



SPECIAL COURT FOR SIERRA LEONE

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Document(s): **Application for Judicial Review of Registry’s Refusal to Provide Additional Funds for an Additional Counsel as Part of the Implementation of the Arbitration Decision of 26th April 2007 - SCSL-04-15-T-817**

Document Dated: 05th September- 2007 Received by Court Management at 16:55

Reason: The document is three pages in excess of the ten page maximum for additional argument relating to minimum guarantees in Article 17 of the Statute.

Signed: *Nsiima*

Advera Nsiima K.

Dated: 06th September -2007

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SCSL-04-15-T
(30243-30582)

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THE SPECIAL COURT FOR SIERRA LEONE

BEFORE:

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

Registrar: Herman von Hebel

Date filed: 5th September 2007

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The Prosecutor

-v-

**Issa Hassan Sesay
Morris Kallon
Augustine Gbao**

Case No: SCSL-2004-15-T

Public with Public and ex Parte Confidential Annexes

**Application for Judicial Review of Registry's Refusal to Provide
Additional Funds for an Additional Counsel as Part of the
Implementation of the Arbitration Decision of 26th April 2007**

Defence for Issa Sesay
Wayne Jordash
Sareta Ashraph

Registry
Herman von Hebel
Nikolaus Toufar

Office of the Principal Defender
Vincent Nmehielle

INTRODUCTION

1. In its 15th November 2006 Decision, Trial Chamber I dismissed the Sesay Defence Application to judicially review the refusal of the Registrar (then Lovemore Munlo) to recognise that the case against Issa Sesay was sufficiently serious, complex or sizeable to amount to exceptional circumstances as to warrant the provision of additional resources under the special consideration clause in the Legal Service Contract (the “LSC”). In its reasoning, the Trial Chamber held that

*at this stage, it possesses no jurisdiction to review the Refusal Decision. We do so hold for the reason that the present dispute is in its arbitral stage... The Chamber rules that the filing of the present Motion is premature and that it cannot entertain the said application until the statutory remedy of arbitration has been exhausted.*¹

2. On 26th April 2007, following arbitration proceedings between the Sesay Defence as Claimant and the Office of the Principal Defender (the ‘OPD’) and the Registry as the First and Second Respondents respectively, an independent arbitrator found as follows:

Having regard to material, arguments and circumstances put forward by the Claimant and the apparent inability of the Respondents to posit the circumstances in which the Special Consideration Clause would apply and my own assessment of the case made by the Claimant, I do find that the case of the Claimant falls within the Special Consideration Clause and accordingly answer the Second Question as follows:

“That 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 sizable to amount to exceptional circumstances as to warrant the provision of additional resources under the special consideration clause in the Legal Service Contract”.²

3. Following negotiations between the parties over the implementation of the arbitration decision, an impasse was reached with the Registry refusing to provide an additional sum of US \$30,000³ to retain an additional Counsel for an estimated period of three months during the currency of Mr. Sesay’s defence case unless such funds were recouped from the team’s budget afterwards. This would have the effect of forcing the current Sesay Defence team to work to a budget found inadequate by an independent arbitrator. For the avoidance of doubt, the \$30,000 proposed by the Sesay Defence and accepted by the Registry as appropriate was significantly below the market rate for the expertise required but was calculated to ensure a swift resolution of the issues to prevent any delay to the proceedings.

¹ *Prosecutor v. Sesay et al.*, SCSL-04-15-T-665, “Decision on Defence Application for Review of the Registrar’s Decision on the Sesay Defence “Exceptional Circumstances” Motion”, 15th November 2006; emphasis in original.

² Annex A, at page 30.

³ Annex B: Letter from Registry, 13th July 2007, at para 4.

Summary of Submissions

4. For reasons set out below, the Sesay team submits that the Registry's refusal to provide this additional funding for a limited period is irrational, in that no reasonable decision-maker, properly directing himself, could have reached it (i) given the size and complexity of the Sesay case, the increased workload of the defence case and the independent finding that the original budget (\$25,000 per month) is inadequate; (ii) given the resources that the Registry has made available to the Taylor defence team for a smaller and less complex case (than the Sesay case); and (iii) given the size of the resources provided to the Prosecution team as a whole and in particular the RUF trial.

