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SCSL-04-15-T
(18462-18466)

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SPECIAL COURT FOR SIERRA LEONE

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995

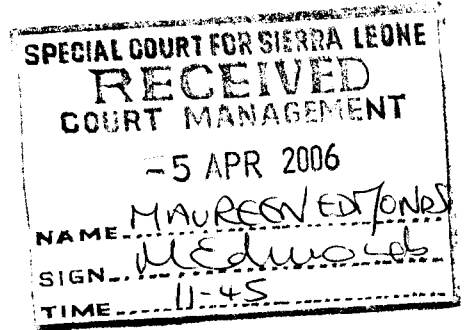
FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

TRIAL CHAMBER I

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

Registrar: Mr. Lovemore G. Munlo SC

Date: 5th of April, 2006



PROSECUTOR Against **ISSA HASSAN SESAY**
MORRIS KALLON
AUGUSTINE GBAO
(Case No. SCSL-04-15-T)

Public Document

**DECISION ON APPLICATION BY COUNSEL FOR THE THIRD ACCUSED TO
WITHDRAW FROM THE CASE**

Office of the Prosecutor:

Desmond de Silva QC
James Johnson
Peter Harrison

Defence Counsel for Issa Hassan Sesay:

Wayne Jordash
Sareta Ashraph

Defence Counsel for Morris Kallon:

Shekou Touray
Charles Taku
Melron Nicol-Wilson

Defence Counsel for Augustine Gbao:

Andreas O'Shea
John Cammegh

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

SEIZED OF the oral application made on the 27th of March, 2006 by Andreas O’Shea, Defence Counsel for the Third Accused, to be allowed to withdraw from the case pursuant to Rule 45(E) of the Rules of Procedure and Evidence (“Rules”) on the basis that various public statements by the Third Accused that he had no trust and confidence in his Defence Counsel as well as the Third Accused unwillingness to provide instructions have caused him a great degree of personal and professional embarrassment and that this constitutes exceptional circumstances warranting his withdrawal from this case (“Application to Withdraw”);¹

NOTING the oral submissions made by the Principal Defender on the 28th of March, 2006;²

MINDFUL OF the “Decision on Application to Withdraw Counsel” issued by this Chamber on the 6th of July, 2004;

MINDFUL OF the “Decision on Appeal against Decision on Withdrawal of Counsel” issued by the Appeals Chamber on the 23rd of November, 2004;

CONSIDERING that Defence Counsel for the Third Accused have represented him throughout the entirety of the proceedings and that the trial is now at an advanced stage;

CONSIDERING that the minimum guarantees set forth in Article 17(4)(d) of the Statute of the Special Court (“Statute”) are fundamental components of the overarching requirement of ensuring a fair trial, and in particular, outline the right of the Accused to a defence, namely, the right:

(d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

¹ Transcripts, 27 March 2006, p. 2-35.

² *Id.*, 28 March 2006, p. 2-60.





CONSIDERING that Rule 26bis of the Rules of Procedure and Evidence (“Rules”) requires the Chamber to ensure that the trial proceedings are conducted in a fair and expeditious manner;

MINDFUL OF the provisions of Rule 45(E) of the Rules of Procedure and Evidence (“Rules”) which provide as follows:

Subject to any order of a Chamber, Counsel will represent the accused and conduct the case to finality. Failure to do so, absent just cause approved by the Chamber, may result in forfeiture of fees in whole or in part. In such circumstances the Chamber may make an order accordingly. Counsel shall only be permitted to withdraw from the case to which he has been assigned in the most exceptional circumstances. In the event of such withdrawal the Principal Defender shall assign another Counsel who may be a member of the Defence Office, to the indigent accused.
[emphasis added]

REITERATING that this Chamber has full confidence in the Defence Counsel and his ability to properly act in the best interest of the Third Accused, and that he, together with his co-counsel, have discharged their duties in a most professional way while the accused had previously decided not to appear in court;³

