067 SCSL-2003-06-PT-(1253-1260) 1253

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

Before: The Appeals Chamber of the Special Court

Registrar: Robin Vincent

Date filed: 24th September 2003

THE PROSECUTOR

Against

ALEX TAMBA BRIMA aka TAMBA ALEX BRIMA aka GULLIT

CASE NO. SCSL – 2003 – 06 – PT

PROSECUTION RESPONSE TO DEFENCE MOTION FOR EXTENSION OF TIME FOR LEAVE TO APPEAL AGAINST THE DECISION AND CONSEQUENTIAL ORDER OF JUDGE BENJAMIN MUTANGA ITOE DATED 22 JULY 2003 REFUSING AN APPLICATION FOR FOR BAIL OR PROVISIONAL RELEASE

Office of the Prosecutor:
Luc Côté, Chief of Prosecutions
Robert Petit, Senior Trial Counsel
Paul Flynn, Trial Counsel

Defence Counsel:
Terrence Michael Terry

SPECIAL COURT FOR SIERRA LEONE
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1254

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INTRODUCTION

The Prosecution submits that the Defence Motion for an extension of time concerning this specified motion, should be denied as ill founded since it does not demonstrate circumstances which constitute "good cause" to warrant the extension sought by the Defence

A. Procedural Matters

1. The Applicant was arrested and transferred to the Special Court for Sierra Leone on 10 March 2003 April.

2. On 22nd July 2003 the Trial Chamber of the Special Court for Sierra Leone (Judge Benjamin Mutanga Itoe) delivered a Ruling and Decision relating to a Motion Applying for Bail or Provisional Release filed by the Applicant. The Trial Chamber refused the Motion aforesaid. The written Decision was served on the Defence Counsel on 4th September 2003.

3. Pursuant to Rule 65 (E) of the Rules of Procedure any decision on bail shall be subject to appeal where leave is granted by a Single Judge of the Appeals Chamber subject to good cause being shown. Such Appeal must be filed with 7 days of the impugned decision. The deadline for submission of a leave to appeal in this case by the Defence would have been 11th September 2003 in accordance with the direction of Judge Bankole Thompson dated 4th September 2003[1].

4. Pursuant to Rule 116 of the Rules of Procedure however the Appeals Chamber may grant a motion to extend a time limit upon a showing of good cause.

5. The Defence thereafter filed an Application for an Extension of Time for Leave to be granted to the Accused the Applicant herein TAMBA ALEX BRIMA, to file a Defence Motion to Appeal against the said Decision and Consequential Orders, 5 days after expiry of the deadline, on 16th September 2003.

ARGUMENT

The Applicant has failed to show "good cause"

6. The Defence submits in the Defence Motion that the extension of time sought is warranted due to the illness of the said lead Counsel for the Defence Terence Michael Terry, and that such illness constitutes good cause to warrant an extension of time for leave to be granted to enable the accused to file Motions for Appeal.

[1] See Court Management Memo dated 4th September 2003 attached hereto

7. The Defence has therefore confined itself to relying on the grounds of Defence Counsel's illness to support its application. The Prosecution submits that this therefore is the only issue to be determined by the Appeals Chamber, since if the Appeals Chamber were to rule in favour of the applicant, he must then in accordance with the Rules of Procedure apply to a Single Judge of the Appeals Chambers for leave to appeal the aforesaid decision.

8. The Prosecution argues that in the present Defence Motion, the applicant has failed to demonstrate the manner in which he was precluded or prevented from preparing or filing a Defence Motion for Appeal and therefore has failed to show good cause..

9. In furtherance of this application the Defence refers to and seeks to rely on the contents of the letter of Dr. Walter Renner of 8 Pultney Street Freetown dated 15th September 2003 together with an undated letter of Dr. Roland Doumith of Paris referring in general terms to medical treatment which the said lead Counsel for the Defence Terence Michael Terry was undergoing together with the sworn affidavit of Mr Terry's employee, Mr. Ayo Max Dixon attesting as to his employer's absence abroad on 4th September 2003.

10. The Prosecution submits that the ill health argument is not adequately supported from the contents of the letters from his medical attendants exhibited with the Motion. The letter from Dr Renner simply states is that his treatment is not completed. Significantly nowhere does it indicate that he could not work during the period of appeal. Furthermore there is no mention that Defense Counsel has been ill for any period much less than he has been unable to work or at least draft a Request for leave to Appeal.

11. The undated letter of Dr. Doumith in essence states that the doctor has previously examined Counsel during the course of the year and more recently on September 15th and that Counsel should return to Paris within a month to undergo additional diagnostic procedures. This document, however, does establish that Defence Counsel could be unfit

indefinitely or at least until he obtains a certificate of fitness from Dr. Doumith[2]. Again in no way does this document support that Counsel was unable to work or draft a request for leave to appeal between the period 4th September 2003 and 11th September 2003 and neither does this document show good cause..

12. The Prosecution respectfully submits that these documents fail to show "good cause" as to why the application should be granted. Furthermore, it is to be noted that Defence Counsel was present before the Special Court on 22nd July 2003 when the Trial Chamber delivered its decisions orally. The Defence in its present Motion, in addition to specifying the "good cause" to be shown i.e. the illness of Defence Counsel, also articulate the grounds of the proposed appeal, should this Court be disposed to grant an extension of time to appeal.

