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SCSL-04-15-A
(229-234)

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**SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone**

IN THE APPEALS CHAMBER

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

Registrar: Mr. Herman Von Hebel

Date filed: 06 May 2009

THE PROSECUTOR

Against

**ISSA HASSAN SESAY
MORRIS KALLON
AUGUSTINE GBAO**

Case No. SCSL-04-15-A

PUBLIC

URGENT

**PROSECUTION RESPONSE TO SESAY DEFENCE URGENT APPLICATION FOR EXTENSION
OF TIME TO FILE APPEAL BRIEF AND EXTENSION OF PAGE LIMIT**

Office of the Prosecutor:

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Mr Vincent Wagona
Dr Niina Jørgensen
Mr Reginald Fynn
Ms Elisabeth Baumgartner
Ms Régine Gachoud

Defence Counsel for Issa Hassan Sesay

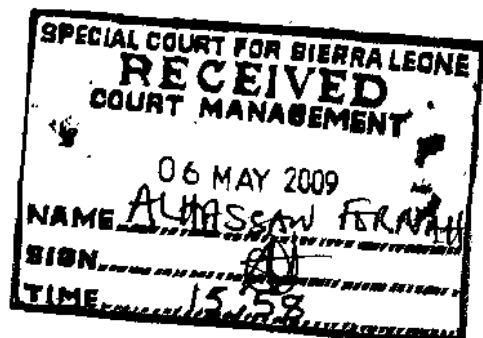
Mr Wayne Jordash
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Defence Counsel for Morris Kallon

Mr Charles Taku
Mr Kennedy Ogeto

Defence Counsel for Augustine Gbao

Mr John Cammegh
Mr Scott Martin



1. The Prosecution files this response to the “Sesay Defence Urgent Application for Extension of Time to File Appeal Brief and Extension of Page Limit” (the “**Sesay Motion**”), dated 5 May 2009, and filed by the defence for Issa Hassan Sesay (the “**Defence**”) on 6 April 2009.
2. The Sesay Motion seeks an extension of time for the filing of the appeal briefs in this case, of an additional two weeks in addition to the extension of 10 days already granted in the Pre-Hearing Judge’s Decision of 4 May 2009 (the “**4 May Decision**”).¹
3. The Sesay Motion also seeks an extension of the page limit for the Sesay appeal brief, in addition to the extension of 50 pages already granted in the 4 May Decision, such that the page limit for the Sesay appeal brief would be double that provided for in the 4 May Decision (from 150 pages to 300 pages).
4. The Prosecution opposes the Sesay Motion. Furthermore, for the reasons given in paragraph 11 of the “Prosecution Response to Kallon Defence Motion for Extension of Time to File Appeal Brief and Extension of Page Limit” dated 1 May 2009 (the “**Prosecution Response to Kallon Motion**”), the Prosecution submits that if the requested extensions were granted to the Sesay Defence, corresponding extensions of time and page limits would have to be granted to the Prosecution for the Prosecution response brief. The Prosecution submits that if the Sesay Defence has an additional two weeks to prepare an appeal brief double the size of that presently envisaged, it inevitably follows that the Prosecution will require additional time and pages to respond to the Sesay appeal brief.
5. The main justification advanced by the Sesay Defence for the requested extensions is the number of grounds of appeal advanced by the Sesay Defence.² The Sesay Motion notes that the Sesay Defence has advanced 46 grounds of appeal. The Prosecution notes however that:

¹ “Decision on ‘Kallon Defence Motion for Extension of Time to File Appeal Brief and Extension of Page Limit’”, Pre-Hearing Judge, 4 May 2009.

² Sesay Motion, para. 8.

- a) the 4 May Decision was given after the notices of appeal had been filed in this case, setting out the grounds of appeal of each of the parties;
- b) the “Kallon Defence Motion for Extension of Time to File Appeal Brief and Extension of Page Limit” of 30 April 2009” (which led to the 4 May Decision) cited, as one justification for the Kallon request for an extension of time and page limits, the fact that Kallon was advancing 31 grounds of appeal;³ and
- c) the Prosecution Response to Kallon Motion noted that the Defence teams for all three accused had raised a combined total of some 96 grounds of appeal (some with multiple sub-grounds or issues).⁴

The number of grounds of appeal raised by Sesay cannot therefore in the Prosecution’s submission be a matter that was not already considered when the 4 May Decision was made.