CONSIDERING that no exceptional circumstances have been demonstrated in this case warranting the withdrawal of Defence Counsel for the Third Accused;

CONSIDERING, however, that in the existing circumstances and taking into account the advanced stage of the trial proceeding, representation of the Third Accused by Court Appointed Counsel will be in the best interests of justice and in accordance with his fundamental right to a fair and expeditious trial;

CONSIDERING that the act of assignment of Counsel by the Registrar or by the Principal Defender, pursuant to Rules 44 and 45 of the Rules of Procedure and Evidence of the Special Court (“Rules”) and the Directive on the Assignment of Counsel, and the act of appointment of Counsel by the Trial Chamber, in the interests of justice, are different means of designating Counsel to represent an Accused person, who upon assignment or appointment are subjected to the same obligations to act both in the interests of the Accused and in the overall interests of justice;⁴

³ Transcripts, 27 March 2006, p. 10; see also Transcripts, 24 March 2006, p. 5.

⁴ *Prosecutor v. Norman, Fofana and Kondewa*, Case No. SCSL-04-14-T, Consequential Order on the Withdrawal of Ms. Quincy Whitaker as Court Appointed Counsel for the First Accused, 19 November 2004.

CONSIDERING that in the performance of their duties, Court Appointed Counsel shall be subject to the relevant provisions of the Statute, of the Agreement, of the Rules, of any other rules, regulations or Codes of Conduct adopted by the Special Court, of the host Country Agreement, of the Directive on the Assignment of Counsel, and of the codes of practice and ethics governing their profession, and that these provisions, as they explicitly apply to Assigned Counsel, apply *mutatis mutandis* to Court Appointed Counsel;⁵

HEREBY DISMISSES the Application to Withdraw;

APPOINTS the Defence Counsel for the Third Accused, namely Andreas O'Shea and John Cammegh, to represent him in the capacity of Court Appointed Counsel; and

ORDERS that the duty of Court Appointed Counsel will be to represent the case of the Third Accused, and in particular, shall:

- a. represent the Accused by investigating and preparing for the testimony of Prosecution witnesses and cross-examining them;
- b. prepare for and examine those witnesses Court Assigned Counsel deem it appropriate to call for his defence;
- c. make all submissions on fact and law that they deem it appropriate to make in the form of oral and written motions before the court;
- d. seek from the Trial Chamber such orders as they consider necessary to enable them to present the Accused's case properly, including the issuance of subpoenas;
- e. discuss with the Accused the conduct of the case, endeavour to obtain his instructions thereon and take account of views expressed by the Accused, while retaining the right to determine what course to follow; and
- f. act throughout in the best interests of the Accused;⁶

STATES that this Order may be modified at any time should necessity arise.

⁵ *Id.*

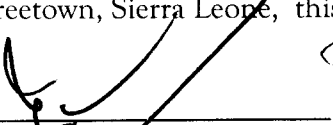
⁶ See also *Prosecutor v. Noman, Fofana and Kondewa*, Case No. SCSL-04-14-T, Consequential Order on the Role of Court Appointed Counsel, 1 October 2004.



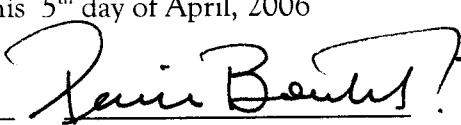


A comprehensive and reasoned written Decision will be published in due course.

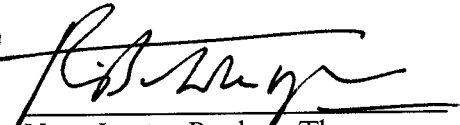
Done at Freetown, Sierra Leone, this 5th day of April, 2006



Hon. Justice Benjamin Mutanga Itoe



Hon. Justice Pierre Boutet
Presiding Judge
Trial Chamber I



Hon. Justice Bankole Thompson