13. Those grounds and therefore the essence of the proposed Request for Leave to Appeal must have been known to the Applicant since July 23rd and given the apparent importance and urgency which the Defence has attributed to this case, the Prosecution considers it both inexplicable and unacceptable that the Defence (even without the benefit of a copy of the written transcript) did not draft the grounds of the proposed Request for leave to Appeal, a basic, familiar and brief document which need only list grounds to be invoked in the substantive brief in the interim.

14. The Prosecution notes that what the documents offered in support of the Application do show is a clear uncertainty as to when Defence Counsel is likely to be fit to resume his duties. Therefore to grant the application on the basis of these documents would essentially create a lacuna, by leaving proceedings open ended until such time as the doctor sees fit to allow Counsel to proceed and thereby indirectly request a suspension of proceedings.

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[2] In essence this letter states that the doctor has previously examined Counsel during the course of the year and more recently on September 15th and that Counsel should return to Paris within a month to undergo additional diagnosis procedures

15. To request such a suspension of proceedings is wholly unacceptable and would create a totally unworkable and dangerous precedent. The Prosecution also submits that such a suspension would amount to a conflict with the terms of the Order for Legal Assistance granted by Judge Benjamin Mutanga Itoe on 9th March 2003 by failing to comply with the provisions of Rule 45 (C) of the Rules of Procedure which requires the Principal Defender assigned to be available on a full time basis to the case.

16. The Prosecution notes with concern that that this is not the first instance in this present case, during which the Defence has failed to meet its obligation to comply with necessary deadline/ s as prescribed by the Rules of Procedure[3]. On the previous occasion, the reason again given by the Defence in support of its application for an extension of time and for non compliance with deadlines was as now, the illness of lead Counsel for the Accused.

17. Since Mr Terence Terry is described throughout the pleadings as lead Counsel for the Defense, it is to be presumed that the accused is also represented by capable and qualified associate Counsel or Junior Counsel who, in the instant case, could have prepared a draft application for approval and submission by lead Counsel. If no such associate or Junior Counsel were available[4], then if the Defence Counsel's health rendered him unable to complete his mandate, as an officer of the Court, concerned with the integrity of the proceedings, he should either refer the mandate to an associate or withdraw from the case.

18. While the Prosecution acknowledges that Lead Counsel appears to be chronically ill and is sympathetic to his condition, it must submit that the integrity of the Rules of Procedure and interest in timely continuance of proceedings both demand that the Rules be complied with in full. The Order for Legal Assistance in this case granted by the

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[3] The Defence by Notice of Motion dated and filed 9 June 2003 applied for an extension of time within which to apply to the Appeals Chamber for leave to appeal against the Order of Judge Bankole Thompson dated May 23rd 2003 in which the learned judge granted the Prosecutions Motion for Protective Measures for Witnesses and Victims.

[4] It is submitted that Defence Counsel because of the circumstances could equally have also availed himself of the services and facilities provided by the Defence Office.

Court[5] enjoined the accused to select Counsel who satisfies the requirements of Rule 45 (C) of the Rules of Procedure. By filing this Motion Counsel acknowledges that he is through illness, unfit to represent his client who is entitled to have a Counsel who is available to fulfil his duties.

MISCELLANEOUS

19. The Prosecution notes that once more Counsel for the Applicant has chosen to ignore the Practice Direction on Filing Documents before the Special Court for Sierra Leone signed by the Registrar and entered into force on 27 February 2003. Counsel has consistently filed in complete disregard of article 8 of said directive, more specifically as it relates to font size and line spacing and thereby filing oversized and barely legible documents. This has previously caused Counsel to be issued notices of deficient filing but obviously to no avail as the instant Application demonstrates. "The Prosecutor intends to formally notify the Registrar and request that alternative sanctions be considered against Counsel to insure that he thereafter respects the relevant directive as is the case of all other Counsels now practicing before the Special Court"

CONCLUSION

Based upon the foregoing, the Prosecution therefore respectfully submits that the Appeals Chamber dismiss the Defence Motion in its entirety.

Freetown, 24th September 2003

For the Prosecution

Luc Côté
Chief of Prosecutions

Robert Petit
Senior Trial Counsel

Paul Flynn
Trial Counsel

[5] See Para 13 above

PROSECUTION INDEX OF ATTACHMENTS

1. Court Management Memo dated 4th September 2003 re Time Limits for Appeal

SPECIAL COURT FOR SIERRA LEONE
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE
PHONE: +39 0831 257000 or +232 22 297000 or +1 212 963 9915 Ext:178 7000
FAX: +39 0831 257001 or +232 22 297001 or +1 212 963 9915 Ext: 178 7001

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COURT MANAGEMENT MEMORANDUM

Date:	4th September, 2003	Ref:	NG/ CMS/LO/034/03
To:	Mr. Terence M Terry – Lead Counsel Mr. Easmon Ngakui – Co-Counsel Mr. Sylvain Roy – Chief of Defence Mr. Luc Coté – Chief of Prosecution	Through: From:	Mr. Len Dolphin – Chief of Court Management Mr. Neil Gibson
Cc:	Judge Bankole Thompson, Presiding, Matteo Crippa, Chambers Support		
Cases:	**Alex Tamba Brima, Case No. SCSL-03-06**		
Subject:	**Time Limits**		

Len Dolphin

1. Judge Bankole Thompson as Presiding Judge of the Trial Chamber has directed me to inform you in regards to the Ruling of Judge Benjamin Itoe on the Motion Applying for Bail or for Provisional Release, deemed served on the 5th of September, 2003, the deadline for lodging an Appeal would be close of business on the 11th day of September, 2003 pursuant to Rule 65(e), of the Rules of Procedure and Evidence.

Regards,

M Edmonds

for N. Gibson