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SCSL-04-15-A
(224-228)

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SPECIAL COURT FOR SIERRA LEONE

IN THE APPEALS CHAMBER

Before: Hon. Justice Rcnate Winter, President,
Hon. Justice Jon Kamanda,
Hon. Justice George Gelaga King, and
Hon. Justice Emmanuel Ayoola
Hon. Justice Shireen Fisher

Registrar: Mr. Herman Von Hebel

Date: 5th May 2009

THE PROSECUTOR

V.

ISSA HASSAN SESAY

Case No. SCSL-2004-15-A

PUBLIC

**Sesay Defence Urgent Application for Extension of Time to File Appeal Brief
and Extension of Page Limit**

Office of the Prosecutor

Mr. Vincent Wagona
Mr. Reginald Fynn

Defence Counsel for Issa Sesay

Mr. Wayne Jordash
Ms. Sareta Ashraph
Mr. Jared Kneitel

Defence Counsel for Morris Kallon

Mr. Charles Taku
Mr. Ogetto Kennedy

Court-Appointed

Counsel for Augustine Gbao

Mr. John Cammegh
Mr. Scott Martin

SPECIAL COURT FOR SIERRA LEONE	
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COURT MANAGEMENT	
06 MAY 2009	
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1. The Sesay Defence hereby submits its Application for Extension of Time to File Appeal Brief and Extension of Page Limit.”¹
2. The Application was originally to be filed as a Response to the Kallon Defence Motion for an Extension of Time to File Appeal Brief and Extension of Time Limit”.² Unfortunately, due to problems with the Lotus Notes system, these submissions were handed to Court Management after the Decision had been filed but before it had been received by the Sesay Defence. The submissions made in that intended Response form the substance of this Application.

Extensions of Time

3. On 4th May 2009, the Appeals Chamber filed its Decision on the Kallon Defence Motion for an Extension of Time to File Appeal Brief and Extension of Time Limit”.³
4. In its Decision, the Appeals Chamber granted the Parties:
 - (i) an additional 10 days to file their Appeals Briefs (bringing the date of filing to 1st June 2009);
 - (ii) an additional 7 days to file their Responses (24th June 2009); and
 - (iii) no extension in respect of the time limit for filing Replies (29th June 2009).⁴
5. Furthermore, the Appeals Chamber, noting that the limit imposed “is sufficient for the Kallon Defence to fully address the issues on appeal”, held that the Appeal and Response Briefs must not exceed 150 pages or 45,000 words, whichever is greater.⁵
6. The Sesay Defence submits that there is good cause for an extension of time for the filing of Appeals Briefs and exceptional circumstances warranting an extension of the page limits that are specific to the Sesay Defence and which were not raised by the Kallon Defence and therefore not considered by the Appeals Chamber.

¹ The “Application”.

² *Prosecutor v. Sesay et al.*, 30th April 2009, SCSL-04-15-A-1257, the “Kallon Motion”.

³ *Prosecutor v. Sesay et al.*, SCSL-04-15-A-1263, the “Decision”.

⁴ Decision, p.222-3

⁵ Decision, p.222

SUBMISSIONS

Good cause for extending the time limits

7. The Sesay Defence requests that the parties be granted an additional two weeks beyond the presently allotted time to file their respective Briefs. That is, the Defence requests that the parties file their Appeal Briefs on the 15th June 2009 with the time limits for the filing of the Responses and Replies to remain as decided by the Appeals Chamber.

8. In addition to the reasons provided by the Kallon Defence in their request for an extension of time,⁶ the Sesay Defence requests an extension of time per the myriad alleged legal and factual errors made by the Trial Chamber. It is the submission of the Defence that the 46 grounds to be advanced by the Sesay Defence are arguable and meritorious: the grounds deserve proper argument and detailed scrutiny. The Sesay appeal grounds will require hundreds of legal hours to draft, if justice is to be done to their detail, subject matter and, in many cases, their factual underpinnings which require detailed reference to the trial record. This is not about rehearsing trial arguments but about elucidating and exposing fundamental errors of law and fact that flow throughout the trial and the evidence.

9. Moreover, as will be observed from the Sesay Notice of Appeal⁷, the grounds cover principally submissions alleging errors which amount to unreasonable assessments of fact requiring detailed analysis and careful drafting if the convicted person's case is to be argued properly. The time, care and analysis, which will be an essential part of constructing concise grounds, will detail carefully and comprehensively the issues and the support for the arguments. This will assist the Appeal Chamber in understanding the issues and enable the grounds to be argued expeditiously and efficiently. In other words, time granted now will save time in the longer term.

10. It is also relevant that the Sesay Defence is able to rely upon only a core of three people⁸ who are familiar with the case, having represented Sesay at the trial. Given the nature of the appeal – its focus on the trial record and the unreasonable assessment of facts – this is inevitable. Whilst the team will rely upon others to assist, it is inevitable that only those who

⁶ These reasons are the size of the Trial Chamber's Judgment and that Defence Counsel was appointed only after the Sentencing Judgment.

