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SCSL-04-15-T
(3203-3205)

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SPECIAL COURT FOR SIERRA LEONE
FREETOWN – SIERRA LEONE

TRIAL CHAMBER I

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

Registrar: Mr. Herman von Hebel

Date filed: 22 November 2007

SPECIAL COURT FOR SIERRA LEONE	
RECEIVED	
COURT MANAGEMENT	
22 NOV 2007	
NAME	<i>Avera Nsima-K.</i>
SIGN	<i>Nsima</i>
TIME	<i>17:00</i>

THE PROSECUTOR

v.

Issa Hassan Sesay
Morris Kallon
Augustine Gbao

Case No. SCSL-04-15-T

PUBLIC

GBAO SUBMISSION ON THE APPLICATION OF RULE 16

Office of the Prosecutor
Mr. Stephen Rapp
Ms. Anne Althaus

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

Defence Counsel for Morris Kallon
Mr. Shekou Touray
Mr. Charles Taku
Mr. Kennedy Ogetto
Mr. Lansana Dumbuya

Defence Counsel for Augustine Gbao
Mr. John Cammegh
Ms. Prudence Acirokop

PROCEDURAL HISTORY

1. On 14th November 2007, defence counsels for the first and third Accused filed a motion requesting the voluntary withdrawal or the disqualification of Judge Thompson.¹
2. On 20th November 2007 the Defence for the second Accused informed the Court of its support for the Defence motion.²
3. On the same day, the Prosecution filed its Response, arguing that the defence motion is without merit and should be dismissed.³
4. On 21st November 2007 the Defence filed a reply to the Prosecution's Response.
5. On 22nd November 2007, the Chamber invited written submissions from Defence counsel stating their views on the application of Rule 16,⁴ with particular regard to the composition of the bench for the remainder of the trial.
6. The Defence for the Third Accused hereby present its submission on the propriety of continuing the proceedings with Justices Itoe and Boutet.

SUBMISSIONS

7. In view of instructions provided by the Third Accused and considering his paramount right to an expeditious trial,⁵ should Justice Thompson be removed from further proceedings in the RUF Trial, Defence for the Third Accused feels compelled to go forward with two Justices, as provided for in Rule 16(B)(ii) of the Rules of Procedure and Evidence for the Special Court for Sierra Leone.⁶
8. Defence for the Third Accused admits to arriving at this conclusion as the only

1 *Prosecutor v. Sesay et al.*, SCSL-04-15-T-880, Sesay and Gbao Joint Motion for Voluntary Withdrawal or Disqualification of Justice Bankole Thompson from the RUF Case, 14 November 2007. ('Defence Motion').

2 *Prosecutor v. Sesay et al.*, SCSL-04-15-T-885, Kallon Defence Statement in Support of the Sesay and Gbao Joint Motion for Voluntary Withdrawal or Disqualification of Justice Bankole Thompson from the RUF Case Filed on the 14th Day of November 2007, 20 November 2007.

3 *Prosecutor v. Sesay et al.*, SCSL-04-15-T-886, Prosecution Response to Sesay and Gbao Joint Motion for Voluntary Withdrawal or Disqualification of Justice Bankole Thompson from the RUF Case, 20 November 2007. ('The Prosecution's Response').

⁴ Rules of Procedure and Evidence of the Special Court for Sierra Leone as amended at the ninth Plenary on 14 May 2007, Rule 16.

⁵ *Id.* at 26*bis*: Article 17(4)(C) of the Statute for the Special Court for Sierra Leone.

⁶ *Id.*

practicable and reasonable choice available under the prevailing exceptional circumstances, bearing in mind the Accused's fundamental right to be tried without further delay. The Gbao defence team, and the Accused himself, have every confidence that the currently constituted trial chamber should preside over these proceedings until their conclusion.

9. Rule 16 also allows for the appointment of an alternate, or replacement, judge. If this judge were imposed upon the trial, the Gbao defence cannot see how this could fairly be done until the new judge has had the opportunity to assimilate the entirety of the trial proceedings thus far. The incoming judge would likely have to review the evidence of 102 witnesses who have testified during the 293 days of proceedings, review 261 exhibits tendered by both the Defence and the Prosecution as well as analyse most, if not all, of the 887 filings (more than 32,000 pages) in the case. Regardless of whether this task were to be performed either before resumption of the trial or following closure of the defence case, such work would take many months, considering that the judge would necessarily have to analyse the aforementioned documentation as well as simply reading it. This would inevitably cause further delay to the proceedings and, ultimately, the delivery of final verdicts. Furthermore, it would place an onerous burden on the incoming judge, who may feel pressured to review the evidence expeditiously.

10. A full assessment of the evidence heard—which, save for exhibits and *92bis* material, has been delivered entirely from the witness box—could not properly be made by reference to the transcripts alone. In order to make a proper assessment of the quality of evidence tendered, we submit that an exhaustive study of video/audio records would be necessary. Without this, no informed assessment of a witness's demeanour, which is crucial to the assessment of his or her veracity, could be satisfactorily reached. The Gbao defence submits that this would be particularly relevant in reviewing the Prosecution's case, where demeanour of the witnesses could arguably be said to be especially important.

Dated: 22 November 2007



John Cammegh (Lead Counsel for Gbao)