

SCSL-04-15-T  
(26809 - 26813)

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**SPECIAL COURT FOR SIERRA LEONE**  
**OFFICE OF THE PROSECUTOR**  
Freetown – Sierra Leone

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

Registrar: Mr. Herman von Hebel

Date filed: 27 May 2008

**THE PROSECUTOR**                      **Against**                      **Issa Hassan Sesay**  
**Morris Kallon**  
**Augustine Gbao**

Case No. SCSL-04-15-T

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**PUBLIC**  
**PROSECUTION RESPONSE TO KALLON APPLICATION FOR ADMISSION OF STATEMENTS OF**  
**BUHARI MUSA AND AMARA ESSY UNDER RULE 92BIS**

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SPECIAL COURT FOR SIERRA LEONE  
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## I. INTRODUCTION

1. On 22 May 2008, the Accused Kallon filed an application for the admission of statements of Buhari Musa (“Musa”) and Amara Essy (“Essy”)<sup>1</sup> pursuant to Rule 92*bis* and Rule 92*ter* (“Application”).<sup>2</sup> A corrigendum was filed on 26 May 2008 making public the names of Musa and Essy, and attaching copies of statements, also filed publicly (“Public Application”).<sup>3</sup> A second corrigendum was filed on 27 May 2008 (“Second Corrigendum”) advising that the Application was in error when it stated that the Kallon Defence was relying on Rule 92*ter* and also advised that the Musa statement filed in the Public Application was the incorrect version, and the correct version is the one attached to the Application as a confidential annex.<sup>4</sup>
2. The Prosecution gives its consent to the Application being determined on the merits even though less than 10 days notice was given of the Kallon Defence’s intention to submit the statements of Musa and Essy as evidence, as is required by Rule 92*bis*(C),

## II. SUBMISSIONS

3. The statement of Musa identifies him as a Nigerian military officer who was an ECOMOG commanding officer in Sierra Leone from an unspecified date in 1997 to August 1998,<sup>5</sup> and from 7 January 1999<sup>6</sup> to April 2000.<sup>7</sup>
4. The Musa statement does “not go to proof of the acts and conduct of the accused”<sup>8</sup> and, in general, the requirements of Rule 92*bis*(B) appear to be met. However, to the extent

<sup>1</sup> The Kallon Defence filings refer to the witness as Amara Essy (filing of 22 May 2008) and as Amara Esse (filing of 26 May 2008). The Prosecution believes that the correct spelling is Amara Essy.

<sup>2</sup> *Prosecutor v. Sesay et al*, SCSL-04-15-T-1141, “Urgent and Public with Confidential Annex Kallon Defence Application for the Admission of the Witness Statements of DMK-422 and DMK-400 Under Rule 92*bis* or, In the Alternative, Under Rule 92*ter*,” 23 May 2008. The Kallon Defence stated in its corrigendum of 27 May 2008, that it is not relying on Rule 92*ter* and the Application is to be decided solely on the basis of Rule 92*bis*. Therefore, the Prosecution will respond only with regard to Rule 92*bis*.

<sup>3</sup> See also *Prosecutor v. Sesay et al*, SCSL-04-15-T-1150, “Public Corrigendum Kallon Defence Application for the Admission of the Witness Statements of Buhari Musa and Amara Esse Under Rule 92*bis* or in the Alternative Under Rule 92*ter*,” 26 May 2008.

<sup>4</sup> *Prosecutor v. Sesay et al*, SCSL-04-15-T-1152, “Corrigendum to Public Corrigendum to Kallon Defence Application for the Admission of the Witness Statements for Buhari Musa and Amara Esse Under Rule 92*bis* or in the Alternative Under Rule 92*ter*,” (“**Second Corrigendum**”), 27 May 2008.

<sup>5</sup> Application, Court Management p. 26132.

<sup>6</sup> Application, Court Management p. 26132: “I had left Sierra Leone in August 1998 and returned a day after the attack on Freetown in January 1999.”

<sup>7</sup> Application, Court Management p. 26129, second paragraph.

<sup>8</sup> Rule 92*bis*(A) states: “In addition to the provisions of Rule 92*ter*, a Chamber may, in lieu of the oral testimony, admit as evidence in whole or in part, information including written statements and transcripts that do not go to proof of the acts and conduct of the accused.”

that the first sentence of the third full paragraph of Court Management p. 26130 offers an opinion, the opinion is not admissible. The statement advises that in Musa's opinion the RUF were driven by a cause that was not just about seizing power.<sup>9</sup> That opinion, expressed in the final clause of the sentence, should be ruled inadmissible.

