

870

SCSL-04-15-T  
(31731-31740)

31731



**SPECIAL COURT FOR SIERRA LEONE**  
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE  
PHONE: +39 0831 257000 or +232 22 297000 or +39 083125 (+Ext)  
UN Intermission 178 7000 or 178 (+Ext)  
FAX: +232 22 297001 or UN Intermission: 178 7001

**Before:** Justice Benjamin Itoe, Presiding  
Justice Bankole Thompson  
Justice Pierre Boutet

**Registrar:** Mr. Herman von Hebel

**Date Filed:** 5 November 2007

COURT MARKED	
05 NOV 2007	
NAME	Adanya Nkima K.
SIGN	Nkima A.
TIME	15:59

**The Prosecutor**

-v-

**Issa Hassan Sesay**  
**Morris Kallon**  
**Augustine Gbao**

**Case No:SCSL-2004-15-T**

---

**Submission by the Registrar Pursuant to the Interim Order Concerning Application  
of Judicial Review dated 1 November 2007 (With Confidential Annex)**

---

Office of the Prosecutor

Mr Pete Harrison  
Mr Reginald Flynn

Defence Counsel for Issa Hassan Sesay

Mr Wayne Jordash  
Ms Sareta Ashraph

Registrar

Herman von Hebel

Defence Counsel for Morris Kallon

Mr Shekou Touray  
Charles Taku  
Kennedy Ogetto

Office of the Principal Defender

Vincent Nmehielle

Defence Counsel for Augustine Gbao

Mr John Cammegh

## I. INTRODUCTION

1. In the “Interim Order Concerning Application for Judicial Review,” *Prosecutor v. Sesay et al.*, SCSL-04-15-T, 1 November 2007 (hereafter, the “Interim Order”), Trial Chamber I ordered:

1. That the Registrar, the Principal Defender and the *Sesay* Defence respectively, provide the Chamber, by Monday, the 5<sup>th</sup> November 2007 at 4.00pm., with:
  - (i) The terms of the Legal Services Contract made between the Office of the Principal Defender and the Defence Teams for the First, Second and the Third Accused and, in particular, the rates paid at the start of the case to those Defence Teams for out-of-Court preparation and for days in Court;
  - (ii) Any information concerning amendment of the said rates since the start of the case and, where such amendments have taken place, the rates actually paid;
2. That the Registrar, the Principal Defender and the *Sesay* Defence, respectively, provide the Chamber with the following information by Monday, the 5<sup>th</sup> of November 2007 at 4.00p.m.:
  - (i) What, in addition to the Arbitration Decision, formed the basis of the discussions during the Negotiations between the parties with regard to the enhancement of the Defence’s pre-Arbitration monthly budgetary limit, eventually leading an agreed enhancement in the order of 40%;
  - (ii) Whether the same considerations affected the agreement concerning the enhancement of the *Sesay* Defence’s monthly budgetary limit backdated to the period from November 2003 to November 2006, and, in particular whether such enhancement was intended to settle claims for back pay only or was also intended to cover other costs or expenditure incurred during that period;
  - (iii) Any other relevant or pertinent information that may assist the Chamber.<sup>1</sup>

2. The Registry recognises that the present dispute has a lengthy procedural history.<sup>2</sup>

Thus, the Registry does not wish to burden the Trial Chamber with any

---

<sup>1</sup> Interim Order at pp. 4-5.

<sup>2</sup> See *Prosecutor v. Sesay et al.*, SCSL-04-15-817, “Application for Judicial Review of the Registry’s Refusal to Provide Additional Funds for an Additional Counsel as Part of the Implementation of the Arbitration Decision of 26<sup>th</sup> April 2007,” 7 September 2007 (hereafter, the “Application”); *Prosecutor v. Sesay et al.*, SCSL-04-15-822, “Submission Pursuant to Rule 33(B) of the Rules of Procedure and Evidence in Relation to the Sesay Team’s ‘Application for Judicial Review of the Registry’s Refusal to Provide Additional Funds for an Additional Counsel as Part of the Implementation of the Arbitration Decision of 26 April 2007’” dated 5 September 2007” (hereafter, the “Response”); and “Defence Reply to the Submission by the Registry in Relation to Sesay Team’s ‘Application for Judicial Review of the Registry’s Refusal to

submissions beyond precisely what the Trial Chamber has requested that the Registrar provide in its Interim Order.