5. The Sesay Defence therefore seeks a review of the Registry's decision as regards the implementation of the arbitration decision of 26th April 2007, with specific reference to the Registry's refusal to fund an additional Counsel for the currency of Mr. Sesay's defence case.

Equality of Arms

6. The Defence seeks an Order that, bearing in mind that the Sesay Defence case is the most sizeable and complex case at the Special Court, the resources required ought to be equal to or larger than those provided to the Taylor Defence Team. This would ensure that the minimum guarantee of an equality of arms – guaranteed by the Registry in the Taylor case – is also guaranteed in the Sesay case.⁴

7. The Defence respectfully request leave to file an application three pages in excess of the usual 10 pages. This Application for Review relates to the minimum guarantees in Article 17 of the Statute and the way in which the exercise of the Registrar's discretion impacts upon those rights. It is submitted that the issues are crucially important and relate to an area of decision making of crucial importance. It is respectfully submitted that, given the potential ramifications (in terms of defence preparation) it would be in the interests of justice to exceptionally allow for extended argument.

⁴ In the *Prosecutor v. Tadic*, Case No. IT-94-1-A, Appeals Judgment, July 15, 1999, paras 43, 44, 48, and 52: Article 20(1) provides that "the Trial Chamber shall ensure that a trial is fair and expeditious..." and "equality of arms means that each party must have a reasonable opportunity to defend its interests 'under conditions which do not place him at a substantial disadvantage vis-à-vis his opponent'". The Appeals Chamber held that "the principle of equality of arms must be given a more liberal interpretation than that normally upheld with regard to proceedings before domestic courts. The principle means that the Prosecution and Defence must be equal before the Trial Chamber. The Trial Chamber shall therefore provide every practicable facility it is capable of granting under the Rules and Statute when faced with a request by a party for assistance in presenting its case.

JURISDICTION

8. The Trial Chamber implicitly recognised its inherent jurisdiction in its Decision of 15th November 2006. The inherent jurisdiction was also recognised by the Appeals Chamber in the Brima-Kamara Decision.⁵

RELEVANT HISTORY

9. Following the Trial Chamber's Decision of 15th November 2006, the Sesay Defence, on the 16th November 2006, invoked Article 22 of the Directive on the Assignment of Counsel in respect of the Registrar's Decision of 10th March 2006.
10. The arbitration involved two distinct issues, the second of which is relevant to the instant Application. The terms of reference put before the arbitrator were as follows:

Whether the case against Issa Sesay, on its own and/or in relation to other cases at the Special Court, is sufficiently serious, complex or sizable to amount to exceptional circumstances such as to warrant the provision of additional resources under the Special Considerations Clause in the Legal Service Contract.
11. In compliance with directives set by the arbitrator, the Sesay Defence filed its Points of Claim,⁶ dated 26th March 2007. Annexed to its Point of Claim was the original Application submitted on 25th November 2005 to Registrar Lovemore Munlo, outlining the exceptional size and complexity of the case against Mr. Sesay. This Application, predicated in part on the need for funds for additional Counsel, was evidenced by several pages of material including comparative assessments as to (i) the amount of court work borne by the Sesay Defence; (ii) the magnitude of the Sesay Defence's out-of-court preparation; and (iii) the volume of legal documents drafted by the Sesay Defence. Updated comparative assessments were also included in the Points of Claim.
12. The Registry and OPD jointly filed Points of Defence⁷ on 3rd April 2007 and the Sesay Defence filed its Points of Reply⁸ dated the 10th April 2007. The agreed Bundle of

⁵ *Prosecutor v. Brima et al.*; SCSL-2004-16-T-441, "Decision on Brima-Kamara Defence Appeal Motion against Trial Chamber II Majority Decision on Extremely Urgent Confidential Joint Motion for the Re-Appointment of Kevin Metzger and Wilbert Harris as Lead Counsel for Alex Tamba Brima and Brima Bazzy Kamara", 8th December 2005, paras 72-78.

⁶ Annex C.

⁷ Annex D.

⁸ Annex E.

