

1154

(26814-26816)

SPECIAL COURT FOR SIERRA LEONE
TRIAL CHAMBER I

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

Registrar: Mr. Herman Von Hebel

Date filed: 27th May 2008

THE PROSECUTOR

v.

ISSA HASSAN SESAY

Case No. SCSL-04-15-T

PUBLIC

Motion Requesting the Withdrawal or Clarification of Trial Chamber's 22nd May 2008
Warning to Issa Sesay

Office of the Prosecutor

Mr. Peter Harrison
Mr. Reginald Fynn

Defence Counsel for Issa Sesay

Mr. Wayne Jordash
Ms. Sareta Ashraph

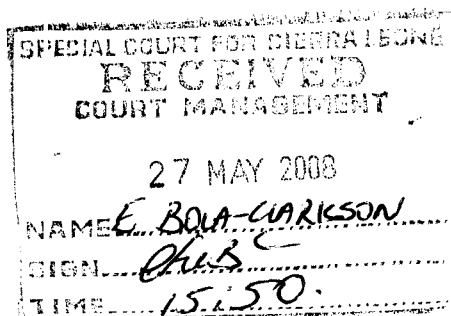
Defence Counsel for Morris Kallon

Mr. Charles Taku
Mr. Orgetto Kennedy
Ms. Tanoo Mylvanganam

Court-Appointed

Counsel for Augustine Gbao

Mr. John Cammegh
Mr. Scott Martin



INTRODUCTION

1. On the 22nd May 2008, the Trial Chamber issued a “Warning to Issa Sesay”¹ based on the findings of the Investigation Panel convened to investigate Mr. Sesay’s alleged misconduct on the 9th November 2007. The Trial Chamber purported to accept the “findings of the Investigation Panel that there is insufficient evidence to determine the intent and exact nature of the utterances made to the witness” by Mr. Sesay.²
2. Notwithstanding, a finding of insufficient evidence and that the allegations do not satisfy the requirements for Contempt of the Special Court (Rule 77 of the Rules of Procedure and Evidence),³ Mr. Sesay was: i) admonished against making any such utterances in the future under any circumstances; and ii) that Counsel for Mr. Sesay should advise him on the consequences of such utterances upon the administration of justice and for Mr. Sesay himself.⁴
3. The Defence for Mr. Sesay requests that the Trial Chamber:
 - i) withdraw the Warning to Mr. Sesay; and
 - ii) if the Warning is not withdrawn, clarify the reasons why Mr. Sesay is being warned to enable the Accused to understand the Warning and for the Decision to be given full effect.

APPLICATION

4. The Defence submits that there is no basis to warn Mr. Sesay based on the Findings of the Investigation Panel. The Defence submits that the Trial Chamber erred by purporting to accept the “findings of the Investigation Panel that there is insufficient evidence to determine the intent and exact nature of the utterances made to the witness.”⁵
5. The Investigation Panel found, *inter alia*, that Mr. Sesay was speaking “in loud tones” while “engaged in conversation with the two Co-Accused” about former members of the RUF being bribed to testify for the Prosecution. The Investigation Panel did not find that Mr. Sesay was addressing the Prosecution specifically.⁶ The Investigation Panel did not find that Mr. Sesay was addressing the witness.

¹ *Prosecutor v. Sesay et al.*, SCSL-04-15-1140.

² *Ibid.*, page 2.

³ *Ibid.*

⁴ *Ibid.*, page 3.

⁵ *Ibid.*, page 2.

⁶ *Prosecutor v. Sesay et al.*, SCSL-04-15-879, “Presentation by the Registrar to the Trial Chamber of the Submissions of the Investigation Panel Established Pursuant to the Trial Order of the Trial Chamber Dated 9 November 2007 Regarding Alleged Remarks Made by the Accused Sesay (With Annexes)”, 14 November 2007, at 31822.

6. The Defence notes that there is no indication from the Findings of the Investigation Panel that Mr. Sesay's comments were even made in the presence of the witness testifying on behalf of Mr. Sesay. Out of the nine persons interviewed by the Investigation Panel⁷ only three made any positive indication that the witness testifying on Mr. Sesay's behalf was in the vicinity of the comments being made.⁸

REQUEST

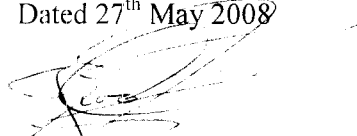
7. The record is therefore inconclusive on whether Mr. Sesay stated, in the presence of the witness, that particular protected persons were witnesses for the Prosecution. Therefore, per the record and the Investigation Panel's Findings (which were purportedly accepted by the Trial Chamber), there is inconclusive evidence that Mr. Sesay's comments:

disclos[ed] information relating to proceedings in knowing violation of an order of a Chamber (Rule 77(A)(ii)); or
threaten[ed], intimidat[ed], caus[ed] any injury or bribe to, or otherwise interfer[ed] with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness (Rule 77(A)(iv)).

Therefore, Mr. Sesay is apparently being warned and admonished for speaking in loud tones to the Co-Accused or some other innocent conduct.

8. Should the Warning to Mr. Sesay not be withdrawn, the Defence for Mr. Sesay requests clarification on which particular grounds Mr. Sesay is to be warned to give full effect to the Decision.
9. The Trial Chamber will be aware that an Accused's conduct during trial is relevant to sentence. In these circumstances, even if the Trial Chamber declines to act as aforementioned, the Defence requests that the Warning Decision be amended to accurately reflect the Findings of the Investigation Panel.

Dated 27th May 2008


 17 Wayne Jordash
 17 Sareta Ashraph

⁷ Notwithstanding the mandate of the Investigation Panel to "2) a) obtain statements from persons who were present in Court Room 1 at the time the comment was allegedly made who are Krio speakers and who were in the vicinity of the comments", statements were not obtained from Mr. Sesay himself, Mr. Kallon, and Mr. Gbao although they were present when the comments were made. Presentation by the Registrar, at 31880.

⁸ Mr. Wagona (Office of the Prosecutor), Neneh Kamara (WVS), and Peter Harrison (Office of the Prosecutor).
Prosecutor v. Sesay et al., SCSL-04-15-T