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SCSL-2004-14-T  
(11208 - 11211)

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**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:** 16<sup>th</sup> of December, 2004

**PROSECUTOR**                                  **Against**                                  **SAM HINGA NORMAN**  
**MOININA FOFANA**  
**ALLIEU KONDEWA**  
(Case No.SCSL-04-14-T)

**DECISION ON APPLICATION BY FIRST ACCUSED FOR LEAVE TO MAKE  
INTERLOCUTORY APPEAL AGAINST THE DECISION ON THE FIRST ACCUSED'S  
MOTION FOR SERVICE AND ARRAIGNMENT ON THE CONSOLIDATED INDICTMENT**

**Office of the Prosecutor:**

Luc Côté  
James Johnson

**Court Appointed Counsel for Sam Hinga Norman:**

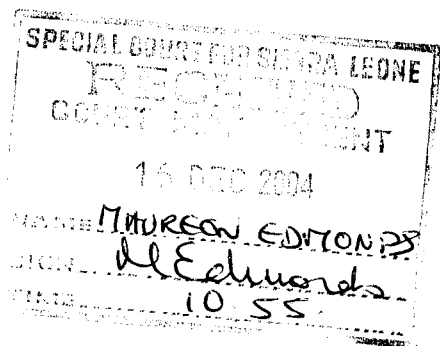
Dr. Bu-Buakei Jabbi  
John Wesley Hall, Jr.  
Tim Owen, Q.C.

**Court Appointed Counsel for Moinina Fofana:**

Michiel Pestman  
Arrow Bockarie  
Victor Koppe

**Court Appointed Counsel for Allieu Kondewa:**

Charles Margai  
Yada Williams  
Ansu Lansana



**THE TRIAL CHAMBER** ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court") composed of Hon. Judge Benjamin Mutanga Itoe, Presiding Judge, Hon. Judge Bankole Thompson, and Hon. Judge Pierre Boutet;

**NOTING** the *Application by First Accused for Leave to Make Interlocutory Appeal Against the Decision on the First Accused's Motion for Service and Arraignment on the Consolidated Indictment*, filed by Court Appointed Counsel for the First Accused, Sam Hinga Norman, on the 2<sup>nd</sup> of December, 2004;

**NOTING** the *Prosecution Response "Application by First Accused for Leave to make Interlocutory Appeal Against the Decision on the First Accused's Motion for Service and Arraignment on the Consolidated Indictment"*, filed by the Prosecution on the 8<sup>th</sup> of December, 2004;

**NOTING** that no Reply has been filed by the First Accused within the time limits proscribed by Article 9 of the Practice Direction for Certain Appeals Before the Special Court, dated the 30<sup>th</sup> of September, 2004;

**MINDFUL** of the Trial Chamber's *Decision on the First Accused's Motion for Service and Arraignment on the Consolidated Indictment*, including Separate Concurring Opinion of Hon. Judge Bankole Thompson and Dissenting Opinion of Hon. Judge Benjamin Mutanga Itoe, dated the 29<sup>th</sup> of November, 2004 ("Decision on Norman's Indictment");

**NOTING** the Consolidated Indictment against the Accused, Sam Hinga Norman, Moinina Fofana, and Allieu Kondewa, approved on the 5<sup>th</sup> of February, 2004;

**NOTING** that Rule 73(B) of the Rules of Procedure and Evidence for the Special Court for Sierra Leone ("Rules") provides that:

Decisions rendered on such motions are without interlocutory appeal. However, in exceptional circumstances and to avoid irreparable prejudice to a party, the Trial Chamber may give leave to appeal. Such leave should be sought within 3 days of the decision and shall not operate as a stay of proceedings unless the Trial Chamber so orders.

**NOTING** that Rule 73(B) of the Rules generally does not confer a right of interlocutory appeal but only grants leave to appeal in exceptional cases;

**NOTING** that the criteria of exceptional circumstances and irreparable prejudice outlined in Rule 73(B) of the Rules are conjunctive and that the Trial Chamber ruled in this regard in the case of *Prosecutor v. Sesay, Kalon and Gbao* and *Prosecutor v. Brima, Kamara and Kanu*, that:

[T]his rule involves a high threshold that must be met before this Chamber can exercise its discretion to grant leave to appeal. The two limbs of the test are clearly conjunctive, not disjunctive; in other words, they must *both* be satisfied;<sup>1</sup>

**NOTING** the Trial Chamber's prior ruling in the case of *Prosecutor v. Sesay, Kallon and Gbao*, where the Trial Chamber stated that:

[T]he overriding legal consideration in respect of an application for leave to file an interlocutory appeal is that the applicant's case must reach a level of exceptional circumstances and irreparable prejudice.