Documents was also filed.⁹ A hearing was held on 16th April 2007.¹⁰ On 26th April 2007, the arbitration decision was handed down as set out in paragraph 2 above.

13. On 9th May 2007, the Sesay Defence team submitted preliminary calculations to the Registry for initial discussion regarding back pay owed to the current members of the Sesay Defence team (that is, Mr. Jordash, Ms. Ashraph, and Mr. Kneitel) and the amount needed to cover the future pay for the current team members.¹¹
14. On 21st May 2007, a preliminary meeting was held between Ms. Ashraph of the Sesay Defence team, Ms. Sanusi of the OPD, and Ms. Frediani of the Registry to discuss the issue of resources needed by the current team to ensure that they received remuneration equal to other defence teams at the court. No agreement was reached on the overall implementation of the arbitration decision and no discussions were held concerning the resources needed over and above that of other teams to ensure effective defence preparation.
15. On 20th and 21st June 2007, meetings were held between the Sesay Defence team and the Registry. The proposals put forward in that meeting are set out in the Sesay team's letter of 25th June 2007.¹²
16. On 13th July 2007, the Registry responded, stating that, in regard to proposal for an additional \$30,000 for an additional Counsel for the three month period of Mr. Sesay's defence case, "we are willing to temporarily increase the current cap of USD 35,000 to USD 45,000 during the presentation of the Sesay defence case. Following the conclusion of the Sesay defence case and until the completion of the hearings, this cap will be set at USD 25,000".¹³
17. The meaning of this was queried in a letter from the Sesay Defence, dated 22nd July 2007.¹⁴ The Registry responded in a letter dated 23rd July 2007 stating that the funds in the amount of USD 30,000 would be taken from the 40% enhancement that was agreed would be paid to the

⁹ Annex F.

¹⁰ Annex G.

¹¹ Annex H.

¹² Annex I.

¹³ Annex B, at para 4.

¹⁴ Annex J.

current team to ensure that it received the same rate of pay as other defence teams and that, therefore, no additional sum would be agreed by the Registry.¹⁵

18. The Sesay Defence, in a letter dated 27th July 2007,¹⁶ stated that, prior to the Registry’s letter of 23rd July 2007, the suggestion that this lump sum would be clawed back through the reduction of the budget to pre-arbitration levels was never canvassed and was not agreed. The Defence highlighted the obvious unfairness in the Registry proposal: that the “claw back” proposal would have the effect of forcing the defence team to work at the pre-arbitration budget of \$25,000 for a period equal to the length of the defence case. This was inconsistent with the arbitration judgment which categorically and without reservation had found that the original resources – that is, the budget of \$25,000 per month – were inadequate to enable effective preparation and to ensure a fair trial for Sesay, given the size and complexity of the case. The Defence indicated that it was not willing to agree to a proposal which, whilst enabling the Defence to employ the much needed additional Counsel during the currency of the defence case, would then irrationally and arbitrarily penalise the Accused by denying him adequate funds until the additional monies had been recouped.

19. On 30th July 2007, the Sesay Defence sent a letter to the Registry explaining the continuing workload of the team following the close of the calling of witnesses for Mr. Sesay and outlining the need for additional resources in the form of funding for additional Counsel during the Sesay Defence case.¹⁷

20. On 30th July 2007, the Registrar sent an email to the Sesay Defence stating that his view remained that the \$30,000 should come from within the budget of the team and that no additional assistance would be provided by the Registry.¹⁸ This was set out formally in a letter dated 1st August 2007.¹⁹

21. On 2nd August 2007, the Sesay Defence responded and reiterated that the effect of clawing back funds for the additional Counsel from the existing budget would be to return the current team to a budget of \$25,000 a month, a budget already found to be inadequate under the

¹⁵ Annex K.
¹⁶ Annex L.
¹⁷ Annex M.
¹⁸ Annex N.
¹⁹ Annex O.