- 6. The Sesay Motion argues that many of the grounds of appeal raised by Sesay concern alleged errors of fact.⁵ The apparent implication is that grounds of appeal alleging errors of fact require more time to prepare, and that “time granted now will save time in the longer term”.⁶ The Prosecution submits that this is not necessarily the case, but that in any event, this must be a matter that was considered by the Pre-Hearing Judge when making the 4 May Decision.
- 7. The Sesay Motion also argues that the Sesay Defence team only has three members who are familiar with the case having represented Sesay at trial, although the Sesay Defence team can rely on others to assist.⁷ The Prosecution submits that this circumstance does not render the Defence team “under resourced” by comparison with the typical defence team in a post-judgement appeal before an international

³ “Kallon Defence Motion for Extension of Time to File Appeal Brief and Extension of Page Limit”, 30 April 2009, para. 7.

⁴ Prosecution Response to Kallon Defence Motion for Extension of Time to File Appeal Brief and Extension of Page Limit”, 1 May 2009, para. 11.

⁵ Sesay Motion, para. 9.

⁶ Sesay Motion, para. 9.

⁷ Sesay Motion, para. 10.

criminal tribunal, and that this is therefore not an unusual circumstance justifying an extension of time.

8. Paragraph 11 of the Sesay Motion makes comparisons with the extensions of time granted in other post-judgement appeals before the Special Court, and apparently suggests that the number of grounds of appeal is the criterion for determining how long an extension should be granted for filing appeal briefs. However, as submitted in the Prosecution Response to Kallon Motion,⁸ a requested extension of time must depend on the totality of the circumstances of the individual case. As the Prosecution there submitted, extensions of time for filing appeal briefs do not depend merely on the size of the case at trial or the length of the trial judgement. It is further submitted that extensions of time also do not depend solely on the number of grounds of appeal raised. In the *AFRC* case and *CDF* case there were factors present that are not present in the instant case.⁹ The mere fact that extensions of time of a certain length were granted in those cases is not determinative of whether a given extension of time should be granted in the present case.
9. As to the requested extension of page limits, the Sesay Motion again relies primarily on the number of grounds of appeal raised as justification.¹⁰ The Sesay Motion points out that in the various cases before the Special Court, different appellants have raised differing numbers of grounds of appeal, such that the number of pages that an accused has for each ground of appeal has been different.
10. The Prosecution submits that it is inevitable that in different cases, different accused will have a different “average” number of pages per ground of appeal for their appeal brief. The mere fact that a party raises a greater number of grounds of appeal does not automatically mean that that party is entitled to more pages for their appeal brief. It must again depend on all the circumstances of the individual case. As has been submitted above, the number of grounds of appeal raised by the Sesay Defence must have been one of the matters in the contemplation of the Pre-Hearing Judge when making the 4 May Decision. The mere fact that Sesay has raised so many grounds of

⁸ Prosecution Response to Kallon Motion, para. 6.

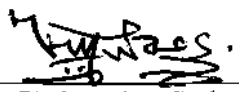
⁹ Prosecution Response to Kallon Motion, paras. 5-6.

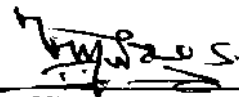
¹⁰ Sesay Motion, para. 14.

appeal therefore cannot at this stage be a "new" consideration justifying an extension of pages. The Sesay Motion does not in substance advance any other justification for a further extension of the page limit.

11. It is therefore submitted that the Sesay Motion should be denied.
12. It is reiterated that the Prosecution submits that if the requested extensions were granted to the Sesay Defence, corresponding extensions of time and page limits would have to be granted to the Prosecution for the Prosecution response brief.
13. The Prosecution requests an immediate ruling on the Sesay Motion in order to enable the parties to plan their work.

Filed in Freetown,
6 May 2009


For Christopher Staker


Vincent Wagona

Index of Authorities

Motions

Prosecutor v. Sesay et al, SCSL-04-15-A-1257, “Kallon Defence Motion for Extension of Time to File Appeal Brief and Extension of Page Limit”, 30 April 2009.

Prosecutor v. Sesay et al, SCSL-04-15-A-1260, “Prosecution Response to Kallon Defence Motion for Extension of Time to File Appeal Brief and Extension of Page Limit”, 1 May 2009.

Prosecutor v. Sesay et al, SCSL-04-15-A-1264 “Sesay Defence Urgent Application for Extension of Time to File Appeal Brief and Extension of Page Limit”, 5 May 2009

Decisions

Prosecutor v. Sesay et al, SCSL-04-15-A-1263, “Decision on Kallon Defence Motion for Extension of Time to File Appeal Brief and Extension of Page Limit”. Pre-Hearing Judge, 4 May 2009.