

TRIAL CHAMBER II (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”), composed of Justice Teresa Doherty, presiding, Justice Richard Lussick and Justice Julia Sebutinde;

BEING SEISED of the Renewed Defence Motion for Defects in the Form of the Indictment and Application for Extension of Time (“motion”), filed by the Accused Alex Tamba Brima on 4 March 2005;

NOTING the submissions of the Parties;

NOTING the Decision on the Defence Motion for Defects in the Form of the Indictment, dated 2 March 2005;

NOTING the Order of the President pursuant to Rule 4, dated 2 March 2005;

CONSIDERING the provisions of the Statute of the Special Court (“Statute), specifically Article 17, and the Rules of Procedure and Evidence (“the Rules”), in particular Rules 7, 50, 66, 72 and 73 of the Rules;

HEREBY decides the renewed Motion.

I. SUBMISSION OF THE PARTIES

1. Defence Counsel applies for an extension of time for filing a motion pursuant to Rule 72(B) challenging the form of the indictment and renews their “motion for defects in the form of the indictment”. They specify the defects alleged in the same form as their original motion dated 1 March 2005.

2. They restate the same grounds and, in addition, submit that Rules 66(A)(ii), 72(A), (B)(ii) and (F) support their original application, that there was non-compliance with Rule 4 and that the decision was rendered prior to submission of the Prosecution reply.

3. Prosecution in response submit that the motion, raising objections based on alleged defects in the form of the indictment is a preliminary motion within the terms of Rule 72(B); leave to bring the motion was not sought; there is no power to reconsider “a previous decision on a preliminary motion”; there was no breach of Rule 4; and there are no specific grounds for an extension of time other than a reference to the rights of the Accused to a fair trial.

4. In reply Defence rely on Rule 66(A)(i) and on a decision in the case of *Prosecutor v Issa Hasan Sesay*¹.

¹ *Prosecutor v. Issa Hassan Sasay*, Case No. SCSL-2003-05-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment, 13 October 2003.

JLS.  

II. DELIBERATIONS

5. Counsel for the Accused Brima filed a Defence Motion for Defects in the Form of the Indictment on 1 March 2005. The Motion was a preliminary motion and therefore should have been filed at the very latest, by the 27 May 2004, which was the last day of the ten-day period allowed by Rule 50 (B) (iii). Notwithstanding this, the Motion did not seek an extension of time.
6. The Trial Chamber, in its decision of the 2 March 2005, found that the Motion was clearly out of time and dismissed it.
7. The present Renewed Defence Motion for Defects in the Form of the Indictment and Application for Extension of Time (if Applicable), seeks exactly the same relief as the previous motion. Counsel for the Accused Brima has not referred us to any statutory provision, nor to any jurisprudence, which would support the view that we have jurisdiction to review our own previous decision.
8. A motion such as the present one is not provided for in the Rules of Procedure and Evidence and does not form part of the procedures of the Trial Chamber.
9. Accordingly, we find that the Trial Chamber does not have jurisdiction to entertain the Motion. In the result, there is no need for us to consider the merits of the Motion
10. Further, the Defence questions the validity of the first Decision by contending that the President's Order pursuant to Rule 4 granting Justice Sebutinde authority to exercise her functions away from the seat of the Special Court postdates the first Decision. This very serious allegation impugns the integrity of the Judges and has no factual basis.
11. The record of filing with the Court Management shows that the Order of the President was filed at 17.00 hours on the 2 March 2005 and that the Decision of the Trial Chamber was filed next day at 10.31 hours which facts were made known to Defence Counsel by way of electronic notification specifying the filing times and dates prior to the filing of the instant motion. To impugn the integrity of the Judges when contrary facts were within the knowledge of Defence Counsel verges on the scandalous.
12. Secondly, Defence Counsel contends that the Trial Chamber has not awaited the complete submissions of the Parties to the first Motion, in particular a response of the Prosecutor and a Defence reply thereto.
13. There is no mandatory obligation on the Trial Chamber to await responses or replies if the Trial Chamber is of the opinion that the law and facts are sufficiently clear to enable it to rule on the motion particularly when a delay could jeopardise the commencement of the trial and cause hardship to the accused.


FOR THE FOREGOING REASONS

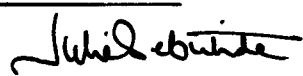
The Trial Chamber dismisses the motion.



Done at Freetown this 24th day of May 2005


Justice Richard Lussick


Justice Tereza Bohorin
Presiding Judge


Justice Julia Sebutinde

[Seal of the Special Court for Sierra Leone]





