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SCSL-2004-14-T
(13010 - 13012)

13010

SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR

FREETOWN - SIERRA LEONE

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

Registrar: Robin Vincent

Date filed: 8th June 2005

THE PROSECUTOR

Against

SAM HINGA NORMAN

MOININA FOFANA

ALLIEU KONDEWA

CASE NO. SCSL - 2004 - 14 - T

**PROSECUTION RESPONSE TO NORMAN COUNSEL'S REQUEST FOR LEAVE TO
APPEAL RULE 46(H)**

Office of the Prosecutor:

Luc Côté

James C. Johnson

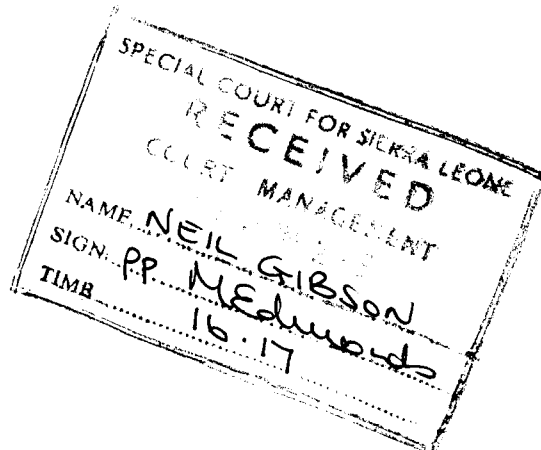
Adwoa Wiafe

Counsel for Norman

Dr. Bu-Buakei Jabbi

Mr. Ibrahim Yillah

Mr. John Wesley Hall



SPECIAL COURT FOR SIERRA LEONE

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**PROSECUTION RESPONSE TO NORMAN COUNSEL’S REQUEST FOR LEAVE TO
APPEAL UNDER RULE 46(H)**

I. INTRODUCTION

1. The Prosecution files this response to the “Norman Counsel’s Request for Leave to Appeal under Rule 46(H)” (hereinafter the “**Request**”).
2. The Request appears to be seeking the following reliefs: (1) A setting aside of the abuse of process findings against him; (2) Alternatively, leave to appeal against the Trial Chamber’s decision of 23 May 2005.
3. The Prosecution submits that the motion lacks merit and should be dismissed in its entirety.

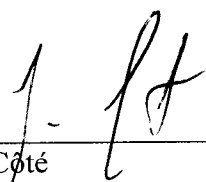
II. ARGUMENT

4. The Prosecution notes that the Request is filed under Rule 46(H) of the Special Court for Sierra Leone Rules of Procedure and Evidence (the “**Rules**”). Given the fact that Rule 46(H) does not provide a standard for reviewing applications made under it, the Prosecution submits that the test provided under Rule 73(B) of the Rules is applicable. It is noteworthy that this Court has underscored the need to adopt a restrictive test in determining interlocutory appeals given the fact that “criminal trials must not be heavily

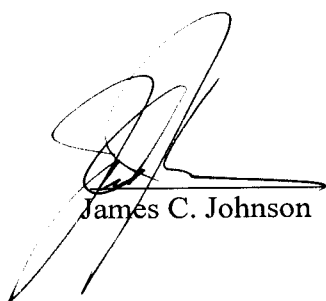
encumbered and consequently unduly delayed by interlocutory appeals”¹ and “the interest of expeditiousness and the peculiar circumstances of this Court’s limited mandate.”² In accordance with this rationale, this Court adopted a high threshold for granting leave to appeal interlocutory decisions under Rule 73(B) in the *Sesay* case.³ The Prosecution submits that the rationale articulated by the Trial Chamber for the Rule 73(B) test is equally pertinent to this application. Hence, the restrictive requirements of Rule 73(B) should be applied.

- 5. Rule 73(B) requires a showing of exceptional circumstances and irreparable harm before leave may be granted for an interlocutory appeal. It is submitted that the Request does not meet these requirements. Indeed, the Request merely restates the arguments made in the original abuse of process motion and fails to establish any additional facts warranting a finding of exceptional circumstances. Accordingly, the Request should be dismissed.
- 6. Alternatively, should the Court find the test under Rule 73(B) inapplicable in this case, the Prosecution submits that leave to appeal should be denied on the basis that no coherent reasons have been given for leave to be granted.

Done in Freetown on this 8th day of June 2005.



Luc Côté



James C. Johnson

¹ *Prosecutor v. Sesay et al.* SCSL-04-15-PT, “Decision on the Prosecution Application for Leave to File an Interlocutory Appeal Against Decision on Motion for Concurrent Hearing of Evidence Common to Cases SCSL-2004-15-PT and SCSL-2004-16-PT”, 1 June 2004, para. 21.

² *Id.*, para. 22.

³ *Prosecutor v. Sesay et al.* SCSL-2004-15-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, para. 10 - 12.