualification of Justice Bankole Thompson from the RUF Case”, 6 December 2007.

Motions

Prosecutor v. Sesay et al, SCSL-04-15-T-929, “Prosecution Consolidated Response to Sesay, Kallon and Gbao Appeal of the Decision on the Defence Motion for Voluntary Withdrawal Joint Motion for Voluntary Withdrawal or Disqualification of Justice Bankole Thompson from the RUF Case”, 14 December 2007.