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arbitration decision. The letter outlined the urgent need for additional Counsel during the period of Mr. Sesay's defence case given the expected workload and made comparisons with the resources made available by the Registry to the Taylor case.²⁰

22. The Registry, in a letter dated 3rd August 2007, reiterated its position and stated that it did not believe that the arbitration award provided any basis for a claim for additional Counsel.²¹
23. In a letter dated 14th August 2007, the Sesay Defence replied stating that the original 2005 application had been posited on the need for additional Counsel and that the arbitration award was in no way limited to the provision of additional fees to the current team alone. It was noted that the 40% enhancement serves to permit the current Sesay defence team (composed of Wayne Jordash, Sareta Ashraph, and Jared Kneitel) to be paid at comparable rates to the other defence teams at the Special Court. The effect of clawing back funds to pay for additional Counsel from this budget would be to return the permanent teams to a pre-arbitration pay scale, roughly 66% of that of the other defence teams.²²
24. This letter was acknowledged by email from Ms. Binta Mansaray, Secretary to the Registrar. The email referred the Sesay Defence to the Registrar's letter of 1st August 2007.
25. On 16th August 2007, Mr. Jordash replied by email indicating that the Sesay Defence considered its remedies to be exhausted and it would revert to the Trial Chamber.

SUBMISSIONS

The financial situation of the Sesay defence pre-arbitration (November 2003 - April 2007)

26. The pre-arbitration budget of the Sesay defence team under the LSC amounted to \$25,000 per month. This served to fund payment of daily living allowances, flight costs for the team, and the payment of fees for all team members. Given the size and complexity of the Sesay case, the practical effect of the limited budget meant that the Sesay defence team, in an attempt to pay itself for its billable hours, provided its legal services to Mr. Sesay at rates far below those recommended under the LSC and rates beneath those paid to other Counsel.

²⁰ Annex P.

²¹ Annex Q.

²² Annex R.

27. Paragraph 27 is filed confidentially as Annex S.

28. This situation persisted until April 2007 despite numerous applications to, and discussions with, the OPD and the Registry.

29. On 26th April 2007, the arbitrator held "That 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 sizable to amount to exceptional circumstances as to warrant the provision of additional resources under the special consideration clause in the Legal Service Contract".

30. Paragraph 30 is filed confidentially as Annex T.

Purported implementation of the arbitration finding

31. In relation to future resources, Mr. Jordash, in the meetings of 20th and 21st June 2007, set out the additional resources that would be needed to adequately prepare a case of the size and complexity of Mr. Sesay's: (i) a 40% enhancement of the pre-arbitration budget, increasing it to \$35,000 per month (in line with the agreed enhancement of back-payment) to ensure proper LSC-recommended rates of pay for the current team comparable to those paid to other defence teams; (ii) a lump sum of \$30,000 to pay for an additional Counsel for three months during the Sesay defence case; and (iii) funds for an international investigator to be paid at P3 level for a period of four months.

32. It should be noted that it was agreed by all present at the meetings that it was appropriate to separate the proposal of the 40% enhancement to ensure back pay and future parity with the other teams from the issue of the team's requirements to ensure an effective presentation of our defence. There was no suggestion at that stage by the Registry that the 40% would represent full and final settlement of the arbitration award. This belated suggestion makes little sense in the context of the overall application for additional fees predicated upon the need to have additional personnel to assist with the additional workload. It was known by both parties that the 40% enhancement would not allow for the employment of any additional personnel.

33. The Registry has implicitly conceded the need for additional Counsel in the Sesay case. However without good cause or forensic reason, the Registry wishes to implement a payment

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scheme which penalises the current team for this need by recouping the money at a later stage. This has the effect of forcing the team to prepare the case for a period equal to the length of the defence case on funding already determined to be inadequate by an independent arbitrator.

34. It is thus not correct, as suggested by the Registry, that the 40% enhancement was supposed to represent the full and final settlement of the award.²³ It is equally erroneous and irrational to assert in the same letter that there is no “basis for a claim for additional co-counsel” given (i) that the original application was predicated upon the need for this additional resource;²⁴ (ii) that the object and purpose of the arbitration was to ensure adequate resources to prepare the case (and not merely to provide adequate payment for existing members); and (iii) that the Registry has accepted the need for additional Counsel but is simply unwilling to fund it.

35. It should also be noted that the requests made were modest in the extreme because the Defence team was concerned with ensuring an end to negotiations and the expedited provision of adequate resources. It was hoped that an additional counsel could be employed and could read into the case over the summer recess. This is not now possible given the unreasoned and unreasonable position adopted by the Registry.