5. The Essy statement is not relevant to the matters in issue before the Trial Chamber. The issues canvassed by Essy, all of which are irrelevant to the issues in the trial, include: representations made by International Alert in 1994-1995;<sup>10</sup> discussions involving Julius Maada Bio and Valentine Strasser prior to 1996;<sup>11</sup> Essy's efforts to communicate with Sankoh in 1995 and 1996;<sup>12</sup> the unwillingness of the United Nations and the Organization of African Unity to assist Essy in his attempts to initiate discussions with the RUF;<sup>13</sup> Sankoh's travel to Abidjan in March 1996;<sup>14</sup> discussions prior to the Abidjan accord regarding the timing of elections in Sierra Leone;<sup>15</sup> general comments about positions advanced during the Abidjan meetings;<sup>16</sup> and comments about Sankoh, in particular, Sankoh's paranoia.<sup>17</sup>
6. The Essy statement as a whole is irrelevant to the issues for determination by the Trial Chamber. In addition, the assertions by Essy that Sankoh's "time in the bush had made him paranoid,"<sup>18</sup> and that "Foday Sankoh had a high level of paranoia,"<sup>19</sup> are opinions which can only be given by persons having the requisite knowledge of psychology or psychiatry. Should the Essy statement be admitted into evidence, the relevant portions of the paragraphs giving expert opinion evidence should be ruled inadmissible.

### III. CONCLUSION

7. No objection is taken to the admission of the Musa statement under Rule 92*bis*, save for the passage that gives opinion evidence.

<sup>9</sup> Application, Court Management p. 26130: "As a result of their strong lines of organization and their very clear commitment and loyalty from most of them to their leader Foday Sankoh, they were driven by a cause which in my opinion was not just about seizing power."

<sup>10</sup> Public Application, Court Management p. 26739.

<sup>11</sup> Public Application, Court Management pp. 26739-26740.

<sup>12</sup> Public Application, Court Management pp. 26740-26742.

<sup>13</sup> Public Application, Court Management pp. 26742-26743.

<sup>14</sup> Public Application, Court Management pp. 26743-26744.

<sup>15</sup> Public Application, Court management pp. 26744-26745.

<sup>16</sup> Public Application, Court Management pp. 26745-26746.

<sup>17</sup> Public Application, Court Management pp. 26745, 26748.

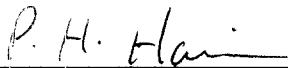
<sup>18</sup> Public Application, Court Management p. 26745.

<sup>19</sup> Public Application, Court Management p. 26748.

8. Objection is taken to the entirety of the Essay statement on the ground that it is irrelevant to the issues for determination by the Trial Chamber. Further objection is taken to those assertions in the Essay statement that comment on matters which can only properly be addressed by an expert witness.

Filed in Freetown, on 27 May 2008

For the Prosecution,



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Pete Harrison

**List of Authorities**

**Decisions and Judgements**

*Prosecutor v. Sesay et al*, SCSL-04-15-T-1141, “Urgent and Public with Confidential Annex Kallon Defence Application for the Admission of the Witness Statements of DMK-422 and DMK-400 Under Rule 92bis or, In the Alternative, Under Rule 92ter,” 23 May 2008.

*Prosecutor v. Sesay et al*, SCSL-04-15-T-1150, “Public Corrigendum Kallon Defence Application for the Admission of the Witness Statements of Buhari Musa and Amara Esse Under Rule 92bis or in the Alternative Under Rule 92ter,” 26 May 2008.

*Prosecutor v. Sesay et al*, SCSL-04-15-T-1152, “Corrigendum to Public Corrigendum to Kallon Defence Application for the Admission of the Witness Statements for Buhari Musa and Amara Esse Under Rule 92bis or in the Alternative Under Rule 92ter,” 27 May 2008.

*Prosecutor v. Sesay et al*, “Consequential Order Regarding Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence,” Annex II, Part II, 24 May 2005.

**Statute and Rules**

Statute for the Special Court of Sierra Leone, Article I, para. 1.

Rules of Procedure and Evidence, as amended, Rule 92bis and Rule 92ter.