

871.)

Sesl - 04 - 15 - T
(31741 - 31745)

SPECIAL COURT FOR SIERRA LEONE
FREETOWN - SIERRA LEONE

31741

TRIAL CHAMBER I

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

Registrar: Mr. Herman von Hebel

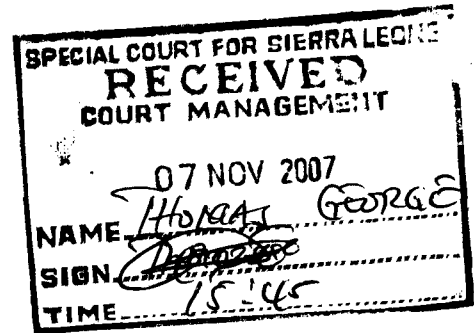
Date filed: 7th November 2007

THE PROSECUTOR

v.

Issa Hassan Sesay
Morris Kallon
Augustine Gbao

Case No. SCSL-04-15-T



PUBLIC

CORRECTION OF ERRORS CONTAINED WITHIN
THE REGISTRAR'S SUBMISSION PURSUANT TO THE
1ST NOVEMBER 2007 INTERIM ORDER
CONCERNING APPLICATION FOR JUDICIAL REVIEW

Registry
Herman von Hebel
Shakiratu Sanusi
Viren Mascarenhas

Office of the Principal Defender
Vincent Nmehielle
Haddijatou Kah-Jallow

Defense Counsel for Issa Hassan Sesay
Mr. Wayne Jordash
Ms. Sareta Ashraph

Defense Counsel for Morris Kallon
Mr. Shekou Touray
Mr. Charles Taku
Mr. Ogetto Kennedy

Defense Counsel for Augustine Gbao
Mr. John Cammegh

INTRODUCTION

1. On 1st November 2007 the Trial Chamber issued an “Interim Order Concerning Application for Judicial Review” (the “Interim Order”).¹ On the 5th November 2007 the Defence filed its Response to the Order. On the 5th November 2007 the Registrar filed a “Submission by the Registrar Pursuant to the Interim Order Concerning Application of Judicial Review dated 1 November 2007 (with Confidential Annex)” (the “Submission”).²
2. The Registrar, in its purported compliance with Order 2(iii) to provide any “other relevant or pertinent information that may assist the Chamber” has made misleading assertions which are likely to hinder the proper examination of the relevant issues. The Defence seeks herewith to correct such specific assertions made by the Registry.

Preliminary Issues

3. In the first place the Defence deplores the continued publication of the details of the “back pay” on the public system. This is a disgraceful breach of confidentiality and the Defence renews its request to the Registrar to keep the Defence’s financial matters out of the public domain.

That *pro bono* hours “do not fall to be charged”

4. The Registrar notes that the Defence agreed during the negotiations that it “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).³ This is deliberately misleading. The reason that the hours worked by the Defence were designated as *pro bono* was due to the inadequate budget provided by the Registrar (for a case as sizeable and complex as the present case). It is thus completely circular to claim that these hours were not chargeable. The hours were properly billable but – pursuant to the Registrar’s failure to provide adequate resources – there were simply no funds to pay Defence for this work.

¹ *Prosecutor v. Sesay et al.*, SCSL-04-15-864.

² *Prosecutor v. Sesay et al.*, SCSL-04-15-870.

³ *Ibid*, para. 15.

