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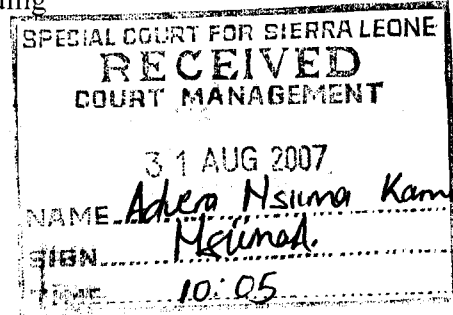
SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
FREETOWN – SIERRA LEONE

TRIAL CHAMBER I

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

Registrar: Mr. Herman von Hebel

Date filed: 31 August 2007



THE PROSECUTOR

Against

**Issa Hassan Sesay
Morris Kallon
Augustine Gbao**

Case No. SCSL-04-15-T

PUBLIC

**PROSECUTION RESPONSE TO GBAO-REQUEST FOR LEAVE TO RAISE
OBJECTIONS TO THE FORM OF INDICTMENT**

Office of the Prosecutor
Pete Harrison
Reginald Fynn

Defense Counsel for Issa Hassan Sesay
Wayne Jordash
Sareta Ashraph

Defense Counsel for Morris Kallon
Shekou Touray
Charles Taku
Melron Nicol-Wilson

Defense Counsel for Augustine Gbao
John Cammegh

I. INTRODUCTION

1. On 3 August 2007, the Prosecution filed a “Prosecution Notice Concerning Joint Criminal Enterprise And Raising Defects In The Indictment”¹ (“Notice”), giving further notice of the joint criminal enterprise alleged in the Indictment.²
2. On 23 August 2007, Gbao filed the “Gbao-Request For Leave to Raise Objections To The Form Of Indictment”,³ (“the Gbao Request”) in which the Gbao Defence seeks leave to raise five specific defects in the form of the Indictment relying on the AFRC Judgment.⁴

II. SUBMISSIONS

3. As held in the CDF Judgement “preliminary motions pursuant to Rule 72(b)(ii) are the principal means by which objections to the form of the Indictment should be raised, and that the Defence should be limited in raising challenges to alleged defects in the Indictment at a later stage for tactical reasons.”⁵
4. The Accused Sesay filed a motion under Rule 72⁶ objecting to the form of the indictment,⁷ and the objections were ruled upon in a timely manner to ensure the trial proceeded fairly and efficiently.⁸ In the event Gbao sought to challenge the

¹ *Prosecutor v Sesay, Kallon, Gbao*, SCSL-04-15-T- 812, “Public Prosecution Notice Concerning Joint Criminal Enterprise And Raising Defects in the Indictment”, 3 August 2007, (“**Notice**”).

² *Prosecutor v Sesay, Kallon, Gbao*, SCSL-04-15-T-619, “Corrected Amended Consolidated Indictment”, 2 August 2006.

³ *Prosecutor v Sesay, Kallon, Gbao*, SCSL-04-15-T- 813, “Public Gbao-Request for Leave to Raise Objections to the Form of the Indictment”, 23 August 2007, (“**Gbao Request**”).

⁴ *Prosecutor v Alex Tamba Brima, Bazy Kamara, Santigie Borbor Kanu*, SCSL-04-16-T-613, “Judgement”, 21 June 2007, (“**AFRC Judgement**”).

⁵ *Prosecutor v. Fofana, Kondewa*, SCSL-04-14-T-785, “Judgement”, 2 August 2007, para. 28 (“**CDF Judgement**”).

⁶ Rule 72 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone as last amended on 14 May 2007.

⁷ *Prosecutor v Sesay, Kallon, Gbao*, SCSL-03-05-PT-055, “Defence Preliminary Motion for Defects in the Form of the Indictment”, 24 June 2003.

⁸ *Prosecutor v Sesay, Kallon, Gbao*, SCSL-03-05-PT-080, “Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment”, 13 October 2003.

form of the Indictment he too should have raised the defects in a preliminary motion.

5. The Prosecution does not oppose the Gbao Request for leave to raise objections to the form of the Indictment as set out in the Gbao Request, however, given that the Prosecution case completed on 2 August 2006, and the Gbao Request was filed almost 13 months later, the burden should shift to the Accused to demonstrate that the Accused's ability to defend himself has been materially impaired by the alleged defects.⁹
6. In addition, should leave to challenge the form of the Indictment be granted, such leave should be limited to objections which relate to the findings in the AFRC Judgement and which are relevant to the present case.
7. To promote judicial economy and fairness, and in the event leave is granted, objections to the form of the Indictment should be dealt with in a consolidated manner. Therefore, in the event leave is granted, the Prosecution asks the Trial Chamber to direct all Accused that if they wish to raise objections to the form of the Indictment arising out of the AFRC Judgment then they should do so in accordance with a time frame set out by the Trial Chamber. Such an approach would serve judicial efficiency and would be fair to the Accused. Only in exceptional circumstances, to be demonstrated by an Accused, should objections to the Indictment be allowed at a later stage in the trial.

III. CONCLUSION

⁹ In the CDF Judgement the Trial Chamber held that "where the Defence has raised no objections during the course of the trial, and raises the matter only in its closing brief, the burden shifts to the Defence to demonstrate that the Accused's ability to defend himself has been materially impaired, unless it can give a reasonable explanation for its failure to raise the objection at trial" (para. 27). Given that the Prosecution closed its case 13 months ago and the Gbao Request was filed only after the Prosecution filed its Notice regarding the joint criminal enterprise, these circumstances require the Accused to demonstrate how his defence has been materially impaired.

10. The Prosecution does not oppose the Gbao Request and should the Request be granted, the Prosecution submits that it would be in the interests of justice for the Trial Chamber, *sui moto*, to grant similar leave to the other Accused. Further, that all such motions challenging the form of the Indictment be limited to matters ruled upon in the AFRC Judgement, and that the motions be filed within 14 days of the Trial Chamber's order.

Filed in Freetown,

31 August 2007

For the Prosecution,



Pete Harrison

INDEX OF AUTHORITIES

A. Decision and Judgments

Prosecutor v Sesay, Kallon, Gbao, SCSL-03-05-PT-080, “Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment”, 13 October 2003.

Prosecutor v Alex Tamba Brima, Bazzy Kamara, Santigie Borbor Kanu, SCSL-04-16-T-613, “Judgement”, 21 June 2007.

Prosecutor v. Fofana, Kondewa, SCSL-04-14-T-785, “Judgement”, 2 August 2007.

B. Motions

Prosecutor v Sesay, Kallon, Gbao, SCSL-03-05-PT-055, “Defence Preliminary Motion for Defects in the Form of the Indictment”, 24 June 2003.

Prosecutor v Sesay, Kallon, Gbao, SCSL-04-15-T-619, “Corrected Amended Consolidated Indictment”, 2 August 2006.

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Prosecutor v Sesay, Kallon, Gbao, SCSL-04-15-T- 813, “Public Gbao-Request for Leave to Raise Objections to the Form of the Indictment”, 23 August 2007.

C. Rules of Procedure and Evidence

Rule 72 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone as last amended on 14 May 2007.