



TRIAL CHAMBER I ("The Chamber") of the Special Court for Sierra Leone ("Special Court") composed of Hon. Justice Benjamin Mutanga Itoe, Presiding Judge, Hon. Justice Bankole Thompson, and Hon. Justice Pierre Boutet;

1. SEIZED of the 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, with the Confidential Annexes (the "Kallon Defence"), filed on the 22<sup>nd</sup> of May, 2008 ("Kallon Defence Application");

2. NOTING The Chamber's Decision on Prosecution Request for Clarification of Status of DMK-400 and DMK-422, filed on the 26<sup>th</sup> of May, 2008;

3. NOTING the Corrigendum to the 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, filed on the 26<sup>th</sup> of May, 2008, which filed publicly, the Annexes to the Kallon Defence Application and provided the names of the Witnesses in question ("Kallon Corrigendum");

4. MINDFUL of the Corrigendum to Public Corrigendum 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 filed on the 26<sup>th</sup> of May, 2008 ("Second Kallon Corrigendum");

5. MINDFUL of the Response filed by the Office of the Prosecutor ("Prosecution") on the 27<sup>th</sup> of May, 2008 ("Prosecution Response");

6. MINDFUL of the fact that in the Second Kallon Corrigendum, the Kallon Defence abandoned its application to have the said Witness statements admitted in evidence under Rule 92ter of the Rules of Procedure and Evidence ("Rules");

7. RECALLING the provisions of Rule 92bis, which provide:

Alternative Proof of Facts

(A) In addition to the provisions of Rule 92ter, a Chamber may, in lieu of 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.

(B) The information submitted may be received in evidence if, in the view of the Trial Chamber, it is relevant to the purpose for which it is submitted and if its reliability is susceptible of confirmation.

(C) A party wishing to submit information as evidence shall give 10 days notice to the opposing party. Objections, if any, must be submitted within 5 days.<sup>1</sup>

8. **CONSIDERING** the principles and propositions enunciated in our recent seminal decision on Rule 92bis, to wit, Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements under Rule 92bis;<sup>2</sup>

9. **EMPHASISING** the imperative necessity for the Parties to adhere strictly to the provisions of the Rules and the Decisions of The Chamber;

10. **RECALLING** that Rule 92bis is *lex specialis* and any evidence submitted under this Rule must meet the conditions set out therein;<sup>3</sup>

11. **MINDFUL** of the fact that for a document to be admissible under Rule 92bis, it must be relevant, must possess sufficient indicia of reliability, its admission must not prejudice unfairly the opposing Party, and more importantly, that it must not contain any information that goes to proof of the acts and conduct of the accused;<sup>4</sup>

12. **RECALLING** that the absence of any objections from the Parties to the admission of a statement under Rule 92bis is not a *sina qua non* of admissibility and that The Chamber must ensure that each tendered statement is properly admissible according to the criteria set out above;<sup>5</sup>

13. **CONSIDERING** that the alleged statement of Colonel Buhari Musa is undated and unsigned, that there is no indication as to where the statement was taken, in what language it was taken or by whom and how the statement was recorded, and that there appear to be editing errors in the statement;

14. **CONSIDERING**, also, that the alleged statement of Amara Essay, although dated, is similarly unsigned and lacks any indication as to where the statement was taken, in what language it was taken or by whom the statement was recorded;

<sup>1</sup> Rule 92bis, amended 19 November 2007.

<sup>2</sup> *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Decision on Defence Application for the Admission of the Witness Statement of DIS-129 under Rule 92bis or, in the Alternative, under Rule 92ter (TC), 12 March 2008 ("Sesay 92bis Decision").

<sup>3</sup> *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Decision on the Gbao Request for Leave to Add Two Documents to its Exhibit List and to have them Admitted in Evidence (TC), 28 May 2008, paras 20-22.

<sup>4</sup> *Sesay 92bis Decision*, *supra* note 2, para 25. See also *Prosecutor v. Norman, Fofana and Kondewa*, Case No. SCSL-04-14-T, Decision on Prosecution's Request to Admit into Evidence Certain Documents Pursuant to Rules 92bis and 89(C) (TC), 15 July 2005, p. 4.

<sup>5</sup> *Sesay 92bis Decision*, *ibid.*, para 26.

15. **COGNISANT** that proof of reliability is not required before a document may be admitted pursuant to Rule 92bis; rather, the document need only be susceptible of confirmation;<sup>6</sup>

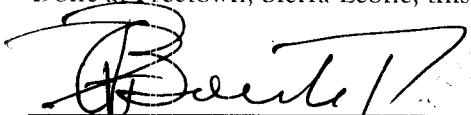
16. **CONSIDERING**, however, that the alleged statements of Colonel Buhari Musa and Amara Essy lack any indicia of reliability whatsoever and therefore, that their reliability is not susceptible of confirmation;

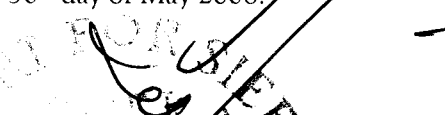
17. **DECIDING**, therefore, that the said documents are inadmissible under Rule 92bis;

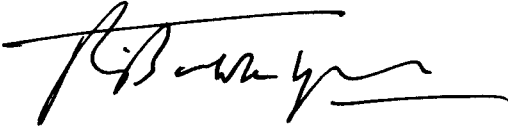
18. In the light of the foregoing considerations, and pursuant to the provisions of Rules 26bis, 54, 89(C), 90(F), and 92bis of the Rules of Procedure and Evidence:

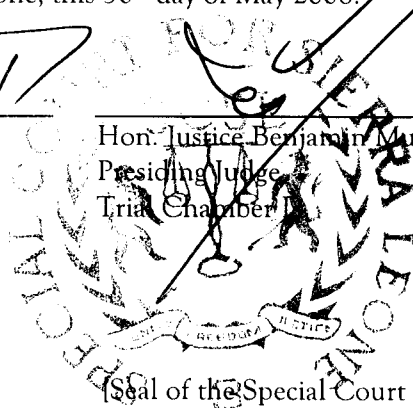
**THE CHAMBER HEREBY DISMISSES** the Kallon Defence Application.

Done at Freetown, Sierra Leone, this 30<sup>th</sup> day of May 2008.

  
Hon. Justice Pierre Boutet

  
Hon. Justice Benjamin Mutunga Itoe  
Presiding Judge  
Trial Chamber

  
Hon. Bankole Thompson



[Seal of the Special Court for Sierra Leone]

<sup>6</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-AR73, Fofana - Decision on Appeal against "Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence" (AC), 16 May 2005, para 26; *Sesay 92bis* Decision, *ibid.*, paras 30-31.