Purported Acknowledgement of Reduction of Need

5. The Registrar's submission that "the Sesay Defence Team has acknowledged that its own needs will sharply decrease once the Sesay hearings are completed"⁴ is highly misleading. It is accepted that the Defence, on page 11 of Annex H to the Application, stated that "[i]t is unlikely that the team will bill its full budget throughout the period of time that the Kallon and Gbao cases will run, barring any unusual occurrences". However, as any reasonable decision maker would have observed, this remark was made in the context of the Sesay defence proposal that its budget should be increased to \$138,500 per three months (\$159,200 minus DLA of \$20,700⁵) or \$46,166 per month. It was not – and has never been – suggested or conceded by the Sesay defence that it would need less than \$35,000 per month as the Registrar now erroneously claims. This would be a ridiculous concession given that the Sesay defence has always required *more* than this amount since 2003. This is amply demonstrated by the huge number of *pro bono* hours worked by the team, even with the enhanced budget and this, without an additional Counsel.
6. Moreover, the fact that this so-called assessment would return the team to the pre-arbitration budget – adjudged by an independent arbitrator to be inadequate – would appear to suggest that this is unlikely to be true.
7. The Registrar claims to "ha[ve] considered whether the budgetary needs of the Sesay Defence Team once the hearings for Sesay's portion of the RUF case conclude might lessen during the remainder of the RUF defence case"⁶ and "the realistic needs of the Sesay Defence Team once its hearings were completed, and the defence case for the two co-Accused commenced"⁷ but has neither demonstrated any assessment of the work remaining or any understanding of the way in which each case is inextricably linked to each other.
8. The Registrar is correct when he asserts that it is essential to "assess the needs of the Sesay case at two stages: (i) while the *Sesay* hearings are underway, and (ii) once the *Sesay* hearings are completed".⁸ Unfortunately for the Accused Sesay and his ongoing defence, there is not one iota of evidence to suggest that the Registrar has conducted *any assessment at any time*.

⁴ Ibid, para. 20; Confidential Annex A of the Submission.

⁵ Daily Living Allowance for Jordash and Ashraph is no longer taken out of Counsels' fees.

⁶ Ibid, para. 18; Confidential Annex A of the Submission.

⁷ Ibid, para. 17; Confidential Annex A of the Submission.

⁸ Ibid, para. 20; Confidential Annex A of the Submission.

It is plainly administratively irrational to recognise the need for an assessment but fail to produce any evidence to demonstrate the approach taken to the assessment and why the conclusions have been reached.

9. It is equally irrational to assert that “the proposal is best suited to implementing the Arbitration Decision in a manner that takes into account the true needs of the Sesay Defence Team”⁹ without asking the Defence what its needs might be and how much (or how little) work will remain during the Kallon or Gbao case. The Registrar has not – and has never tried – to conduct any such enquiry.¹⁰
10. Additionally, the Defence notes that the Registrar has not suggested that the Kallon or Gbao teams have been billing less than their allotted \$25,000 per month during the course of the Sesay defence case. This would have at least demonstrated that during the currency of a co-accused’s case the budget of \$25,000 is overly generous to these smaller and less complex cases – thus providing a basis for suggesting it would be adequate for the Sesay case. Even this appears not to be the case. It can thus reasonably be assumed that the Defence – with the only case adjudged to be exceptionally large and complex – will therefore require more than the \$25,000 per month *during the currency* of the Kallon and Gbao cases. It appears that the Registrar has not conducted even this simple analysis when attempting to deprive the Defence of funds.
11. Moreover the fact that the Registrar is constrained to rely upon a fallacious claim of a so-called concession by the Defence demonstrates that he is unable to offer any proper reason for his so-called assessment that a budget of \$25,000 per month will be sufficient following the completion of the Sesay of the case.
12. In any event, in the absence of any proper or accurate reasoning or demonstrable assessment of the work involved in the case at this stage, it can safely be assumed to be nothing more than dangerous guess work and plainly irrational.
13. The aforementioned confirms that all pertinent information has been provided to the Trial

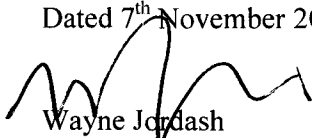
⁹ Ibid, para. 19; Confidential Annex A of the Submission.

¹⁰ The substantial work remaining was outlined to the Registrar on the 30th July 2007 – see Annex M of the Application, pp. 30538. This appears to have been overlooked or simply ignored.

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Chamber.

Dated 7th November 2007



Wayne Jordash
Sareta Ashraph