The need for additional Counsel during the Sesay Defence case

36. The Sesay Defence case will involve the proofing of approximately 250 witnesses and the continued taking of approximately 100 statements from witnesses to be served under Rule 92.

37. Witnesses to be called live will require proofing by Counsel to ensure Counsel is adequately prepared for all aspects of the witness’s in-court testimony. As the trial is likely to run full-time (that is, without breaking for the continuation of the CDF trial) and given there are only two Counsel in the Sesay Defence case, this will mean that for several months, Counsel will be doing full court days for current witnesses while trying to prepare upcoming witnesses in the morning before Court and in the evening after Court has adjourned.

²³ See Annex Q

²⁴ Indeed at one point the OPD was suggesting that the only the application was only “a request for additional funds to hire an additional counsel” and for no other reason (see paragraph 4 of 9th February 2007 memo from OPD; Annex U).

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38. It is the submission of the Sesay Defence team that it is simply not physically or cognitively possible for two Counsel to both proof and lead the number of witnesses expected to be called over a lengthy trial period as well as deal with all relevant legal arguments, ongoing instruction of experts, ongoing assessment of the evidence, and all other incidental legal tasks. To do so will damage the Counsel's ability to both prepare the case and to lead witnesses effectively. Furthermore, early morning and late night preparation of witnesses is also likely to have an adverse impact on the witnesses' experience of being a witness and their testimony in Court.

Comparison with the funding for the Taylor Defence

39. The irrationality of the Registry's approach is apparent from the preferential treatment of the Taylor Defence team. A rational decision maker could not conclude (i) that the Taylor case is more complex or sizeable than the Sesay case; or (ii) that the resources required for the Taylor case should be twice that of the Sesay case. The Registry's partisan approach to the Taylor case in Trial Chamber II illustrates that the Registry has taken into consideration irrelevant considerations (namely, those not related to effective preparation such as the adverse publicity garnered by the refusal of Taylor to attend court and the need to ensure that the Registry is *seen* to be acting fairly given the high profile nature of the case and the accused) and failed to take into account relevant considerations (namely, the size and complexity of the two cases).
40. In relation to the Taylor Defence team, the Registry has provided a budget of \$70,000 per month for 3 Counsel and 2 legal assistants, with daily living allowances for 3 people (amounting to \$350 per person per day in the Hague) and costs of travel and investigation trips being drawn from a separate account.²⁵ No logical forensic reason exists for this disparity with the provision afforded to the Sesay defence. It follows that the Registry's failure to provide funds for an additional Counsel for even the currency of the Sesay Defence is irrational, unfair and arbitrary. The following demonstrates the inequity and unreasonableness of the Registry's approach.
41. A comparison of the charges faced by both Taylor and Sesay and the geographic and temporal jurisdictions of those charges illustrates the size and complexity of the Sesay case.²⁶

²⁵ Annex V.

²⁶ See Annex W for a comparison in tabulated form.

It ought to be evident to any reasonable decision maker, properly applying their discretion, that the charges levied against Sesay are (i) greater in number; (ii) more serious; (iii) involve more crime bases; and (iv) encompass a wider geographic area. For example, whereas Sesay is charged with 3 counts of crimes of unlawful killings across 8 districts, Taylor is charged with 2 such counts across 4 districts. Similarly, in relation to crimes of sexual violence, Sesay faces 4 counts across 6 districts whereas Taylor faces 3 counts across 3 districts. This wider remit of the defence case requires more case analysis, more investigation, more defence witnesses, and consequently an overall higher workload of the Sesay Defence. This is indisputable and is based on observable facts which the Registry has ignored or failed to take into account when exercising its discretion in relation to each case.

42. The Sesay Defence further notes that in the Taylor pre-trial brief, the Taylor Defence states:

At this moment in time, the Defence expects this case to be primarily concerned with the nexus between the alleged crimes and Mr. Taylor. The critical question in the case is therefore not so much whether the crimes in Sierra Leone were indeed committed, but whether Mr. Taylor is criminally responsible for them.²⁷

43. The Taylor Defence team does not have to prepare to take issue with the fact or the details of crimes committed in Sierra Leone but only with the link between those committing the crimes and the Accused Taylor. The Sesay Defence, in contrast, must attack the nexus between the Accused and, in relation to a number of the alleged crimes, call evidence to show that no criminal offence was committed and/or that the Prosecution has failed to establish any or any accurate crime base. A reasonable decision maker properly applying himself to the salient facts would have concluded therefore that the Sesay defence is likely to involve a greater degree of work than that involved in the Taylor case.

