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SCSL - 04-15-T

(22034 - 22036)

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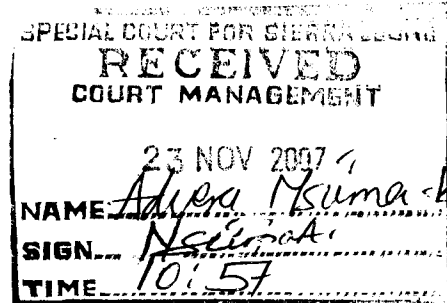
SPECIAL COURT FOR SIERRA LEONE
FREETOWN - SIERRA LEONE

TRIAL CHAMBER I

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

Registrar: Mr. Herman von Hebel

Date filed: 23rd November 2007



THE PROSECUTOR

v.

Issa Hassan Sesay
Morris Kallon
Augustine Gbao

Case No. SCSL-04-15-T

PUBLIC

SESAY DEFENCE SUBMISSIONS ON THE INTERPRETATION OF RULE 16

Office of the Prosecutor:

Mr. Peter Harrison
Mr. Reginald Fynn
Mr. Charles Hardaway
Mr. Vincent Wagana

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

Defense Counsel for Augustine Gbao

Mr. John Cammegh

INTRODUCTION

1. On 22nd November 2007, the Trial Chamber requested that the parties provide written submissions on the application of Rule 16 of the Rules of Procedure and Evidence (the “Rules”).

SUBMISSIONS

2. The Sesay Defence agrees with the interpretation of Rule 16 as set out in the Prosecution submissions.¹
3. The Sesay Defence additionally draws the Trial Chamber’s attention to the following issues of concern.

Effects of a delay consequent to the appointment of an alternate Judge

4. Where an alternate Judge is appointed, this is likely to cause significant delay to the proceedings as the alternate Judge familiarises him/herself with the substantial case papers. While this raises concerns as to the operation of Article 17, namely Mr. Sesay’s right to an expeditious trial, it is also likely to have practical adverse effects on Mr. Sesay’s defence case including possible loss of witnesses and loss of memory due to a further extended time between the events and the giving of evidence.

The effect of Rule 16(B)(ii)

5. The mandatory “shall” in Rule 16(B)(ii) would place the Accused at jeopardy of a new trial in the event that the remaining Judges are split as to their decision.
6. This, therefore, should be balanced against any loss of time caused by the appointment of an alternate Judge. Nevertheless, given the consequences of a delay at this stage, and the importance of the right to an expeditious trial, it may be preferable to proceed with two Judges.

Interlocutory decisions

7. The Sesay Defence submits that, where a decision is reached to proceed with two Judges, consideration should be given to amending the Rules to deal with split interlocutory decisions.

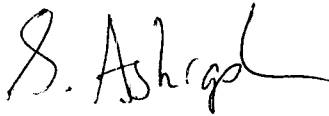
¹ Prosecution submission on Rule 16 of the Rules of Procedure and Evidence, 23rd November 2007, SCSL-04-15-T-891.

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CONCLUSION

8. The Sesay Defence submits that, in exercising its discretion, the Trial Chamber should have regard to the Accused's consent to the proposed course of conduct.
9. The Sesay Defence emphasises that the decision on how to proceed in the event of a Judge being unable to sit for longer than five days ultimately depends upon where the interests of justice lie.

Dated 23rd November 2007



Wayne Jordash
Sareta Ashraph