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SCSL-04-15-T  
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**SPECIAL COURT FOR SIERRA LEONE**

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**TRIAL CHAMBER I**

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

**Registrar:** Mr. Herman von Hebel, Acting Registrar

**Date:** 5<sup>th</sup> of July 2007

<b>PROSECUTOR</b>	<b>Against</b>	<b>ISSA HASSAN SESAY</b> <b>MORRIS KALLON</b> <b>AUGUSTINE GBAO</b> (Case No. SCSL-04-15-T)
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**Public Document**

**ORAL RULING ON THE ADMISSIBILITY OF ALLEGED CONFSSIONAL  
STATEMENTS OBTAINED BY INVESTIGATORS OF THE OFFICE OF THE  
PROSECUTOR FROM THE FIRST ACCUSED, ISSA HASSAN SESAY**

Office of the Prosecutor:  
James C. 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

Court Appointed Counsel for Augustine Gbao:  
John Cammegh

SPECIAL COURT FOR SIERRA LEONE
<b>RECEIVED</b>
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05 JUL 2007
NAME <u>MAUREGLEDONDI</u>
SIGN <u>[Signature]</u>
TIME <u>12-40</u>

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

**SEIZED** of an Oral Application by the Prosecution on the 5<sup>th</sup> of June 2007 to admit alleged confessional statements obtained by the Investigators of the Office of the Prosecutor from the First Accused, Issa Hassa Sesay;

**MINDFUL** of the oral submissions advanced by Learned Lead Counsel for the Prosecution Mr. Peter Harrison on the one hand, and also by Mr. Wayne Jordash, Learned Lead Counsel for the Defence Team of the First Accused on the other;

**MINDFUL** of the provisions of Rule 92 as read conjunctively with Rules 43, 63 and 95 of the Rules of Procedure and Evidence;

**MINDFUL** of the provisions of Rule 54 of the Rules of Procedure and Evidence;

**HEREBY ISSUES THE FOLLOWING ORAL RULING:**

1. This is the unanimous Ruling of this Trial Chamber on the issue of the voluntariness or otherwise of the statements alleged to have been made by the First Accused to the Prosecution on successive dates between the months of March and April 2003, coupled with that of the voluntariness of the alleged waiver by the First Accused of his right to the presence of Counsel during the said interviews.

2. Having heard in the course of the *Voir Dire* proceeding the case both for the Prosecution and for the First Accused as presented through witnesses for both the Prosecution and First Accused respectively; and having heard legal submissions by both Counsel for the Prosecution and Counsel for the First Accused on the aforementioned issue;

Case No. SCSL-04-15/11



5<sup>th</sup> of July 2007

3. And having deliberated upon the said issue in the light of the evidence and legal submissions put forward by both sides;

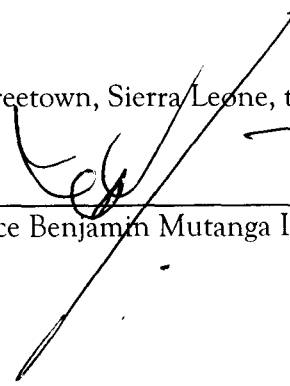
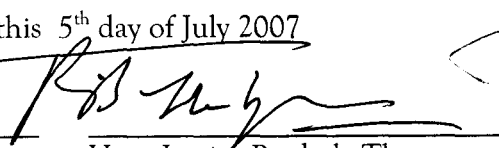
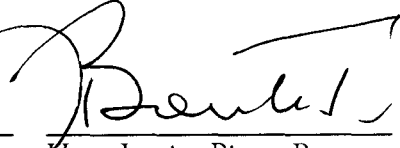
4. This Chamber, taking all the facts and circumstances as gathered from the totality of the evidence into consideration, and the applicable law and jurisprudence in situations of this nature, finds that the alleged statements obtained from the First Accused during the interviews by the Prosecution were not voluntary in that they were obtained by fear of prejudice and hope of advantage held out by persons in authority, the Prosecution having failed to discharge the burden of proving beyond reasonable doubt, under the provisions of Rule 92 as read conjunctively with Rules 43 and 63 of the Rules of Procedure and Evidence.

5. In the light of these findings, The Chamber, accordingly **RULES** that the alleged statements are inadmissible under Rule 95 and cannot be used even for the limited purpose advanced by the Prosecution of cross-examining the First Accused in order to impeach his credibility.

6. A detailed Reasoned Decision will be published in due course.

Hon. Justice Benjamin Mutanga Itoe appends a separate and concurring opinion to the present Ruling.