44. As such, no good forensic reason exists for providing the Taylor defence team with resources over and above those of the Sesay Defence. No rational decision maker would have refused a modest request of an additional \$30,000 to remunerate an additional Counsel in light of the decision made to fund the smaller and less complex Taylor defence to this extent.

45. Additionally no reasonable decision maker would have concluded that the Sesay team required an additional \$10,000 per month during the currency of its defence case to allow for the employment of an additional co-Counsel but thereafter (i) seek to deny the Accused

²⁷ *Prosecutor v. Taylor*, SCSL-03-01-PT-229, "Rule 73bis Taylor Pre-Trial Defence Brief", 26th April 2007.

adequate funds simply as a means of replenishing the Registry’s coffers; and (ii) also to penalise the existing team by forcing them to pay for that resource themselves by forcing them to work for funds found to be inadequate by an independent arbitrator. The fact that the Registry is unable (or unwilling) to provide any reasoning to explain this unfair proposal speaks volumes about the arbitrary nature of the decision making and the overall unfairness of the Registry’s purported decision.

Comparison with the funding of the Prosecution Team

46. Since the finalisation of the CDF and AFRC trials, the Registry has overseen a significant increase in the overall size of the Prosecution team. Notwithstanding a huge diminution in the Prosecution workload occasioned by the closure of the two trials and the closure of the Prosecution case in the RUF trial, the Registry has seen fit not to reduce the funding available to the Prosecution but instead has increased it to allow the Prosecution to employ more Counsel, more criminal analysts, more legal assistants, more investigators, and more support staff.²⁸ The Registry’s willingness to fund an ever increasing Prosecution team irrespective of any realistic analysis of need given is not only administratively perverse but in the circumstances of this disputed decision betrays an anti-defence bias which is inconsistent with its duties pursuant to Article 17. The Registry’s provision of excessive resources to the Prosecution team – whilst simultaneously depriving the defence of assistance it acknowledges being essential – is irrational, unfair, and unjustifiable.

47. Moreover the present RUF Prosecution team consists of at least four senior Counsel, a case manager, and numerous investigators. Whilst the Sesay Defence has the capacity for one Counsel to be in court at one time, the Prosecution is able to call on four at any one time, and this during the currency of the Defence case when it cannot conceivably be suggested that the Prosecution have more work to do than the Sesay Defence.

48. The Defence request for funds for an additional counsel is thus both modest and necessary. In light of the resources provided to the Prosecution (and the recognition by the Registry that the Sesay Defence request for funds for an additional counsel is essential) it is reasonable to infer that the Registry, when seeking to claw back the money, has taken into account irrelevant considerations (for example, the need to save money given the increased funding being


²⁸ The SCSL website indicates that at the time of writing the Prosecution is advertising for a P2 Associate Legal Officer.

provided to the Prosecution) rather than any common sense and fair analysis of the work being done. The Decision thus flies in the face of common sense and effectively deprives the defence of essential assistance pursuant to Article 17.

CONCLUSION

49. The Sesay Defence therefore requests that the Trial Chamber:
- (i) Quash the Registry’s decision to provide \$10,000 per month for an additional counsel and its claw back provision; and
 - (ii) Order the Registry to provide the Sesay Defence with the same resources provided to the smaller and less complex Taylor case.

Dated 5th September 2007



Wayne Jordash
Sareta Ashraph

LIST OF AUTHORITIES

Decisions and Judgments

Prosecutor v. Brima et al., SCSL-2004-16-T-441, “Decision on Brima-Kamara Defence Appeal Motion against Trial Chamber II Majority Decision on Extremely Urgent Confidential Joint Motion for the Re-Appointment of Kevin Metzger and Wilbert Harris as Lead Counsel for Alex Tamba Brima and Brima Bazzy Kamara”, 8th December 2005.