<sup>1</sup> *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-2004-15-PT, and *Prosecutor v. Brima, Kamara and Kanu*, Case No. SCSL-2004-16-PT, Decision on Prosecutor's Application for Leave to File an Interlocutory Appeal against the Decision on the Prosecution Motions for Joinder, 13 February 2004.

Nothing short of that will suffice having regard to the restrictive nature of Rule 73(B) of the Rules and the rationale that criminal trials must not be heavily encumbered and consequently unduly delayed by interlocutory appeals;

**CONSIDERING** that the arguments, submissions and grounds advanced by the Defence for the First Accused in its application for leave to appeal interlocutorily against the Decision on Norman's Indictment (which arguments, grounds, and submissions the Chamber has meticulously examined) have satisfied the conjunctive test of "exceptional circumstances" and "irreparable prejudice" prescribed by Rule 73(B);

**CONSIDERING** that the Application for leave to appeal raises serious issues that concern the charges against the Accused contained in the Consolidated Indictment, and that may impact on the Accused right to a fair trial and the presentation of the Prosecution case;

**CONSIDERING** that the Application raises issues of fundamental importance to the Special Court and to international criminal law generally;

**CONVINCED ALSO** of the controversial nature of the specific issues addressed by the Trial Chamber in the Decision which is the subject of the application herein and the diverse legal perspectives from which they can be viewed as evidenced by the Majority Decision, Separate Concurring Opinion, and Dissenting Opinion of the Judges of the Trial Bench; and that it does not conduce to the overall interests of justice and the preservation of the integrity of the proceedings to leave the law on such important issues in international criminal adjudication unsettled and in a state of uncertainty;

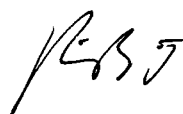
**CONSIDERING** that the differences of legal opinion expressed by the Judges on the Decision on Norman's Indictment on issues of such fundamental importance constitute exceptional circumstances;

**CONSIDERING** that irreparable prejudice may ensue to the integrity of the judicial system, that could not be cured through the final disposition of the trial, should no leave to appeal be granted;

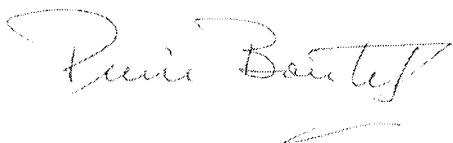
**FINDING** that there is no good cause to grant a stay of proceedings;

**NOTING** the *Order Pursuant to Rule 4*, issued on the 15<sup>th</sup> of December, 2004, by Justice Emmanuel Ayoola, President of the Special Court, authorizing Hon. Judge Benjamin Mutanga Itoe and Hon. Judge Pierre Boutet to exercise their functions away from the seat of the Special Court;

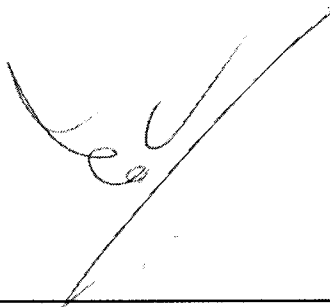
**THE TRIAL CHAMBER HEREBY GRANTS** the application for leave to appeal and **DENIES** the request for a stay of proceedings.



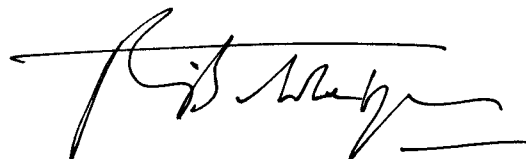
Done in Freetown, Sierra Leone, this 16<sup>th</sup> day of December, 2004



Hon. Judge Pierre Boutet



Hon. Judge Benjamin Mutanga Itoe  
Presiding Judge, Trial Chamber



Hon. Judge Bankole Thompson

[Seal of the Special Court for Sierra Leone]