Done at Freetown, Sierra Leone, this 5<sup>th</sup> day of July 2007

		
_____ Hon. Justice Benjamin Mutanga Itoe	_____ Hon. Justice Bankole Thompson Presiding Judge Trial Chamber I	_____ Hon. Justice Pierre Boutet



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

**Public Document**

**SEPARATE CONCURRING OPINION OF HON. JUSTICE BENJAMIN MUTANGA ITOE  
ON THE ORAL RULING ON THE ADMISSIBILITY OF ALLEGED CONFSSIONAL  
STATEMENTS OBTAINED BY INVESTIGATORS OF THE OFFICE OF THE  
PROSECUTOR FROM THE FIRST ACCUSED, ISSA HASSAN SESAY**

**Office of the Prosecutor:**

James C. Johnson  
Peter Harrison

**Defence Counsel for Issa Hassan Sesay:**

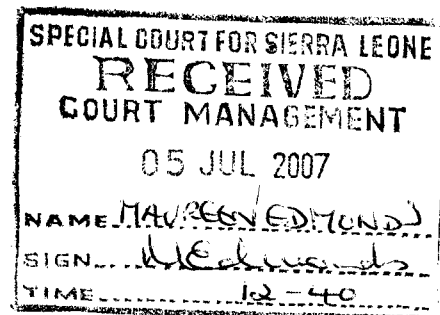
Wayne Jordash  
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**Defence Counsel for Morris Kallon:**

Shekou Touray  
Charles Taku  
Melron Nicol-Wilson

**Court Appointed Counsel for Augustine Gbao:**

John Cammegh



**SEIZED** of an Oral Application by the Prosecution on the 5<sup>th</sup> of June 2007 to admit alleged confessional statements obtained by the Investigators of the Office of the Prosecutor from the First Accused, Issa Hassa Sesay;

**MINDFUL** of the oral submissions advanced by Learned Lead Counsel for the Prosecution Mr. Peter Harrison on the one hand, and also by Mr. Wayne Jordash, Learned Lead Counsel for the Defence Team of the First Accused on the other;

**MINDFUL** of the provisions of Rule 92 as read conjunctively with Rules 43, 63 and 95 of the Rules of Procedure and Evidence;

**MINDFUL** of the provisions of Rule 54 of the Rules of Procedure and Evidence;

**NOW THEREFORE, I HON. JUSTICE BENJAMIN MUTANGA ITOE DO HEREBY ISSUE THE FOLLOWING SEPARATE CONCURRING OPINION**

1. I would like to say here that I concur entirely with the Decision that has been read by the Honourable Presiding Judge and that in so concurring, I will only add an additional italicised element in Paragraph 4 of that Decision.
2. I would accordingly therefore, only be reading Paragraph 4 of the Unanimous Decision of the Chamber which should now read as follows:

This Chamber, taking all the facts and circumstances as gathered from the totality of the evidence into consideration, and the applicable law and jurisprudence in situations of this nature, finds that the alleged statements obtained from the First Accused during the interviews by the Prosecution, "*as well as his alleged waiver of his rights to Counsel*", were not voluntary in that they were obtained by fear of prejudice and hope of advantage held out by persons in authority, the Prosecution having failed to discharge the burden of proving beyond reasonable doubt, under the provisions of Rule 92 as read conjunctively with Rules 43 and 63 of the Rules of Procedure and Evidence.

3. The addition here is that the Separate Concurring Opinion includes, the phrase: "*as well as his alleged waiver of his rights to Counsel*".
4. I accordingly adopt in their entirety, including my addition to Paragraph 4, Paragraphs 1, 2, 3, 4 and 5 of the Unanimous Ruling of the Chamber.
5. I would like at this juncture to acknowledge and highly commend the professionalism and the thoroughness of both Mr Wayne Jordash, Learned Lead Counsel for the First Accused's Defence Team and Mr Peter Harrison, Learned Lead Counsel for the Prosecution and their respective Teams, in the presentation of their evidence and their factual and legal submissions on an issue of such complexity, whose results, I have no doubt, will go a very long way to registering yet another milestone in the progress that has so far been made by Domestic and International Criminal Law jurisdictions on cases relating to Waivers by Accused Persons of their rights to Counsel, and the Rules and conduct that govern, or should govern, the concept of voluntariness in the process of adjudicating on issues relating to the admissibility of alleged confessional statements.
6. A Separate Reasoned Written Concurring Opinion will be published in due course.

Done at Freetown, Sierra Leone, this 5<sup>th</sup> day of July 2007

  
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Hon. Justice Benjamin Mutanga Itoe