Prosecutor v. Sesay et al., SCSL-04-15-T-665, “Decision on Defence Application for Review of the Registrar’s Decision on the Sesay Defence ‘Exceptional Circumstances’ Motion”, 15th November 2006.

Prosecutor v. Tadic, Case No. IT-94-1-A, Appeals Judgement, 15 July 1999.

Prosecutor v. Taylor, SCSL-03-01-PT-229, “Rule 73bis Taylor Pre-Trial Defence Brief”, 26th April 2007.

Public Annexes

W. Tabular comparison between the Indictments against the Accuseds Sesay and Taylor.

Confidential Annexes

- A. Decision of the independent arbitrator, 26th April 2007.
- B. Letter from the Registry to the Sesay Defence, 13th July 2007.
- C. Sesay Defence Points of Claim and attached Annexes, 26th March 2007.
- D. Registry and OPD Points of Defence, 3rd April 2007.
- E. Sesay Defence Points of Reply, 10th April 2007.
- F. Sesay Defence, Registry, and OPD Agreed Bundle of Authorities.
- G. Transcript of the arbitration hearing, 16th April 2007.
- H. Sesay Defence post-arbitration funding calculations, 9th May 2007.
- I. Letter from the Sesay Defence to the Registry, 25th June 2007.
- J. Letter from the Sesay Defence to the Registry, 22nd July 2007.
- K. Letter from the Registry to the Sesay Defence, 23rd July 2007.
- L. Letter from the Sesay Defence to the Registry, 27th July 2007.
- M. Letter from the Sesay Defence to the Registry, 30th July 2007.

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- N. Email from the Registry to the Sesay Defence, 30th July 2007.
- O. Letter from the Registry to the Sesay Defence, 1st August 2007.
- P. Letter from the Sesay Defence to the Registry, 2nd August 2007.
- Q. Letter from the Registry to the Sesay Defence, 3rd August 2007.
- R. Letter from the Sesay Defence to the Registry, 14th August 2007.
- S. Paragraph 27.
- T. Paragraph 30.
- U. Letter from the Registry to the Sesay Defence, 9th February 2007.
- V.



SPECIAL COURT FOR SIERRA LEONE
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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: 817
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Number of Pages: 340 **Confidential Page Numbers: 30258-30578**
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- Affidavit
- Indictment
- Correspondence
- Order
- Application**

Document Title: **Exparte and Confidential Annexes**

Name of Officer:

Advera Nsiima K.

Signed *Advera Nsiima K.*

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ANNEX W
(Public)

Comparison of the Indictment charged against the Accused Taylor and the Accused Sesay