⁷ *Prosecutor v. Sesay et al.*, Sesay Notice of Appeal, SCSL-04-15-A-1255, 29th April 2009.

⁸ Mr. Jordash, Ms. Ashraph, and Mr. Kneitel, all of whom have been involved in Sesay's Defence for at least the past three years.

are familiar with the facts and the trial will be able to function to draft the grounds. Hence, the Sesay Defence makes its request for an extension of time in good faith and with real concern that the Sesay Defence will be unable to fulfil its legal and ethical duties, both in terms of presenting the convicted person's appeal and assisting the Appeal Chamber in understanding the complex and voluminous legal and factual issues which constitute the proposed appeal.

11. In *Prosecutor v. Sesay et al.*, a total of 99 grounds were raised.⁹ The Defence submits that, in comparison to the sizes of the appeals in *Prosecutor v. Fofana and Kondewa* and *Prosecutor v. Brima et al.*, the requested further two week extension is not excessive, given the initial extension of 10 days. In *Prosecutor v. Fofana and Kondewa*, in which a total of 16 grounds were raised,¹⁰ the Appeals Chamber granted the parties a four-week extension of time to file their respective appeal briefs.¹¹ In *Prosecutor v. Brima et al.*, in which a total of 54 grounds were raised,¹² the Appeals Chamber granted the parties a three-week extension to file their respective appeal briefs.¹³

Exceptional Circumstances warranting an Extension of the Page Limits

12. The Sesay Defence submits that there are exceptional circumstances warranting the extension of the page limits for its Appeal Brief. The Sesay Defence requests 300 pages to file its Appeal Brief.
13. The Sesay Defence, in its Notice of Appeal, has set out 46 separate grounds of appeal. It is clear that the Sesay Defence Appeal will be more sizeable than the Prosecution, with its 3 grounds or than the Kallon and Gbao Defences with their 31 and 19 grounds, respectively.
14. In the *Prosecutor v. Fofana and Kondewa*, the Appeals Chamber granted the parties each 150

⁹ Three for the Prosecution, forty-six for Sesay, thirty-one for Kallon, and nineteen for Gbao.

¹⁰ Ten grounds raised by the Prosecution, six by Kondewa, and none by Fofana.

¹¹ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-A-804, "Decision on Urgent Joint Defence and Prosecution Motion for an Extension of Time for the Filing of Appeal Briefs and Extension of Page Limits for Appeal Briefs," 7 November 2007. The notices in *Prosecutor v. Fofana and Kondewa* were filed on 23 October 2007. In this Decision, the parties were granted an extension of time to file their respective briefs on 11 December 2007.

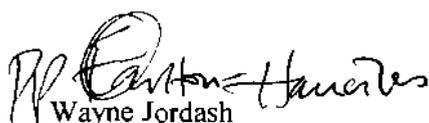
¹² Nine grounds for the Prosecution, twelve by Brima, thirteen by Kamara, and twenty by Kanu.

¹³ *Prosecutor v. Brima et al.*, SCSL-04-16-A-640, "Decision on Urgent Joint Defence and Prosecution Motion for an Extension of Time for the Filing of Appeal Briefs," 10 August 2007. The notices in *Brima et al.* were filed on 2 August 2007. The parties were granted an extension of time to file their respective briefs on 13 September 2007.

pages for their Appeals Briefs where the Prosecution asserted ten grounds and the Kondewa Defence, six. In *Prosecutor v. Brima et al.*, the Prosecution were given 250 pages for their 9 grounds of appeal, the Brima Defence 120 pages for its 12 grounds (4 of which were abandoned), the Kamara Defence 120 pages for its 13 grounds (5 of which related to sentence) and the Kanu Defence for its 19 grounds (8 of which related to sentence). It is submitted that there is a clear disparity in relation to the pages afforded to the Sesay defence given the size of its appeal, in comparison both with the other parties in the RUF trial and in comparison with the parties in the CDF and AFRC trials.

15. The substance of Sesay Defence's 46 grounds of appeal cannot be elucidated clearly and accurately where a page limit of 150 pages exists. Such a page limit across the Defence teams – and the page limit of 220 pages for the Prosecution – impacts unfairly and disproportionately on the Sesay Defence, with its more sizeable and arguably more complex appeal. The Sesay Defence cannot adequately prepare its Appeal Brief in 150 pages as such a limit would render it unable to provide a proper explanation of the grounds of the Mr. Sesay's Appeal.
16. The Sesay Defence does not require an extension to the page limits for the Reply and is willing, if granted an extension for the page limits for its Brief, to limit its Response to half of the limit set by the Appeals Chamber, that is, to a page limit of 75 pages.
17. For the reasons outlined above, per the myriad alleged legal and factual errors and the nature thereof, the Sesay Defence submits that 300 pages are required, in the interests of justice, to argue the grounds of appeal fully.

Filed 5 May 2009


Wayne Jordash
Sareta Ashraph
Jared Kneitel