SPECIAL COURT FOR SIERRA LEONE
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THE TRIAL CHAMBER

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

Registrar: Robin Vincent

Date: 7 September 2004

PROSECUTOR Against **Issa Hassan Sesay**
Morris Kallon
Augustine Gbao
(Case No.SCSL-04-15-T)

DISSENTING OPINION OF JUDGE THOMPSON ON DECISION ON APPLICATION FOR LEAVE TO APPEAL GBAO – APPLICATION TO WITHDRAW COUNSEL

Office of the Prosecutor:
Luc Coté
Lesley Taylor

Defence Counsel for Issa Hassan Sesay:
Tim Clayson
Wayne Jordash

Defence Counsel for Morris Kallon:
Shekou Touray
Raymond Brown

Defence Counsel for Augustine Gbao:
Girish Thanki
Andreas O'Shea

DISSENTING OPINION OF JUDGE BANKOLE THOMPSON[1]

1. With the greatest respect to my learned Brothers, the Hon. Benjamin Mutanga Itoe, Presiding Judge and the Hon. Judge Pierre Boutet, the Decision to grant leave in this matter to the Defence to file an interlocutory appeal against the Chamber's Decision on the Third Accused's application to withdraw his Counsel from further representing him in this case is seriously flawed for the reasons articulated in the succeeding paragraphs.

2. My primary concern is that the issue which purports to be the legal foundation of the instant application is a glaring and patent mis-characterisation of the actual issue that came up before the Trial Chamber for determination on 6 July 2004. The purported issue which is the basis of the instant application is stated as the right to legal representation and the right to defend oneself. As the records show,[2] the issue that fell to be determined by the Trial Chamber on 6 July 2004 was whether or not to grant the Third Accused's application not to allow any legal representation on his behalf including his present lawyers in that he did not recognize the Special Court on the grounds that the Court is illegal and political in nature.

3. At no time did learned Counsel for the Third Accused, on behalf of his client, or the Third Accused himself in person, expressly or impliedly, seek leave of the Chamber to be granted the right of self-representation. Neither of these rights was in issue before the Chamber as the main basis for the application or even collaterally or tangentially. It, therefore, defies logic and common sense to suggest that the right of legal representation was in issue in the face of the Third Accused's own unambiguous and emphatic denunciation of the Court as an illegal and a political entity.

4. By parity of reasoning, it is disingenuous to proffer that an accused person who avows his non-recognition of the Court before which he is indicted and protests the legality of the said Court is, by some curious twist of logic, asserting a right to legal representation or self-representation. It is also an example of convoluted legal thinking to suggest that a Court confronted with an issue of withdrawal

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[1] On 4 August 2004, the majority of the Trial Chamber rendered its Decision on Application for Leave to Appeal Gbao - Decision on Application to Withdraw Counsel ("Decision"), granting leave to appeal the Decision on Application to Withdraw Counsel of 9 July 2004. As already anticipated in the Decision, Hon. Judge Thompson is hereby appending his Dissenting Opinion thereto.

[2] *Prosecutor v. Sesay et al.*, Case No. SCSL-2004-15-T, Transcripts of open session proceedings of 6 July 2004.

of legal representation should embark, as it were, upon an imaginary and speculative intellectual quest for various legal options open to the accused, and as it were, offer him the right of self-representation as a judicial carrot in return for his recognition of the legality and legitimacy of the Court. Courts do not have a mandate to try hypothetical issues.

5. To adopt such an approach as articulated in paragraph 4 above is, in my considered judgement, equivalent to a form of judicial condonation of political blackmail and a *fiat* to politically-motivated accused persons to hold the judicial process to ransom by threats of non-recognition and challenges to its legality, thereby making a mockery of the rule of law. It would seem to be an abuse by the Court of its process.

6. It seems to me that the application must fail for the reasons articulated in the foregoing paragraphs, since, in my judgement, the mis-characterisation of the legal issue forming the basis of the impugned Decision is fatal to the instant application. It must also fail for the additional reason that the Accused is in breach of Rule 45*bis*(B) of the Rules of Procedure and Evidence of the Special Court ("Rules") if it was ever his intention to apply for self-representation. Hence, it is not necessary for me to evaluate the said application as to its merits in terms of Rule 73(B) of the Rules.

Done at Freetown this 7th day of September 2004

Judge Bankole Thompson

Trial Chamber

[Seal of the Special Court for Sierra Leone]