| Indictment against Sesay | | Indictment against Taylor | | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|------------|-----------------------|
| Count | Place | Time period | Count | Place | Time period |
| Counts 1-2 1: Acts of Terrorism 2: Collective Punishments | Counts 1-14 incorporated | Counts 1-14 incorporated | Count 1 1: Acts of Terrorism incorporated Counts 2-11 and including <u>burning</u> | Kono | 1 Feb 98 – 18 Jan 02 |
| | | | | Ftown & WA | 21 Dec 98 – 28 Feb 99 |
| Counts 3 – 5 3: Extermination 4: Murder 5: Violence to life, health... (in part murder) | Bo | 1 June 97 – 30 June 97 | Counts 2-3 2: Murder 3: Violence to life, health... (in part murder) | Kenema | 25 May 97 – 31 Mar 98 |
| | Kenema | 25 May 97 – 19 Feb 98 | | Kono | 1 Feb 98 – 31 Jan 00 |
| | Kono | 14 Feb 98 – 30 June 98 | | Kailahun | 1 Feb 98 – 30 June 98 |
| | Kailahun | 14 Feb 98 – 30 June 98 | | Ftown & WA | 21 Dec 98 – 28 Feb 99 |
| | Koinadugu | 14 Feb – 30 June 98 | | | |
| | Bombali | 1 May 98 – 30 Nov 98 | | | |
| | Ftown & WA Port Loko | 6 Jan 99 – 28 Feb 99 Feb 99 – April 99 | | | |
| Counts 6 – 9 (sexual violence) 6: Rape 7: Sexual slavery and other forms of sexual violence 8: other inhumane acts 9: outrages upon personal dignity | Kono | 14 Feb 98 – 30 June 98 | Counts 4-6 4: Rape 5: Sexual slavery and other forms of sexual violence 6: outrages upon personal dignity | Kono | 1 Feb 98 – 31 Dec 98 |
| | Koinadugu | 14 Feb 98 – 30 Sept 98 | | Kailahun | 30 Nov 96 – 18 Jan 02 |
| | Bombali | 1 May 98 – 31 Nov 98 | | Ftown & WA | 21 Dec 98 – 28 Feb 99 |
| | Kailahun | 30 Nov 96 – 15 Sept 00 | | | |
| | Ftown & WA | 6 Jan 99 – 28 Feb 99 | | | |
| | Port Loko | Feb 99 – April 99 | | | |
| | | | | | |
| Count 10 – 11 (physical violence) 10: violence to life, health and physical or mental wellbeing in | Kono | 14 Feb 98 – 30 June 98 | Count 7 -8 7: violence to life, health and physical or mental wellbeing in particular mutilation | Kono | 1 Feb 98 – 31 Dec 98 |
| | Kenema | 25 May 97 – 19 Feb 98 | | Kailahun | 30 Nov 96 – 18 Jan 02 |
| | Koinadugu | 14 Feb 98- 30 Sept 98 | | | |
| | Bombali | 1 May 98 – 21 Nov 98 | | | |

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| particular mutilation 11: other inhumane acts | Ftown & WA | 6 Jan 99 – 28 Feb 99 | 8: other inhumane acts | Ftown & WA | 21 Dec 98 – 28 Feb 99 |
| | Port Loko | Feb 99 – April 99 | | | |
| Count 12 (child soldiers) 12: conscripting of enlisting children under the age of 15 into armed forces or groups or using them to participate actively in hostilities | Throughout SL | 30 Nov 96 – 15 Sept 00 | Count 9 9: conscripting of enlisting children under the age of 15 into armed forces or groups or using them to participate actively in hostilities | Throughout SL | 30 Nov 96 – 18 Jan 02 |
| | | | | | |
| Count 13 (abductions and forced labour) 13: enslavement | Kenema | 1 Aug 97 – 31 Jan 98 | Count 10 10: enslavement | Kenema | 1 July 97 – 28 Feb 98 |
| | Kono | 14 Feb 98 – Jan 2000 | | Kono | 1 Feb 98 – 18 Jan 02 |
| | Koinadugu | 14 Feb 98 – 30 Sept 98 | | Kailahun | 30 Nov 96 – 18 Jan 02 |
| | Bombali | 1 May 98 – 31 Nov 98 | | Ftown & WA | 21 Dec 98 – 28 Feb 99 |
| | Kailahun | 30 Nov 96 – 15 Sept 00 | | | |
| | Ftown & WA | 6 Jan 99 – 28 Feb 99 | | | |
| | Port Loko | Feb 99 | | | |
| Count 14 (looting/ burning) 14: pillage | Bo | 1 June 97 – 30 June 97 | Count 11 11: pillage | Kono | 1 Feb 98 – 31 Dec 98 |
| | Koinadugu | 14 Feb 98 – 30 Sept 98 | | Bombali | 1 Feb 98 – 30 April 98 |
| | Kono | 14 Feb 98 – 30 June 98 | | Port Loko | 1 Feb 98 – 30 April 98 |
| | Bombali | 1 March 98 – 31 Nov 98 | | Ftown & WA | 21 Dec 98 – 28 Feb 99 |
| | Ftown & WA | 6 Jan 99 – 28 Feb 99 | | | |
| Count 15 – 18 (attacks on UNAMSIL) 15: intentionally directing attacks against personnel involved in a humanitarian assistance or peacekeeping mission 16: for the unlawful killings, murder | Throughout but notably Bombali, Kailahun, Kambia, Port Loko and Kono | 15 April 00 – 15 Sept 00 | | | |

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| 17: violence to life, health and physical or mental well-being of persons, in particular murder 18: abduction and holding as hostages | | | | | |
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