3. The Registry also wishes to delineate what already has been agreed to between the parties to the present dispute, and what remains to be adjudicated by the Trial Chamber in the hopes that this information will be helpful to the Trial Chamber.
4. There does not appear to be any dispute between the parties that the amounts received by the Sesay Defence Team for the period from November 2003 through November 2006 (inclusive) following the Arbitration Decision of 26 April 2007 was in accordance with the Arbitration Decision.<sup>3</sup>
5. Similarly, there does not appear to be any dispute between the parties that the Sesay Defence Team would receive a monthly budgetary limit of \$35,000 per month from December 2006 until the end of the hearings for the *Sesay* case.<sup>4</sup>

## II. SUBMISSIONS

### A. SUBMISSION OF THE REGISTRAR ON THE FIRST ORDER OF THE TRIAL CHAMBER

6. With regards to Order 1(i) of the Trial Chamber seeking “[t]he terms of the Legal Service[] Contract made between the Office of the Principal Defender and the Defence Teams for the First, Second and Third Accused and, in particular, the rates paid at the start of the case to those Defence Teams for out-of-court preparation and for days in Court,”<sup>5</sup> the Registrar will provide this information and any supporting documentation to the Trial Chamber through its Office of the Principal Defender, which will file a separate submission.
7. With regards to Order 1(ii) of the Trial Chamber seeking “[a]ny information concerning amendment of the said rates since the start of the case and, where such amendments have taken place, the rate actually paid,” the Registrar will provide this information and any supporting documentation to the Trial Chamber through its Office of the Principal Defender, which will file a separate submission.

---

Provide Additional Funds for an Additional Counsel as Part of the Implementation of the Arbitration Decision of 26<sup>th</sup> April 2007” (hereafter, the “Reply”).

<sup>3</sup> See Application at para. 31, Response at para. 15.

<sup>4</sup> See Response at para. 15, which stated, in part, “The monthly financial limit for the Sesay Defence Team was thereby increased from \$25,000 to \$35,000 from December 2006 until the end of the hearings *in its case*” (emphasis added).

<sup>5</sup> See Interim Order at para. 1(i), p. 4.

**B. SUBMISSION OF THE REGISTRAR ON THE SECOND ORDER OF THE TRIAL CHAMBER**

8. With regards to the Second Order of the Trial Chamber,<sup>6</sup> which requests information about what formed the basis of the discussions underlying the negotiations between the Registry and the Sesay Defence Team following the Arbitral Decision, the Registrar confirms that the basis was the Arbitration Decision itself. In particular, in the Arbitration Decision, the Registrar was ordered to “assess the payment of additional fees due the Claimant.”<sup>7</sup>
9. In paragraphs 11-13 of the Registrar’s Response, the Registry endeavoured to provide the Trial Chamber with the background information as to the guiding principles underlying the negotiations between the parties as to how to implement the Arbitrator’s Decision to “assess the payment of additional fees due the Claimant.”
10. In particular, the Registrar explained the utility of the “principle of enhancement” in allowing the Registry to implement the Arbitrator’s Decision. In the Response, the Registrar explained:

This principle therefore allowed the Registrar to adequately and properly compensate the Sesay Defence Team for the complexity of the work it carries out in its case and takes into account the Arbitrator’s award that its case is complex such as to warrant additional resources and additional payment under the terms of the award. *Further, it provided a basis for future compensation and reasonable remuneration in the case.*<sup>8</sup>

11. The agreed fees following negotiations were not to settle claims for ‘back pay’ for the period from November 2003 through November 2006. Rather, the fees were additional fees in recognition of the Arbitrator’s Decision

[t]hat the case against Issa Sesay on its own and/or in relation to the other cases at the Special Court, is sufficiently serious, complex or sizeable to amount to exceptional circumstances as to

---

<sup>6</sup> See Interim Order at para. 2(i)-(ii) on pp. 4-5.

<sup>7</sup> Arbitration Decision, Annex A of the Application at para. 7.16.

<sup>8</sup> Response at para. 13 (emphasis added).

warrant the provision of additional resources under the special considerations clause in the Legal Service Contract.

12. At a preliminary meeting on 21 May 2007<sup>9</sup> between Shakiratu Sanusi, Sareta Ashraph and Sophie Frediani, it was established that the principle of enhancement would be acceptable to the Sesay Defence Team as a means of quantifying “special considerations” in implementing the Arbitrator’s Decision. Ms Ashraph indicated that an enhancement of around 40% would compensate the team in the amount it was claiming based on its figures of work done between November 2003 and November 2006 that were provided to the Defence Office at that meeting.
13. The ‘back-pay payment’ element of the implementation of the Arbitrator’s award was in recognition of the complexity of the Sesay case, as assessed by the arbitrator in his decision, from the time that Counsel was engaged in November 2003. It was computed by providing for additional payment for those costs that the Defence Office was obliged to limit to the \$25,000 monthly contractual limit, even when the bills had been assessed as reasonable in excess of that limit. The Sesay Team provided its computation of the amount. Similarly, the Defence Office provided its own computation. Both parties then negotiated and ultimately agreed to a global sum, that is, \$370,000, to represent the 40% enhancement which was agreed by both parties as adequately compensating the Sesay Team for past work. This amount covered the period from November 2003 to November 2006.
14. Furthermore, the parties also came to an agreement in relation to future work. In short, the parties would use the same percentage figure of 40% to be applied to the contractual monthly budgetary limit of \$25,000, i.e., \$35,000 ( $\$25,000 \times 1.40$ ) per month in recognition of the Arbitrator’s determination that the case against Issa Sesay is “sufficiently serious, complex or sizeable to amount to exceptional circumstances to warrant the provision of additional resources.” Additionally and exceptionally, the Registrar agreed to the provision of an international

---

<sup>9</sup> Response at Annex B.

investigator for 4 months. Additionally and exceptionally, during the negotiation meetings on 20 and 21 June 2007, the Registrar agreed to consider the Sesay Defence Team's request for additional Counsel. It should be noted that this request came at the very end of the discussions implementing the Arbitration Decision.

15. There was no agreement to cover other costs of expenditure incurred during that said period nor did they form a part of the negotiations. The global figure agreed was in full compliance with the award. At the outset, during the meeting on 21 May 2007, Ms Ashraph stated that the Sesay Defence Team would not be pursuing claims in relation to outstanding payments made to team members borne by Counsel or payment for what the team had identified as pro bono hours in their bills (the latter do not fall to be charged, in any event).
16. The present dispute stems not from the Sesay Defence Team's desire to hire an additional co-counsel but rather from its unwillingness to negotiate with the Registry as to how to budget for this alleged need in a way that would be consistent with the Arbitrator's Decision. The Registry has been flexible on this point, proposing several options to the Sesay Defence Team. In particular, the Registry invites the Trial Chamber to review its letter to the Sesay Defence Team dated 23 July 2007 (Annex K to the Application); E-mail from the Registrar to several recipients dated 30 July 2007 (Annex N to the Application) and Letter from the Registrar to the Sesay Defence Team dated 1 August 2007 (Annex O to the Application).
17. CONFIDENTIAL. SEE ANNEX A TO THE PRESENT SUBMISSION.<sup>10</sup>
18. CONFIDENTIAL. SEE ANNEX A TO THE PRESENT SUBMISSION.
19. CONFIDENTIAL. SEE ANNEX A TO THE PRESENT SUBMISSION.
20. CONFIDENTIAL. SEE ANNEX A TO THE PRESENT SUBMISSION.
21. Save to affirm that the Arbitration Decision itself formed the basis of discussion during negotiations, leading to an agreed enhancement in the order of 40% of the

---

<sup>10</sup> Paragraphs 17 - 20 contain discussion about Annexes H, K, N and O to the Application, which were all filed as "confidential" by the Sesay Defence Team. Accordingly, to prevent public disclosure of those materials, these paragraphs are being filed confidentially by the Registrar as Annex A to the present Submission.

31737

overall case, the Registrar confirms that all pertinent information has been provided to the Trial Chamber.

Respectfully submitted,

Freetown, 5 November 2007



Herman von Hebel  
Registrar



SPECIAL COURT FOR SIERRA LEONE  
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE  
PHONE: +39 0831 257000 or +232 22 297000 or +39 083125 (+Ext)  
UN Intermission 178 7000 or 178 (+Ext)  
FAX: +232 22 297001 or UN Intermission: 178 7001

Court Management Section – Court Records

**CONFIDENTIAL DOCUMENT CERTIFICATE**

This certificate replaces the following confidential document which has been filed in the *Confidential* Case File.

Case Name: The Prosecutor – v- Sesay, Kallon & Gbao

Case Number: SCSL-2004-15-T

Document Index Number: 870

Document Date 05 November, 2007

Filing Date: 05 November, 2007

Number of Pages: 10 **Page Numbers: 31738-31740**

Document Type:- **Confidential Annex**

- Affidavit
- Indictment
- Correspondence
- Order
- Other**

**Document Title Submission by the Registrar Pursuant to the Interim Order Concerning Application of Judicial Review dated 1 November 2007 (with Confidential Annex).**

Name of Officer:

Advera Nsiima K  
Signed *Nsiima*